Background

The Government of India took the task of transforming India into a manufacturing power through the ‘Make in India’ campaign launched on September 25, 2014. A national program designed to facilitate investment, foster innovation, enhance skill development, protect intellectual property and build best-in-class manufacturing infrastructure. While several initiatives are being undertaken to provide adequate physical and social infrastructure such as industrial corridors, cluster, zones, etc. it is encouraging to note that the Government of India (GoI) has embarked on ambitious reforms focused on improving India’s performance in the World Bank’s Doing Business rankings. India is ranked 77 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings.

Investment climate in India has also improved considerably since the opening up of the economy in 1991. With an aim to attract and promote FDI, GoI has put in place a policy framework on FDI, which is transparent, predictable and easily comprehensible.

This toolkit covers information on Setting up Business in India such as types of permitted business establishments, commencing business in India by a foreign investor, foreign company incorporation process – LO/ BO/ PO, business registration process and Central & State level compliances.

Moreover, it covers the FDI related information across sectors such as how much FDI is permitted under different sectors via automatic/ Government route. The toolkit further covers the institutional and regulatory framework such as routing FDI in India, concerned administrative Ministries/ Departments, applicable regulatory framework for business establishments, governing bodies for business establishments and winding-up business.
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   • Pre-commissioning and post commissioning of operations

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## Abbreviations

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<td>AD</td>
<td>Authorized Dealer</td>
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<tr>
<td>AF</td>
<td>Angel Fund</td>
</tr>
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<td>ADR</td>
<td>American Depository Receipts</td>
</tr>
<tr>
<td>AIF</td>
<td>Alternative Investment Fund</td>
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<tr>
<td>Act or the Act</td>
<td>Companies Act, 2013</td>
</tr>
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<td>AD</td>
<td>Authorized Dealer</td>
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<td>AoA</td>
<td>Articles of Association</td>
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<td>BO</td>
<td>Branch Office</td>
</tr>
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<td>CA</td>
<td>Chartered Accountant</td>
</tr>
<tr>
<td>CCEA</td>
<td>Cabinet Committee on Economic Affairs</td>
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<tr>
<td>CCS</td>
<td>Cabinet Committee on Security</td>
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<td>CoI</td>
<td>Certificate of Incorporation</td>
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<td>CRC</td>
<td>Central Registration Center</td>
</tr>
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<td>CS</td>
<td>Company Secretary</td>
</tr>
<tr>
<td>DDT</td>
<td>Dividend Distribution Tax</td>
</tr>
<tr>
<td>DEA</td>
<td>Department of Economic Affairs</td>
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<tr>
<td>DPIIT</td>
<td>Department for Promotion of Industry and Internal Trade</td>
</tr>
<tr>
<td>DR</td>
<td>Depository Receipt</td>
</tr>
<tr>
<td>DSIM</td>
<td>Department of Statistics and Information Management</td>
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<tr>
<td>DGIT</td>
<td>Director General of Income Tax</td>
</tr>
<tr>
<td>DGP</td>
<td>Director General of Police</td>
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<tr>
<td>DIN</td>
<td>Director Identification Number</td>
</tr>
<tr>
<td>DSC</td>
<td>Digital Signature Certificate</td>
</tr>
<tr>
<td>ECB</td>
<td>External Commercial Borrowing</td>
</tr>
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<td>FCCB</td>
<td>Foreign Currency Convertible Bond</td>
</tr>
<tr>
<td>FCNR (B)</td>
<td>Foreign Currency Non-Resident Account</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FEMA</td>
<td>Foreign Exchange Management Act</td>
</tr>
<tr>
<td>FPI</td>
<td>Foreign Portfolio Investor</td>
</tr>
<tr>
<td>FIFP</td>
<td>Foreign Investment Facilitation Portal</td>
</tr>
<tr>
<td>FVICI</td>
<td>Foreign Venture Capital Investor</td>
</tr>
<tr>
<td>FII</td>
<td>Foreign Institutional Investor</td>
</tr>
<tr>
<td>GDR</td>
<td>Global Depository Receipts</td>
</tr>
<tr>
<td>GoI</td>
<td>Government of India</td>
</tr>
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<td>GST</td>
<td>Goods and Service Tax</td>
</tr>
<tr>
<td>InvITs</td>
<td>Infrastructure Investment Trusts</td>
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<td>JV</td>
<td>Joint Venture</td>
</tr>
<tr>
<td>KYC</td>
<td>Know Your Customer</td>
</tr>
<tr>
<td>LLP</td>
<td>Limited Liability Partnership</td>
</tr>
<tr>
<td>LO</td>
<td>Liaison Office</td>
</tr>
<tr>
<td>Max</td>
<td>Maximum</td>
</tr>
<tr>
<td>PROI</td>
<td>Person Resident Outside India</td>
</tr>
</tbody>
</table>
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min</td>
<td>Minimum</td>
</tr>
<tr>
<td>MoA</td>
<td>Memorandum of Association</td>
</tr>
<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>MCA</td>
<td>Ministry of Corporate Affairs</td>
</tr>
<tr>
<td>MSME</td>
<td>Micro, Small and Medium Enterprise</td>
</tr>
<tr>
<td>NBFC</td>
<td>Non-Banking Financial Companies</td>
</tr>
<tr>
<td>NFRA</td>
<td>National Financial Reporting Authority</td>
</tr>
<tr>
<td>NGO</td>
<td>Non Government Organization</td>
</tr>
<tr>
<td>NOC</td>
<td>No Objection Certificate</td>
</tr>
<tr>
<td>NPO</td>
<td>Non-profit organization</td>
</tr>
<tr>
<td>NRE</td>
<td>Non-Resident Entity</td>
</tr>
<tr>
<td>NRE Account</td>
<td>Non-Resident (External) Rupee Account</td>
</tr>
<tr>
<td>NRI</td>
<td>Non-Resident Indian</td>
</tr>
<tr>
<td>NRO Account</td>
<td>Non-Resident Ordinary Rupee Account</td>
</tr>
<tr>
<td>PAN</td>
<td>Permanent Account Number</td>
</tr>
<tr>
<td>PIB</td>
<td>Press Information Bureau</td>
</tr>
<tr>
<td>PIO</td>
<td>Person of Indian Origin</td>
</tr>
<tr>
<td>PO</td>
<td>Project Office</td>
</tr>
<tr>
<td>PSU</td>
<td>Public Sector Undertaking</td>
</tr>
<tr>
<td>PGBP</td>
<td>Profit and Gains on Business and Professions</td>
</tr>
<tr>
<td>RBI</td>
<td>Reserve Bank of India</td>
</tr>
<tr>
<td>REIT</td>
<td>Real Estate Investment Trust</td>
</tr>
<tr>
<td>RoC</td>
<td>Registrar of Companies</td>
</tr>
<tr>
<td>SEBI</td>
<td>Securities and Exchange Board of India</td>
</tr>
<tr>
<td>SEZ</td>
<td>Special Economic Zone</td>
</tr>
<tr>
<td>SME</td>
<td>Small and Medium-sized Enterprise</td>
</tr>
<tr>
<td>SMS</td>
<td>Short Message Service</td>
</tr>
<tr>
<td>TAN</td>
<td>Tax deduction account number</td>
</tr>
<tr>
<td>TDR</td>
<td>Transferable Development Rights</td>
</tr>
<tr>
<td>TDS</td>
<td>Tax Deducted at Source</td>
</tr>
<tr>
<td>UTI</td>
<td>Unit Trust of India</td>
</tr>
<tr>
<td>VC</td>
<td>Venture Capital</td>
</tr>
<tr>
<td>WOS</td>
<td>Wholly-owned Subsidiary</td>
</tr>
<tr>
<td>IBC</td>
<td>Insolvency and Bankruptcy Code</td>
</tr>
</tbody>
</table>
Setting up Business in India

Types of permitted business establishments
Commencing business in India by foreign Investor
Foreign company incorporation process- LO/BO/PO
Business Registration process
Central level process/compliances
State level process/compliances
### Setting up Business in India

#### Types of permitted business establishments

<table>
<thead>
<tr>
<th>One Person Company</th>
<th>Private Ltd Company</th>
<th>Public Ltd Company</th>
<th>Sole Proprietorship</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Companies Act 2013 enables formulation of new type of entity i.e. One Person Company (OPC). An OPC means a company with only 1 person as a member</td>
<td>A private company is a company which has the following characteristics:</td>
<td>A public company is a company which has the following characteristics:</td>
<td>• Sole proprietorship is a form of business in which one person owns all the assets of the business, in contrast to partnership or corporations</td>
</tr>
<tr>
<td>• Shareholder can make only 1 nominee, who shall become a shareholder in case of death / incapacity of original stakeholder</td>
<td>• Shareholders right to transfer shares is restricted</td>
<td>• Shareholders right to transfer shares is not restricted</td>
<td>• No legal formalities are required to create a sole proprietorship other than an appropriate licensing to conduct a business and registration of business name if it differs from that sole proprietorship</td>
</tr>
<tr>
<td>• Only a natural person who is Indian Citizen &amp;ROI shall be eligible to act as member &amp; nominee in OPC</td>
<td>• Minimum number of 2 members in company</td>
<td>• Minimum 7 shareholders</td>
<td>• The owner reports income/loss from this business along with personal income tax return</td>
</tr>
<tr>
<td>• A person can be nominee in only 1 OPC</td>
<td>• Number of shareholders is limited to 200</td>
<td>• Publishing a prospectus become mandatory in case of public issue</td>
<td></td>
</tr>
<tr>
<td>• 1 Resident director mandatory (Min stay of 182 days)</td>
<td>• An invitation to the public to subscribe to any shares or debentures or any type of security is prohibited</td>
<td>• A company which is a subsidiary of a public company, shall be deemed to be a public company even where such subsidiary continues to be private company in AoA</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 1 Resident director mandatory</td>
<td>• 1 Resident director mandatory</td>
<td></td>
</tr>
</tbody>
</table>

Note - Resident Director : sec 149 (3) – Every company should have at least one director who has stayed in India for a total period of not less than 182 days in the financial year (wef. 7 May 2018)
Setting up Business in India
Types of permitted business establishments

