औद्योगिक नीति एवं संवर्धन विभाग
DEPARTMENT OF
INDUSTRIAL POLICY & PROMOTION

Home Investors Investor Guidance FREQUENTLY ASKED QUESTIONS

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

   Ans."Entry Strategies for foreign investors" is available under the "Policy & Procedures" menu of the website by clicking "Secretariat for Industrial Assistance" of DIPP Website (http://dipp.nic.in).

   Foreign companies can make investments or operate their business in a number of ways as given below: -

   Liaison/representative office

   Project Office

   Branch Office

   100% Wholly owned subsidiary

   Joint venture company

Financial/Technical/Techno-financial approval is given by

1. Under Automatic route through RBI
2. Government/FIPB/RBI automatic approval is governed by Press Note No. 2 of 2000 subject to sectoral caps as given in Annex IV.

Any company set up with FDI has to be incorporated under the Indian Companies Act with the Registrar of Companies and all Indian operations would be conducted through this company.

- Is foreign company treated as domestic company?

Ans. Yes, a foreign company incorporated under the Companies Act is treated at par with any domestic Indian company within the scope of approval and subject to all Indian laws.

- How does a foreign company invest in India?

Ans. Either through:-

a. Automatic Approval - by the country's Central Bank, the Reserve Bank of India (RBI), Mumbai, or
b. Through the Foreign Investment Promotion Board (FIPB)

i. Automatic Approval through Reserve Bank of India is available for all items/activities except a few as given in the Press Note No.2(2000 series) dated 11.2.2000. The sector specific guidelines in this regard are given in Annexure IV of the Manual on Industrial Policy & Procedures in India.
No prior approval required. The company is only required to report to RBI within 30 days of receipt of foreign equity/allotment of shares.

ii. FIPB approval is required for all other proposals not eligible for Automatic Approval.

Applications to be submitted in Form IL-FC or on plain paper with full details to the Secretariat for Industrial Assistance (SIA) for the cases involving NRI/OCB investment and 100% EOU. For remaining cases, the applications may be submitted to Department of Economic Affairs, Ministry of Finance. The proposals are considered by the reconstituted FIPB in the Department of Economic Affairs. IL-FC Form is available at Website in a downloadable format on the DIPP Website (http://dipp.nic.in).

- From where one can get NIC Codes 1987 for products/services, to be filled in IL-FC Form?

Ans. Investors are required to give the description of activities as per the National Industrial Classification of all Economic Activities (NIC), 1987, while submitting applications to the RBI/SIA.
Copies of the NIC, 1987 published by the Ministry of Statistics & Programme Implementation , Central Statistical Organization, can be obtained on payment from the Controller of Publications, 1 Civil Lines, Delhi 110054 or from any authorised agent.

However, NIC Codes (1987) are also available on the website (http://dipp.nic.in).

- What is the FIPB?

Ans. FIPB is a competent body to consider and recommend Foreign Direct Investment (FDI), which do not come under the automatic route. The FIPB has been reconstituted as under :

1. Secretary, Department of Economic Affairs - Chairman
2. Secretary, Department of Industrial Policy & Promotion - Member
3. Secretary, Department of Commerce - Member
4. Secretary (Economic Relations), Ministry of External Affairs - Member

The Board would be able to co-opt Secretaries to the Government of India and other top officials of financial institutions , banks and professional experts of industry and commerce, as and when necessary.

- What are the factors considered by the FIPB while examining proposals?

Ans. To impart greater transparency to the approval process, guidelines have been issued which govern the consideration of FDI proposals by the FIPB. These are given at Annexure III of the Manual on Foreign Direct Investment in India - Policy & Procedures.

- Who is the Officer concerned in your Department for FIPB related matters?

Ans. Director (Foreign Collaboration/Foreign Direct Investment Policy) Mr. Deepak Narain (Tel:91-11-23063345, Fax 91-11-23062626 e-mail: narain[dot]d[at]nic[dot]in) may be contacted for FDI policy matters. At Joint Secretary level, work is being looked after by Shri Gopal Krishna(Tel : 91-11-23062983, Fax: 91-11-23061034, Email: g[dot]krishna[at]nic[dot]in).

- Please let us know the status of the application made to FIPB?

