

## A Brief About Foreign Direct Investment in India



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### WHAT IS FOREIGN DIRECT INVESTMENT?

Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provisions of the Foreign Exchange Management Act (FEMA) 1999.

**FOREIGN DIRECT INVESTMENT** ('FDI') means investment through capital instruments by a person resident outside India in:

- (a) Unlisted Indian company
- (b) 10 % or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.
  - ◆ **INVESTMENT** means to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India.
  - ◆ **CAPITAL INSTRUMENTS** means equity shares, debentures, preference shares and share warrants issued by the Indian company.
    - **Equity shares:** Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include partly paid equity shares issued on or after July 8, 2014.
    - **Share warrants:** Share warrants issued on or after July 8, 2014 will be considered as capital instruments.
    - **Debentures:** means fully, compulsorily and mandatorily convertible debentures.
    - **Preference shares:** means fully, compulsorily and mandatorily convertible preference shares.

#### Important Links:

FDI Policy - <https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf> read with [https://dpiit.gov.in/sites/default/files/Press\\_Note\\_1\\_2022\\_14March2022.pdf](https://dpiit.gov.in/sites/default/files/Press_Note_1_2022_14March2022.pdf)

Master Direction FDI - <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11200&fn=5&Mode=0>

FAQS on FDI - Reserve Bank of India - Frequently Asked Questions ([rbi.org.in](http://rbi.org.in))

### WHO ARE ELIGIBLE TO RECEIVE FOREIGN DIRECT INVESTMENT IN INDIA?

#### INDIAN COMPANY

*A company as defined in the Companies Act 2013 or a body corporate established or constituted by or under Central or*

	<i>State Act</i>
<b>LIMITED LIABILITY PARTNERSHIP (LLP)</b>	<i>A Limited Liability Partnership firm, formed and registered under the Limited Liability Partnership Act, 2008.</i>
<b>PARTNERSHIP FIRM</b>	As defined in section 4 of the Indian Partnership Act, 1932
<b>PROPRIETORSHIP CONCERN</b>	Proprietorship concern can be defined as a kind of business that is owned, controlled and operated by an individual.
<b>STARTUP COMPANY</b>	<i>A Private Company incorporated under the Companies Act, 2013 and registered as Startup under DPIIT, Ministry of Commerce and Industry.</i>
<b>TRUSTS</b>	<i>Investment by a person resident outside India is not permitted in Trusts other than in 'Venture Capital Fund' registered and regulated by SEBI and 'Investment vehicle'.</i>

### **WHO CAN INVEST IN FOREIGN DIRECT INVESTMENT IN INDIA?**

<b>NON-RESIDENT ENTITY</b> (including NRI) <i>means a 'person resident outside India' as defined under Foreign Exchange Management Act, 1999</i>	Automatic and Government Route, as the case may be
<b>ENTITY OF A COUNTRY, WHICH SHARES LAND BORDER WITH INDIA</b> (or if the beneficial owner of investment is situated in or is a citizen of any such country)	Only under the Government route
<b>A CITIZEN OF PAKISTAN OR AN ENTITY INCORPORATED IN PAKISTAN</b>	Only under the Government route and other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.
<b>FOREIGN VENTURE CAPITAL INVESTOR (FVCI)</b> <i>[incorporated and established outside India and registered with the SEBI under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000, as amended from time to time]</i>	Subject to the terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
<b>FOREIGN PORTFOLIO INVESTORS (FPI)</b> <i>[a person registered in accordance with the provisions of Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, as amended from time to time]</i>	Subject to the terms and conditions specified in Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

### **HOW CAN FOREIGN DIRECT INVESTMENT BE MADE IN INDIA?**

**Foreign Investment** - means any investment made by a person resident outside India on a repatriable basis in capital instruments of an Indian company or to the capital of a LLP.

A beneficial interest being held by a person resident outside India, even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign

investment.

## THE INVESTMENT IN INDIA CAN BE MADE UNDER FOLLOWING ROUTES:

- (1) **AUTOMATIC ROUTE:** Foreign Investment is allowed under the automatic route without prior approval of the Government or the Reserve Bank of India, in all activities/ sectors as specified in the Regulation 16 of FEMA 20 (R).
- (2) **GOVERNMENT ROUTE:** Foreign investment in activities not covered under the automatic route requires prior approval of the Government (Competent Authority) and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

Important Links:
Link to apply for Government Route is <a href="https://fifp.gov.in/Public/ApplicantRegister.aspx">https://fifp.gov.in/Public/ApplicantRegister.aspx</a> Procedure for applying for Government approval - <a href="http://fifp.gov.in/Forms/SOP.pdf">http://fifp.gov.in/Forms/SOP.pdf</a>  List of Automatic Route and Competent Authority - <a href="https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf">https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf</a>

## MODE OF PAYMENT

The Amount of consideration shall be paid as Inward Remittance from:

- (a) Abroad through banking channels; **or**
- (b) Out of funds held in NRE/ FCNR(B)/ Escrow account (*as the case may be*) maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Important Links:
Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 -  <a href="https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=11723">https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=11723</a> (refer for mode of payment)

## Notes:

- (1) **NRE Account** is a bank account opened in India in the name of an NRI, to put his foreign earnings.
- (2) **NRO Account** is a bank account opened in India in the name of an NRI, to manage the income earned in India.
- (3) **Repatriation Basis:** Repatriation means the process of transferring or taking money back into the same country from where the investment has been made by PROI. An investment, the sale or maturity proceeds of which are, net of taxes, eligible to be repatriated out of India.
- (4) **Non-Repatriation Basis:** An investment made by PROI and the sale or maturity proceeds of which are, net of taxes, not eligible to be repatriated out of India and to be kept in Indian bank accounts only including NRO account.

