A Guide to Foreign Direct Investment in India
2019-2020

Our Offices: Abu Dhabi | ADGM (Abu Dhabi) | Bahrain | Delhi | Doha | Dubai | Fujairah | Lisbon | London | Luxembourg | Moscow | Ras Al Khaimah | Sharjah

A GUIDE TO FOREIGN DIRECT INVESTMENT IN INDIA

Imagine that you are a child in India during the 1980s. Your uncle, who resides abroad in Switzerland, has come for his vacation and gifts you a goody bag filled with exquisite chocolates such as Lindt, Milka and Toblerone, all of which you adore. After he departs, you search for these chocolates at different markets and bakeries, only to find out that they are not sold there. Fast-forwarding 25 years, in the 2000s, you visit a supermarket and voila! There, in the chocolate section, your eyes feast upon various packets of Lindt, Milka, Toblerone and other chocolate brands. Reading this, one can wonder what happened during those twenty-five years that brought these chocolate brands to India. Well, the answer is simple. Foreign Investment.

In simple terms, investment is the acquisition of an asset with the intention of generating monetary benefit from it in the future. Foreign Investment is an international investment that is made into a country by an entity that is foreign to it. A variation of Foreign Investment is Foreign Direct Investment or FDI. In India, the regulation of FDI was promoted during the 1970s, with the aim of liberalising the trade and economy of the nation while promoting investments into the country. This was done with the help of the Foreign Exchange Regulation Act (FERA) of 1973, which empowered the Reserve Bank of India to act as the statutory governing body for regulating and controlling activities like:

I. Export and import of currency notes and bullion

II. Transfer of securities between residents and non-residents

III. Acquisition of immovable property in and outside India

IV. Foreign exchange payments outside India

But at the same time, FERA 1973 restricted the growth of foreign companies by imposing restrictions on foreign equity and was seen as controlling legislation rather than one that provides incentives for foreign companies. The provisions of FERA 1973 stipulated that foreign companies must reduce their shareholdings in the Indian companies to a maximum of 40 per cent in order to continue operations and if that percentage was higher, they would require authorization from the Reserve Bank of India to continue with their operations. This led to a reduction in the amount of investments flowing into the country. Over the following years, the Government adopted policies that promoted liberalising FDI regulations, which were incompatible with the existing legislation. Therefore, the Foreign Exchange Management Act (FEMA) of 1999 was introduced.

The Foreign Exchange Management Act, 1999 brought about a liberalization on the foreign exchange controls and reduced the restrictions on FDI, by managing rather than regulating foreign exchange, with the significant change being offences were now of a civil nature than a criminal one. The Foreign Exchange Management (Transfer or Issue of security by a person resident outside India) Regulations, 2000 regulates foreign direct investments in accordance with the FEMA 1999. Under the provisions of the Regulations, a foreign investor i.e., a person residing outside India who happens to be a citizen of a foreign state or a body corporate registered outside India, can make investments through a domestic asset management company or a portfolio manager (who

> *"Developing countries have much to gain from capital mobility: the ability to tap external sources of finance, greater financial efficiency from deeper stock and bond markets, and technology transfer and know-how from foreign direct investment.*
> *– Zanny Minton Beddoes*

are affiliated with the *Securities and Exchange Board of India (SEBI)* as a foreign institutional investor) who will manage the funds of a sub-account that will be used for investment. This was governed by the Department of Industrial Policy and Promotion, which recently changed its name to the Department for Promotion of Industry and Internal Trade (DPIIT). The DPIIT focused on the facilitation of FDI into the country by issuing the Consolidated FDI Policy (issued every 6 months), that governs the limit at which foreign investors can invest in the different sectors and contains the regulations that the investors must adhere to. Certain sectors were prohibited from investors initially or had a cap on the amount of investment that could be done.

Under the new regulations, there were 2 ways in which foreign investors could invest in India. There are:

I. Automatic Route : Under this route, the investor does not require approval from the government for their investment.

II. Government Route : Under this route, any investment that is done in an industry will require prior approval from the government, that would be given by the concerned department.

The procedure to obtain approval under the government route is as follows:

I. A proposal for the foreign investment must be submitted along with the supporting documents to the Foreign Investment Facilitation Panel of DPIIT via an online portal.

II. Once the DPIIT receives the proposal, it will identify the relevant Ministry/Department and forward the proposal within 2 days to them and simultaneously to the RBI as well, in order to inspect it from a FEMA perspective. The relevant Ministry/Department must provide its comments with relation to the proposal within 4 weeks from the receipt of the proposal. If any additional information is a requirement, the DPIIT will request the applicant to furnish the same within 1 week. It must be noted that proposals which involve an FDI of more than INR 50 billion will be placed before the Cabinet Committee of Economic Affairs.

III. Once the proposal is complete, the required approvals will be granted within 8-10 weeks from the date of application.

