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**REGULATORY UNCERTAINTY IN DOWNSTREAM
INVESTMENTS: CHALLENGES AND IMPLICATIONS FOR
FOREIGN-OWNED OR CONTROLLED COMPANIES IN INDIA'S
M&A LANDSCAPE**- Sia Sethi¹Abstract: -

India has emerged as a key destination for foreign direct investment (FDI), particularly in the mergers and acquisitions (M&A) sector, as evidenced by record inflows reported by the Reserve Bank of India (RBI) and rankings in the UNCTAD World Investment Report 2023. However, uncertainty surrounding regulatory frameworks for downstream investments by foreign-owned or controlled companies (FOCCs) poses significant challenges. In 2023, the RBI issued notices to several FOCCs for allegedly violating FDI norms related to deferred payment of consideration for their investments, raising questions about regulatory interpretations. The RBI's actions have left stakeholders in a state of ambiguity, as there are no explicit provisions in Indian FDI regulations regarding deferred purchase consideration for downstream investments. This lack of clarity disrupts transaction structures, extends timelines, and causes delays in statutory reporting requirements. The prevailing interpretations of the regulations vary, with some stakeholders advocating for a total prohibition on deferred consideration, while others argue for its allowance under the established 18–25 rule. This paper explores the implications of regulatory uncertainty on FOCC transactions, highlighting three interpretations of deferred consideration: complete prohibition, conditional deferral under the 18–25 rule, and unrestricted deferral. It argues that a ban on deferred consideration hinders essential transaction mechanisms, such as post-closing price adjustments, holdbacks, escrows, and earnouts, which are vital for M&A activities. The discussion

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emphasizes that allowing deferred consideration for downstream investments, while adhering to the 18–25 rule, aligns with regulatory goals and promotes ease of doing business. It calls for the RBI to issue clear guidelines to mitigate existing uncertainties, enhance consistency in transaction structuring, and attract greater foreign investment. Ultimately, a transparent regulatory framework is essential for fostering investor confidence and facilitating economic growth in India's evolving M&A landscape.

Keywords : -

Foreign-owned or controlled companies, Deferred Payment, Downstream Investments, FDI Norms, RBI Regulations, 18–25 Rule, M&A Activity, Regulatory Uncertainty

Overview of the Topic : -

India has established itself as a premier global hub for foreign direct investment (FDI) and has continued to be a significant contributor to the realm of mergers and acquisitions (M&A) sector.² As reported by data that has been periodically recorded by the Reserve Bank of India (RBI), which also functions as the central bank of India, FDI inflows into India reached their highest level during the financial year of 2021–2022.³ Further, the 'World Investment Report 2023 by UN Trade and Development (UNCTAD)' highlighted that, on a global scale, India has ranked as the eighth largest recipient of foreign direct investment in 2022. Moreover, India stood as the third-largest recipient of foreign direct investment in 'greenfield projects' (i.e., new initiatives) and held the position of the second-largest recipient for foreign direct investment in international project finance transactions.⁴ Despite the global economic downturn, India's M&A activity reached the highest level it has in the past ten years in 2023, as was reported in the 'M&A Report 2023' that was released by Bain & Company.⁵ However, in this context, the ongoing uncertainty regarding regulations surrounding downstream investments, specifically by 'FOCCs' which are called 'foreign owned or controlled companies' in India, coupled

² *Cross-border ventures: India's pivotal role in global investment flows* (2024) ARC Group. Available at: <https://arc-group.com/india-cross-border-ventures/> (Accessed: 19 September 2024).

³ *FDI in India: Foreign Direct Investment Policy of India* (2024) Invest India. Available at: <https://www.investindia.gov.in/foreign-direct-investment#:~:text=In%20FY%202014%2D15%2C%20FDI,inflows%20stands%20at%20%2444.42%20Bn.> (Accessed: 19 September 2024).

⁴ *World investment report 2023 | unctad* (2023) United Nations Trade and Development. Available at: <https://unctad.org/publication/world-investment-report-2023> (Accessed: 19 September 2024).

