

## FOREIGN DIRECT INVESTMENT IN INDIA

In the recent times, there has been surge in investments in India, both domestic and foreign. The Government has constantly encouraged Private Sector Investments in diverse sectors to boost the economy. Recent Government Policies and measures have enhanced transparency and simplified compliances for Ease of Doing Business in India.

Investments can be done either through Automatic Route, where no Government permission is required; or through Government Route, where applications are processed through Foreign Investment Facilitation Portal (**FIFP**), which is an online single point interface of the Government of India for investors to facilitate Foreign Direct Investment (**FDI**).

### FDI POLICY



The Department for Promotion of Industry and Internal Trade (**DPIIT / DIPP**), Ministry of Commerce and Industry has recently published the Consolidated FDI Policy 2020<sup>1</sup>, which is meant to provide ease of doing business in India for global investors. The significant Policy pronouncements are as follows:

SN	SECTOR	FDI	ENTRY ROUTE
1	Agriculture and Plantation	100%	Automatic Route
2	Mining	100%	Automatic Route
3	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	100%	Government Route
4	Petroleum and Natural Gas	100%	Automatic Route
5	Petroleum Refining	49%	Automatic Route
6	Insurance and Pension	74%	Automatic Route
7	Insurance Intermediaries	100%	Automatic Route
8	Financial Services Activities	100%	Automatic Route
9	Defence Sector	100%	Automatic Route- up to 74%

<sup>1</sup> <https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf>

			Government Route- Beyond 74%
10	Broadcasting and Carriage Services	100%	Automatic Route
11	Print Media	26%	Government Route
12	Publishing/printing foreign magazines, scientific/technical journals, etc	100%	Government Route
13	Brownfield and Greenfield Airport Projects	100%	Automatic Route
14	Scheduled and Regional Air Transport Service	100%	Automatic Route- up to 49% Government Route- Beyond 49% (Automatic up to 100% for Non-Resident Indians)
15	Non-Scheduled Air Transport Service, Ground Handling Services, Maintenance and Repair Organizations (MRO), Flying Training Institutes and Technical Training Institutions  Helicopter/Seaplane Services requires Sectoral Approvals	100%	Automatic Route
17	Construction-Development Projects	100%	Automatic Route
18	Satellites	100%	Government Route
19	Telecom Services	100%	Automatic Route- up to 49% Government Route- Beyond 49%
20	E-commerce Activities	100%	Automatic Route
21	Single Brand Product Retail Trading	100%	Automatic Route
22	Multi- Brand Product Retail Trading	51%	Government Route
23	Railway Infrastructure	100%	Automatic Route
24	Asset Reconstruction Companies	100%	Automatic Route
25	Banking- Private Sector	74%	Automatic Route – up to 49% Government Route - Beyond 49% and up to 74%
26	Infrastructure Companies in Securities Markets	49%	Automatic Route
27	Brownfield Pharmaceuticals	100%	Automatic Route – up to 74% Government Route - Beyond 74%
28	Greenfield Pharmaceuticals	100%	Automatic Route

## PROHIBITED SECTORS

The FDI has been prohibited in the following sectors:

- |  |   |  |
|--|---|--|
| <ul style="list-style-type: none"> <li>✓ Defence</li> <li>✓ Space</li> <li>✓ Atomic Energy</li> <li>✓ Railway Operations</li> <li>✓ Chit funds</li> <li>✓ Gambling and Betting including casinos etc.</li> <li>✓ Lottery Business including Government/private lottery, online lotteries, etc including Foreign technology collaboration of any form such as licensing, franchise, trademark, etc</li> </ul> |  | <ul style="list-style-type: none"> <li>✓ Nidhi company (a company that is into lending and borrowing funds amongst its members)</li> <li>✓ Real Estate Business (not including development of townships, construction of residential/commercial premises, roads or bridges, etc) or Construction of Farm Houses</li> <li>✓ Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes</li> <li>✓ Trading in Transferable Development Rights</li> </ul> |
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## TYPES OF INVESTORS

- ❖ Individual Investors including Non-Resident Indians (NRIs)/ Persons of Indian Origin (PIOs) and High Net-Worth Individuals
- ❖ Partnerships and Proprietorships
- ❖ Financial Institutions
- ❖ Mutual Funds
- ❖ Companies
- ❖ Societies and Trust
- ❖ Sovereign Wealth Funds
- ❖ Foreign Venture Capital Investors (FVCI)
- ❖ Foreign Institutional Investors





## **ENTRY STRATEGIES**

Foreign Investors may invest in India through Automatic Route or Government Route, subject to Sectoral Approvals.

