FAQs

Sectoral

Retail & E-commerce

1. Are we allowed to sell products of a sub brand if we have a Single Brand Retail Trade (SBRT) license?

No, any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. For more information, click here. For any further queries, please write to us at retail@investindia.org.in

2. What are the rules for sale of goods in online e-commerce?

An e-commerce entity will not be permitted more than 25% of the sales affected through its marketplace from one vendor or their group companies. For more information, click here.

3. If I want to set up online and I already operate as an SBRT, do I need special permission?

Subject to the conditions of SBRT under the FDI policy (link), a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.

4. Describe the term wholesale cash and carry as per the Foreign Direct Investment policy.

Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. For more information, click here.

5. Is there any condition for FDI under Single Brand Retail Trade?

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1)Products to be sold should be of a ‘ Single Brand ’ only i.e. sold under the same brand internationally products should be sold under the same brand in one or more countries other than India except for undertaking SBRT of Indian brands. 2) ‘ Single Brand ’ product-retail trading would cover only products which are branded during manufacturing. 3)A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. 4)The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-license agreement etc. For more information, click here.

6. What are the different states that allow Multi Brand Retail Trading (MBRT) and are there any clauses under the rule?

As per para 5.2.15.4 of the FDI Policy, 2017, the following states allow MBRT subject to the conditions mentioned in the policy: i. Andhra Pradesh ii. Assam iii. Delhi iv. Haryana v. Himachal Pradesh vi. Jammu &amp Kashmir vii. Karnataka viii. Maharashtra ix. Manipur x. Rajasthan xi. Uttarakhand xii. Daman & Diu and Dadra and Nagar Haveli (Union Territories) For more information, click here. For any further queries, please write to us at retail@investindia.org.in

7. How much FDI is allowed under single brand product retail?

100% FDI is allowed under single brand product retail via automatic route. For more information, click here. For any further queries, please write to us at retail@investindia.org.in

8. Are there specific laws regarding the termination of employee contracts?

According to the Shops and Establishments Act, no employer shall dispense with the services of an employee who has been in their continuous employment for not less than three months, without giving at least one month's notice. However, if the notice period prescribed under the Employment Contract of the employee is more than one month, the Company will have to provide the notice period as prescribed under the Contract. Please refer to the Shops and Establishments Act of the respective state for further details.

9. Are there any legal requirements regarding apparel labelling?

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There are legal labelling requirements regarding garments in loose form in retail stores, which can be found below through the Legal Metrology Rules, 2011. Name or Description of Product Size: Internationally recognizable size indicators - S, M, L, XL, etc. along with the details in metric notation in terms of cm or m as the case may be. Alternatively, the words ‘ TO FIT SIZE ’ instead of only ‘ Size ’ on the label may be used. Maximum Retail Price Name, full address and customer care number of the manufacturer For any further queries, please write to us at retail@investindia.org.in

10. Are there any required approvals and licenses or registrations that need to be procured in order to import apparel or other retail goods?

Approval or licensing requirements depend on the product proposed to be imported to India. Further, in the case of proposed foreign investment, compliance with relevant provisions of the Policy 2017 will have to be ensured. Additionally, any person interested in importing goods into India must follow certain rules and guidelines as laid down by The Companies Act 2013, RBI guidelines etc. They must pay GST, Income Tax and other taxes as per state ruling. The Directorate General of Foreign Trade (DGFT) issues Import Export (IE) Codes which are required for importing or exporting goods. The issued IE Codes can be used by the entity throughout its existence and don't require any renewal or filing. For any further queries, please write to us at retail@investindia.org.in

11. Can my company use plastic bags and plastic packaging?

According to the Plastic Waste Management Rules 2016, there is a complete ban of the manufacture, supply and storage of polythene bags and other plastic items such as cups, plates, spoons, and glasses in many states with a partial ban in some states like Maharashtra, West Bengal, Goa, Kerala etc. Some states permit polythene bags above 50 microns thickness. For more information, click here.

12. Where can I find regulations in food safety?

Food Safety and Standards Authority of India is the regulatory authority and has created a comprehensive policy framework on food safety and standards in India. For more information, click here.

