

# INDIA: FOREIGN DIRECT INVESTMENT



Policy and Procedures



PricewaterhouseCoopers Pvt. Ltd., India (PwC) is one of the largest and most reputed professional services network in the country, providing industry-focused services to public and private clients. PwC specialists connect their thinking, experience and solutions to build public trust and enhance value for clients and their stakeholders.

PwC in India has offices in Bangalore, Kolkata, Chennai, Hyderabad, Mumbai, New Delhi, Bhubaneswar and Pune.

The Inward Investment Advisory Group of PricewaterhouseCoopers in India works with international companies, regulators and policy making authorities to provide focused solutions and assistance for setting up operations in India.

For further information, please contact:  
Vivek Mehra, Executive Director  
PricewaterhouseCoopers Pvt. Ltd.  
Sucheta Bhawan, 11-A, Vishnu Digamber Marg  
New Delhi - 110 002  
Ph: +91 11 2321 0542  
Email: [vivek.mehra@in.pwc.com](mailto:vivek.mehra@in.pwc.com)

## CONTENTS

---

<b>Chapter 1</b>	India - Overview _____	4
	Vital Statistics	
	Laws Governing Business	
<b>Chapter 2</b>	Highlights of Industrial Policy _____	6
<b>Chapter 3</b>	Foreign Investment in India - Routes and Authorities _____	8
	Govt. Policy on Foreign Equity Investment	
	Govt. Policy on Foreign Technology Transfer	
	Investment by Way of Acquisition of Shares	
	Investment by Foreign Institutional Investors	
<b>Chapter 4</b>	Sector Specific Policy on FDI - Summary _____	13
<b>Chapter 5</b>	Mobilisation of Funds and Significant Exchange Control Regulations _____	18
	Investment through GDR / ADR / FCCB	
	Mobilisation of funds through Preference Shares	
	Mobilisation of funds through External Commercial Borrowings (ECBs)	
	Significant Exchange Control Regulations	
<b>Chapter 6</b>	Entity Options in India _____	21
<b>Chapter 7</b>	Taxation in India* _____	23
	Direct Taxes	
	Transfer Pricing	
	Indirect Taxes	
<b>Chapter 8</b>	Incentive Schemes _____	32
<b>Annexures</b>		
Annexure 1	Guidelines for Consideration of FDI Proposals by the FIPB _____	37
Annexure 2	Part I, Guidelines for FDI in the Banking Sector _____	41
	Part II, Annexure to Roadmap for Presence of Foreign Banks in India _____	43
Annexure 3	Tax Rates under Double Taxation Avoidance Treaties _____	44
Annexure 4	Summary of Agencies/Departments Dealing with Investment Clearances/Approvals _____	49

## IMPORTANT STATISTICS

**Size:** 3.3 Million sq kms. World's 7th largest nation

**Population:** Over 1 Billion people, World's 2nd most populous nation

**Political set up:** Parliamentary democracy since independence from British rule in 1947

**Written Constitution:** Preamble: "Justice - social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity, and to promote among them fraternity assuring the dignity of individual and the unity of the Nation".

**Fundamental Rights:** Guaranteed by the Constitution.

**State Religion:** Secular State - there is no state religion

**Directive principles of:** Promotion of peoples' welfare in a social State Policy order

**Union of India:** 28 Federal States and 7 Union Territories.

**Parliament:** Two Houses - Lok Sabha (Lower House) and Rajya Sabha (Upper House).

**Head of State:** President

**Head of Government:** Prime Minister

**Independent Judiciary:**

**Supreme Court** - highest judicial authority in India

**High Court** - head of judicial hierarchy in the State.

**Language:** Official language is Hindi, but English is used for official purposes and is widely read and spoken.

## IMPORTANT LAWS GOVERNING BUSINESS

India has an exhaustive legal framework governing all aspects of business. Some of the important ones include:

### Corporate

**Companies Act, 1956:** Governs all Corporate Bodies.

**Competition Act, 2002:** Law to ensure free and fair competition in the market.

**Consumer Protection Act, 1986:** Law relating to protection of consumers from unscrupulous traders/manufacturers.

**Environment Protection Act, 1986:** Provides framework for seeking environmental clearances.

**Foreign Exchange Management Act, 1999:** Regulates foreign exchange transactions including foreign investment.

### Labour

**Factories Act, 1948:** Law regulating labour in factories.

Industrial Disputes Act & Workmen Compensation Act

**Labour laws dealing with disputes:** Industries (Development & Regulation) Act, 1951

Governs all industries.

#### Dispute Settlement

**Arbitration and Reconciliation Act, 1996:** Law relating to alternate redressal of disputes amongst parties.

#### Taxation

**Central Excise Act, 1944:** Governs duty levied on manufacture.

**Customs Act, 1962:** Deals with import regulations.

**Customs Tariff (Amendment) Act, 2003:** The Act puts in place a uniform commodity classification code based on globally adopted nomenclature system for use in all trade-related transactions.

**Income Tax Act, 1961:** Governs direct taxes on income of all persons, both corporate and non-corporate as well as residents and non-residents.

**Sales Tax Act, 1948:** Governs the levy of tax on sales.

#### Sector Specific

**Electricity Act 2003:** Regulates generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interests of consumers and supply of electricity to all areas.

**Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:** Seeks to put in place securitisation and asset foreclosure laws creating a legal framework for establishment of Asset Reconstruction Companies.

#### Other Laws

**Information Technology Act, 1999:** Law governing E-commerce transactions.

**Money Laundering Act:** Prevents money laundering and provides for confiscation of property derived from, or involved in, money laundering.

**Patents Act, Copyright Act, Trade Marks Act:** Protect intellectual property rights.

**Special Economic Zones Act, 2005:** A comprehensive Act : Provides for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.

Provides for fiscal and economic incentives for developer of / units in SEZ.

The Industrial Policy Resolution of 1956 and the Statement on Industrial Policy of 1991 provides the basic framework for the overall industrial policy of the Indian Government. In fact, the process of liberalisation started in India with the Statement on Industrial Policy of 1991.

We outline below those aspects of the Industrial Policy which are of interest and relevance for a first-time investor into India.

### Licensing

Since 1991 the Government has substantially removed bureaucratic control on industry. Licensing has been completely abolished except in :

- Two (2) Units reserved for public sector - atomic energy and railways
- Five (5) industries in which Industrial Licensing is compulsory viz., hazardous chemicals, industrial explosives, distillation and brewing of alcoholic drinks, all types of electronic aerospace and defence equipment, cigarettes;
- Manufacture of items reserved for Small Scale Sector;
- Proposals attracting locational restrictions.
- The exemption from Licensing also applies to all substantial expansion of existing units.
- Procedure for Obtaining Industrial Licence
- All industrial undertakings subject to compulsory industrial licensing are required to submit an application in the prescribed format, i.e. FC-IL, to the Entrepreneurial Assistance Unit of SIA, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Udyog Bhawan, New Delhi – 110011.
- The application should be submitted along with a crossed demand draft of US\$ 55 (INR 2500/-) drawn in favour of the Pay & Accounts Officer, Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, payable at State Bank of India, Nirman Bhawan, New Delhi.
- Approvals are generally given within 4-6 weeks of filing the application.