The following table illustrates the various sectors and the permitted percentage of investment via FDI:

Serial Number	Sector	Percentage of Investment in Automatic Route	Percentage of Investment in Government Route
01	Agriculture and Animal Husbandry	100%	-
02	Air Transport Services (non-scheduled and other services under civil aviation)	100%	-
03	Air Transport Services (scheduled and other services under civil aviation)	Up to 49%	Above 49%
04	Airports (Greenfield & Brownfield)	100%	-
05	Asset Reconstruction Company	100%	-
06	Auto components	100%	-
07	Automobiles	100%	-

"Foreign direct investment, on the other hand, is far more stable and driven by domestic fundamentals."

– Gita Gopinath

Serial Number	Sector	Percentage of Investment in Automatic Route	Percentage of Investment in Government Route
08	Banking (Private Sector)	Up to 49%	Up to 49%
09	Banking (Public Sector)	-	Up to 20%
10	Biotechnology (Brownfield)	Up to 74%	Above 74%
11	Biotechnology (Greenfield)	100%	-
12	Broadcast Content Services (up-linking of non "News & Current Affairs" TV Channels/Down-linking of TV Channels	100%	-
13	Broadcasting Carriage Services	100%	-
14	Broadcasting Content Services	-	Above 49%
15	Capital Goods	100%	-
16	Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	-
17	Chemicals	100%	-
18	Coal & Lignite	100%	-
19	Construction Development: Townships, Housing, Built-up infrastructure	100%	-
20	Construction of Hospitals	100%	-
21	Core Investment Company	-	100%
22	Credit Information Companies (CIC)	100%	-
23	Defence	Upto 49%	Above 49%
24	Duty-Free Shops	100%	-
25	E-Commerce Activities	100%	-
26	Electronic Systems	100%	-
27	Food Processing	100%	-
28	Food Products Retail Trading	-	100%
29	Gems & Jewellery Manufacturing	100%	-
30	Healthcare (Brownfield)	upto 74%	Above 74%

"How many millionaires do you know who have become wealthy by investing in savings accounts? I rest my case."

- Robert G. Allen

Serial Number	Sector	Percentage of Investment in Automatic Route	Percentage of Investment in Government Route
31	Healthcare (Greenfield)	100%	-
32	Industrial Parks (New and existing)	100%	-
33	Infrastructure Company in the Securities Market	Up to 49%	-
34	Insurance	Upto 49%	-
35	IT and BPM	100%	-
36	Leather	100%	-
37	Manufacturing	100%	-
38	Medical Devices	100%	-
39	Mining and Exploration of metal and nonmetal ores	100%	-
40	Mining and Exploration of metal and titanium bearing mineral and ores, its value addition and integrated services	-	100%
41	Multi Brand Retail Trading	-	51%
42	Other Financial Services	100%	-
43	Other services under the Civil Aviation sector (Maintenance and Repair organiza-tions; flying training institutes; and	100%	-
44	Other services under the Civil Aviation sector (Ground Handling Services subject to	-	100%
45	Pension	49%	-
46	Petroleum & Natural Gas	100%	-
47	Petroleum Refining (by PSUs)	49%	-
48	Pharmaceuticals (Brownfield)	Up to 74%	Above 74%
49	Pharmaceuticals (Greenfield)	100%	-
50	Plantation Sector	100%	-
51	Ports and Shipping	100%	-
52	Power Exchanges	49%	-

"Every once in a while, the market does something so stupid it takes your breath away."
- Jim Cramer

Serial Number	Sector	Percentage of Investment in Automatic Route	Percentage of Investment in Government Route
53	Print Media (Publication/printing of scientific and technical magazines/ specialty journals/ periodicals and facsimile edition of foreign newspapers)	-	100%
54	Print Media (Publishing of newspaper, periodicals and Indian editions of foreign magazines dealing with news and current affairs	-	100%
55	Private Security Agencies	Up to 49%	Above 49%
56	Railway Infrastructure	100%	-
57	Renewable Energy	100%	-
58	Roads & Highways	100%	-
59	Satellites – establishment and operation	-	100%
60	Single Brand Product Retail Trading	100%	-
61	Telecom Services	Up to 49%	Up to 49%
62	Textiles & Garments	100%	-
63	Thermal Power	100%	-
64	Tourism & Hospitality	100%	-
65	White Label ATM Operation	100%	-

The major industries have been explained below: -

1. Agriculture and Animal Husbandry:

In the Agriculture and Animal Husbandry sector, 100% foreign direct investment is permitted for the following activities:

i. Floriculture, Horticulture and Cultivation of Vegetables and Mushrooms under controlled conditions (i.e., the artificial controlling of rainfall, solar radiation, air humidity, temperature through the use of net houses, greenhouses and net houses.)

ii. Development and production of seeds and planting material.

iii. Apiculture, Aquaculture, Pisciculture and Animal Husbandry

iv. Services related to Agro and Allied Sectors.

