



Invest India

NATIONAL INVESTMENT PROMOTION AGENCY

Foreign Participation in India

March 2017

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Abbreviations (1/3)

AD	Authorised Dealer
AF	Angel Fund
ADR	American Depository Receipts
AIF	Alternative Investment Fund
BO	Branch Office
CA	Chartered Accountant
CCEA	Cabinet Committee on Economic Affairs
CCS	Cabinet Committee on Security
Col	Certificate of Incorporation
DDT	Dividend Distribution Tax
DEA	Department of Economic Affairs
DR	Depository Receipt
DSIM	Department of Statistics and Information Management
ECB	External Commercial Borrowing
FCCB	Foreign Currency Convertible Bond
FCNR (B)	Foreign Currency Non-Resident Account
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FII	Foreign Institutional Investor
FIPB	Foreign Investment Promotion Board
FPI	Foreign Portfolio Investor
FVCI	Foreign Venture Capital Investor

Abbreviations (2/3)

GDR	Global Depository Receipts
Gol	Government of India
InvITs	Infrastructure Investment Trusts
JV	Joint Venture
KYC	Know Your Customer
LLP	Limited Liability Partnership
LO	Liaison Office
MoA	Memorandum of Association
MoU	Memorandum of Understanding
NBFC	Non-Banking Financial Companies
NOC	No Objection Certificate
NRE	Non-Resident Entity
NRE Account	Non-Resident (External) Rupee Account
NRI	Non-Resident Indian
NRO Account	Non-Resident Ordinary Rupee Account
PIO	Person of Indian Origin
PO	Project Office
PSU	Public Sector Undertaking
RBI	Reserve Bank of India
REIT	Real Estate Investment Trust
RoC	Registrar of Companies

Abbreviations (3/3)

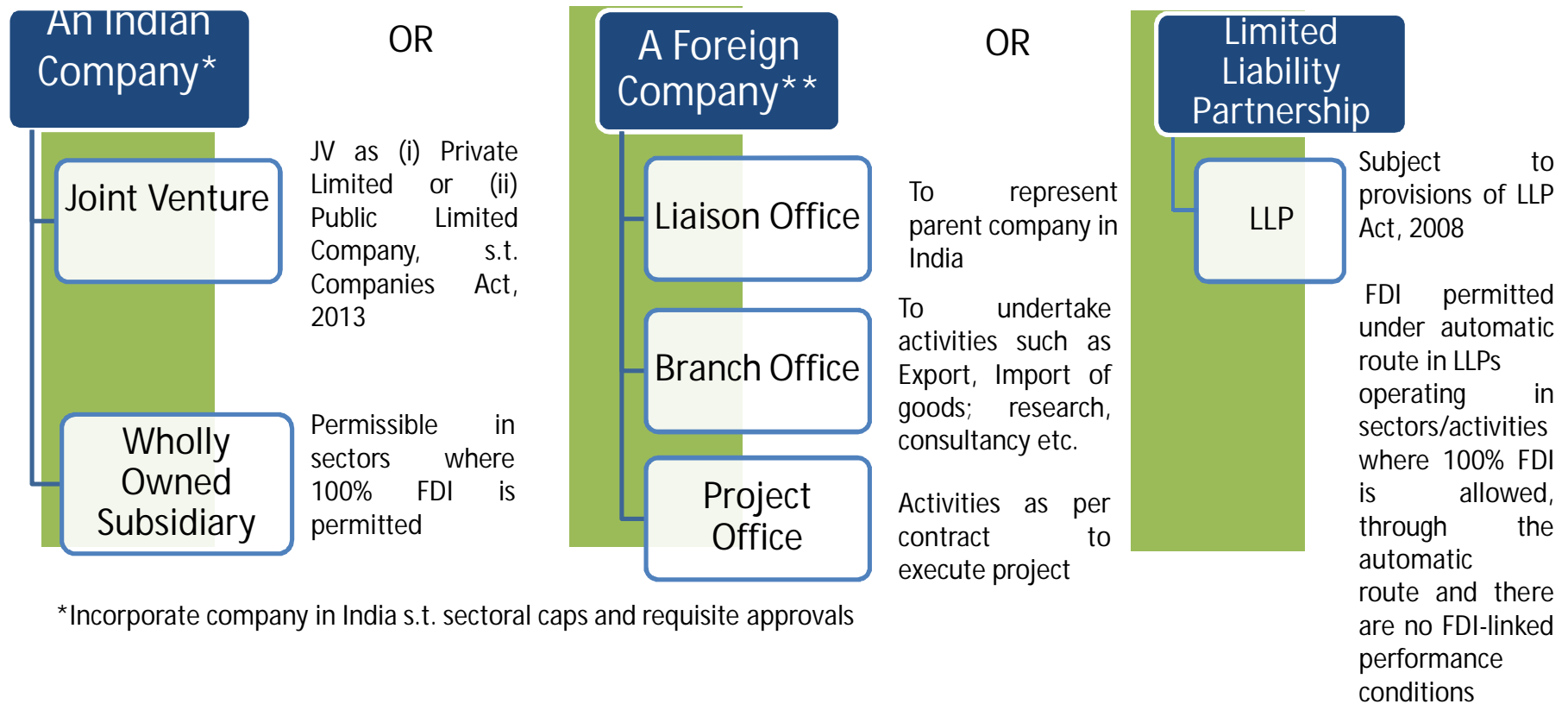
SEBI	Securities and Exchange Board of India
SME	Small and Medium-sized Enterprise
SMS	Short Message Service
TDR	Transferable Development Rights
TDS	Tax Deducted at Source
VC	Venture Capital
WOS	Wholly-owned Subsidiary

1

Setting up Business in India

Setting up Business in India

Foreign Investor can commence business in India as:



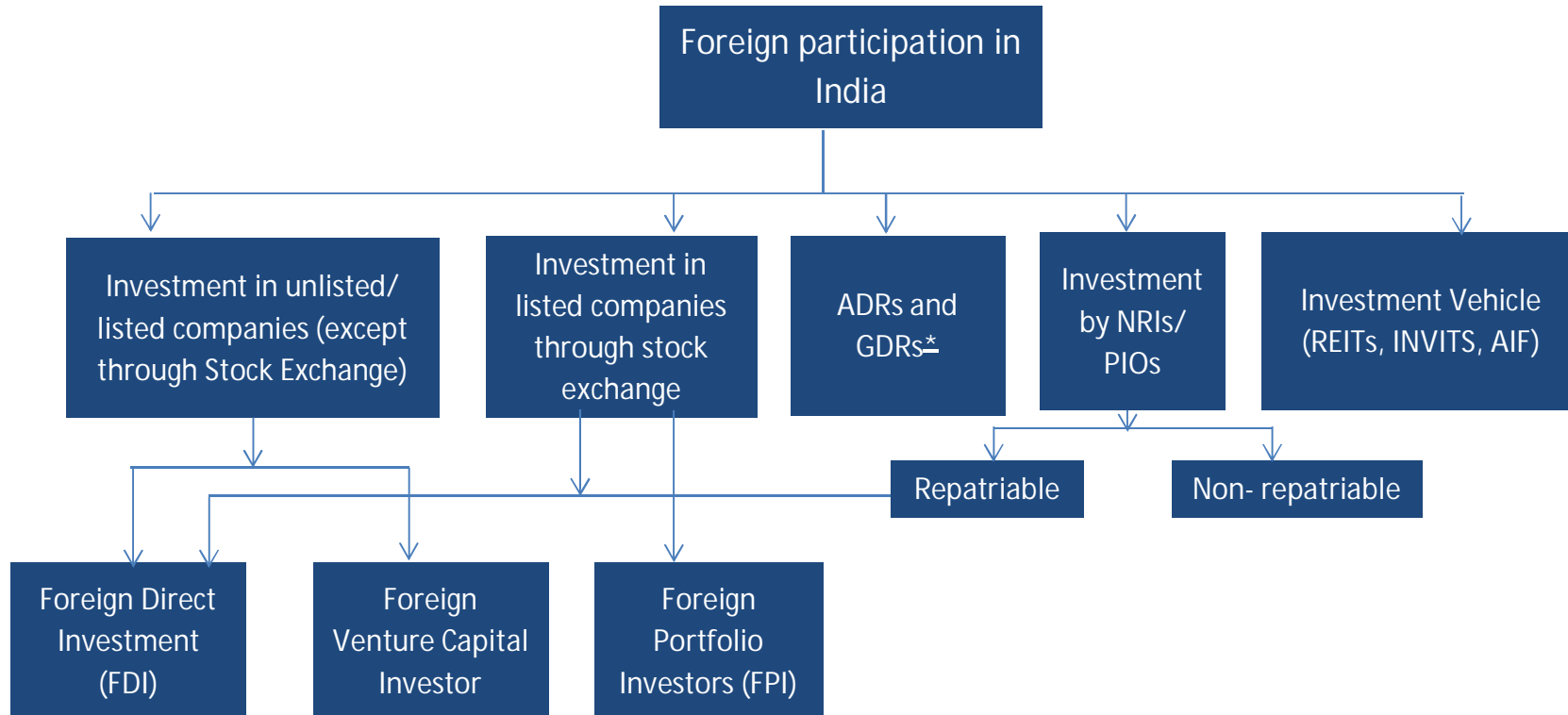
*Incorporate company in India s.t. sectoral caps and requisite approvals

**RBI guidelines regarding establishment of LO/BO/PO: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10398&Mode=0>

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Types of Foreign Participation

Overview of Foreign Participation



Note: An investor can participate in Indian economy by either commencing business in India (forms explained earlier in slide 7) via, say the FDI route as outlined above or can invest in the financial markets via a host of available financial instruments. A few of these have been enumerated in the subsequent slides. In particular, FDI has been explained in detail in Section 3 of this document.

Types of Foreign Participation

Understanding Investors/ Instruments

Comments

Foreign
Portfolio
Investors
(FPI)

- Under the [SEBI FPI Regulations, 2014](#), Foreign Institutional Investors (FIIs) or sub accounts and Qualified Foreign Investors (QFIs) were merged into a single category, referred to as FPIs
 - Category I FPI- Government and Government related investors; Category II FPI – broad based funds, banks, asset management companies, university and pension funds etc; Category III FPI- others such as charitable societies, trusts, foundations etc.
 - Purchase of equity shares of each company by a single FPI or an investor group shall be below 10% of total issued capital of the company
- No person can buy, sell or deal in securities as FPI unless obtained a Certificate of Registration from a Designated Depository Participant (on behalf of SEBI)- Application in Form A along with prescribed fees
 - Eligibility- Conditions such as person non resident in India, not a NRI; applicant resident of country whose securities market regulator signatory to International Organization of Securities Commission's Multilateral MoU or a signatory to bilateral MoU; applicant legally permitted to invest in securities outside the country of its incorporation ; track record of applicant etc.
 - Bank Account: Appoint a branch of a bank authorized by RBI for opening a foreign currency denominated account and special Non Resident Rupee account before making any investments in India
 - Compliance with acts, rules and regulations issued by Designated Depository Participant or SEBI

Types of Foreign Participation

Understanding Investors/ Instruments

Foreign Portfolio Investors (FPI)

Permissible securities

The diagram consists of a light green vertical bar on the left. A dark blue box with white text 'Foreign Portfolio Investors (FPI)' is positioned at the top of the bar. A dark blue arrow with white text 'Permissible securities' points from the right side of the bar towards the list of securities.

A FPI is permitted to invest only in the following securities:

- a) Securities in the primary and secondary markets including shares, debentures and warrants of companies, listed or to be listed on a recognized stock exchange in India;
- b) Units of schemes floated by domestic mutual funds, whether or not listed on recognized stock exchange
- c) Units of schemes floated by a collective investment scheme;
- d) Derivatives traded on a recognized stock exchange;
- e) Treasury bills and dated government securities;
- f) Commercial papers issued by an Indian company;
- g) Rupee denominated credit enhanced bonds;
- h) Security receipts issued by asset reconstruction companies
- i) Perpetual debt instruments and debt capital instruments, as specified by the RBI
- j) Listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector
- k) Non-convertible debentures or bonds issued by NBFC categorized as 'Infrastructure Finance Companies'(IFCs) by RBI
- l) Rupee denominated bonds or units issued by infrastructure debt funds;
- m) Indian depository receipts; and
- n) Such other instruments specified by the Board from time to time.