⁵ Singh, K. and Chandrashekhar, V. (2023) *M&A in India: How Long Can This Hotspot Buck the Global Downturn?*, Bain & Company. Available at: <https://www.bain.com/insights/india-m-and-a-report-2023/> (Accessed: 20 September 2024).

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with the cautious stance adopted by most stakeholders following the Reserve Bank's actions, has remained a significant challenge for foreign investors looking for investment opportunities in the country.⁶

In the year 2023, a prominent newspaper that specialises in financial news in India had reported that the Reserve Bank of India (RBI), which not only serves as the country's central bank but also oversees adherence with regulations governing foreign exchange control in India, had given out certain notices to several companies for violating specific FDI norms. The question then arose as to what the exact nature of these violations was? It was found that these FOCCs had deferred a portion of the consideration owed for their downstream investments in other Indian companies.⁷

Up until recently, most legal practitioners and authorized dealer banks, also known as AD Banks, which are the financial intermediaries that are responsible for routing foreign investment transactions under the relevant applicable laws, had prominently held the opinion that FOCCs were allowed to defer a specific portion of the consideration due for their investments in other companies in India.⁸ As such, the recent incidents have resulted in numerous investment and acquisition transactions that are structured through FOCCs being left in a state of utter uncertainty.

At its essence, this situation revolves around a lack of clarity in regulations. Without a clarification from the RBI, especially without an explicit provision in Indian FDI norms with regards to the deferral of purchase consideration for downstream investments, the stakeholders have been left to formulate their own interpretations with regard to the matter in discussion.⁹ Previously, stakeholders had adopted a general interpretation of the

⁶Lala, P. and Mukherjee, R. (2024) *Downstream investments by foccs: Practical challenges and conundrums*, *Downstream Investments by FOCCs: Practical Challenges and Conundrums | Trilegal Quarterly Roundup: Jan - Mar 2024*. Available at: <https://trilegal.com/magazine/downstream-investments-foccs-practical-challenges-and-conundrums-insights-issue-11.html> (Accessed: 20 September 2024).

⁷Dubey, A. and Sarkar, S. (2024) *Deferred consideration by 'foreign owned or controlled' Indian companies – regulatory overhang*, *International Bar Association*. Available at: <https://www.ibanet.org/deferred-consideration-by-foreign-owned-or-controlled-indian-companies-regulatory-overhang#:~:text=Indian%20FDI%20norms%20ordinarily%20apply,not%20to%20share%20transfers%20between> (Accessed: 20 September 2024).

⁸Menezes, A. (2024) *Deferred consideration for foccs in india - legal perspective*, *King Stubb & Kasiva*. Available at: <https://ksandk.com/corporate/navigating-deferred-consideration-for-foreign-owned-and-controlled-companies-foccs-in-india-legal-perspective/#:~:text=The%20RBI%20appears%20to%20hold,deferred%20consideration%20since%20early%202022> (Accessed: 21 September 2024).

⁹Dubey, and Sarkar, *supra* note, 6.

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applicable law regarding the deferral of purchase consideration for downstream investments.¹⁰ However, that view has shifted following the RBI's issuance of notices, which reflected a deduced regulatory stance on the aforementioned matter. This uncertainty with regard to the regulations to be followed is not only affecting structures of various deals and transactions and extending previously decided timelines, but also resulting in delays in these timelines. M&A practitioners have observed that statutory reporting requirements for downstream investments involving deferred consideration are being delayed because the relevant Authorized Dealer Banks (AD Banks) are reluctant to approve filings due to the prevailing regulatory ambiguity.¹¹

A blanket prohibition on deferred consideration in downstream investments merits reconsideration, as it does not align with the intent with which the Indian FDI norms that are applicable to FOCCs were drafted, in addition this lacks commercial practicality.¹²

