



Foreign Investment in India

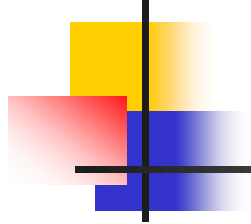
- 'Foreign Investment' means any investment made by a person resident outside India on a repatriable basis in capital instruments of an Indian company or to the capital of an LLP;
- If a declaration is made by persons as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person **resident outside India**, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

Why Foreign Investments?



- For governments:
- Changing role of governments
- Boost to economic activity
- Access to latest technology
- Bridging the current account deficit (for developing countries)
- Supplement to domestic savings for large infrastructure investments

Why Foreign Investments?



For companies:

- Overcoming the tariff barriers
- Increasing global competition
- Acceleration on development of technology

Foreign Investments

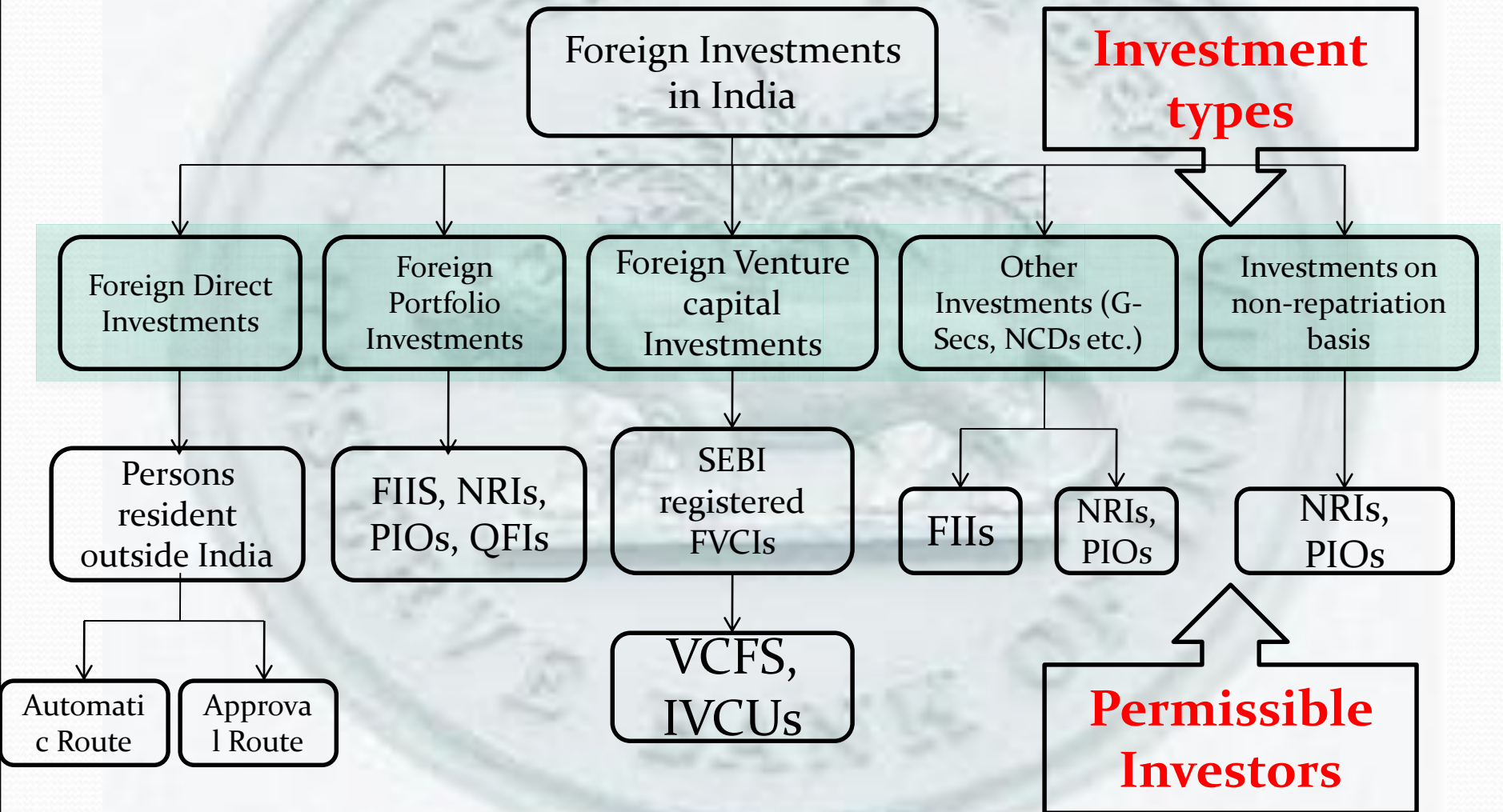
Foreign Direct Investment

Portfolio Investment

**Notification No. FEMA 20(R)/ 2017-RB
November 07, 2017**

***Foreign Exchange Management (Transfer or Issue of
Security by a Person Resident Outside India) Regulations,
2017***

Foreign Investments in India – Schematic Representation



FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000: 'FEMA 20'

- Sch. 1- Foreign Direct Investment ('FDI') Scheme
- Sch. 2 & 2A-Purchase/Sale of shares or convertible debentures or warrants of an Indian Company by Registered Foreign Portfolio Investor (RFPI) under Foreign Portfolio Investment (FPIs) Scheme (Registered FIIs under Sch. 2 subsumed with Sch. 2A)
- Sch. 3 - Purchase/Sale of Shares and/or Convertible Debentures by an NRI on a stock exchange in India on repatriation and/or non-repatriation basis under Portfolio Investment Scheme
- Sch. 4 - Purchase and Sale of Shares or Convertible Debentures or Warrants] by NRI, on Non-repatriation basis
- Sch. 5 - Purchase and Sale of Securities other than Shares or Convertible Debentures of an Indian company by a person resident outside India
- Sch. 6 - Investment in an Indian venture capital undertaking by a registered Foreign Venture Capital Investor
- Sch. 7 - Indian depository receipts by eligible companies resident outside India
- Sch. 8 -Scheme for investment by Qualified Foreign Investors in equity shares (Subsumed under Sch. 2A)
- Sch.9 -Scheme for Acquisition/Transfer by a person resident outside India of capital contribution or profit share of (LLPs)