2. Air Transport Services (non-scheduled and other services under civil aviation):

Air Transport Services under this sector includes the Domestic Scheduled Passenger Airlines, Non-Scheduled Air Transport Services, helicopter and seaplane services. The following are the conditions for this sector:

i. Foreign airlines are permitted to acquire equity in companies operating in to the Cargo sector, helicopter and seaplane services in accordance with Table 1.

> *"The individual investor should act consistently as an investor and not as a speculator."*
> *- Ben Graham*

ii. With respect to operating in non-scheduled air transport services, foreign companies are permitted to invest up to 49% of the capital of Indian companies, and must adhere to the following conditions as well:

i. It must be under the Government Route.

ii. The investment must comply with the regulations of the Securities and Exchange Board of India (SEBI).

iii. The permit will be granted to a company that meets the required criteria as follows:

a. The company is registered and has its principal place of business in India.

b. The Chairman and at least two-thirds of the Directors of the company must be citizens of India.

c. The ownership and effective control of the company must be vested in Indian Nationals.

d. The foreign nationals associated with the Air Transport Services shall be cleared from a security view point prior to the deployment.

e. Any technical equipment that will be imported as a result of the investment must acquire clearance from the Ministry of Civil Aviation.

iv. Any foreign investment in M/s Air India Ltd. must not exceed 49% either directly or indirectly and the substantial ownership and effective control will be vested in Indian Nationals.

3 Air Transport Services (Scheduled and other services under civil aviation):

Air Transport Services under this sector relates to the scheduled air transport services, domestic scheduled passenger airline and regional air transport service. In the case of NRIs, 100% FDI is allowed under the automatic route. With respect to operating in scheduled air transport services, foreign companies are permitted to invest up to 49% of the capital of Indian companies, and must adhere to the following conditions as well:

i. It must be under the Government Route.

ii. The investment must comply with the regulations of the Securities and Exchange Board of India (SEBI).

iii. The permit will be granted to a company that meets the required criteria as follows:

i. The company is registered and has its principal place of business in India.

ii. The Chairman and at least two-thirds of the Directors of the company must be citizens of India.

iii. The ownership and effective control of the company must be vested in Indian Nationals.

iv. The foreign nationals associated with the Air Transport Services shall be cleared from a security viewpoint prior to the deployment.

v. Any technical equipment that will be imported as a result of the investment must acquire clearance from the Ministry of Civil Aviation.

vi. Any foreign investment in M/s Air India Ltd. must not exceed 49% either directly or indirectly and the substantial ownership and effective control will be vested in Indian Nationals.

4. Airports (Greenfield & Brownfield):

The conditions applicable for this sector are the same as Sectors II and III.

5. Asset Reconstruction Company:

The main condition for FDI in asset reconstruction companies is that the company must be registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The other relevant conditions are as follows:

i. Persons residing outside India can invest up to 100% via the Automatic Route in Asset Reconstruction Companies that are registered with the Reserve Bank of India (RBI)

"Wide diversification is only required when investors do not understand what they are doing."
-Warren Buffett

ii. The investment limit of a sponsor in the shareholding of an Asset Reconstruction Company and the investments by institutional and non-institutional investors will be governed by the provisions of SARFAESI Act.

iii. The total shareholding of Foreign Institutional Investors (FII)/Foreign Portfolio Investors (FPI) must be below 10% of the total paid-up capital.

iv. The FIIs and FPIs can invest up to 100% of each tranche of Security Receipts issued by Asset Reconstruction Companies, subject to the guidelines and regulations of the Reserve Bank of India.

6. Autocomponents:

Refer to Sector XXXVII (Manufacturing).

7. Automobiles:

Refer to Sector XXXVII (Manufacturing).

8. Banking (Private Sector):

In the banking (private sector), FDI of up to 74% is permitted, wherein up to 49% is via the automatic route and any investment above that must be under the government route. There are further conditions, as follows:

i. The aggregate foreign investment from all sources will only be permitted to a maximum of 74% of the paid-up capital of the bank, wherein at all times at least 26% of the paid-up capital must be held by residents (with an exception given to a wholly-owned subsidiary of a foreign bank).

ii. The condition above is applicable to all investments in both new and existing private banks.

9. Banking (Public Sector):

All investments in the public sector of banking will be subject to the Banking Companies (Acquisition & Transfer of Undertakings) Act 1980, wherein the ceiling of 20% is applicable to the State Bank of India and its associate banks.

10. Biotechnology (Brownfield):

Refer to XLVIII (Pharmaceuticals – Brownfield).

11. Biotechnology (Greenfield):

No specific conditions.

12. Broadcast Content Services (up-linking of non "News & Current Affairs" TV Channels/Down-linking of TV Channels:

No specific conditions.