### Industrial Entrepreneurs Memorandum (IEM)

Industrial undertakings exempt from industrial licence, including

existing units undertaking substantial expansion, are required to file an IEM in Part A with the SIA, Department of Industrial Policy and Promotion, Government of India, and obtain an acknowledgment. No further approval is required. Immediately after the commencement of commercial production, Part B of IEM has to be filed in the prescribed format. The facility for amendment of existing IEMs has also been provided.

### Procedure

- (a) The IEM can be submitted to the EAU of the SIA in person or by post along with a crossed demand draft of INR 2,000/- (approx. US\$ 20) drawn in favour of "The Pay & Accounts Officer, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry", payable at New Delhi for up to 10 items proposed to be manufactured in the same unit. For more than 10 items, an additional fee of INR 250 (approx. US\$ 5-6) for up to 10 additional items needs to be paid through crossed demand draft.
- (b) A computer acknowledgement containing the SIA Registration Number (for future reference) is issued across the counter immediately, if delivered in person, or sent by post, if received through post. No further approval from SIA is required.
- (c) All Industrial undertakings also need to file information in Part 'B' of the IEM at the time of commencement of commercial production to EAU in SIA. No fee is required for filing part B. All industrial undertakings whether exempt or not from compulsory industrial licensing, are required to submit a monthly production return in the proforma at the following address every month, so as to reach the Industrial Statistics Unit (ISU) by the 10<sup>th</sup> of the following month, along with a copy to the concerned Administrative Ministry/ Department/ Authorities.

### Joint Director

Industrial Statistics Unit (ISU)  
Department of Industrial Policy & Promotion  
Room No. 326, Udyog Bhawan  
New Delhi – 110 011  
Fax: + 91 - 11 - 2301 4564

This information is used to compile the Index of Industrial Production (IIP).

Details and the prescribed format are available at the website: <http://dipp.nic.in>.

In the case of small scale industrial undertakings, the monthly production return should be submitted to the appropriate State Government or Commissioner of Industries and to the Department of Small Scale and Agro & Rural Industries, Government of India along with a copy to the Small Industries Service Institute.

- (e) An IEM would be cancelled/deleted from the SIA records if, on scrutiny, it is found that the proposal contained in the IEM is licensable.

### Location

Industrial Approval is required from the Central Government for industries proposed to be located in cities with a population of more than one million (as per 1991 census).

- Industries of polluting nature may be located outside 25 km of the periphery of cities with population of more than one million, or in prior designated Industrial Areas. Local zoning, land use regulations and environmental regulations also apply.
- Industries like Electronics, Computer software and Printing are exempt from such locational restriction.

### Policy relating to Small-Scale Undertakings

A small-scale industrial (SSI) unit is an industrial undertaking having an investment of less than INR 10 million (approx. US\$ 0.22 million) in plant and machinery.

- Equity from an industrial undertaking (either foreign or domestic) up to 24% is permitted in the small-scale sector. SSI status is lost if equity from another company (including foreign equity) exceeds 24% unless the Industrial Undertaking undertakes an export obligation of 50%.
- There are 506 items reserved for the small-scale sector ranging from food and allied industry to glass and ceramic products.
- Manufacture of items reserved for the small-scale sector requires an industrial licence.
- SSI units enjoy a number of concessions, privileges and preferences such as excise duty exemption / concession up to specified limits on turnover, inapplicability of some labour laws, concessional finance from scheduled banks, etc.

### Procedure for Obtaining Carry on Business Licence

A small scale unit manufacturing small scale reserved item(s), on exceeding the small scale investment ceiling in plant and machinery by virtue of natural growth, needs to obtain a Carry-on-Business (COB) Licence. No export obligation is fixed on the capacity for which the COB licence is granted. However, if the units expands its capacity for the small scale reserved item(s) further, it needs to apply for and obtain a separate industrial licence.

The application for COB licence should be submitted in revised form "EE", which can be downloaded from the web site (<http://dipp.nic.in>) along with a crossed demand draft of INR 2,500 (approx. US\$ 55) drawn in favour of the Pay & Accounts Officer, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, payable at New Delhi.

The cities with population of more than one million (as per 1991 census) are as under:

1. Greater Mumbai U.A	7. Ahmedabad U.A	13. Jaipur U.A	19. Madurai U.A
2. Kolkata, U.A	8. Pune U.A	14. Kochi U.A	20. Bhopal M.C
3. Delhi U.A	9. Kanpur U.A	15. Coimbatore U.A	21. Visakhapatnam U.A
4. Chennai U.A	10. Nagpur U.A	16. Vadodara U.A	22. Varanasi U.A
5. Hyderabad U.A	11. Lucknow U.A	17. Indore U.A	23. Ludhiana M.C
6. Bangalore U.A	12. Surat U.A	18. Patna U.A	

Note:

U.A = Urban Area

M.C = Municipal Corporation

# Foreign Investments in India - Routes and Facilitating Authorities

## Chapter 3

The Indian Government's attitude towards foreign investment has changed significantly during the past decade. Until the 1980s, foreign investment was permitted only in cases where a desired technology was not obtainable on any other terms. With the introduction of the Statement on Industrial Policy of 1991, the government began taking a more liberal attitude. Automatic approval was granted in specified high-priority industries for up to 51 per cent direct foreign investment and in trading companies engaged primarily in export activities.

In 2000, the Foreign Direct Investment (FDI) policy was further liberalised and now foreign investment up to 100 per cent for new and existing companies / firms, is permitted under the automatic route (i.e. without requiring prior approval) for all items/activities except for a few specific sectors.

### Government Policy on Foreign Equity Investment

Foreign investment is allowed in all areas other than the following sectors in which foreign investment is prohibited:

- Retail Trading
- Atomic Energy
- Lottery Business/ Gambling & Betting
- Agriculture (excluding floriculture, horticulture, seed development, animal husbandry, pisciculture and cultivation of vegetables, mushrooms etc.)
- Plantations (excluding Tea plantation)

For all other sectors, there are two approval routes for foreign investment in India:

- automatic route under delegated powers exercised by the Reserve Bank of India (RBI),
- approval by the Government through the Foreign Investment Promotion Board (FIPB) under the Ministry of Finance.

