FAQs

Setting Up Business in India

Foreign Direct Investment

1. Is it permissible for Start-ups to secure foreign funding?

RBI via the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (FEMA 20) has allowed startups to issue convertible notes to foreign investors apart from FDI in startups by foreign venture capital investors through subscribing to equity or equity-linked instruments or debt instruments. For more information, click here.

2. What does Person of Indian Origin (PIO) stand for?

‘ Person of Indian Origin (PIO) ’ means a citizen of any country other than Bangladesh or Pakistan, if They at any time held Indian Passport, or, They or either of their parents or grandparents was a citizen of India by the Constitution of India or the Citizenship Act, or, The person is a spouse of an Indian citizen or a person referred to in sub-clauses (1) or (2). For more information, click here.

3. What does the FDI policy entail with regards to issuing equity shares under government route?

Issue of equity shares under the FDI Policy is allowed under the Government route for the following: Import of capital goods/ machinery/ equipment (excluding second-hand machinery) Pre-operative/pre-incorporation expenses (including payments of rent, etc.) However, these are subject to compliance with several conditions, as mentioned in sub-section (iv), section (6) of Annexure-3 of the Consolidated FDI Policy For more information, click here

4. Can foreigners establish a partnership/proprietorship concern in India?

No, only NRIs are allowed to set up partnership/ proprietorship concerns in India on non-repatriation basis. For more information, click here.

5. What are the permitted activities if I want to set up a Branch office in India?

Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent / group companies and undertake the following activities in India: i. Export / Import of goods ii. Rendering professional or consultancy services iii. Carrying out research work, in areas in which the parent company is engaged iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company v. Representing the parent company in India and acting as buying / selling agent in India vi. Rendering services in information technology and development of software in India vii. Rendering technical support to the products supplied by parent/group companies viii. Foreign airline / shipping company. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes. For more information, click here

6. How to commence business in India?

A foreign investor can commence business in India as: Indian Company Foreign Company Limited Liability Partnership For more information, click here.

7. What are the possible sectors where FVCI can invest?

An FVCI can invest in an Indian company engaged in Biotechnology, IT related to hardware and software development, Nanotechnology, Seed research and development, Research and development of new chemical entities in pharmaceutical sector, Dairy industry, Poultry industry, Production of bio-fuels, Hotel-cum-convention centres with seating capacity of more than three thousand and Infrastructure sector. For more information, click here.

8. Is transfer of capital instruments from resident to non-residents permitted?

Yes, transfer of capital instruments from resident to non-resident is permitted, s.t. prior permissions from the Reserve Bank of India, except in following cases (as mentioned in detail in Sub section 5.2 of the Consolidated FDI Policy 2017): where the pricing guidelines under FEMA, 1999 are not met, s.t. other conditions where the transfer requires prior approval of the Government per the extant FDI Policy where the transfer of shares attracts SEBI (Substantial Acquisition of Shares and Takeovers) Regulations where the investee company is in the financial sector. For more information, click here

9. What is the procedure for making portfolio investments in India for a Non-Resident Indian?

An NRI needs to apply to a designated branch of a bank, which deals in Portfolio Investment. An NRI can purchase shares up to 5% of the paid-up capital of an Indian Company on a fully diluted basis. All NRIs taken together cannot purchase more than 10% of the paid-up value of the Company. The aggregate limit of up to 24%, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively. For more information, click here.

10. Which are the permissible ways in which an FVCI can make the investment?

The FVCI is permitted to: a) Purchase the securities/ instruments (permitted for FVCI) either from the issuer of these securities/ instruments or from any person holding these securities/ instruments. b) Invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time. c) Acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security/ instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer.
d) Receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes/ funds set up by the VCFs or Cat-I AIFs.

11. Can FDI be made in investment vehicles?

Any person resident outside India may invest in units of Investment Vehicles subject to the conditions laid down in Schedule 8 to Notification No FEMA 20. A person resident outside India who has acquired or purchased units of an investment vehicle may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by the Reserve Bank. For more information, click here

12. What are investment vehicles?

Investment Vehicle is an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose. For the purpose of Schedule 8 of FEMA 20(R), an Investment Vehicle is a Real Estate Investment Trust (REIT) governed by the SEBI (REITs) Regulations, 2014, an Infrastructure Investment Trust (InvIt) governed by the SEBI (InvIts) Regulations, 2014 and an Alternative Investment Fund (AIF) governed by the SEBI (AIFs) Regulations,

2012. It does not include a Venture Capital Fund registered under the erstwhile SEBI (Venture Capital Funds) Regulations, 1996. For more information, click here.

