



# Investing in India

A Comprehensive Manual for Foreign Direct Investment-Policy & Procedures



Department of Industrial Policy & Promotion  
Ministry of Commerce & Industry,  
Government of India, New Delhi

## **INDIA AT A GLANCE:**

- India is a Union of States with parliamentary system of Government
- Land area: 3.29 million square kilometers
- Capital: New Delhi
- Population: 1.027 billion (March 1, 2001)
- Climate: mainly tropical with temperature ranging from 10° – 40° C in most parts
- Time zone: GMT + 5 1/2 hours
- Major international airports: New Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Thiruvananthapuram
- Major ports of entry: Chennai, Ennore, Haldia, Jawaharlal Nehru, Kolkata, Kandla, Kochi, Mormugao, Mumbai, New Mangalore, Paradip and Tuticorin, Vizag,

## **BASIC ECONOMIC STATISTICS:**

- GDP at current prices(2004-05): Rs.28,30,465 billion
- GDP(PPP) (2004) =US \$ 3319 billion (4<sup>th</sup> largest in the world)
- GDP growth rate : 2004-05 : 6.9%
- Exchange rate: Rs.43.55/ \$ (as on August 9, 2005)
- Foreign Exchange reserves: US\$ 140.6 billion (as on 29.07.2005)
- Exports: 2004-05: US \$ 79.24 billion, Growth Rate: 24 %
- Imports: 2004-05: US \$ 107 billion, Growth Rate : 37 %
- Foreign Direct Investment: 2004-05: US \$ 5.3 billion Growth rate : 18.2%
- Portfolio Investment 2004-05 : US \$ 9.9 billion

# **INVESTING IN INDIA**

## **FOREIGN DIRECT INVESTMENT POLICY & PROCEDURES**

**Department of Industrial Policy and Promotion  
Ministry of Commerce & Industry  
Government of India  
New Delhi**

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This booklet on '**Investing in India**-Foreign Direct Invest- Policy and Procedures' is intended to serve as a guide to prospective investors/entrepreneurs and does not purport variance between what has been stated in this booklet and the relevant Act, Rules, Regulations, Policy Statements, etc., the latter shall prevail.

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## **FOREWORD**

The policy of reforms followed by Government of India in the post-1991 period recognizes the important role of foreign capital in the industrial & economic development of the country. Foreign capital inflow is encouraged not only as source of financial capital but also as a tool of knowledge and technology transfer.

The Central Government took several initiatives and measures during this period to encourage foreign investment inflows, particularly the flow of Foreign Direct Investment (FDI) into our country. Major thrust areas include infrastructure development, particularly energy, power, telecom and township development. FDI in most of the sectors/activities including manufacturing sectors are under the automatic route and require only notifying the Reserve Bank of India . Initiatives have also been taken to make procedures related to transfer of shares and repatriation more simple. The policy & procedures for induction of foreign technology have also been progressively simplified. To create a more conducive investment climate, the procedures governing approvals/clearances are continuously reviewed.

This publication has been revised to make it more user friendly and to provide updated information on the policies and procedures relating to investing in India. Information/clarification can be sought at this Department's website (<http://dipp.gov.in>).

**(Ajay Dua)**



# CONTENTS

<b>Chapter</b>	<b>Content</b>	<b>Page No.</b>
I.	Foreign Direct Investment	1
II.	Industrial Licensing	6
III.	Foreign Technology Agreements	8
IV.	Entry Options for Foreign Investor	9
V.	Exchange Control	11
VI.	Portfolio Investment	13
VII.	Incorporation of Company	14
VIII.	Other Schemes and Incentives	16
IX.	Taxation in India	18
X.	Investment Guidance and Facilitation	21
XI.	Frequently Asked Questions	23

# ANNEXURE

I. Guidelines for Consideration of Foreign Direct Investment (FDI) Proposals by the Foreign Investment Promotion Board (FIPB)	25
II. Sector Specific Guidelines for Foreign Direct Investment	28
III. FDI Permitted in Various Sectors/ Activities	34
IV. Illustrative List of sectors under Automatic Route for FDI upto 100%	36
V. Illustrative List of Infrastructure sectors with FDI upto 100% under Automatic Route	37
VI. Illustrative List of services sector with FDI upto 100% under Automatic route	38
VII. Guidelines pertaining to approval of Foreign/Technical Collaborations under the Automatic route with previous ventures/Tie-up in India	39
VIII. Guidelines for FDI in Development of Township, Housing, Building, Infrastructure and construction projects	40
IX. List of Cities with Population of 10 Lakhs (1 Million) and above according to the Provisional results of 1991 Census	41
X. Details of Selected Agencies/Department involved with various Clearances/Approvals and their Web-Sites	42
XI. Website Addresses of Important Ministeries/Departments	43
XII. Website Addresses of States/UTs	44
XIII. Addresses for Filing Application etc	45
XIV. Contact Addresses:	46



# CHAPTER - I

## FOREIGN DIRECT INVESTMENT

### 1. INTRODUCTION

1.1 India, the largest democracy and 10<sup>th</sup> largest economy in the world, with its consistent growth performance and abundant high-skilled manpower provides enormous opportunities for investment, both domestic and foreign. India is the fourth largest economy in terms of purchase power parity and the tenth most industrialized country in the world.

Since the beginning of economic reforms in 1991, major reform initiatives have been taken in the fields of investment, trade, financial sector, exchange control simplification of procedures, enactment of competition and amendments in the intellectual property rights laws, etc. India provides a liberal, attractive, and investor friendly investment climate. Main features of policy on Foreign Direct Investment are dealt with in this chapter.

### INVESTMENT OUTLOOK

1.2 A number of studies in the recent past have highlighted the growing attractiveness of India as an investment destination. According to the study by Goldman Sachs, Indian economy is expected to continue growing at the rate of 5% or more till 2050. Indian economy is slated to become the fourth largest economy by 2050. Some of these conclusions are listed below :

- 3<sup>rd</sup> most attractive destination -ATKEARNEY Business Confidence Index, 2004
- Best off shoring destination-ATKEARNEY Offshoring Index, 2004
- Among the top three investment hotspots- UNCTAD and Corporate Location Survey April 2004.

### POLICY ON FOREIGN DIRECT INVESTMENT

1.3 India has among the most liberal and transparent policies on FDI among the emerging economies. FDI up to 100% is allowed under the automatic route in all activities/sectors except the following which require prior approval of the Government :

- Activities/items that require an Industrial Licence (Refer para 2.1);
- Proposals in which the foreign collaborator has an existing financial / technical collaboration in India in the 'same' field(Refer Press Note no. 1 of 2005 series),
- Proposals for acquisition of shares in an existing Indian company in:

- Financial services sector and
  - Where Securities & Exchange Board of India (Substantial Acquisition of Shares and Takeovers ) Regulations, 1997 is attracted;
- iv. All proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted. (Refer Annexure II).

1.4 FDI policy is reviewed on an ongoing basis and changes in sectoral policy/sectoral equity cap are notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy & Promotion. All Press Notes are available at the website ([www.dipp.gov.in](http://www.dipp.gov.in)). FDI Policy is also notified by Reserve Bank of India (RBI) under Foreign Exchange Management Act (FEMA) .Please refer to RBI website ([www.rbi.org.in](http://www.rbi.org.in)).

### PROCEDURE UNDER AUTOMATIC ROUTE

1.5 FDI in sectors/activities to the extent permitted under automatic route does not require any prior approval either by the Government or RBI. The investors are only required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.

### PROCEDURE UNDER GOVERNMENT APPROVAL

1.6 FDI in activities not covered under the automatic route according to para 1.3 above, requires prior Government approval and are considered by the Foreign Investment Promotion Board (FIPB). Approvals of composite proposals involving foreign investment/foreign technical collaboration is also granted on the recommendations of the FIPB.

Application for all FDI cases, except Non-Resident Indian (NRI) investments and 100% Export Oriented Units (EOUs), should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance.

Application for NRI and 100% EOU cases should be presented to SIA in Department of Industrial Policy & Promotion.

Applications can also be submitted with Indian Missions abroad who forward them to the Department of Economic Affairs for further processing.

Application can be made in Form FC-IL, which can be downloaded from <http://www.dipp.gov.in>. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

The guidelines for consideration of FDI proposals by the FIPB are at Annexure-I.

## **PROHIBITED SECTORS**

1.8 The extant policy does not permit FDI in the following cases:

- i. Gambling and betting;
- ii. Lottery Business,
- iii. Atomic Energy
- iv. Retail Trading
- v. Agricultural or plantation activities or Agriculture (excluding Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture and Cultivation of Vegetables, Mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than Tea plantations)

## **GENERAL PERMISSION OF RBI UNDER FEMA**

1.9 Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors.

The companies are required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRIs.

## **PARTICIPATION BY INTERNATIONAL FINANCIAL INSTITUTIONS**

1.10 Equity participation by international financial institutions such as ADB, IFC, CDC, DEG, etc., in domestic companies is permitted through automatic route, subject to SEBI/RBI regulations and sector specific cap on FDI.

## **ISSUE AND VALUATION OF SHARES IN CASE OF EXISTING COMPANIES**

1.11 According to RBI / SEBI guidelines, in case of listed companies, the issue price shall be either at :

- (a) The average of the weekly high and low of the closing prices of related shares quoted on the stock exchange during the six months preceding the relevant date, or
- (b) The average of the weekly high and low of the closing prices of related shares quoted on the stock exchange during the two weeks preceding the relevant date.

The stock exchange referred to is the one at which the highest trading volume in respect of the share of company has been recorded during the preceding six months prior to the relevant date.

The relevant date is the date thirty days prior to the date on which the meeting of the General Body of the shareholder is convened. In all other cases a company may issue shares as per the RBI regulation in accordance with the guidelines issued by the erstwhile Controller of Capital Issues.

Other relevant guidelines of Securities and Exchange Board of India (SEBI)/ and RBI, including the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, wherever applicable, would need to be followed. Further information could be obtained at Security and Exchange Board of India's (SEBI) website : [www.sebi.gov.in](http://www.sebi.gov.in)

## **ISSUE OF RIGHTS/BONUS SHARES**

1.12 General permission of the RBI is available to Indian companies to issue right/bonus shares, subject to certain conditions. Entitlement of rights shares is not automatically available to investors who have been allotted such shares as Overseas Corporate Bodies (OCBs). Such issuing companies would have to seek specific permission from RBI, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai for issue of shares on right basis to erstwhile OCBs.

## **ISSUE OF SHARES UNDER MERGER/AMALGAMATION**

1.13 Where a Scheme of merger or amalgamation of two or more Indian companies has been approved by a court in India, the transferee company may issue shares to the shareholders of the transferor company resident outside India, subject to ensuring that the percentage of shareholding of persons resident outside India in the transferor new company does not exceed the percentage specified in the approval granted by the Central Government or the Reserve Bank of India. This entitlement of rights shares is not automatically available to investors who have been allotted such shares as OCBs. For this specific permission from RBI is necessary.

## **ISSUE OF SHARES UNDER ESOP SCHEME**

1.14 Under this Scheme a company may issue shares to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, directly or through a Trust, subject to the condition that the scheme has been drawn in terms of relevant regulations issued by the SEBI and face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5% of the paid-up capital of the issuing company.

## **TRANSFER OF SHARES/DEBENTURES**

1.15 Transfer of shares in the following categories of cases is allowed under automatic route :

- (a) Transfer of shares from resident to non-resident (including transfer of subscribers' shares to non-residents) other than in financial services sector provided the investment is covered under automatic route, does not attract the provisions of SEBI's (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, falls within the sectoral cap and also complies with prescribed pricing guidelines.
- (b) Conversion of ECB/Loan into equity provided the activity of the company is covered under automatic route, the foreign equity after such conversion falls within the sectoral cap and also complies with prescribed pricing guidelines.
- (c) Cases of increase in foreign equity participation by fresh issue of shares as well as conversion of preference shares into equity capital provided such increase within the sectoral cap in the relevant sectors, are within the automatic route and also complies with prescribed pricing guidelines.

General permission of the RBI has been granted to non-residents/NRIs for transfer of shares and convertible debentures of an Indian company as under :

- a. A person resident outside India (Other than NRI and OCB) may transfer by way of sale or gift shares or convertible debentures to any person resident outside India (including NRIs); provided transferee has obtained prior permission of SIA/FIPB, in terms of Press Note No.1 (2005 Series) to acquire the shares if he has an existing venture or tie-up in India in the same field in which the Indian company whose shares are being transferred is engaged.
- b. NRI or OCB may transfer by way of sale or gift the shares or convertible debentures held by him or it to another non-resident Indian; provided transferee has obtained prior permission of Central Government in terms of Press Note No.1 (2005 Series) to acquire the shares if he has an existing venture or tie-up in India in the same field in which the Indian company whose shares are being transferred, is engaged.
- c. The person resident outside India may transfer any security to a person resident in India by way of gift.
- d. A person resident outside India may sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered broker

### **AMERICAN DEPOSITORY RECEIPTS (ADRs)/GLOBAL DEPOSITORY RECEIPTS (GDRs)**

1.16 An Indian corporate can raise foreign currency resources abroad through the issue of ADRs or GDRs by issuing its Rupee

denominated shares to a person resident outside India being a depository for the purpose of issuing GDRs and/ or ADRs, subject to the conditions that :

- b) the ADRs/GDRs are issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government thereunder from time to time
- c) The Indian company issuing such shares has an approval from the Ministry of Finance, Government of India to issue such ADRs and/or GDRs or is eligible to issue ADRs/ GDRs in terms of the relevant scheme in force or notification issued by the Ministry of Finance, and
- d) Is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations.

There is no limit up to which an Indian company can raise ADRs/ GDRs. However, the Indian company has to be otherwise eligible to raise foreign equity under the extant FDI policy.

There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets.

The FCCB issue proceeds need to conform to external commercial borrowing end use requirements. In addition, 25 per cent of the FCCB proceeds can be used for general corporate restructuring.

Regulation 4 of Schedule-I of FEMA Notification No. 20 deal with the issue of ADR/GDR by an Indian company.