13. Broadcasting Carriage Services:

Broadcasting carriage services refers to services relating to:

i. Teleports (setting up of up-linking of HUBs/Teleports)

ii. Direct to Home (DTH)

iii. Cable Networks (Multi-System Operators operating at National/State/District level and undertaking upgradation of networks towards digitalization.

iv. Mobile TV

v. Headend-in-the-Sky Broadcasting Service (HITS)

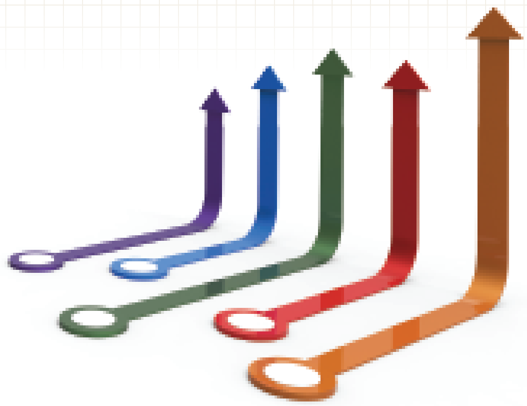
vi. Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators).

(Any infusion of foreign investment beyond 49% in a company, that does not seek a license/permission from the sectoral Ministry, which results in the change of ownership or transfer of stake from the existing investor to the new foreign investor will require the approval of the government.)

14. Broadcasting Content Services:

With respect to the Broadcasting content services, only FDI of up to 49% in permitted via the Government Route. The terrestrial broadcasting is subject to the terms and conditions of the Ministry of Information & Broadcasting, with respect to:

i. Broadcasting Content Services (up-linking of news and current affairs TV Channel)



"In investing, what is comfortable is rarely profitable."
- Robert Arnott

ii. Broadcasting Content Services (FM)

15. Capital Goods:

Refer to Sector XXXVII (Manufacturing).

16. Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs):

With respect to FDI in Cash and Carry Wholesale Trading, the following are the conditions that must be met:

i. In order to carry out wholesale trading, the required licenses and permits must be obtained from the relevant Government Bodies.

ii. Not forsaking any sale made to government entities, any sale made by a wholesaler will be considered as cash & carry wholesale trading with valid business customers only when the wholesale trade is made to the following entities:

i. Entities that hold sales tax/VAT/service tax/excise duty registration.

ii. Entities holding trade licenses (under the Shops and Establishment Act).

iii. Entities holding permits for undertaking retail trade (like tehbazari or similar license for hawkers) from Government bodies.

iv. Institutions that are registered as a society or a public trust for self-consumption.

(Entities can fulfil any one of the above 4 conditions)

iii. Records that contain details of the sale, such as the name and kind of the entity, license number, amount of sale, etc., must be maintained on a day-to-day basis.

iv. Wholesale trading to the companies that belong to the same group is permitted up to 25% of the total turnover of the wholesale venture when the group companies are taken together.

v. Wholesale trading, including credit facilities, can be undertaken as normal business practices, subject to the applicable regulations.

vi. A wholesale trading entity can undertake retail trading also, subject to conditions as applicable, wherein the entity must maintain separate books of accounts for the different businesses, which must be audited by the relevant authorities.

17. Chemicals:

Refer to Sector XXXVII (Manufacturing).

18. Coal & Ignite:

The conditions for FDI in coal and lignite are as follows:

i. For captive consumption by iron, steel & cement units, power projects and other eligible activities, mining of coal and lignite will be in accordance with the provisions of the Coal Mines (Nationalization) Act, 1973.

ii. Coal processing plants like washeries will be permitted to set up on the condition that the company will not undertake coal mining and sell washed or seized coal from its coal processing plants in the open market. The washeries must supply the washed/seized coal to those who supply raw coal to processing plants for washing/sizing.

iii. Any FDI for the separation of titanium bearing minerals and ores must adhere to the following conditions:

i. Any value addition facilities must be set up in India along with the transfer of technology.

ii. Any disposal of tailings that arise during mineral separation must be done in accordance with the regulations issued by the *Atomic Energy Regulatory Board* i.e., the Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.

iv. FDI in the mining of 'Prescribed Substances', as per the Department of Atomic Energy will not be permitted.