- Sch. 10 -Depository Receipts Scheme, 2014 (DRs)



FDI AND FPI

- A person resident outside India may hold foreign investment either as **Foreign Direct Investment** or as **Foreign Portfolio Investment** in any particular Indian company.

IMF's Balance of Payments Manual 5,

- **FDI is that category of international investment that reflects the objective of obtaining a lasting interest by a resident entity in one economy in an enterprise resident in another economy.**
- **The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the investor in the management of the enterprise.**
- **According to EU law, foreign investment is labeled direct investment when the investor buys more than 10 per cent of the investment target, and portfolio investment when the acquired stake is less than 10 per cent.**
- **FPIs are not interested in management control in general**



Contd.

- Any flow of lending to, or purchases of ownership in, a foreign enterprise that is largely owned by residents of the investing country.
 - Securities (stocks and bonds)
 - Loans
 - Bank deposits
 - Technical Collaboration
- **FDI** is the purchase of assets to establish financial control of a foreign entity. Generally **ownership of 10% or more** of a company's outstanding stock is considered FDI.
- **Portfolio investment** involves little management control or interest, and is solely for financial gain.



~~Foreign Direct Investment~~

- Investment in capital instrument of an unlisted company or Investment in the capital instruments of 10% or more of the capital of a listed company
- If investment in a listed company falls below 10%, it will continue to be FDI
- Foreign Portfolio Investment
- Investment in the capital instruments of 10% or less of the capital of a listed company
- Automatic Route and Approval Route

Activities in which Foreign Investment is prohibited

- Foreign investment in any form is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as, Trusts) which is engaged or proposes to engage in the following activities:
 - (a) Business of chit fund, or
 - (b) Nidhi company, or
 - (c) Agricultural or plantation activities, or
 - (d) Real estate business, or construction of farm houses, or
 - (e) Trading in Transferable Development Rights (TDRs).
- Only NRIs are eligible to subscribe to the chit funds on non- repatriation basis subject to conditions:

Foreign Investments

- FDI is not allowed both under Govt Route and Automatic route in
- (a) Lottery Business including Government/ private lottery, online lotteries, etc.
- (b) Gambling and Betting including casinos etc.
- (c) Chit funds
- (d) Nidhi company
- (e) Trading in Transferable Development Rights (TDRs)
- (f) Real Estate Business or Construction of Farm Houses
- (g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- (h) Activities / sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations

FDI compliant instruments

- Equity shares issued in accordance with the provisions of the Companies Act, 2013;
- Fully and mandatorily convertible preference shares, and fully and mandatorily convertible debentures. The price/ conversion formula of convertible instruments should be determined upfront at the time of issue of the instruments and should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with FEMA 20 Partly paid equity shares (25% - 12 m) and warrants (25%-18 m) issued by an Indian company in accordance with the provision of the Companies Act, 2013 and the SEBI guidelines, as applicable, The pricing and receipt of balance consideration shall be as stipulated in terms of [A.P.\(DIR Series\) Circular No.3 dated July 14, 2014](#) as modified from time to time (pricing/receipt of balance/reporting/compliance).
- Non-convertible/ optionally convertible/ partially convertible preference shares (issued after April 30, 2007) and optionally convertible/ partially convertible debentures (issued after June 7, 2007) shall be treated as debt and shall require conforming to External Commercial Borrowings guidelines



Other mode

FDI compliant instruments, as applicable can be issued by Indian companies as follows:

- ESOP
- Sweat Equity
- Bonus
- Rights
- Swap of Shares
- On merger/ de-merger/ amalgamation etc of Indian companies
- Against any other funds payable to a person resident outside India, the remittance of which does not require the prior approval of the Reserve Bank or the Government of India.

Modes of payment allowed for receiving FDI in an Indian company

- a.inward remittance through normal banking channels;
- b.debit to NRE/ FCNR (B) account of a person concerned maintained with an AD Category I bank;
- c.debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration;
- d.conversion of royalty/ lump sum/ technical know-how fee due for payment or conversion of ECB;
- e.conversion of pre-incorporation/ pre-operative expenses incurred by the a non-resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less;
- f.conversion of import payables/ pre incorporation expenses/ can be treated as consideration for issue of shares with the approval of FIPB;
- g.against any other funds payable to a person resident outside India, the remittance of which does not require the prior approval of the Reserve Bank or the Government of India: and
- h.Swap of capital instruments, provided where the Indian investee company is engaged in a Government route sector, prior Government approval shall be required

FDI & FPI in INDIA (USD Mio)

INVESTMENT TYPE	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
FDI	22061	19819	21564	31251	36021	35612
FPI	17170	26891	4822	42205	-4130	7612
TOTAL	39231	46711	26386	73456	31891	43224

FDI in India-Sector wise (2016-17)

▶ The sector wise foreign direct investment inflows to India during 2016-17(Provisional) are given below.

▶ Manufacturing	I	USD 11972(mio)
▶ Communication Services	II	USD 5876(mio)
▶ Financial Services	III	USD 3732(mio)
▶ Retail & Wholesale Trade	IV	USD 2771(mio)
▶ Business Services	V	USD 2684(mio)

Foreign Direct Investment Flows (2016-17)

Country	Rank
• Mauritius	I
• Singapore	II
• Japan	III
• Netherlands	IV
• USA	V

Top Ten Country-wise FDI Equity Inflows to India from April, 2000 to March 2017

SL No	COUNTRY	FDI in rupees	FDI in USD(Bn)	% of Total FDI
1	Mauritius	585950.38	111.63	33.63
2	Singapore	315042.49	54.59	16.44
3	Japan	142259.65	25.67	7.73
4	UK	125544.59	24.59	7.41
5	Netherlands	117166.54	20.68	6.23
6	U.S.A	110531.54	20.32	6.12
7	Germany	52044.62	9.69	2.92
8	Cyprus	46730.58	9.15	2.76
9	France	30637.22	5.72	1.72
10	UAE	26186.87	4.7	1.42

Sector-wise FDI Equity Inflow from April 2000 to March 2017

SL No	Sector	FDI in rupees	FDI in USD(Bn)	% of Total FDI
1	Service Sector	316567.77	59.47	17.92
2	Computer Software & Hardware	136789.08	24.66	7.43
3	Construction & Development	114638.90	24.29	7.32
4	Telecommunications	130163.87	23.94	7.21
5	Automobile Industry	92218.42	16.67	5.02
6	Drugs & Pharmaceuticals	75820.05	14.70	4.43
7	Trading	84557.43	14.21	4.28
8	Chemicals	68951.96	13.29	4.00
9	Power	60086.74	11.58	3.49
10	Metallurgical Industries	53074.07	10.33	3.11