<table>
<thead>
<tr>
<th>Partnership firm</th>
<th>Limited Liability Partnership</th>
<th>Foreign Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Partnership firms are created by drafting a partnership deed among the partners. The partnership deed is registered to make a firm</td>
<td>• LLP is an alternative corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm</td>
<td>• Incorporated outside but having a place of business in India (section 2(42))</td>
</tr>
<tr>
<td>• Partnership firms in India are governed by the Indian Partnership Act, 1932</td>
<td>• Introduced in India by way of Limited Liability Partnership Act, 2008. LLP is a separate legal entity</td>
<td>• Liaison office - To represent parent company in India</td>
</tr>
<tr>
<td>• Maximum no. of partners in a partnership firm can be 20</td>
<td>• Min 2 partners required</td>
<td>• Branch office - To undertake activities such as Export, Import of goods; research, consultancy etc.</td>
</tr>
<tr>
<td>• The Profit &amp; Loss are shared in manner as agreed in the partnership deed</td>
<td>• LLP shall have 2 designated partners who are individuals and at least one of them shall in be Resident Partner</td>
<td>• Project Office - Activities as per contract to execute project</td>
</tr>
<tr>
<td>• Min 2 partners required</td>
<td>• Individual/ Body corporate may be a partner in LLP</td>
<td>• As per company law, a resident having PAN to be appointed for receiving notices in India for foreign company</td>
</tr>
</tbody>
</table>

Note - As per the section 7 (1) resident DP means a person who has stayed in India for at least 182 days during the immediately preceding 1 year.
## Setting up business in India

### Comparative analysis of different business establishments in India

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Private</th>
<th>Public</th>
<th>OPC</th>
<th>LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min Members</td>
<td>2</td>
<td>7</td>
<td>1</td>
<td>2 partners</td>
</tr>
<tr>
<td>Max Members</td>
<td>200</td>
<td>Unlimited</td>
<td>1</td>
<td>No Limit</td>
</tr>
<tr>
<td>Min Directors</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>2 Designated Partners</td>
</tr>
<tr>
<td>Max Directors</td>
<td>15*</td>
<td>15*</td>
<td>15*</td>
<td>NA</td>
</tr>
<tr>
<td>Resident Director</td>
<td>1 Mandatory</td>
<td>1 Mandatory</td>
<td>1 Mandatory</td>
<td>1 Designated Partner</td>
</tr>
<tr>
<td>Transfer of ownership</td>
<td>Ownership can be transferred</td>
<td>Ownership can be transferred</td>
<td>Ownership can be transferred to nominee in the event of death of owner</td>
<td>Ownership can be transferred</td>
</tr>
<tr>
<td>Subscription of shares</td>
<td>Public subscription not allowed</td>
<td>Public subscription allowed</td>
<td>Public subscription not allowed</td>
<td>Public subscription not allowed</td>
</tr>
<tr>
<td>Issue of Prospectus</td>
<td>Not Mandatory</td>
<td>**Mandatory</td>
<td>Not Mandatory</td>
<td>Not Mandatory</td>
</tr>
<tr>
<td>Managerial Remuneration</td>
<td>No limit for managerial personnel</td>
<td>Shareholder approval is required, if remuneration payable is above limits</td>
<td>NA</td>
<td>Remuneration is based on LLP agreement</td>
</tr>
</tbody>
</table>

*Note: Resident Director : sec 149(3) – Every company should have at least one director who has stayed in India for a total period of not less than 182 days in the Financial Year.

*Company may appoint more than fifteen directors after passing a special resolution, further provided that such class or classes of companies as may be prescribed, shall have at least one woman director (Rule 3 of The Companies (Appointment and Qualification of directors) Rules, 2014)

** In case of public issue
## Setting up business in India

### Comparative analysis of different categories of company (contd.)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Private</th>
<th>Public</th>
<th>OPC</th>
<th>LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement of Business/Operations</td>
<td>Declaration to be filed prior to commencement</td>
<td>Declaration to be filed prior to commencement</td>
<td>Declaration to be filed prior to commencement</td>
<td>Immediately after obtaining certificate of incorporation</td>
</tr>
<tr>
<td>Legal Status</td>
<td>Pvt Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>Public Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>OPC is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>LLP is a separate legal entity registered under LLP Act, 2008. The Designated partners of LLP are liable for contraventions under the act</td>
</tr>
<tr>
<td>Annual Statutory Filings</td>
<td>Annual statement of accounts &amp; annual return with ROC</td>
<td>Annual statement of accounts &amp; annual return with ROC</td>
<td>Annual statement of accounts &amp; annual return with ROC</td>
<td>Annual statement of solvency &amp; annual return with ROC</td>
</tr>
<tr>
<td>Annual Filings &amp; Audit</td>
<td>IT return to be filed. Audit mandatory</td>
<td>IT return to be filed. Audit mandatory</td>
<td>IT return to be filed. Audit mandatory</td>
<td>IT return to be filed. Audit mandatory. Audit mandatory in case turnover exceeds INR 40 lakhs or contribution exceeds INR 25 lakhs</td>
</tr>
</tbody>
</table>
Foreign Investor can commence business in India as:

1. **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](https://rbi.org.in/Scripts/NotificationUser.aspx?id=10398&Mode=0)

2. **Indian Company**
   - **JV / Wholly Owned Subsidiary** as (i) Private Limited or (ii) Public Limited Company, s.t. [Companies Act, 2013](https://www.cpan.in/)
3. **Limited Liability Partnership**
   - FDI permitted under automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions

*For detailed definitions, clarifications/ exceptions, please refer to [Consolidated FDI Policy, effective from August 28, 2017, Amendment to FDI policy in Jan 2018](https://www.consortium-india.org/)

*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](https://rbi.org.in/Scripts/NotificationUser.aspx?id=10398&Mode=0). As per company law, a resident having PAN to be appointed for receiving notices in India for foreign company

***For detailed definitions, clarifications/ exceptions, please refer to [Consolidated FDI Policy, effective from August 28, 2017, Amendment to FDI policy in Jan 2018](https://www.consortium-india.org/)**
# Setting up business in India

## As a foreign company incorporation - LO/BO/PO

<table>
<thead>
<tr>
<th>Foreign Company</th>
<th>Branch Office (BO)</th>
<th>Liaison Office (LO)</th>
<th>Project Office (PO)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permitted activities</strong></td>
<td>BO can be set up by foreign companies. The permitted activities include export/import of goods; rendering professional or consultancy services; carrying out research work, in which the parent company is engaged; promoting technical or financial collaborations between Indian companies and parent or overseas group company; representing the parent company in India and acting as buying/selling agents in India; rendering services in information technology and development of software in India; rendering technical support to the products supplied by the parent/group companies and foreign airline/shipping company</td>
<td>LO can not undertake any commercial activity and acts as a channel of communication between the principal place of business or head office and entities in India. Its role 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. It cannot earn any income in India</td>
<td>PO can be set up to execute specific projects in India and cannot undertake or carry on any activity other than the activity relating and incidental to execution of the project</td>
</tr>
</tbody>
</table>

There is a general permission to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities subject to:

- BOs are functioning in those sectors where 100% FDI is permitted
- BOs comply with Chapter XXII of the Companies Act, 2013
- BOs function on a stand-alone basis
## Setting up business in India

As a foreign company incorporation - LO/BO/PO

<table>
<thead>
<tr>
<th>Foreign Company</th>
<th>Branch Office (BO)</th>
<th>Liaison Office (LO)</th>
<th>Project Office (PO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility</td>
<td>Profit making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 100,000 or its equivalent</td>
<td>Profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent.</td>
<td>NA</td>
</tr>
<tr>
<td>Validity</td>
<td>NA</td>
<td>Generally for 3 years *except in the case of NBFCs and those entities engaged in construction and development sectors, for whom the validity period is two years only</td>
<td>As per the tenure of the project</td>
</tr>
<tr>
<td>Remittance</td>
<td>Permitted to remit profits net of applicable taxes and on submission of requisite documents</td>
<td>NA</td>
<td>Intermittent remittances by companies pending winding up permitted s.t. satisfaction of AD Category 1 bank</td>
</tr>
</tbody>
</table>

**Note** - An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC) (Annex A) from its parent/group company, subject to the condition that the parent/group company satisfies the prescribed criteria for net worth and profit.
Setting up business in India

Foreign company incorporation process- LO/BO/PO

**Exception:** RBI approval required in following cases:
(i) applicant is a citizen of or is registered/incorporated in Pakistan;
(ii) applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
(iii) principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting (s.t. certain relaxations) and
(iv) applicant is a Non-Government Organization (NGO), a Non-Profit Organization, or a Body/ Agency/ Department of a foreign government.

1. Application (Form FNC) to a AD Category 1 bank Form FNC along with supporting documents

2. Post evaluation and before approval- bank forwards a copy of the Form FNC along with the details of the approval proposed to be granted by it to RBI for allotment of Unique Identification Number (UIN) to each BO/LO

**Exceptions:** Foreign banks and insurance companies do not require UIN from forex department RBI

3. After receipt of the UIN from the Reserve Bank, the AD Category-I bank issues the approval letter to the non-resident entity for establishing BO/LO in India

4. inform designated AD Category I bank as to the date on which the BO/LO/PO has been set up.- bank in turn shall inform RBI

**Note:** In case the BO/LO/PO for which approval has been granted is not opened within 6 months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of 6 months for setting up the office. Any further extension of time shall require the prior approval of RBI.
### Setting up business in India

#### Foreign company incorporation process- LO/BO/PO

5. Applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation, RBI, Central Office and IRDA, respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.

**Note:** There is a general permission to non-resident companies to establish POs in India, provided:

1. they have secured a contract from an Indian company to execute a project in India
2. project must have secured the necessary regulatory clearances;
3. Project is funded directly by inward remittance from abroad; or the project is funded by a bilateral or multilateral International Financing Agency, or a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project

6. March 31 – submit annual activity certificate (AAC) to AD Category 1 Bank

**Other Registrations**

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to **register with the State Police authorities**

- **Registration with RoC** if reqd. as per companies Act, 2013
- **BO/LO to obtain PAN from Income Tax authorities**

**NOTE: Branches of Foreign Banks**

Foreign banks do not require separate approval under FEMA, for opening branch office, however they require necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Regulation, Reserve Bank.
Foreign company after being registered with the RBI ought to get itself registered with the Ministry of Corporate Affairs (MCA), for it to be registered as an establishment of a foreign company in India

7. Necessary documents shall be filled with the Registrar of Companies (RoC) within 30 days of establishment

Note: As per Section 380 of Companies Act, following documents shall be filled:

- Certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- Full address of the registered or principal office of the company
- List of the directors and secretary of the company containing such particulars as prescribed under Rule 3.
- Name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company
- Full address of the office of the company in India which is deemed to be its principal place of business in India
- Particulars of opening and closing of a place of business in India on earlier occasion or occasions
- Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad.
- Other Documents as may be prescribed.

8. Rule 3(3) of the Companies (Registration of Foreign Companies) Rules, 2014 requires application in Form FC-1 to be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act and the rules and regulations thereunder or a declaration from the authorised representative of such Foreign Company that no such approval is required.

