



INVEST INDIA

NATIONAL INVESTMENT PROMOTION
AND FACILITATION AGENCY

Doing Business in India

March 2019

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.

Contents

Abbreviations

Introduction to the toolkit

- Related Compliances
- Company wind-up

1. Setting up Business in India

- Types of permitted business establishment
- Foreign company incorporation process- LO/BO/PO & foreign bank branch
- Registration process- OPC, Pvt. Ltd., LLP, FLLP
- Pre- commissioning and post commissioning of operations

2. Foreign Direct Investment in India

- Permitted sectors
- Prohibited Sectors
- Eligible Investors & Instruments
- Compliances/Requirements

3. Institutional & Regulatory framework

- Regulatory set-up
- Institutional set-up

4. Annexures

- Annexure I: List of Documents required for DSC, DIN
- Annexure II: List of Documents required for OPC, Private Limited
- Annexure III: List of Documents required for LLP, BIS
- Annexure IV: List of Documents required for FIFP
- Annexure V: List of Documents required for Foreign Bank Branch
- Annexure VI: Investment Options for Foreigners
- Annexure VII: Contact

Abbreviations

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

Abbreviations

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

1

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

One Person Company	Private Ltd Company	Public Ltd Company	Sole Proprietorship
<ul style="list-style-type: none">• 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• Shareholder can make only 1 nominee, who shall become a shareholder incase of death / incapacity of original stakeholder• Only a natural person who is Indian Citizen & ROI shall be eligible to act as member & nominee in OPC• A person can be nominee in only 1 OPC• 1 Resident director mandatory (Min stay of 182 days)	<p>A private company is a company which has the following characteristics:</p> <ul style="list-style-type: none">• Shareholders right to transfer shares is restricted• Minimum number of 2 members in company• Number of shareholders is limited to 200• An invitation to the public to subscribe to any shares or debentures or any type of security is prohibited• 1 Resident director mandatory	<p>A public company is a company which has the following characteristics:</p> <ul style="list-style-type: none">• Shareholders right to transfer shares is not restricted• Minimum 7 shareholders• Publishing a prospectus become mandatory incase of public issue• 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• 1 Resident director mandatory	<ul style="list-style-type: none">• Sole proprietorship is a form of business in which one person owns all the assets of the business, in contrast to partnership or corporations• 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• The owner reports income/ loss from this business along with personal income tax return

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

Partnership firm

- Partnership firms are created by drafting a partnership deed among the partners. The partnership deed is registered to make a firm
- Partnership firms in India are governed by the Indian Partnership Act, 1932
- Maximum no. of partners in a partnership firm can be 20
- The Profit & Loss are shared in manner as agreed in the partnership deed
- Min 2 partners required

Limited Liability Partnership

- 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
- Introduced in India by way of Limited Liability Partnership Act, 2008. LLP is a separate legal entity
- Min 2 partners required
- LLP shall have 2 designated partners who are individuals and at least one of them shall in be Resident Partner
- Individual/ Body corporate may be a partner in LLP

Foreign Company

- Incorporated outside but having a place of business in India (section 2(42))
- Liaison office - To represent parent company in India
- Branch office- To undertake activities such as Export, Import of goods; research, consultancy etc.
- Project Office- Activities as per contract to execute project
- As per company law, a resident having PAN to be appointed for receiving notices in India for foreign company

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

Private Company vis-à-vis Public Company vis-à-vis OPC vis-à-vis LLP

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

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.)

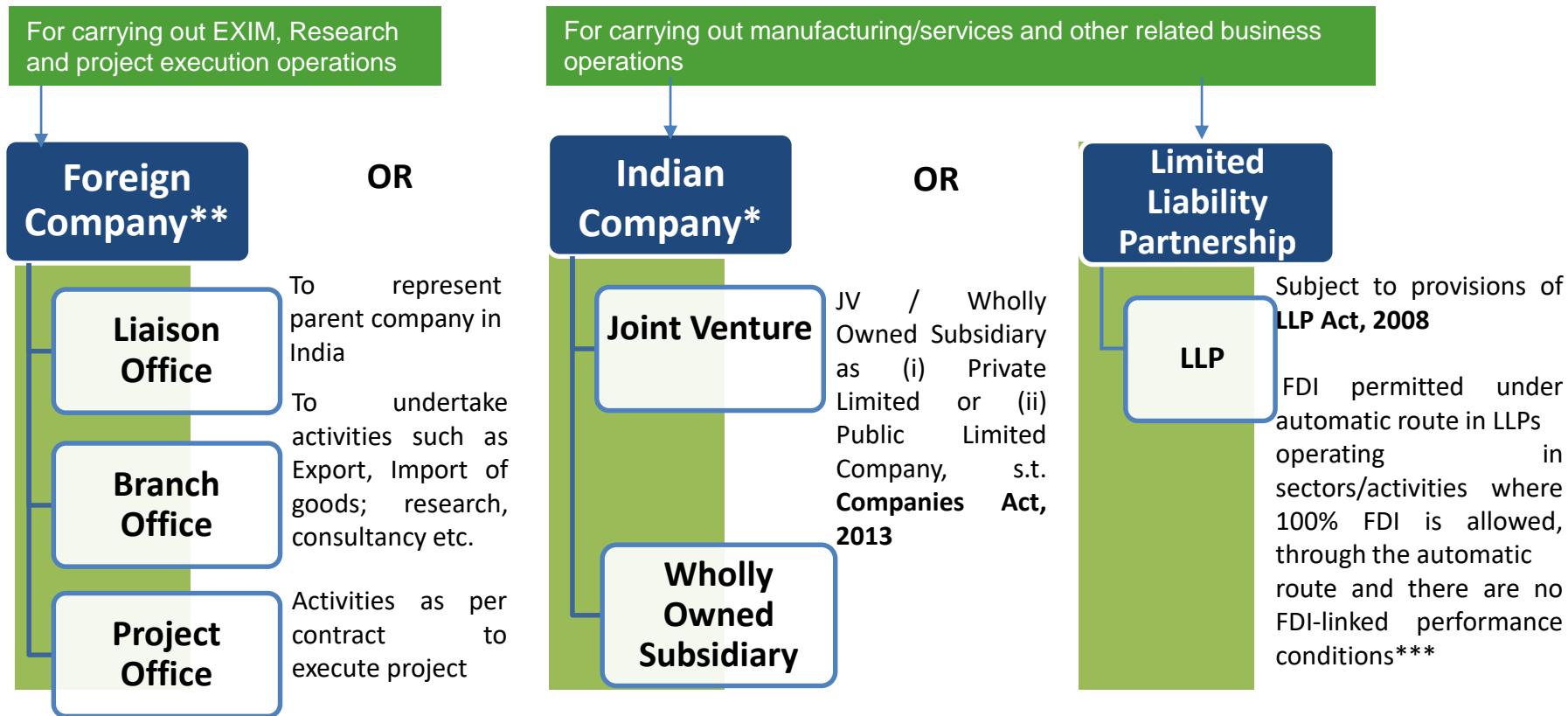
Private Company vis-à-vis Public Company vis-à-vis OPC vis-à-vis LLP