13. Is physical presence mandatory for a single brand retail entity into B2C e-commerce? Is there any required number of stores for this?

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Single brand retail entity willing to enter into B2C e-commerce in India is required to have a physical presence in India before entering the e-commerce business. Per se, there is no specific requirement on the number of physical stores to be maintained in India.

14. Does the FDI policy allow investors to sell products online?

Under the FDI Policy, the following modes are available for online retail:- 1) Cash and Cash Wholesale Trading, including E-Commerce - 100% Automatic Route 2) E-Commerce (B2B/Marketplace Model) - 100% Automatic Route 3) Single Brand Retail Trade (Online presence allowed provided company establishes physical stores within 2 years from date of start of online retail) - 100% Automatic 4) E-Commerce (Food Retail; only for products manufactured and/ or produced in India) - 100% Government Above cases are subject to sub-condition as specified in the FDI Policy (link) For any further queries, please write to us at retail@investindia.org.in

15. Does India have a retail policy?

The Government has proposed formulation of a National Retail Trade Policy, and the stakeholder meetings associated with its formulation are ongoing For any further queries, please write to us at retail@investindia.org.in

16. What are the steps being undertaken by the Government to support development of retail sector in order to benefit the sixty five million small traders in the country?

Government has set up a National Traders ' Welfare Board with the objectives of welfare of traders and their employees, simplification of the acts and rules applicable to traders, reduction of compliance burden and improvement in access to funds for traders. For any further queries, please write to us at retail@investindia.org.in

17. Are Investments by Non Resident Indians (NRIs)/Person of Indian Origin (PIO) considered FDI?

Investments made into an unlisted Indian company by a Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) are deemed FDI provided they are made on a non-repatriable basis (See definition here). Such investments are governed by provisions of Schedule 1 of the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019, along with inter alia sectoral caps and limitations

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as provided under the Foreign Direct Investment (FDI) Policy and its subsequent amendments On the other hand, if investments are made on non-repatriable basis, the investments would be deemed as domestic investments. Such investments would be governed by provisions under Schedule 4 of the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 and would not have to conform to rules as provided under the Foreign Direct Investment (FDI) Policy Please refer to Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 and Foreign Direct Investment(FDI) Policy for further details For any further queries, please write to us at retail@investindia.org.in

18. Is FDI allowed under Multi-Brand Retail in India?

As per the FDI Policy, foreign direct investment is allowed under Multi-Brand Retail Trading upto 51% through the government approval route. For any further queries, please write to us at retail@investindia.org.in

19. Are there any sub-condition to Multi-Brand Retail Trade (MBRT) under the FDI Policy?

The FDI Policy specifies few sub-conditions that must be met by entity undertaking Multi Brand Retail Trade: Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded. Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million. At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'back- - end infrastructure' within three years, where ‘ back- - end infrastructure ’ will include capital expenditure on all activities, excluding that on front- - end units At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2.00 million. For more information, please refer to the FDI Policy For any further queries, please write to us at retail@investindia.org.in

20. What are the conditions for FDI under Single Brand Retail Trade?

Products to be sold should be of a ‘ Single Brand ’ only i.e. sold under the same brand internationally products should be sold under the same brand in one or more countries other than India except for undertaking SBRT of Indian brands. Single Brand ’ product-retail trading would cover only products which are branded during manufacturing. A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted, directly or through a legally tenable agreement with the brand owner or through a legally tenable agreement executed between the

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Indian entity undertaking single brand retail trading and the brand owner. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-license agreement etc. In respect of proposals involving foreign investments beyond 51%, sourcing of 30% of the value of goods procured, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic souring will be self-certified by the company, to be subsequently checked by statutory auditor from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in first instance, as an average of five years' total value of the goods procured, beginning 1st April of the year of commencement of SBRT business. Thereafter, SBRT entity shall be required to meet the 30% local sourcing norms on an annual basis. For any further queries, please write to us at retail@investindia.org.in

21. Are Single Brand Retail Traders, as defined under the FDI Policy, required to locally source products?

For projects under Single Brand Retail Trading involving foreign investments beyond 51%, sourcing of 30% of the value of goods will be done from India. This procurement would have to be met, in the first instance, as an average of first five years total value of goods purchased. Thereafter, it would have to be met on an annual basis or year 6 onwards. Further details on sub-conditions associated with SBRT are provided in the FDI Policy, click here. For any further queries, please write to us at retail@investindia.org.in

22. Are only products retailed in India counted towards local sourcing under requirements for a Single Brand Retail Trader under FDI Policy?