### Automatic Route

#### Foreign Direct Investments (FDI)

- FDI up to 100 per cent for new and existing companies/joint

ventures /firms, is permitted under the automatic route for all items/activities except the following:

- proposals that require compulsory industrial licensing
- where the foreign collaborator has an existing venture/tie-up in India in the same field ('same field' means 1987 NIC code) as on January 12, 2005, with the exception of following cases which would not require prior FIPB approval :
  - Investment by a Venture Capital Fund registered with SEBI<sup>1</sup>
  - Existing joint venture has less than 3% investment by either party
  - Existing joint venture is defunct or sick
  - acquisition of shares held by resident shareholders of an existing Indian company in the following cases :
    - Indian company is engaged in financial services sector;
    - Where SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 1997 is triggered.
  - proposals falling outside notified sectoral policy/caps or sectors in which FDI is not permitted (please refer to Chapter 4 for details)
- **Downstream investment**  
Subsequent investment in India by foreign-owned Indian holding companies (commonly referred to as "Downstream investments") are allowed in accordance with the FDI guidelines mentioned above.  
Prior approval of FIPB is required to act as a holding company. Domestic funds cannot be leveraged by the foreign-owned Indian holding company for downstream investments.
- **Procedure for Automatic Route**  
The foreign investor is not required to obtain any prior approval. Only a post facto filing is required to be made by the company in India which is receiving the foreign investment. This filing entails submission of notifications to the concerned regional office of RBI in the prescribed form within 30 days of receipt of inward remittances and within 30 days after issue of shares by the Indian company to the foreign investor.

### Investment by Non Resident Indians (NRIs)

- For all sectors excluding those falling under Government Approval, NRIs (which also includes Persons of Indian Origin - PIOs) are eligible to bring investment through the automatic route of RBI. The Government through the FIPB considers all other proposals, which do not fulfill any or all of the criteria for automatic approval.
- Further, under the non-repatriation scheme (i.e. capital is not repatriable outside India), NRIs are permitted to invest even in those sectors where sectoral caps are prescribed under the FDI policy. NRIs are also permitted to purchase and sell shares/convertible debentures under the portfolio investment scheme through a branch designated by an authorised dealer for the purpose and duly approved by the RBI, subject to fulfillment of certain conditions.
- The total holding by each NRI cannot exceed 5% of the total paid up equity capital or 5% of the paid up value of each series of convertible debentures issued by an Indian company. Further, the total holdings of all NRIs put together cannot exceed 10% of paid up equity capital or paid up value of each series of convertible debentures. This limit of 10% may be increased to 24% by the concerned Indian company by sanction of the shareholders through a special resolution.

### FIPB Route

- For all cases of Foreign Investment where the project does not qualify for automatic approval, as given above, prior approval is required from the FIPB under the Ministry of Finance.
- The proposal for foreign investment is decided on a case-to-case basis depending upon the merits of the case and in accordance with the prescribed sectoral policy (please refer to Chapter 4 for details).
- Generally, preference is given to projects in high priority industries, infrastructure sector, those having export potential, large-scale employment opportunities, linkages with agro sector, social relevance or relating to infusion of capital and induction of technology.

- Dividends are freely repatriable (i.e. without any foreign exchange neutrality conditions).

### Procedure for FIPB Route

Applications should be submitted in either Form FC-IL or a plain paper giving all necessary details of the proposal. No fee is payable. The proposal submitted to FIPB should include information on whether the applicant has had or has any existing financial / technical collaboration or trade mark agreement in India in the same field for which approval has been sought along with details and justification for proposing the new venture.

Decision of the FIPB is conveyed within 30 days of submitting the application. For a review of the factors that FIPB takes into account for granting FDI approvals, please refer to Annexure I.

### Government Policy on Foreign Technology Transfer

For promoting an industrial environment which accords priority to the acquisition of technological capability, foreign technology induction is encouraged both through FDI and through foreign technology collaboration agreements. Foreign collaboration agreements are permitted either through the automatic approval route or with prior approval from the Government.

### Automatic Approval

No prior approval is required in respect of all those foreign technology agreements, which involve:

- a lump sum payment of up to US\$ 2 million
- royalty payable up to 8 per cent on exports and 5 per cent on net domestic sales<sup>2</sup>, subject to a total payment of 8 per cent on sales over a 10 year period, without any restriction on the duration of royalty payments
- Within the overall cap of 8 per cent / 5 per cent as above, royalty is payable up to 2 per cent for exports and 1 per cent for domestic sales on use of trademarks and brand name of the foreign collaborator without technology transfer.<sup>3</sup>

### Procedure

A post-facto filing of the foreign technology collaboration agreement is required to be made to the concerned regional office of RBI.

### Government Approval

Government approval from the Ministry of Industry is necessary for the following categories of foreign technical collaboration agreements:

- Proposals attracting compulsory licensing (please refer to Chapter 2 for details)
- Items of manufacture reserved for the small-scale sector
- Proposals where the foreign collaborator has an existing venture/tie-up in India in the same field ('same field' means 1987 NIC code) as on January 12, 2005, (certain exceptions have been outlined earlier)
- Proposals not meeting any or all of the parameters for automatic approval
- It is permissible for a Company registered in India to issue equity shares against lumpsum fee and royalty in convertible foreign currency already due for payment / repayment, subject to meeting all applicable tax liabilities and procedures.

### Procedure

Applications in respect of such proposals should be submitted in Form FC-IL to the Secretariat for Industrial Assistance, Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi. After due consideration by the Project Approval Board, the decision is conveyed within 4 to 6 weeks of filing the application.

### Hiring of Foreign Technicians / Personnel

Indian firms/companies may engage the services of foreign nationals on short-term assignments without prior approval of RBI. However, the following conditions should be satisfied:

- The foreign national rendering services in India holds a valid

visa i.e. employment, business, tourist etc. (a valid employment visa is essential in case the stay of foreign national in India exceeds three months).

- The amount of remittance sought for such services is in accordance with the terms of contract entered into by the applicant firm/company with the foreign national/company. Foreign nationals/ Indian citizens who are not permanently resident in India and have been deputed by a foreign company to its office / branch / subsidiary / JV in India are allowed to make recurring remittances abroad for family maintenance up to 100% of their net salary. Further, up to 75% of salary of a foreign national/ Indian citizen deputed by a foreign company to its Indian office / branch / subsidiary / JV can be paid abroad by the foreign company subject to the foreign national / Indian citizen paying applicable taxes in India.

### Investment by Way of Acquisition of Shares

Foreign investors looking at acquiring equity in an existing Indian company through stock acquisitions can do so without obtaining approvals except in financial services sector, provided (i) such investments do not trigger off the takeover provisions under SEBI's (Substantial Acquisition of Shares and Takeover) Regulations, 1997 and (ii) the non-resident shareholding after transfer complies with sectoral limits under FDI policy.