Foreign Investors may set up their business in India in any of the following ways:

### **A) Incorporation as an Indian company:**

The investor can set up a company in India, either in the form of a joint venture with an existing Indian company, or by setting up a wholly owned subsidiary. The company can be a private limited company or a public limited company. Repatriation of dividends is allowed.

### **B) Limited liability partnerships:**

Foreign entities (other than citizens of Pakistan and Bangladesh) can invest in Limited Liability Partnerships (**LLP**) in India except those registered as Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital Investor. FDI in LLP is permitted in those sectors where 100% FDI is allowed through automatic route.

### **C) Sole proprietorship/partnership firm:**

NRIs or PIOs resident outside India can invest by way of contribution to the capital of proprietorship/partnership firms. Persons resident outside India other than NRIs or PIOs may invest in the said manner with prior approval of the Reserve Bank of India (**RBI**). Prior approval of RBI is also required for repatriation of dividends.

### **D) 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.

### **E) Franchise:**

The foreign entity may grant franchise to an Indian entity with representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor.

### **F) Incorporation as a foreign company:**

The foreign entity may set up a liaison office/ project office/ branch office in India:

- i) Liaison offices are set up as a representative of a foreign parent company to promote its business interests, spread awareness about its products, explore further market opportunities for the business in India, etc. They cannot repatriate money outside India. RBI approval is required for setting up liaison office in India.
- ii) Project offices are set up to execute specific projects in India, upon securing a contract with an Indian company. They can remit outside India a surplus upon completion of the project and also repatriate post-tax profits to the head office outside India. RBI approval is required for setting up project office in India.
- iii) Branch offices are set up as a representative of a foreign parent or group company to carry out various activities such as export/import of goods; providing professional or consultancy services; conducting research; rendering services in information technology and development of software in India; etc. They can repatriate post-tax profits outside India. RBI approval is required for setting up branch office in India.

#### **G) Other structures:**

The other investment options for such investors are Public Provident Fund, Pension Fund, Banks and Financial Institutions, Real Estate, Equity Funds, Mutual Funds, Securities Market etc.



#### **STEPS INVOLVED IN INVESTMENT**

- Identification of structure
- Obtaining approval for name of the organization
- Central Government/Sectoral Authority approval, where required
- Setting up or incorporating the structure
- Inflow of funds
- Meeting reporting requirements of RBI and other Authorities

- Registrations/obtaining key documents like Permanent Account Number (**PAN**), Tax Deduction Account Number (**TAN**), etc and other State, UT and Central level registrations
- Project approval at State/Union Territory (**UT**) level
- Finding ideal space for business activity based on various parameters like incentives, cost, availability of man power etc.
- Industrial license and other licenses, if any
- Hiring of manpower
- Payment of taxes etc
- Intellectual Property Rights registration such as trademark, copyright, patent, trade secret, etc



### **GOVERNMENT INITIATIVES**

- 1) The RBI has notified “Foreign Investment in India - Reporting in Single Master Form” vide Notification dated 07-06-2018, whereby, RBI integrated all the reporting structures of various types of foreign investments in India into a Single Master Form (**SMF**). This Form has to be filed online on FIRMS (Foreign Investment Reporting and Management System) Portal of the RBI. Therefore, now the procedure of reporting FDI has been merged into a single revised FC-GPR.
- 2) The Government has announced certain incentives to encourage FDI in India, in the Union Budget FY 2021:
  - ✓ Increase in FDI in Insurance Sector from 49% to 74%
  - ✓ Permitted foreign ownership and control in Insurance companies, provided majority of Directors on the Board and key management persons are Indian residents
  - ✓ Tax holidays for startups till 31-03-2022
  - ✓ Capital gains exemption for investment in start-ups to incentivize funding of startups

**MAJOR FOREIGN INVESTORS IN INDIA**

❖ Amazon, United States of America (USA) (E-Commerce)	❖ Sony, Japan (Electronics)
❖ Google, USA (Search Engine Platform and other services)	❖ Renault, France (Cars)
❖ JP Morgan Chase, USA (Corporate and Investment Banking Services)	❖ BMW, Germany (Luxury, Travel, Lifestyle, and Sports)
❖ Microsoft Corporation, USA (Operating System)	❖ Volkswagen, Germany (Cars)

**ROAD AHEAD**

These Government initiatives and incentives are aimed at simplifying domestic approvals and bureaucratic processes and also, digitalizing the investment procedure to ensure transparency. The Government is also considering easing of FDI rules to offer a lucrative market to foreign investors, which will enhance capital flow, human resource development, employment generation, technological advancement, creation of a competitive market and stimulation of economic growth of the country.

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