

Foreign Direct Investments

A brief overview of FEMA
Regulations

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Foreign Direct Investment-Basics

- Meaning: Direct Strategic Investment by Non residents in Indian Entities.
- Policy framework: Industrial Policy/FEMA Regulations.
- Non Resident Indian (NRI).
- Person of Indian Origin (PIO).

Who Can Invest?

- A person resident outside India (other than a citizen of Bangladesh or Pakistan).
- An entity incorporated outside India (other than an entity incorporated in Bangladesh or Pakistan).
- An unincorporated entity not eligible after September, 16, 2003.

Entities which can be invested in.

- Indian Companies.
- Partnership firms.
- Proprietorship firms.
- AOPs
- By necessary implication, other forms are not eligible for FDI.

The Form of FDI

- Equity Shares.
- Preference Shares (only Convertible).
- Debentures (only Convertible).
- Capital in partnership/proprietorships.

Sectoral Policy Framework.

- Sectors where FDI is prohibited.
- Sectors where FDI is allowed on a case to case basis-Approval Route.
- Sectors where FDI is permitted-Automatic Route.

Prohibited List.

- Retail Trading
- Atomic Energy
- Lottery Business
- Gambling and Betting.
- Housing and real estate business.
- Agriculture and Plantation.

Approval Route List

- Petroleum Sector
- Investing Companies in infrastructure/service sector.
- Defence/strategic industries.
- Atomic Minerals.
- Print Media.
- Broadcasting.

Approval Route List-contd.

- Postal Services.
- Courier Services.
- Establishment & Operation of Satellite.
- Development of integrated townships.
(now under automatic route subject to some conditions.)
- Tea sector.
- Asset Reconstruction Companies

Automatic Route-Basic conditions.

- Indian Company is not engaged in business falling under Prohibited/Approval List.
- Industrial License is not required.
- Shares are not issued for acquiring the shares of another company.
- The foreign investor does not have an existing joint venture/technology transfer/trade mark agreement in the “same” field.
- It is not a SSI unit investing beyond 24%.

Automatic Route-Basic conditions. -contd.

- Acquisition is not by way of transfer
- The investment is within the sectoral caps.

Sectoral Caps

● Banking	74%
● NBFCs	100%
● Insurance	26%
● Telecommunications	49%
● Petroleum refining	100%
● Housing & Real estate	100%
● Coal & Lignite	100%

Sectoral Caps-Contd

● Trading	51%
● Power	100%
● Drugs/Pharmaceuticals	100%
● Roads/Highways	100%
● Hotel/Tourism	100%
● Mining	100%
● Films/Advertising	100%

Sectoral Caps-contd.

- Airports 74%
- Mass Rapid Transport 100%
- Pollution Control 100%
- Townships/infrastructure 100%
- Domestic Airlines 49%
- (100 % forNRI)
- Any Other activity 100%

Miscellaneous issues:

- Issue Price: Listed Companies-SEBI Guidelines.
- Others-Fair valuation by CA as per erstwhile CCI guidelines.
- Rate Of Dividend on pref. shares: Maximum 300 points over the SBI PLR on the date of Board meeting.

Miscellaneous issues-contd.

- Mode of payment: by inward remittance/by debit to NRE/FCNR account.
- Capitalization of Technical know how fee/Royalty or conversion of ECB.
- Issue of shares/debentures on right basis-subject to the same sectoral cap/FDI limit as approved, Original shares/debentures as per Regulations, offer at the same price as residents.

Miscellaneous issues-contd.

- Bonus shares- subject to the conditions that the original shares were held as per the Regulations, shall be subject to the same conditions as the original shares.
- Form FC-GPR to be filed within 30 days of the issue of bonus/right shares to the Regional office of RBI.
- Shares under ESOP-can be issued to the employees of the WOS/JV abroad, subject to a scheme as per SEBI guidelines, and upto 5 %of the paid up capital and a report with RBI within 30 days.

Miscellaneous issues-contd.

- Issue of shares upon merger/amalgamation-Non resident shareholders can be issued shares in a new merged entity under a scheme of merger duly approved by the court subject to the condition that the percentage of shares issued to the non resident shareholders does not exceed the approved limit/sectoral cap.

Formalities under FEMA

- Report to RBI by the company within 30 days of the receipt of consideration:
- Report to specify: Name and address of investor, date of receipt, name and address of the bankers, details of government approval, if any.
- File Form FC-GPR within 30 days from the date of issue of shares.

Formalities under FEMA-contd.

- File a certificate of the company secretary to the effect that all the requirements of companies Act, FEMA and government approval have been complied with and the company has all the original certificates evidencing the receipt of the consideration.
- A certificate of the statutory auditors/chartered accountant indicating the manner of arriving at the price.

APPROVAL ROUTE-FORMALITIES

- Application to be made to FIPB
- Application to be made in Form FC-IL to the Deptt. of economic Affairs, Ministry of Finance when the foreign investors are other than NRI or the investment is not in 100% EOU.
- In other cases, application to be made to Entrepreneur Assistance Unit of the Secretariat of Industrial approval, ministry of Industry.

Approval Route Formalities-contd.

- Applications can also be made on plain paper.
- Detailed proposal with complete justification.
- Proposal considered by FIPB within 15 days.
- Proposals with investment up to Rs.6 billion approved by FM and beyond by cabinet committee on economic affairs.

Issue of shares to depository via ADR/GDRs

- The Indian company has the permission of the Ministry of Finance for ADR/GDR or the company is eligible in terms of the Scheme in force issued by the Ministry.
- Not otherwise ineligible to issue shares to non residents under FEMA.
- The ADRs /GDRs are issued in accordance with the scheme for the issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

Issue of shares via ADR/GDR- contd.

- Indian company to file a report with RBI within 30 days in form as per “Annexure C”.
- Indian company to furnish a return on a quarterly basis with RBI as per Annexure D within 15 days of each quarter.

Investment in Sole prop./partnership firms/AOPs

- By NRI/PIOs- on non repatriation basis- subject to-contribution is received by way of inward remittance/out of an account maintained with AD, firm is not engaged in any real estate or agricultural/plantation activity.
- By other Non residents-Subject to prior approval of RBI.

Thank you

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