1.17 A company engaged in the manufacture of items covered under Automatic route, whose direct foreign investment after a proposed GDRs/ADRs/FCCBs issue is likely to exceed the equity limits under the automatic route, or which is implementing a project falling under Government approval route, would need to obtain prior Government clearance through FIPB before seeking final approval from the Ministry of Finance.

### **FOREIGN CURRENCY CONVERTIBLE BONDS (FCCBs)**

1.18 FCCBs are issued in accordance with the [Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments.

## ELIGIBILITY

1.19 The eligibility for issue of Convertible Bonds or Ordinary Shares of issuing company is as under :

- a) An issuing company desirous of raising foreign funds by issuing Foreign Currency Convertible Bonds or ordinary shares for equity issues through Global Depository Receipt
  - i. Can issue FCCBs up to US\$50 Million under the Automatic route,
  - ii. From US\$50 –100 Million, the companies have to take RBI approval,
  - iii. From US\$100 Million and above, prior permission of the Department of Economic Affairs is required.

## PREFERENCE SHARES

1.20 Foreign investment through preference shares is treated as Foreign Direct Investment. Issue of preference share should conform to guidelines prescribed by the SEBI and RBI and other statutory requirements. The policy in regard to preference shares is tabulated below :

1 .Procedure	Automatic or Government approval route depending upon the activity/sector of the company.
2. Whether considered as part of share capital?	Yes, and fall outside the ECB guidelines/cap.
3. Whether considered while calculating equity cap, if any?	Yes, provided they carry a conversion option.
4. Duration of conversion	As per the maximum limit prescribed under the Company's Act or as agreed to in shareholder's agreement, whichever is less.
5. Dividend rate	This should not exceed the limit prescribed by the Ministry of Finance

## FDI IN EOUs/SEZs/INDUSTRIAL PARK/EHTP/STP SPECIAL ECONOMIC ZONES (SEZs)

1.21 FDI up to 100% is permitted under the automatic route for setting up of Special Economic Zone (SEZ). Proposals not covered under the automatic route require approval by FIPB.

## HOW TO SET UP UNIT IN SEZ

Units in SEZ qualify for FDI approval through automatic route subject to sectoral norms.

- i. For setting up a unit in an SEZ, three copies of the application in the form given in Appendix-14-I-A of Foreign Trade Policy may be submitted to the Development Commissioner (DC) of the SEZ concerned.
- ii. Proposals for setting up units in SEZ other than those requiring industrial Licence may be granted approval by the Development Commissioner.
- iii. Proposals for setting up units in SEZ requiring Industrial Licence may be granted approval by the Development Commissioner after clearance of the proposal by the SEZ Board of Approval.
- iv. Letter of Permission (LOP)/Letter of Intent(LOI) issued to SEZ units by the Development Commissioner would be construed as a licence for all purposes, including for procurement of raw material and consumables either directly or through canalising agency.
- v. The LOP/LOI shall specify the items of manufacture/service activity, annual capacity, projected annual export for the first years in dollar terms, Net Foreign Exchange Earnings (NFE), limitations, if any, regarding sale of finished goods, by products and rejects in the DTA and such other matter as may be necessary and also impose such conditions as may be required.

Details about the type of activities permitted are available in the Foreign Trade Policy issued by Department of Commerce. (dgft.delhi.nic.in)

## 100% EXPORT ORIENTED UNITS (EOUs)

1.22 FDI up to 100% is permitted under the automatic route for setting up 100% EOU, subject to sectoral policies. Proposals not covered under the automatic route would be considered and approved by FIPB.

## INDUSTRIAL PARK

1.23 FDI up to 100% is permitted under automatic route for setting up of Industrial Park.

## PROCEDURE FOR APPROVAL

### ELECTRONIC HARDWARE TECHNOLOGY PARK (EHTP) UNITS

1.24 Proposals for FDI/NRI investment in EHTP Units are eligible for approval under the automatic route, subject to parameters listed in Para 1.3. For proposals not covered under automatic route, the applicant should seek separate approval of the Government through the FIPB, as per the procedure outlined in Para 1.6.

## **SOFTWARE TECHNOLOGY PARK (STP) UNITS**

1.25 Proposals for FDI/NRI investment in STP Units are eligible for approval under automatic route subject to parameters listed in Para 1.3. For proposals not covered under automatic route, the applicant should seek separate approval of the Government through the FIPB, as per the procedure outlined in Para 1.6.

## **CAPITALIZATION OF IMPORT PAYABLES**

1.26 FDI inflows are required to be under the following mode :

i. By inward remittances through normal banking channels or

ii. By debit to the NRE/FCNR account, of person concerned, maintained with an authorized dealer/authorized bank.

Issue of equity to non-residents against other modes of FDI inflows or in kind is not permissible, except issue of equity shares against lump-sum fee and royalty payable for technology collaborations and external commercial borrowings (ECBs) in convertible foreign currency which are permitted under the automatic route subject to meeting all applicable tax liabilities and sector specific guidelines.

# CHAPTER - II

## INDUSTRIAL LICENSING

### INDUSTRIAL LICENSING POLICY

2.1 Industrial Licenses are regulated under the Industries (Development & Regulation) Act, 1951. With progressive liberalization and deregulation of the economy, the requirement of industrial licensing have been substantially reduced. At present industrial licence for manufacturing is required only for the following :

- i. Industries retained under compulsory licensing,
- ii. Manufacture of items reserved for small scale sector by non-SSI units; and
- iii. When the proposed location attracts locational restriction

### INDUSTRIES REQUIRING COMPULSORY LICENSING

2.2 The following industries require compulsory industrial license :

- i. Distillation and brewing of alcoholic drinks.
- ii. Cigars and cigarettes of tobacco and manufactured tobacco substitutes;
- iii. Electronic Aerospace and defence equipment: all types;
- iv. Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose and matches;
- v. Hazardous chemicals;
  - a. Hydrocyanic acid and its derivatives
  - b. Phosgene and its derivatives
  - c. Isocyanates and di-isocyanates of hydrocarbon, not elsewhere specified (example: Methyl Isocyanate).

### SMALL-SCALE SECTOR

2.3 An industrial undertaking is defined as a small-scale unit if the capital investment in plant and machinery does not exceed Rs 10 million.

Small-scale units can get registered with the Directorate of Industries/District Industries Centre of the State Government. Such units can manufacture any item, and are also free from locational restrictions.

The Government has reserved certain items for exclusive manufacture in the small-scale sector. (List available at [www.dipp.gov.in](http://www.dipp.gov.in))

### MANUFACTURE OF ITEMS RESERVED FOR SMALL-SCALE SECTOR

2.4 Non small-scale units can manufacture items reserved for the small-scale sector only after obtaining an industrial license. In such cases, the non-small scale unit is required to undertake an obligation to export 50 per cent of the production of SSI reserved items.

### FDI IN SSI UNITS

2.5 A small-scale unit can not have more than 24 per cent equity in its paid up capital from any industrial undertaking, either foreign or domestic. If the equity from another company (including foreign equity) exceeds 24 per cent, even if the investment in plant and machinery in the unit does not exceed Rs 10 million, the unit loses its small-scale status and shall require an industrial license to manufacture items reserved for small-scale sector.

### LOCATIONAL RESTRICTIONS

2.6 Industrial undertakings are free to select the location of their projects. Industrial License is required if the proposed location is within 25 KM of the Standard Urban Area limits of 23 cities having population of 1 million as per 1991 census. List of such cities is at Annexure IX.

Locational restriction does not apply :

- i) If the unit were to be located in an area designated as an "industrial area" before the 25th July, 1991.
- ii) In the case of Electronics, Computer software and Printing and any other industry, which may be notified in future as "non polluting industry".

The location of industrial units is subject to applicable local zoning and land use regulations and environmental regulations.

### PROCEDURE FOR OBTAINING INDUSTRIAL LICENSE :

2.7 Industrial License is granted by the Secretariat for Industrial Assistance (SIA) on the recommendation of the Licensing Committee.

Application for industrial license is required to be submitted in the prescribed form. (Form FC-IL). This form is available in the Public Relation and Complaint Section (PR&C) of the SIA, all outlets dealing in Government Publications, Indian Embassies, and can be downloaded from the web site <http://www.dipp.gov.in>.

Application accompanied with a crossed demand draft of Rs. 2500/- (appr. US\$ 55) may be submitted to the Public Relation and Complaint Section (PR&C) of Department of Industrial Policy & Promotion.

Decisions are usually taken within 4-6 weeks of filing the application.

### **POLICY FOR INDUSTRIES EXEMPT FROM LICENSING - INDUSTRIAL ENTREPRENEURS MEMORANDUM (IEM)**

2.8 Industrial undertakings exempt from industrial license are only required to file an Industrial Entrepreneur Memorandum (IEM) in Part 'A', in the prescribed format,

#### **PROCEDURE FOR IEM**

2.9 The form for filing an IEM is available at Public Relation and Complaint Section (PR&C), all outlets dealing in Government publications, Indian Embassies, and can also be downloaded from the web site [www.dipp.gov.in](http://www.dipp.gov.in)

The IEM can be filed with the PR&C section in SIA either in person or by post. The IEM should be submitted along with a crossed demand draft of Rs.1000/- (appr. US\$ 22) for up to 10 items proposed to be manufactured. For more than 10 items, an additional fee of Rs. 250 (appr. US\$ 6) for up to 10 additional items needs to be paid.

On filing the IEM, an acknowledgement containing the SIA Registration Number, for future reference, is issued. In case IEM is sent by post, the acknowledgement is sent by post & no further approval is required.

#### **An IEM would stand cancelled if the proposal requires compulsory license.**

Upon commencement of commercial production, Industrial undertakings need to file information in Part 'B' of the IEM to PR&C Section in SIA. No fee is to be paid for filing Part B.

All industrial undertakings whether or not exempt from compulsory industrial licensing, are statutorily required to submit monthly production return in the prescribed proforma every month. This should reach the Industrial Statistics Unit (ISU) of the Department positively by the 10<sup>th</sup> of the following month.

### **CARRY ON BUSINESS (COB) LICENCE**

2.10 Small-scale units by virtue of their natural growth may exceed the investment limit prescribed for small-scale units. In such cases

these units need to obtain a Carry-on-Business (COB) License based on the best production in the preceding three years. No export obligation is fixed on the capacity for which the COB license is granted.

The application for COB licence should be submitted in revised form "EE", which can be downloaded from the web site [www.dipp.gov.in](http://www.dipp.gov.in) along with a crossed demand draft of Rs. 2500/- (appr. US\$ 55)

However, on further expansion of its capacity beyond the capacity included in COB license, the unit would need to obtain an industrial license.

#### **PAYMENT OF PRESCRIBED FEE**

2.11 The fee prescribed for various applications, licenses are to be paid through crossed demand draft drawn in favour of the Pay & Accounts Officer, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, payable at New Delhi.

#### **ENVIRONMENTAL CLEARANCES**

2.12 Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment as may be necessary, for setting up an industrial project for 31 categories of industries in terms of Notification S.O. 60(E) dated 27.1.94 as amended from time to time, issued by the Ministry of Environment & Forests under The Environment (Protection) Act, 1986. This list includes petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilisers, dyes, paper, etc.

2.13 However, if investment in the project is less than Rs. 1 billion, such Environmental clearance is not necessary, except in cases of pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of certain parameters, tarred roads in Himalayan areas, distilleries, dyes, foundries and electroplating industries.

Setting up industries in certain locations considered ecologically fragile (e.g. Aravalli Range, coastal areas, Doon valley, Dahanu, etc.) are guided by separate guidelines issued by the Ministry of Environment and Forests.

For further details please refer the website of Ministry of Environment and Forests (<http://envfor.nic.in>).

# CHAPTER - III

## FOREIGN TECHNOLOGY AGREEMENTS

### GENERAL POLICY

3.1 For promoting technological capability and competitiveness of the Indian industry, acquisition of foreign technology is encouraged through foreign technology collaboration agreements. Induction of know-how through such collaborations is permitted either through automatic route or with prior Government approval.

### SCOPE OF TECHNOLOGY COLLABORATION

3.2 The terms of payment under foreign technology collaboration, which are eligible for approval through the automatic route and by the Government approval route, includes technical know how fees, payment for design and drawing, payment for engineering service and royalty.

Payments for hiring of foreign technicians, deputation of Indian technicians abroad, and testing of indigenous raw material, products, indigenously developed technology in foreign countries are governed by separate RBI procedures and rules pertaining to current account transactions and are not covered by the foreign technology collaboration approval. For details please refer to the website of the RBI.

### AUTOMATIC ROUTE

3.3 Payment for foreign technology collaboration by Indian companies are allowed under the automatic route subject to the following limits :

- (i) the lump sum payments not exceeding US\$2 million;
- (ii) royalty payable being limited to 5 per cent for domestic sales and 8 per cent for exports, without any restriction on the duration of the royalty payments. The royalty limits are net of taxes and are calculated according to standard conditions. [Press Note No.19 (1998 series) and Press Note No. 2 (2003 series)].

The royalty will be calculated on the basis of the net ex-factory sale price of the product, exclusive of excise duties, minus the cost of the standard bought-out components and the landed cost of imported components, irrespective of the source of procurement, including ocean freight, insurance, custom duties, etc.

### USE OF TRADEMARKS AND BRAND NAME

3.4 Payment of royalty up to 2% for exports and 1% for domestic sales is allowed under automatic route for use of trademarks and brand name of the foreign collaborator without technology transfer. Royalty on brand name/trade mark shall be paid as a percentage of net sales, viz., gross sales less agents'/dealers' commission, transport cost, including ocean freight, insurance, duties, taxes and other charges, and cost of raw materials, parts and components imported from the foreign licensor or its subsidiary/affiliated company (Press Note No.1 of 2002).

In case of technology transfer, payment of royalty includes the payment of royalty for use of trade mark and brand name of the foreign collaborator.