As per RBI valuation norms, acquisition price should not be lower than

- Prevailing market price, in case of listed companies
- Fair market value as per Controller of Capital Issues (CCI) valuation guidelines, in case of unlisted companies

Acquisitions may be made from an existing Indian company which is either a privately held company or a company in which public is interested i.e., a company listed on stock exchange, provided a resolution to this effect has been passed by the Board of Directors of the Indian Company.

Acquisition of shares of a public listed company is subject to SEBI guidelines and requires prior approval from FIPB. SEBI's Take-Over Code Regulations require that any person acquiring 15 per cent or more of the voting capital in a public

listed company should make a public offer to acquire a minimum 20 per cent stake from the public.

### Investment by Foreign Institutional Investors

A registered Foreign Institutional Investor (FII) may, through SEBI, apply to RBI for permission to purchase the shares and convertible debentures of an Indian company under Portfolio Investment Scheme.

FIs are permitted by RBI to purchase shares/convertible debentures of an Indian company through registered brokers on recognised stock exchanges in India. They are also permitted to purchase shares/convertible debentures of an Indian company through private placement/ arrangement.

The total holding by each FII / SEBI approved sub-account of FII cannot exceed 10 per cent of the total paid-up equity capital or 10 per cent of the paid-up value of each series of convertible debentures issued by an Indian company. Further, the total holdings of all FIIs/sub-accounts of FIIs put together cannot exceed 24 per cent of paid-up equity capital or paid-up value of each series of convertible debentures. This limit of 24 per cent may be increased to the specified sectoral cap / statutory ceiling, as applicable, by the Indian company concerned by passing a Board of Directors' resolution followed by sanction of the shareholders through a special resolution to that effect.

### Authorities dealing with Foreign Investment

#### Foreign Investment Promotion Board (FIPB)

The FIPB (which functions under the Ministry of Finance) is the nodal agency for all matters concerning Foreign Direct Investment (FDI) as well as its promotion into the country. It maintains flexibility of purposeful negotiations with investors and considers project proposals in totality, with a view to maximising FDI into the country. The FIPB meets once every week ensuring speedy disposal of applications and communicates the Government's decision to the applicant within 6 weeks.

The main functions of FIPB, inter-alia include:

- Ensuring expeditious clearance of the proposals for foreign investment

- Periodically reviewing the implementation of proposals cleared earlier
- Reviewing the general and sectoral policy guidelines and in consultation with Administrative Ministries, incorporating a set of transparent rules for each of these sectors
- Undertaking investment promotion activities including establishment of contact with and inviting selected international companies to invest in India in appropriate projects.

The FIPB comprises of:

- Secretary, Department of Economic Affairs – Chairman
- Secretary, Department of Industrial Policy and Promotion – Member
- Secretary, Department of Commerce – Member
- Secretary (Economic Relations), Ministry of External Affairs – Member

Other Secretaries and top officials of financial institutions, banks, and professional experts of industry and commerce, are co-opted onto the FIPB as and when necessary.

For more details, visit the website at [http://finmin.nic.in/the\\_ministry/dept\\_eco\\_affairs/fipb/fipb\\_index.htm](http://finmin.nic.in/the_ministry/dept_eco_affairs/fipb/fipb_index.htm)

#### Secretariat for Industrial Assistance (SIA)

The SIA, functioning with the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, acts as a gateway to industrial investment in India. It provides a single window clearance for Entrepreneurial Assistance and facilitates the processing of investors' applications requiring government approval. Broadly SIA:

- Assists entrepreneurs and investors in setting up projects and monitors the implementation of these projects;
- Liaises with State Governments and other governmental bodies for seeking necessary clearances;
- Notifies all Government policy relating to investment and technology.

For more details, visit the website at <http://dipp.nic.in>

This web site has the facility of online chat between 4.00 pm to 5.00 pm (Indian Standard Time: GMT+5 ½ hrs; summer time: 4½ hrs) on all working days where investors can ask questions relating to FDI Policies and related issues.

#### **Foreign Investment Implementation Authority (FIIA)**

The FIIA is also constituted within the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. FIIA aims at facilitating:

- Quick implementation of FDI approvals;
- Resolution of operational difficulties faced by foreign investors, in consultation with the concerned Ministries/State Governments (for this purpose Fast Track Committees have been set up in 30 Ministries / Departments – details of these Committees are available at the website <http://dipp.nic.in>).

#### **Direct Contact with Investors**

FIIA periodically writes to the approval holders of FDI mega projects (with investment of US\$ 21 million or more), which are under implementation to get a direct feedback on any difficulties being faced by them in the implementation of their projects, which can be followed by FIIA with respective Ministries/State Governments. All fresh FIPB approvals issued since September 2001 contain information on FIIA and its e-mail address ([fia@ub.nic.in](mailto:fia@ub.nic.in)) for investors to approach FIIA in case of any difficulties. Investors experiencing difficulties in the implementation of their projects can also approach FIIA through the website (<http://dipp.nic.in>)

#### **Investment Commission**

Investment Commission was established in 2004 for attracting domestic and foreign investors to India. The Commission is delegated broad powers authorising it to engage in, discuss and invite both domestic and foreign businesses to invest in the country. The Commission acts as the single window facilitator for investors coming into India.

#### **Reserve Bank of India (RBI)**

The RBI, India's central bank, was established on April 1, 1935 and nationalised on January 1, 1949. Its basic purpose is to secure monetary stability and develop India's financial structure in line with national socio-economic objectives and policies. The main functions of RBI are as follows :

- Formulate, implement and monitor the monetary policy to ensure flow of credit to productive sectors.
- Prescribe parameters of banking operations within the country's banking and financial system functions.
- Administer external trade and payment, for promoting orderly development and maintenance of foreign exchange market in India.

The RBI also acts as a banker to Central/State Governments, commercial banks, state cooperative banks and some financial institutions. Further, RBI acts as an agent of the Government in respect of India's membership of International Monetary Fund.

For more details, visit the website at [www.rbi.org.in](http://www.rbi.org.in)

#### **Investment Facilitation Channels**

##### **Business Ombudsperson**

To facilitate expeditious redressal of grievances and attend to complaints relating to delays in grant and implementation of industrial approvals and facilitate their disposal, the Government has appointed the Additional Secretary & Financial Adviser, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi-110011, as BUSINESS OMBUDSPERSON [e mail: [nc@ub.nic.in](mailto:nc@ub.nic.in)].

