DOING BUSINESS IN INDIA
INTRODUCTION

The Government of India has taken several initiatives to attract and promote foreign direct investment in its endeavor to accelerate economic growth. It is constantly updating its policies to meet the challenges of the global market. India is making investments in India simple and straightforward in order to establish the Indian footprint worldwide.

To meet this challenge, the Government has issued a Circular on Consolidated FDI Policy, August 2017.
WHY INDIA

The major initiatives, policy changes and amendments to the Law have put India on the global industrial map as the Most Preferred Investment Destination as per the Ernst & Young Report. India is currently rated as one of the fastest growing economies in the world.
Reasons to invest in India:

- Fastest Growing Economy
- Demographic Advantage
- Favorable Policies
- Developing Infrastructure
- Supportive Government Structure (at the Centre & States’ Levels)
SECTORS OPEN TO THE GLOBAL INVESTOR

- Oil and Gas
- Pharmaceuticals
- Ports and Shipping
- Roads and Highways
- Renewable Energy
- Railways
- Space
- Thermal Power
❖ Automobile
❖ Aviation
❖ Electronic Systems, etc
❖ Defence Manufacturing
❖ IT and BPM (Business Process Management)
❖ Mining
❖ Chemicals
❖ Construction
❖ Biotechnology
INDIA’S FDI EQUITY INFLOWS

QUARTERLY REPORT

MONTH-WISE FDI EQUITY INFLOW IN Q3 AND Q4
(FY 2016-17) [US MILLION]

YEARLY REPORT

FDI INFLOW AND FDI EQUITY INFLOW FY 2015-16 VS FY 2016-17 [USD BILLION]
ENTRY ROUTES FOR FOREIGN INVESTORS IN INDIA

❖ **Automatic Route:**

Under this route no Central Government permission is required. Most sectors fall within this route.

❖ **Government Route:**

Under this route applications are considered by various Ministries in consultation with the Department of Industrial Policy and Promotion (DIPP).
The Government has, recently (05.06.2017), abolished the Foreign Investment Promotion Board (FIPB) as it has successfully implemented e-filing and online processing of FDI applications through its website(https://fipb.gov.in/). The Government has allowed various Ministries to henceforth, grant government approvals for FDI in notified sectors including telecom, civil aviation, trading, pharmaceuticals, banking etc.
ENTRY OPTIONS

Foreign Investors can commence business in India as:-

- An Indian Company:
  - Joint Venture
  - Wholly owned subsidiary permissible in sectors where 100% FDI is permitted.
  - Limited Liability Partnership
A Foreign Company can open:

- Liaison Office to represent the parent company in India.
- Branch Office for activities such as export-import of goods; research, consultancy etc.
- Project Office for execution of project.
❖ FDI is permitted under automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route where there are no FDI-linked performance conditions.
GOVERNMENT SCHEMES TO ATTRACT FDI

A. MAKE IN INDIA

i. The ‘Make in India’ scheme of the Government of India aims at making India a manufacturing powerhouse.

ii. It has formulated the following incentives for investors in and
outside India in the key sectors of textiles, automotives, telecommunication, IT hardware and electronics, aviation, food processing, Small and Medium Enterprises (SMEs) Public Sector Enterprises (PSEs), etc:

❖ Setting up of National Investment & Manufacturing Zones (NIMZ) and various industrial corridors across the country which will have manufacturing hubs and smart industrial and investment regions.
❖ A web-enabled process of providing clearances and a single window clearance for all units in NIMZ.

❖ Provision of subsidy and other incentives for production of environment friendly equipments.

❖ A number of monetary reliefs in relation to SMEs such as easier financing schemes, setting up of stock exchange for SMEs, etc.
- Purchase of technologies from companies investing in the sectors of solar energy equipment, electronic hardware, fuel efficient transport equipment, IT based security systems, power, roads & highways, railways, aviation and ports by the public authorities.

- Facilitate easier trade.
The Digital India scheme aims at digital empowerment through the following e-Governance initiatives:

- Broadband and mobile network connectivity for rural and urban areas;
- For digital empowerment certain incentives have been given for electronic manufacturing in India:
✓ 100% FDI in Electronics System Design and Manufacturing (ESDM) sector through automatic route and up to 49% FDI in electronic items for defence;

✓ Government procurement of domestically manufactured electronic products preferred;

✓ A subsidy of 25% of capital expenditure for 10 years (20% in SEZs);
✓ Total reimbursement of excise or countervailing duty on capital equipment in non-SEZ units;
✓ Exemption of levy of Basic Customs Duty, Excise Duty, Countervailing Duty and Special Additional Duty on manufacture of inputs, parts and sub-parts of mobile handsets, micro-wave ovens, etc;
Financial support to Micro Small and Medium Scale Enterprises (MSMEs) in the ESDM sector to promote electronic manufacturing in India;

Single window facility for traders to lodge their clearance documents online;

These incentives are also made available for relocation of manufacturing plants from foreign countries.