### PROCEDURE FOR AUTOMATIC ROUTE

3.5 Authorised Dealers (ADs) appointed by the RBI allow remittances for royalty, payment of lump-sum fee and remittance for use of Trade mark /Franchise in India within the limits prescribed under the automatic route.

RBI's prior approval is required for remittance towards purchase of trade mark/franchise.

### GOVERNMENT APPROVAL – PROJECT APPROVAL BOARD (PAB)

3.6 Royalty payment in the following cases requires prior Govt. approval (through PAB when only technical collaboration is proposed and through FIPB where both financial & technical collaboration are proposed) :

- a) Sectors/activities which are not on the automatic route for FDI, or
- b) Proposals not meeting any of the parameters for automatic approval as in para 3.3.

### PROCEDURE FOR GOVERNMENT APPROVAL

3.7 Proposals for foreign technology collaboration not covered under the automatic route are considered by the Project Approval Board (PAB) in the Department of Industrial Policy and Promotion. Application in such cases should be submitted in Form FC-IL to the Secretariat for Industrial Assistance. Proposals where both financial & technical collaboration are proposed, application is to be submitted to FIPB. No fee is payable.



# CHAPTER - IV

## ENTRY OPTIONS FOR FOREIGN INVESTOR

### ENTRY OPTIONS

4.1 A foreign company planning to set up business operations in India has the following options :

#### AS AN INCORPORATED ENTITY

- i) By incorporating a company under the Companies Act, 1956 through
  - i. Joint Ventures; or
  - ii. Wholly Owned Subsidiaries

Foreign equity in such Indian companies can be up to 100% depending on the requirements of the investor, subject to any equity caps prescribed in respect of the area of activities under the Foreign Direct Investment (FDI) policy.

#### AS AN UNINCORPORATED ENTITY

- ii) As a foreign Company through
  - i. Liaison Office/Representative Office
  - ii. Project Office
  - iii. Branch Office

Such offices can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office of other place of business) Regulations, 2000.

#### INCORPORATION OF COMPANY

4.2 For registration and incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies.

For details please visit the website of Ministry of Company Affairs at <http://dca.nic.in>

#### LIAISON OFFICE/REPRESENTATIVE OFFICE

4.3 The role of liaison office is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Liaison office can not undertake any commercial activity directly or indirectly and can not, therefore, earn any income in India. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).

### PROJECT OFFICE

4.4 Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices can not undertake or carry on any activity other than the activity relating and incidental to execution of the project. Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI.

### BRANCH OFFICE

4.5 Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes :

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

Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines. Permission for setting up branch offices is granted by the Reserve Bank of India (RBI).

#### BRANCH OFFICE ON “STAND ALONE BASIS” IN SEZ

4.6 Such Branch Offices would be isolated and restricted to Special Economic Zone (SEZ) alone and no business activity/transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India.

No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to the following conditions :

- a. Such units are functioning in those sectors where 100% FDI is permitted,
- b. Such units comply with part XI of the Company's Act (Section 592 to 602),
- c. Such units function on a stand-alone basis,
- d. In the event of winding up of business and for remittance of winding-up proceeds, the branch shall approach an authorized dealer in foreign exchange with the documents required as per FEMA.

**Procedure for Liaison office/Project office/Branch office**

Application for setting up Liaison Office/ Project Office/ Branch Office may be submitted to Chief General Manager, Exchange Control Department(Foreign Investment Division), RBI Central Office, Mumbai-400001, in form FNC 1 (available at RBI website at [www.rbi.org.in](http://www.rbi.org.in) )

**INVESTMENT IN A FIRM OR A PROPRIETARY CONCERN BY NRIS**

4.7 A Non-Resident Indian or a Person of Indian Origin resident outside India may invest by way of contribution to the capital of a

firm or a proprietary concern in India on non-repatriation basis provided,

- i) Amount is invested by inward remittance or out of NRE/ FCNR/NRO account maintained with AD
- ii) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business i.e. dealing in land and immovable property with a view to earning profit or earning income there from.
- iii) Amount invested shall not be eligible for repatriation outside India.

NRIs/PIO may invest in sole proprietorship concerns/ partnership firms with repatriation benefits with the approval of Department of Economic Affairs, Government of India /RBI.

**INVESTMENT IN A FIRM OR A PROPRIETARY CONCERN BY OTHER THAN NRIS**

4.8 No person resident outside India other than NRIs/PIO shall make any investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The RBI may, on an application made to it, permit a person resident outside India to make such investment subject to such terms and conditions as may be considered necessary.

# CHAPTER - V

## EXCHANGE CONTROL

### FOREIGN EXCHANGE MANAGEMENT ACT

5.1 The Reserve Bank of India's Exchange Control Department, administers Foreign Exchange Management Act, 1999, (FEMA) which has replaced the earlier Foreign Exchange Regulation Act (FERA), with effect from June 1, 2000. The new legislation is for "facilitating external trade" and "promoting the orderly development and maintenance of foreign exchange market in India".

5.2 In terms of Section 6(3)(b) of Foreign Exchange Management Act, 1999, Reserve Bank of India regulates transfer or issue of any security by a person resident outside India under the Foreign Exchange Management (Transfer of Securities to any person resident outside India) Regulation [Notification No. FEMA 20/2000-RB dated May 3, 2000] as amended from time to time.

### REPATRIATION OF INVESTMENT CAPITAL AND PROFITS EARNED IN INDIA

- 5.3 (i) All foreign investments are freely repatriable, subject to sectoral policies and except for cases where NRIs choose to invest specifically under non-repatriable schemes. Dividends declared on foreign investments can be remitted freely through an Authorised Dealer.
- (ii) Non-residents can sell shares on stock exchange without prior approval of RBI and repatriate through a bank the sale proceeds if they hold the shares on repatriation basis and if they have necessary NOC/ tax clearance certificate issued by Income Tax authorities.
- (iii) For sale of shares through private arrangements, Regional offices of RBI grant permission for recognized units of foreign equity in Indian company in terms of guidelines indicated in Regulation 10.B of Notification No. FEMA.20/2000 RB dated May '2000. The sale price of shares on recognized units is to be determined in accordance with the guidelines prescribed under Regulation 10B(2) of the above Notification.
- (iv) Profits, dividends, etc. (which are remittances classified as current account transactions) can be freely repatriated.

### CURRENT ACCOUNT TRANSACTIONS

5.4 Current account transactions are regulated under the Foreign Exchange Management (Current Account Transactions) Rules 2000. [No. G.S.R. 381(E), dated 3.5.2000]. Prior approval of the RBI is required for acquiring foreign currency above certain limits for the following purposes :

- a. Holiday travel over US\$10,000 p.a.
- b. Gift/donation over US\$5,000 / US\$10,000 per beneficiary p.a.
- c. Business travel over US\$25,000 per person
- d. Foreign studies as per estimate of institution or US\$100,000 per academic year
- e. Architectural / consultancy services procured from abroad over US\$1,000,000 per project
- f. Remittance for purchase of Trade Mark / Franchise
- g. Reimbursement of pre incorporation expenses over US\$100,000
- h. Remittances exceeding US\$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.

The above figures are for the purpose of general guidance of the investors. It is suggested that investors must reconfirm, the permissible limits before undertaking transactions.

### ACQUISITION OF IMMOVABLE PROPERTY BY NON-RESIDENT :

5.5 A person resident outside India, who has been permitted by Reserve Bank of India to establish a branch, or office, or place of business in India (excluding a Liaison Office), has general permission of Reserve Bank of India to acquire immovable property in India, which is necessary for, or incidental to, the activity. However, in such cases a declaration, in prescribed form (IPI), is required to be filed with the Reserve Bank, within 90 days of the acquisition of immovable property.

Foreign nationals of non-Indian origin who have acquired immovable property in India with the specific approval of the Reserve Bank of India can not transfer such property without prior permission from the Reserve Bank of India. Please refer to the Foreign Exchange Management (Acquisition and transfer of Immovable

Property in India) Regulations' 2000 [Notification No. FEMA.21/2000-RB dated May 3, 2000 ].

### **ACQUISITION OF IMMOVABLE PROPERTY BY NRI**

5.6 An Indian citizen resident outside India (NRI) can acquire by way of purchase any immovable property in India other than agricultural/ plantation /farm house. He may transfer any immovable

property other than agricultural or plantation property or farm house to a person resident outside India who is a citizen of India or to a Person of Indian Origin resident outside India or a person resident in India.

Please refer to the Foreign Exchange Management (Acquisition and transfer of Immovable Property in India) Regulations' 2000 [Notification No.FEMA.21/2000-RB dated May 3, 2000].

# CHAPTER - VI

## PORTFOLIO INVESTMENT

### PORTFOLIO INVESTMENT SCHEME (PIS)

6.1 Foreign Institutional Investors (FIIs) registered with SEBI and Non-Resident Indians are eligible to purchase shares and convertible debentures under the Portfolio Investment Scheme. The FII should apply to the designated AD for opening a foreign currency account and/or a Non Resident Rupee Account

6.2 Investment by FIIs is regulated under SEBI (FII) Regulations, 1995 and Regulation 5(2) of FEMA Notification No. 20 dated May 3, 2000. SEBI acts as the nodal point in the entire process of FII registration. FIIs are required to apply to SEBI in a common application form in duplicate. RBI approval is also required under FEMA to enable an FII to buy/sell securities on Stock Exchanges and open foreign currency and Indian Rupee accounts with a designated bank branch.

### FOREIGN INSTITUTIONAL INVESTORS (FIIs)

6.3 FIIs include Asset Management Companies, Pension Funds, Mutual Funds, Investment Trusts as Nominee Companies, Incorporated/Institutional Portfolio Managers or their Power of Attorney holders, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies.

### POLICY ON FII INVESTMENTS

6.4 Main features of the policy on investment by FII are :

- a. FIIs are required to allocate their investment between equity and debt instruments in the ratio of 70:30. However, it is also possible for an FII to declare itself a 100% debt FII in which case it can make its entire investment in debt instruments.
- b. FIIs can buy/sell securities on Stock Exchanges. They can also invest in listed and unlisted securities outside Stock Exchanges where the price has been approved by RBI.

- c. No individual FII/sub-account can acquire more than 10% of the paid up capital of an Indian company.
- d. All FIIs and their sub-accounts taken together cannot acquire more than 24% of the paid up capital of an Indian Company.
- e. Indian Companies can raise the above mentioned 24% ceiling to the Sectoral Cap / Statutory Ceiling as applicable by passing a resolution by its Board of Directors followed by passing a Special Resolution to that effect by its General Body in terms of Press Release dated Sept.20, 2001 and FEMA Notification No.45 dated Sept. 20, 2001.

No permission from RBI is needed so long as the FIIs purchase and sell on recognized stock exchange. All non-stock exchange sales/purchases require RBI permission.

### PORTFOLIO INVESTMENTS BY NRIs

6.5 NRIs/PIOs are permitted to purchase/sell shares/convertible debentures of Indian companies on Stock Exchanges under Portfolio Investment Scheme. For this purpose, the NRI/PIO has to apply to a designated branch of a Bank which deals in Portfolio Investment. All the sale/purchase transaction are routed through the designated branch.

An NRI can purchase shares up to 5% of the paid up capital of an Indian company. All NRIs taken together cannot purchase more than 10% of the paid up value of the company. This limit can be increased by the Indian company to 24% by passing a General Body resolution.

Investment can be made both on repatriation basis or non-repatriation basis. The sale of shares will be subject to payment of applicable taxes.

Details regarding portfolio investment scheme available at the website of RBI ([www.rbi.org.in](http://www.rbi.org.in)) and Security & Exchange Board of India (SEBI) ([www.sebi.gov.in](http://www.sebi.gov.in))

# CHAPTER - VII

## INCORPORATION OF COMPANY

### COMPANY'S ACT 1956

7.1 Incorporation of a company in India is governed by the Companies Act, 1956. Part II of the Act deal with the incorporation of a company and matters related to.

### PRIVATE COMPANY

7.2 Private company means a company which has a minimum paid-up capital of Rs,1,00,000/- or such higher paid-up capital as may be prescribed, and by its articles,

- (a) restricts the rights to transfer its shares, if any;
- (b) limits the number of its members to fifty, not including
  - i) persons who are in the employment of the company ; and
  - ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment have continued to be members after the employment ceased; and
- (c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company;
- (d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

### PUBLIC COMPANY

7.3 A public company is a company which is not a private company and has a minimum paid-up capital of Rs,5,00,000/-or such higher paid-up capital, as may be prescribed; is a private company which is a subsidiary of a company which is not a private company.

### FORMATION OF A PRIVATE LIMITED COMPANY

- 7.4 A private Company can be formed either by
- i. incorporation of a new company for doing a new business, or
  - ii. conversion of existing business of a sole proprietary concern or partnership firm into a company.

### NAME OF COMPANY

7.5 The name of a corporation is the symbol of its personal existence. Any suitable name may be selected for registration subject to the following guidelines :

- a. The promoters should select three to four alternative names, quite distinct from each other.
- b. The names should include, as far as possible, activity as per the main objects of the proposed company.
- c. The names should not too closely resemble with the name of any other registered company.
- d. The official guidelines issued by the Central Government should be followed while selecting the names. Besides, the names so selected should not violate the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.
- e. Apply in form 1-A to the Registrar of Companies having jurisdiction along with a filing fee of Rs. 500.

### MEMORANDUM OF ASSOCIATION

7.6 An important step in the formation of a company is to prepare a document called Memorandum of Association. It is the charter of the company and it contains the basic conditions on which the company is incorporated.

The Memorandum contains the name, the State in which the registered office is to be situated, main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects, liability of the members and the authorized capital of the company. The main purpose of the memorandum is to state the scope of activities and powers of the company.

### ARTICLES OF ASSOCIATION

7.7 Articles of Association of the company contain rules, regulation and bye-laws for the general management of the company. It is compulsory to get the Articles of Associations registered along with the Memorandum of Association in case of a private company.

The Articles are subordinate to the Memorandum of Association. Therefore, the Articles should not contain any regulation, which is contrary to provisions of the Memorandum or the Companies Act. The Articles are binding on the members in relation to the company as well as on the company in its relation to members.