Note: For more information on Foreign companies regulations as per companies act, refer chapter XXII - http://www.mca.gov.in/MCASearch/search_table.html
(Sec 379 –sec 393)
### Setting up business in India

### Foreign company incorporation process- Setting up Foreign Bank branch in India

<table>
<thead>
<tr>
<th>Licensing of Licensing of New Banks in the Private Sector &amp; “On Tap” licensing for new banks in Private sector</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eligible Promoters:</strong></td>
</tr>
<tr>
<td>i. Individuals / professionals who are residents [as defined in FEMA Regulations, as amended from time to time] having 10 years of experience in banking and finance at a senior level.</td>
</tr>
<tr>
<td>ii. Entities / groups in the private sector that are ‘owned and controlled by residents’ [as defined in FEMA Regulations, as amended from time to time] and have a successful track record for at least 10 years, provided that if such entity / group has total assets of ` 50 billion or more, the non-financial business of the group does not account for 40 per cent or more in terms of total assets / in terms of gross income</td>
</tr>
<tr>
<td>iii. Existing non-banking financial companies (NBFCs), that are ‘controlled by residents’ [as defined in FEMA Regulations, as amended from time to time], and that have a successful track record for at least 10 years will be eligible to convert into a bank or promote a new bank</td>
</tr>
<tr>
<td><strong>Fit &amp; Proper criteria</strong>: Entities / groups should have a past record of sound credentials and integrity, be financially sound with a successful track record of 10 years. For this purpose, RBI may seek feedback from other regulators and enforcement and investigative agencies.</td>
</tr>
</tbody>
</table>

**NOHFC**: The NOFHC shall be wholly owned by the Promoter / Promoter Group. The initial minimum paid-up voting equity capital for a bank shall be `5 billion. The NOFHC shall initially hold a minimum of 40 per cent of the paid-up voting equity capital of the bank which shall be locked in for a period of five years. At least 50% of the Directors of the NOFHC should be independent directors.

**Foreign Shareholding in Bank**: The aggregate non-resident shareholding in the new bank shall not exceed 49% in first 5 years.


For more information on Guidelines for Licensing of New Banks in the Private Sector act, refer to RBI guideline [link](https://rbi.org.in/scripts/bs_pressreleasedisplay.aspx?prid=28191) & [link](https://rbidocs.rbi.org.in/rdocs/Content/PDFs/GOTL01082016BB321081EF5A45A489080187CA4CA690.PDF).
Setting up business in India

Foreign company incorporation process- Setting up Foreign Bank branch in India

Licensing of New Banks in the Private Sector & “On Tap” licensing for new banks in Private sector

Application process
- Applications shall be submitted in the prescribed form (Form III) as per Rule 11 of the Banking Regulation (Companies) Rules, 1949. The applicants should furnish the requisite information as per the Annex II.
- Applications for setting up banks in the private shall be made to Chief General Manager, Department of Banking Regulation, Reserve Bank of India, Central Office, 13th Floor, Central Office Building, Shahid Bhagat Singh Road, Mumbai-400001
- The licensing window will be open on-tap. As such, applications in the prescribed form along with requisite information could be submitted to RBI at any point of time, as desired by the applicant

Procedure by RBI
- Applications will be screened by RBI to assess the eligibility of the applicants vis-à-vis the criteria laid down in the guidelines
- RBI may apply additional criteria to determine the suitability of applications, in addition to the ‘fit and proper’ criteria prescribed at paragraph 2 (B).
- The applications will be referred to a Standing External Advisory Committee (SEAC) to be set up by RBI. The SEAC will set up its own procedures for screening the applications. SEAC has right to call for more information as well as have discussions with any applicant/s and seek clarification and submit its recommendations to RBI for consideration
- The Internal Screening Committee (ISC), consisting of the Governor and the Deputy Governors will examine all the applications and then submit its recommendations to the Committee of the Central Board (CCB) of RBI for the final decision to issue in-principle approval.
- The validity of the in-principle approval issued by RBI will be 18 months from the date of granting in-principle approval and would thereafter lapse automatically. Therefore, the bank will have to obtain the licence within a period of 18 months of granting the in-principle approval.

Note: The setting up of a wholly owned subsidiary by a foreign bank in India would require a specific approval from the RBI and the home country regulator of the bank. Accordingly, the foreign bank would have to make an application with their home country regulator and subsequently with RBI meeting the conditions prescribed by RBI for issuance of a banking license.
Setting up business in India

Incorporation of Company: Overview

1. **RUN**
2. **DSC**
3. Filing for Incorporation through form Spice
4. **eMOA**
5. **eAOA**
6. **SPICE** upload and fee payment is confirmed by MCA
7. Incorporation (CRC to verify)
8. Obtain CoI
9. Declaration of commencement of business

**Check availability of name** / registered trademark for incorporation of company

Reserve name of the proposed company through online service **RUN** on MCA website. Name can also be applied through **SPICE**.

Obtain Digital Signature Certificate (**DSC**) for at least one proposed Director of the Company. **DIN** for proposed Directors can only be applied for through form **SPICE**.

**Form INC 32 (SPICE)** to be duly filled and submitted to RoC for incorporation of company. PAN and TAN shall be auto generated based on details filed in the **SPICE** form.

Filing of electronic Memorandum of Association (**eMOA - INC 33**) & Articles of Association (**eAOA - INC 34**) in **SPICE**. For foreign subscribers physical MoA and AoA to be executed and attached.

**SPICE** upload & fee payment is confirmed by MCA

Central Registration Centre (CRC) verifies/scrutinises all the documents and forms and may suggest few changes to be made in the attachments or form itself. One needs to make necessary changes accordingly.

Obtain certificate of incorporation (Col). CIN, PAN & TAN numbers are allotted at the time of registration.

A company having share capital is required to file a declaration of receipt of subscription amount and verification of registered office within 180 days of incorporation and prior to commencement of business.

**Note**: Notarization & Apostilling / legalization of documents mandatory in case of foreign subscribers / Directors. Some registrations would be applicable based on state in which company is incorporating and nature of business entity.
Setting up business in India

Incorporation as an LLP: Overview

Incorporation of Limited Liability Partnership (LLP) and Foreign LLP (FLLP)

1. **DSC**
   - Obtain class 2 or class 3 Digital Signature Certificate (DSC) for at-least 1 designated partners of LLP

2. **Availability check for LLP name**
   - For a quick search on already existing names of LLP, a facility is provided by MCA to check list of similar/closely resembling names of existing companies/LLPs. Trademark is also to be checked.

3. **Reservation and approval of name for LLP through RUN – LLP**
   - Filing the proposed name of LLP for approval from the Registrar of Companies through RUN – LLP and can also be done through FiLLiP.

4. **Filing for incorporation of LLP/ FLLP/ DPIN and obtain Certificate of Incorporation**
   - FiLLiP is to be duly filled and submitted to RoC for incorporation of LLP. For Foreign LLP (FLLP) Form 27 is to be filed in and digitally signed by FLLP (DPIN must be obtained through FiLLiP.

5. **LLP Agreement**
   - Form 3 (Information with regard to LLP agreement and changes, if any made therein) to be filled within 30 days of incorporation of LLP.

**Note**: Some registrations would be applicable based on state in which company is incorporating and nature of business entity.
Setting up business in India

Central level process/compliances

**Obtain Director Identification Number (DIN)**

DIN is a unique identification number issued by the Ministry of Corporate Affairs (MCA), for a designated partner of an existing LLP or a person intending to become a director of a company.

DIN can be obtained by filing application Form DIR-3 online.

All designated partners of the proposed LLP shall obtain “Designated Partner Identification Number (DPIN) / Director Identification Number (DIN)” through FiLiP & proposed company through SPiCe (if DIN is not available).

*Note* – Application for DIN (for a person proposed to be appointed as a Director of existing company or Designated Partner of existing LLP) to be filed in Form DIR-3. Change in particulars to be intimated in Form DIR-6 within 30 days.

**Digital Signature Certificate (DSC) for proposed Directors**

DSC can be obtained by approaching Certifying Authorities (CAs) with original supporting documents and self-attested copies.

A licensed Certifying Authority (CA) issues the digital signature. Certifying Authority (CA) means a person who has been granted a license to issue a digital signature certificate under Section 24 of the Indian IT-Act 2000.

**Approval for proposed Company/ LLP Name**

For [LLP name search facility](https://mca.gov.in) (of existing companies / LLPs) is available on MCA portal. The system will provide the list of similar/closely resembling names of existing companies/LLPs based on the search criteria filled up. For registration of name RUN LLP to be filed.

The applicant must file e form [RUN](https://mca.gov.in) with the Central Registration Center (CRC), India for approval of name.

The name reserved for company shall be available for adoption of name for a period of 20 days. In case of laps of the said period, fresh approval needs to be taken from RUN or RUN-LLP is to be taken. For LLP name is reserved for 3 months. Incase of change of name of company, the reserved name is available for 60 days.

Setting up legal existence of the entity
Setting up business in India
Central level process/compliances

**Finalization of supporting documents**
Filing of electronic Memorandum of Association (eMoA- INC 33) & Articles of Association (eAoA- INC 34)
Payment of stamp duty/filing fees.
In case of foreign subscribers physical MOA and AOA is to be filled in

**Filing of e-forms with CRC**
SPICe is duly filled and submitted to CRC for incorporation of company.
MCA form FilliP for LLP would be required
Form 27 is required for Foreign LLP (FLLP)

**Verification of documents**
After payment of all fees & stamp duties, CRC scrutinizes all forms and may suggest changes in forms and/or attachments

**Consent to establish & operate**
Issue of Certificate of Incorporation by CRC- Once all the Forms are duly approved by CRC, the digitally signed “Certificate of Incorporation” is issued.
In Case of LLP, LLP agreement is required to be signed and submitted to ROC within 30 days of incorporation of LLP
Once the Incorporation Certificate is received, LLP can start its operations.
A company having share capital is required to file a declaration of receipt of subscription amount and verification of registered office within 180 days of incorporation and prior to commencement of business.
### Setting up business in India

#### Central level process/compliances (contd.)

<table>
<thead>
<tr>
<th><strong>Obtain Permanent Account Number (PAN)</strong></th>
<th><strong>Registration for Tax Account Number (TAN)</strong></th>
<th><strong>Grant for Bureau of Indian Standards (BIS) License</strong></th>
<th><strong>Quality Marking Certificate</strong></th>
</tr>
</thead>
</table>

- PAN number shall be allotted based on the information filled in Form **SPICe** at the time of incorporation of a company.
- TAN number shall be allotted based on the information filled in Form **SPICe** at the time of incorporation of a company.
- Applicant has to submit application in the prescribed **Form** & **Self Evaluation-cum- Verification Report** along with prescribed documents and original test report(s) taxes) for considering grant of license under Product **Certification Scheme of BIS**.
- Quality Marking certificate are provided by Quality Marking Centre of the State Government

**Note:** PAN & TAN are not allotted to LLPs on incorporation.

List of products that mandatory require BIS license are listed in Annexure I.
For starting a manufacturing unit in any state, the first step for the company is to register themselves as MSME or Mega or Large Projects. The criteria to categorise a unit into MSME or Mega Project or Ultra Mega Project is defined in respective industrial policies of states. This would benefit the units to apply for various incentives available under state government Policies/Scheme in addition to other specific policies.

