

3RD WORKSHOP ON FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

organised by

All India Chartered Accountants Society (AICAS) | CFO World | Forum of India's Chartered Accountant Firms

SESSION VI - FOREIGN DIRECT INVESTMENT (FDI) – II

15th May 2026 | 19:15 to 20:00 hours (IST) | New Delhi

Presented by:

CA Siddharth Banwat

Prepared by:

Ms. Ishika Shah

PRESENTATION AGENDA



Downstream Investment



Investment by Foreign Venture
Capital Investor



Foreign Institutional
Investment (FII)



Issuance of ESOPs / Sweat
Equity Shares to NR



Procedure for Automatic and
Government Route



Role of Cabinet Committee of
Economic Affairs (CCEA) in
approval of FDI



Investments in Investment
Vehicle



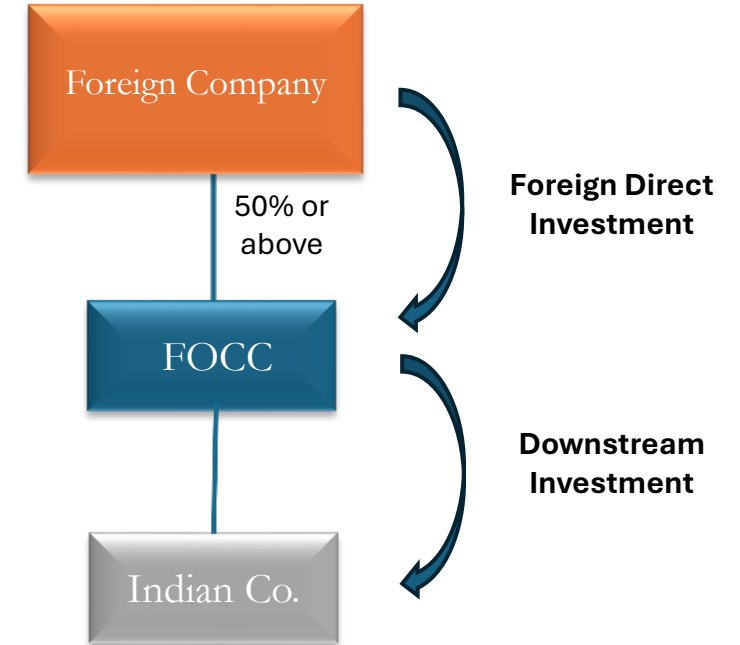
Investment through IFSC



Sectoral Nuances

NAVIGATING DOWNSTREAM INVESTMENT

- i. The primary legal framework governing these transactions consists of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019
- ii. When an Indian entity is classified as being **Foreign Owned and Controlled (FOCC)**, any subsequent capital or equity injection it makes into another Indian company is legally treated as a downstream investment rather than a domestic one
- iii. These **downstream investments** are categorized as indirect foreign investments, meaning they **must strictly adhere to the same conditions applicable to direct foreign investments, such as sectoral caps, entry routes, and pricing guidelines**
- iv. The applicability of the Downstream Investment Guidelines (DIG) is determined by the specific status of the investing Indian entity, particularly regarding whether it meets the criteria for foreign ownership and control
- v. The transition from a Foreign Company making a Foreign Direct Investment into an FOCC, which then conducts a Downstream Investment into a third Indian entity, creates a chain of capital that is monitored under these FEMA provision.



DEFINITIONS (1/2)

➤ Indirect Foreign Investment

“**indirect foreign investment**” means downstream investment received by an **Indian entity** from,-

(A) **another Indian entity** (IE) which has received **foreign investment** and (i) the IE is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India; **or**

(B) **an investment vehicle** whose sponsor or manager or investment manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India :

Provided that no person resident in India other than an Indian entity can receive Indirect Foreign Investment;”

➤ Downstream Investment

“**downstream investment**” shall mean investment made by an Indian entity which has total foreign investment in it, or an Investment Vehicle in the equity instruments or the capital, as the case may be, of another Indian entity.”