19. Construction Development: Townships, Housing, Built-up Infrastructure:

FDI in construction and development of townships, housing and built-up infrastructure is subject to the following conditions:

"India-bound FDI may face thorough frisking."
- Economic Times

i. FDI will not be permitted in an entity that engages in real estate business, construction of farmhouses and trading in transferable developmental rights (TDRs). (Real estate business is defined as the dealing in land and immovable property with a view of earning profit and does not include the development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure and townships. It must be noted that the earning of rent/income from the lease of such property, that does not amount to transfer, will not amount to real estate business.

ii. A lock-in period of 3 years for the repatriation of funds by the investors will not apply to hospitals, *Special Economic Zones (SEZs),* educational institutions, old age homes, hotels & tourist resorts and investment by NRIs.

iii. The completion of a project will be determined by rules and regulations of the relevant State Government.

iv. 100% FDI is permitted in the operation and management of completed projects such as townships, malls/shopping complexes and business centres. The transfer of ownership from residents to non-residents is also permitted. It must be noted that there will be a lock-in period of 3 years, that is calculated on the basis of each tranche of the FDI for the project, and during this period, any transfer of immovable property will not be permitted.

v. The investor can exit the project upon completion or after the development of the trunk infrastructure. A person resident outside India will not be permitted to exit and repatriate the foreign investment prior to the completion of the project, except in the case where a lock-in period of 3 years has been completed with respect to each tranche of foreign investment.

vi. Such a project must conform to all norms and standards as laid down by the relevant Government Bodies.

vii. The Indian investee company will be responsible for obtaining the required permits and approvals and will only be permitted to sell developed plots (where trunk infrastructure has been made available).

viii. The respective government bodies will be responsible for monitoring the investors for compliance to the regulations.

(Real estate broking services will be excluded from the definition of real estate business. 100% FDI in real estate broking services is permitted under the Automatic Route.)

20. Construction of Hospitals:

Refer to XIX (Construction Development: Townships, Housing, Built-up Infrastructure).

21. Core Investment Company:

FDI in core investment companies are subject to the regulatory framework issued by the Reserve Bank of India, as per circular number 197/03.10.001/2010-11, issued on August 12, 2010.

22. Credit Information Companies (CIC):

Any foreign investment in Credit Information Companies is subject to the provisions of the Credit Information Companies (Regulation) Act, 2005. Such kind of foreign investment will be subject to the regulatory clearance from the Reserve Bank of India. Any kind of FII/FPI will be permitted subject to the following conditions:

i. Any single entity must, either directly or indirectly, hold below 10% equity.

ii. As a mandatory requirement, any acquisition that is in excess of 1% must be reported to the RBI

iii. The FII/FPI that carries out the investment must not seek any representation in the Board of Directors on the basis of their shareholding.

23. Defence:

In the Defence sector, FDI of up to 49% is permitted via the Automatic Route. Any investment above 49% must be via the Government Route. The two regulations that govern licenses that are issued in the defence sector

"I propose to further consolidate the gains in order to make India a more attractive FDI destination
- Sitharaman

are the Industries (Development & Regulation) Act of 1951 and the Manufacturing of Small Arms and Ammunition under the Arms Act of 1959. The following are the conditions that must be adhered to in the wake of any foreign investment:

i. Any infusion of foreign investment within the permitted route, in a company that does not seek an industrial license, which results in the change of ownership or transfer of stake from the existing investor to the new foreign investor will require the approval of the Government.

ii. The licenses will be issued by the *Department for Promotion of Industry and Internal Trade (DPIIT)*, under the Ministry of Commerce and Industry, after consultations with the Ministry of Defence and Ministry of External Affairs.

iii. Any sort of foreign investment into the Defence sector will be subject to security clearance and guidelines from the Ministry of Defence.

iv. The company that invests must be self-sufficient in areas such as product design and development. The company must also have maintenance and life cycle support facilities of the products being manufactured in India.

24. Duty-Free Shops:

Foreign investment in Duty-Free Shops is permitted on several conditions:

i. All foreign investment is subject to compliance under the Customs Act of 1962

ii. The Duty-Free Shop must not partake any retail trading activity in the Domestic Tariff Area of the nation.

25. E-Commerce:

One of the main conditions for foreign investment in E-Commerce is that the entities are permitted to engage in only *Business to Business (B2B)* e-commerce and not *Business to Consumer (B2C)* e-commerce. The following are the other relevant conditions that are in place for FDI in E-Commerce:

i. FDI for e-commerce that is based on an inventory model is not permitted. (By inventory model, it means where the inventory of goods and services is owned by the e-commerce entity and sold to the consumers directly.)

ii. 100% FDI under the automatic route based on a marketplace model of e-commerce is permitted. (By marketplace model, it means there exists an information technology platform by the e-commerce entity on a digital or electronic network that acts as a facilitator between the buyer and the seller.)

iii. The entity will only be permitted to enter into transactions with sellers that are registered on the its platform on a B2B basis.

iv. The e-commerce marketplace can provide services such as logistics, call centre, payment collection, etc.

v. If more than 25% of the purchases of an inventory of a vendor are by the e-commerce entity, then such inventory will be considered to be controlled by the e-commerce entity.

vi. The details of the seller must be clearly mentioned in the digital or electronic network such as the name, address and contact details. Once the sale has taken place, it will be the responsibility of the seller to ensure that the delivery of the product takes place.