Particulars	Private	Public	OPC	LLP
Commencement of Business/ Operations	Declaration to be filed prior to commencement	Declaration to be filed prior to commencement	Declaration to be filed prior to commencement	Immediately after obtaining certificate of incorporation
Legal Status	Pvt Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	Public Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	OPC is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	LLP is a separate legal entity registered under LLP Act, 2008. The Designated partners of LLP are liable for contraventions under the act
Governing Act/ Law	Companies Act, 2013	Companies Act, 2013	Companies Act, 2013	LLP Act, 2008
Annual Statutory Filings	Annual statement of accounts & annual return with ROC	Annual statement of accounts & annual return with ROC	Annual statement of accounts & annual return with ROC	Annual statement of solvency & annual return with ROC
Annual Filings & Audit	IT return to be filed. Audit mandatory	IT return to be filed. Audit mandatory	IT return to be filed . Audit mandatory.	IT return to be filed. Audit mandatory in case turnover exceeds INR 40 lakhs or contribution exceeds INR 25 lakhs

Setting up business in India

Commencing business in India by foreign Investor

Foreign Investor can commence business in India as:



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

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

Setting up business in India

As a foreign company incorporation - LO/BO/PO

Foreign Company	Branch Office (BO)		Liaison Office (LO)	Project Office (PO)
	Permitted activities	<p>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</p> <p>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:</p> <ul style="list-style-type: none">• 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	<p>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</p>	<p>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</p>

Setting up business in India

As a foreign company incorporation - LO/BO/PO

Foreign Company	Branch Office (BO)		Liaison Office (LO)	Project Office (PO)
	Eligibility	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	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.	NA
	Validity	NA	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	As per the tenure of the project
	Remittance	Permitted to remit profits net of applicable taxes and on submission of requisite documents	NA	Intermittent remittances by companies pending winding up permitted s.t. satisfaction of AD Category 1 bank

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

Foreign Company

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:

- i. they have secured a contract from an Indian company to execute a project in India
- ii. project must have secured the necessary regulatory clearances;
- iii. 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.

Setting up business in India

Foreign company incorporation process- LO/BO/PO

Foreign Company

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.

Setting up business in India

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

Foreign Bank

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

- **Eligible Promoters:**

- 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.
- 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
- 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

- **Fit & Proper criteria :** 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.

NOFHC: 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 .

Regulatory framework : The foreign bank branches shall be governed by Banking Regulation Act, 1949, Reserve Bank of India Act, 1934, Foreign Exchange Management Act, 1999, Payment and Settlement Systems Act, 2007, Credit Information Companies (Regulation) Act, 2005, Deposit Insurance and Credit Guarantee Corporation Act, 1961, other relevant Statutes and the Directives, issued by RBI , SEBI and other regulators

For more information on Guidelines for Licensing of New Banks in the Private Sector act, refer TO RBI guideline