➤ Total Foreign Investment

“**total foreign investment**” means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis;

➤ Equity Instruments

“**equity instruments**” means equity shares, convertible debentures, preference shares and share warrants issued by an Indian company;”

DEFINITIONS (2/2)

➤ Ownership –

“ownership of an Indian company” shall mean beneficial holding of **more than fifty percent of the equity instruments** of such company and “ownership of an LLP” shall mean contribution of **more than fifty percent in its capital and having majority profit share;**”

➤ Control as per Companies Act , 2013 –

“**control**” shall include the right to appoint majority of the directors or to control the 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 agreements or in any other manner;”

➤ Foreign Investment –

“foreign investment” means any investment made by a person resident outside India **on a repatriable basis** in equity instruments of an Indian company or to the capital of a LLP;

Explanation: - If a declaration is made by a person as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment;

Note:- A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company;”

➤ Strategic Downstream Investment- ‘Strategic downstream investment’ means downstream investment by banking companies incorporated in India in their subsidiaries, joint ventures and associates.”

STRUCTURAL BOUNDARIES: STRATEGIC, PROHIBITED AND DISTRESSED CAPITAL

Strategic Downstream Investment



- Requires board approval to ensure structural integrity
- Pricing guidelines to be adhered to
- Mandatory compliance with sectoral caps

Prohibited Indirect FDI



- Strict FEMA prohibitions block indirect investment from flowing into:
- Real estate business or construction of farm house
 - Lotteries & Gambling
 - Chit funds
 - Nidhi company
 - Trading in Transferable Development Rights

Corporate Debt Restructuring (CDR)

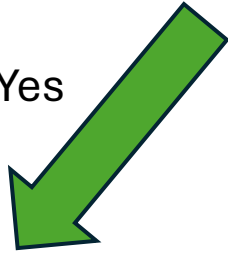


- Acquisition of shares by non-residents via debt conversion is permitted by banks without any sectoral limits or approval
- The original lending must have complied with External Commercial Borrowing or FDI norms.

CALCULATING TOTAL FOREIGN INVESTMENT

Is the investing Indian Company **Owned** or **Controlled** by Person Residents Outside India (FOCC) ?

Yes



100% of its Downstream Investment is counted as Indirect Foreign Investment

No



0% of its Downstream Investment is counted as Indirect Foreign Investment

Calculation Guidelines

Equation: Total Foreign Investment = Direct FDI + Indirect FDI

Rule: The calculation must be strictly applied across all equity instruments on fully diluted basis.

Other Conditions

- Any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment
- The methodology for calculating total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company
- The indirect foreign investment received by a wholly owned subsidiary of an Indian company will be limited to the total foreign investment received by the company making the downstream investment

COMPLIANCE AND EXIT CONDITION (1/2)

Sr. No.	Particulars	Conditions
1	Source of funds	<ul style="list-style-type: none">Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets.The downstream investments may be made through internal accruals. For this purpose, internal accruals shall mean profits transferred to reserve account after payment of taxes.
2	Reporting	<ul style="list-style-type: none">Entity master to be created for the entity receiving downstream investment and business user of the FOCC entity.FOCC making downstream investment in another Indian, shall notify the Secretariat for Industrial Assistance, DPIIT within 30 days of such investment, even if equity instruments have not been allotted, along with the modality of investment in new / existing ventures (with / without expansion programme).Further, FOCC shall also file Form DI with the Reserve Bank within 30 days from the date of allotment of equity instruments on FIRMS portal. Proof of filing with DPIIT to be submitted as an attachment of Form DI.
3	Other Requirement	<ul style="list-style-type: none">Each downstream investment requires prior approval from the Board of Directors and shareholders.FOCC to obtain certificate form auditor on an annual basis and compliance of NDI rules to be included in the Director's Report.