Apply for state government incentives/ customised package scheme for Mega projects as per state policies (Optional)

All industrial undertakings exempt from the requirements of industrial licensing, including existing units undertaking substantial expansion, are required to file information in the prescribed form for Industrial Entrepreneurs Memorandum (IEM), i.e. “Form IEM”, with the Secretariat of Industrial Assistance (SIA), Department for Promotion of Industry and Internal Trade (DPIIT), Government of India, and obtain an acknowledgement. No further approval is required

Optional for all Micro and small enterprises; Service sector medium enterprises; mandatory for manufacturing sector medium enterprises.

E-biz - Link
MSME Registration

**Rule**
MSME Registration is an optional registration under the **MSMED Act** that provides Micro, Small and Medium sized enterprises with a host of benefits and access to subsidies and schemes.

**MSME Criteria**
Industries are categorized into manufacturing & service enterprises:

<table>
<thead>
<tr>
<th>Enterprise</th>
<th>Manufacturing sector</th>
<th>Service sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro</td>
<td>$\geq 25$ Lakhs</td>
<td>$\geq 10$ Lakhs</td>
</tr>
<tr>
<td>Small</td>
<td>$25$ Lakhs $\geq 5$ crores</td>
<td>$10$ Lakhs $\geq 2$ crores</td>
</tr>
<tr>
<td>Medium</td>
<td>$5$ crores $\geq 10$ crores</td>
<td>$2$ crores $\geq 5$ crores</td>
</tr>
</tbody>
</table>

**Guideline**
MSME can be registered by filling **Udyog Aadhaar Memorandum**. It is a 12 digit Aadhaar number allotted to MSME by DIC.

The Udyog Aadhaar Registration can be done online by individuals themselves in case they have an Aadhaar number. However, in all exceptional cases, including those of not having Aadhaar number, can still file Udyog Aadhaar Memorandum, in offline mode (i.e. on paper form), with the General Manager (GM) of the concerned District Industries Centre (DIC). Articles not covered under the MSMED Act 2006 for registration of Udyog Aadhaar Memorandum are listed in the link.

A unit can apply for PRC for any item that does not require industrial license which means items listed in Schedule-III and items not listed in Schedule-I or Schedule-II of the licencing Exemption Notification. Units employing less than 50/100 workers with/without power can apply for registration even for those items included in Schedule-II. Once the unit commences production, it has to apply for permanent registration on the prescribed form.
Pre-Commissioning Phase

Setting up business in India
State level process/compliances

Acquisition of Land
Application to respective State DI/State Industrial Development Corporation (SIDC)/ Infrastructure Corporation/ Small Scale Industrial Development Corporation (SSIDC)

Environment, Forest and Wildlife Clearance
Application for environment clearance (EC) need to be made at the online platform by MoEF.

Proposals requiring EC clearance under EIA notification 2006. Proposals requiring only CRZ Clearance under CRZ Notification 2014. Proposals requiring both clearances i.e. EC clearance (Category A and Category B both) under EIA notification 2006 and CRZ Clearance under CRZ notification 2011

Environment Clearance is 2 stage process.
Stage 1- Grant of ToR (If, after accepting category A or category B proposals, Ministry/SEIAA do not take any decision within one month, then, Standard TOR is accorded automatically to the proposal. Stage 2- Grant EC - TOR accorded proposals, Proposals without TOR

Permission for Land Use
Applicable in case industry located outside an industrial area
Concerned departments:
- State Directorate of Industries (DI)
- Department of Town and Country Planning
- Local authority/ District Collector

(contd.)
Setting up business in India

State level process/compliances (contd.)

Application to State Pollution Boards before commencement of construction activities and production activities under Water Act and Air Act for Consent to Establish and CTO respectively is to be made.

There are 4 categories of industries-

- Red – Industries having pollution index score of 60 and above
- Orange – Industries having pollution index score of 41 to 59
- Green - Industries having pollution index score of 21 to 40
- White - Industries having pollution index score up to 20

Note - The approval is granted by state and compliance procedure may vary from state to state.

Industrial licenses are regulated by the IDRA, 1951 Act, and are approved by the Secretarial of Industrial Assistance (SIA) on the recommendation of the licensing committee.

Businesses planning to establish industries to produce any of the following items in India must obtain a compulsory license:

- Distillation and brewing of alcoholic drinks;
- Cigars and cigarettes of tobacco and manufactured tobacco substitutes;
- Electronics and aerospace and defence equipment;
- Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches; and
- Hazardous chemicals including items hazardous to human safety and health and thus fall for mandatory licensing.

Consent to establish is required from Environment and pollution control board for starting the building construction activity of the unit. An application is to be made to concerned bodies at the state pollution board and central level for environment clearance.

Form IL
Setting up business in India

State level process/compliances

Pre-Commissioning Phase

### Factory Layout Plan Approval

Under the Factory Act, 1948 approval for Factory Layout Plan is required. It is usually granted by the Labour’s Department of each state however the competent authority may vary from state to state.

The approval is granted within 60 days for chemical factory and 45 days for other factories subject to the specific criteria met by the competent authority of the state.

The layout plan approved is non-transferrable.

### Factory registration

As per The Factories Act 1948, the applicant needs to submit the plans of any class/description of factories to the Chief inspector or the State Govt.

If no order is communicated to the applicant within 3 months from the date on which the application was submitted, the permission shall be deemed to have granted.

Where the State Govt. or Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to registration/licensing of a factory, the applicant may within 30 days of date of such refusal, appeal to the Central Govt. if the decision appealed from was of the State Govt. and to the State Govt. in any other case.
As per the Boiler Act 1923, registration of Boiler is mandatory compliance. Permission for registration is granted post successful inspection.

Provisional registration is granted by the competent authority for the period of 6 months, within which the final inspection (upon request) is undertaken.

For further details and form link to be referred

An approval from development authority/ local nodal authority for sanction of building plans/ building permit under the provisions of Building Byelaws, Master plan and Local Body Acts. The Building approval comprises of the building plan and the layout approval for the construction of the building. The applicant has to get approval of layout plan from concerned authorities before starting construction of. Intimation of Disapproval or IOD basically states conditions that needs to be complied with during different phases of Under Construction Project. Post this the applicant received commence certificate to commence construction

Under the Contract Labour (Regulation and Abolition) Act, 1970 approval required. It is usually granted by the Labour’s Department of each state however the competent authority may vary from state to state.

The approval is granted within 30 days subject to the specific criteria met by the competent authority of the state

Under the Building and other Construction Workers Act, 1996 approval required during pre and post commissioning stage. It is usually granted by the Labour’s Department of each state however the competent authority may vary from state to state.

The approval is granted within 30 days subject to the specific criteria met by the competent authority of the state
<table>
<thead>
<tr>
<th>Pre-Commissioning Phase</th>
<th>Power for construction</th>
<th>Provisional Fire Approval</th>
<th>Approval for lifts &amp; Escalator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application to State Electricity Distribution Company for sanction of power supply for low tension (LT), high tension (HT), or Extra High Tension connection as applicable during the construction phase</td>
<td>Provisional Fire Safety Approval from State Fire and Safety department</td>
<td>Lift and escalator approval needs to be obtained from local state authority. Approval is given for installation and operation is accorded separately</td>
<td></td>
</tr>
</tbody>
</table>
Setting up business in India

State level process/compliances (contd.)

<table>
<thead>
<tr>
<th>Consent to operate</th>
<th>Building Completion certificate</th>
<th>Final Fire Approval</th>
<th>Water Connection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consent to operate is obtained from Pollution control board of the respective states. It is required in both pre-commissioning stage. It is subject to renewal from time to time.</td>
<td>A completion certification (CC) is a critical and mandatory legal document that a builder should obtain from Application to Town and Country Planning, or Local municipality, development authority or agricultural department or other local bodies such as Nagar Nigam or Gram Panchayat as applicable) with plan, scrutiny fees and land allotment copy. After the completion of a project, the local authority inspects and evaluates the premise against the approved building plan and awards the completion certificate, if all the rules are satisfied.</td>
<td>Final Fire approval needs to be taken by local state authority.</td>
<td>State Industrial Development Corporations for approval for water connections; to State Industrial Promotion Boards (where applicable) where source of water is river/canal/dam; and to Central Ground Water Commission in case of ground water extraction.</td>
</tr>
</tbody>
</table>
Setting up business in India

State level process/compliances

( contd. )

**Power**

Application to State Electricity Distribution Company for sanction of power supply for low tension (LT), high tension (HT), or Extra High Tension connection as applicable

**Authorization for hazardous waste**

Application to State Pollution Control Boards for Collection/ Reception/ Treatment/ Transport/ Storage and Disposal of Hazardous waste
Any business whose turnover exceeds the threshold limit of INR 20 lakhs (INR 10 lakhs for North Eastern and hill states) will have to register under GST. Businesses registered under any of the pre-GST laws: VAT, Excise/Service Tax have to register under GST by default.

Any business can get registered under GST by applying via the GST Online Portal or at GST Seva Kendra set up by the Government of India. Fill Form-part A (PAN, Mobile and email id. The portal verifies your detail via OTP. Upload the document as per business type. Fill Form-part B using the received number through OTP. Application reference number shall be received via mobile/ email. The GST officer verifies your application/ document. In case more information/ documents are asked through Form GST-REG-03 details have to be shared through Form GST-REG-04 within 7 working days. GST officer approves application and GSTIN within 7 working days

According to section 5 of the Profession Tax Act, every employer (not being an officer of the government is liable to pay tax and shall obtain a certificate of registration from the prescribed authority.

The company is required to apply in Form I to the registering authority.

Note – Applicability of Excise is for liquor and petroleum based units.
Employees' State Insurance Corporation (ESIC) provides monetary and medical benefits to Employees in case of sickness, maternity and employment injury and to make provisions for related matters. Form 01 should be used by employers to register with ESIC.

Shops & Establishment Act

Registration under Shop & Establishment is provided by state government.

Employee Registration with ESIC

Employees' State Insurance Corporation (ESIC) provides monetary and medical benefits to Employees in case of sickness, maternity and employment injury and to make provisions for related matters. Form 01 should be used by employers to register with ESIC.
Setting up business in India

State level process/compliances

**Employer Registration with EPFO**

The Employees' Provident Fund Organization (EPFO) provides social security benefits to Employees of establishments on which the Employees’ Provident Fund and Miscellaneous Provisions Act 1952. Online registration for EPFO can be done through link.