Types of Foreign Participation

Understanding Investors/ Instruments

Comments

Foreign
Venture
Capital
Investor

- Venture capital fund means a Fund established in the form of a Trust, a company including a body corporate and registered under SEBI (Venture Capital Fund) Regulations, 1996, which (i) has a dedicated pool of capital; (ii) raised in the manner specified under the Regulations; and (iii) invests in accordance with the regulations and RBI Regulations.

- Regulated under the [SEBI \(Foreign Venture Capital Investor\) Regulations, 2000](#)
- Considerations for Eligibility include: applicant's track record financial soundness and competency; approval by RBI; whether applicant an investment company/ trust/ pension fund/ mutual fund etc.
- Conditions and criteria include disclosing strategy to SEBI and having at least 66.67% investable funds invested in unlisted equity shares or equity linked instruments
- Registration Certificate: Application to SEBI in Form A along with the application fee
- Need to appoint a domestic custodian and bank
- Compliance requirement- Maintain books of accounts, records, records and documents for 8 years

Types of Foreign Participation

Understanding Investors/ Instruments

Comments

Depository Receipts

- Negotiable securities representing INR denominated equity shares (held as a deposit by custodian bank) of a company
 - Issued outside of India by a Depository bank on behalf of the company
 - Traded on stock exchanges in U.S., Singapore, Luxembourg etc. - DRs listed and traded in US markets- American Depository Receipts (ADRs), elsewhere Global Depository receipts (GDRs)
- Governed by [FEMA notification 330/2014-RB](#) (Schedule 10 of FEMA 20/ 2000), issued by RBI
 - A person can issue DRs, if it is eligible to issue eligible instruments to person resident outside India under Schedules 1, 2, 2A, 3, 5 and 8 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
 - The eligible securities shall not be issued or transferred to a foreign depository for the purpose of issuing DRs at a price less than the price applicable to a corresponding mode of issue or transfer of such securities to domestic investors under FEMA, 1999 as amended from time to time.
 - DRs issued shall be reported to RBI in prescribed formats

Types of Foreign Participation

Understanding Investors/ Instruments

Investment by NRIs/PIOs

- A 'Non-resident Indian' (NRI) is a person resident outside India who is a citizen of India.
 - A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions: (i) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or (ii) Who belonged to a territory that became part of India after the 15th day of August, 1947; or (iii) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or (iv) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c). PIO included Overseas Citizen of India (OCI)
- Major accounts permitted for Non-Resident include: NRE, NRO and FCNR (B) accounts- Prior approval of RBI for accounts by individuals/entities of Pakistan and Bangladesh
 - NRI can invest in capital of Indian companies on non- repatriation basis. The said investment shall be treated as domestic investment.
 - For investments on repatriable basis, provisions of FDI policy apply
 - Under portfolio investment schemes through stock exchanges for NRIs Individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation basis provided the company passes a special resolution
 - NRIs residents in Nepal and Bhutan permitted to invest in the capital of Indian companies on repatriation basis, s.t. condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

Types of Foreign Participation

Understanding Investors/ Instruments

Investment Vehicles

- Foreign investments permitted under AUTOMATIC ROUTE
- An entity registered / incorporated in and a citizen of Pakistan/ Bangladesh not permitted

Infrastructure Investment Trusts (InvITs)

- Governed by the [SEBI \(InvIT\) Regulations, 2014](#)
- Structure: Sponsor; trustee, Investment manager and project manager
- Cumulative project size \geq INR 500 cr;
- Issue size \geq INR 250 cr
- Sponsors to set up InvTS (max 3); 3 years min lock in period for sponsors
- Minimum distribution- 90% of distributable cash flow of InvITs/ SPVs
- Permitted for any project in infrastructure sector- (as defined by vide [Ministry of Finance Notification](#) dated Oct. 2013 and any amendments/additions made thereof)

Types of Foreign Participation

Understanding Investors/ Instruments

Investment Vehicles

- Foreign investments permitted under AUTOMATIC ROUTE
- An entity registered / incorporated in and a citizen of Pakistan/ Bangladesh not permitted

Real Estate Investment Trusts (REITs)

- Governed by the [SEBI \(REITs\) Regulations, 2014](#)
- Set up as a trust under Indian Trusts Act, 1882 and registered with SEBI
- Parties: Sponsor, Manager and Trustee (registered with SEBI)
- Investments directly or indirectly through SPVs (must have holding interest)- cannot invest in vacant or agriculture land or mortgages other than mortgage backed securities
- Mandatory distribution of at least 90% of net distributable cash flows to investors on a half yearly basis and at least 90% of the sale proceeds from sale of assets to unit holders, unless reinvested in another property

Types of Foreign Participation

Understanding Investors/ Instruments

Investment Vehicles

- Foreign investments permitted under AUTOMATIC ROUTE

Alternative Investment Funds (AIFs)

- Governed by the SEBI (AIFs) Regulations, 2012
- Certificate of registration from SEBI
- Alternative Investment Fund means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-
 - (i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and
 - (ii) is not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities:
- Key conditions- Min size of AIF - INR 200 mn; Minimum investment amount by an investor, subject to a minimum of INR 10 million; min 2.5%/5% or INR 50 million or INR 100 million, whichever ever is less, investment from sponsor (locked-in)

Types of Foreign Participation

Understanding Investors/ Instruments

Alternative Investment Funds (AIFs) (Cont.)