COMPLIANCE AND EXIT CONDITION (2/2)

Sr. No.	Particulars	Conditions																
	Other Requirement	<ul style="list-style-type: none"> Downstream investment by an LLP not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to one hundred percent is permitted under automatic route and there are no FDI linked performance conditions. Further, If a resident investor entity becomes FOCC, its existing investments are reclassified as downstream investments from that date. The investor must ensure these investments comply with all applicable sectoral caps and entry routes. Finally, a Form DI must be filed within 30 days of this change in status to report the reclassification to the RBI. 																
4	Additional Reporting Guidelines	<table border="1"> <thead> <tr> <th data-bbox="649 778 904 842">Transferor</th> <th data-bbox="917 778 1159 842">Transferee</th> <th data-bbox="1172 778 1516 842">Pricing Norms</th> <th data-bbox="1528 778 1987 842">Reporting Norms</th> </tr> </thead> <tbody> <tr> <td data-bbox="649 849 904 921">FOCC</td> <td data-bbox="917 849 1159 921">PROI</td> <td data-bbox="1172 849 1516 921">No</td> <td data-bbox="1528 849 1987 921">Form FC - TRS</td> </tr> <tr> <td data-bbox="649 928 904 999">FOCC</td> <td data-bbox="917 928 1159 999">PRI</td> <td data-bbox="1172 928 1516 999">Yes</td> <td data-bbox="1528 928 1987 999">No reporting required</td> </tr> <tr> <td data-bbox="649 1006 904 1078">FOCC</td> <td data-bbox="917 1006 1159 1078">FOCC</td> <td data-bbox="1172 1006 1516 1078">No</td> <td data-bbox="1528 1006 1987 1078">Form DI</td> </tr> </tbody> </table>	Transferor	Transferee	Pricing Norms	Reporting Norms	FOCC	PROI	No	Form FC - TRS	FOCC	PRI	Yes	No reporting required	FOCC	FOCC	No	Form DI
Transferor	Transferee	Pricing Norms	Reporting Norms															
FOCC	PROI	No	Form FC - TRS															
FOCC	PRI	Yes	No reporting required															
FOCC	FOCC	No	Form DI															
5	Exit Requirements	<ul style="list-style-type: none"> Any change in the investment structure, including exits or reclassifications, must be reported to the regulatory authorities (typically using Form FC) to maintain an accurate record of total foreign investment 																

SPECIALIZED CAPITAL DEPLOYERS: FVCI & FII

Foreign Venture Capital Investor (FVCI)



Registration : SEBI Registered



Capital Focus : Primarily unlisted securities, startups and specialized sectors



Special Privilege : Exempt from stringent FEMA pricing guidelines at entry and exit, allowing flexible valuation



Permitted Sectors : IT, Biology, Nanotechnology, Dairy industry , poultry industry, etc.

Foreign Institutional Investment (FII) / FPI



Registration : SEBI Registered (under FPI route)



Capital Focus : Primarily listed securities, startups and secondary public markets



Special Privilege : Portfolio investment scheme allows purchasing shares directly on recognized stock exchanges.



Permitted Sectors : Individual holdings capped at 10%. Aggregate FII holdings capped at the sectoral limit (default 24% unless raised by company board).