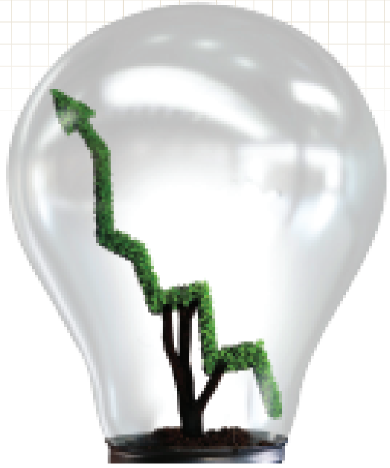
vii. Any payment that is conducted on the digital or electronic network must be facilitated in accordance with the guidelines issued by the Reserve Bank of India.

viii. With respect to the warranty/guarantee of the goods and services sold, the seller will be held responsible for the same.

ix. It must be noted that the e-commerce entity must not, in any way, influence the sale price of the goods or services. The services provided by the entity must be equal in nature to all sellers and must not, in any manner, be discriminatory manner.

x. The e-commerce entity cannot order a seller to be exclusive to that entity's platform.

xi. The e-commerce entity must produce a certificate of compliance with the above-mentioned guidelines, along with a statutory audit to the Reserve Bank of India, by the 30th September of year, for the preceding financial year.



"In the long run, it's not just how much money you make that will determine your future prosperity. It's how much of that money you put to work by saving it and investing it."
- Peter Lynch

26. Electronic Systems:

Refer to Sector XXXVII (Manufacturing).

27. Food Processing:

Refer to Sector XXXVII (Manufacturing).

28. Food Products Retail Trading:

The main condition with respect to FDI in food products retail trading is that the manufacturing/production of the food product must be in India.

29. Gems & Jewellery (Manufacturing):

Refer to Sector XXXVII (Manufacturing).

30. Healthcare (Brownfield):

Refer to XLVIII (Pharmaceuticals – Brownfield).

31. Healthcare (Greenfield):

No specific conditions.

32. Industrial Parks (new and existing):

No specific conditions.

33. Infrastructure Company in the Securities Market:

FDI in an infrastructure company in the Securities Market i.e., stock exchanges, commodity exchanges, depositories and clearing corporations, must comply with the SEBI regulations.

The conditions are as follows:

i. Any foreign investment will be subject to the provisions of:

ii. The Securities Contracts (Regulations) (Stock Exchanges and Participants) Regulations, 2012

ii. The Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996

34. Insurance:

In the Insurance Sector, FDI is permitted for up to 49%, with the main condition being that it is applicable to insurance companies, insurance brokers, third party administrators, surveyors and loss assessors and any other insurance intermediaries as per the provisions of the Insurance Regulatory and Development Authority Act, 1999. The following conditions are applicable:

i. The Indian Insurance Company must not allow foreign investments into the holdings of equity shares to exceed 49% of the paid-up equity capital of the Indian Insurance Company.

ii. The foreign investment of up to 49% is subject to the approval by the Insurance Regulatory and Development Authority of India and must be in accordance with the provisions of the Insurance Act, 1938. Furthermore, it must be the Indian Insurance Company (the company that receives the FDI) that must obtain the necessary licenses and approvals for undertaking insurance-related activities, from the Insurance and Regulatory Authority of India.

iii. Any *Foreign Portfolio Investment (FPI)* into an Indian Insurance Company must be in accordance with the FEMA Regulations of 2000 and the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.

iv. The Indian Insurance Company must make sure that ownership and control remain with the resident Indian entities at all times, in accordance with the Insurance Regulatory Authority of India and the Department of Financial Services.

v. If the foreign entity is a bank, with banks being different from the insurance sector, and has secured the permission of the Insurance Regulatory and Development Authority of India to function as an insurance entity, the foreign investment cap that is applicable to the entity will be that of which it belongs to, subject to the condition that their revenues from the sector to which they belong to remains above 50% of their total revenue at all times.

35. IT and BPM:

Information Technology and Business Process Management sector permits 100% FDI via the automatic route with no specific conditions. The activities for which investment is permitted includes data processing,

"All intelligent investing is value investing — acquiring more that you are paying for. You must value the business in order to value the stock."
– Charlie Munger

software development and computer consultancy services, software supply services, business and management consultancy services, market research services, technical testing and analysis services.

Foreign Direct Investments are those international investments that are made by entities belonging to one economy into entities belonging to another economy with the help of capital instruments, wherein the investor will have a lasting interest. Such kinds of investment establish a long-term relationship between the foreign and local entities. Foreign Direct Investments play a crucial role in the economy of a nation, especially in relation to growth and infrastructure development.

36. Leather

Approximately 12.9 per cent of the world's leather production of skins/hides is accounted for by India, thereby making it one of the biggest producers of leather. Additionally, this industry is also an employment-intensive industry as it provides job opportunities to a large section of people in the region. Under the automatic route, 100 per cent FDI inflows to this industry is allowed.