### REGISTRATION OF COMPANY AND ISSUE OF CAPITAL

7.8 After completion of the preliminaries as enumerated above, the application with necessary documents are required to be filed

with the Registrar of Companies of the State in which the company is proposed to be incorporated. These include :

- a. Memorandum of Association (duly stamped) and a duplicate thereof.
- b. Articles of Association (duly stamped) and a duplicate thereof
- c. The agreement, if any, which the company proposes to enter into with any individual for appointments as its managing or whole time director or manager.
- d. A copy of the letter of the Registrar of Companies intimating the availability of the proper name
- e. Documents evidencing payment of prescribed registration and filing fee, i.e. a bank draft or a treasury challan.
- f. Documents evidencing the directorship and situation of Registered Office in Form 32 and Form 18 respectively and declaration of compliance with requirements of the Companies Act in Form No.1 and Form 29 for giving consent to act as a Director in case of public company be also given.

7.9 The amount of registration fee payable is regulated with reference to the amount of authorized capital of the proposed company.

## **CERTIFICATE OF INCORPORATION**

7.10 Upon compliance with all requirements, the Registrar will register the company and issue a Certificate of Incorporation of company. It brings the company into existence as a legal entity.

## **ISSUE OF SHARE CAPITAL**

7.11 After obtaining registration, the company proceeds with its business for which it requires funds. In case of a private company, the capital is to be raised by way of private arrangements whereas a Public Ltd. company can raise funds from the public. First of all, the company will issue shares to the subscribers to its memorandum and other members of the company. The issued capital must not exceed the authorized capital of the company.

It is necessary for a public limited company to obtain the Certificate of Commencement of Business before commencing the business. For more details please contact Ministry of Company Affairs at <http://dca.nic.in>

# CHAPTER - VIII

## OTHER SCHEMES AND INCENTIVES

### **SPECIAL ECONOMIC ZONES (SEZs) AND 100% EXPORT ORIENTED UNITS (EOUs)**

#### **Policy for Setting Up 100% EOUs under the Automatic Route**

8.1 The Development Commissioners (DCs) of Special Economic Zones (SEZs) accord automatic approval to projects where

- (a) Activity proposed does not attract compulsory licensing or falls in the services sector except Software & IT enabled services;
- (b) Location is in conformity with the prescribed parameters;
- (c) Units undertake to achieve positive net foreign exchange earning;

8.2 If Unit is amenable to bonding by customs authorities; conversion of existing Domestic Tariff Area (DTA) units into EOU is also permitted under automatic route, if the DTA unit satisfies the parameters mentioned in para 8.1 and there is no outstanding export obligation under any other export oriented scheme of the Government of India.

8.3 Proposals not covered by the automatic route are forwarded by the Development Commissioner to the Board of Approval (BoA), Department of Commerce for consideration. On consideration of the proposal by the Board, the decision would normally be conveyed in six weeks.

#### **PROCEDURE FOR APPROVAL**

8.4 Applications in the prescribed form for 100 per cent EOUs and units set up in SEZ should be submitted to the concerned Development Commissioners (DCs) of the Special Economic Zones (SEZs) for automatic approval and to Board of Approval (BoA) in Department of Commerce for Government approval. The Form is available at all outlets dealing in Government publications. The application should be submitted along with a crossed demand draft of Rs. 5000/- drawn in favour of the "the Pay & Accounts Officer, Department of Commerce, Ministry of Commerce and Industry", payable at New Delhi.

Application form and detailed procedure may be obtained from the website of Department of commerce at <http://commerce.nic.in> under DGFT.

Wherever, the proposals meet the criteria for automatic approval, as given in paragraph 8.1, the DC of the SEZ would issue approval usually within 2 weeks. For proposals requiring government approval, proposal are placed by the Development Commissioner before the Board of Approvals (BoA) and approval are conveyed usually within 45 days.

#### **POLICY FOR FDI/NRI INVESTMENT FOR 100% EOUs/ UNITS IN SEZ**

8.5 Details about the type of activities permitted are given in the Foreign Trade Policy issued by Department of Commerce (web site - <http://commerce.nic.in>). Proposals not covered under the automatic route are considered by the FIPB.

#### **POLICY FOR SETTING UP SPECIAL ECONOMIC ZONE (SEZ)**

8.6 Proposals as per criteria under appendix 14-11-0 available at DGFT website, (<http://dgft.delhi.nic.in>) are considered by Board of Approvals and Department of Commerce issues the letter of permission.

#### **PROCEDURE**

- 8.7 The applicant should follow the following procedure :
- a. Submission of 10 copies of application along with project report to Chief Secretary of the concerned State.
  - b. Forwarding of application along with comments by the State government to Board of Approvals in the Department of Commerce.
  - c. Issue of letter of permission by Department of Commerce

#### **POLICY FOR FDI/NRI INVESTMENT FOR SETTING UP SEZ**

8.8 As 100% FDI is permitted under automatic route for setting up of Special Economic Zone, the procedure mentioned in para 1.5 will be applicable for seeking requisite approval.

#### **SETTING UP OF INDUSTRIAL PARKS, INDUSTRIAL PARKS, INDUSTRIAL MODEL TOWNS AND GROWTH CENTRES**

#### **POLICY UNDER AUTOMATIC ROUTE**

8.9 The Government has notified Industrial Park scheme on 1.4.2002 for setting up Industrial Parks/ Industrial Model Towns. The scheme is available at [www.dipp.gov.in](http://www.dipp.gov.in). Secretariat for Industrial Assistance, Department of Industrial Policy & Promotion accord



approval to set up the Industrial Parks/ Industrial Model Towns, which meet the criteria laid down for approval under the automatic route under the Industrial Park Scheme.

### **APPROVAL BY EMPOWERED COMMITTEE**

8.10 Proposals not meeting any or all of the parameters for automatic route require approval of Empowered Committee set up in the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry.

### **PROCEDURE FOR APPROVAL AND AVAILING 100% TAX EXEMPTION**

8.11 Application in the Form-IPS-1, available on this Department's web site (<http://dipp.gov.in>), for obtaining approval for setting up an Industrial Park and for availing 100% tax exemption available under section 80 IA of the Income Tax Act, should be made to the Public Relation and Complaint Section of the Department of Industrial Policy and Promotion. Application for automatic route has to be submitted in duplicate and for non-automatic approval, in six sets. The application must be accompanied by a fee of Rupees 6,000/- by a demand draft drawn in favour of the Pay and Accounts Officer, Department of Industrial Policy & Promotion payable at New Delhi. All applications eligible for Automatic route in accordance with the Industrial Park scheme, 2002 shall be disposed of usually within fifteen days. All proposals not eligible for automatic route require the approval of Empowered Committee set up in the Department of Industrial Policy and Promotion. On consideration of the proposal by the Committee, the decision is usually conveyed within six weeks.

### **POLICY FOR FDI/NRI INVESTMENT**

8.12 As 100% FDI is permitted under automatic route for setting up of Industrial Parks/ Industrial Model Towns , the procedure mentioned in para 1.5 will be applicable for seeking requisite approval.

### **ELECTRONIC HARDWARE TECHNOLOGY PARK (EHTP) AND SOFTWARE TECHNOLOGY PARK (STP) SCHEMES**

8.13 In order to provide impetus to the electronics industry, to enhance its export potential and to develop an efficient electronic component industry, EHTP and STP schemes offer a package of incentives and facilities like duty free imports on the lines of the EOU Scheme, deemed exports benefits and tax holidays.

### **AUTOMATIC ROUTE**

8.14 The Directors of STPs in respect of STP proposals; and the Designated Officers in respect of EHTP proposals accord automatic approval if :

- (a) items do not attract compulsory licensing;
- (b) location is in conformity with the prescribed parameters;
- (c) unit is amenable to bonding by the Customs, and all the manufacturing operations are carried out in the same premises and the proposal does not envisage sending out of the bonded area any raw material or intermediate products for any other manufacturing or processing activity.

Proposals for FDI/NRI investments in EHTP/STP units are eligible for approval through automatic route subject to parameters listed under Para 1.3

### **GOVERNMENT APPROVAL**

8.15 All proposals for setting up of these projects, which do not meet any or all of the parameters for automatic approval, need to be considered and approved by the Ministry of Information Technology through the Inter-Ministerial Standing Committee.

### **PROCEDURE**

8.16 Application, in the prescribed form, should be submitted to the concerned Directors of STPs or the Designated Officers of EHTPs for automatic route , and to the Ministry of Information Technology for Government approval. The application should be submitted along with a crossed demand draft for Rs. 5000/- drawn in favour of the "the Pay & Accounts Offer, Department of Commerce, Ministry of Commerce & Industry", payable at New Delhi. The form is available in any outlet dealing with Government Publications.

Wherever, the proposals meet the criteria for automatic approval, as given in paragraph 8.14 the approval, letters are issued within 2 weeks.

All other proposals requiring Government approval shall be forwarded by the Officer designated to the Inter Ministerial Standing Committee in the Ministry of Information Technology for consideration. On consideration by the Inter Ministerial Standing Committee, a decision is usually conveyed within six weeks.

### **PROCEDURE FOR FDI/NRI INVESTMENT**

8.17 All proposals for FDI/NRI investment in EHTP/STP Units are eligible for approval under automatic route subject to parameters listed in Para 1.3 . For proposals not covered under automatic route, the applicant should seek separate approval of the FIPB, as per the procedure outlined in Para 1.6.

# CHAPTER - IX

## TAXATION IN INDIA

### TAXATION SYSTEM IN INDIA

9.1 India has a well developed tax structure Income Tax (except tax on agricultural income, which the State Governments can levy), Customs duties, Central Excise and Sales Tax and Service Tax are the main taxes levied by the Central Government. Value Added Tax, (Sales Tax where VAT is yet not in force), Stamp Duty, State Excise, Land Revenue, Tax on Professions and are the principal taxes levied by the State Governments. Local Bodies are empowered to levy tax on properties, Octroi and for utilities like water supply, drainage, etc.

### PERSONAL INCOME TAX

9.2 The rates of personal income tax are :

Income range (Rupee)	Tax rate(%)
0-100,000	NIL
1,00,000-1,50,000	10
1,50,000- 2,50,000	20
2,50,000 and above	30

Surcharges of 10% is levied on income exceeding Rs.8,50,000. Senior citizens with income up to Rs.1,50,000 are exempt from Income Tax.

### RATES OF WITHHOLDING TAX

9.3 Current rates for withholding tax for payment to non-residents are

(i) Interest	20%
(ii) Dividends	Dividends paid by domestic companies : Nil
(iii) Royalties	10%
(iv) Technical Services	10%
(v) Any Other Services	Individuals: 30% of the income Companies: 40% of the net income

The above rates are general and in respect of countries with which India does not have a Double Taxation Avoidance Agreement (DTAA).

### GENERAL TAX INCENTIVES FOR INDUSTRIES

9.4 Tax holidays in the form of deductions are available for priority sectors and incentives to industries located in special area/regions are listed below :

### INFRASTRUCTURE SECTORS

9.5 Deduction of 100% of the profits from business for a period of 10 years for :

- Development or operation and maintenance of ports, airports, roads, highways, bridges, rail systems, inland waterways, inland ports, water supply projects, water treatment systems, irrigation projects, sanitation and sewage projects, solid waste management systems.
- Generation, distribution and transmission of power which commence before 31.3.2006.
- Development, operation and maintenance of an Industrial Park or Special Economic Zone before 31.3.2006.

### CAPITAL GAINS ON INFRASTRUCTURE FUNDS

9.6 Income by way of dividend, interest, or long-term capital gain of an infrastructure capital company or an infrastructure capital fund is 100% tax-exempt. Income of venture capital company or venture capital fund set up to raise funds for investment in a venture capital undertaking is also tax-exempt.

### TAX EXEMPTIONS

9.7 Following tax exemptions are available in different sectors :  
Deduction of 100% of the profit from business of

- Development or operation and maintenance of ports, air ports, roads, highways, bridges etc.
- Generation, distribution and transmission of power
- Development, operation and maintenance of an Industrial Park or SEZ
- By undertakings set up in certain notified areas or in certain thrust sector industries in the North-eastern states and Sikkim.
- By undertakings set up in certain notified areas or in certain thrust sector industries in Uttaranchal & Himachal Pradesh
- Derived from export of articles or software by undertakings in FTZ / EHTP / STP
- Derived from export of articles or software by undertakings in SEZ
- Derived from export of articles or software by 100% EOU
- An offshore banking unit situated in a SEZ from business activities with units located in the SEZ.