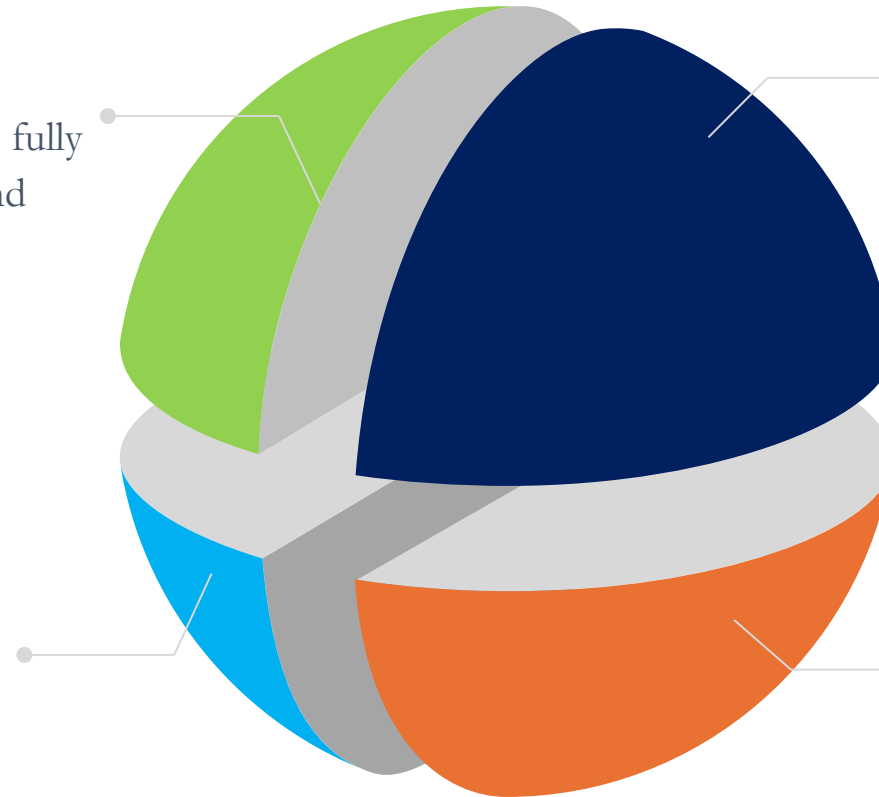
HUMAN CAPITAL INTEGRATION : ISSUANCE OF ESOPs/ SWEAT EQUITY

Scheme Formulation

The equity incentive plan must be fully compliant with Companies Act and SEBI guidelines (in case of listed company)

Route Verification

If the sector requires Government approval for FDI, prior mandate is also required for issuing ESOPs. Otherwise, it falls under Automatic route



Cap Alignment

Issuance of ESOPs or Sweat Equity must not breach prevailing sectoral cap for that specific industry

Reporting Mechanics

Mandatory filing of Form ESOP with the Reserve Bank of India within 30 days of issuance of shares to non-resident employee or director

AUTOMATIC ROUTE & APPROVAL ROUTE

	Automatic Route	Approval Route
Speed to Market	Frictionless entry. Capital deployment upon regulatory filing	Staged entry. Timeline subject to multi-departmental administrative review
Regulatory Friction	Post- facto RBI compliance and routine reporting	Pre- investment scrutiny by respective administrative ministries/departments
Administrative Requirement	Standard banking channels and Authorized Dealers (AD) bank verifications	Formal proposal via National Single System Window (NSWS)
Typical Use- Cases	Standard commercial activities in non-sensitive, fully-liberalized sectors	Restricted sectors, high-stake investments, or boundary sharing nation investments
Examples	Insurance (Sectoral cap 74%, Route Automatic)	Private Sector Banking (Up to 49%,Route Automatic) (>49% and <74%, Route–Approval)

Stage 1 & 2: Application Filing → DPIIT

Assignment & Scrutiny



Application Filing

Investor submits FDI proposal via online portal

Annexure I

Annexure II



DPIIT Assignment

Completeness check & Competent Authority identification by sector

Annexure V



Scrutiny by CA

Detailed review; queries raised; applicant responds within stipulated timelines

Annexure I

Annexure II

Compliance Checkpoints: Annexure I checklist completeness · Annexure II security disclosures · Portal submission protocols must all be satisfied before advancement to the next stage.

Stage 3: Multi-Agency Consultation



Parallel Circulation

MHA · MEA · RBI · Sectoral Ministries review simultaneously per Annexure V windows

Escalation Protocols

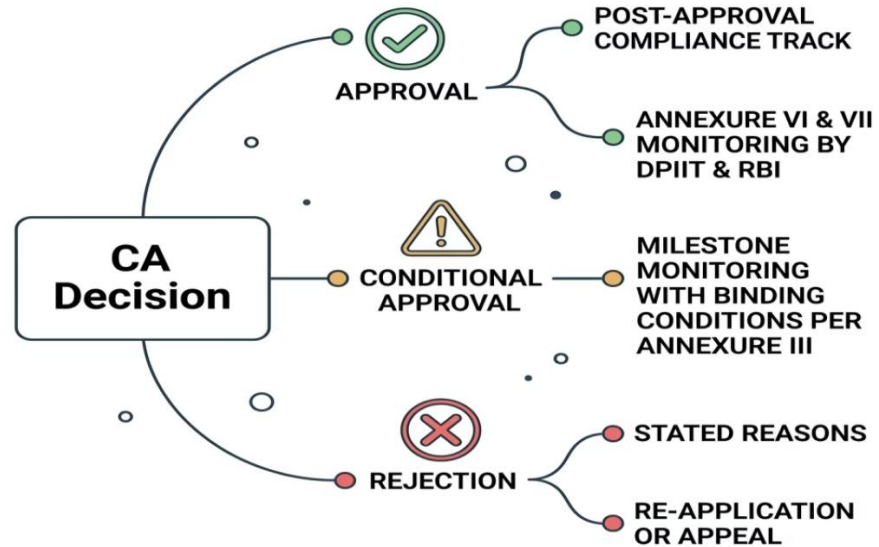
Agency delays trigger automatic escalation; sensitive sectors (defence, telecom, media) undergo enhanced security review