Information and Communication Technologies (ICT) enablement in Government Departments, etc for fast tracking approvals, cloud computing, etc.
C. STARTUP INDIA

- Startup means an entity (private limited company/limited liability partnership/registered partnership firm), incorporated or registered in India not prior to five years, with annual turnover not exceeding Rs. 25 Crore ($ 3854362.50) in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven
by technology or intellectual property. Provided that such entity is not formed by splitting up, or reconstruction, of a business already in existence.

❖ This Scheme aims at encouraging innovation for which certain incentives have been laid down for encouraging Startups in India which will drive sustainable economic growth and generate employment opportunities.
But due to their high risk nature, Startups are unable to attract investments during their initial phases. Therefore, the Government has provided the investors with an incentive of capital gain tax exemption on investments they make for MSMEs.
To encourage Startups in India, the Government has come up with a number of incentives:

- Self-certification of compliance with the 6 prescribed labour laws and 3 prescribed environment laws;
- No inspection under labor laws for the first three years, unless written, credible and verified complaints filed;
- Income tax exemption for a period of three consecutive assessment years;
➢ A Mobile App to provide online registration of Startups with relevant agencies of the Government, approvals, etc;

➢ Equal opportunity for Startups for participation in the public procurement tenders floated by Government provided, they demonstrate the requisite capability to undertake the project;

➢ The Insolvency and Bankruptcy Code 2016 provides for a fast track winding up of business for startups (90 days);
➢ Setting up of Fund of Funds to support the innovation driven startups with funds;

➢ Venture debt funding, credit guarantee through banks and other lenders such as Small Industrial Development Bank of India (SIDBI) which has more than 970 Startups, 62 investors, 70 incubators registered with it.
D. SKILL INDIA

❖ In order to make India a manufacturing hub, generate employment opportunities and attract foreign investments, skilled manpower is required.

❖ This Scheme aims at job creation and entrepreneurship for all socio-economic classes by providing training in various fields such as automobiles, defence, engineering, etc.
E. SMART CITIES

❖ The objective of the Smart Cities Mission is to promote cities that provide core infrastructure and give a decent quality of life to its citizens, a clean and sustainable environment and application of ‘Smart’ Solutions.

❖ A few elements of smart city are adequate water supply, assured electricity supply, proper sanitation, public transport, affordable
housing facilities, health and education, e-governance, etc.

❖ Application of Smart Solutions will enable cities to use technology to improve the infrastructure and services, which will in turn, improve the quality of lives of people and create employment for the poor and the disadvantaged section.
India has signed MoUs with countries like Netherlands, the Republic of China, UK, Israel, Germany, Japan and USA for developing the cities to smart cities. They have collaborated on urban development, public transportation, sewage management, etc.
Thereafter, several companies from the following countries have also invested in India. According to the Forbes ranking 2015, USA has been the leading foreign investor in India, followed by Japan, UK, Germany, UAE, France, Switzerland, Spain, Netherlands, Singapore, Sweden, China, South Korea, Italy, Finland and so on.

- Coca Cola (USA) in Food Processing
- CLP Holdings (Hong Kong) in Thermal Power
- Accel Partners, (USA) in Startups
- Hitachi (Japan) in Electrical Machinery
- Babcock (UK) in Electrical Machinery
- BMW (Germany) in Automobiles
- Etihad Airways (UAE) in Aviation
- Airbus (France) in Defence Manufacturing
✓ Pilatus (Switzerland) in Defence Manufacturing
✓ Mango (Spain) in Textiles and Garments
✓ Royal Boskalis Westminster NV (Netherlands) in Shipping
✓ Singapore Airlines in Aviation
✓ AstraZeneca (Sweden-UK) in Pharmaceuticals
✓ Samsung (South Korea) in Electronic Systems
✓ FIAT (Italy) in Automobiles
✓ Tekes (Finland) in Biotechnology
✓ Bombardier Transportation (Canada) in Railways
✓ Siemens (Germany) in Railways*

*As the list of investing companies is very exhaustive, only one company has been taken from each country.*
GOODS AND SERVICES TAX

❖ As per the recent laws governing goods and services tax (GST), GST will be the only indirect tax payable in India.

❖ It is believed that the integration of existing multiple taxes into a single GST will reduce the cost of tax compliance, logistics cost, transaction cost, etc and bring a stability and transparency in the tax regime which will make it easier to do business in India.
CENTRAL GOVERNMENT
INTIATIVES IN EODB

❖ ACTIONS COMPLETED

❖ Fastrack permissions for starting a business:

The Government has simplified certain procedural requirements for formation of a company such as company registration in one to two working days.