13. How can an Indian company receive foreign investment?

Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by respective Administrative Ministry/Department. Foreign investment in sectors/activities under government approval route will be subject to government approval where: a) An Indian company is being established with foreign investment and is not owned by a resident entity. b) An Indian company is being established with foreign investment and is not controlled by a resident entity. c) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to nonresident entities through amalgamation, merger/demerger, acquisition etc. d) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to nonresident entities through amalgamation, merger/demerger, acquisition etc. e) It is clarified that Foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 9 (LLPs), 10 (DRs) and 11(Investment Vehicles) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment. f) Investment by NRIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident outside India) Regulations will be deemed to be domestic investment at par with the investment made by residents. g) A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations and such investment will also be deemed domestic investment at par with the investment made by residents.

14. Are there any restrictions on the sectors for FDI in India?

Yes, investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. as per the latest FDI policy. For more information, click here.

15. Are the investments and profits earned in India repatriable?

All foreign investments are repatriable (net of applicable taxes) except in cases where the investment is made or held on non-repatriation basis. For more information, click here.

16. What is to be done after the investment is made under the Automatic Route or with Government approval?

On receipt of the foreign direct investment (FDI), the Indian company receiving the investment for issuing shares/ debentures should report the details to the Regional Office concerned of the Reserve Bank of India (RBI) within 30 days from the date of receipt in the Advance Reporting Form in Section 1, Annexure 6 Steps for reporting of investment varies for shares, depository receipts and other instruments. To know more about the detailed process of reporting, refer to section 2, Annexure 6 of the Consolidated FDI Policy, 2017. For more information, click here

17. What are the guidelines for the issue price of shares against FDI received for a company listed in India?

The price of shares issued to persons residing outside India under the FDI Policy, should not be less than the price worked out with the Securities and Exchange Board of India (SEBI) when shares are listed on a recognized stock exchange in India. For more information, click here

18. What is the institutional framework governing FDI in India?

FDI in India is regulated under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Original notification is available at link; subsequent amendment notifications are available at link2. Besides FEMA, 1999, FDI is also subject to other regulations as per Reserve Bank of India (RBI) and DPIIT. DPIIT is the nodal agency entrusted to formulate FDI Policy. It issues press notes to make amendments in the existing policy and also issues consolidated FDI Policy on an annual basis.

19. What is apostille and how to get the documents apostilled and notarized from the foreign country?

An "apostille" is a form of authentication/certification issued to documents for use in countries that participate in the Hague Convention of 1961. Apostille is to confirm the legal authenticity of any document. A list of countries that accept apostilles is provided by the US State Department. Apostilles are affixed by Competent Authorities designated by the government of a state which is party to the convention. A list of these authorities is maintained by the Hague Conference on Private International Law. Examples of designated authorities are embassies, ministries, courts or (local) governments. An Apostille Certificate is official government Certificate printed or stamped onto the reverse side of a single page document or attached to multiple paged documents with green notary ribbon making it become one inseparable document. It authenticates the seal and or signature of the public official or authority such as a notary or registrar issuing the document.

20. Can one increase the Company's authorized capital to get more external funding?

The authorized capital of a Company can be increased at any time as per the Companies Act, 2013 and in case the Article of Association does not allow this, the AoA can be amended by passing a “ special resolution ” . One may also consider getting External Commercial Borrowings. For more information, click here.

21. How can foreign investors put money in Portfolio Investments in India?

Investment by FPI registered in accordance with SEBI guidelines including deemed RFPI (erstwhile FII) is permitted in the capital of an Indian Company under the Portfolio Investment Scheme. Investment by individual FPIs should be less than 10% of the paid-up capital of the Indian Company on a fully diluted basis. The aggregate investment by FPIs should not exceed 24% of the paid-up capital of an Indian Company on a fully diluted basis. This aggregate limit of 24% can be increased by the Indian Company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, cannot exceed sectoral/statutory cap. For more information, click here.

22. What are the regulations for a foreign company to set up business operations in India?

A foreign company can set up business in India via Foreign Direct Investment (FDI) either by incorporating an Indian company or foreign company or LLP under the Companies Act, 2013 or by setting up a Liaison Office, Project Office or a Branch Office of the foreign company. Entry into India is however as per the provision of FDI policy and FEMA rules. For more information, click here.

23. What is the amount Foreign Direct Investment is permissible under railroads?

100 % FDI under automatic route is available for the following: 1. Construction, operation and maintenance of suburban corridor projects through PPP 2. High speed train projects 3. Dedicated freight corridors 4. Railway electrification 5. Signaling systems 6. Freight terminals 7. Passenger terminals 8. Infrastructure in industrial parks pertaining to railway line/siding including electrified railways lines and connectivity to main railway line 9. Mass Rapid Transport Systems (MRTS) For more information, click here.