For the purpose of meeting local sourcing requirements, all procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing irrespective of whether the goods procured are sold in India or exported. For any further queries, please write to us at retail@investindia.org.in

23. Are goods procured from Special Economic Zones counted against local sourcing requirements of Single Brand Retail Trade (SBRT) under FDI Policy?

Yes, sourcing goods from units located in Special Economic Zones in India will qualify as sourcing from India for the purpose of 30% mandatory sourcing of goods for proposals involving FDI beyond 51% under SBRT For any further queries, please write to us at retail@investindia.org.in

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24. Can companies with foreign direct investments sell through standalone stores in India?

Under the Single Brand Retail Trade (SBRT) model under the FDI Policy, international retailers that enters India can sell through their stand-alone stores in shopping locations/streets. Examples of Companies: H&M (CP Street, New Delhi), IKEA (Hyd, Telangana) For any further queries, please write to us at retail@investindia.org.in

25. Can foreign investors seek exemption from local sourcing requirements under the Single Brand Retail Trade of the FDI Policy?

Sourcing norms will not be applicable up to three years from commencement of a business, i.e., opening of first store or start of online retail, whichever if earlier for entities undertaking single brand retail trading of products having 'state of art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, the company will be required to follow local sourcing norms as defined under FDI Policy. The claim of 'state-of-art' and 'cutting-edge' technology will be examined by a Committee under the Chairmanship of Secretary, Department for Promotion of Industry and Internal Trade (DPIIT), with representatives from NITI Aayog, concerned administrative ministry and independent technical experts. For any further queries, please write to us at retail@investindia.org.in

26. Can retailers with foreign direct investments sell under B2B model?

Yes, entities with foreign direct investments can undertake B2B retail under the following model: This is a model wherein the international retailer enters India and sells to other vendors/businesses in B2B model as well as having own single brand stores (B2C) Please note: A wholesale/cash & carry trader can undertake retail trading, subject to the conditions as applicable. An entity undertaking wholesale/cash and carry as well as retail business will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. Conditions of the FDI policy for wholesale/cash and carry business and for retail business have to be separately complied with by the respective business arms. • Examples of Companies: Cartier, Dyson For any further queries, please write to us at retail@investindia.org.in

27. What does the term wholesale cash and carry denote as per the Foreign Direct Investment policy?

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Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. For more information, click here. For any further queries, please write to us at retail@investindia.org.in

28. Can a wholesale/cash and carry trader undertake retail trading?

An entity conducting wholesale/cash and carry trade can also conduct retail business provided it maintains sperate books of accounts for these two arms of the business and each are duly audited by the statutory auditors. Each arms shall have to adhere to norms applicable for wholesale/cash and carry and for retail business under the FDI Policy. For any further queries, please write to us at retail@investindia.org.in

29. Are there any laws protecting consumer interests on online retail transactions?

The government notified the Consumer Protection (E-Commerce) Rules, 2020 in July 2020, with the aim of protecting consumer interests, as well as outlining duties of the sellers and e-commerce entities. For any further queries, please write to us at retail@investindia.org.in

30. What is the Consumer Protection Act, 2019?

Consumer Protection Act, 2019 is an Act instituted by the Government which covered consumer rights under the following areas: Right to Safety Right to be Informed Right to Choose Right to be heard Right to seek Redressal Right to Consumer Awareness For any further queries, please write to us at retail@investindia.org.in

31. What are the rules governing 'Franchising' in India?

There isn't any umbrella legislation governing 'Franchising' in India. However, a broad set of laws and regulations can be applicable to 'Franchising' governing different aspects of a particular franchising business in India. Given below is an indicative list of laws that can be made applicable: Indian Contract Act, 1872 - It governs the contractual aspects of a franchise agreement relating to offer, acceptance, indemnity, termination, breach of contract among other clauses inserted in the agreement. Intellectual Property Laws - The Trade Marks Act 1999, the Copyright Act 1957, the

