FOREIGN DIRECT INVESTMENT OF INDIA

In the recent times, Indian economy has seen increase in number of investments from across the world. In order to make our economy investor-friendly various laws, rules and regulations governing foreign investment in India have been time and again amended. The current Government is investor friendly and has made investment in India transparent, easy and speedy. Recent Government policies and measures have paved way for the foreign investors to make easy entry into and exit from the economy. It has increased the sectoral limit for various sectors and simplified compliances and procedures for investing in India.

DEFINITIONS

Automatic Route:

- Under this route no Government permission is required.

Government Route:

- Under this route applications are considered by the Foreign Investment Promotion Board (FIPB). Approval from Cabinet Committee on Security is required for more than 49% Foreign Direct Investment (FDI) in Defence Sector. The proposals involving investments of more than USD 769.23 million are considered by Cabinet committee on economic affairs.

- The Indian company receiving FDI either under the automatic route or the government route is required to comply with provisions of the FDI Policy including reporting the FDI and issue of shares to the Reserve Bank of India.

Following are certain FDI Policy reforms which are meant to provide ease of doing business in India for global investors:

RECENT POLICY MEASURES

SN	SECTOR	ENTRY ROUTE	FDI
1.	Insurance and Pension	Automatic route	49%
2.	Defence Sector	Automatic route In access of 49% has been allowed on case to cases basis with Government approval in cases resulting in access to modern technology in India	49%
3.	Defence Sector made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959	Limit Automatic route Beyond 49 % through Government route.	100% 49%
4.	Teleports, Direct to Home, Cable Networks, Mobile TV, Headend-in-the Sky Broadcasting Service	Automatic route	100%
5.	Up-linking of Non-'News and Current Affairs' TV Channels, Down-linking of TV Channels	Automatic	100%
6.	Activities of Non-Scheduled Air Transport Service, Ground Handling Services.	Automatic route	100%
7.	Brownfield Airport projects	Automatic route	100%
8.	Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and regional Air Transport Service	Limit Automatic route Beyond 49% through Government route.	100% 49%
9.	Foreign airlines would continue to be allowed to invest in capital of Indian companies operating scheduled and nonscheduled air-transport services		49% of their paid capital

10.	E-commerce Sector- the marketplace model of e-commerce	Automatic route	100%
11.	Retail trading, including through e-commerce, in respect of food products manufactured and/or produced in India	Government route	100%
12.	Asset Reconstruction Companies	Automatic route	100%
13.	Brownfield Pharmaceuticals.	Automatic route Beyond 74% will be allowed through Government route	74%
14.	Private Security Agencies	Limit Automatic route Beyond 49% and upto 74% through Government route	74% 49%
15.	For establishment of branch office, liaison office or project office or any other place of business in India if the principal business of the applicant is Defence, Telecom, Private Security or Information and Broadcasting, approval of Reserve Bank of India would not be required in cases where FIPB approval or license/permission by the concerned Ministry/Regulator has already been granted		
16.	Requirement of 'controlled conditions' for FDI in Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture has been waived off		

FDI HAS BEEN PROHIBITED IN THE FOLLOWING SECTORS:

SN	PROHIBITED SECTORS
1.	Lottery Business including Government/private lottery, online lotteries, etc.
2.	Gambling and Betting including casinos etc.
	Note: Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.
3.	Chit funds
4.	Nidhi company (a company that is into lending and borrowing funds amongst its members)
5.	Trading in Transferable Development Rights (TDRs)
6.	Real Estate Business or Construction of Farm Houses Note: 'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014
7.	Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
8.	Activities/sectors not open to private sector investment- e.g.(I) Atomic Energy and (II) Railway operations.

TYPES OF INVESTORS

1. **Individual:**
   - Foreign Venture Capital Investors (FVCI)
   - Pension/Provident Fund
   - Financial Institutions
2. **Company:**
   - Foreign Trust
   - Sovereign Wealth Funds

- Non Resident Indians (NRIs)/ Persons of Indian Origin (PIOs)

3. **Foreign Institutional Investors:**
   - Private Equity Funds
   - Partnership / Proprietorship Firm
   - Others

SECTORS REQUIRING CENTRAL GOVERNMENT APPROVAL

- Mining and mineral separation of titanium bearing minerals and ores – Upto 100%
- Defence – Beyond 49% and upto 100%
- Publishing/printing of scientific and technical magazines/specialty journals/ periodicals – Upto 100%
- Publication of facsimile edition of foreign newspapers – Upto 100%
- Print Media - Publishing of newspaper and periodicals dealing with news and current affairs – Upto 26%
- Air Transport Service - Scheduled, and Regional Air Transport Service – Beyond 49% and Upto 100%
- Satellites – establishment and operation – Upto 100%
- Telecom Services – Beyond 49% and Upto 100%
- Trading – Single Brand Retail Trading (SBRT) – Beyond 49% and Upto 100%
- Banking – Private Sector – Beyond 49% and Upto 74%
- Banking – Public Sector – Upto 20%
- Private Security Agencies – Beyond 49% and Upto 74%
- Broadcasting Content Service
  - FM Radio – Upto 49%
  - Uplinking of 'News and Current Affairs' TV Channels – Upto 49%
- Trading - Multi Brand Retail Trading (MBRT) – Upto 51%