https://rbi.org.in/scripts/bs_pressreleasedisplay.aspx?prid=28191 , &

<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

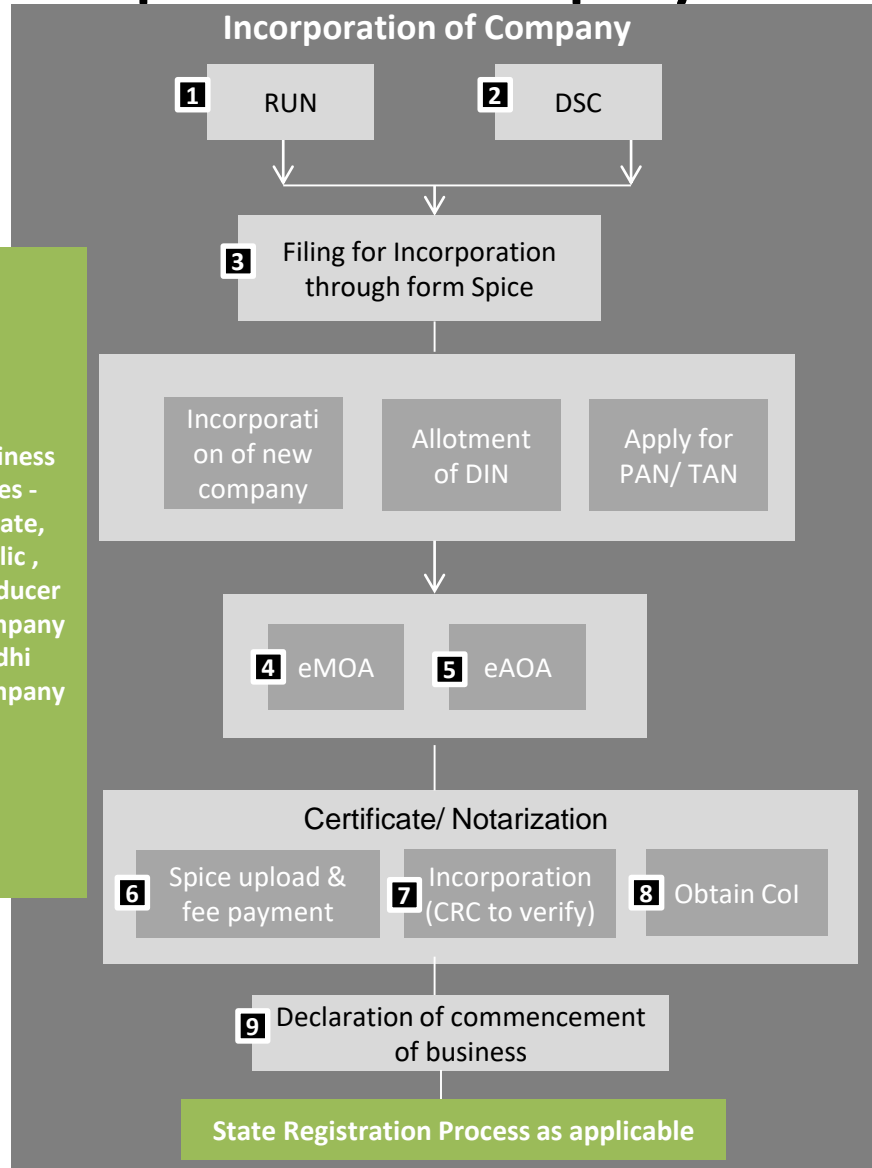
- Applications will be screened by RBI to assess the eligibility of the applicants vis-à-vis the criteria laid down in the guidelines
- RBI may apply additional criteria to determine the suitability of applications, in addition to the ‘fit and proper’ criteria prescribed at paragraph 2 (B).
- The applications 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

Business Types - Private, Public, Producer Company, Nidhi Company



- 0** [Check availability of name](#) / registered trademark for incorporation of company
- 1** Reserve name of the proposed company through online service [RUN](#) on MCA website. Name can also be applied through [SPICE](#).
- 2** Obtain Digital Signature Certificate ([DSC](#)) for at-least one proposed Directors of the Company. [DIN](#) for proposed Directors can only be applied for through form [SPICE](#).
- 3** [Form INC 32 \(SPICE\)](#) to be duly filled and submitted to RoC for incorporation of company. PAN and TAN are shall be auto generated based on details filed in the [SPICE](#) form
- 4 & 5** 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
- 6** [SPICE](#) upload and fee payment is confirmed by MCA
- 7** 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
- 8** Obtain certificate of incorporation (Col). CIN, PAN & TAN numbers are allotted at the time of registration
- 9** 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 .

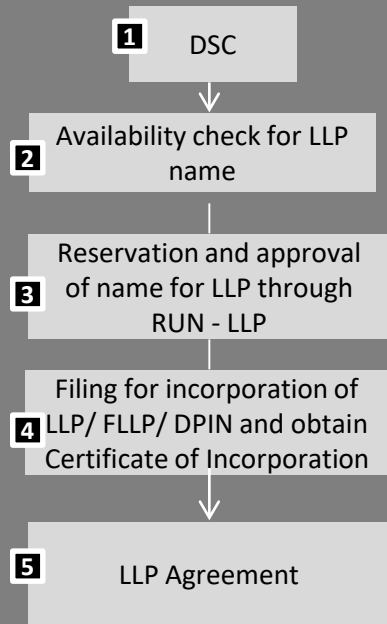
Some registrations would be applicable based on state in which company is incorporating and nature of business entity.

Setting up business in India

Incorporation as an LLP: Overview

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

Business
Types -
LLP



State Registration Process as applicable

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

2 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 Filing the proposed name of LLP for approval from the Registrar of Companies through RUN – LLP and can also be done through FiLLiP

4 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 [Form 3](#) (Information with regard to LLP agreement and changes, if any made therein) to be filled within 30days 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

Setting up legal existence of the entity

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 ([DPIN](#))” through FiLLiP & 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](#) (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](#) 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 business in India

Central level process/compliances

(contd.)

Setting up legal existence of the entity

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.

Incase 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 it's 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.)

Setting up legal existence of the entity

Obtain Permanent Account Number (PAN)

PAN number shall be allotted based on the information filled in Form [SPICe](#) at the time of incorporation of a company.

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

Registration for Tax Account Number (TAN)

TAN number shall be allotted based on the information filled in Form [SPICe](#) at the time of incorporation of a company.

Grant for Bureau of Indian Standards (BIS) License

Applicant has to submit application in the prescribed [Form](#) & [Self Evaluation-cum-Verification Report](#) along with prescribed documents and original test report(s) for considering grant of license under [Product Certification Scheme of BIS](#).