Ans. The status of the FIPB application can be seen on the website of Department of Economic Affairs (http://finmin.nic.in) . However, status for the applications involving NRI/OCB investment and 100% EOU is available at "SIA Application status" link on the opening page of the DIPP website (http://dipp.nic.in) wherein following three categories are given.

a. Daily Status of Applications for NRI / OCB investment and 100% EOU for the week.
b. Weekly Status of Applications for NRI/OCB Investmebt and 100% EOU for the week ending
c. Date of posting of approval letters of applications for NRI/OCB investment and 100% EOU

The cases that are listed but do not figure in the approved / rejected categories, fall under the deferred category viz. cases which are still under consideration. It may be possible that applications in such cases, need additional clarification from other Ministries or attracts on policy angle because of which it may take some more time. The link for the status of FIPB applications has also been provided at the front page of DIPP website (http://dipp.nic.in).

- Which are the sectors, which attracts limit on foreign ownership?

Ans: The following activities attract equity cap for FDI:

S. No.	Sector	FDI cap (in %)	Activities
1.	Telecom	49 74	basic, cellular, value-added services, global mobile personal communications by satellite internet service providers with gateways, radio paging and end-to-end bandwidth
2.	Coal & Lignite	49 50 74	public sector undertakings other than public sector undertakings for exploration & mining of coal or lignite for captive consumption

3.	Mining	74	exploration and mining of diamonds and precious stones
4.	Private Sector Banking	49	private banking sector
5.	Insurance	26	insurance sector (subject to obtaining license from IRDA)
6.	Domestic Airlines	40	no direct or indirect equity participation by foreign airlines
7.	Petroleum (Other than refining) Refining	60 51 51 74 26	in unincorporated joint venture in incorporated joint venture petroleum products and pipelines sector in infrastructure related marketing and marketing of petroleum products for public sector undertakings
8.	Investing companies in Infrastructure/Service sectors	49	investment through such vehicle is treated as resident equity
9.	Atomic minerals	74	mining and mineral separation; value addition; integrated activities.
10.	Defence industry sector	26	for arms and ammunition and allied items of defence equipment, defence aircraft and warships
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11.	Broadcasting Setting up hardware facilities, such as uplinking, HUB, etc. Cable network	49 49 20	Private companies incorporated in India with permissible FII/NRI/OCB/PIO equity within the limits (as in the case of telecom sector FDI limit up to 49% inclusive of both FDI and portfolio investment) to set up up linking hub (teleports) for leasing or hiring out their facilities to broadcasters

	Direct-to-Home Terrestrial Broadcasting FM	20 (portfolio investment)	Footnote: As regards satellite broadcasting, all T.V. Channels irrespective of the ownership or management control to uplink from India provided they undertake to comply with the broadcast (programme and advertising) code Foreign investment allowed up to 49% (inclusive of both FDI and portfolio investment) of paid up share capital. Companies with minimum 51% of paid up share capital held by Indian citizens are eligible under the Cable Television Network Rules (1994) to provide cable TV services. Companies with a maximum of foreign equity including FDI/NRI/OCB/FII of 49% would be eligible to obtain DTH License. Within the foreign equity, the FDI component not to exceed 20%. The licensee shall be a company registered in India under the Companies Act. All share holding should be held by Indians except for the limited portfolio investment by FII/NRI/PIO/OCB subject to such ceiling as may be decided from time to time. Company shall have no direct investment by foreign entities, NRIs and OCBs. As of now, the foreign investment is permissible to the extent of 20% portfolio investment. No private operator is allowed in terrestrial TV transmission
12	Small Scale Industries (SSI) sector	24	if FDI in an SSI unit exceeds 24% of the paid up capital, the company loses its SSI status. Further, if the item/s of manufacture is/are reserved for SSI sector, the company has to obtain an industrial license and undertake a minimum export obligation of 50% of annual production on such products
13.	Satellites	74%	Establishment and operation of Satellites
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14.	Tea Sector	100%*	FDI permitted in Tea sector, including tea plantations requiring prior Government approval

			* subject to compulsory divestment of 26% equity of the company in favour of an Indian partner/Indian public within a period of five years.
15.	Print Media	74%** 26%**	In Indian entities publishing scientific/technical and speciality magazines/periodical/journals In Indian entities publishing newspapers and periodicals ** subject to guidelines notified by Ministry of Information & Broadcasting from time to time

- What is the Government Policy for Telecom Sector?