❖ Dealing with construction permits:

Many State Governments have introduced fast track approval systems to issue permits for construction projects.
❖ **Trading Across Borders:**

A single window has been created at the Customs Department to ensure easy import and export. Documentation required by the Customs has been reduced.

❖ **Enforcing Contracts:**

Commercial Courts have been established in New Delhi and Mumbai to ensure the commercial disputes are settled at the earliest. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 mandates that commercial disputes have to be settled within approximately 6 months.
Getting Credit:
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) has been amended to ensure that all properties that have a mortgage or a charge have to enter details of the charge in the Central Registry of Securitization Asset Reconstruction and Security Interest. This would help to ensure transparency in loans.

Getting Electricity:
Permissions for electricity connections have been simplified in the metro cities of Delhi and Mumbai and connections are being given promptly.
❖ **Single Window Government (SWG):**

SWG vision is to enable consolidated service delivery across multiple channels and platforms to provide excellent customer service, regardless of the channel chosen.

❖ **Registering Property:**

Property registrations have become digital thereby ensuring transparency in the property matters.

❖ **Resolving Insolvency:**

A new Legislation has been passed to solve corporate insolvency.
MEASURES UNDERWAY

❖ Integrate processes for obtaining PAN, TAN, ESIC & EPFO registration with incorporation of company.

❖ Increasing the coverage of Credit Registry and Credit Bureau to register at least 70% of the individuals and firms with information on their borrowing history from the last 5 years.

❖ Simplification in the forms for filing income tax return, VAT return, CST return, EPFO and ESIC return.

❖ Operationalizing Insolvency and Bankruptcy Code.
DIPP has launched an online portal in April 2016 to track implementation of reforms on a real-time basis. The online portal is aimed to provide the following:

- Real time ranking and tracking of the States and UTs based on implementation of the recommendations
- Details of the good practices to learn and replicate
❖ Provide information on current policies and practices across States and UTs.

❑ More than 7000 reforms have been uploaded by States on the Portal. A detailed data set of ease of doing business measures implemented by various states is available in this website: http://eodb.dipp.gov.in
REPATRIATION OF PROFITS BY FOREIGN INVESTORS

- **Liaison Office:** No money can be repatriated from the Liaison Office.

- **Project Office:** Project Offices can remit outside India a surplus upon completion of the project.

- **Branch Office:** All investments and profits earned by branches of a foreign company are repatriable after payment of taxes, but there are two uncommon exceptions; defence sector and when NRIs choose to invest under non-repatriable schemes.
Investment on repatriable basis

❖ A foreign investor may make investments either based on repatriation or otherwise.

❖ According to the Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015, ‘Investment on repatriable basis’ means investment, the sale proceeds of which, net of taxes, are eligible to be repatriated out of India.
Repatriation subject to certain formalities

Foreign investors may repatriate their return on investment subject to fulfillment of certain formalities.

➢ Net amount of dividend is fully repatriable after tax deduction at source or after payment of Dividend Distribution Tax;

➢ Sale proceeds of securities is repatriable by an Authorized Dealer Category-I Bank to a resident outside India, provided that:

▪ the security has been held on repatriation basis;

▪ the sale of security has been made in accordance with the
prescribed guidelines; and

- NOC / tax clearance certificate from the Income Tax Department;

- Investments are subject to a lock-in period of 3 years in case of construction development sector.

➢ Net amount of interest on fully, mandatorily and compulsorily convertible debentures is freely repatriable after payment of applicable taxes.
Applicable Taxes

While repatriating profits outside India, the applicable taxes that need to be paid are:

i. Corporate tax of 40%;

ii. Education Cess (EC) @ 2% of the corporate tax;

iii. Secondary and Higher Education Cess (SHEC) @ 1% of the corporate tax;

iv. Surcharge is levied @ 2% on the amount of corporate tax if net income exceeds Rs. 1 Crore ($154174.50) but does not exceed Rs. 10 Crore ($1541745).
and @ 5% on the amount of corporate tax if net income exceeds Rs. 10 Crore ($1541745).

In case of levy of surcharge, EC of 2% and SHEC of 1% will be levied on the amount of corporate-tax plus surcharge;

v. Fringe Benefit Tax (FBT) is levied at a prescribed percentage on the taxable value of fringe benefits.

Besides, surcharge shall be leviable on the amount of FBT. On these amounts, EC shall also be payable.
EXIT OPTIONS

WINDING UP OF A COMPANY

- Winding up of Joint Venture / Wholly Owned Subsidiary / Limited Liability Partnership: Winding up by Tribunal.

- Winding up of LO/BO/PO: Requests for closure of BO/LO/PO and for remittance of winding up proceeds need to be submitted to the designated AD Category - I bank along with requisite documents such as Copy of RBI approval, auditor’s certificate, etc.
THANK YOU

For any further queries, please contact us at contact@theindianlawyer.in

Website- www.theindianlawyer.in