List of products that mandatory require BIS license are listed in Annexure I

Quality Marking Certificate

Quality Marking certificate are provided by Quality Marking Centre of the State Government

Setting up business in India

State level process/compliances

(contd.)

Starting/ Registering a unit in State

Registering / categorization of unit in State

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 the 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.

Approval for State Incentives (Optional)

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

IEM/ EM Registration

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](#)

Setting up business in India

State level process/compliances

(contd.)

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:

	Manufacturing sector	Service sector
Enterprise	Investment in plant & machinery	Investment equipment)
Micro	> = 25 Lakhs	> = 10 Lakhs
Small	25 Lakhs > = 5 crores	10 Lakhs > = 2 crores
Medium	5 crores > = 10 crores	2 crores > = 5 crores

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

Setting up business in India

State level process/compliances

(contd.)

Pre- Commissioning Phase

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

Setting up business in India

State level process/compliances

(contd.)

Pre-Commissioning Phase

Pollution Board

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 License

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.

[Form IL](#)

Consent to Establish

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

Setting up business in India

State level process/compliances

(contd.)

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.

Setting up business in India

State level process/compliances

(contd.)

Pre- Commissioning Phase

Registration of Boilers

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

Building Plan Approval

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

Registration under Contract Labour Act 1970

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

Registration under BOCW Act

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

Setting up business in India

State level process/compliances

(contd.)

Pre-Commissioning Phase

Power for construction

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

Provisional Fire Approval

Provisional Fire Safety Approval from State Fire and Safety department

Approval for lifts & Escalator

Lift and escalator approval needs to be obtained from local state authority.

Approval is given for installation and operation is accorded separately

Setting up business in India

State level process/compliances

(contd.)

Post- Commissioning Phase

Consent to operate

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

Building Completion certificate

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.

Final Fire Approval

Final Fire approval needs to be taken by local state authority

Water Connection

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

Setting up business in India

State level process/compliances

(contd.)

Post-Commissioning Phase

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

Setting up business in India

State level process/compliances

(contd.)

Post- Commissioning of operations

GST Registration

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

Professional Tax Registration

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

Central Excise Registration

The [application](#) for registration is to be filed with the Superintendent of Central Excise having jurisdiction over the premises in respect whereof the registration is to be obtained.

Note – Applicability of Excise is for liquor and petroleum based units

Setting up business in India

State level process/compliances

(contd.)

Post - Commissioning of Operation

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

(contd.)

Post - Commissioning of Operations

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](#)

2

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'.

Category 1

100% FDI permitted through **Automatic route**

Category 2

100% FDI permitted through **Government route**

Category 3

Upto **100%** FDI permitted through **Government + Automatic route**

Category 4

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



Airports & Railway Infrastructure**



Transport services***



Construction Development projects****



Cash & Carry Wholesale Trading



Civil Aviation – Greenfield & Brownfield



Exploration of Petroleum & Natural Gas (including marketing of petroleum products & natural gas)



Broadcasting Carriage Services



Market Place E-commerce Activities



Asset Reconstruction & Credit Information Companies



Other Services at Airport *****



Up-link of non-'News & Current Affairs' TV Channels, Down linking of TV channel



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

Foreign Direct Investment (FDI) in India

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

	Telecom Services*	Up to	49%	Automatic route	Above	49%	Government route
	Defence industry	Up to	49%	Automatic route	Above	49%	Government route
	Pharmaceutical - Brownfield	Up to	74%	Automatic route	Above	74%	Government route
	Air Transport Services **	Up to	49%	Automatic route	Above	49%	Government route
	Banking – Private Sector	Up to	49%	Automatic route	Above	49% Up to 74%	Government route
	Private Security Agencies***	Up to	49%	Automatic route	Above	49% Up to 74%	Government route

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, Unified Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/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 Publication
of Indian editions of foreign magazines
dealing with news and current affairs***

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)