- 3 categories
 - Category I- invest in start-up or early stage ventures or social ventures or SMEs or infrastructure. Includes venture capital funds, SME funds, social venture funds, infrastructure funds, angel funds, etc.;
 - Category II- private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other regulator;
 - Category III- hedge funds, open ended funds etc. which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives
- 'Control' of the AIF should be in the hands of 'sponsors' and 'managers/ investment managers', with the general exclusion of others

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Foreign Direct Investment in India

Foreign Direct Investment (FDI) in India

Understanding FDI

- Foreign Direct Investment (FDI) means investment by non-resident entity/person resident outside India in the capital of an Indian company
- FDI entails acquiring a “lasting interest” outside of the economy of the investor and includes capital investments from abroad in the productive capacity of a Nation in the form of:
 - (i) incorporating a wholly owned subsidiary or company anywhere
 - (ii) acquiring shares in an associated enterprise
 - (iii) merger or an acquisition of an unrelated enterprise
 - (iv) equity joint venture with another investor or enterprise
- Government of India has permitted foreign investment in almost all sectors with a few exceptions, for instance in sectors such as atomic energy, lottery business, and chit funds etc. where FDI is completely prohibited.
- For other sectors, FDI is either 100% permitted or partially permitted.
- In the permitted sectors, subject to sectoral caps, FDI may be via 2 routes:
 - (i) Automatic route or
 - (ii) Government route i.e. where prior approval of Gol is required.

Foreign Direct Investment (FDI)

Prohibited Sectors

Lottery Business including Government/private lottery, online lotteries , etc.*

Gambling and Betting including casinos*

Chit funds

Nidhi company

Trading in Transferable Development Rights (TDR)

Real Estate Business or Construction of farm houses**

Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

Sectors not open to private sector investment- atomic energy, railway operations (other than permitted activities mentioned in para 5.2, Consolidated FDI policy, June 07, 2016)

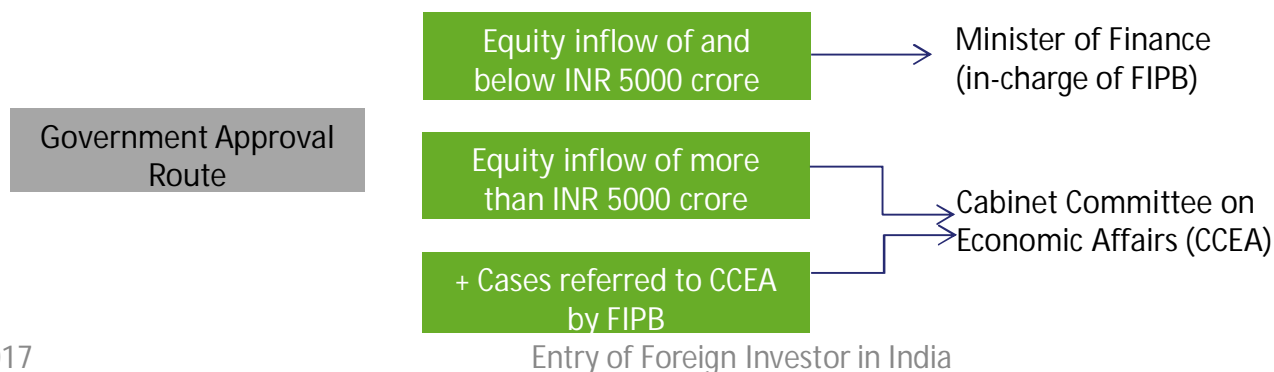
- Notes

- *Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities
- **Real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014

Foreign Direct Investment (FDI) in India

Institutional and Regulatory Set-up

- DIPP is the nodal agency entrusted to formulate FDI Policy. It issues press notes to make amendments in the existing policy and also issues consolidated FDI Policy on an annual basis.
- FDI in India is administered under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Original notification is available at https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174; Subsequent amendment notifications are available at https://rbi.org.in/Scripts/BS_FemaNotifications.aspx)
- All proposals requiring government approval as per FDI Policy need to be approved by an inter-ministerial body known as FIPB. FIPB comprises of (i) Secretary to Government, Department of Economic Affairs, Ministry of Finance- Chairperson; Secretary to Government, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry; Secretary to the Government, Department of Commerce, Ministry of Commerce and Industry; Secretary to Government, Economic Relations, Ministry of External Affairs
- The procedural instructions are issued by the Reserve Bank of India vide A.P. (DIR Series) Circulars. The regulatory framework, over a period of time, thus, consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.
- The level of approvals for cases under the Government route are summarized below:



Note: In the Budget speech (1 February, 2017), the Government has announced abolition of the Foreign Investment Promotion Board (FIPB) in the year 2017-18

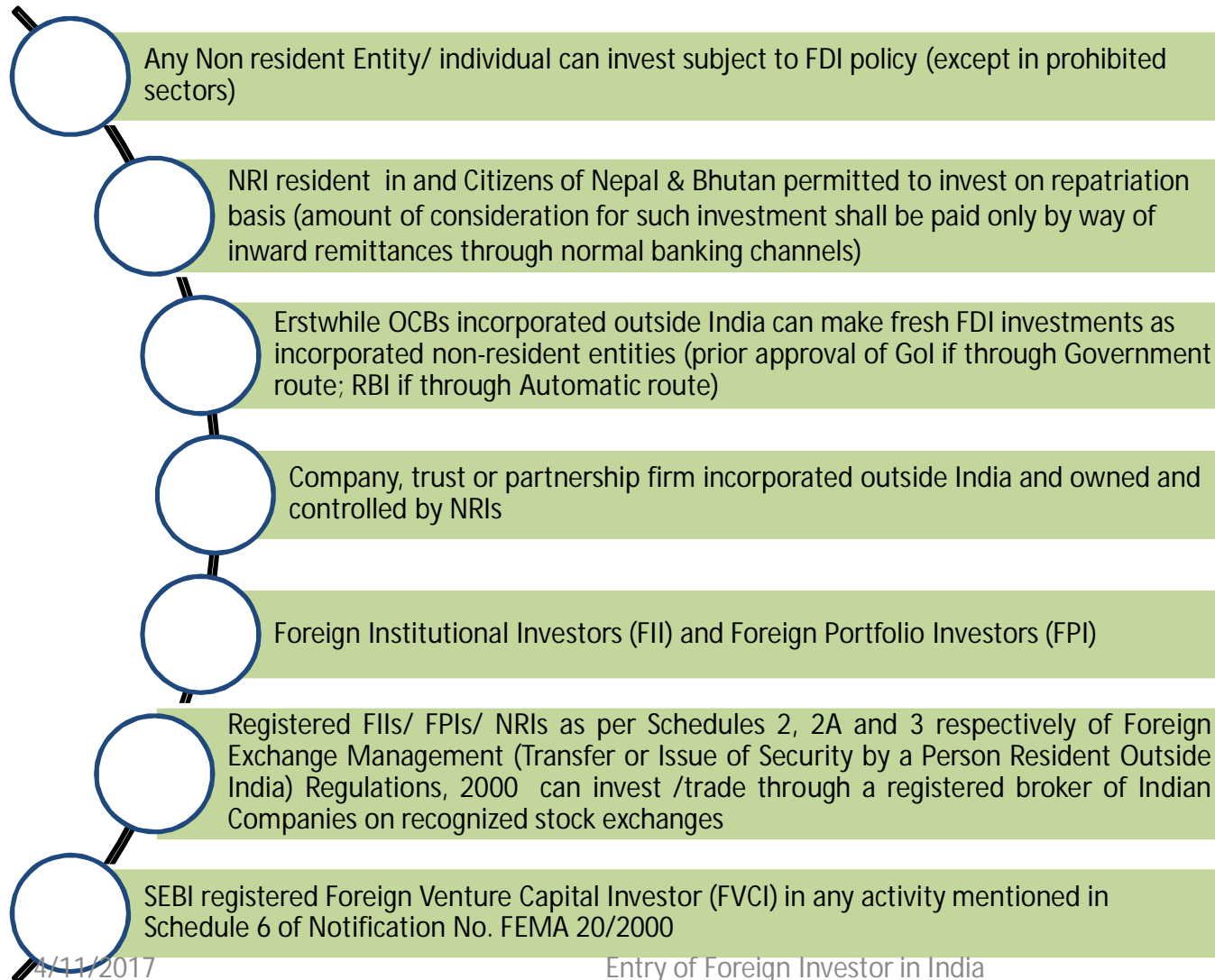
Foreign Direct Investment (FDI) in India