FDI regulations pertaining to cross-border mergers and acquisitions : -

Indian FDI norms typically engage exclusively with 'cross-border' transfer of shares, meaning transactions between individuals residing outside of the territory of India or foreign body corporates also called 'Non-Residents' and individuals residing in India or Indian body corporates also known as 'Residents'. They do not apply to share transfers between two or more Residents or between two or more Non-Residents. As a consequence, FDI norms are used in almost every instance where a foreign body corporate invests directly in a Indian body corporate.¹³

Key FDI Regulations for Downstream Investments in India : -

When a FOCC acquires shares in any Indian entity, representing a case of indirect foreign investment, the transaction is governed by two key FDI norms that specifically apply to such situations.

¹⁰Chowdhury, P.R. and Pera, P. (2022) *Exploring the latest whims of the RBI*, Lexology. Available at: <https://www.lexology.com/library/detail.aspx?g=9ac2b174-8376-49f4-be8f-8248332123cb> (Accessed: 21 September 2024).

¹¹Menezes, *supra* note, 7.

¹²Chandrashekar, K., Joshipura, N. and Joshi, K. (2022) *DOWNSTREAM INVESTMENTS – A REGULATORY CONUNDRUM*, Nishith Desai Associates. Available at: <https://nishithdesai.com/SectionCategory/33/Regulatory-Digest/12/77/RegulatoryDigest/8308/1.html> (Accessed: 21 September 2024).

¹³Dubey, and Sarkar, *supra* note, 6.

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1. Under the established pricing guidelines, it is expressly mandated that the price per share that is paid by the Non-Resident acquirer to the Resident contracting party must be equal to or greater than the fair market value of the shares in question. The fair market value would essentially serve as a benchmark for determining the appropriate price, thereby fostering equitable dealings between the parties involved in the transaction.¹⁴
2. Effective from 20th May 2016, the Reserve Bank of India (RBI) has modified India's foreign exchange regulations, that require Indian sellers to seek prior RBI approval if their indemnity obligations to foreign buyers (and vice versa) exceeded the newly set limits.¹⁵ Pursuant to this amendment, the '18–25 rule' specifies that the Non-Resident acquirer can defer payment of the purchase consideration for a period of up to 18 months from the date of execution of the primary transaction documents.¹⁶ Additionally, the acquirer may defer, place in escrow or hold back no more than 25 percent of the total amount of consideration to cover post-closing adjustments, earnouts, or general and specific indemnity items as have been outlined in the main transaction documents.¹⁷

The Debate Over the '18–25 Rule' as It Relates to Foreign-Owned or Controlled Companies :-An FOCC (Foreign-Owned or Controlled Company) in India refers to a company that is either majority-owned by a non-resident or a company that has a board of directors that is predominantly controlled by non-residents.¹⁸ When a Foreign-Owned or Controlled Company invests in other Indian companies, these transactions are termed as 'indirect foreign investments' or 'downstream investments.' Although these transactions are domestic, they are still required to comply with FDI (Foreign Direct Investment) regulations.¹⁹ This legal stance arises from the perspective that non-residents must not be

¹⁴Ministry of Finance, *Memorandum Explaining the Provisions in the Finance Bill*, 2024 (2024).

¹⁵*Impact of India's 18/25 cap on indemnities in cross-border M&A transactions* (2022) Majmudar & Partners. Available at: <https://www.majmudarindia.com/the-impact-of-indias-18-25-cap-on-indemnities-in-cross-border-ma-transactions/> (Accessed: 22 September 2024).

¹⁶Chowdhury, and Pera, *supra* note, 9.

¹⁷Dubey, and Sarkar, *supra* note, 6.

¹⁸Sethi, R., Pradeep, L. and Kumar, A. (2024) *Investing in India: An overview of legal considerations*, S&R Associates. Available at: <https://www.snrlaw.in/investing-in-india-an-overview-of-legal-considerations/> (Accessed: 22 September 2024).