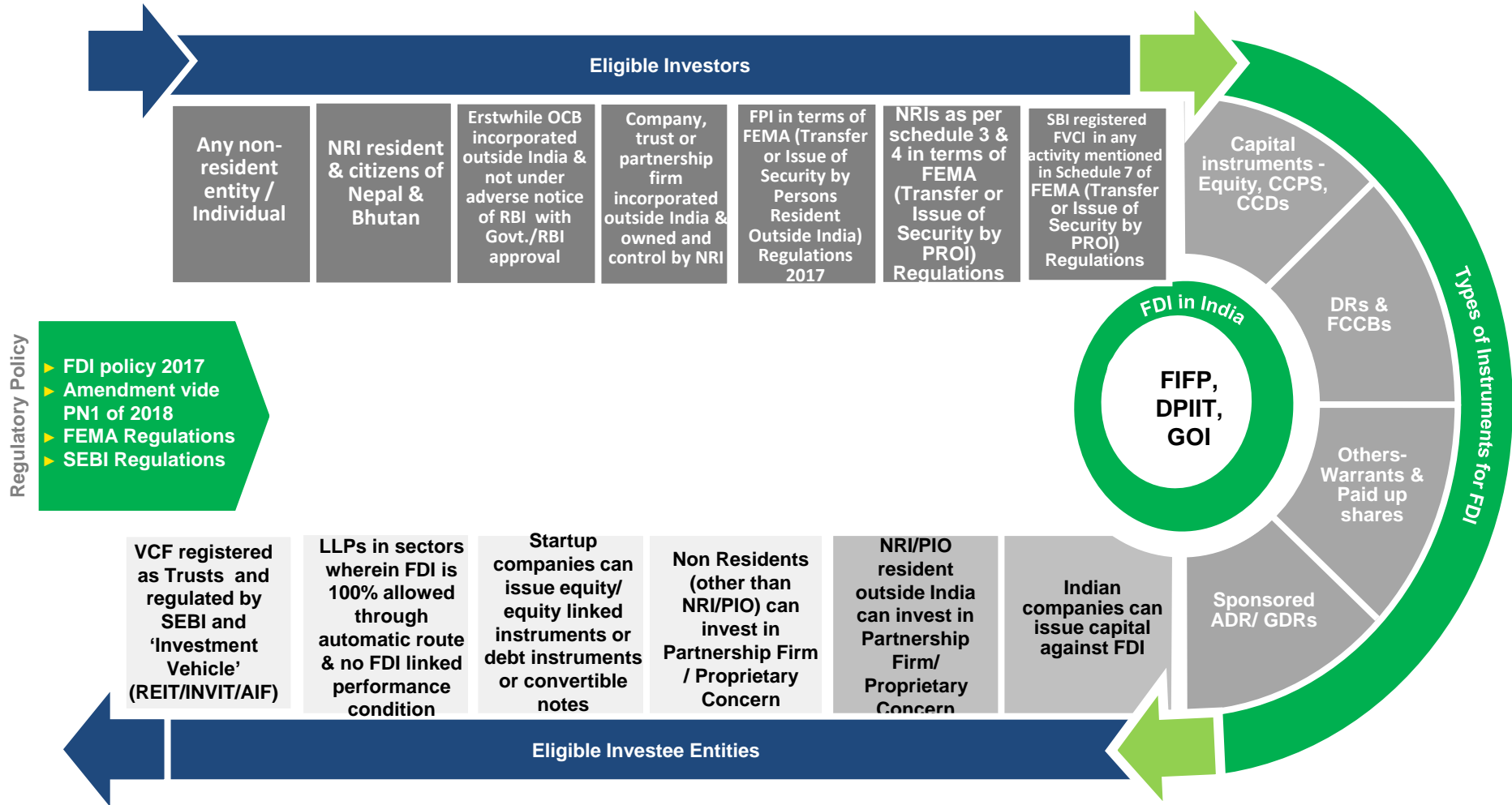
Notes

*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



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

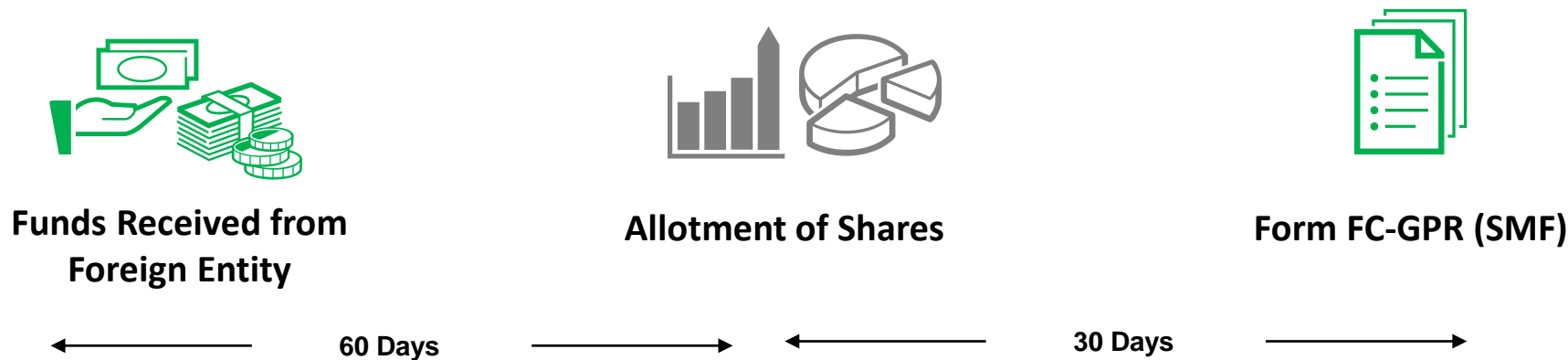


Illustration: Documents for Form FC-GPR

- 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.

Foreign Direct Investment (FDI) in India

Compliances/ Requirements - Allotment, Transfer, Conversion & Remittance of Shares

1

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

2

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.

3

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

4

Repatriation

Repatriation for dividend and Interest

Dividend and interest on fully, mandatorily & compulsorily convertible debentures is freely repatriable without any restrictions

5

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 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 FEMA regulations 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

Step 2c: Transfer of Capital Instrument

Transfer from NRI to NRI is applicable on following case basis:

- 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
- 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
- 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.

Note:

- 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.
- 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.

Step 3: Transfer of Capital Instruments

Transfer from resident to non-resident or vice-versa shall not be less than/exceeding:

- the price worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company;
- 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
- 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.

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.

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.