Application for FIPB Approval

- 1 • Online registration at: <http://fipb.gov.in/Public/ApplicantRegister.aspx>
- 2 • Submission of duly signed printout of the application with following prescribed documents to Facilitation Counter, North Block within 10 days of electronic submission
Illustrative list of documents required :
Summary of proposal on company (applicant) letterhead, Certificate of Incorporation (COI), Memorandum of Association(MoA), Board Resolution, Audited Financial Statement and Income Tax Return of Last Financial Year, Article of Association, LLP Draft; LLP Agreement, Passport Copy/ Identification Proof etc. (list at http://fipb.gov.in/FIPB_FAQ.aspx)
- 3 As soon as the physical copy of proposal and documents are received, user will receive email/sms alerts and proposal will be forwarded to FIPB for further processing. During the processing stage user will get email/sms alert at specific stages .
- 4 Application discussed and decision taken in FIPB meeting
- 5 Decision communicated to applicant via Press Release or Approval/ rejection Letters

Foreign Direct Investment (FDI) in India

Eligible Investors



- Citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under Government route
- Citizen of Pakistan or entity incorporated in Pakistan can invest only under Government route in sector/ activities other than defense, space & atomic energy and prohibited sector/ activities
- FII and FPIs may invest in capital of Indian companies under the Portfolio Investment Scheme which limits individual holding to below 10% and aggregate limit of FII/FPI investment to 24% (this may be increased to the sectoral cap through resolution of Board of Directors followed by a Special Resolution)

Foreign Direct Investment (FDI) in India

Eligible Investee Entities

Indian Companies can issue capital against FDI

NRI/PIO resident outside India can invest in Partnership Firm/ Proprietary Concern

Non Residents (other than NRI/PIO) can invest in Partnership Firm/ Proprietary Concern

Non Repatriation Basis

- Amount invested authorized dealer/ authorized banks
- Firm/ proprietary concern not engaged in agricultural/plantation/real estate business/ print media sector
- Amount invested not eligible for repatriation outside India
- Investment by NRI/PIO/OCI on non repatriable basis to be treated as domestic investment

Repatriation Basis

- Prior permission of RBI – application to be decided in consultation with the GoI

- Make an application and seek prior approval of RBI for making investment in capital of a firm or proprietorship concern or any association of persons in India
- NRI/PIO not allowed to invest in firm/ proprietorship concern not engaged in agricultural /plantation or real estate business or print media sector

Foreign Direct Investment (FDI) in India

Eligible Investee Entities

Trusts

- FDI not permitted in trusts other than VCF registered and regulated by SEBI and 'Investment Vehicle'

Limited Liability Partnerships (LLPs)