37. Manufacturing

Indubitably, India is quite an attractive hub for all foreign investments, including the manufacturing sector. With the launch of 'Make in India' campaign, India's manufacturing industry got the boost it needed to become a preferred destination for FDI. It is pertinent to note that the role of FDI on this industry has had a positive impact on the currency, GDP, foreign exchange reserves, imports, exports, unemployment rate, stock market, etc. 100 per cent FDI inflow to this industry is allowed.

38. Medical devices

At present, this sector is governed under the Drugs and Cosmetics Act and is allowed 100% FDI. However, pharmaceuticals are only allowed under 74 per cent in the automatic route. A remedy which shall plausibly boost the medical devices industry and pharmaceutical industry is remunerative and consistent policies wherein investor and companies are able to make long-haul plans.

39. Mining and Exploration of metal and nonmetal ores

In continuation the Coal Sector, mining is one of the core sectors in India which basically provides the basic raw material to numerous vital industries in the region. 100 per cent foreign direct investment under automatic route is allowed for this sector.

40. Mining and mineral separation of titanium bearing mineral and ores, its value addition and integrated services

Refer to above Mining Sector.

41. Multi Brand Retail Trading

Refer to E-commerce Industry

42. Other Financial Services

The government of India allows 100 per cent FDI in this sector carried out by *NBFCs (Non-banking Finance Companies)*, consequently continuing the liberalization of foreign investments regime. For clarity, these services include the activities that are regulated by any of the financial sector regulators including IRDA, SEBI, RBI, to name a few.

43. Other services under the Civil Aviation sector (Maintenance and Repair organizations; flying training institutes; and technical training institutions.)

Refer to Air Transport Services Sector.

44. Other services under the Civil Aviation sector (Ground Handling Services subject to sectoral regulations and security clearance

Refer to Air Transport Services Sector.

45. Pension

The government allows 49 per cent FDI in both pensions sector and insurance sector under the automatic route. In the case of indirect foreign investment, the insurance sector enjoys a rather greater leeway.

"You don't need to be a rocket scientist. Investing is not a game where the guy with the 160 IQ beats the guy with 130 IQ."
– Warren Buffett

46. Petroleum & Natural Gas

With regards to the natural gas and petroleum sector, 100 per cent FDI is allowed for various exploration activities under the automatic route.

47. Petroleum Refining (by PSUs)

Public Sector Undertakings (PSUs) allows 49 per cent FDI in the petroleum sector, without any dilution and disinvestment of the domestic equity in any of the existing PSUs under the automatic route.

48. Pharmaceuticals (Brownfield)

The pharmaceutical industry in the country accounts for approximately 2.4 per cent of the world's pharmaceutical industry. For Brownfield pharmaceutical projects, 74 per cent FDI is allowed. For this reason, several multinational corporations consider India to be a pharma destination. 100 per cent FDI is allowed under the government route, thereby meaning that if the investment is over 74 per cent, government approval is necessary.

49. Pharmaceuticals (Greenfield)

As opposed to the above, 100 per cent FDI is allowed for greenfield pharmaceutical under the automatic route.

50. Plantation Sector

The government allows 100 FDI in essentially five main plantation crops including cardamom, rubber, coffee, olive oil tree and palm oil tree. The same is through the automatic route. Additionally, 100 per cent FDI for tea plantation is allowed through government approval route.

51. Ports and Shipping

It is a matter of fact the most of India's trading is done through maritime transport. The government has continually introduced non-fiscal and fiscal incentives for enterprises that mainly maintain, operate and develop inland waterways as well as shipbuilding in India. Further, 100 per cent FDI is allowed under both automatic and government route.

52. Power Exchanges

Earlier, purchases in this industry were limited to secondary markets only. However, at present, 49 per cent FDI under the automatic route is allowed for this industry registered under the Central Electricity Regulatory Commission Regulations of 2010.

53. Print Media (Publication/printing of scientific and technical magazines/speciality journals/periodicals and a facsimile edition of foreign newspapers)

There remained ambiguity with regards to the FDI in the media industry. The extant FDI policy allowed 49 per cent investment under the approval route, though several websites had 100 per cent foreign investment. It is, however, pertinent to note that 26 per cent FDI is the digital media is allowed in India.

54. Print Media (Publishing of newspaper, periodicals and Indian editions of foreign magazines dealing with news and current affairs

Refer to the above sector.

55. Private Security Agencies

Foreign investors that wish to invest in companies that provide train private security or armoured car services are required to comply with 49 per cent FDI cap, as clarified by the Government of India.

56. Railway Infrastructure

Essentially, a foreign player may invest up to 100 per cent in almost all segments of the railway industry's infrastructure including metro rail, suburban rail, rolling stock and freight lines, locomotive, signalling systems, railways electrification, passenger terminals, etc.

57. Renewable Energy

The government of India allows 100 per cent FDI through the automatic route for all projects related to distribution and generation of renewable energy on a condition that the same be in compliance with the Electricity Act, 2003.