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Patents Act 1970 and the Design Act 2000 governs and regulates the intellectual property aspects involved in a franchise agreement which would include brand names (owner), logos, designs, trademarks among others. Competition Act, 2002 - The competition law will check on the anti-competitive element of the franchise agreement, which is a vertical agreement (governed by Section 3(4) of the Act) and also on abuse of dominance by the franchisor. Foreign Exchange Management Act - It will govern payments and guarantees issued by Indian franchisees to foreign franchisors depending upon the franchising arrangement. The FDI Policy will also come into action to govern the investment aspect. Consumer Protection Act, 2019 - It will be applicable to remedy the consumers and hold the franchisee or the franchisor or both of them jointly liable in case of defective goods or unsatisfactory service. Other laws which will also become applicable include the Tax related Laws in India, Labour Laws, The Arbitration and Conciliation Act, 1996, Information Technology Act, 2000, Transfer of Property Act 1882,Indian Stamp Act 1899, Registration Act 1908. For any further queries, please write to us at retail@investindia.org.in

32. What is the FDI policy for Duty free shops?

"100% FDI is allowed under Duty free shops via automatic route. As per the FDI Policy, duty free shops with foreign investment are not permitted to engage in any retail trading activity in the domestic tariff area of the country. Further, such duty free shops are also required to comply with the conditions stipulated under the Customs Act, 1962 and the other applicable laws and regulations. For more information, click here. For any further queries, please write to us at retail@investindia.org.in"

33. What is a marketplace and inventory based model of e-commerce?

"1) Marketplace based model of e-commerce means providing an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between the buyer and seller. 2) Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly. For any further queries, please write to us at retail@investindia.org.in"

34. Is FDI allowed for inventory based model of e-commerce?

"No, FDI is not permitted for inventory based model of e-commerce. For any further queries, please write to us at retail@investindia.org.in"

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35. Does India have an e-commerce policy?

"A draft e-commerce policy was prepared and put up in the public domain on February 23, 2019 for comments/suggestions. Comments from over 120 stakeholders (companies, Industry associations, think tanks, foreign governments) have since been received. The Govt. is currently working on finalising the policy. Click here for the draft policy. For any further queries, please write to us at retail@investindia.org.in"

36. What is deemed inventory ownership by a marketplace under the FDI Policy on E-Commerce?

As per the FDI Policy, E-Commerce marketplace is not supposed to exercise control or ownership of the inventory. Inventory is deemed to be controlled by the marketplace if more than 25% of purchases of a vendor on the marketplace are purchased from the marketplace entity or its group companies. For any further queries, please write to us at retail@investindia.org.in

37. Can sellers on e-commerce marketplaces have equity participation from the marketplace or its group companies?

No, as per the FDI Policy, no entity having equity participation from the e-commerce marketplace entity or its group companies will be permitted to sell its products on the platform run by such a marketplace entity. For any further queries, please write to us at retail@investindia.org.in

38. Can e-commerce marketplaces offer services to sellers hosted on its webite?

As per the FDI Policy, e-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfilment, call centre, payment collection and other services For any further queries, please write to us at retail@investindia.org.in

39. Is E-Commerce allowed for Food Retail?

For food product retail trading: 100% FDI is allowed under approval route, including through ecommerce, in respect of food products manufactured and/or produced in India. For any further queries, please write to us at retail@investindia.org.in

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40. Can an SBRT entity commence e-commerce operations?

Subject to the conditions of SBRT under the FDI policy (link:), a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce. Further, as per policy, retail trading through e-commerce can also be undertaken prior to opening of brick & mortar stores, subject to the condition that the entity open brick and mortar stores within 2 years from date of start of online retail For any further queries, please write to us at retail@investindia.org.in

41. Where can I find regulations on food safety?

Food Safety and Standards Authority of India is the regulatory authority and has created a comprehensive policy framework on food safety and standards in India. For more information, click here For any further queries, please write to us at retail@investindia.org.in

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