- j. Derived by undertakings engaged in the business of developing and building housing projects. Deduction of 50% of profits derived from the business of building, owning and operation of multiplex theatres of convention centre is also available.
- k. Derived by an undertaking engaged in the integrated business of handling, storage and transportation of food grains.
- l. Derived by an undertaking engaged in the commercial production or refining of mineral oil
- m. Derived by an undertaking from export of woodbased handicraft

## DOUBLE TAXATION RELIEF

9.8 India has entered into DTAA with 65 countries including countries like U.S.A., U.K., Japan, France, Germany, etc. In case of countries with which India has double taxation avoidance agreements, the tax rates are determined by such agreements and are indicated for various countries as under :

Country	Dividends %	Interest %	Royalties %
Australia	15	15	15
Austria	20	20	30
Bangladesh	15	10	10
Belarus	15	10	15
Belgium	15	15	20
Brazil	15	15	15
Bulgaria	15	15	20
Canada	25	15	15
China	10	10	10
Cyprus	15	10	15
Czechoslovakia	20	15	30
Czech Republic	10	10	10
Denmark	20	15	20
Egypt	20	20	30
Finland	15	10	20
France	10	15	10/20
Germany	10	10	10
Greece	20	20	30
Hungary	15	15	30
Indonesia	15	10	15
Israel	10	10	10
Italy	20	15	20
Japan	15	15	20

Jordan	10	10	20
Kazakhstan	10	10	10
Kenya	15	15	20
Korea	20	15	15
Kyrgyzstan	10	10	15
Libya	20	20	30
Malaysia	20	20	30
Malta	15	10	15
Mauritius	15	20	15
Mongolia	15	15	15
Morocco	10	10	10
Namibia	10	10	10
Nepal	15	15	15
Netherlands	10	10	10
New Zealand	15	10	10
Norway	15	15	30
Oman	12.5	10	15
Philippines	20	15	15
Poland	15	15	22.5
Portugal	15	10	10
Qatar	10	10	10
Romania	20	15	22.5
Russian Federation	10	10	10
Singapore	15	15	15
South Africa	10	10	10
Spain	15	15	20
Sri Lanka	15	10	10
Sweden	10	10	10
Switzerland	15	15	20
Syria	0	7.5	10
Tanzania	15	12.5	20
Thailand	20	20	15
Trinidad and Tobago	10	10	10
Turkey	15	15	15
Turkmenistan	10	10	10
United Arab Emirates	15	12.5	10
United Kingdom	15	15	15
United States	20	15	15
Uzbekistan	15	15	15
Vietnam	10	10	10
Zambia	15	10	10
Non treaty countries	0	20	20

## **AUTHORITY FOR ADVANCE RULING**

9.9 With a view to avoid a dispute in respect of assessment of income-tax liability in the case of a non-resident ( and also specified categories of residents), a Scheme of Advance Ruling was incorporated in the Income Tax Act. The Authority for Advance ruling (AAR) pronounces rulings on the applications of the non-resident/residents submitted and such rulings are binding both on the applicant and the Income-Tax Department. Thus, the applicant

can avoid expensive and time consuming litigation which would have arisen from normal income tax assessment proceedings. The application in such cases should be addressed to  
The Commissioner of Income-Tax Authority of Advance Rulings,  
5<sup>th</sup> Floor, N.D.M.C. Building,  
Yashwant Place, Satya Marg,  
Chankyapuri,  
New Delhi -110021.

# CHAPTER - X

## INVESTMENT GUIDANCE AND FACILITATION

### INVESTMENT GUIDANCE

#### SECRETARIAT FOR INDUSTRIAL ASSISTANCE (SIA)

10.1 Secretariat for Industrial Assistance (SIA) has been set up in the Department of Industrial Policy and Promotion (DIPP) in the Ministry of Commerce and Industry to provide a single window for entrepreneurial assistance, investor facilitation, conveying Government decisions on applications filed, assisting entrepreneurs and investors in setting up projects, (including liaison with other organisations and State Governments) and in monitoring implementation of projects. It also notifies all Government policy relating to investment and technology.

#### ASSISTANCE TO ENTREPRENEURS

10.2 Public Relation & Complaint (PR&C) Section provides assistance to entrepreneurs on various subjects concerning investment decisions. PR&C receives all papers/applications related to industrial approvals i.e. IEMs, Industrial Licences, Foreign Investment (NRIs), Foreign Technology Agreements, EHTP, STP Schemes, etc. and immediately issues a computerised acknowledgement, which also has an identity/reference number. All correspondence with the SIA should quote this number.

The Unit also provides information regarding the current status of applications filed for various industrial approvals.

#### WEB SITE (<http://dipp.gov.in>)

10.3 DIPP's website [www.dipp.gov.in](http://www.dipp.gov.in) ensures easy availability of information to the investors about investment policies and procedures, investment climate, state industrial policies, publications, notifications and press notes/releases.

The web site contains the following :

- Manual on Foreign Direct Investment in India - Policy and Procedures (available in English/French/German/Spanish/Korean/Japanese and Italian language)
- SIA Newsletter-monthly issues
- SIA Statistics- monthly issues
- Press Notes, Notifications and Press Releases
- List of SSI reserved items & NIC Codes
- Industrial Policy Statements
- Latest Annual Report
- Information about Intellectual Property Rights

- Status of SIA applications
- Important Legislations
- Information about Attached and Subordinate Offices
- Profile of selected industrial sectors
- Link to other Ministries/Departments
- All relevant application forms

#### NATIONAL INDUSTRIAL CLASSIFICATION (NIC) CODE

10.4 In all the forms required for various approvals including FDI, description of activities are required to be given as per the National Industrial Classification of All Economic Activities (NIC), 1987, DIPP website provides a link for this list for the benefit of the users.

#### ONLINE CHAT AND BULLETIN BOARD SERVICES

10.5 The web site has the facility of on line chat between 11AM to 12 Noon & 4.00 to 5.00 P.M. (Indian Standard Time, GMT+5 ½) on all working days where investors can seek clarification on any issue relating to FDI Policies and related issues.

The web site also has provision of bulletin board service. If the investor cannot avail the on line chat facility, he/she can post the question on bulletin board at any time. All efforts are made to send a reply within 24 hours.

#### INFORMATION ABOUT VARIOUS OTHER CLEARANCES AND APPROVALS

10.6 In addition to the approval for bringing FDI in India, other clearances and approvals, such as registration of company, environment and forest clearance, land acquisition, power and water connection, etc., may be required for starting a business in India.

Details of concerned Departments/Agencies along with their web site addresses are given in Annex-XIII.

#### PUBLICATIONS

10.7 Following publications are brought out by DIPP and updated regularly for the guidance of investors :

- a. Foreign Direct Investment in India – Policy & Procedure.
- b. Investing in India – Flyer
- c. Entry Strategies for foreign Investors – Flyer
- d. Taxation in India – Flyer
- e. Investment Opportunities in infrastructure sectors
- f. Single Window System in States & Union Territories

These publications are available through the PR&C section of the SIA or Investment Promotion and Infrastructure Development Cell, Department of Industrial Policy & Promotion as also from Indian Missions abroad. These can also be down loaded from the web site [www.dipp.gov.in](http://www.dipp.gov.in)

## **SIA NEWS LETTER**

10.8 This is a monthly publication and covers information on data relating to Foreign Direct Investment /NRI Investment/ sectoral breaks-ups/ country-wise break-ups, all actual FDI inflows and policy notifications issued during the month. The monthly publication is uploaded on Department's website at [www.dipp.gov.in](http://www.dipp.gov.in).

Annual issues of SIA Newsletter are also published and available on payment from Controller of Publications, 1, Civil Lines, Delhi - 110 054 or from any outlet dealing in Government publications.

## **SIA STATISTICS**

10.9 This is also a monthly publication which contains data relating to Industrial Licences, Foreign Technical Collaboration, etc., monthly data on industrial production of 209 select industry groups, as well as policy announcements by Government during the month. Annual issues of SIA Statistics are available on payment from Controller of Publications, 1 Civil lines, Delhi - 110 054 or from any outlet dealing in Government publications

## **INVESTMENT FACILITATION**

### **FOREIGN INVESTMENT IMPLEMENTATION AUTHORITY (FIIA)**

10.10 Foreign Investment Implementation Authority (FIIA) has been established to facilitate quick implementation of FDI approvals and assist foreign investors in getting necessary approvals. Fast Track Committees have been set up in 30 Ministries/Departments for regular review of FDI mega projects (with proposed investment of Rs. 1 billion and above), and resolution of any difficulties. Details of the fast track committees set up in various ministries is available at <http://dipp.gov.in>. Investors can approach FIIA through website <http://dipp.gov.in>.

## **FOREIGN INVESTMENT PROMOTION BOARD (FIPB)**

10.11 The Government has set up the Foreign Investment Promotion Board (FIPB) to consider Foreign Direct Investment (FDI) proposals requiring prior Government approval.

The reconstituted FIPB comprises of :

- (i) Secretary, Department of Economic Affairs - Chairman
- (ii) Secretary, Department of Industrial Policy & Promotion - Member
- (iii) Secretary, Department of Commerce – Member
- (iv) Secretary (Economic Relations), Ministry of External Affairs  
Member
- (v) Secretary, Ministry of Overseas Indian Affairs - Member

## **BUSINESS OMBUDSPERSON**

10.12 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 a BUSINESS OMBUDSPERSON in the Ministry of Commerce & Industry. Additional Secretary & Financial Adviser, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi-110011 has been nominated to act as Business Ombudsperson(email: [nc@ub.nic.in](mailto:nc@ub.nic.in)).

## **GRIEVANCES OFFICER-CUM-JOINT SECRETARY**

10.13 Grievances and complaints are also 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 in the PR&C of the SIA, or at Reception of the Ministry of Commerce and Industry at Gate No.12 , Udyog Bhavan, New Delhi-110011. Such communications are handled expeditiously and steps are taken to redress the grievance.

# CHAPTER - XI

## FREQUENTLY ASKED QUESTIONS

### 1. What are the forms in which business can be conducted by a foreign company in India?

Ans. Foreign companies can make investments or operate their business in a number of ways such as Liaison/ Representative office, Branch Office, Project Office, 100% Wholly owned Subsidiary, and Joint Venture company. The requisite approval can be granted by Reserve Bank of India (RBI) or Foreign Investment Promotion Board (FIPB). Any company set up with FDI has to be incorporated under the Indian Companies Act with the Registrar of Companies, Ministry of Company Affairs and all Indian operations would be conducted through this company.

### 2. What proposals require an industrial licence (IL) and how is it obtained?

Ans. Under the New Industrial Policy, all industrial undertakings are exempt from licensing except for those industries as mentioned in Para 2.1 & 2.2 of this Publication. The project should not be located within 25 kilometres of a city with a population of more than one million as per 1991 Population Census.

The Government has substantially liberalised the procedures for obtaining an Industrial License. The application in form IL-FC should be filed with the SIA. Approvals are normally granted within 4-6 weeks.

### 3. What is the procedure for a delicensed sector?

Ans. An Industrial undertaking exempted from licensing needs only to file information in the Industrial Entrepreneurs Memorandum (IEM) with the SIA, which will issue an acknowledgement. No further approvals are required.

### 4. What is the taxation policy in India?

Ans. Foreign nationals working in India are generally taxed only on their Indian income. Income received from sources outside India is not taxable unless it is received in India. The Indian tax laws provide for exemption of tax on certain kinds of income earned for services rendered in India. Further, foreign nationals have the option of being taxed under the tax treaties that India may have signed with their country of residence.

Remuneration for work done in India is taxable irrespective of the place of receipt. Remuneration includes salaries and wages,

pensions, fees, commissions, profits in lieu of or in addition to salary, advance salary and perquisites. Taxable payments include all allowances and tax equalisation payments unless specifically excluded. The stock options granted by the employer are taxable as capital gains at the time of sale of shares acquired due to exercise of options.

### 5. What is the situation regarding intellectual property rights protection in India?

Ans. India is a signatory to the agreement concluding the Uruguay Round of GATT negotiations and establishing the World Trade Organisation (WTO) and its laws today are WTO compliant. The important regulations dealing with Intellectual Property Rights are:

- The Patents Act
- The Trademarks Act
- The Geographical Indication of Goods Act
- The Designs Act

### 6. Is investment by non-resident Indians (NRIs) permitted?

Ans. The Government attaches importance to investments by NRIs. Government has provided a liberalised policy framework for approval of NRI investments through both the Automatic and the Government route. NRIs are permitted to invest up to 100% equity in the Real Estate and Civil Aviation Sectors. Automatic Approval is given by the RBI to all NRI proposals with their investment up to 100% for all items/activities except a few exceptions mentioned in Press Note 2 (2000 series) read with sector specific guidelines. Government approval is required for all proposals not qualifying under Automatic Route.

### 7. Can profits, dividends, royalty, know how payments be repatriated from India?

Ans. All profits, dividends, royalty, know how payments that have been approved by the Government/RBI can be repatriated. Some sectors like investment in development of integrated township, NRI Investment in real estates, etc. may attract a lock-in period.

### 8. What are the formalities a joint venture company has to complete to increase the foreign equity holding?

Ans. The following formalities are required for the joint ventures that want to increase in their foreign equity holding by acquisition of shares or by any other means.

- a) If only the quantum of foreign equity increased without change in percentage then Press Note no. 7 (1999 series) may be followed.
- b) For increase in percentage of foreign equity by way of expansion of capital base, automatic route or FIPB / Government route would apply depending upon the nature of proposal in terms of Press Note No. 2 (2000 series)
- c) Cases involving increase in percentage in foreign equity by way of acquiring existing shares in an Indian company would necessarily require prior approval of FIPB/Government if the activity is in the financial sector or the provision of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 is attracted.
- d) In cases involving inclusion of an additional foreign collaborator, guidelines laid down in Press Note No. 1 (2005 series) would have to be satisfied.

**9. What is the policy of conversion of non-repatriable shares into repatriable shares?**

Ans. FIPB approval is required. Where original investment was made in foreign exchange, the change is allowed without any

conditions; if not, the sale proceed will have to be repatriated to India by opening an NRO account.

**10. What is the mechanism for publicizing the changes in the FDI policies?**

Ans. Changes in FDI policies are brought out in the form of Press Notes by Department of Industrial Policy & Promotion (DIPP). Soon after releasing the Press Notes to the media, it is also loaded on the Departmental website (<http://dipp.gov.in>).

**11. What mechanism is available alternative dispute resolution (ICADR)?**

Ans. International Centre for Alternative Dispute Resolution (ICADR) has been established as an autonomous organization under the aegis of Ministry of Law & Justice to promote settlement of domestic and international disputes by different modes of alternate dispute resolution. ICADR has its headquarters in New Delhi and has regional office in Lucknow and Hyderabad. More information on ICADR can be obtained from the website: <http://www.icadr.org>



## GUIDELINES FOR CONSIDERATION OF FOREIGN DIRECT INVESTMENT (FDI) PROPOSALS BY THE FOREIGN INVESTMENT PROMOTION BOARD (FIPB)

(To be read with paragraph 1.6 of the Manual)

The Guidelines are meant to assist the FIPB to consider proposals in an objective and transparent manner. These would not in any way restrict the flexibility or bind the FIPB from considering the proposals in their totality or making recommendation based on other criteria or special circumstances or features it considers relevant. Besides these are in the nature of administrative Guidelines and would not in any way be legally binding in respect of any recommendation to be made by the FIPB or decisions to be taken by the Government in cases involving Foreign Direct Investment (FDI).