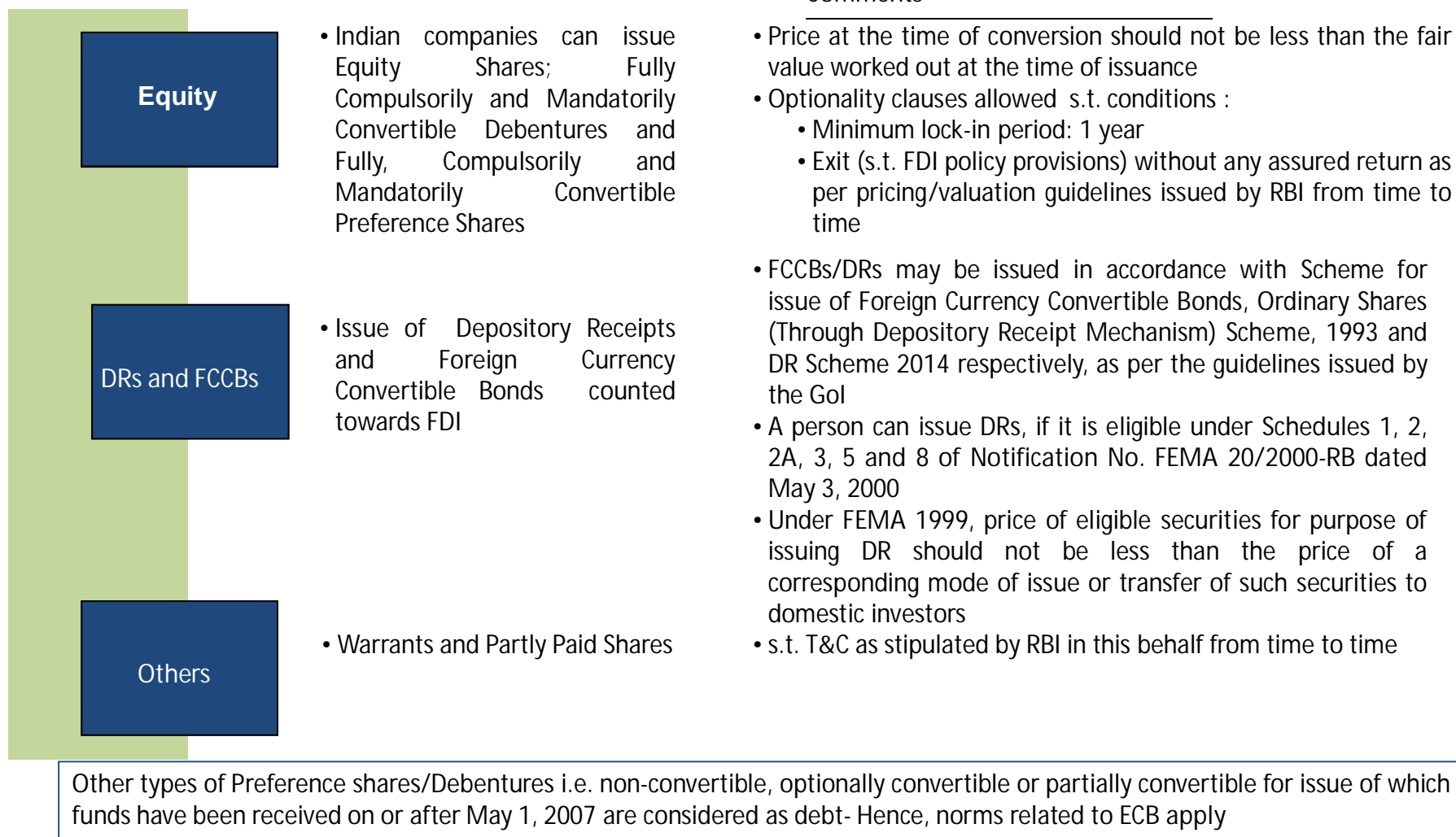
- FDI permitted under automatic route in LLPs in sectors where 100% FDI allowed through automatic route and there are no FDI linked performance conditions
- FDI in LLP s.t. compliance of conditions of the LLP act

Investment Vehicle

- Investment vehicles registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose (incl. REITs, Invites, AIFs etc.) permitted to receive foreign investment from person resident outside India including an Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI).

Foreign Direct Investment (FDI) in India

Types of Instruments for FDI



Foreign Direct Investment (FDI) in India

Sectoral Caps (%) and Entry Routes

Sector/ Activity	% allowed and approval route	Notes
Agriculture & Animal Husbandry	100% automatic	<ul style="list-style-type: none"> • Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions • Development and Production of seeds and planting material • Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture • Services related to agro and allied sectors Besides the above, FDI not allowed in any other agricultural sector/ activity
Plantation	100% automatic	<ul style="list-style-type: none"> • Tea sector including tea plantations • Coffee plantations • Rubber plantations • Cardamom plantations • Palm oil tree plantations • Olive oil tree plantations Besides the above, FDI not allowed in any other plantation sector/ activity
Mining	100% automatic	*Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities – 100%, Government Route

For detailed clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from June 07, 2016 read with Press Note 5, 6 of 2016

Foreign Direct Investment (FDI) in India

Sectoral Caps (%) and Entry Routes

Sector/ Activity	% allowed and approval route	Notes
Petroleum and Natural Gas	100% automatic	*Petroleum refining by the PSU without any disinvestment or dilution of domestic equity in existing PSUs – 49%, Automatic
Trading, including through e-commerce, of food products manufactured and/or produced in India	100% Govt. approval	100% FDI under the government route is allowed for trading, including through e-commerce, in respect of food products manufactured and/or produced in India.
Broadcasting Carriage Services	100% automatic	Teleports(setting up of up-linking HUBs/Teleports), DTH, Cable Networks, Mobile TV, Headend-in-the Sky Broadcasting Service
Broadcasting Content Services	49% Govt. approval	Terrestrial Broadcasting FM Up-linking of 'News & Current Affairs' TV Channels *Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels- 100%, Automatic
Defence	49 % automatic Could go up to 100% s.t. certain conditions	Wherever it is likely to result in access to modern technology or for other reasons to be recorded

For detailed clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from June 07, 2016 read with Press Note 5, 6 of 2016

Foreign Direct Investment (FDI) in India

Sectoral Caps (%) and Entry Routes

Sector/ Activity	% allowed and approval route	Notes
Print Media- Publishing of newspaper and periodicals; Indian editions of foreign magazines dealing with news and current affairs	26% Govt. approval	subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.
Print Media- Scientific/ Technical Magazines, Specialty Journals; Facsimile editions of foreign newspapers	100% Govt. approval	
Civil Aviation - Greenfields/ Brownfields	100% automatic	
Air Transport Services- Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline; Regional Air Transport Service	49% automatic Could go up to 100% via Govt. approval	Foreign Airlines allowed to invest in capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital Automatic up to 100% for NRIs

For detailed clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from June 07, 2016 read with Press Note 5, 6 of 2016

Foreign Direct Investment (FDI) in India

Sectoral Caps (%) and Entry Routes

Sector/ Activity	% allowed and approval route	Notes
Air Transport Services- Non Scheduled Air Transport Service/ Helicopters services/ seaplane services requiring DGCA approval	100% automatic	
Other Services under Civil Aviation Sector	100% automatic	
Helicopter services/seaplane services requiring DGCA approval	100% automatic	
Construction Development: development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships	100% automatic	FDI not permitted in entity engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs)
Industrial parks- new and existing	100% automatic	
Satellites – Establishment and Operations	100% Govt. approval	
Private Security Agencies	49% automatic Can go up to 74% under Govt. approval	

For detailed clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from June 07, 2016 read with Press Note 5, 6 of 2016