24. How can the sale/ maturity proceeds taken by the Foreign Venture Capital Investor?

The sale/ maturity proceeds (net of taxes) of the securities may be remitted outside India or credited to the foreign currency account or a Special Non-resident Rupee Account of the FVCI. For more information, click here.

25. Can a foreign investor invest in shares issued by an unlisted company in India?

Yes. As per the regulations/ guidelines issued by the Reserve Bank of India/ Government of India, investments can be made in shares issued by an unlisted Indian company subject to compliance with FEMA provisions such as pricing, reporting, etc. For more information, click here.

26. What are the various reporting formalities for foreign investments?

The reporting requirements for foreign investments under Form Single Master Form (SMF) includes, inter alia: Form FC-GPR: Issuance of capital instruments Form FC-TRS: Transfer of capital instruments

Form LLP – I: Receipt of consideration by Limited Liability Partnership (LLP) for capital contribution and profit shares Form LLP – 2: Disinvestment or transfer of capital contribution and profit shares in an LLP Form CN: Issue or transfer of convertible notes Form ESOP: Issue of employee stock options, sweat equity shares to a person resident outside India Form InVi: Reporting foreign inflows in an investment vehicle Form DI: Reporting of downstream investment Form DRR: Issue or transfer of depository receipts The detailed reporting requirements are laid down in the Master Direction on Reporting under Foreign Exchange Management Act, 1998. For more information, click here

27. What are the legislatures governing IDRs?

Central Government notified the Companies (Issue of Indian Depository Receipts) Rules, 2004 (IDR Rules) pursuant to the section 605 A of the Companies Act. SEBI issued guidelines for disclosure with respect to IDRs and notified the model listing agreement to be entered between Stock Exchange and the foreign issuer specifying continuous listing requirements. For more information, click here.

28. Who are eligible to issue IDRs?

The eligibility criteria given under IDR rules and guidelines as mentioned under: The foreign issuing company shall have the following: pre - issue paid - up capital and free reserves of at least USD 50 M and have a minimum average market capitalization (during the last 3 years) in its home country of at least USD 100 M a continuous trading record or history on a stock exchange in its home country for at least three immediately preceding years a track record of distributable profits for at least three out of immediately preceding five years listed in its home country and not been prohibited to issue securities by any Regulatory Body and has a good track record with respect to compliance with securities market regulations in its home country Note: The size of an IDR issue shall not be less than INR. 50 Cr For more information, click here.

29. Whether the draft prospectus for IDRs to be filled with SEBI?

Yes. Foreign issuer is required to file the draft prospectus with SEBI while complying with the requirements of SEBI (ICDR) Regulations, 2009. Any changes specified by SEBI shall be incorporated in the final prospectus to be filed with Registrar of Companies For more information, click here

30. Whether any listing permission required for issuance of IDRs?

Yes, the issuer company is required to obtain in-principle listing permission from all the recognized stock exchanges in which the issuer proposes to get its IDRs listed. For more information, click here

31. Whether the IDRs required to be listed in any stock exchanges of India?

Yes, The IDRs are required to be listed in at least one stock exchange in India having nationwide terminals. For more information, click here

32. Whether IDRs can be converted/ redeemed into underlying equity shares?

IDRs can be converted/ redeemed into the underlying equity shares only after the expiry of one year from the date of the listing of the IDRs, subject to the compliance of the related provisions of Foreign Exchange Management Act and Regulations issued thereunder by RBI & SEBI in this regard. For more information, click here

33. What are the exit options available for an investor in IDR?

The Investor may trade the IDRs in India or can request for redemption of the IDRs to the issuer company. For more information, click here

34. Who is responsible to distribute the corporate benefits to IDR holders?

On the receipt of dividend or other corporate action on the IDRs, the Domestic Depository shall distribute the corporate benefits to the IDR holders in proportion to their holdings of IDRs. For more information, click here

35. Can an IDR holder appoint any nominee in case of death?

Yes, an IDR holder can at any time nominate a person to whom his IDRs shall vest in the event of his death. For more information, click here

36. What is fungibility window?

Fungibility window is the time period specified by the issuer company during which IDR holders can apply for conversion/ redemption of IDRs into underlying equity shares. For more information, click here

37. How is IDR holder informed about the duration of fungibility window?

IDR holders can look for such announcements made by the company in leading English and Hindi national daily newspapers with wide circulation as well as the websites of the stock exchanges. For more information, click here