SECTORS UNDER AUTOMATIC ROUTE

- Agriculture – 100%
- Plantation Sector – 100%
- Mining of metal and non-metal ores – 100%
- Mining – Coal and Lignite – 100%

- Food Product Retail Trading – 100%
- Broadcasting Carriage Services (Teleports, DTH, Cable Networks, Mobile TV, HITS) – 100%
- Broadcasting Content Service - Up-linking of Non-'News and Current Affairs' TV Channels/ Down-linking of TV Channels – 100%
- Airports – Greenfield – 100% and Airports – Brownfield – 100%
- Air Transport Service – Non-Scheduled – 100% and Air Transport Service – Helicopter Services/ Seaplane Services – 100%
- Ground Handling Services – 100%
- Maintenance and Repair organizations; flying training institutes; and technical training institutions – 100%
- Construction Development – 100%
- Industrial Parks – new and existing – 100%
- Trading – Wholesale – 100% and Trading – B2B E-commerce – 100%
- Duty Free Shops – 100%
- Railway Infrastructure – 100%
- Asset Reconstruction Companies – 100%
- Credit Information Companies – 100%
- White Label ATM Operations – 100%
- Non-Banking Finance Companies – 100%
- Pharma – Greenfield – 100%
- Petroleum and Natural Gas - Exploration activities of oil and natural gas fields – 100% and Petroleum refining by PSUs – 49%
- Infrastructure Company in the Securities Market – 49%
- Commodity Exchanges – 49%
- Insurance – 49% and Pension – 49%
- Power Exchanges – 49%

ENTRY STRUCTURES

Incorporating a company in India:

- It can be a private or public limited company. Both wholly owned and joint ventures are allowed. Private limited company requires minimum of 2 shareholders.

Limited liability partnerships:

- Allowed under the Government route in Sectors where 100% FDI is allowed.

Sole proprietorship/partnership firm:

- Under Reserve Bank of India (RBI) approval- RBI decides the application in consultation with Government of India.

Extension of foreign entity:

- Liaison office, Branch office (BO) or Project Office (PO) - These offices can undertake only the activities specified by the RBI. Approvals are granted under the Government and RBI route. Automatic route is available to BO/PO meeting certain conditions.

Other structures:

- Foreign investment or contributions in other structures like not for profit companies etc. are also subject to provisions of Foreign Contribution Regulation Act (FCRA).

STEPS INVOLVED IN INVESTMENT

- Identification of structure
- Central Government approval if required
- Setting up or incorporating the structure
- Inflow of funds via eligible instruments and following pricing guidelines
- Complying with the reporting requirements of RBI.
- Registrations/obtaining key documents like PAN etc.
- Project approval at State/UT level
- Finding ideal space for business activity based on various parameters like incentives, cost, availability of man power etc.
- Manufacturing projects are required to file Industrial Entrepreneur's Memorandum (IEM), some of the industries may also require industrial license.
- Construction/renovation of unit.
- Hiring of manpower.
- Obtaining licenses if any.
- Other state and central level registrations.
- Meeting annual requirements of a structure, paying taxes etc.

REPATRIATION

Repatriation of Dividend:

- Dividends are freely repatriable without any restrictions (net after tax deduction at source or Dividend Distribution Tax.

Repatriation of Capital:

- Authorized Dealer (AD) Category-I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and No Objection Certificate (NOC) / tax clearance certificate from the Income Tax Department has been produced.

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

Repatriation of Interest:

- Interest on fully, mandatorily and compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes).

ASPECTS OF TAXATION

Direct Taxes:

- The investor is required to pay tax on net income earned in India. The rates of taxes differ among structures.

Company:

- The company incorporated in India is required to pay currently 30% tax+surcharge+education cess on net income earned. It is also required to deduct tax on profits distributed currently @15.5%+surcharge+education cess.

Branch office/ Project office/ Liaison office or permanent establishment:

- The fixed place of business in India is treated as a permanent establishment and is required to pay tax currently @40%+surcharge+education cess. There is no tax on profits distributed.

Limited Liability Partnerships (LLPs):

- LLPs are required to pay tax currently @30%+surcharge+education cess. There is no tax on profits distributed.

Minimum Alternate Tax (MAT):

- Currently 18.5%+SC+EC- Indian tax law requires MAT to be paid by corporations in cases where the tax payable according to the regular tax provisions is less than 18.5% of their book profits. However MAT credit (MAT-actual tax) can be carried forward in next 10 years for set-off against regular tax payable during the subsequent years subject to certain conditions.

Note: Transactions between associated enterprises need to follow transfer pricing regulations.

INCENTIVES

Central Government Incentives:

- Incentives available to unit's set-up in Special Economic Zones (SEZ), National Investment and Manufacturing Zones (NIMZ) etc. and Export Oriented Units (EOUs).

- Exports incentives like duty drawback, duty exemption/remission schemes, focus products and market schemes etc.

- Areas based incentives like unit set-up in north east region, Jammu and Kashmir, Himachal Pradesh, Uttarakhand.

- Sector specific incentives like Modified Special Incentive Package Scheme (M-SIPS) in electronics.

State Government Incentives:

- Each state government has its own incentive policy, which offers various types of incentives based on the amount of investments, project location, employment generation, etc. The incentives differ from state to state and are generally laid down in each state's industrial policy.

- The broad categories of state incentives include: stamp duty exemption for land acquisition, refund or exemption of value added tax, exemption from payment of electricity duty etc.