Ans. For major sector specific guidelines including Telecom Sector, please refer to Annexure IV at the Manual on FDI in India - Policy & Procedures in India of the website.

- What is the investment policy for trading companies?

Ans. Trading is permitted under automatic route with FDI up to 51% provided it is primarily export activities, and the undertaking is an export house/trading house/super trading house/star trading house. However, under the FIPB route :

i. 100% FDI is permitted in case of trading companies for the following activities:
   exports,

   bulk imports with ex-port/ex-bonded warehouse sales,

   cash and carry wholesale trading,

   other import of goods or services provided at least 75% is for procurement and sale of goods and services among the companies of the same group and not for third party use or onward transfer/distribution/sales.

ii. The following kinds of trading are also permitted, subject to provisions of EXIM Policy:
   a. Companies for providing after sales services (that is not trading per se)
   b. Domestic trading of products of JVs is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their joint ventures in which they have equity participation in India.
   c. Trading of hi-tech items/items requiring specialised after sales service
   d. Trading of items for social sector
   e. Trading of high-tech, medical and diagnostic items.
   f. Trading of items sourced from the small scale sector under which, based on technology provided and laid down quality specifications, a company can market that item under its brand name.

g. Domestic sourcing of products for exports.
h. Test marketing of such items for which a company has approval for manufacture provided such test marketing facility will be for a period of two years , and investment in setting up manufacturing facilities commences simultaneously with test marketing.
i. FDI upto 100% permitted for e-commerce activities subject to the condition that such companies would divest 26% of their equity in favour of the Indian public in 5 years, if these companies are listed in other parts of the world. Such companies would engage only in business to business (B2B) e-commerce and not in retail trading.

- Whether wholesale trading activity is covered on the automatic route?

  Ans: No, prior approval of FIPB is required.

- Whether FIPB approval is required for 100% EOUs involving FDI from foreign companies?

  Ans. Only where the activity proposed does not fall on the automatic route.

- How are investments in 100% Export Oriented Units (EOUs) allowed?

  Ans. There are four schemes for such units. They are the 100% EOUs, Electronics Hardware Technology Parks (EHTPs) , Software Technology Parks (STPs) and Special Economic Zones (SEZ) . FDI/NRI/OCB investment up to 100% in these units is eligible for automatic route subject to fulfilling parameters prescribed in Press Note No.2 (2000 series) dated 11.2.2000. This Press Note is available on the website (http://dipp.nic.in)

- Is a 100% foreign owned subsidiary allowed? Whether FIPB approval is required?

  Ans. Yes, except in sectors that attract equity cap. The criteria for allowing such investments have been detailed in the guidelines given at Annexure IV of the Manual on Industrial Policy & Procedures in India. FIPB approval is required if the activity does not fall on the automatic route.

- Is investment by Non-Resident Indians(NRIs) permitted?

  Ans. The Government attaches importance to investments by NRIs and Overseas Corporate Bodies(OCBs) i.e. corporate bodies in which NRIs hold at least 60% of equity. Government has provided a liberalised policy framework for approval of NRI investments through both the Automatic and the Government route. NRI/OCBs are permitted to invest upto 100% equity in the Real Estate and Civil Aviation Sectors. Automatic Approval is given by the RBI to all NRI/OCB proposals with their investment upto 100% for all items/activities except a few exceptions mentioned in Press Note 2 (2000 series) read with sector specific guidelines. Government approval is given for all proposals not qualifying for Automatic Approval.

- How is FDI permitted in the Small Scale Sector?

Ans. Equity participation in the Small Scale Sector up to 24% by any other Industrial undertaking is allowed. For equity participation in excess of this or if a non-SSI unit whishes to manufacture a reserved item, it would be required to obtain industrial licence and undertake a minimum export obligation of 50% of production.

- Can profits, dividends, royalty, knowhow payments be repatriated from India?

Ans. All profits, dividends, royalty, knowhow payments that have been approved by the Government/RBI can be repatriated. Some sectors like NRI Investment in real estates may attract a lock-in period.

- Whether FDI is permitted in "Online Lottery Business"?

Ans: The lottery business, including "Online Lottery Business" is not opened to foreign direct investment.

- What is the procedure of issuing shares to foreign collaborator?