##### **Grievances Officer-cum Joint Secretary**

Grievances and complaints are received by the Grievances Officer-cum-Joint Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi-110011, either through post or through the mail box. Any such communication is handled speedily and appropriate steps are taken to redress the grievance.

# Summary of Guidelines for Foreign Direct Investment in Specific Sectors

## Chapter 4

Prior to 2000, foreign direct investment (FDI) was allowed up to specified percentages (50 per cent, 51 per cent and 74 per cent) in certain specific sectors only and all other sectors were closed to FDI. In 2000, with a view to promoting foreign investment and aligning the Indian economy with the global economy, the FDI policy was inverted to permit FDI in all sectors with the exception of a few sectors in which FDI is either prohibited or restricted.

The prevailing FDI limits for different sectors are as follows.

### Advertising and Films

**Advertising industry:** FDI is permitted up to 100 per cent through the automatic route.

**Film industry:** FDI in all film-related activities, such as film financing, production, distribution, exhibition, marketing etc., is permitted up to 100 per cent for all companies under the automatic route.

### Agriculture (including plantation)

No FDI/NRI/OCB investment is permitted in agriculture, other than in Tea sector (including tea plantations), wherein 100 per cent FDI is allowed. Proposals for FDI in tea plantations, require prior approval of the FIPB and are subject to the following conditions

- Compulsory disinvestment of 26 per cent equity in favour of an Indian partner/Indian public within a period of five years
- Prior approval of the State Government is required for any future change in land use.

### Atomic Energy

Under this sector, the following three activities are permitted to receive FDI/NRI investments after approval from the FIPB:

- Mining and mineral separation,
- value addition per se to the mining and mineral separation products,

- Integrated activities (comprising of both the above).

FDI up to 74 per cent is permitted in both pure value addition and integrated projects.

For pure value addition projects as well as integrated projects with value addition up to any intermediate stage, FDI is permitted up to 74 per cent through joint venture companies with Central/State PSUs in which equity holding of at least one PSU is not less than 26 per cent. However, in exceptional cases, FDI beyond 74 per cent will be permitted subject to clearance of the Atomic Energy Commission before FIPB approval.

### Banking

74 per cent from all sources on automatic route in private sector banks, subject to RBI guidelines. (Also refer Annexure 2)

### Broadcasting

#### TV software production

100per cent FDI permitted subject to:

- all future laws on broadcasting and no claim of privilege or protection by virtue of approval accorded
- not undertaking any broadcasting from Indian soil without Government approval

#### Setting up hardware facilities such as Uplinking Hubs, etc.

FDI limit up to 49 per cent inclusive of both FDI & Portfolio Investment to set up uplinking hub (teleports) for leasing or hiring out their facilities to the broadcasters.

### Cable Networks

FDI limit upto 49per cent inclusive of both FDI & Portfolio Investment. Companies with minimum 51 per cent of paid up share capital held by Indian citizens, are eligible for providing cable TV services under the Cable Television Network Rules (1994).

### Direct-To-Home

Maximum 49 per cent foreign equity including FDI/ NRI//FII. Within the foreign equity, FDI component should not exceed 20 per cent.

### Terrestrial Broadcasting FM

Licensee has to be a company registered in India under the Companies Act. No direct investment is allowed by foreign entities and NRIs. Limited portfolio investments by FII / NRI / PIO is permitted, subject to such ceiling as may be decided from time to time; at present the prescribed ceiling is 20 per cent.

### Terrestrial TV

No private operator is permitted.

Note : 26 per cent cap is imposed for purposes of uplinking from India with respect to all forms of foreign investment in TV channels devoted to news and current affairs. The investment cap does not apply to pure entertainment channels.

### Cigarettes

Up to 100 per cent foreign equity is allowed subject to industrial licensing. Automatic route is not available.

### Civil Aviation

In the Domestic Airlines sector, FDI up to 49 per cent is permitted. However, no direct or indirect equity participation by foreign airlines is allowed. NRI investment is permitted upto 100 per cent, but the automatic route is not available.

In case of Airports, FDI is permitted up to 100 per cent (FDI beyond 74 per cent requires FIPB approval).

### Coal and Lignite

FDI is permitted up to 100 per cent for private Indian companies, which set up or operate power projects and coal or lignite mines for captive consumption.

A company setting up coal processing plants is allowed FDI up to 100 per cent subject to compliance with the condition that it will not do coal mining and supply the washed or sized coal to parties supplying raw coal to coal processing plants instead of selling it in the open market.

Exploration or mining of coal or lignite for captive consumption permits FDI up to the limit of 74 per cent.

FDI is permitted up to 50 per cent under the automatic route in all the above cases subject to the condition that such investment shall not exceed 49 per cent of the equity of a PSU.

### Drugs and Pharmaceuticals

FDI up to 100 per cent in the case of bulk drugs, their intermediates and formulations thereof, is allowed under the automatic route.

However, FIPB approval is required for manufacture of bulk drugs by the use of recombinant DNA technology and specific cell/tissue targeted formulations and those that require compulsory licensing.

### Defence

FDI, including NRI investment, in this sector is permitted up to 26 per cent subject to prior approval of the government and compliance with the security and licensing requirements and guidelines issued by the Ministry of Defence.

According to the guidelines for production of arms and ammunitions, the management of the applicant company/ partnership should be in Indian hands with majority representation on the Board as well as the Chief Executive being resident Indians. Further, there would be a three year lock-in period for transfer of equity from one foreign investor to another foreign investor.

### Hotels and Tourism

FDI in this sector is permitted up to 100 per cent on the automatic route. For foreign technology agreements, automatic approval is granted if:

- Up to 3 per cent of the capital cost of the project is proposed to be paid for technical and consultancy services

- Up to 3 per cent of the net turnover is payable for franchising and marketing/publicity fee, and
- Up to 10 per cent of gross operating profit is payable for management fee, including incentive fee.

### Insurance

FDI in the insurance sector is permitted up to 26 per cent under the automatic route subject to obtaining license from the Insurance Regulatory & Development Authority (IRDA).

### Lottery Business, Gambling & Betting

FDI / foreign technical collaboration in any form is prohibited in Lottery Business, Gambling & Betting.

### Mass Rapid Transport System

FDI up to 100 per cent is allowed under the automatic route in mass rapid transport systems, including associated real estate development, in all metropolitan cities.

### Mining

FDI is allowed up to 100 per cent under the automatic route for activities such as exploration and mining of gold and silver (and minerals other than diamonds and precious stones), metallurgy and processing.

For exploration and mining of diamonds and precious stones, FDI is allowed up to 74 per cent under the automatic route.

For companies which seek to set up 100 per cent wholly owned subsidiaries in the mining sector, permission may be given subject to the condition that the applicant has no existing joint venture for the same area and/or the particular mineral.