These guidelines are issued without prejudice to the Government's right to issue fresh guidelines or change the legal provisions and policies whenever considered necessary.

These guidelines stand modified to the extent changes have been notified by Secretariat for Industrial Assistance from time to time.

The following Guidelines are laid-down to enable the Foreign Investment Promotion Board (FIPB) to consider the proposals for Foreign Direct Investment (FDI) and formulate its recommendations;

1. All applications should be put up before the FIPB within 15 days and it should be ensured that comments of the Administrative Ministries are placed before the Board either prior to/or in the meeting of the Board.
2. Proposals should be considered by the Board keeping in view the time frame of 30 days for communicating Government decision (i.e. approval of FM/CCEA or rejection, as the case may be).
3. In cases in which either the proposal is not cleared or further information is required, in order to obviate delays presentation by applicant in the meeting of the FIPB should be resorted to.
4. While considering cases and making recommendations, FIPB should keep in mind the sectoral requirements and the sectoral policies vis-a-vis the proposal(s).
5. FIPB would consider each proposal in totality (i.e. if it includes apart from foreign investment, technical collaboration/

industrial licence) for composite approval or otherwise. However, the FIPB's recommendation would relate only to the approval for foreign financial and technical collaboration and the foreign investor will need to take other prescribed clearances separately.

6. The Board should examine the following while considering proposals submitted to it for consideration :

- (i) Whether the items of activity involve industrial licence or not and if so the considerations for grant of industrial licence must be gone into;
- (ii) Whether the proposal involves technical collaboration and if so the source and nature of technology sought to be transferred;
- (iii) Whether the proposal involves any mandatory requirement for exports and if so whether the applicant is prepared to undertake such obligation (this is for items reserved for small scale sector as also for dividend balancing, and for 100% EOUs/EPZ units);
- (iv) Whether the proposal involves any export projection and if so the items of export and the projected destinations;
- (v) Whether the proposal has concurrent commitment under other schemes such as EPCG Scheme etc;
- (vi) In the case of Export Oriented Units (EOUs) whether the prescribed minimum value addition norms and the minimum turn over of exports are met or not;
- (vii) Whether the proposal involves relaxation of locational restrictions stipulated in the industrial licensing policy;
- (viii) Whether the proposal has any strategic or defence related considerations, and
- (ix) Whether the proposal has any existing joint venture or technology transfer/trademark agreement in the same field in India, and if so whether this agreement is sick

or defunct; the investment by either party is less than 3% & investment is by FVCI, the detailed circumstance in which it is considered necessary to set-up a new joint venture/enter into new technology transfer (including trade mark), and proof that the new proposal would not in any way jeopardize the interest of the existing joint venture or technology/trade mark partner or other stake holders.

7. While considering proposals the following may be prioritized :

- (a) Items/activities covered under Government route (i.e. those which do not qualify under automatic route).
- (b) Items falling in infrastructure sector.
- (c) Items which have an export potential
- (d) Items which have large scale employment potential and especially for rural people.
- (e) Items, which have a direct or backward linkage with agro business/farm sector.
- (f) Item which have greater social relevance such as hospitals, human resource development, life saving drugs and equipment.
- (g) Proposals, which result in induction of technology or infusion of capital.

8. The following should be especially considered during the scrutiny and consideration of proposals :

- (a) The extent of foreign equity proposed to be held (keeping in view sectoral caps if any - e.g. 24% for SSI units, 49% for air taxi/airlines operators, 74% in basic/cellular/paging in Telecom sector etc).
- (b) Extent of equity with composition of foreign/NRI/resident Indians.
- (c) Extent of equity from the point of view whether the proposed project would amount to a holding company/ Wholly owned Subsidiary/a company with dominant foreign investment (i.e. 75% or more) Joint Venture.
- (d) Whether the proposed foreign equity is for setting up a new project (Joint Venture or otherwise) or whether it is for enlargement of foreign/NRI equity or whether it is for fresh induction of foreign equity/NRI equity in an existing Indian company.
- (e) In the case of fresh induction of foreign/NRI equity and/or cases of enlargement of foreign/ NRI equity in

existing Indian companies whether there is a resolution of the Board of Directors supporting the said induction/enlargement of foreign/NRI equity and whether there is a shareholders agreement or not.

- (f) In the case of induction of fresh equity in the existing Indian companies and/or enlargement of foreign equity in existing Indian companies, the reason why the proposal has been made and the modality for induction/enhancement [i.e. whether by increase of paid up capital/authorised capital, transfer of shares (hostile or otherwise) whether by rights issue, or by what modality].

Cases pertaining to FIPB approvals, which involve increase in the non-resident equity within the approved percentage of non-resident equity in a joint venture company and enhancement of paid-up capital in a wholly owned subsidiary do not require FIPB approval provided the intent for increase in the amount of foreign equity is duly notified to SIA and formal documentation by way of intimation is made to SIA within 30 days of receipt of funds and allotment of shares (to non-resident shareholders).

- (g) Issue/transfer/pricing of shares will be as per SEBI/RBI guidelines.
- (h) Whether the activity is an industrial or a service activity or a combination of both.
- (i) Whether the item of activity involves any restriction by way of reservation for the small scale sector.
- (j) Whether there are any sectoral restrictions on the activity (e.g. there is ban on foreign investment in real estate while it is not so for NRI investment).
- (k) Whether the item involves only trading activity and if so whether it involves export or both export and import, or also includes domestic trading and if domestic trading whether it also includes retail trading.
- (l) Whether the proposal involves import of items which are either hazardous, banned or detrimental to environment (e.g. import of plastic scrap or recycled plastics).

9. In respect of activities to which equity caps apply, FIPB may consider recommending higher levels of foreign equity as

compared to the prescribed caps, keeping in view the special requirements and merits of each case.

10. In respect of other industries/activities the Board may consider recommending 51 per cent foreign equity on examination of each individual proposal. For higher levels of equity up to 74 per cent the Board may consider such proposals keeping in view considerations such as the extent of capital needed for the project, the nature and quality of technology, the requirements of marketing and management skills and the commitment for exports.
11. FIPB may consider recommending proposals for 100 percent foreign owned holding/subsidiary companies based on the following criteria :
  - (a) where only "holding" operation is involved all subsequent/downstream investments to be carried out would require prior approval of the Government;
  - (b) where proprietary technology is sought to be protected or sophisticated technology is proposed to be brought in;
  - (c) where at least 50% of production is to be exported;
  - (d) proposals for consultancy; and
  - (e) proposals for industrial model towns/industrial parks or estates.
12. In special cases, where the foreign investor is unable initially to identify an Indian joint venture partner, the Board may consider and recommend proposals permitting 100 per cent foreign equity on a temporary basis on the condition that the foreign investor would divest to the Indian parties (either individual, joint venture partners or general public or both) at least 26 per cent of its equity within a period of 3-5 years.
13. Similarly in the case of a joint venture, where the Indian partner is unable to raise resources for expansion/ technological upgradation of the existing industrial activity the Board may consider and recommend increase in the proportion/percentage (up to 100 per cent) of the foreign equity in the enterprise.
14. In respect of trading companies, 100 per cent foreign equity may be permitted in the case of the activities involving the following :
  - (i) exports;
  - (ii) bulk imports with ex-port/ex-bonded warehouse sales;
  - (iii) cash and carry wholesale trading;
  - (iv) other import of goods or services provided at least 75% is for procurement and sale of goods and services among the companies of the same group.
15. In respect of the companies in the infrastructure/services sector where there is a prescribed cap for foreign investment, only the direct investment should be considered for the prescribed cap and foreign investment in an investing company should not be set off against this cap provided the foreign direct investment in such investing company does not exceed 49 per cent and the management of the investing company is with the Indian owners.
16. No condition specific to the letter of approval issued to a foreign investor would be changed or additional condition imposed subsequent to the issue of a letter of approval. This would not prohibit changes in general policies and regulations applicable to the industrial sector.
17. Where in case of a proposal (not being 100% subsidiary) foreign direct investment has been approved up to a designated percentage of foreign equity in the joint venture company the percentage would not be reduced while permitting induction of additional capital subsequently. Also in the case of approved activities, if the foreign investor(s) concerned wished to bring in additional capital on later dates keeping the investment to such approved activities, FIPB would recommend such cases for approval on an automatic basis.
18. As regards proposal for private sector banks, the application would be considered only after "in principle" permission is obtained from the Reserve Bank of India (RBI).
19. The restrictions prescribed for proposals in various sectors as obtained, at present, are given in the annexure - II and these should be kept in view while considering the proposals.

## SECTOR SPECIFIC GUIDELINES FOR FOREIGN DIRECT INVESTMENT

Sl.No.	Sector	Guidelines
1.	Airports	Up to 100% with FDI, beyond 74% requiring Government approval
2.	Atomic Minerals	<p>The following three activities are permitted to receive FDI/NRI investments through FIPB (as per detailed guidelines issued by Department of Atomic Energy vide Resolution No. 8/1(1)/97-PSU/1422 dated 6.10.98) :</p> <ol style="list-style-type: none"> <li>a. Mining and mineral separation</li> <li>b. Value addition per se to the products of (a) above</li> <li>c. Integrated activities [comprising of both (a) and (b) above</li> </ol> <p>The following FDI participation is permitted :</p> <ol style="list-style-type: none"> <li>(i) Up to 74% in both pure value addition and integrated projects</li> <li>(ii) For pure value addition projects as well as integrated projects with value addition up to any intermediate stage, FDI is permitted up to 74% through joint venture companies with Central/ State PSUs in which equity holding of at least one PSU is not less than 26% .</li> <li>(iii) In exceptional cases, FDI beyond 74% will be permitted subject to clearance of the Atomic Energy Commission before FIPB approval</li> </ol>
3.	Agriculture (Including Plantation)	<p>No FDI/NRI investment is permitted other than Tea sector, where FDI permitted up to 100% in Tea sector, including tea plantations, with prior Government approval and subject to following conditions:</p> <ol style="list-style-type: none"> <li>a. Compulsory divestment of 26% equity in favour of Indian partner/Indian public within a period of five years, and</li> <li>b. Prior State government approval required in case of any future land use change.</li> </ol> <p>The above dispensation would be applicable to all fresh investments (FDI) made in this sector.</p>
4.	Broadcasting	<p>Broadcasting TV Software Production</p> <ol style="list-style-type: none"> <li>a) 100% foreign investment allowed subject to : <ol style="list-style-type: none"> <li>(i) all future laws on broadcasting and no claim of any privilege or protection by virtue of approval accorded, and</li> <li>(ii) not undertaking any broadcasting from Indian soil without Government approval</li> </ol> </li> <li>b) Setting up hardware facilities, such as uplinking, HUB, etc. Private companies incorporated in India with permissible FII/NRI/PIO equity within the limits (as in the case of telecom sector FDI limit up to 49% inclusive of both FDI and portfolio investment) to set up uplinking hub (teleports) for leasing or hiring out their facilities to broadcasters</li> </ol> <p><b>Foot note:</b> As regards satellite broadcasting, all TV channels irrespective of management control to uplink from India provided they undertake to comply with the broadcast (programme &amp; advertising) code</p>

Sl.No.	Sector	Guidelines
		<p>c) Cable Network Foreign investment allowed up to 49% (inclusive of both FDI and portfolio investment) of paid up share capital. Companies with minimum 51% of paid up share capital held by Indian citizens are eligible under the Cable Television Network Rules (1994) to provide cable TV services</p> <p>d) Direct-to-Home Company with a maximum of foreign equity including FDI/NRI/FII of 49% would be eligible to obtain DTH License. Within the foreign equity, the FDI component not to exceed 20%</p> <p>e) Terrestrial Broadcasting FM The licensee shall be a company registered in India under the Companies Act. All share holding should be held by Indians except for the limited portfolio investment by FII/NRI/PIO/OCB subject to such ceiling as may be decided from time to time. Company shall have no direct investment by foreign entities, NRIs and OCBs. As of now, the foreign investment is permissible to the extent of 20% portfolio investment</p> <p>f) Terrestrial TV No private operator is allowed in terrestrial TV transmission.</p>
5.	Coal & Lignite	<p>(i) Private Indian companies setting up or operating power projects as well as coal or lignite mines for captive consumption are allowed FDI up to 100%.</p> <p>(ii) 100% FDI is allowed for setting up coal processing plants subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing</p> <p>(iii) FDI up to 74% is allowed for exploration or mining of coal or lignite for captive consumption.</p> <p>(iv) In all the above cases, FDI is allowed up to 50% under the automatic route subject to the condition that such investment shall not exceed 49% of the equity of a PSU.</p>
6.	Domestic Airlines	<p>In the domestic Airlines</p> <p>i) FDI up to 49% permitted under automatic route.</p> <p>ii) 100% investment by NRIs permitted under automatic route subject to no direct or indirect equity participation by foreign airlines. (Detailed guidelines have been issued by Ministry of Civil Aviation)</p>
7.	Defence & Strategic Industries	Foreign Direct Investment, including NRI investment, is permitted up to 26% with prior Government approval subject to licensing and security requirements.
8.	Establishment and Operation of Satellite	FDI up to 74% is permitted with prior Government approval
9.	Housing & Real Estate	<p>NRIs are allowed to invest in the following activities:</p> <p>a) Development of serviced plots and construction of built up residential premises</p> <p>b) Investment in real estate covering construction of residential and commercial premises including business centres and offices</p> <p>c) Development of townships</p>