Foreign Direct Investment (FDI) in India

Sectoral Caps (%) and Entry Routes

Sector/ Activity	% allowed and approval route	Notes
Telecom Services(including Telecom Infrastructure Providers Category-I)	49% automatic Could go up to 100% via Govt. approval	All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.
Trading (Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100% automatic	
E-Commerce Activities	100% automatic	<ul style="list-style-type: none"> 100% FDI under automatic route is permitted in marketplace model of e-commerce FDI is not permitted in inventory based model of e-commerce
Single Brand Product Retail Trading	49% automatic Can go up to 100 % under Govt. approval	In terms of Press Note 5 of 2016 Local sourcing norms will not be applicable upto 3 years from the commencement of business of products having "state-of-art and cutting edge technology" where local sourcing is not possible.
Multi Brand Retail Trading	51% Govt.	In specified states

For detailed clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from June 07, 2016 read with Press Note 5, 6 of 2016

Foreign Direct Investment (FDI) in India

Sectoral Caps (%) and Entry Routes

Sector/ Activity	% allowed and approval route	Notes
Duty Free Shops	100% automatic	<ul style="list-style-type: none"> Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country
Railway Infrastructure	100% automatic	<ul style="list-style-type: none"> Proposals involving FDI beyond 49% in sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis
Credit Information Companies	100% automatic	
Infrastructure Companies in Securities Market	49% automatic	
Insurance	49% automatic	
Pension Sector	49% automatic	
Power Exchanges	49% automatic	

For detailed clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from June 07, 2016 read with Press Note 5, 6 of 2016

Foreign Direct Investment (FDI) in India

Sectoral Caps (%) and Entry Routes

Sector/ Activity	% allowed and approval route	Notes
White Label ATM Operations	100% automatic	
Other Financial Services (* earlier NBFCs as per consolidated FDI policy 2016)	100% automatic	<ul style="list-style-type: none"> Via automatic route provided such services are regulated by any financial sector regulators (RBI, SEBI, PFRDA etc.) / Government Agencies' Up to 100% Via approval route if not regulated by any regulators / Government agency- S.T. conditions such as min. capitalization requirement as decided by the govt. Any activity specifically regulated by an act- applicable foreign investment limits restricted as per those specified in the act
Pharmaceuticals - Greenfields	100% automatic	
Pharmaceuticals - Brownfields	74% automatic Can go up to 100% via govt. approval	
Asset Reconstruction Companies	100% automatic	
Banking - Private Sector	49% automatic Can go up to 74% under Govt. approval	<ul style="list-style-type: none"> Except in regard to a wholly-owned subsidiary / branch office of a foreign bank
Banking - Public Sector	20% Govt. approval	

For detailed clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from June 07, 2016 read with Press Note 5, 6 of 2016

Foreign Direct Investment (FDI) in India

Reporting Requirements

Inflow

- Report the details of amount of consideration to the Regional RBI office within 30 days of receipt in the [Form ARF](#) through an AD Category I bank with the following documents
- Foreign Inward Remittance Certificate (FIRC) evidencing receipt and KYC report of the non resident investor from overseas bank remitting the amount
- Report acknowledged by the regional Office which will allot lot a UIN for amount reported

Issue of Shares

- File [Form FC-GPR](#) not later than 30 days from date of issue of shares
- Signed by MD, Director, Secretary of the company (CS) and submitted to AD of the bank along with following documents:
- Certificate from CS for compliance ; Valuation Certificate from SEBI registered Merchant Banker or CA

Transfer of Shares

- Submit [Form FC-TRS](#) to AD Category I bank within 60 days from date of receipt of amount of consideration
- Onus of submission on transferor/ transferee resident in India; and on investee company in case Non Resident investor (including NRI) acquires stock on stock exchange

Non-Cash

- Issue of shares against conversion of ECB
- Full conversion of ECB into equity- Form FC-GPR to RBI regional office and [Form ECB-2](#) to Department of Statistics and Information Management (DSIM), RBI within 7 working days from close of corresponding month
 - Partial conversion of ECB- Form FC-GPR to RBI regional office and Form ECB-2 with "ECB partially converted to equity" indicated on top of form. In subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM

FCCB/ DR issues

- Domestic custodian shall report issue/ transfer of sponsored/ unsponsored DR as per DR Scheme 2014 in [Form DRR](#) within 30 days of close of issue/ program

Foreign Direct Investment (FDI) in India

Reporting Requirements

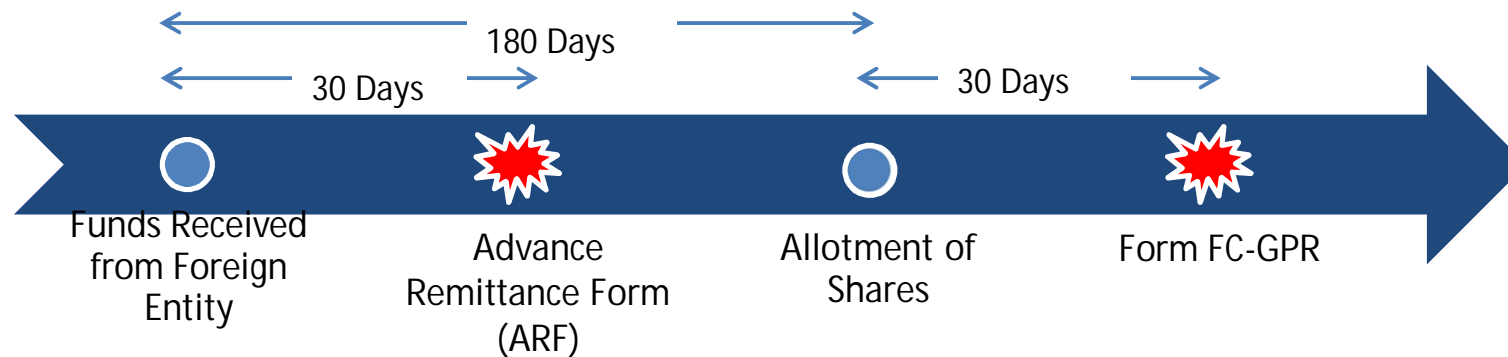


Illustration: Documents for ARF

- Certificate from the bank evidencing the receipt of the remittance.
- KYC report on the non-resident investor from the overseas bank remitting the amount

Illustration: Documents for Form FC-GPR

- Unique Identification Number from RBI
- KYC report for the beneficiary
- CS certificate
- Certificate from SEBI registered Merchant Banker / Chartered Accountant
- Disclaimer Certificate
- Statutory Auditor Certificate
- Board resolution
- Copy of FIPB approval (if required)
- Details of Transfer of shares if any
- No objection certificate from the remitter etc.