Step 4: Conversion into Equity

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

- 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
- The foreign equity after conversion of ECB into equity is within the sectoral cap, if any
- Pricing of shares as per extended guidelines
- Compliance with the requirements prescribed under any other statute and regulation in force
- 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

Source: RBI, as accessed on 16 January 2019
https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?id=11456

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

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

3

Institutional & Regulatory framework

Routing FDI in India

Concerned Administrative Ministries/Departments

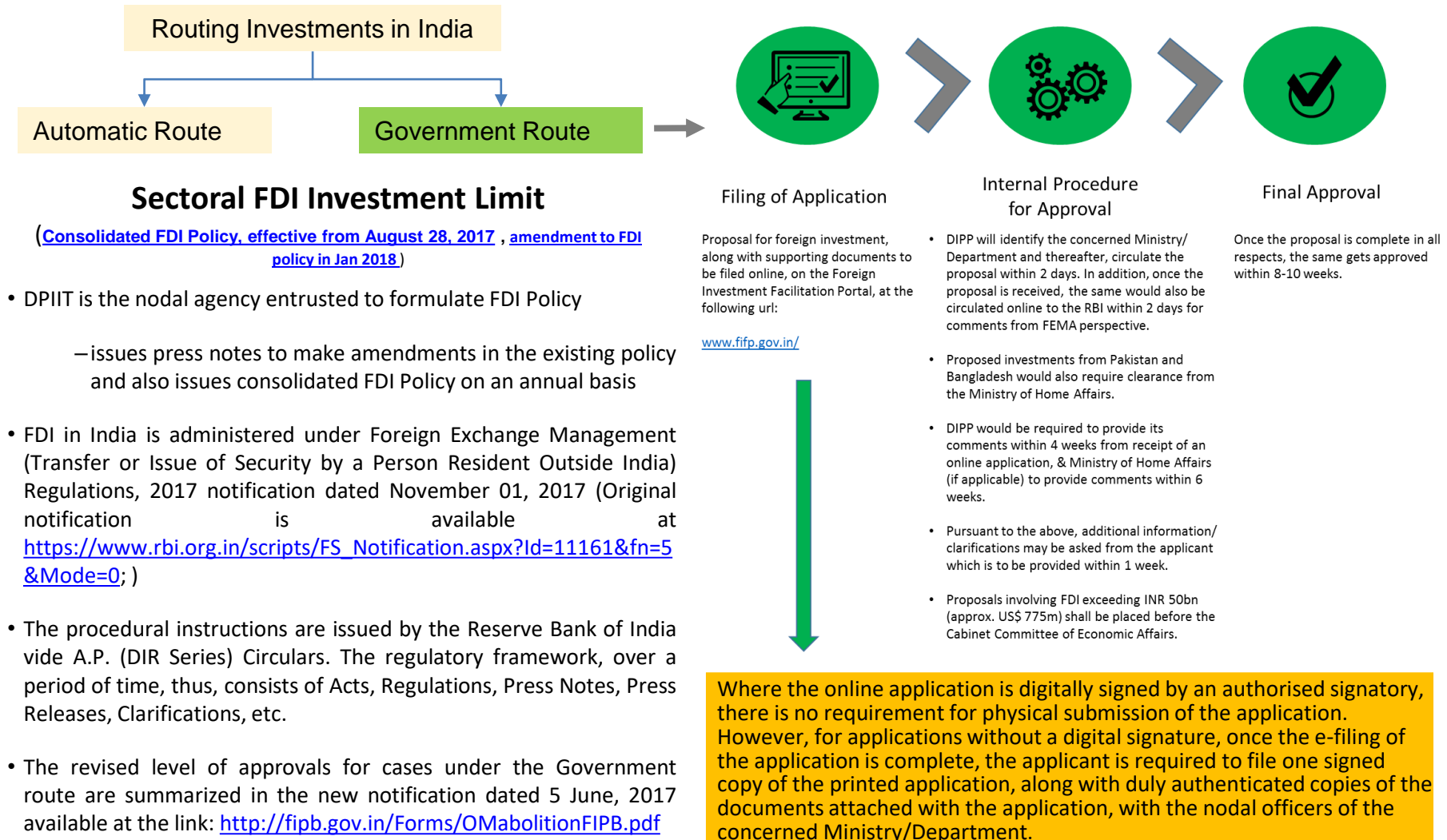
Applicable regulatory framework for Business establishments

Governing Bodies for Business establishments

Winding-up of Business

Institutional and Regulatory Set-up

Routing FDI in India



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:

S. No	Sector/ activity	Administrative Ministry/ Department
1	Mining	Ministry of Mines
2 (a)	Defence – items requiring license under the industries(Development & Regulation) act 1951 and/or arms act 1959	Department of Defence Production, Ministry of Defence
2 (b)	Cases relating to FDI in small arms.	Ministry of Home Affairs
3	Broadcasting.	Ministry of Information and Broadcasting
4	Print Media.	Ministry of Information and Broadcasting
5	Civil Aviation	Ministry of Civil Aviation
6	Satellites	Department of Space
7	Telecom	Department of Telecommunications
8	Private Security Agencies	Ministry of Home Affairs
9	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	Ministry of Home Affairs
10	Single Brand Product Retail Trading	DPIIT
11	FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government	DPIIT
12	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	DPIIT

Institutional and Regulatory Set-up

Concerned Administrative Ministries/Departments

S. No	Sector/ activity	Administrative Ministry/ Department
13	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	Department of Economic Affairs
14	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.	Department of Economic Affairs
15	Banking (Public and Private)	Department of Financial Services
16	Pharmaceuticals	Department of Pharmaceuticals

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>).
- 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

Companies Act, 2013

- ▶ The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013
- ▶ 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

Limited Liability Partnership Act, 2008

- ▶ 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
- ▶ The Act defines of LLP's, their incorporation, conversion to LLP, contribution of partners, administration, management, reporting and filing, and dissolution

The Indian Partnership Act, 1932

- ▶ 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

Institutional and Regulatory Set-up

Applicable regulatory framework for business entities

Competition Act, 2002

- ▶ 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
- ▶ 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.

LO/ BO/ PO (RBI/ AD Banks/ other regulators)

- ▶ 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.

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](#)

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.

