

MINISTRY OF FINANCE
(Department of Economic Affairs)

NOTIFICATION

New Delhi, the 27th July , 2020

S.O. 2442 (E).—In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely:-

1. (1) These rules may be called the Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (hereinafter referred to as the principal rules), after rule 2, the following rule shall be inserted, namely:-

“2(A). *Reserve Bank to administer these rules.* -

(1)*These rules shall be administered by the Reserve Bank.*

(2)*While administering these rules, the Reserve Bank may interpret and issue such directions, circulars, instructions, clarifications, as it may deem necessary, for effective implementation of the provisions of these rules.”*

3. In the principal rules, in rule 3, the words “*and in consultation with the Central Government*” shall be omitted.

4. In the principal rules, in rule 4, the words “*and in consultation with the Central Government*” shall be omitted.

5. In the principal rules, in Schedule 1, in the Table,-

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

S. No. (1)	Sector/Activity (2)	Sectoral Cap (3)	Entry Route (4)
“9.3	Air Transport Services		

	(1) (a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline (b) Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
	(2) Non-Scheduled Air Transport Services	100%	Automatic
	(3) Helicopter services/seaplane services requiring Directorate General of Civil Aviation (DGCA) approval	100%	Automatic

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

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

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

(1)	(2)
“9.5	Other Conditions”
	<p>(a) Air Transport Services shall include Domestic Scheduled Passenger Airlines, Non-Scheduled Air Transport Services, helicopter and seaplane services.</p> <p>(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.</p> <p>(c) Foreign airlines are allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49 per cent of their paid-up capital, subject to the following conditions, namely :-</p> <p>(i) it is made under the Government approval route,</p> <p>(ii) the 49 per cent limit will subsume FDI and FII/FPI investment,</p> <p>(iii) the investments so made would need to comply with the relevant regulations of the Securities and Exchange Board of India (SEBI), such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations/Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations,</p> <p>(iv) all foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security view point before deployment, and</p> <p>(v) all technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.</p>

	<p>(d) In addition to the above conditions, foreign investment in M/s Air India Limited shall be subject to the following conditions, namely :-</p> <p>(i) foreign investments in M/s Air India Limited, including that of foreign airlines shall not exceed 49 per cent either directly or indirectly except in case of those NRIs, who are Indian Nationals, where foreign investments is permitted up to 100 per cent under automatic route.</p> <p>(ii) substantial ownership and effective control of M/s Air India Limited shall continue to be vested in Indian Nationals as stipulated in Aircraft Rules, 1937.</p> <p>(e) FDI in Civil Aviation shall be subject to provisions of the Aircraft Rules, 1937, as amended from time to time.</p> <p>Note:</p> <p>(i) The FDI limits or entry routes mentioned at serial numbers 9.2 and 9.3 above, are applicable in the situation where there is no investment by foreign airline.</p> <p>(ii) Any investment by foreign airlines in companies operating in Air Transport Services, including in M/s Air India Limited, shall be subject to entries (b) and (c) above.</p> <p>(iii) The dispensation for those NRIs, who are Indian Nationals, regarding FDI up to 100 per cent will continue in respect of the investment regime specified at entries (c) (ii) and (d) above.”</p>
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[F. No. 01/05/EM/2019]

ANAND MOHAN BAJAJ, Addl. Secy.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), *vide* number S.O.3732 (E), dated the 17th October, 2019 and subsequently amended *vide* numbers S.O. 4355 (E), dated the 5th December 2019, S.O. 1278 (E), dated the 22nd April, 2020 and S.O. 1374 (E), dated the 27th April, 2020.