¹⁹Ajwani, N. (2016) *Indirect Foreign Investment and Downstream investments*, Rashmin Sanghvi & Associates. Available at: https://www.rashminsanghvi.com/downloads/foreign_exchange_law/FEMA/Indirect%20Foreign%20Investment%20and%20Downstream%20investments.html (Accessed: 22 September 2024).

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allowed to indirectly achieve what they are prohibited from doing directly. If FOCCs were exempt from FDI regulations, a non-resident could have established or invested in an Indian company and used it as a vehicle to make further investments in other Indian entities, which would essentially entail them circumventing the FDI rules that have been established.²⁰

The current uncertainty affecting many FOCC transactions revolves around the 18–25 rule that was earlier discussed. The FDI regulations clearly specify that the 18–25 rule applies to direct foreign investments. The main issue that most legal practitioners have with this rule however, is that these norms do not adequately clarify to what extent the 18–25 rule would apply to indirect foreign investments or downstream investments, such as when a Foreign-Owned or Controlled Company acquires shares of an Indian entity from resident sellers.²¹

Three Prominant Interpretations of Deferred Consideration : -

Here are three main possible interpretations that can be derived from the given information. Each of these interpretations offers a unique perspective and sheds light on different aspects of the subject matter at hand.

1. The first interpretation is that no deferred consideration is allowed. This is considered to be the most conservative interpretation, and unfortunately, it seems to be the basis on which the Reserve Bank of India had issued the concerned notices with regard to the transactions that have been carried out by Foreign-Owned or Controlled Companies.
2. The second interpretation indicates that the consideration may be deferred, but it must comply with the 18–25 rule. This could be considered to be a more balanced, "middle ground" interpretation, which has been used as the basis for most transactions since the 18–25 rule was introduced in the year 2016.
3. The third and final interpretation is that the consideration can be deferred without any restrictions on the amount or the time. This interpretation is considered to be the most business friendly interpretation and it aligns closely with the Indian

²⁰Cyriac, R. (2024) *Downstream investments by foccs – resolving the regulatory conundrum*, IndiaCorpLaw. Available at: <https://indiacorplaw.in/2024/05/downstream-investments-by-foccs-resolving-the-regulatory-conundrum.html> (Accessed: 25 September 2024).

²¹Lala and Mukherjee, *supra* note, 5.

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government's policy which is aimed at enhancing the ease of conducting and partaking in business.²²

Unfortunately the recent actions taken by the RBI concerning FOCC transactions has resulted in many Authorized Dealer (AD) Banks in India having completely stopped allowing any deference with regard to purchase consideration in downstream investments. As a result, this has prompted the adoption of the first interpretation among the three options, which is the most conservative interpretation that has been discussed.²³ Such an approach not only contradicts the intended purpose of regulating downstream investments but it is also commercially impractical considering the nature of most mergers and acquisitions (M&A) transactions.

If looked at from a regulatory standpoint, it could be concluded that the aim of overseeing downstream investments has consistently been to ensure that the foreign investors are unable to achieve indirectly what is prohibited for them to do directly under Indian FDI rules and regulations.²⁴ Deferred consideration is permitted for direct foreign investments, provided that it adheres to pricing guidelines and the 18–25 rule.²⁵ To prevent foreign investors from bypassing these regulations via downstream investments, deferred consideration in these instances should be permitted just as it is for direct foreign investments. This means it should comply with the 18–25 rule.²⁶ A total prohibition contradicts this intent, as it imposes stricter regulations on downstream investments compared to direct foreign investments.²⁷

A ban on deferred consideration poses significant commercial challenges : -

Implementing a complete ban on deferred consideration by Foreign-Owned Controlled Companies (FOCCs) would not only be impractical but it would also be counterproductive when looked at from a commercial point of view.²⁸ Such a prohibition would hinder the

²²Dubey, and Sarkar, *supra* note, 6.

²³Chowdhury, and Pera, *supra* note, 9.

²⁴Cyriac, *supra* note, 19.