**Trademark/ Brand Registration**

Trademark registration provides legal right of exclusivity for the use of mark to the owner of the mark. Trademark registration involves multiple steps. A step by step guide for registration of trademark is detailed at link.

**Importer Exporter Code (IEC)**

Import Export (IE) Code is a registration required for persons importing or exporting goods and services from India. IE Code is issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industries, Government of India. IE Codes when issued can be used by the entity throughout its existence and doesn't require any renewal or filing. IE Code application must be made to the Directorate General of Foreign Trade along with the necessary supporting documents.

**Customs- Special Valuation Branch**

Special Valuation Branch (“SVB”) is a branch of the Custom House that specializes in investigating the transactions involving relationship between the supplier and the importer. The detailed working and functions of the branch can be accessed at link.
Foreign Direct Investment

Permitted sectors

Prohibited Sectors

Eligible Investors & Instruments

Compliances/Requirements
  - Reporting Requirements
  - Guidance on Issue, Transfer, Conversion & Remittance of Shares
Foreign Direct Investment (FDI) in India

Investment climate in India has improved considerably since the opening up of the economy in 1991. This is largely attributed to ease in FDI norms across sectors of the economy. India, today is a part of top 100 club on Ease of Doing Business (EoDB) and globally ranks 1st in the greenfield FDI ranking. India jumps 65 positions from 142nd (2014) to 77th (2018) in 'World Bank's Ease of Doing Business Ranking 2018'.

100% FDI permitted through Automatic route

100% FDI permitted through Government route

Upto 100% FDI permitted through Government + Automatic route

Upto 51% FDI permitted through Government/ Automatic route

**Note:**

i) In sectors/ activities not listed above, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditions.

(ii) All the information/ contents provided herein is basis the Consolidated FDI Policy dated August 28, 2017 issued by DPIIT from time to time as amended from time to time

For detailed definitions, clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017*

*Amendment to FDI policy in Jan 2018
Foreign Direct Investment (FDI) in India

Category 1: 100% FDI permitted through Automatic route*

- Agriculture & Animal Husbandry
- Plantation (Tea, Coffee, Rubber, Cardamom, Palm oil tree, Olive oil tree)
- Mining & Exploration of metals & non-metals ores excluding titanium bearing minerals and its ores
- Coal & Lignite mining for captive consumption in respect of eligible activities
- Single Brand Retail Trading, Duty Free Shops
- Exploration of Petroleum & Natural Gas (including marketing of petroleum products & natural gas)
- Transport services***
- Construction Development projects****
- Cash & Carry Wholesale Trading
- Civil Aviation – Greenfield & Brownfield
- Up-link of non-‘News & Current Affairs’ TV Channels, Down linking of TV channel
- Broadcasting Carriage Services
- Market Place E-commerce Activities
- Asset Reconstruction & Credit Information Companies
- Other Services at Airport *****
- Other Financial Services (registered/regulated entity)
- Pharmaceuticals – Greenfield Sector and Medical device manufacturing
- White Label ATM Operations
- Industrial Park

*For detailed definition, clarifications/exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017, amendment to FDI policy in Jan 2018
** Greenfield and existing projects,
***Air Transport Services- Non Scheduled Air Transport Service / Helicopters services/ seaplane services requiring DGCA approval
****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, Real estate Broking business
*****Other services include ground Handling Services subject to sectoral regulations and security clearance & Maintenance and Repair organizations; flying training institutes; and technical training institutions
Foreign Direct Investment (FDI) in India

Category 2: 100% FDI permitted through Government Route

- Mining and minerals separation of titanium bearing minerals & ores, its value addition & integrated activities
- Retail Trading including through e-commerce in respect of food products manufactured and/or produced in India
- Publishing/ printing of scientific and technical magazines/specialty journals/periodicals
- Government Route
  (Approval from various Administrative Ministries/ Government Department)
- Satellite establishment and operations
- Publication of facsimile edition of foreign newspapers

Foreign investment in core investment companies (CIC) and other investing companies, engaged in the activity of investing in the capital of other company/ies/LLP, is permitted under Govt. approval route. CICs will additionally have to follow RBI regulatory framework.

*For detailed definition, clarifications/exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017, amendment to FDI policy in Jan 2018
## Foreign Direct Investment (FDI) in India

### Category 3: Up to 100% FDI permitted through Government + Automatic route

<table>
<thead>
<tr>
<th>Industry</th>
<th>Maximum FDI</th>
<th>Route</th>
<th>Above FDI</th>
<th>Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecom Services*</td>
<td>Up to 49%</td>
<td>Automatic route</td>
<td>Above 49%</td>
<td>Government route</td>
</tr>
<tr>
<td>Defence industry</td>
<td>Up to 49%</td>
<td>Automatic route</td>
<td>Above 49%</td>
<td>Government route</td>
</tr>
<tr>
<td>Pharmaceutical - Brownfield</td>
<td>Up to 74%</td>
<td>Automatic route</td>
<td>Above 74%</td>
<td>Government route</td>
</tr>
<tr>
<td>Air Transport Services **</td>
<td>Up to 49%</td>
<td>Automatic route</td>
<td>Above 49%</td>
<td>Government route</td>
</tr>
<tr>
<td>Banking – Private Sector</td>
<td>Up to 49%</td>
<td>Automatic route</td>
<td>Above 49%</td>
<td>Up to 74%</td>
</tr>
<tr>
<td>Private Security Agencies***</td>
<td>Up to 49%</td>
<td>Automatic route</td>
<td>Above 49%</td>
<td>Up to 74%</td>
</tr>
</tbody>
</table>

For detailed definition, clarifications/exceptions, please refer to [Consolidated FDI Policy, effective from August 28, 2017, amendment to FDI policy in Jan 2018](#).

*All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United 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/Audio text/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.*

**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**

***FDI in Private Security Agencies is subject to compliance with Private Security Agencies (Regulation) (PSAR) Act, 2005, as amended from time to time***
Foreign Direct Investment (FDI) in India

Category 4: Up to 51% FDI permitted through Government/Automatic route

**Automatic route**
- Insurance: 49%
- Petroleum Refining by PSUs\(^*\): 49%
- Infrastructure Companies in Securities Markets: 49%
- Power Exchanges: 49%
- Pension Sector: 49%

**Government route**
- Up-linking of ‘News & Current Affairs’ TV Channels: 49%
- Terrestrial Broadcasting FM (FM Radio): 49%
- Multi-Brand Retail Trading \(^**\): 51%
- Banking Public Sector: 20%
- Print Media-Publishing of Newspapers & Periodicals: 26%

For detailed definition, clarifications/exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017, amendment to FDI policy in Jan 2018.

\(^*\) Petroleum refining by the PSU without any disinvestment or dilution of domestic equity in existing PSUs – 49%, Automatic

\(^**\) In specified states

\(***\) Print Media - Publishing of newspaper and periodicals; Indian editions of foreign magazines dealing with news and current affairs

49% in Air India- Govt. route (amended vide PN1 of 2018)
Foreign Direct Investment (FDI) in India

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 under the Consolidated FDI policy)

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 Investment in India

Eligible Investors & Instruments

Eligible Investors

- Any non-resident entity / Individual
- NRI resident & citizens of Nepal & Bhutan
- Erstwhile OCB incorporated outside India & not under adverse notice of RBI with Govt./RBI approval
- Company, trust or partnership firm incorporated outside India & owned and control by NRI
- FPI in terms of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations 2017
- NRIs as per schedule 3 & 4 in terms of FEMA (Transfer or Issue of Security by PROI) Regulations
- SBI registered FVCI in any activity mentioned in Schedule 7 of FEMA (Transfer or Issue of Security by PROI) Regulations

Eligible Investee Entities

- VCF registered as Trusts and regulated by SEBI and ‘Investment Vehicle’ (REIT/INVIT/AIF)
- LLPs in sectors wherein FDI is 100% allowed through automatic route & no FDI linked performance condition
- Startup companies can issue equity/equity linked instruments or debt instruments or convertible notes
- Non Residents (other than NRI/PIO) can invest in Partnership Firm / Proprietary Concern
- NRI/PIO resident outside India can invest in Partnership Firm / Proprietary Concern
- Indian companies can issue capital against FDI

Note: Currently as per the extant FEMA regulations, a firm or a proprietorship concern is restricted from receiving any funds from a non-resident (other than NRI/PIO). However, RBI on making a specific application and post consideration of the facts may allow the same on case to case basis. Accordingly, a specific RBI application for approval would have to be made in case where a firm or proprietorship concern is willing to receive from a non-resident.
Foreign Direct Investment (FDI) in India

*Compliances/Requirements - Reporting Requirements

- CS certificate
- Pre and post shareholding pattern in the Indian company
- Copy of the order of the High Court on the scheme of merger/demerger/amalgamation (if applicable)
- Valuation certificate
- Relevant RBI approvals for an issue of equity shares against funds payable to the foreign investor
- Know Your Customer (KYC)
- Declaration by the Authorised Representative of the Indian Company/LLP
- Copy of government approval (if applicable)
- RBI approval on the amount of refund with respect to the amount of the issue (if applicable)
- Approval letter (if non-compliant with the guidelines – if applicable)
- FIRC/Debit statement
- Board Resolution

*As per the RBI notification on “Foreign Investment in India - Reporting in Single Master Form” of 7th June 2018, now provides for all the extant reporting structures of various types of foreign investments in India are now provided under a Single Master Form (SMF) which is required to be filed online. As per the RBI Notification ARF and FC-GPR is merged into a single revised FC-GPR (SMF). All new filings for the Form FC-GPR (SMF) have to be done in Single Master Form only.*
**Issue of Shares**
Issuance within 60 days from day of receipt of inward remittance; else refunded immediately to non-resident investor by outward remittance through normal banking channels or by credit to NRE/FCNR (B) account as the case may be within fifteen days from the date of completion of 60 days.

**Transfer of capital instruments**
Permission granted to Non-Resident (NR) / Non-Resident Indian (NRI) for acquisition of capital instruments in following ways: NR to NR, NRI to NRI, NRI to Resident, Resident to NRI, while a person resident outside India can sell capital instruments of an Indian company on a recognized Stock Exchange in India through a registered stock broker. Transfer between resident and non-resident should be in compliance with extant guidelines and reporting needs to be done in Form FC-TRS. In respect of transfer of capital instruments between resident and non-resident, an amount not exceeding 25% of the total consideration can be deferred or settled through escrow mechanism.

**Conversion into 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 conditions.

**Repatriation**
Repatriation for dividend and Interest
Dividend and interest on fully, mandatorily & compulsorily convertible debentures is freely repatriable without any restrictions.

