31 August 2026

To,
The Chief General Manager,
Reserve Bank of India
Central Office
Mumbai

Subject: Feedback on the Draft Foreign Investment Rules

Dear Sir/Madam,

We appreciate the efforts of the Reserve Bank of India (RBI) in reviewing and revising the inbound foreign investment framework to align with the evolving business needs and regulatory requirements. BCAS welcomes the opportunity to provide feedback on the draft Foreign Investment Rules and recommends the various clarifications and modifications as per **Annexure 1**.

We believe that these clarifications and modifications will enhance the effectiveness and clarity of the Foreign Investments Rules. We appreciate RBI's consideration of our feedback and look forward to a favorable response.

Thank you for your time and consideration.

Regards,

CA Kinjal Shah	**CA Mayur Nayak**	**CA Anil Doshi**
President	**Chairman**	**Co Chairman**
	International Taxation Committee	

Annexure 1

Representation regarding the Draft Foreign Exchange Management (Foreign Investment) Rules, 2026

Sr. No.	Reg. No. of the Draft FI Rules, 2026	Extracts of annotated text of Draft Reg. / Plain description of Draft Reg. (emphasis provided in *italics*)	Our comments / suggestions on draft text
1.	Rule 3(1)(b)	**“eligible investee entity”** means, – i) a company as defined in the Companies Act, 2013 or a body corporate established or constituted by or under any Central or State Act, which is incorporated in India and does not include a society or trust; ii) a limited liability partnership or “LLP” registered as such under the Limited Liability Partnership Act, 2008; iii) an investment vehicle registered with the SEBI and shall include (i) Real Estate Investment Trusts (REITs);(ii) Infrastructure Investment Trusts (InvITs) (iii) Alternative Investment Funds (AIFs) (iv) Venture Capital Funds (v) Mutual funds or Exchange-Traded Fund (ETFs) or any other investment vehicle which invest more than fifty per cent in equity which are registered and regulated under the respective	In the proposed Rules, in the definition of ‘eligible investee entity’ at Sr No (iv), a proprietary concern registered under the applicable domestic laws has been included. It is humbly pointed out that currently there are no specific domestic laws under which a proprietary concern can be registered - other than the state specific Shop and Establishment laws and GST law. Hence, the final framework should clearly specify the law under which a proprietary concern would be required to be registered in order to be considered as an eligible investee entity. Alternatively, it could be considered to drop the requirement for registration of the proprietary concern for being an eligible investee.

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		Securities and Exchange Board of India (SEBI) regulations; iv) a partnership firm registered under the Indian Partnership Act, 1932 and a proprietary concern registered under the applicable domestic laws;	
2.	Regulation 3(1)(b) read with Regulation 3(1)(d)	**Definition of Eligible Investee Entity, Equity, Foreign Direct Investment, Foreign Portfolio Investment** **Regulation 3(1)(b):** "eligible investee entity" means, – i) a company as defined in the Companies Act, 2013 or a body corporate established or constituted by or under any Central or State Act, which is incorporated in India and does not include a society or trust; *ii) a limited liability partnership or "LLP" registered as such under the Limited Liability Partnership Act, 2008;* iii) an investment vehicle registered with the SEBI and shall include (i) Real Estate Investment Trusts	The Draft substantially expands the entities eligible to receive foreign investment by including LLPs, registered partnership firms and proprietary concerns. However, the definition of "equity" does not expressly recognise capital contribution or other ownership interests in partnership firms or proprietary concerns and, in relation to LLPs, refers only to "participating interest or right" in oil fields or mines. This creates a disconnect between the entities eligible to receive foreign investment and the nature of interest that may constitute "equity". We request that Regulation 3(1)(d) expressly recognise such interests.