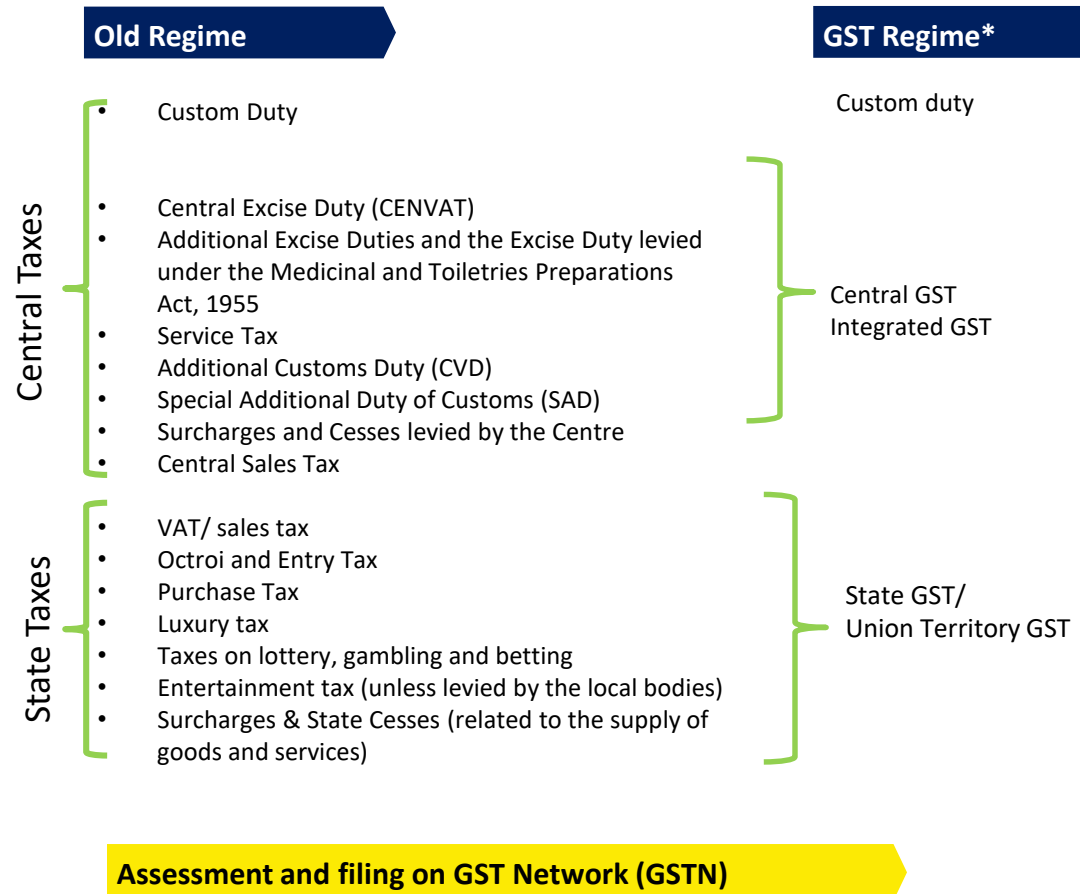
Note: For detailed information, please refer to Taxation in India page (<https://www.investindia.gov.in/taxation>)

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.



*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

Agencies of MCA	Agencies under MCA Supervision	Other Agencies
Registrar of Companies	*Competition Commission of India	National Company Law Tribunal
Official Liquidators	The Institute of Chartered Accountants of India	National Financial Reporting Authority
Regional Directors	The Institute of Company Secretaries of India	Securities Exchange Board of India
Central Registration Centre	The Institute of Cost Accountants of India	The Reserve Bank Of India
		Central Board of Direct Taxes
		Central Board of Excise and Customs
		Income Tax Department
		State Commercial Tax Department
		Municipal Bodies/ Local Property tax Department

*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))



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

Company : sec 2(94A) and sec 272 of companies act 2013 : <http://mca.gov.in/SearchableActs/Section272.htm> along with provisions of insolvency and bankruptcy code : <http://www.ibbi.gov.in/>

LLP : Section 63, 64 and 65 of LLP Act 2008 : <http://www.mca.gov.in/MinistryV2/llpact.html>

Partnership : sec 40-44 of the Partnership Act 1932, http://www.mca.gov.in/Ministry/actsbills/pdf/Partnership_Act_1932.pdf

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 :

Company : sec 2(94A) and sec 272 of companies act 2013 : <http://mca.gov.in/SearchableActs/Section272.htm> along with provisions of insolvency and bankruptcy code : <http://www.ibbi.gov.in/>

LLP : Section 63, 64 and 65 of LLP Act 2008 : <http://www.mca.gov.in/MinistryV2/Ilpact.html>

Partnership : sec 40-44 of the Partnership Act 1932, http://www.mca.gov.in/Ministry/actsbills/pdf/Partnership_Act_1932.pdf

4

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

List of documents required for Digital Signature Certificate

- ▶ Address Proof
- ▶ Aadhaar card (not mandatory)
- ▶ PAN card
- ▶ Photo
- ▶ Email Id
- ▶ Phone Number

Note:

- PAN is mandatory for Indian
- Passport is mandatory for foreigner
- Documents to be notarized & apostilled for foreigners
- Video and mobile verification is mandatory.
- Only video verification is required for foreigners.