Issue and Transfer of Shares

Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No. FEMA20/2000-RB dated May 3, 2000)

Issue of Shares

- Capital instruments should be issued within 180 days from day of receipt of inward remittance; else refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to NRE/FCNR (B) account
- Issue price of shares
 - Listed on recognized stock exchange in India- not less than price worked out in accordance with SEBI guidelines.
 - Not listed on any stock exchange in India- not less than fair valuation done by SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on an arm's length basis. However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, as applicable, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.
 - Preferential allotment- as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by RBI

Issue and Transfer of Shares

Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No. FEMA20/2000-RB dated May 3, 2000)

Transfer of Shares

- General permission granted to non-residents/ NRIs for acquisition of shares by way of transfer in the following
 - 1) Transfer of shares in the investee company from one non-resident to another non-resident in sectors which are under automatic route. Government approval required for transfer of stake from one non-resident to another non-resident in sectors which are under Government approval route
 - 2) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI
 - 3) A person resident outside India can transfer any security to a person resident in India by way of gift
 - 4) A person resident outside India can sell shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered stock broker or a registered merchant banker
 - 5) A person resident in India can transfer by way of sale, shares/ convertible debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the guidelines given in para 5.2 and Section 1 of Annexure 3 of Consolidated FDI Policy, effective from June 07 2016

Issue and Transfer of Shares

Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No. FEMA20/2000-RB dated May 3, 2000)

Transfer of Shares

- General permission granted to non-residents/ NRIs for acquisition of shares by way of transfer s.t. the following -(Cont.):
 6. Transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in para 5.2 and Section 1 of Annexure 3 of Consolidated FDI Policy, effective from June 07 2016
 7. The above mentioned situations also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company

Issue and Transfer of Shares

Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No. FEMA20/2000-RB dated May 3, 2000)

Transfer of Capital Instruments

Prior approval of RBI required in the following cases

1. Transfer of capital instruments from resident to non-residents by way of sale where:
 - Transfer is at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time and the transaction does not fall under the exception given in para 5.2. of Annexure 3 of Consolidated FDI Policy, effective from June 07 2016
 - Transfer of capital instruments by the non-resident acquirer involving deferment of payment of the amount of consideration. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category-I bank for necessary due diligence, within 60 days from the date of receipt of the full and final amount of consideration
2. Transfer of any capital instrument, by way of gift by a person resident in India to a person resident outside India. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the documents mentioned in Section 2 of Annexure 3 of Consolidated FDI Policy, effective from June 07 2016 should be enclosed.

Issue and Transfer of Shares

Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No. FEMA20/2000-RB dated May 3, 2000)

Transfer of Capital Instruments

Prior approval of RBI not required in the following cases: -

1. Transfer of Shares from a Non-Resident to Resident under the FDI scheme where pricing guidelines under FEMA are not met, provided that
 - Original and resultant FDI is in compliance with the FDI policy and FEMA regulations
 - Pricing for transaction is compliant with SEBI regulations and guidelines
 - Chartered Accountants Certificate that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the Form FC-TRS to be filed with the AD bank
2. Transfer of shares from Resident to Non-Resident:
 - Transfer of shares requires the prior approval of the Government conveyed through FIPB as per the Consolidated FDI Policy, effective from June 07 2016 and the approval has been obtained and transfer of shares adhered with the pricing guidelines and document requirements specified by RBI
 - Transfer of shares attract SEBI (Substantial Acquisition of Shares and Takeovers) Regulations subject to the adherence with the pricing guidelines and documentation requirements as specified by RBI
 - Transfer of shares does not meet the pricing guidelines under the FEMA, 1999 provided the resultant FDI is in compliance with the FDI policy and FEMA regulations; pricing for transaction is compliant with SEBI regulations and guidelines (Chartered Accountants Certificate that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the Form FC-TRS to be filed with the AD bank)

Foreign Exchange Management Act

Conversion of ECB/Lump sum fee/Royalty etc. into Equity

Conversion to Equity

- Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to the following conditions and reporting requirements:
 - The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;
 - The foreign equity after conversion of ECB into equity is within the sectoral cap, if any
 - Pricing of shares is as per the provision of para 2 Annexure 3 of Consolidated FDI Policy, 2016
 - Compliance with the requirements prescribed under any other statute and regulation in force; and
 - The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.
- General permission is also available for issue of shares/preference shares against lump sum technical know-how fee, royalty due for payment, subject to entry route, sectoral cap and pricing guidelines and compliance with applicable tax laws

Repatriation

Dividend

- Freely repatriable without any restrictions
- Net after tax deduction at source (TDS) or dividend distribution tax (DDT) as applicable
- Governed by Foreign Exchange Management (Current Account Transactions) Rules, 2000

Interest

- Interest on fully, mandatorily & compulsorily convertible debentures freely repatriable without any restrictions
- Net of applicable taxes
- Governed by Foreign Exchange Management (Current Account Transactions) Rules, 2000

Remittance

Sale proceeds of
shares &
securities

- Remittance of asset (i.e. sale proceeds of share and securities and their remittance) is governed by the Foreign Exchange Management (Remittance of Assets) Regulations, 2016 under FEMA
- AD Category-1 can allow remittance of sale proceeds (net of applicable taxes) of a security to the seller of shares outside India provided
 - Security has been held on repatriation basis
 - Sale-of security has been made in accordance with the prescribed guidelines
 - NOC/ Tax clearance certificate from the Income Tax department has been produced

Winding up/
liquidation of
companies

- AD Category 1 banks allowed to remit winding up proceeds of companies in India which are under liquidation s.t. payment of applicable taxes an any order issued by the court winding up the company or official liquidator
- Applicant needs to submit the following to the AD Category 1 bank for remittance :
 - NOC/ Tax clearance certificate from the Income Tax department
 - Auditor's certificate confirming that
 - All liabilities in India have been either fully paid or adequately provided for
 - Winding up is in accordance with the provisions of the Companies Act as applicable
 - In case of winding up otherwise than by a court- No legal proceeding pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance

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Thank You