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		(REITs);(ii) Infrastructure Investment Trusts (InvITs) (iii) Alternative Investment Funds (AIFs) (iv) Venture Capital Funds (v) Mutual funds or Exchange-Traded Fund (ETFs) or any other investment vehicle which invest more than fifty per cent in equity which are registered and regulated under the respective Securities and Exchange Board of India (SEBI) regulations; *iv) a partnership firm registered under the Indian Partnership Act, 1932 and a proprietary concern registered under the applicable domestic laws;* **Regulation 3(1)(d):** "equity" means i) Instruments classified as equity by the eligible investee entity, other than an investment vehicle, as per applicable accounting standards; ii) Unit of an investment vehicle as per the respective SEBI regulations;	Further, the Rules may also clarify whether FDI / FPI classification and related conditions are intended to apply to these entities, particularly since the definitions of FI presently refer specifically to equity of a company or LLP.

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		iii) *"Participating interest or right" in oil fields or mines of an Indian company or an LLP;* **Regulation 3(1)(f):** "foreign Direct Investment" or "FDI" means foreign investment of ten per cent or more in the *equity of a company or an LLP.* **Regulation 3(1)(g):** "foreign portfolio investment" means foreign investment of less than ten per cent in the *equity of a company or an LLP.*	
3.	Regulation 3(1)(d)(i)	**Definition of Equity** **Regulation 3(1)(d)(i):** "equity" means i) Instruments classified as equity by the eligible investee entity, other than an investment vehicle, *as per applicable accounting standards;*	The Draft proposes that, other than for investment vehicles, "equity" would comprise instruments classified as equity by the eligible investee entity under "applicable accounting standards". While this is a useful principles-based approach, the expression "applicable accounting standards" could give rise to uncertainty, particularly as different eligible investee entities may be subject to Indian Accounting Standards (Ind AS) or Accounting Standards (AS) under the applicable regulatory framework.

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			Further, clarity may not be available where the accounting classification of an instrument differs from its contractual or legal character, particularly in the case of hybrid, convertible and structured instruments. We request to define equity as done at present under the NDI Rules. This gives clarity and is not bound to change due to different accounting standards applicable to different entities; or to same entity at different points of time. Such a precise definition would provide certainty and avoid situations where the same instrument could be treated differently for foreign investment purposes solely due to the accounting framework applicable to the investee entity.
4.	Regulation 3(1)(e)	**Definition of Foreign Investment in Equity** “foreign investment in equity” (referred to as ‘foreign investment’ in these rules) means: investment in equity of an eligible investee entity by a person resident outside India; *A. directly; or*	The Draft consolidates direct and indirect foreign investment within the definition of “foreign investment in equity”. The definition covers investment through an FCE or another person resident outside India which is owned or controlled

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		B. indirectly through *(i)* *an FCE; or* (ii) *any other person resident outside India* (other than the person resident outside India who is investing directly) *which is owned or controlled by the person resident outside India, or through any other person resident outside India which is under common ownership or control with the person resident outside India*, In this context, – I. "ownership" means beneficial holding of more than fifty percent of such person resident outside India; II. "control" means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting	by the direct foreign investor, or which is under common ownership or control with such investor. The Draft also introduces specific quantitative thresholds of more than 50% for ownership and 10% or more voting rights as one of the indicators of control in this context. While the consolidation is welcome, the scope of "directly" and "indirectly" and its interaction with legitimate multi-layered investment structures requires greater clarity. In particular, the Rules should clarify the treatment of structures involving Indian resident participation in offshore holding/investment entities i.e., *bona fide* round-tripping structures, and distinguish such arrangements from structures intended to circumvent the foreign investment framework. The Rules may also clarify whether ownership/control is to be tested at every level and how minority or protective rights are to be treated. This is important because the 10% voting-rights threshold could otherwise bring genuine minority

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		agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;	investments within the indirect foreign investment framework.
5.	Rule 3(1)(f) and 3(1)(g)	f) "foreign Direct Investment" or "FDI" means foreign investment of ten per cent or more in the equity of a company or an LLP. g) "foreign portfolio investment" means foreign investment of less than ten per cent in the equity of a company or an LLP;	**"Control" of entity with investment below 10%** In the proposed Rule, the only threshold prescribed for differentiating between FDI and FPI is shareholding of 10% i.e. any investment (whether in shares of an unlisted entity - public or private - or listed entity) below 10% would be treated as FPI. There could be situations where a foreign investor holds less than 10% of shareholding in the Indian entity but exercises control in various ways such as by way of a shareholding agreement, etc. In such a case, where the foreign entity is in a position to exercise control over the investee, the investment would still be classified as FPI under the proposed Rules. Under Rule 2(q) of the Foreign Exchange Management (Overseas Investment) Rules, 2022, Overseas Direct Investment or ODI has been defined as under:

