

FOREIGN DIRECT INVESTMENT IN INDIA

❖ Modes of Foreign Investment in India:

- Foreign Direct Investment comprising of equity in India, ADR/GDR/FCCB, -automatic route or Government Route (approval route) for foreign investors as well as NRI.
- Foreign Portfolio Investment by NRI/PIO and FIL.
- Foreign Venture Capital Investment by SEBI registered FVCIs.
- Investments in G-Sec (Government securities), NCD etc. by FII, NRI, PIO, Foreign central Bank.
- Investment non-repatriation basis by NRI and PIO.

❖ Eligibility for Investment

A person resident outside India or an entity incorporated outside India, can invest in India, as per schemes approved by Government of India.

❖ Entry Routes for Foreign Direct Investment:

Under the FDI Scheme, Investments can be made by two ways:

- Automatic Route: Under this route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for making any investment.
- Government Route : Under this route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & promotion, as the case may be) for the investment.

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❖ Modes of Investment under Foreign Direct Investment

- Issuance of fresh shares by the company in India ,
- Acquisition by way of transfer of existing shares by person resident in or outside India,
- Issue of Rights/Bonus Shares,
- Issue of shares under Employees Stock Option Scheme(ESOPs),
- Conversion of ECB / Lump sum Fee / Royalty / Import of capital goods by units in SEZs in to Equity/ Import payables / Pre incorporation expenses,
- Issue of shares by Indian Companies under ADR / GDR,
- Through issue / transfer of 'participating interest/right' in oil fields to a non resident.

❖ Sectoral Investment Cap for FDI

Besides Investment in industrial sector investment in some sectors is permitted subject to certain restrictions & ceilings. In case of residual activities (where sectoral cap is prescribed), 100% FDI under automatic route is permissible.

- FDI in following sectors is prohibited -:
 - Lottery Business including government lottery & online lottery
 - Gambling & Betting including casino
 - Business of chit fund
 - Nidhi company
 - Trading in Transferable Development Rights (TDRs)
 - Activity / sectors not opened to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).
 - Real estate business or construction of farm houses (except development of townships, roads or bridges, city & regional infrastructure.)
 - Manufacturing of cigars, cheroots, cigarillos & cigarettes of tobacco or of tobacco substitutes.
 - Atomic Energy
 - Retail Trading (except single brand retailing)
 - Plantation (except tea plantation)

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- Agricultural (except floriculture, horticulture, pisciculture & cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro & allied sectors).

Note: 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.

Sector-specify policy for foreign investments

S. N.	Sector/Activity	%FDI Cap/Equity	Entry Route
1	Agriculture	100%	Automatic
2	Tea Plantation	100%	Automatic
3	Mining	100%	Automatic
4	Petroleum & Natural Gas	100%	Automatic
5	Manufacturing	Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Industries (Development & Regulation) Act 1951.	
6	Defence	26%	Up to 26% Government

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			above 26% approval from Cabit Committee on Security.
7	Broadcasting	General -74% Cable Network-49%, News Channels- 26%, Non News Chennels-100%	Up to 49% automatic, 49% to 74% approval route,
8	Print Media	26% (FDI, FIIs, PIOs, NRIs)	Government
9	Civil Aviation		
	Airports	100%	Automatic for green filed projects, Govt approval beyond 74% for existing projects
	Scheduled Air transport	49%	Automatic
	Non Scheduled Air transport	74%	Automatic up to 49% beyond & up to 74% Govt. route
	Helicopter Services/seaplane services requiring DGCA Approval	100%	Automatic
	Ground Handling Services	74%	Automatic up to 49% beyond & up to 74% Govt route
	Maintenance & Repair Services	100%	Automatic
10	Courier services	100%	Automatic
11	Construction Development	100%	Automatic
12	Industrial Parks (New & Existing)	100%	Automatic
13	Satellites	74%	Government
14	Private Security Services	49%	Government
15	Telecom Services	100%	Automatic up

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			to 49% above 49% Government
16	Trading , Ecommerce Activities & Single Brand Product retail trading	100%	Automatic, for Single Brand retail above 49% government approval
17	Asset Reconstruction Companies	100%	Automatic up to 49% above 49% Government
18	Banking - Private Sector	74%	Automatic up to 49% above 49% to 74% Government
19	Banking - Public Sector	20%	Government
20	Commodity Exchange	49%	49% (FDI & FII) [Investment by Registered FII under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI
21	Credit Information Companies	74%	Automatic
22	Infrastructure Company in the Securities Market	49% (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital]	Automatic
23	Insurance	26%	Automatic
24	Non Banking Finance Companies	100%	Automatic
25	Pharmaceuticals	100%	Automatic for green filed,

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			Government for existing companies
26	Power Exchanges	49% (FDI & FII)	Automatic

❖ Approval procedure:

In some cases, approval is automatic, while in some cases, specific approval is required to be obtained.

Further in case where approval is automatic, no permission of RBI is required. Only intimation has to be given to RBI. An Indian company may issue shares or compulsorily convertible debentures to a resident outside India up to the extent specified.

Foreign Investment in EOU/STP/EHTP/BTP is permitted, subject to sectoral limit prescribed in respect of certain activities foreign investment upto 100% is permitted in units in SEZs (Special Economic Zones), subject to some exceptions. In all these cases, automatic approval is granted.

If the proposed foreign investment is beyond the sectoral limits stipulated or where automatic route is not permitted, prior approval of Secretariat for Industrial Assistance or of the Foreign Investment Promotion Board of the Government of India should be obtained and the terms and conditions of such an approval should be complied with.

❖ Authorities dealing with Foreign Investment :

Main authorities for granting permission are:

- (a) Foreign Investment Promotion Board (FIPB), Udyog Bhawan, New Delhi
- (b) Secretariat of Industrial Assistance (SIA), Department of Industrial Development,
Ministry of Industry, Udyog Bhawan, New Delhi-110011
- (c) Reserve Bank of India, Foreign Exchange Department, Fort, Mumbai-400023.

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❖ **Foreign Investment in MSE** (Micro and Small Enterprises) : Equity participation in MSE (Micro Small Enterprises) upto 24% by other industrial undertakings (including foreign collaborators) is permitted with a view to encourage modernization & technological up gradation in SSI sector. The restriction does not apply to SSI in EOU/STP/EHTP. MSE which is EOU, STP, and EHTP can issue shares in excess of 24% within sectoral cap.

❖ **Procedure for Licensing of Industries :**

- In case of value of Plant & Machinery Exceeds Rs.10 Crore or above then, application should be filed in form FC/IL with SIA, with DD of Rs. 2,500.
- In case value of Plant & Machinery below or does not exceeds Rs.10 Crore, then IEM (Industrial Entrepreneurs Memorandum) is required to be filed & sent to Secretariat for Industrial Assistance (SIA), Department of Industrial Development, Ministry of Industry, Udyog Bhawan, New delhi-110011. The IEM should be accompanied by a demand draft of Rs.1,000/- payable to 'Pay and Accounts Officer, Department of Industrial Development, Ministry of Industry' payable at State Bank of India, Nirman Bhavan Branch, New Delhi.