### Non-banking Financial Services

FDI/NRI investments allowed in 19 specified activities subject to minimum capitalisation norms indicated below: (i) Merchant

Banking (ii) Underwriting (iii) Portfolio Management services (iv) Investment Advisory Services (v) Financial Consultancy (vi) Stock Broking (vii) Asset Management (viii) Venture Capital (ix) Custodial Services (x) Factoring (xi) Credit Reference Agencies (xii) Credit Rating Agencies (xiii) Leasing and Finance (xiv) Housing Finance (xv) Forex Broking (xvi) Credit Card Business (xvii) Money Changing Business (xviii) Micro Credit (xix) Rural Credit.

### Minimum Capitalisation Norms (Foreign Equity)

- US\$ 0.5 million upfront - where the foreign equity is upto 51 per cent .
- US\$ 5 million upfront - where the foreign equity is more than 51 per cent but upto 75 per cent.
- US\$ 50 million (US \$ 7.5 million upfront and US \$ 42.5 million in 24 months) - where the foreign equity is more than 75 per cent.

For non-fund based NBFCs, the minimum capitalisation norms has been fixed at US \$ 0.5 million.

Foreign investors bringing in at least US \$ 50 million have now been permitted to set up 100 per cent operating subsidiaries without having to disinvest a minimum of 25 per cent of its equity to Indian entities. Joint Venture operating NBFCs, having up to 75 per cent foreign investment, have been allowed to set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries complying with the minimum capitalisation norms.

FDI in this sector is permitted under the automatic route subject to compliance with the guidelines issued by RBI.

### Petroleum

#### Other than Refining

100per cent FDI is permitted under the automatic route in respect of the following: -

- Oil Exploration in small and medium sized fields subject to the government policy on private participation in exploration of oil and the discovered fields of national oil companies.
- Petroleum Product Pipeline Sector

- Petroleum Products Marketing
- In case of Natural Gas / LNG Pipeline, 100 per cent FDI is permitted under the non-automatic route.

### Refining

In case of a Public Sector Units (PSUs), FDI is limited to 26 per cent (26 per cent being held by PSUs and balance 48 per cent by public). In case of private Indian companies, FDI up to 100 per cent is permitted under the automatic route.

### Pollution Control and Management

For activities like manufacture of pollution control equipment and consultancy for integration of pollution control systems, FDI is permitted up to 100 per cent under the automatic route.

### Ports and Harbours

Up to 100 per cent FDI is allowed through the automatic route for construction and maintenance of ports and harbours (BOT projects).

### Postal Services

FDI up to 100 per cent is permitted for courier services excluding distribution of letters, subject to grant of prior approval by the government.

### Power

FDI in the power sector is permitted up to 100 per cent, in respect of projects relating to electricity generation, transmission and distribution, other than atomic reactor power plants. There is no limit on the project cost and quantum of the FDI.

### Print Media

In the non-news / non-current affairs category and speciality publication entities, FDI up to 74 per cent is allowed. This would

allow publication of Indian editions of foreign scientific, technical and specialty magazines / periodicals / journals. In the case of scientific and technical journals, FDI up to 100 per cent is permitted.

In the news and current affairs category, for instance newspapers, FDI has been allowed up to 26 per cent. However, this is further subject to certain conditions:

- The largest shareholder must hold at least 51 per cent equity;
- Three – fourth (3/4) of directors and all executive and editorial staff have to be resident Indians.

### Real Estate

FDI up to 100% under the automatic route is permitted in :

- Townships
- Housing
- Built-up infrastructure
- Construction-development projects (including but not restricted to – Housing, Commercial premises, Hotels, Resorts, Hospitals, Educational institutions, Recreational facilities, City and regional level infrastructure).

subject to certain conditions (such as minimum area to be developed, minimum capitalisation to be US\$ 10 million for a wholly owned subsidiary and US\$ 5 million for a JV with an Indian partner – minimum 3 years lock-in from the completion of capitalisation).

However, investment by NRIs is permitted in the following additional activities:

- Investment in manufacture of building material, which is also open to FDI.
- Investment in participatory ventures in the above activities, and
- Investment in housing finance institutions (which is also open to FDI as NBFC).

## Roads and Highways

Investment by the private sector, including FDI, is permitted up to 100 per cent through the automatic route for the construction and maintenance of roads, highways, vehicular bridges and tunnels and toll roads.

## Satellite

FDI up to 74 per cent with prior FIPB approval is permitted for establishment and operation of satellites.

## Telecommunications

### FDI is permitted up to

- 74 per cent in basic, cellular, paging, value-added services and global mobile personal communication by satellites, subject to grant of licence from Department. of Telecommunications.
- 74 per cent for telecom activities such as ISPs with gateways, radio-paging and end-to-end bandwidth,.
- 100 per cent in ISPs not providing gateways, Infrastructure Providers providing dark fibre, electronic mail and voice mail, subject to the condition that such companies would divest 26 per cent of their equity in favour of the Indian public in 5 years (provided these companies are listed in other parts of the world).  
Proposals beyond 49 percent shall be considered by FIPB on a case-to-case basis. These services would be subject to licensing and security requirements, wherever required.
- FDI up to 100 per cent is allowed in the manufacturing sector under the automatic route.

## Trading

Foreign investment for trading can be approved through the automatic route up to 51 per cent provided it is primarily export activities, and the undertaking is an export house/trading house/ super trading house/ star trading house registered under the provisions of the Export Import Policy (EXIM) in force.

100per cent FDI is also permitted subject to FIPB approval, for the following activities:

- Exports
- Bulk imports with ex-port/ex-bonded warehouse sales
- Cash and carry wholesale trading
- Other import of goods/services foreign equity subject to the condition that at least 75per cent is for procurement and sale of goods and services among the companies of the same group and not for third party use or onward transfer/distribution/sales
- Domestic wholesale trading of products manufactured by the foreign investor's existing joint venture(s) in India
- Providing after sales services (provide the same does not entail import of spare parts/components and supplying the same domestically)
- Trading of hi-tech items, items requiring specialised after sales services, hi-tech medical and diagnostic items, and items for social sector;
- Domestic sourcing of products for exports
- Test marketing of items for which company has approval for manufacture subject to a time period of 2 years, provided investment in setting up manufacturing facilities commences simultaneously with test marketing
- Trading of items sourced from small scale sector under which, based on technology provided and laid down specifications, a company can market that item under its brand name.

FDI up to 100 per cent is permitted for E-commerce activities subject to the conditions that such companies, if listed in other parts of the world, divests 26 per cent of their equity in favour of the Indian public in five years and that these companies engage only in business-to-business (B2B) e-commerce.