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			"Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment *with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity* Thus, under the ODI rules, there is an emphasis on control in cases where the shareholding is less than 10%. This will ensure that such cases would not become Overseas Portfolio Investment or OPI. It is represented that the definition of FDI at Rule 3(f) should (corresponding to the definition of ODI mentioned above), include control as a criteria to classify investments as FDI even if the threshold of 10% shareholding is not met.
6.	Regulation 3 read with Annexure III	**Definition of Equity** **Regulation 3(1)(d):** "equity" means	**No express provision corresponding to the existing framework for convertible notes issued by recognised start-ups**

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		i) Instruments classified as equity by the eligible investee entity, other than an investment vehicle, as per applicable accounting standards; ii) Unit of an investment vehicle as per the respective SEBI regulations; iii) "Participating interest or right" in oil fields or mines of an Indian company or an LLP	The NDI Rules (Rule 2(e) and 18) contain a specific framework permitting recognised start-ups to issue convertible notes to persons resident outside India, including provisions governing their acquisition, transfer and conversion into equity. The Draft FI Rules do not expressly contain any corresponding provision. Further, depending on the applicable accounting standards and terms of the instrument, a convertible note may not qualify as "equity" under the proposed definition. The omission could create uncertainty for existing and future start-up funding structures. We therefore request that the specific convertible note regime be expressly retained in the FI Rules or appropriately incorporated through Annexure III / RBI directions. The final framework should also clarify the treatment of convertible notes issued under the existing NDI Rules,

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			including their conversion, transfer and exit after the FI Rules come into force.
7.	Rule 6A	**6A. Acquisition or transfer of equity by a person resident outside India or an FCE. –** In accordance with the conditions provided under Rule 8, a person resident outside India or an FCE may make foreign investment on repatriation or non-repatriation basis, in any of the following manner: (1) by way of subscription to an issue; (2) by way of purchase from any person; …	Currently, Rule 9(1) of the NDI Rules clearly provides that the transfer of shares of an Indian company by one non-resident investor to another does not require to comply with the pricing guidelines. However, Rule 6A does not include an express provision to this effect. This could result in ambiguity arising with respect to transfer of shares by one non resident to another. In order to avoid such ambiguity, the final framework (Rule 6A of the proposed Rules) should include an express provision to the effect that the transfer of shares from one non resident to another need not comply with the pricing guidelines.
8.	Rule 6B	**6B. Issue of equity by an eligible Investee entity:** An eligible Investee entity may issue its equity to a person resident outside India or an FCE subject to	Currently, Rule 8 of the NDI Rules contains the provisions with respect to issuance of Employee Stock Options/ Sweat Equity shares. However, Rule 6A of the proposed Rules

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		conditions prescribed in Annexure-I and Annexure-II of these Rules, as applicable.	does not contain an enabling provision for issuance of Employee Stock Options/ Sweat Equity shares. In such an event, even though the current Foreign Direct Investment Policy, 2020 (At Para 5 in Annexure 3 of the policy) contains provisions with respect to the issuance of Employee Stock Options/ Sweat Equity shares, the absence of a specific enabling provision in Rule 6A of the proposed Rules, there could be an ambiguity with respect to the same. Hence the final framework (Rule 6A of the proposed Rules) should include a specific enabling provision with respect to issuance of Employee Stock Options/ Sweat Equity shares.
9.	Rule 8	**8. Conditions applicable on foreign investments. –** (1) General Conditions: (a) Foreign investment shall be in compliance with the conditions prescribed in the foreign investment policy (Annexure-II), including	Currently Rule 12(2) read with Schedule IV of NDI Rules deals with investment on a non-repatriable basis. Clause A(1)(b) of Schedule IV clearly provides that the investment made on a non repatriable basis would be treated as a domestic investment. Further, under Clause A(2) of Schedule IV NRIs and OCIs are permitted to invest in domestic mutual funds (who invest 50% or more in equity