DIN

The DIR-3 form must contain a photo of the DIN applicant along with the details of the applicant and the following documents:

- ▶ In case of Indian nationals, Income-tax PAN is a mandatory requirement for proof of identity.
- ▶ 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.
- ▶ In case of Indian applicant, documents should not be older than 2 months from the date of filing of the eForm.
- ▶ In case of foreign applicant, address proof should not be older than 1 year from the date of filing of the eForm.
- ▶ 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.
- ▶ It is mandatory to attach a copy of board resolution for appointment of director in an existing company

Annexure II: List of Documents required

OPC

List of documents required for filing OPC

- ▶ PAN of main director and Nominee Director (Both the directors should be Indian nationals)
- ▶ Address Proof of Director & Nominee Director – Passport, Driving License, Aadhaar , Bank Statement or electricity bill (Any two of these docs must be valid and recent
- ▶ 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
- ▶ Sign Digital Signature Application

Private Limited Company

List of documents required for filling [SPICe](#) form for Private Limited Company for Indian Nationals

- ▶ PAN card is mandatory along with any one of:
 - ▶ Passport
 - ▶ Election Card or Voter Identity Card
 - ▶ Unique Identification Number (UIN)
 - ▶ Driving License
- ▶ Residence Proof (in case present and permanent address are different) then following documents required for both addresses
 - ▶ Bank Statement
 - ▶ Electricity Bill
 - ▶ Telephone Bill
 - ▶ Mobile Bill

List of documents required for filling [SPICe](#) form for Private Limited Company for Foreign National

- ▶ Passport (mandatory)
- ▶ Address Proof
- ▶ Residence Proof
 - ▶ Bank Statement
 - ▶ Electricity Bill
 - ▶ Telephone Bill
 - ▶ Mobile Bill
- ▶ Below proofs are common for both residents and foreign
 - ▶ Registered Office Proof- proof of registered office during the company registration process or within 30 days of incorporation of the company
 - ▶ 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
 - ▶ The authorization from the Landlord

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

FDI approval : Foreign Investment Facilitation Portal (FIFP)

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

Additional information to be furnished by the Promoters along with relevant supporting documents for setting up Foreign Bank Branch in India (Annex II)

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

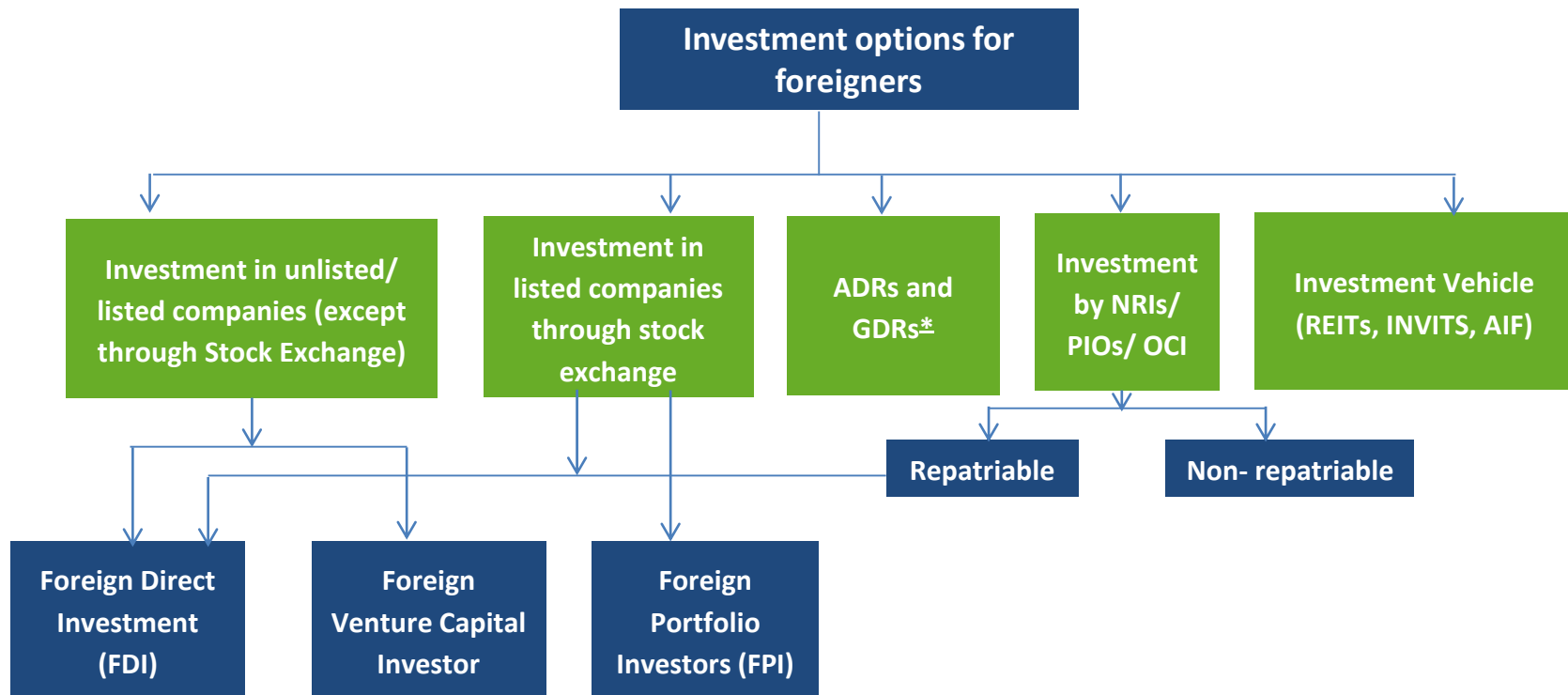
List of documents required for Proposed Structure

- ▶ 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 report⁹ 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/SLR¹⁰, 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



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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