Consolidated Assessment

CA aggregates all agency inputs, resolves conflicts, and prepares final decision assessment

FDI SOP PROCESS FLOW – GOVERNMENT APPROVAL ROUTE (3/3)

Stage 4 & 5: Decision → Post-Approval Compliance



Decision Outcome	Governing Annexure	Next Step
✓ Approval	Annexure III	Post-Approval Compliance
⚠ Conditional Approval	Annexure III + Conditions	Milestone Monitoring
✗ Rejection	Stated Reasons	Re-application / Appeal
📄 Corrigendum	Annexure IV	Correction & Reissue

Post-Approval Obligations: Reporting per Annexure VI · Legal affidavits · Investment milestones · High-risk investments follow Annexure VII protocols · DPIIT & RBI jointly monitor compliance

ROLE OF CABINET COMMITTEE OF ECONOMIC AFFAIRS (CCEA)

While the Foreign Investment Facilitation Portal (FIFP) and individual ministries process standard FDI applications, the CCEA is responsible for reviewing and approving proposals that involve significant capital inflows

According to general regulatory standards, the CCEA typically handles all FDI proposals that exceed INR 5,000 crore. Proposals below this limit are usually approved by the relevant administrative ministry or department.







The committee ensures that large-scale foreign investments are consistent with India's strategic national interests and economic priorities.

As the apex body in the approval process, it acts as the final gatekeeper for investments into sectors that are not permitted under the Automatic Route

For sectors that do not fall under the Automatic Route, the CCEA acts as the ultimate gatekeeper, ensuring that any approval granted is in full compliance with the FEMA (Non-debt Instruments) Rules, 2019



INVESTMENT IN INVESTMENT VEHICLES (REITs, INVITs, AIFs)

<p>REITs (Real Estate Investment Trust) & InvITs (Infrastructure Investment Trust)</p>	<p>Asset Focus</p>  <p>Completed, income-generating real estate.</p>	<p>FDI Treatment</p>  <p>Permitted under Automatic route</p>	<p>Structural Nuance</p>  <p>Sponsor and Mnager must be Indian owned or controlled for Trust's downstream investment to be treated as domestic capital</p>
<p>AIFs (Alternative Investment Funds) & Venture Capital Funds</p>	<p>Asset Focus</p>  <p>Private equity, venture capital, distressed asset</p>	<p>FDI Treatment</p>  <p>Capital can be pooled from non-residents seamlessly under the Automatic route</p>	<p>The control exemption</p>  <p>If the AIF is sponsored and managed by an entity owned and controlled by resident Indians, all downstream investment made by the AIF are considered entirely domestic, effectively bypassing sectoral FDI caps</p>

INVESTMENT THROUGH IFSC

Inward Investment

Foreign capital freely flows into IFSC entities without standard FDI frictions. The IFSC is treated as “non-resident” territory under FEMA.

Compliance Condition

Any investment flowing from an IFSC into a domestic Indian entity is treated as foreign investment and is strictly subject to the entry routes, sectoral caps, investment limits, and pricing guidelines defined in the NDI Rules

Downstream Implications

If an investment vehicle in the IFSC is managed or controlled by non-residents, it may be classified as a Foreign Owned and Controlled Company (FOCC), meaning its investments into other Indian companies will be legally treated as downstream investment

Reporting Requirements:

All capital entering India through this route must be accurately reported to ensure that the total foreign investment in the target Indian company is monitored and remains within permissible sectoral limits

Strategic Edge of the IFSC

- Full capital convertibility
- Distinct tax holidays
- Ability to maintain accounts and transact in foreign currency

SECTORAL NUANCES (1/3)