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		conditions of entry routes, sectoral caps and sectoral conditions, as applicable. … **(2) Pricing Guidelines. –** Foreign investment and transfer thereof, shall be at a price: (a) Determined in accordance with the relevant SEBI Regulations in case of a company listed on a recognised stock exchange in India or an investment vehicle; (b) Determined in accordance with the conditions prescribed in Annexure-I, in case of a public company listed on an international stock exchange. (c) Determined, in all other cases, as per any internationally accepted pricing methodology for valuation on an arm's length basis. This shall be duly certified by a Chartered Accountant or a Merchant	shares) on a non repatriable basis. Also, under Clause B of Schedule IV investment in partnership firms/ proprietary concerns are also permitted on a non-repatriable basis. In the proposed Rules, only one relaxation has been provided in Rule 8, i.e., the non-applicability of the pricing guidelines to investment on non-repatriable basis. It is represented that the investment on non-repatriable basis be treated at par with domestic investment so as to ensure that such investments do not result in the requirement to undertake compliances - both at the time of acquisition/ transfer and the annual compliance of foreign liabilities and assets return (FLA return).

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		Banker registered with the Securities and Exchange Board of India or a Cost Accountant. Provided that the pricing guidelines shall not apply to subscription to equity of an eligible investee entity issued on rights basis. *(3) Foreign investment on non-repatriation basis shall not require compliance with the conditions prescribed in this rule.* Provided that foreign investment on non-repatriation basis shall not be permitted in the prohibited sectors prescribed in the foreign investment policy (Annexure-II) for such investment.	
10.	Proviso to Regulation 8(2)	**8. Conditions applicable on foreign investments. –** … **(2) Pricing Guidelines. –** Foreign investment and transfer thereof, shall be at a price:	**Pricing guidelines shall not apply in case of subscription to equity shares issued by an eligible investee entity on rights basis.** The Draft FI Rules provides that pricing guidelines will not apply to subscription to equity issued on a rights basis. However, unlike the NDI Rules, it does not expressly

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		(a) Determined in accordance with the relevant SEBI Regulations in case of a company listed on a recognised stock exchange in India or an investment vehicle; (b) Determined in accordance with the conditions prescribed in Annexure-I, in case of a public company listed on an international stock exchange. (c) Determined, in all other cases, as per any internationally accepted pricing methodology for valuation on an arm's length basis. This shall be duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a Cost Accountant. *Provided that the pricing guidelines shall not apply to subscription to equity of an eligible investee entity issued on rights basis.*	address the acquisition of rights by a non-resident pursuant to renunciation by a resident shareholder. Under the existing Rule 7A, a person resident outside India acquiring rights renounced by a person resident in India may acquire the corresponding equity instruments subject to the applicable pricing guidelines. The omission is significant because an unrestricted exemption for rights issues, without corresponding safeguards for renunciation and acquisition of unsubscribed rights, could potentially permit a non-resident to acquire equity at a price that is not aligned with the applicable pricing framework. We therefore request that the FI Rules expressly retain provisions governing renunciation of rights, including the circumstances in which a non-resident may acquire rights renounced by a resident and the applicable pricing conditions. This would preserve the policy objective of preventing circumvention of pricing norms while facilitating genuine rights issues.

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11.	No Current Rule	**Acquisition of immovable property**	The current NDI Rules includes Chapter IX comprising Rule 24 to 33 with respect to acquisition and transfer of immovable property in India by non residents. In the proposed Rules, there are no provisions with respect to the acquisition and transfer of immovable property in India by non residents. It is represented that separate Rules/ Regulations with respect to acquisition and transfer of immovable property in India by non residents be issued prior to superseding the NDI Rules. The separate Rules/ Regulations should cover all of the aspects mentioned in the above referred Chapter IX and include a saving clause.