38. What are the requirements for investing in IDRs?

Following are some of the requirements for investing in IDRs: IDRs can be purchased by any person who is resident in India as defined under FEMA Minimum application amount in an IDR issue shall be INR. 20,000 Investments by Indian companies in IDRs shall not exceed the investment limits, if any, prescribed for them under applicable laws In every issue of IDR - At least 50% of the IDRs issued shall be subscribed to by QIBs; The balance 50% shall be available for subscription by no institutional and retail For more information, click here

39. What is Foreign Portfolio Investment?

Foreign Portfolio Investment (FPI) is an investment by a foreign investor in a group of assets such as stocks, bonds, cash equivalents. For more information, click here.

40. What are Indian depository receipts (IDR)?

An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity shares of issuing company to enable foreign companies to raise funds from the Indian securities Markets. For more information, click here.

41. What is the FDI Policy for Asset Reconstruction Companies?

Up to 100% FDI is permitted for Asset Reconstruction Companies registered with Reserve Bank of India without government route. For more information, click here.

42. What is the FDI policy for Single Brand Retail Trading sector?

Up to 100% FDI is permitted for Single Brand Retail Trading (SBRT) sector without any government route subject to the following conditions: Products should be of single brand only Sold under same brand internationally Covers products which are branded during manufacturing DIPP approval is needed for any addition to product category Entities involving FDI beyond 51% in the SBRT are required to source at least 30% of the value of goods purchased by them from India For more information, click here.

43. Which are the major FDI attractive sub-sectors in India?

Textiles (including Dyed, Printed) sector attracted USD 3.19 Bn FDI during April 2000-June 2019. For more information, click here.

44. How much FDI did the automobile and auto-components sub-sectors attract?

Automobile and auto-components industry attracted $22.3 bn FDI inflows during April 2000 - June 2019. It contributes almost 5% of the total FDI inflows in India. For more information, click here.

45. Which act governs foreign fund investments?

Foreign Investments and repatriation is governed by Foreign Exchange Management Act. For more information, click here.

46. What is Foreign Investment Promotion Board?

The Foreign Investment Promotion Board (FIPB) has been replaced by Foreign Investment Facilitation Portal (FIFP). FIFP, housed in the Department of Economic Affairs, Ministry of Finance, is an inter-ministerial body, responsible for processing of FDI proposals and making recommendations for Government approval. For more information, click here.

47. What is Indirect Foreign Investment?

If the investor company is not owned or controlled by resident Indian citizens, or is owned or controlled by persons resident outside India, then such investment is termed as “ Indirect Foreign Investment ” for the investee company. For more information, click here.

48. How is India-Bangladesh trade relationship?

India and Bangladesh signed their first trade agreement in 1972 and have engaged in multiple trade arrangements whenever the two countries recognise any opportunity in terms of comparative advantage. India has 'revealed comparative advantages' in many products that Bangladesh needs. Bangladesh has been provided duty free quota free access by India on all tariff lines except tobacco and alcohol under SAFTA. India ’ s exports to Bangladesh for the year 2017-18 (April to March) stood at US $ 8.46 billion and imports from Bangladesh during the financial year 2017-18 stood at US $ 0.68 billion.

49. What is the highlight of India-Bangladesh bilateral relationship?

India was the first country to recognize Bangladesh as a separate and independent state and, shortly after its independence in December 1971, established diplomatic relations with the country. Bangladesh is the one of the main development partners of India today. India has extended three Lines of Credits to the said nation in the last 8 years of worth US$ 8 billion.

50. What are the limits of FII/FPIs Investment in securities in India?

Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may in terms of Schedule 2 and 2A of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, as the case may be, respectively, invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap.

51. What are the pricing guidelines to be complied with given the scenario of transfer of shares from resident to non-resident?

Listed Securities: Price to be not less than the price worked out as per SEBI guidelines Unlisted Securities: Price to be not less than fair value worked out as per any internationally accepted pricing methodology on arm ’ s length basis

52. What are the pricing guidelines to be complied with given the scenario of transfer to shares from non-resident to resident?

Listed Securities: Price to be not more than price worked out as per SEBI guidelines Unlisted Securities: Price to be not more than fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm ’ s length basis

53. What are the pricing guidelines to be complied with given the scenario of Issue of shares by Indian investee company to a person resident outside India?

Listed Securities: Price to be not less than the price worked out as per SEBI guidelines Unlisted Securities: Price not less than the price worked out as per internationally accepted pricing methodology on arm ’ s length basis