Sl.No.	Sector	Guidelines
		<ul style="list-style-type: none"> <li>d) City and regional level urban infrastructure facilities, including both roads and bridges</li> <li>e) Investment in manufacture of building materials, which is also open to FDI</li> <li>f) Investment in participatory ventures in (a) to (e) above</li> <li>g) Investment in housing finance institutions, which is also open to FDI as an NBFC</li> </ul>
10. Investing Companies In Infrastructure/Service Sector		In respect of the companies in infrastructure/service sector, where there is a prescribed cap for foreign investment, only the direct investment will be considered for the prescribed cap and foreign investment in an investing company will not be set off against this cap provided the foreign direct investment in such investing company does not exceed 49% and the management of the investing company is with the Indian owners. The automatic route is not available
11. Insurance		FDI up to 26% in the Insurance sector is allowed on the automatic route subject to obtaining licence from Insurance Regulatory & Development Authority (IRDA)
12. Lottery Business, Gambling & Betting		Government has reiterated prohibition of Foreign Direct Investment (FDI) / Foreign Technical Collaboration (FTC) in any form in lottery business, gambling and betting sector. Foreign Technology Collaboration including Franchise/Trading/brand name, management contract etc. in the lottery business, gambling and betting sector is also prohibited.
13. Mining		<ul style="list-style-type: none"> <li>(i) For exploration and mining of diamonds and precious stones FDI is allowed up to 74% under automatic route</li> <li>(ii) For exploration and mining of gold and silver and minerals other than diamonds and precious stones, metallurgy and processing ,FDI is allowed up to 100% under automatic route</li> <li>(iii) Press Note No. 18 (1998 series) dated 14.12.98 and Press Note No 1 of 2005 dated 12.01.2005 would not be applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and / or the particular mineral.</li> </ul>
14. Non-Banking Financial		<p>(a) FDI/NRI investments allowed in the following 19 NBFC activities shall be as per levels indicated Companies below:</p> <ul style="list-style-type: none"> <li>i) Merchant banking</li> <li>ii) Underwriting</li> <li>iii) Portfolio Management Services</li> <li>iv) Investment Advisory Services</li> <li>v) Financial Consultancy</li> <li>vi) Stock Broking</li> <li>vii) Asset Management</li> <li>viii) Venture Capital</li> <li>ix) Custodial Services</li> <li>x) Factoring</li> <li>xi) Credit Reference Agencies</li> <li>xii) Credit rating Agencies</li> <li>xiii) Leasing &amp; Finance</li> </ul>

Sl.No.	Sector	Guidelines
		<ul style="list-style-type: none"> <li>xiv) Housing Finance</li> <li>xv) Forex Broking</li> <li>xvi) Credit card business</li> <li>xvii) Money changing Business</li> <li>xviii) Micro Credit</li> <li>xix) Rural Credit</li> </ul> <p>(b) Minimum Capitalisation Norms for fund based NBFCs:</p> <ul style="list-style-type: none"> <li>i) For FDI up to 51% - US\$ 0.5 million to be brought upfront</li> <li>ii) For FDI above 51% and up to 75% - US \$ 5 million to be brought upfront</li> <li>iii) For FDI above 75% and up to 100% - US \$ 50 million out of which US \$ 7.5 million to be brought upfront and the balance in 24 months</li> </ul> <p>(c) Minimum capitalisation norms for non-fund based activities: Minimum capitalisation norm of US \$ 0.5 million is applicable in respect of all permitted non-fund based NBFCs with foreign investment</p> <p>(d) Foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US\$ 50 million as at (b) (iii) above (without any restriction on number of operating subsidiaries without bringing in additional capital)</p> <p>(e) Joint Venture operating NBFC's that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capital inflow i.e. (b)(i) and (b)(ii) above</p> <p>(f) FDI in the NBFC sector is put on automatic route subject to compliance with guidelines of the Reserve Bank of India. RBI would issue appropriate guidelines in this regard</p>
15.	Petroleum (Other than Refining)	<ul style="list-style-type: none"> <li>a. FDI is permitted up to 100% on automatic route in petroleum products marketing. FDI in this sector would be permissible subject to the existing sectoral policy and regulatory framework in the oil marketing sector.</li> <li>b. FDI up to 100% is allowed in on the automatic route in oil exploration in both small and medium sized fields subject to and under the policy of the Government on private participation in (i) exploration of oil and (ii) the discovered fields of national oil companies.</li> <li>c. FDI up to 100% is permitted on the automatic route for petroleum products pipeline subject to and under the Government policy and regulations thereof.</li> <li>d. FDI upto 100% is permitted for Natural Gas/LNG Pipelines with prior Government approval</li> <li>e. 100% Wholly owned Subsidiary(WoS) is permitted for the purpose of market study and formulation</li> <li>f. 100% wholly owned subsidiary (WOS) is permitted for investment/Financing</li> <li>g. For actual trading and marketing, minimum 26% Indian equity is required over 5 years</li> </ul>
	Petroleum (Refining)	<ul style="list-style-type: none"> <li>a. FDI is permitted up to 26% in case of public sector units (PSUs). PSUs will hold 26% (Refining) and balance 48% by public. Automatic route is not available</li> <li>b. In case of private Indian companies, FDI is permitted up to 100% under automatic route</li> </ul>

Sl.No.	Sector	Guidelines
16.	Postal services	FDI up to 100% is permitted in courier services with prior Government approval excluding distribution of letters, which is reserved exclusively for the state
17.	Print media	The following FDI participation in Indian entities publishing News Papers and periodicals is permitted: (a) FDI up to 100% in publishing/printing scientific & technical magazines, periodicals & journals (b) FDI up to 26% in publishing News Papers and Periodicals dealing in News and Current Affairs subject to verification of antecedents of foreign investor, keeping editorial and management control in the hands of resident Indians and ensuring against dispersal of Indian equity. The detailed guidelines have been issued by Ministry of Information and Broadcasting
18.	Private sector banking	74% from all sources on the automatic route subject to guidelines issued by RBI from time to time.
19.	Telecommunication	i) basic, cellular, value added services and global mobile personal communications by satellite, FDI is limited to 74% subject to licensing and security requirements and adherence by the companies (who are investing and the companies in which the investment is being made) to the licence conditions for foreign equity cap and lock- in period for transfer and addition of equity and other licence provisions ii) In ISPs with gateways, radio-paging and end-to-end bandwidth, FDI is permitted up to 74% with FDI, beyond 49% requiring Government approval. These services would be subject to licensing and security requirements iii) No equity cap is applicable to manufacturing activities iv) FDI up to 100% is allowed for the following activities in the telecom sector : (a) ISPs not providing gateways (both for satellite and submarine cables) (b) Infrastructure Providers providing dark fibre (IP Category I) (c) Electronic Mail; and (d) Voice Mail The above services would be subject to the following conditions : a. FDI up to 100% is allowed subject to the condition that such companies would divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world b. The above services would be subject to licensing and security requirements, wherever required c. Proposals for FDI beyond 49% shall be considered by FIPB on case to case basis
20.	Trading	Trading is permitted under automatic route with FDI up to 51% provided it is primarily export activities, and the undertaking is an export house/trading house/super trading house/star trading house. However, under the FIPB route:- i. 100% FDI is permitted in case of trading companies for the following activities: a) exports b) bulk imports with ex-port/ex-bonded warehouse sales c) cash and carry wholesale trading d) other import of goods or services provided at least 75% is for procurement and sale of goods and services among the companies of the same group and for third party use or onward transfer/distribution/sales



Sl.No.	Sector	Guidelines
		<p>ii. The following kinds of trading are also permitted, subject to provisions of Foreign Trade Policy:</p> <ul style="list-style-type: none"> <li>a) Companies for providing after sales services (that is not trading per se)</li> <li>b) Domestic trading of products of JVs is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their joint ventures in which they have equity participation in India</li> <li>c) Trading of hi-tech items/items requiring specialised after sales service</li> <li>d) Trading of items for social sector</li> <li>e) Trading of hi-tech, medical and diagnostic items</li> <li>f) Trading of items sourced from the small scale sector under which, based on technology provided and laid down quality specifications, a company can market that item under its brand name</li> <li>g) Domestic sourcing of products for exports</li> <li>h) Test marketing of such items for which a company has approval for manufacture provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facilities commences simultaneously with test marketing</li> <li>i) FDI up to 100% permitted for e-commerce activities subject to the condition that such companies would divest 26% of their equity in favour of the Indian public in five years, if these companies are listed in other parts of the world. Such companies would engage only in business to business (B2B) e-commerce and not in retail trading</li> </ul> <p>FDI is not permitted in retail trading activity.</p>
21.	Township Development	FDI upto 100% is allowed under the automatic route in townships, housing, built-up infrastructure and construction-development projects which would include, but not restricted to, housing, commercial, premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure) subject to conditions and guidelines as mentioned at Annexure VIII.
22.	Venture Capital	As per Schedule VI under FEMA Regulation, a registered Foreign Venture Capital Investor (FVCI) may invest in Indian Venture Capital Undertakings (IVCU) or in a VCF after approval from RBI.

## FDI PERMITTED IN VARIOUS SECTORS/ ACTIVITIES

### 1. FDI Prohibited

- i. Retail trading
- ii. Atomic energy
- iii. Lottery business
- iv. Gambling and betting sector
- v. Housing and real-estate business except development of integrated townships.
- vi. Agriculture (excluding Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantation (excluding Tea Plantations)

### 2. FDI up to 26 % allowed

- i. FM Broadcasting – Only portfolio investment up to 20% with prior Government approval
- ii. Print media: Publishing newspaper and periodicals dealing with news and current affairs - FDI up to 26% with prior Government approval
- iii. Defence industries - FDI up to 26% with prior Government approval
- iv. Insurance - Foreign equity (FDI+FII) up to 26% under the automatic route

### 3. FDI up to 49 % allowed

- i. Broadcasting
  - a. Setting up hardware facilities such as up-linking, HUB, etc.- FDI+FII equity up to 49% with prior Government approval
  - b. Cable network- Foreign equity (FDI+FII) up to 49% with prior Government approval
  - c. DTH - Foreign equity (FDI+FII) up to 49% with prior Government approval. FDI can not exceed 20%.
- ii. Domestic airlines - FDI up to 49% under the automatic route with no direct or indirect participation of foreign airlines
- iii. Telecommunication services: basic and cellular - FDI up to 49%. However, under license conditions foreign equity (FDI+FII) up to 49% is allowed. The decision to raise foreign equity limit to 74% has not been notified so far
- iv. Investing companies in infrastructure/service sector – FDI up to 49% with prior Government approval

### 4. FDI up to 74% allowed

- i. Development of Airports- up to 74% under the automatic route; prior Government approval beyond 74%
- ii. ISP with gateways, radio-paging, end-to-end bandwidth – FDI up to 74% with FDI beyond 49% requiring prior Government approval
- iii. Establishment and operation of satellites - FDI up to 74% with prior Government approval
- iv. Atomic minerals - FDI up to 74% with prior Government approval
- v. Exploration and mining of coal and lignite for captive consumption – FDI up to 74% with FDI above 50% requiring prior Government approval

- vi. Mining of diamonds and precious stones- FDI up to 74% under the automatic route
- vii. Private sector banks - Foreign equity (FDI + FII) up to 74% under the automatic route

**5. FDI up to 100 % allowed subject to conditions**

- i. Development of Airports - FDI beyond 74% requires Government approval
- ii. Petroleum sector: NG/LPG pipelines with prior Government approval
- iii. Petroleum sector: market study and formulation, investment /financing with prior Government approval. Minimum 26% Indian equity within 5 years for actual trading and marketing.
- iv. Trading: wholesale cash and carry; exports, trading of hi-tech items with prior Government approval. In Export trading - FDI up to 49% permitted under the automatic route.
- v. B2B e-commerce subject to divestment of 26% equity within 5 years if the company is listed in other parts of the world
- vi. Courier services- prior Government approval
- vii. Tea Sector, including tea plantation – prior Government approval subject to divestment of 26% equity within five years
- viii. Non Banking Finance Companies – FDI up to 100% under the automatic route subject to minimum capitalization norms
- ix. ISP without gateway, infrastructure provider providing dark fibre, electronic mail and voice mail – FDI up to 100% allowed subject to divestment of 26% equity in 5 years if the investing companies are listed in other parts of the world.
- x. Domestic airlines – NRI investment up to 100% permitted under the automatic route with no direct or indirect participation of foreign airlines.

## ILLUSTRATIVE LIST OF SECTORS UNDER AUTOMATIC ROUTE FOR FDI UPTO 100%

- Most manufacturing activities
- Non-banking financial services
- Drugs and pharmaceuticals
- Food processing
- Electronic hardware
- Software development
- Film industry
- Advertising
- Hospitals
- Private oil refineries
- Pollution control and management
- Exploration and mining of minerals other than diamonds and precious stones
- Management consultancy
- Venture capital funds/companies
- Setting up/development of industrial park/model town/SEZ
- Petroleum Products Pipeline

## ILLUSTRATIVE LIST OF INFRASTRUCTURE SECTORS WITH FDI UPTO 100% UNDER AUTOMATIC ROUTE

- Electricity Generation (except Atomic energy)
- Electricity Transmission
- Electricity Distribution
- Mass Rapid Transport System
- Roads & Highways
- Toll Roads
- Vehicular Bridges
- Ports & Harbours
- Hotel & Tourism
- Townships, Housing, Built-up Infrastructure and Construction Development Project

## ILLUSTRATIVE LIST OF SERVICES SECTOR WITH FDI UPTO 100% UNDER AUTOMATIC ROUTE

- Advertising and Films
- Computer related Services
- Research and Development Services
- Construction and related Engineering Services
- Pollution Control and Management Services
- Urban Planning and Landscape Services
- Architectural Services
- Health related & Social Services
- Travel related services
- Road Transport Services
- Maritime Transport Services
- Internal Waterways Transport Services

## **GUIDELINES PERTAINING TO APPROVAL OF FOREIGN/TECHNICAL COLLABORATIONS UNDER THE AUTOMATIC ROUTE WITH PREVIOUS VENTURES/TIE-UP IN INDIA**

Press Note No. 1 (2005 Series)

1. The Government has reviewed the guidelines notified vide Press Note 18 (1998 series) which stipulated approval of the Government for new proposals for foreign investment/ technical collaboration where the foreign investor has or had any previous joint venture or technology transfer/ trademark agreement in the same or allied field in India.
2. New proposals for foreign investment/technical collaboration would henceforth be allowed under the automatic route, subject to sectoral policies, as per the following guidelines:
  - i) Prior approval of the Government would be required only in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement in the 'same' field. The onus to provide requisite justification as also proof to the satisfaction of the Government that the new proposal would or would not in any way jeopardize the interests of the existing joint venture or technology/ trademark partner or other stakeholders would lie equally on the foreign investor/ technology supplier and the Indian partner.
  - ii) Even in cases where the foreign investor has a joint venture or technology transfer/ trademark agreement in the 'same' field prior approval of the Government will not be required in the following cases:
    - a. Investments to be made by Venture Capital Funds registered with the Security and Exchange Board of India (SEBI); or
    - b. where in the existing joint-venture investment by either of the parties is less than 3%; or
    - c. where the existing venture/ collaboration is defunct or sick.
  - iii) In so far as joint ventures to be entered into after the date of this Press Note are concerned, the joint venture agreement may embody a 'conflict of interest' clause to safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the 'same' field of economic activity.
3. These guidelines would come into force with immediate effect.