²⁵*Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations*, 2017* (Nov. 7, 2017), <https://www.rbi.org.in/commonman/English/Scripts/Notification.aspx?Id=1390> (Accessed: 25 September 2024).

²⁶Krishan, V. and Daswani, S. (2023) *Understanding downstream investments in India: Chambers expert focus, Chambers and Partners*. Available at: <https://chambers.com/legal-trends/indian-downstream-investments-and-the-legal-framework> (Accessed: 25 September 2024).

²⁷Chandrashekar, Joshipura, and Joshi, *supra* note, 11.

²⁸Lala and Mukherjee, *supra* note, 5.

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use of three prevalent forms of deferred consideration, namely post-closing price adjustments, holdbacks and escrows, and earnouts, that are essential in transactions relating to mergers and acquisitions (M&A). The three forms of deferred consideration are further discussed and elaborated on below : -

Post-closing price adjustments : -

Post-closing adjustment clauses generally focus on the target company's liabilities and assets that may fluctuate as a result of business activities occurring between the initial agreement on the purchase price and the actual closing of the deal, which may take place several months later. The most frequent adjustments relate to the disparity between the target's actual net working capital (NWC) at the time of closing and a predetermined target NWC amount anticipated at that time.²⁹ Post-closing price adjustments are often necessary because it can be challenging for an investor to determine a company's valuation at the outset due to the unavailability of trustworthy data.³⁰ The final valuation is typically established after the investor has access to the books and records of the company, and after audited financial statements are drawn up following the completion of the deal.³¹ As a result, the majority of transactions include a provision for adjusting the purchase price after the closing.³² The recent 'American Bar Association (ABA) Private Target M&A Deal Points Study' indicates that 92 percent of M&A transactions in 2022-2023 incorporated mechanisms for post-closing price adjustments.³³

Holdbacks and escrows: -

In mergers and acquisitions (M&A) transactions, escrow or holdback arrangements are employed to ensure that the seller fulfils specific conditions before the agreed funds are released. When an escrow is utilized, a third-party escrow agent retains the funds until he is

²⁹Spillman, J. (2023) *Post-closing purchase price adjustments in mergers and acquisitions*, SGR Law. Available at: <https://www.sgrlaw.com/ttl-articles/post-closing-purchase-price-adjustments-in-mergers-and-acquisitions/#:~:text=Post%2Dclosing%20purchase%20price%20adjustments%20are%20sometimes%20based%20on%20income,performance%20of%20the%20acquired%20business> (Accessed: 26 September 2024).

³⁰Guidance Note on Accounting for Depreciation in Companies in the Context of Schedule II to the Companies Act, 2013 (2014), <https://kb.icai.org/pdfs/50944clcg40588.pdf> (Accessed: 26 September 2024).

³¹Report of the Committee on the Conceptual Framework for Financial Statements under Indian Accounting Standards (2014), https://www.mca.gov.in/XBRL/pdf/framework_fin_statements.pdf (Accessed: 27 September 2024).

³²Spillman, *supra* note, 28.

³³ABA Private Target M&A Deal Points Study, https://www.americanbar.org/groups/business_law/about/committees/mergers-and-acquisitions/deal-points/ (Accessed: 27 September 2024).

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notified that the required obligations have been satisfied, allowing for their release.³⁴ Alternatively, a holdback involves the buyer retaining a certain percentage of the transaction amount. The primary risk associated with a holdback is that the buyer could go bankrupt or become unable to pay the retained amount. Although this scenario is rare, it is one reason many sellers prefer the security offered by an escrow arrangement.³⁵

Due to the uncertainty of valuation on the closing date in many transactions, investors frequently postpone a portion of the purchase price until after the closing.³⁶ The deferred payment serves as a protection against possible price reductions. The investor either retains this amount separately or places it in an escrow account. If the purchase price is lowered following the final valuation, the decrease is subtracted from the holdback or escrow, and the remaining amount is subsequently paid to the sellers or the company.³⁷ The most recent 'ABA Private Target M&A Deal Points Study' indicates that 66 percent of M&A transactions in 2022–2023 included holdbacks or escrows. In contrast, the percentage was significantly higher at 83 percent during 2018–2019.³⁸