**Remittance**
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.
Foreign Direct Investment (FDI) in India
Guidance on Issue, Transfer, Conversion & Remittance of Shares

**Step 1: Issue of shares**
- Capital instruments should be issued within 60 days from the 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 *
  - In case of Listed Indian company, not less than price worked out in accordance with SEBI guidelines.
  - In case of unlisted Indian company, not less than fair valuation done by SEBI registered Merchant Banker or a Chartered Accountant or practicing cost accountant as per any internationally accepted pricing methodology on an arm’s length basis.
  - For non-residents (including NRIs) making investment in Indian company by way of subscription to its Memorandum of Association, then such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

*In case of convertible capital instruments, the price/ conversion formula of the instrument should be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such capital instruments.

**Step 2a: Transfer of Capital instrument**
- Permission granted to non-residents / NRIs for acquisition of Capital instrument by way of transfer in the following:
  - Non – resident (other than NRI or erstwhile OBC) to Non resident – Transfer shall be permissible under automatic route. However, prior approval shall be required in case the company is engaged in a sector which requires Govt. approval under the FDI regulations.
  - NRIs/ OCI to PROI – transfer by way of sale or gift the Capital instrument provided that prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires Government approval.
- Note: PROI (person resident outside India is one who has taken up employment/ business or vacation outside India and has not stayed in India for more than 182 during the previous year).
- Non resident to resident – transfer any Capital instrument by way of gift. Transfer of capital instrument, by way of sale under private arrangement, subject to extant guideline.
- A person resident outside India can sell capital instrument of an Indian company on a recognized Stock Exchange in India through a registered stock broker or a registered merchant banker in manner prescribed by SEBI.
- Resident to non resident – transfer of capital instrument by way of sale subject to extant guidelines.

**Step 2b: Transfer of Capital instrument**
- Resident to non-resident- Transfer of capital instruments by way of gift- prior RBI approval required.
- In respect of transfer of capital instruments between resident and non-resident, an amount not exceeding 25% of the total consideration:
  - Can be paid by buyer on a deferred basis within a period not exceeding 18 months from the date of transfer agreement; or
  - can be settled through an escrow arrangement between the buyer and the seller for a period not exceeding 18 months from the date of the transfer agreement; or
  - can be indemnified by the seller for a period not exceeding 18 months from the date of the payment of the full consideration, if the total consideration has been paid by the buyer to the seller.

Note: Transfer is subject to entry routes, sectoral caps/ investment limits and pricing guidelines as per FDI regulations. Disclosure of such transfer shall be required to be reported in Form FC-TRS based on the relevant FDI regulations.
Foreign Direct Investment (FDI) in India

Guidance on Issue, Transfer, Conversion & Remittance of Shares

<table>
<thead>
<tr>
<th>Step 2c: Transfer of Capital instrument</th>
<th>Step 3: Transfer of Capital Instruments</th>
<th>Step 4: Conversion into Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transfer from NRI to NRI</strong> is applicable on following case basis:</td>
<td><strong>Transfer from resident to non-resident or vice-versa shall not be less than/exceeding:</strong></td>
<td>Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (including matured but unpaid) in convertible foreign currency into equity shares/ fully compulsorily and mandatorily convertible preference shares, subject to the following conditions</td>
</tr>
<tr>
<td>a) Where the transfer is b/w two NRIs who both hold shares on a repatriable basis – such a transfer is similar to transfer b/w non resident – non resident</td>
<td>(a) the price worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company;</td>
<td>► Activity of borrowing company is covered under the auto or govt. approval for FDI, wherever applicable, for foreign equity participation as per extant FDI policy</td>
</tr>
<tr>
<td>b) Where the transfer is between an NRI who holds shares on non repatriable and NRI who holds shares on repatriable basis – such a transfer is similar to transfer b/w resident – non-resident</td>
<td>(b) the price at which a preferential allotment of shares can be made under the SEBI guidelines, as applicable, in case of a listed Indian company</td>
<td>► The foreign equity after conversion of ECB into equity is within the sectoral cap, if any</td>
</tr>
<tr>
<td>c) Where the transfer is b/w two NRIs who hold shares on non-repatriable basis – such a transfer is similar to transfer b/w a resident and another resident (i.e. domestic transfer) and hence, reporting requirements shall not be applicable.</td>
<td>(c) the valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm’s length basis duly certified by a Chartered Accountant or a Securities and Exchange Board of India registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.</td>
<td>► Pricing of shares as per extended guidelines</td>
</tr>
<tr>
<td>Note:</td>
<td>Reporting of transfer of capital instruments between residents and non-residents and vice versa is to be done in Form FC-TRS. The Form FC-TRS should be submitted to the AD Category-I bank, within 60 days from the date of receipt of the amount of consideration.</td>
<td>► Compliance with the requirements prescribed under any other statute and regulation in force</td>
</tr>
<tr>
<td>a) As per FEMA regulations, any sale of capital instrument by NRI held as a non-repatriable basis would require prior RBI approval authorising the transfer of the said capital instrument if the value is above USD 1 mn annually.</td>
<td></td>
<td>► 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 applicable pricing guidelines and compliance with applicable tax laws</td>
</tr>
<tr>
<td>b) An NRI is allowed to repatriate only upto USD 1 mn on an annual basis for its NRO account. Any remittance made over and above USD 1 mn in any financial year from the NRO account would require an RBI approval.</td>
<td></td>
<td>Source: RBI, as accessed on 16 January 2019</td>
</tr>
</tbody>
</table>

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**Prior approval of RBI required**: Resident to non-residents by way of sale
- Transfer is at a price which falls outside the pricing guidelines specified by the RBI from time to time and the transaction does not fall under the exception given
- Transfer involving deferment of payment of the amount of consideration more than 25% of the total consideration would require RBI approval. Post approval, the same should be reported in Form FC-TRS, to an AD Category-I bank within 60 days from the date of receipt of the full and final amount of consideration.

## Foreign Direct Investment (FDI) in India
### Guidance on Issue, Transfer, Conversion & Remittance of Shares

### Step 5: Repatriation

**Repatriation for dividend and Interest**
- Dividend is freely repatriable without any restrictions
- Dividend is net after tax deduction at source (TDS) or dividend distribution tax (DDT) (if any, as the case may be)
- Dividend is governed by Foreign Exchange Management (Current Account Transactions) Rules, 2000
- Interest on fully, mandatorily & compulsorily convertible debentures is freely repatriable without any restrictions.
- Interest is net of applicable taxes
- Interest is governed by Foreign Exchange Management (Current Account Transactions) Rules, 2000

### Step 6: 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 and NOC/ Tax clearance certificate from the Income Tax department

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**Winding up/ liquidation of companies** AD Category 1 banks are allowed to remit winding up proceeds of the companies which are under liquidation subject to payment of taxes. Applicant needs to submit the following to the AD Category 1 bank for remittance

- Auditor’s certificate confirming All liabilities in India have been either fully paid or adequately provided, Winding up is in accordance with the provisions of the Companies Act as applicable and lastly in case of winding up otherwise than by a court- No legal proceeding pending in any court in India against the applicant or company under liquidation
Institutional & Regulatory framework

Routing FDI in India
Concerned Administrative Ministries/Departments
Applicable regulatory framework for Business establishments
Governance Bodies for Business establishments
Winding-up of Business
Institutional and Regulatory Set-up

Routing FDI in India

**Sectoral FDI Investment Limit**

(Consolidated FDI Policy, effective from August 28, 2017, amendment to FDI policy in Jan 2018)

- DPIIT is the nodal agency entrusted to formulate FDI Policy
  - 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 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notification dated November 01, 2017 (Original notification is available at [https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=11161&fn=5 &Mode=0;](https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=11161&fn=5 &Mode=0;))

- 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 revised level of approvals for cases under the Government route are summarized in the new notification dated 5 June, 2017 available at the link: [http://fipb.gov.in/Forms/OMabolitionFIPB.pdf](http://fipb.gov.in/Forms/OMabolitionFIPB.pdf)

**Routing Investments in India**

- **Automatic Route**
- **Government Route**

**Filing of Application**

Proposal for foreign investment, along with supporting documents to be filed online, on the Foreign Investment Facilitation Portal, at the following url:

[www.fip.gov.in/](http://www.fip.gov.in/)

**Internal Procedure for Approval**

- DIPP will identify the concerned Ministry/Department and thereafter, circulate the proposal within 2 days. In addition, once the proposal is received, the same would also be circulated online to the RBI within 2 days for comments from FEMA perspective.

- Proposed investments from Pakistan and Bangladesh would also require clearance from the Ministry of Home Affairs.

- DIPP would be required to provide its comments within 4 weeks from receipt of an online application, & Ministry of Home Affairs (if applicable) to provide comments within 6 weeks.

- Pursuant to the above, additional information/clarifications may be asked from the applicant which is to be provided within 1 week.

- Proposals involving FDI exceeding INR 50bn (approx. US$ 775m) shall be placed before the Cabinet Committee of Economic Affairs.

**Final Approval**

Once the proposal is complete in all respects, the same gets approved within 8-10 weeks.

