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### » PREFERENCE SHARES UNDER FDI ROUTE

Preference Shares have for long time been one of the preferred instruments for structuring investments. Preference shares were especially preferred for some sectors where investments through a non-convertible preference shares were excluded for computing the FDI sectoral limits. Preference Shares were also used to fund the Company and at the same time obtain an agreed rate of return on the capital and return of capital itself on redemption without falling within the ambit of the regulatory framework for a loan capital/External Commercial Borrowings.

Department of Economic Affairs, Ministry of Finance has on April 30, 2007 announced new guidelines which will have substantial implications on the future FDI/foreign investments in Indian companies through preference shares. According to the press note (i) only foreign investment coming through a fully convertible preference shares would be treated as part of the share capital and for computing sectoral wherever prescribed, (ii) foreign investment through any other type of preference shares (such as, non-convertible, optionally convertible or partially convertible) would be considered as a debt and will require confirmation to the ECB guidelines and caps. However, the press note excludes all foreign investments made through non-convertible or optionally convertible or partially convertible preference shares as on and up to April 30, 2007 outside the sectoral cap till their current maturity.

The above amendments would definitely be open to certain interpretations and would have a bearing on structuring the instruments for future investments in the country, such as, whether all preference shares issued before April 30, 2007 will not be subject to the new guidelines, whether non-convertible preference share will still be considered as FDI, whether convertible preference shares where conversion is subject to certain events will still qualify and meet with regulatory requirement, etc. It is expected that relevant amendments to the RBI guidelines would be announced shortly.

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