Earnouts :-

An earnout acts as a mechanism for allocating risk between the acquirer and the target company, where the purchase price is tied to the future performance of the target. In this arrangement, the acquirer generally pays a substantial portion of the purchase price upfront at the time the deal is finalized.³⁹ However, the remaining amount is contingent upon how well the target company performs in the future. This structure allows the acquirer to mitigate risks associated with uncertainties in the target's future profitability while incentivizing the target's management to drive performance after the acquisition.⁴⁰

³⁴Orosz, J. (2024) *The role of an escrow agent when selling or buying a business*, Morgan & Westfield. Available at: <https://morganandwestfield.com/knowledge/the-role-of-escrow-when-selling-or-buying-a-business/> (Accessed: 1 October 2024).

³⁵Grava, D. (2022) *The use of escrow accounts and holdbacks*, Boutique Investment Bank. Available at: <https://www.versaillesgroup.com/m-and-a-blog/the-use-of-escrow-accounts-and-holdbacks/> (Accessed: 1 October 2024).

³⁶Orosz, *supra* note, 33.

³⁷Dubey, and Sarkar, *supra* note, 6.

³⁸ABA Private Target M&A Deal Points Study, *supra* note, 32.

³⁹Harroch, R. (2024) *Understanding earnouts in mergers and acquisitions*, Forbes. Available at: <https://www.forbes.com/sites/allbusiness/2021/06/26/understanding-earnouts-in-mergers-and-acquisitions/> (Accessed: 2 October 2024).

⁴⁰Barbopoulos, L. and Danbolt, J. (2021) *Earnouts: A study of financial contracting in Acquisition Agreements*, Journal of Accounting and Economics. Available at: <https://www.sciencedirect.com/science/article/abs/pii/S016541011000025X> (Accessed: 2 October 2024).

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Ultimately, earnouts are designed to align the interests of both parties and ensure that the final purchase price reflects the target's actual performance.⁴¹

With the intention to encourage sellers, deferred consideration is usually structured to be paid when the company achieves specific financial or operational milestones within a set timeframe. This strategy aligns the investor's interests in the company's success with those of the founders.⁴² From the founders' viewpoint, an earnout is more tax-efficient compared to receiving a cash bonus. Earnouts are considered capital gains, which are taxed at a lower rate, while cash bonuses are treated as employment income and are subject to a higher tax rate.⁴³ The most recent 'ABA Private Target M&A Deal Points Study' found that 26% of M&A transactions in 2022–2023 included an earn out provision.⁴⁴

Regulatory limitations concerning acquisition or investment activities by Foreign Owned Companies (FOCCs) obstruct the application of each of these structures which are otherwise typically used in M&A transactions worldwide.⁴⁵ This situation has created various structuring challenges for legal practitioners in deals involving FOCCs, especially regarding the ban on deferred consideration in these transactions.

An Analysis of Deferred Consideration with regard to Downstream Investments, specifically in relation to the 18-25 rule :-

Given the fundamental regulatory objectives coupled with the commercial need of deferred consideration in mergers and acquisitions as well as its widespread application, it can be argued that deferred consideration should be allowed with regards to downstream investments, as long as it adheres to the 18–25 rule.⁴⁶

This stance aligns with the administrative goal of imposing Foreign Direct Investment (FDI) norms on Foreign Owned and Controlled Companies (FOCCs), which seeks to inhibit foreign investors from indirectly engaging in activities that they are prohibited from

⁴¹Harroch, *supra* note, 38.

⁴²Macheng, M. (2024) *Deferred consideration in M&A Transactions*, Hill Dickinson. Available at: <https://www.hilldickinson.com/insights/articles/deferred-consideration-ma-transactions> (Accessed: 2 October 2024).