Venture Capital Fund (VCF) and Venture Capital Company (VCC)

Offshore venture capital funds / companies are allowed to invest in domestic venture capital funds / companies subject to SEBI's investment norms and other regulations

### Investment through Global Depository Receipts (GDRs) / American Depository Receipts (ADRs) / Foreign Currency Convertible Bonds (FCCBs)

Indian companies are permitted to raise capital in the international market through the issue of GDRs/ADRs/FCCBs, subject to certain restrictions. Foreign investment through GDRs/ADRs/FCCBs is also treated as FDI.

Issue of ADRs / GDRs does not require any prior approvals (from Ministry of Finance / FIPB or RBI) except where the FDI after such issue would exceed the sectoral caps (as specified under Automatic Route on page 10), in which case prior approval from FIPB would be required.

Issue of FCCBs up to the following ceilings to a person resident outside India is allowed under the automatic route without requiring any prior approval from the Government or RBI: -

- US\$ 20 million with minimum average maturity of 3 years
- US\$ 500 million with minimum average maturity of 5 years

### Mobilisation of Funds through Preference Shares

Companies registered in India can mobilise foreign investment through issue of preference shares for financing their projects / industries. Foreign investment through preference shares is treated as FDI. All preference shares have to be redeemed out of accumulated profits / fresh capital within a period of 20 years as per Indian Company Law. The proposals are processed either through the automatic route or FIPB route as the case may be.

The following guidelines apply:

- Foreign investment in preference shares is considered as part of share capital and falls outside the External Commercial Borrowings (ECB) guidelines/ caps. Issue of preference shares is permissible only as rupee denominated instrument in accordance with Indian Companies Act.
- Preference shares, carrying a conversion option, are considered as foreign direct equity for purposes of sectoral caps on foreign equity. If the preference shares are structured without conversion option, they fall outside the FDI cap.
- The dividend rate should not exceed the limit prescribed by the Ministry of Finance (currently fixed at 300 Basis Points above State Bank of India's Prime Lending Rate)

- Duration for conversion shall be as per the maximum limit prescribed under the Companies Act (20 years) or what has been agreed to in the shareholders' agreement, whichever is less.
- Issue of preference shares should conform to guidelines prescribed by SEBI (in case of listed Indian companies), RBI and other statutory requirements.

### Mobilisation of Funds through External Commercial Borrowings (ECBs)

Companies registered in India (other than financial intermediaries<sup>4</sup>) are allowed to raise ECBs from any internationally recognised source such as banks, Financial Institutions, export credit agencies, suppliers of equipment, foreign collaborators, foreign equity holders.

Non-Government Organisations (NGOs) engaged in micro finance activities are eligible to avail ECB subject to prescribed conditions. Overseas organisations and individuals may provide ECB to such NGOs subject to prescribed safeguards.

ECB can be raised from Foreign Equity holders holding the prescribed minimum level of equity in the Indian borrower company.

- ECB up to USD 5 million – minimum equity of 25% held directly by the lender;
- ECB more than USD 5 million – minimum equity of 25% held directly by the lender and debt-equity ratio not exceeding 4:1 (i.e. the proposed ECB not exceeding four times the direct foreign equity holding).

A Company can issue equity shares against ECBs in convertible foreign currency already due for payment / repayment, subject to meeting all applicable tax liabilities and procedures.

The prevailing ECB policy stipulates certain end-use restrictions.

- ECB proceeds can only be utilised for
  - Investment (import of capital goods, new projects, modernisation / expansion) in real sector - industrial sector and infrastructure sector – in India
  - Overseas acquisition by Indian Companies
  - First stage acquisition of shares in disinvestment process and in the public offer stage under the Government's disinvestment programme.

- ECBs are not permitted for working capital/on-lending / investment in capital market / in real estate (excluding integrated townships).
- Utilisation of ECB proceeds is not permitted for on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate.

ECBs should be compliant with the prescribed minimum average maturities:

Minimum 3 years average maturity for ECBs equal to or less than US\$ 20 million equivalent, otherwise 5 years

'All-in-cost ceiling' has also been prescribed as given below.

- 3-5 years maturity 200 basis points over 6-month LIBOR
- > 5 years maturity 350 basis points over 6-month LIBOR

Guarantees / standby letter of credit by financial intermediaries are not permitted.

The approval requirements for ECBs have been significantly liberalised. No prior approvals are required in respect of ECBs complying with the prescribed minimum maturity and "all-in-cost" ceilings. All other ECBs require prior approval from an empowered committee of RBI.

Indian corporates raising ECBs have to retain the funds abroad until the time of their utilisation.

The current guideline for prepayment of ECBs states that prepayment up to US\$ 200 million can be done without any approvals, subject to compliance with the minimum average maturity of the loan.

### Significant Exchange Control Regulations

Exchange control is regulated under the Foreign Exchange Management Act (FEMA), 1999. The Indian Rupee is fully convertible for current account transactions, subject to a negative list of transactions that are prohibited / require prior approval.

A foreign-invested Indian company is treated on par with other locally incorporated companies. Accordingly, the exchange control laws and regulations for residents apply to foreign-invested companies as well.

Under the FEMA, foreign exchange transactions have been divided into two broad categories - current account transactions and capital account transactions. Transactions that alter the assets

or liabilities outside India of a person resident in India or in India, of a person resident outside India have been classified as capital account transactions. All other transactions would be current account transactions.

### Current Account Transactions

Prior approval of the RBI is required for acquiring foreign currency above certain limits for the following purposes:

- Holiday travel over USD 10,000 per person p.a.
- Gift over USD 5,000 / donation over USD 10,000 per remitter / donor p.a.
- Business travel over USD 25,000 per person per visit
- Foreign studies as per estimate of institution or USD 100,000 per academic year, whichever is higher
- Consultancy services procured from abroad over USD 1,000,000 per project
- Remittance for purchase of Trade Mark / Franchise
- Reimbursement of pre incorporation expenses over USD 100,000

In certain specified cases, prior approval of the concerned ministry is needed for drawal of foreign exchange, such as: -

- Remittance of freight of vessel chartered by a PSU,
- Payment of import through ocean transport by a Government. Department or a PSU on C.I.F basis
- Multi-modal transport operators making remittance to their agents abroad

Certain specified remittances are prohibited:

- Remittance out of lottery winnings
- Remittance of income from racing / riding etc. or any other hobby
- Remittance for purchase of lottery tickets, banned / prescribed magazines, football pools, sweepstakes etc
- Payment of commission on exports made towards equity investments in Joint Ventures/ Wholly Owned subsidiaries abroad of Indian Companies.
- Payment of commission on exports under the Rupee State Credit Route
- Payment related to "Call Back Services" of telephones

### Capital Account Transactions

Capital account transactions can be undertaken only to the extent permitted. RBI has prescribed a list of capital account transactions, which inter alia include the following:

- transfer or issue of any foreign security by a resident/ security by a non resident;
- borrowing/ lending in foreign exchange;
- export/ import of currency;
- transfer / acquisition of immovable property in / outside India;
- remittances exceeding USD 25,000 p.a. (over and above ceilings prescribed for other remittances mentioned above) by a resident individual for any current account or capital account transaction.