**Where the online application is digitally signed by an authorised signatory, there is no requirement for physical submission of the application. However, for applications without a digital signature, once the e-filing of the application is complete, the applicant is required to file one signed copy of the printed application, along with duly authenticated copies of the documents attached with the application, with the nodal officers of the concerned Ministry/Department.**
Institutional and Regulatory Set-up

Concerned Administrative Ministries/Departments

The work of granting government approval for foreign investment under the extant FDI Policy and FEMA Regulations, shall be entrusted to the concerned Administrative Ministries/Departments as listed below:

<table>
<thead>
<tr>
<th>S. No</th>
<th>Sector/ activity</th>
<th>Administrative Ministry/ Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mining</td>
<td>Ministry of Mines</td>
</tr>
<tr>
<td>2</td>
<td>Defence – items requiring license under the industries(Development &amp; Regulation) act 1951 and/or arms act 1959</td>
<td>Department of Defence Production, Ministry of Defence</td>
</tr>
<tr>
<td>2 (b)</td>
<td>Cases relating to FDI in small arms.</td>
<td>Ministry of Home Affairs</td>
</tr>
<tr>
<td>3</td>
<td>Broadcasting.</td>
<td>Ministry of Information and Broadcasting</td>
</tr>
<tr>
<td>4</td>
<td>Print Media.</td>
<td>Ministry of Information and Broadcasting</td>
</tr>
<tr>
<td>5</td>
<td>Civil Aviation</td>
<td>Ministry of Civil Aviation</td>
</tr>
<tr>
<td>6</td>
<td>Satellites</td>
<td>Department of Space</td>
</tr>
<tr>
<td>7</td>
<td>Telecom</td>
<td>Department of Telecommunications</td>
</tr>
<tr>
<td>8</td>
<td>Private Security Agencies</td>
<td>Ministry of Home Affairs</td>
</tr>
<tr>
<td>9</td>
<td>Applications involving investments from Countries of Ministry of Home Affairs Concern which presently include Pakistan and Bangladesh, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, amended from time to time</td>
<td>Ministry of Home Affairs</td>
</tr>
<tr>
<td>10</td>
<td>Single Brand Product Retail Trading</td>
<td>DPIIT</td>
</tr>
<tr>
<td>11</td>
<td>FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government</td>
<td>DPIIT</td>
</tr>
<tr>
<td>12</td>
<td>Applications relating to issue of equity shares for sectors requiring Govt. approval under the FDI policy is allowed under Govt route for following i) import of capital goods/ machinery/ equipment (excluding second hand machinery) and pre-operative/ pre-incorporation expenses (including payments of rents etc.) s.t. conditions</td>
<td>DPIIT</td>
</tr>
</tbody>
</table>
## Institutional and Regulatory Set-up

### Concerned Administrative Ministries/Departments

<table>
<thead>
<tr>
<th>S. No</th>
<th>Sector/ activity</th>
<th>Administrative Ministry/ Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight</td>
<td>Department of Economic Affairs</td>
</tr>
<tr>
<td>14</td>
<td>Applications for foreign investment into a Core Investment Company or an Indian company engaged only in the activity of investing in the capital of other India Company/ies.</td>
<td>Department of Economic Affairs</td>
</tr>
<tr>
<td>15</td>
<td>Banking (Public and Private)</td>
<td>Department of Financial Services</td>
</tr>
<tr>
<td>16</td>
<td>Pharmaceuticals</td>
<td>Department of Pharmaceuticals</td>
</tr>
</tbody>
</table>

### Note
- In respect of sectors/activities which are presently under automatic route but required Government approval earlier as per the extant policy during the relevant period, concerned administrative Ministry/Department would be the Competent Authorities for the grant of post-facto approval for foreign investment.
- In respect of applications in which there is a doubt about the Administrative Ministry/Department concerned, DPIIT shall identify the Administrative Ministry/Department where the application will be processed.
- Proposals for foreign investment would be examined by Competent Authorities as per the Standard Operating Procedure laid down by DPIIT (available at [http://www.fifp.gov.in/Forms/SOP.pdf](http://www.fifp.gov.in/Forms/SOP.pdf)).
- In case of proposals involving total foreign equity inflow of more than INR 5000 cr, Competent Authority shall place the same for consideration of Cabinet Committee on Economic Affairs (CCEA).
- The CCEA would also consider the proposals which may be referred to it by the Minister in-charge of the concerned Competent Authority.
- In respect of proposals where the Competent Authority proposes to reject the proposals or in cases where conditions for approval are stipulated in addition to the conditions laid down in the FDI policy or sectoral laws/regulations, concurrence of DPIIT shall compulsorily be sought by the Competent Authority.
- The monitoring of the compliance of conditions under the FDI approvals, including the past cases approved by the Government, shall be done by the concerned Administrative Ministries/Departments.
### Institutional and Regulatory Set-up

**Applicable regulatory framework for business entities**

<table>
<thead>
<tr>
<th><strong>Companies Act, 2013</strong></th>
<th><strong>Limited Liability Partnership Act, 2008</strong></th>
<th><strong>The Indian Partnership Act, 1932</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013</td>
<td>A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership</td>
<td>An Act to define and amend the law relating to partnership. It lays out the complete structure of a partnership firm constituting definition of partnership firm, its registration, management and dissolution procedure, and interrelation between partners. State governments have made rules regarding certain provisions of the act</td>
</tr>
<tr>
<td>The act governs companies, their incorporation, allocation of share capital, administration, management, reporting and filing, dissolution and compliances of all types of companies under its ambit. It also lays down guidelines for memorandum of association and articles of association for different types of companies</td>
<td>The Act defines of LLP’s, their incorporation, conversion to LLP, contribution of partners, administration, management, reporting and filing, and dissolution</td>
<td></td>
</tr>
</tbody>
</table>

- **Others**: Income tax Act 1961, GST act, Shops and establishment acts etc.
## Institutional and Regulatory Set-up

### Applicable regulatory framework for business entities

<table>
<thead>
<tr>
<th>Competition Act, 2002</th>
<th>LO/ BO/ PO (RBI/ AD Banks/ other regulators)</th>
</tr>
</thead>
<tbody>
<tr>
<td>► An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets.</td>
<td>► The FEMA Regulations and Companies Act regulates the set up operations and closure of LO/ BO/ POs. There may also be other sector-specific regulations such as IRDA, to regulate the entities.</td>
</tr>
<tr>
<td>► The Act lays down rules and procedure for formation of the competition commission, its administration and management, and its duties, powers and functions. It also talks about the organisation and working of Competition Appellate Tribunal.</td>
<td></td>
</tr>
</tbody>
</table>

Others : Income tax Act 1961, GST act, Shops and establishment acts etc.
Institutional and Regulatory Set-up

Applicable regulatory framework for business establishments

Taxation Overview in India

Over the last few years, the government of India (GoI) and various State (provincial) Governments have undertaken various policy reforms and process simplification towards great predictability, fairness & automation. This has consequently, lead to India’s meteoric rise to the top 100 in the World Bank’s Ease of Doing Business (EoDB) ranking in 2017.

Key Features of India’s taxation System: Taxes in India are levied by the Central Government and the State Governments. Some minor taxes are also levied by the local authorities such as the Municipality and Local Government.

Major Central Taxes

- Income Tax
- Central Goods & Services Tax (CGST)
- Integrated GST (IGST)
- Custom Duty

Note: For detailed information, please refer to Taxation in India page (https://www.investindia.gov.in/taxation)

Major State Taxes

- State Goods & Services Tax (SGST)
- Stamp Duty & Registration

A resident company is taxed on its worldwide income. A non-resident company is taxed only on income that is received in India, or that accrues or arises, or is deemed to accrue or arise, in India. Company whether Indian or foreign is liable to taxation, under the Income Tax Act,1961. Corporation tax is a tax which is levied on the incomes of registered companies and corporations.

Taxes In India are primarily into 2 categories- Direct and Indirect Tax.
**Institutional and Regulatory Set-up**

**Applicable regulatory framework for business establishments**

**Goods and Services Tax (GST)** is a unified indirect tax across the country on products and services. It is a comprehensive levy on manufacture, sale and consumption. It is a destination based consumption tax.

- The GST, dual in nature is levied by both the Centre and State. The Central GST (CGST) is levied on intra state supply of goods and / or service by Central Government and State GST (SGST) is levied by the States.
- Integrated GST (IGST) is levied and administered by the Centre on every inter-state supply of goods and services.
- Import of goods or services is treated as inter-state supplies and is subject to IGST in addition to Basic Custom duty.
- CGST, SGST and IGST is levied at uniform rates, mutually agreed upon by the Centre and the States under the aegis of the GST Council (GSTC).
- All goods and services are covered under GST except alcohol for human consumption and specified petroleum products.

### Old Regime

- Custom Duty
- Central Excise Duty (CENVAT)
- Additional Excise Duties and the Excise Duty levied under the Medicinal and Toiletries Preparations Act, 1955
- Service Tax
- Additional Customs Duty (CVD)
- Special Additional Duty of Customs (SAD)
- Surcharges and Cesses levied by the Centre Central Sales Tax
- VAT/ sales tax
- Octroi and Entry Tax
- Purchase Tax
- Luxury tax
- Taxes on lottery, gambling and betting
- Entertainment tax (unless levied by the local bodies)
- Surcharges & State Cesses (related to the supply of goods and services)

### GST Regime*

- Central GST
- Integrated GST
- State GST/
  - Union Territory GST

*Assessment and filing on GST Network (GSTN)*

*Cess as may be applicable*
**Institutional and Regulatory Set-up**

**Governing Bodies for business establishment**

Ministry of Corporate Affairs is primarily concerned with administration of the Companies Act 2013, the Limited Liability Partnership Act, 2008, Competition Act & other allied Acts and rules & regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law.

<table>
<thead>
<tr>
<th>Agencies of MCA</th>
<th>Agencies under MCA Supervision</th>
<th>Other Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registrar of Companies</td>
<td>*Competition Commission of India</td>
<td>National Company Law Tribunal</td>
</tr>
<tr>
<td>Official Liquidators</td>
<td>The Institute of Chartered Accountants of India</td>
<td>National Financial Reporting Authority</td>
</tr>
<tr>
<td>Regional Directors</td>
<td>The Institute of Company Secretaries of India</td>
<td>Securities Exchange Board of India</td>
</tr>
<tr>
<td>Central Registration Centre</td>
<td>The Institute of Cost Accountants of India</td>
<td>The Reserve Bank Of India</td>
</tr>
</tbody>
</table>

*affiliated office, as per the MCA website*
Institutional and Regulatory Set-up

1. Winding-up of business establishments – Voluntary liquidation (companies under Insolvency & Bankruptcy Code (IBC))

1. Prepare declaration of solvency and hold board meeting
4. Intimate Statutory authorities and banker
7. Filing application for winding up

2. Obtain shareholders, creditors approval & appoint liquidator
5. Submit preliminary report on verification of claims by liquidator
8. NCLT to pass dissolution order

3. Public notice inviting claims
6. Realise assets, discharge liabilities and repatriate funds if any

For details w.r.t winding up, refer :

LLP : Section 63, 64 and 65 of LLP Act 2008 : [http://www.mca.gov.in/MinistryV2/llpact.html](http://www.mca.gov.in/MinistryV2/llpact.html)
Institutional and Regulatory Set-up

2. Winding-up of business establishments – Strike off under Companies Act

Governed by Companies Act 2013 and Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016
Provides an opportunity for defunct companies to get their names removed from the Register of Members in a time-bound manner, subject to certain conditions

Pre-requisites and Key Considerations

- “NIL” assets and “NIL” liabilities may apply for strike-off subject to following:
  - Not commenced business within 1 year of incorporation; or
  - Not carrying on any business or operation for 2 immediately preceding financial years
- No pending prosecution or compounding application
- All Directors to sign an Indemnity Bond against all lawful claims, losses, liabilities that may arise even after striking-off
- Any aggrieved person may make an application within 20 years of the strike off for revival of the Company

Key Milestones

- Pass a Board resolution and hold general meeting to pass a special resolution
- Obtain No objection certificate from applicable regulators, if any
- Prepare statement of accounts close to the tentative date of application
- File the application for strike-off along with necessary affidavits, bonds, declarations, statement of accounts
- RoC to issue a public notice inviting objections and also intimate the Income tax Department
- RoC to pass an order for strike off on verification of documents

The strike off process is complete on publication of the entity name in the Official Gazette – it takes tentative 6-9 months

For details w.r.t winding up, refer:


**LLP**: Section 63, 64 and 65 of LLP Act 2008 : [http://www.mca.gov.in/MinistryV2/lpact.html](http://www.mca.gov.in/MinistryV2/lpact.html)

Annexures:

List of Documents required of DSC, DIN
List of Documents required of OPC, Private Limited
List of Documents required of LLP, BIS
List of Documents required of FIFP
List of Documents required of Foreign Bank Branch
Investment Options for Foreigners
Contacts
# Annexure I: List of Documents required

## DSC

<table>
<thead>
<tr>
<th>List of documents required for Digital Signature Certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>► Address Proof</td>
</tr>
<tr>
<td>► Aadhaar card (not mandatory)</td>
</tr>
<tr>
<td>► PAN card</td>
</tr>
<tr>
<td>► Photo</td>
</tr>
<tr>
<td>► Email Id</td>
</tr>
<tr>
<td>► Phone Number</td>
</tr>
</tbody>
</table>

### Note:

1. PAN is mandatory for Indian
2. Passport is mandatory for foreigners
3. Documents to be notarized & apostilled for foreigners
4. Video and mobile verification is mandatory.
5. Only video verification is required for foreigners.