⁴³Dubey, and Sarkar, *supra* note, 6.

⁴⁴ABA Private Target M&A Deal Points Study, *supra* note, 32.

⁴⁵Dubey, and Sarkar, *supra* note, 6.

⁴⁶Menezes, *supra* note, 7.

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doing directly.⁴⁷ Additionally, permitting deferred consideration in downstream investments by Foreign Owned and Controlled Companies, while adhering to the relevant rules, would equalize their position with that of Non-Resident entities and investors regarding the capacity to defer consideration.⁴⁸

Further, permitting deferred consideration enhances the ease of doing business while engaging in downstream investments.⁴⁹ This approach is commonly employed globally, benefiting both buyers and sellers by offering mechanisms for earnouts and post-closing price adjustments for sellers. Moreover, in many mergers and acquisitions transactions, deferred consideration is essential due to the complexities and practicalities involved in finalizing these transactions.⁵⁰

Through the years, the Indian Government and the Reserve Bank of India (RBI) have gradually liberalized foreign direct investment (FDI) regulations, which has significantly contributed to an increase in foreign investment in the country.⁵¹ One of the most notable reforms was the introduction of the 18–25 rule, which unequivocally permitted deferred consideration in direct foreign investments.⁵² In line with this trend, it is anticipated that the Government and the Reserve Bank will extend the allowance for deferred consideration to downstream investments under the 18–25 rule by issuing a clarification or making an appropriate amendment.

Conclusion : -

It is evident that the existing legal framework for Foreign Owned or Controlled Companies (FOCCs) poses various issues with regard to uniform interpretation. This is largely due to the absence of clear and unambiguous regulations in certain key legislations. As a result, stakeholders frequently depend on informal guidance from Authorized Dealer (AD) banks, which is often given on a case-by-case basis which leads to further problems in uniformity. This approach hampers consistency and predictability in structuring transactions involving

⁴⁷Cyriac, *supra* note, 19.

⁴⁸Sethi., Pradeep, and Kumar, *supra* note, 17.

⁴⁹Chowdhury, and Pera, *supra* note, 9.

⁵⁰Macheng, *supra* note, 41.

⁵¹India Brand Equity Foundation, *Foreign Direct Investment* (2023), <https://www.ibef.org/economy/foreign-direct-investment> (Accessed: 5 October 2024).

⁵²Walia, H., Mathur, S. and Gupta, A. (2023) *M&A transactions: Notable Structuring Considerations, M&A Transactions/ Notable Structuring Considerations - M&A/Private Equity - Corporate/Commercial Law - India*. Available at: <https://www.mondaq.com/india/maprivate-equity/1336920/ma-transactions%7C-notable-structuring-considerations> (Accessed: 9 October 2024).

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FOCCs and raises concerns about inconsistent interpretations and practices across different various transactions.

Without a clear and comprehensive regulatory framework to govern M&A transactions, companies are faced with countless uncertainties that result in hindered strategic decision-making and issues in long-term planning. One solution to this problem could be the Reserve Bank of India (RBI) issuing explicit and unambiguous guidelines which would help address the challenges in discussion and create a strong foundation for regulating FOCCs effectively. Such a framework would enable businesses to structure transactions more efficiently, with a clear understanding of regulatory expectations and requirements for everyone involved.

The existing regulatory landscape in India can also hinder foreign investment. Uncertainty and inconsistency in regulations may discourage prospective investors, leaving them doubtful about the sustainability of their investments. By creating a transparent and stable regulatory system, India could attract greater foreign capital, fostering economic growth and development.

Financial institutions and legal experts have voiced concerns to the RBI and other authorities regarding this and have urged them for the swift release of official clarifications with regard to rule 18-25. Resolving these uncertainties would not only greatly enhance the ease of cross-border transactions but also boost investor confidence as well as create a clearer, more predictable regulatory framework for FOCCs. The industry is keenly anticipating these clarifications from regulators, which would be a crucial move toward closing the existing gaps in the legal framework.

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