### Repatriation of Capital

Foreign capital invested in India is generally repatriable, along with capital appreciation, if any, after the payment of taxes due on them, provided the investment was on repatriation basis

Acquisition of immovable property in India: Generally foreigners are not permitted to acquire immovable property except in certain cases, where the property is required for the business of the Indian branch / office / subsidiary of the foreign entity. NRI/PIOs are also permitted to acquire certain properties.

Royalties and Technical Know-how Fees: Indian companies that enter into technology transfer agreements with foreign companies are permitted to remit payments towards know-how and royalty under the terms of the foreign collaboration agreement, subject to limits (Please refer to Chapter 3).

Dividends: Dividends are freely repatriable after the payment of Dividend Distribution Tax by the Indian company declaring the dividend. No permission of RBI is necessary for effecting remittance, subject to specified compliances

Other Remittances: No prior approval is required for remitting profits earned by Indian branches of companies (other than banks) incorporated outside India to their Head Offices outside India. Remittances of winding-up proceeds of a branch / liaison office of a foreign company in India are permitted subject to RBI approval. Remittances of winding-up proceeds of a project office

of a foreign company in India are permitted under the automatic route subject to fulfillment of necessary compliances.

### Netting

The RBI does not permit netting of payments for remittances and requires that all accruals from overseas be repatriated into the country.

### Outbound Investment Regulations

Direct Investment by Indian parties in Joint Ventures (JVs) and Wholly Owned Subsidiaries (WOS) abroad is encouraged. Such overseas investment by Indian parties can be made by way of setting up wholly owned subsidiaries, taking up equity in a joint venture company or for acquisition of overseas business, provided the overseas JV or WOS is engaged in a bona fide business activity.

Resident corporates and registered partnership firms can invest in a joint venture/wholly owned subsidiary abroad on an automatic basis, without prior reference to RBI up to a total value of investment not exceeding 200 per cent of its net worth (as on the date of last audited balance sheet of the investing company) in a single financial year provided:

- Investment is in a bona fide business activity;
- Investment is not in a foreign entity engaged in real estate or banking business.
- The funding of such investments can be by one or a combination of the following sources:
- Balances in EEFC accounts of investing companies;
- Other domestic resources including loans, equity and other contingent liabilities like guarantees;
- Proceeds of ADR/GDR issues by investing company;
- Proceeds of ECB raised by the investing company.

The investment ceiling of 200 per cent of net worth does not apply where investment is made out of EEFC account balance or ADR/GDR proceeds.

Proposals for overseas investment not falling under the automatic route as given above, have to be referred to the RBI for prior approval.

A foreign company looking at setting up operations in India has the following alternative options for formulating its entry strategy:

### Operating as an Indian Company

Through:

- Wholly owned subsidiaries
- Joint Ventures

#### Wholly owned Subsidiary company

A foreign company can set up a wholly owned subsidiary company in India for carrying out its activities. Such subsidiary is treated as an Indian resident and an Indian Company for all Indian regulations (including Income Tax, FEMA and Companies Act), despite being 100 per cent foreign owned. At least two shareholders are mandatory.

Joint Venture with an Indian Partner preferably with majority equity participation

Though a wholly owned subsidiary has been the most preferred option, foreign companies have also been setting up shop in India by forging strategic alliances with Indian partners. The trend in this respect is to choose a partner who is in the same field/area of activity and has sufficient experience and expertise in his line of activity.

The foreign investment guidelines for setting up an Indian subsidiary company or participating in a joint venture company with an Indian partner have been discussed in Chapter 3.

#### Incorporation of a Company

Incorporation of a company with the Registrar of Companies ("RoC") is a two-step process:

1. Obtaining approval from RoC for the name of the Indian Company. Minimum 4 alternative names are required to be

given for consideration. The name of the company should clearly reflect the main objects of the company.

2. Drafting Memorandum and Articles of Association of the Company and obtaining Certificate of Incorporation.

### Operating as a Foreign Company

Through:

- Liaison Office
- Project Office
- Branch Office

#### Liaison/Representative Office

Setting up a liaison or representative office is a common practice for foreign companies seeking to enter the Indian markets. Prior approval from RBI is required for setting up a Liaison Office followed by registration with the RoC. The role of such offices is limited to collecting information about the possible market and providing information about the company and its products to prospective Indian customers. Such offices act as "Listening and transmission posts" and provide a two-way information flow between the foreign company and the Indian customers. A liaison office is not allowed to undertake any business activity other than liaison activities in India and cannot, therefore, earn any income in India, in terms of the approval granted by RBI.

#### Project Office

Foreign companies planning to execute specific projects in India can set up temporary project /site offices in India for this purpose. RBI has granted general permission to a foreign entity for setting up a project office in India, subject to fulfillment of certain conditions. The foreign entity only has to furnish a report to the jurisdictional Regional Office of RBI giving the particulars of the project / contract and register the Project Office with the RoC.

### Branch Office

Foreign companies engaged in manufacturing and trading activities abroad can set up Branch Offices in India for the following purposes, with the prior approval of RBI and subsequent registration with RoC:

- Export/Import of goods
- Rendering professional or consultancy services
- Carrying out research work, in which the parent company is engaged
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company
- Representing the parent company in India and acting as buying/selling agent in India
- Rendering services in Information Technology and development of software in India
- Rendering technical support to the products supplied by parent/group companies
- Foreign airline/shipping company

In general, manufacturing activity cannot be undertaken through a branch office. Foreign companies can, however, establish branch office / unit for manufacturing in a SEZ subject to fulfillment of certain conditions.

### Registrar of Companies (ROC)

The ROC plays a crucial role in the governance of Companies Act, the nodal law on regulating companies doing business in India. The ROC is primarily responsible for:

- Ensuring adherence to the filing and registration requirements under the Companies Act
- Collecting and making publicly available information on companies registered within its jurisdiction
- Bringing non-compliant companies and officers to Court, where necessary

In a nutshell, the ROC has two distinct, but complementary roles – (i) facilitating business and commerce by providing a vehicle for the incorporation of companies, registration of documents and charges, and (ii) assisting in regulation of business and commerce by striking-off and/or prosecuting companies which fail to comply with their statutory obligations under the Companies Act.

For more details, visit the website at <http://dca.nic.in>