## GUIDELINES FOR FDI IN DEVELOPMENT OF TOWNSHIP, HOUSING, BUILDING, INFRASTRUCTURE AND CONSTRUCTION PROJECTS

(Press Note No. 2 2005 series)

With a view to catalysing investment in townships, housing, built-up infrastructure and construction-development projects as an instrument to generate economic activity, create new employment opportunities and add to the available housing stock and built-up infrastructure, the Government has vide Press Note no 2 (2005 series) decided to allow FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure), subject to the following guidelines:

- a. Minimum area to be developed under each project would be as under:
    - i. In case of development of serviced housing plots, a minimum land area of 10 hectares
    - ii. In case of construction-development projects, a minimum built-up area of 50,000 sq.mts
    - iii. In case of a combination project, any one of the above two conditions would suffice
  - b. The investment would further be subject to the following conditions:
    - i. Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.
    - ii. Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.
  - c. At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell undeveloped plots.  
For the purpose of these guidelines, "undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.
  - d. The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.
  - e. The investor shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.
  - f. The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer.
2. Para (iv) of Press Note 4 (2001 Series), issued by the Government on 21.5.2001, and Press Note 3 (2002 Series), issued on 4.1.2002, stand superceded.



**LIST OF CITIES WITH POPULATION OF 10 LAKHS (1 MILLION)  
AND ABOVE ACCORDING TO THE PROVISIONAL  
RESULTS OF 1991 CENSUS**

**Name of the Cities**

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

Note: U.A. = Urban Area

M.C. = Municipal Corporation

## DETAILS OF SELECTED AGENCIES/ DEPARTMENTS INVOLVED WITH VARIOUS CLEARANCES/APPROVALS AND THEIR WEB-SITES

Subject Matter	Concerned Ministry/Department of Govt. of India	Website address
Industrial Entrepreneur Memorandum for delicensed industries	Department of Industrial Policy & Promotion	<a href="http://dipp.gov.in">http://dipp.gov.in</a>
Approval for Industrial License / carry-on-business License	Department of Industrial Policy & Promotion	<a href="http://dipp.gov.in">http://dipp.gov.in</a>
Approval for Technology Transfer:		
(i) Automatic route	Reserve Bank of India	<a href="http://www.rbi.org.in">http://www.rbi.org.in</a>
(ii) Government approval (PAB)	Department of Industrial Policy & Promotion	<a href="http://dipp.gov.in">http://dipp.gov.in</a>
Approval for financial collaboration:		
(i) Automatic route	Reserve Bank of India	<a href="http://www.rbi.org.in">http://www.rbi.org.in</a>
(ii) Government approval (FIPB)	Department of Economic Affairs	<a href="http://finmin.nic.in">http://finmin.nic.in</a>
Approval of Industrial Park		
(i) Automatic route	Department of Industrial Policy & Promotion	<a href="http://dipp.gov.in">http://dipp.gov.in</a>
(ii) Non-Automatic route (Empowered Committee)		
Registration as a company & certificate of commencement of business	Department of Company Affairs (Registrar of Companies)	<a href="http://dca.gov.in">http://dca.gov.in</a>
Matters relating to FDI policy and its promotion and facilitation as also promotion and facilitation of investment by Non- resident Indians ( NRIs)	Department of Industrial Policy & Promotion	<a href="http://dipp.gov.in">http://dipp.gov.in</a>
Matters relating to Foreign Exchange	Reserve Bank of India	<a href="http://www.rbi.org.in">http://www.rbi.org.in</a>
Matters relating to Taxation	Department of Revenue	<a href="http://finmin.nic.in">http://finmin.nic.in</a>
Matters relating to Direct Taxation	Central Board of Direct Taxes	<a href="http://incometaxindia.gov.in">http://incometaxindia.gov.in</a>
Matters relating to Excise & Customs	Central Board of Excise & Custom	<a href="http://www.cbec.gov.in">http://www.cbec.gov.in</a>
Matters relating to Industrial Relations	Ministry of Labour	<a href="http://labour.nic.in">http://labour.nic.in</a>
Import of Goods	Directorate General of Foreign Trade	<a href="http://dgft.delhi.nic.in">http://dgft.delhi.nic.in</a>
Matters relating to Environment & Forest clearance	Ministry of Environment and Forests	<a href="http://envfor.nic.in">http://envfor.nic.in</a>
Overseas investment by Indians	Ministry of Overseas Affairs	<a href="http://iic.nic.in">http://iic.nic.in</a>
Allotment of land/Shed in Industrial areas, acquisition of land, change in land use, approval of building plan, release of water connection etc.	Departments Concerned of State Governments	Web site address of the state/UT is given at ANNEXURE-XII

## WEBSITE ADDRESSES OF IMPORTANT MINISTRIES/DEPARTMENTS

Biotechnology, Ministry of	<a href="http://dbtindia.nic.in">http://dbtindia.nic.in</a>
Bureau of Indian Standards	<a href="http://www.bis.org.in">http://www.bis.org.in</a>
Chemicals & Petrochemicals, Ministry of	<a href="http://chemicals.nic.in">http://chemicals.nic.in</a>
Civil Aviation, Ministry of	<a href="http://civilaviation.nic.in">http://civilaviation.nic.in</a>
Commerce, Department of	<a href="http://commerce.nic.in">http://commerce.nic.in</a>
Coal, Ministry of	<a href="http://coal.nic.in">http://coal.nic.in</a>
Company Affairs, Ministry of	<a href="http://dca.nic.in">http://dca.nic.in</a>
Education, Department of	<a href="http://www.education.nic.in">http://www.education.nic.in</a>
Environment and Forests, Ministry of	<a href="http://envfor.nic.in">http://envfor.nic.in</a>
Explosives, Department of	<a href="http://explosives.nic.in">http://explosives.nic.in</a>
External Affairs, Ministry of	<a href="http://www.meaindia.nic.in">http://www.meaindia.nic.in</a>
Finance, Ministry of	<a href="http://finmin.nic.in">http://finmin.nic.in</a>
Foreign Trade, Directorate General of,	<a href="http://dgft.delhi.nic.in">http://dgft.delhi.nic.in</a>
Heavy Industries, Department of	<a href="http://dhi.nic.in">http://dhi.nic.in</a>
Industrial Policy & Promotion, Department of	<a href="http://dipp.gov.in">http://dipp.gov.in</a>
Information and Broadcasting, Ministry of	<a href="http://pib.nic.in">http://pib.nic.in</a>
Information Technology, Department of	<a href="http://www.mit.gov.in">http://www.mit.gov.in</a>
Labour, Ministry of	<a href="http://labour.nic.in">http://labour.nic.in</a>
Mines, Department of	<a href="http://mines.nic.in">http://mines.nic.in</a>
Non-conventional Energy Sources, Ministry of	<a href="http://mnes.nic.in">http://mnes.nic.in</a>
Patents, Designs and Trademarks, Office of the Controller General of	<a href="http://patentoffice.nic.in">http://patentoffice.nic.in</a>
Petroleum and Natural Gas, Ministry of	<a href="http://petroleum.nic.in">http://petroleum.nic.in</a>
Power, Ministry of	<a href="http://powermin.nic.in">http://powermin.nic.in</a>
Railways, Ministry of	<a href="http://www.indianrailways.gov.in">http://www.indianrailways.gov.in</a>
Reserve Bank of India	<a href="http://www.rbi.org.in">http://www.rbi.org.in</a>
Road Transport & Highways, Ministry of	<a href="http://morth.nic.in">http://morth.nic.in</a>
Shipping, Ministry of	<a href="http://shipping.nic.in">http://shipping.nic.in</a>
Small Scale Industries & Agro and Rural Industries, Ministry of	<a href="http://ssi.nic.in">http://ssi.nic.in</a>
Statistics and Programme Implementation, Ministry of	<a href="http://mospi.nic.in">http://mospi.nic.in</a>
Telecommunication, Department of	<a href="http://www.dotindia.com">http://www.dotindia.com</a>
Textiles, Ministry of	<a href="http://texmin.nic.in">http://texmin.nic.in</a>
Tourism, Ministry of	<a href="http://tourismofindia.com">http://tourismofindia.com</a>
Urban Development, Ministry of	<a href="http://urbanindia.nic.in">http://urbanindia.nic.in</a>
Water Resources, Ministry of	<a href="http://wrmin.nic.in">http://wrmin.nic.in</a>

## WEBSITE ADDRESSES OF STATES/UTS

Andaman & Nicobar (UT)	<a href="http://andaman.nic.in">http://andaman.nic.in</a>
Andhra Pradesh	<a href="http://www.andhrapradesh.com">http://www.andhrapradesh.com</a>
Arunachal Pradesh	<a href="http://arunachalpradesh.nic.in">http://arunachalpradesh.nic.in</a>
Assam	<a href="http://assamgovt.nic.in">http://assamgovt.nic.in</a>
Bihar	<a href="http://bihar.hypermart.net">http://bihar.hypermart.net</a>
Chandigarh (UT)	<a href="http://chandigarh.nic.in">http://chandigarh.nic.in</a>
Chhattisgarh	<a href="http://chhattisgarh.nic.in">http://chhattisgarh.nic.in</a>
Dadra & Nagar Haveli (UT)	<a href="http://oidc.nic.in">http://oidc.nic.in</a>
Daman & Diu (UT)	<a href="http://daman.nic.in">http://daman.nic.in</a>
Delhi	<a href="http://delhigovt.nic.in">http://delhigovt.nic.in</a>
Goa	<a href="http://goagovt.nic.in">http://goagovt.nic.in</a>
Gujarat	<a href="http://gujaratindustry.gov.in">http://gujaratindustry.gov.in</a>
Haryana	<a href="http://haryana.nic.in">http://haryana.nic.in</a>
Himachal Pradesh	<a href="http://himachal.nic.in">http://himachal.nic.in</a>
Jammu & Kashmir	<a href="http://jammukashmir.nic.in">http://jammukashmir.nic.in</a>
Jharkhand	<a href="http://jharkhand.nic.in">http://jharkhand.nic.in</a>
Karnataka	<a href="http://www.kar.nic.in">http://www.kar.nic.in</a>
Kerala	<a href="http://www.keralagov.com">http://www.keralagov.com</a>
Lakshdweep (UT)	<a href="http://lakshadweep.nic.in">http://lakshadweep.nic.in</a>
Madhya Pradesh	<a href="http://mpgovt.nic.in">http://mpgovt.nic.in</a>
Maharashtra	<a href="http://www.maharashtra.gov.in">http://www.maharashtra.gov.in</a>
Manipur	<a href="http://manipur.nic.in">http://manipur.nic.in</a>
Meghalaya	<a href="http://meghalaya.nic.in">http://meghalaya.nic.in</a>
Mizoram	<a href="http://mizoram.nic.in">http://mizoram.nic.in</a>
Nagaland	<a href="http://nagaland.nic.in">http://nagaland.nic.in</a>
Orissa	<a href="http://orissagov.nic.in">http://orissagov.nic.in</a>
Pondicherry (UT)	<a href="http://pondicherry.nic.in">http://pondicherry.nic.in</a>
Punjab	<a href="http://punjabgovt.nic.in">http://punjabgovt.nic.in</a>
Rajasthan	<a href="http://www.rajasthan.gov.in">http://www.rajasthan.gov.in</a>
Sikkim	<a href="http://sikkim.nic.in">http://sikkim.nic.in</a>
Tamil Nadu	<a href="http://www.tn.gov.in">http://www.tn.gov.in</a>
Tripura	<a href="http://tripura.nic.in">http://tripura.nic.in</a>
Uttar Pradesh	<a href="http://www.upgovt.nic.in">http://www.upgovt.nic.in</a>
Uttaranchal	<a href="http://www.uttaranchalassembly.org">http://www.uttaranchalassembly.org</a>
West Bengal	<a href="http://www.wbgovt.com">http://www.wbgovt.com</a>

## ADDRESSES FOR FILING APPLICATION ETC

Sl.No. Application for	Address for filing
1. Industrial Licence/COB Licence	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
2. IEM	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
3. Monthly Production Returns	Jt. Director, Industrial Statistics Unit (ISU), Department of Industrial Policy & Promotion, Room No. 326, Udyog Bhavan, New Delhi –11. India Fax: 011-23014564 E-mail: vishu@ub.nic.in
4. FDI Application with NRI Investment & 100% EOU	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
5. Foreign Technology Agreement under Government Approval	Project Approval Board, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
6. Approval for Industrial Park, Model town/Growth Center under Government Approval	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
7. FDI under automatic route	Regional Office concerned of Reserve Bank of India (Addresses are available at RBI website)
8. FDI application under government route	FIPB Unit, Department of Economic Affairs, Ministry of Finance, North Block, New Delhi –110001. India
9. For registration and incorporation of company	Registrar of Companies, Ministry of Company Affairs, B Block, 2 <sup>nd</sup> floor, Paryavaran Bhavan, CGO complex, New Delhi – 110003. India
10. For setting up liaison / Project/ Branch office of a foreign company	Reserve bank of India, Central Office, Foreign Investment Division, Shaheed Bhagat Singh Road, Mumbai –400001, India

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