Ans: The issue of shares to the foreign collaborator is governed by the guidelines issued by RBI / SEBI and Companies Act.

- While calculating ceiling on foreign holdings, are preference shares included?

Ans: Yes, if it is convertible into equity shares. Non-convertible redeemable preference shares are not included for calculating FDI limit.

- Is FIPB approval required for the swap of shares?

Yes, FIPB approval is required.

- Whether issue of preference shares can be made on the automatic route?

Yes, subject to the activity concerned falling under the automatic route.

- What are the formalities a joint venture company has to do to increase the foreign equity holding?

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

a. If only the quantum of foreign equity increased without change in percentage then Press Note no. 7 (1999 series) may be followed.
b. For increase in percentage of foreign equity by way of expansion of capital base, automatic route or FIPB / Government route would apply depending upon the nature of proposal in terms of Press Note No. 2 (2000 series)
c. Cases involving increase in percentage in foreign equity by way of acquiring existing shares in an Indian company would necessarily require prior approval of FIPB/Government.
d. In cases involving inclusion of an additional foreign collaborator, guidelines laid down in Press Note No. 18 (1998 series) would have to be satisfied.

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

  Ans. FIPB approval is required. Where original investment was made in foreign exchange, the change is allowed without any conditions; if not, the sale proceed will have to be repatriated to India by opening an NRO account.

- Is there any time limit within which Indian company have to make their Euro issues or ADRs/GDRs after having received the approval from FIPB?

  Ans There is no time limit as per extant guidelines.

- In a public limited company having less than 100% foreign equity participation under the automatic route, whether it can be increased to 100% equity participation under the automatic route?

  Ans. As long as the activity is covered on the automatic route and there is no sectoral cap and no acquisition of existing shares is involved.

- Is it possible that a foreign company provide a non interest bearing or interest bearing loan to an Indian company?

  Yes, subject to conformity with the ECB Guidelines of Ministry of Finance .

- Whether FIPB approval is required for consultancy services, research and development, software development etc.?

  Ans: The above activities fall under automatic route and, therefore, do not require FIPB approval.

- How are foreign technology agreements approved?

  Ans. Approval is granted by two routes

  a. Automatic approval by RBI;

   i. Available for any proposal with lumpsum payment not exceeding US$ 2 million, and royalty of upto 5% on domestic sales and 8% on exports.This is applicable to technical collaborations with technology transfer. There is no limit on duration of royalty payment by a WOS to its offshore parents.
   ii. Payment of royalty up to 2% of exports and 1% for domestic sales on use of trade marks and brand name of the foreign collaborator without technology transfer

b. Government approval in all other cases.

- Whether royalties for technology transfer and other royalty can be paid for same product on use of trademarks and brand name?

Ans. No, both royalties cannot be paid together on the same product.

i. Cases involving transfer of technology will be eligible for royalty payment at the prescribed rate on the automatic route.
ii. Cases not involving any transfer of technology and only involving the use of brand names and trademarks will be eligible to payment of trademarks or brand name royalty at the prescribed rate on the automatic route.

- Is it possible to use foreign brand names/trade marks in India and is lump sum fee permissible under royalty payment for use of brand name and trademarks?

Ans. Yes, it is possible to use foreign brand names/trade marks in India. However, lump sum fee is not permissible, only running royalty payment is permissible as per prescribed rate.

- What is the mechanism for publicizing the changes in the FDI Policies?

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

- What proposals require an Industrial Licence(IL) and how is it obtained?

Ans. In the New Industrial Policy, all industrial undertakings are exempt from licencing except for those products given in Annexure I and II and those reserved for the Small Scale Sector. The project should not be located within 25 kilometres of a city with a population of more than one million (Annexure v).

The Government has substantially liberalised the procedures for obtaining an Industrial Licence. An IL is approved by the Government.

The application in form IL-FC should be filed with the SIA. Approvals normally granted within 6-8 weeks.

- What is the procedure for a delicensed sector?

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

- Where can one get the information on Indian Standards for any product?

Ans. Please refer to the website of Bureau of Indian Standards (http://delhi.vsnl.net.in/bis.org)

- How to contact the Nodal Officers of the Department of Industrial Policy & Promotion who are responsible for monitoring the approved Projects of a particular state?

Ans: Please visit the website of the Department of Industrial Policy & Promotion at http://dipp.nic.in by clicking FIIA.