## DIN

<table>
<thead>
<tr>
<th>The DIR-3 form must contain a photo of the DIN applicant along with the details of the applicant and the following documents:</th>
</tr>
</thead>
<tbody>
<tr>
<td>► In case of Indian nationals, Income-tax PAN is a mandatory requirement for proof of identity.</td>
</tr>
<tr>
<td>► Address proofs like passport, election (voter identity) card, and ration card, driving license, electricity bill, telephone bill or Aadhaar shall be attached and should be in the name of applicant only.</td>
</tr>
<tr>
<td>► In case of Indian applicant, documents should not be older than 2 months from the date of filing of the eForm.</td>
</tr>
<tr>
<td>► In case of foreign applicant, address proof should not be older than 1 year from the date of filing of the eForm.</td>
</tr>
<tr>
<td>► DIN for foreign nationals can be obtained by providing a copy of the foreign nationals passport that is notarised and apostilled and address proof (legalised) in accordance with the country requirements. The passport copy attached for the foreign national DIN applicant must contain the date of birth of the applicant. If passport does not include date of birth, then an additional proof containing date of birth must be submitted, duly certified or attested.</td>
</tr>
<tr>
<td>► It is mandatory to attach a copy of board resolution for appointment of director in an existing company.</td>
</tr>
</tbody>
</table>
**Annexure II: List of Documents required**

<table>
<thead>
<tr>
<th>OPC</th>
<th>Private Limited Company</th>
<th>Private Limited Company for Foreign National</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>List of documents required for filing OPC</strong>&lt;br&gt;► PAN of main director and Nominee Director (Both the directors should be Indian nationals)&lt;br► Address Proof of Director &amp; Nominee Director – Passport, Driving License, Aadhaar, Bank Statement or electricity bill (Any two of these docs must be valid and recent)&lt;br► Proof of registered office in India – Rent Agreement, Sale Deed, Copy of Electricity bill, Property Tax receipt. NOC from landlord for use of premises as registered office&lt;br► Sign Digital Signature Application</td>
<td><strong>List of documents required for filling SPICE form for Private Limited Company for Indian Nationals</strong>&lt;br► PAN card is mandatory along with any one of:&lt;br► Passport&lt;br► Election Card or Voter Identity Card&lt;br► Unique Identification Number (UIN)&lt;br► Driving License&lt;br► Residence Proof (in case present and permanent address are different) then following documents required for both addresses:&lt;br► Bank Statement&lt;br► Electricity Bill&lt;br► Telephone Bill&lt;br► Mobile Bill</td>
<td><strong>List of documents required for filling SPICE form for Private Limited Company for Foreign National</strong>&lt;br► Passport (mandatory)&lt;br► Address Proof&lt;br► Residence Proof&lt;br► Bank Statement&lt;br► Electricity Bill&lt;br► Telephone Bill&lt;br► Mobile Bill&lt;br► Below proofs are common for both residents and foreign&lt;br► Registered Office Proof- proof of registered office during the company registration process or within 30 days of incorporation of the company&lt;br► The notarized copy of lease / rent agreement in the name of the company along with a copy of rent paid receipt not older than one month&lt;br► The authorization from the Landlord</td>
</tr>
</tbody>
</table>

Note: For Indian & foreign nationals having DIN, no other proof required if particulars are updated in DIN and declaration to this effect in Form SPICE
# Annexure III: List of Documents required

## LLP
- List of documents required for filing form **FiLLiP**
  - PAN Card of the Partners
  - Address Proof of the Partners
  - Utility Bill of the proposed Registered Office of the LLP
  - No-Objection Certificate from the Landlord
  - Rental Agreement Copy between the LLP and the Landlord

## BIS
- List of Products that mandatory require BIS license are:
  - Cement
  - Household electrical goods
  - Batteries
  - Food and related products
  - Oil pressure stoves
  - Automobile accessories
  - Cylinders, Valves and Regulators
  - Diesel engines
  - Medical Equipment’s
  - Steel Products
  - Electrical Transformers
  - Electrical motors
  - Capacitors
  - Chemicals & Fertilizers
  - Kitchen appliances
  - Domestic water heaters for use of LPG
  - Electronics and IT goods
  - Solar Photovoltaics, systems, devices & components
Annexure IV: List of Documents required for filing application through FIFP:

- Certificate of Incorporation of the Investee & Investor Companies/Entities (Investee company may be a proposed entity and may not be incorporated)
- Memorandum of Association (MOA) of the Investee & Investor Companies/Entities
- Board Resolution of the Investee & Investor Companies/Entities
- Audited Financial Statement of Last Financial Year of the Investee & Investor Companies/Entities
- Article of Association of the Investee & Investor Companies/Entities
- List of Names and addresses of all foreign collaborators along with Passport Copy/ Identification Proof of the Investor Company/Entity
- Diagrammatic representation of the flow and funds from the original investor to the investee company and Pre and Post shareholding pattern of the Investee Company
- Affidavit stating that all information provided in hard copy and online are the same and correct
- Signed copy of the JV agreement/shareholders agreement/technology transfer/trademark/brand assignment agreement (as applicable), in case there are existing ventures
- Board resolution of any joint venture company
- Certificates of Incorporation and charter documents of any joint venture/company which is a party to the proposed transaction
- Copy of Downstream Intimation
- Copy of relevant past FIPB/SIA/RBI approvals, connected with the current proposal (in case of amendment proposal)
- Foreign Inward Remittance Certificate (FIRC) in case investment has already come in and in case of post-facto approval
- In the cases of investments by entities which themselves are pooled investment funds, the details such as names and addresses of promoters, investment managers as Standard Operating Procedure for Processing FDI Proposals 9 well as all the contributors to the investment fund
- List of the downstream companies of the Indian company and the details of the equity held by the Indian Company along with the details of the activities of the companies
- High Court order in case of a scheme of arrangement
- Valuation certificate as approved by a Chartered Accountant
- Non-compete clause certificate of the investor and investee company in case of investment in pharmaceutical sector (As per Annexure 10 of Consolidated FDI Policy Circular of 2016), and as amended from time to time
- Certificate of statutory auditors as mandated in the FDI policy, as applicable
**Annexure V: List of Documents required**

**List of documents required for Existing Structure**

- Information on the individual promoters behind the group
  - A. Self-declaration by the individual promoters as per Appendix
  - B. Detailed profiles on the background and experience of the individual promoters, his/their expertise, track record of business
- Information on entities in the promoter group:
  - A. Names and details of other entities in the promoter group as per Appendix II (if not covered in Appendix I).
  - B. Shareholding pattern of all the entities in the promoter group.
  - C. A pictorial organogram indicating the corporate structure of all the entities in the group indicating the shareholding and total assets of the entities.
  - D. Annual reports of the past five years of all the group entities.
- Information on the promoting / converting entity:
  - a. Declaration by the promoting / converting entity as per Appendix III.
  - b. Shareholding pattern of the promoting / converting entity.
  - c. Memorandum and Articles of Association and financial statements of the promoter entity for the past five years (including a tabulation of important financial indicators for the said years), board composition and representation of the Directors over a period of ten years, income tax returns for last three years, C.A certificate indicating source of funds for promoting / converting entity

**List of documents required for Proposed Structure**

- The applicants should furnish detailed information about the persons/entities, who would subscribe to 5 per cent or more of the paid up equity capital (shareholding pattern) of the proposed bank, including foreign equity participation in the proposed bank and the sources of capital of the proposed investors.
- The proposed promoter shareholding and plan for dilution of promoter shareholding in compliance with the guidelines.
- Proposed management of the bank, if finalized

**Project Report**

- A project report covering business potential and viability of the proposed bank, any other financial services proposed to be offered, plan for compliance with prudential norms on CRR/SLR, composition of loan portfolio, priority sector, etc. as per the guidelines, and any other information that they consider relevant.
- The project report should give as much concrete details as feasible, based on adequate ground level information and avoid unrealistic or unduly ambitious projections. The business plan should address how the bank proposes to achieve financial inclusion and in the case of an NBFC applicant, how the existing lending business will fold into the bank or divested / disposed of.
Annexure VI: Investment options for foreigners

Investment options for foreigners

- Investment in unlisted/listed companies (except through Stock Exchange)
- Investment in listed companies through stock exchange
- ADRs and GDRs*
- Investment by NRIs/PIOs/OCI
- Investment Vehicle (REITs, INVITS, AIF)

Foreign Direct Investment (FDI)
Foreign Venture Capital Investor
Foreign Portfolio Investors (FPI)

Repatriable Non-repatriable

Note: An investor can participate in Indian economy by either commencing business in India (forms explained earlier) 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 previous slides. In particular, FDI has been explained in detail in Section 2 of this document.
Annexure VII: Contacts

Please connect, in case of any queries.

INVEST INDIA (Investment Facilitation Cell)

Vigyan Bhavan, Annexe,
Maulana Azad Road,
New Delhi 110011
Tel: +91-11-23048155
Email: info@investindia.org.in
Website: www.investindia.gov.in

FDI Approval related queries
Address: Foreign Investment Facilitation Section DPIIT
Udyog Bhawan, New Delhi-110001, India
Email: fifp-dipphelpdesk@gov.in
FIFP Status-Enquiry link :
http://www.fifp.gov.in/Authenticate/Login.aspx

MCA related queries
MCA online service related link:
http://www.mca.gov.in/mcafoportal/userComplaintDetails.do
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