"Bull markets are born on pessimism, grow on scepticism, mature on optimism and die of euphoria."
- John Templeton

58. Roads & Highways

In furtherance to Construction Sector above, 100 per cent FDI for highways and roads is allowed under the automatic route. India has one of the largest road networks in the world.

59. Satellites – establishment and operation

As long as the guidelines of the Department of Space or that of ISRO are complied with, 100 per cent FDI allowed. The same is under government route, and not automatic route. One such condition under the ISRO rules includes that the application with regards to notifying, operating or registering an Indian satellite network/system can only be on behalf of a company that is registered in India, thereby meaning that the applicant must be registered in the country.

60. Single Brand Product Retail Trading

Refer to the E-commerce industry

61. Telecom Services

This industry in the last decade has witnessed an exponential growth which was primarily driven by wider availability, affordable tariffs, expanding 4G coverage, etc. it is pertinent to note that 100 per cent FDI is allowed in this sector wherein 49 per cent is through automatic route, and anything beyond 49 per cent is allowed under government route.

62. Textiles & Garments

The apparel and textile industry in India is one of the largest in the world, and this industry has significantly contributed to the exports, national output and employment sectors. At present 100 per cent FDI is allowed through the automatic route. Instead of requiring prior approval, the investors only need to notify the regional office concerned of RBI within a specified number of days.

63. Thermal Power

100 per cent FDI is permitted for this sector through the automatic route.

64. Tourism & Hospitality

The hospitality and tourism sector in India has emerged as one of the vital drivers of expansion and growth among the services industry. Further, 100 per cent FDI is allowed which includes construction projects like development of resorts, hotels and recreational facilities.

65. White Label ATM Operation

Automated teller machines (ATMs) are installed by commercial banks to aid the customers in checking balance, withdrawals, paying utility bills, transferring money, etc. White label ATMs, as the name suggests, are ATMs owned by a non-banking entity. The Central Government allows 100 per cent FDI on white label ATMs, which means that any foreign entity/company may sign a pact with a commercial bank and service provider to open an ATM.

Conclusion

In conclusion, it is fair to say that foreign direct investment is the panacea for the economic tribulations of any nation. Various market-oriented policies strive to boost economic activity. Further, the Indian economy in recent times has been geared up for competing in the international market where foreign investors see the potential for attractive returns, which is also clear from the already achieved foreign direct investment stories.

STA Law Firm's offices across GCC

Abu Dhabi Office

Advocates and Legal Consultants
23 A, Level 23 Tamouh Towers
Marina Square, Reem Island
Abu Dhabi, United Arab Emirates

Tel: +971 2 644 4330
Fax +971 2 644 4919

ADGM Office

3517, Al Maqam Tower
Abu Dhabi Global Markets Square
Abu Dhabi
United Arab Emirates

Tel: +971 2 644 4330
Fax +971 2 644 4919

Dubai Office

Advocates and Legal Consultants
Office 1904, Level 19, Boulevard Plaza,
Opposite Burj Khalifa
Dubai, United Arab Emirates

Tel: +971 4 368 9727
Fax +971 4 368 5194

Sharjah Office

48-1F, Next to Abu Dhabi Islamic Bank
Near Hamriyah Free Zone Headquarters,
Hamriyah
Sharjah, United Arab Emirates

Tel: +971 6 513 4270
Fax: +971 6 526 4027

Bahrain

Advocates and Legal Consultants
Level 22, West Tower
Bahrain Financial Harbour
King Faisal Highway
Manama
Kingdom of Bahrain
Tel: +973 1750 3045

Qatar

Level 22, Tornado Tower
West Bay, Doha
Qatar
PO Box – 27774
Tel: +974 44294827

RAK Office

Office 501-A, Level 5, Building 4
Ras Al Khaimah Free Trade Zone
Ras Al Khaimah,
United Arab Emirates
Tel: +971 7 204 2180
Fax: +971 7 204 2181

Fujairah Office

Creative Tower
Creative City - Media free zone
Fujairah,
United Arab Emirates
Tel: +971 7 204 2180
Fax: +971 7 204 2181

For a free subscription request, you can e-mail us at:
corporate@stalawfirm.com
with your name and address.
www.stalawfirm.com

ISBN 978 - 9948 - 22 - 445 - 7

Office 1904, Level 19,
Boulevard Plaza, Tower 1,
Opp. Burj Khalifa, Dubai
United Arab Emirates
Tel: +971 4 368 9727
corporate@stalawfirm.com
www.stalawfirm.com

Disclaimer:

STA (the Firm) represents a group of internationally qualified counsels. STA Law Firm Limited is a company incorporated pursuant to Abu Dhabi Global Market Companies Regulations. STA Legal Consultants FZC is incorporated pursuant to applicable federal and local laws of Ras Al Khaimah.