Agriculture & Plantation Sector

General Rule :

- Strict prohibition on standard agricultural activities

The Carve Outs : (100% Automatic)

- Allowed strictly for specialized areas:
- Floriculture, Horticulture, Agriculture, Cultivation of Vegetable/ Mushrooms under controlled conditions, Development of seeds, and Animal Husbandry

Plantations :

- Tea, Coffee, Rubber, Cardamom and Plum/Olive oil plantation

Aviation Sector

Scheduled Air Transport :

- Up to 49% under Automatic Route (100% for NRIs), Government approval is required to exceed 49%

Helicopter and Seaplane

Services :

- 100% permitted under Automatic route

Airport Infrastructure :

- 100% permitted under Automatic Route for both greenfield and brownfield airport development projects

Manufacturing sector

General Rule :

- 100% permitted under Automatic Route

Special Liberties :

- A manufacturer is permitted to sell products manufactured in India through wholesale and/or retail, including e-commerce, without Government approval.
- Entities that manufacture in India are free to conduct business across all channels (B2B and B2C).

Defence Sector

Automatic Route:

- Up to 74% permitted for new industrial licenses.

Government Router :

- Beyond 74% and up to 100% where it is likely to result in access to modern technology or for other reasons to be recorded.

Key Condition :

- Infusion of fresh foreign investment within the permitted automatic limit in a company not seeking a new industrial license must be reported to the Ministry of Defence.

Broadcasting & Media

Broadcasting Content Services :

- **FM Radio:** Up to 49% under the Government Route
- **New & Current Affairs:** Up to 26% under Government Route

Broadcasting Carriage Services:

- Up to 100% permitted under the Automatic Route (includes Teleports, DTH, Cable Networks, and Mobile TV).

Print Media:

- 26% for News and 100% for Non-News/Specialized scientific/technical magazines (Government Route).

E-commerce Entities

Marketplace Model (100% Automatic)

- Provision of an IT platform by an e-commerce entity on a digital network to act as a facilitator between buyer and seller

Inventory Model (Prohibited)

- FDI is strictly prohibited in the inventory-based model where the entity owns the goods and sells directly to consumers

Key Performance Condition ;

- Marketplace entities cannot exercise ownership or control over the inventory or influence the sale price of goods/services

Trading Sector

Cash & Carry Wholesale (100% Automatic):

- B2B trading involving the sale of goods to retailers, industrial, commercial, or professional users

Single Brand Retail (100% Automatic):

- Products must be of a "Single Brand" sold internationally; 30% local sourcing required for FDI exceeding 51%.

Multi-Brand Retail (51% Government):

- Minimum investment of USD 100 million; 50% must be in back-end infrastructure; restricted to states that allow such retail.

Financial Services & Digital Assets

Other Financial Services (100% Automatic):

- Allowed if the activity is regulated by any financial sector regulator (RBI, SEBI, IRDAI, etc.).

Credit Information Companies (100% Automatic):

- Subject to relevant sectoral regulations.

Virtual Digital Assets (VDA):

- Subject to 30% flat tax and strict AML/CFT reporting to FIU-IND; no separate FDI cap but high regulatory oversight.

THANK YOU !!

S BANWAT & ASSOCIATES LLP

Chartered Accountants

Mumbai

2001, 20th Floor, Marathon Millennium,
LBS Marg, Near Nirmal Lifestyle Mall,
Mulund West, Mumbai - 400080

MAHARASHTRA, INDIA



CA Siddharth Banwat

Founding Partner

Email:

siddharth@sbna.co.in /
siddharth@yuvyze.in



YUVYZE CONSULTING LLP

Mumbai | Dubai

2002, 20th Floor, Marathon Millennium,
LBS Marg, Near Nirmal Lifestyle Mall,
Mulund West, Mumbai - 400080

MAHARASHTRA, INDIA

Satellite office(s) – for meetings

Parel: AWFIS, Unit 801-802, 8th Floor, Tower 1, One International Center, Senapati Bapat Marg, Lower Parel, Mumbai, Maharashtra - 400013

BKC: AWFIS, 1st Floor, Parinee Crescenzo, G Block BKC, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra - 400051