FDI Equity Flows-Top Ten States (2000-2017)

S. No.	State-wise Inflows of FDI	Cumulative FDI (USD Bn)	%age to total Inflows
1	MAHARASHTRA, DADRA & NAGAR HAVELI, DAMAN & DIU	102.28	31
2	DELHI, PART OF UP AND HARYANA	68.03	20
3	TAMIL NADU, PONDICHERY	23.76	7
4	KARNATAKA	22.37	7
5	GUJARAT	16.65	5
6	ANDHRA PRADESH	13.76	4
7	WEST BENGAL, SIKKIM, ANDAMAN & NICOBAR ISLANDS	3.98	1
8	KERALA, LAKSHADWEEP	1.75	1
9	RAJASTHAN	1.48	0.4
10.	MADHYA PRADESH, CHATTISGARH	1.37	0.4

FII Investment in India 2007-2017 (Rs in Crores)

Year	Equity	Debt	Total
2007-08	53404	12775	66179
2008-09	-47706	1895	-45811
2009-10	110221	32438	142658
2010-11	110121	36317	146438
2011-12	43738	49988	93726
2012-13	140033	28334	168367
2013-14	79709	-28060	51649
2014-15	111333	166127	277461
2015-16	-14172	-4004	-18176
2016-17	55703	-7292	48411

DI and IFI

- Down stream Investment (DI)
Investment made by an Indian company/LLP into another Indian company/LLP
- Indirect Foreign Investment (IFI)
Investment received by an Indian company/LLP from Another Indian company not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India
- Ownership–more than 50% share
- Control–ability to appoint majority of the directors/partners or to control the management/policy decisions
- **Total Foreign Investment–Direct Investment received from persons resident outside India + IFI**
- DI can be made by LLP in sectors under 100% auto route & no FDI linked conditionalities are there

Foreign Investment

- Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior approval of the Government.
- An Indian company may issue capital instruments to a person resident outside India against swap of capital instruments if the Indian investee company is engaged in an automatic route sector.
- An Indian company may issue equity shares against any funds payable by it to a person resident outside India, the remittance of which is permitted.

Capital instruments with GOI Approval

- An Indian company may issue capital instruments to a person resident outside India with prior Government approval against:
- (a) Swap of capital instruments if the Indian investee company is engaged in a sector under Government route;
- (b) Import of capital goods/ machinery/ equipment (excluding second-hand machinery) subject to the conditions specified by RBI and GOI
- (c) Pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to compliance with the conditions specified by RBI and GOI

Mode of Payment & Repatriation

- As inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ Escrow account
- The amount of consideration shall include:
 - (i) Issue of equity shares by an Indian company against any funds payable by it to the investor
 - (ii) Swap of capital instruments.
- (2) Capital instruments shall be issued to the person resident outside India making such investment within 60 (prior to Nov 17, 2017 – 180) **days** from the date of receipt of the consideration.
- In case of partly paid equity shares, the period of 60 days shall be reckoned from the date of receipt of each call payment

Mode of Payment & Repatriation

- Where the capital instruments are not issued within **60 days** from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR(B) accounts, within **15 days** from the date of completion of sixty days.
- Prior approval of the RBI shall be required for payment of interest, if any, as laid down in the Companies Act, 2013, for delay in refund of the amount so received.
- An Indian company issuing capital instruments under this Schedule may open a foreign currency account with an Authorised Dealer
- **Remittance of sale proceeds**
- The sale proceeds (net of taxes) of the capital instruments may be remitted outside India or may be credited to the NRE/ FCNR(B) of the person concerned.

Entry Routes and Eligibility

- Freely permitted in almost all sectors
- Two entry routes –
 - **Automatic Route** – No approval required
 - **Approval Route** – Government (MoF, FIPB, (SIA)DIPP) prior approval required
- Eligibility – A person resident outside India or an entity incorporated outside India. Residents of and entities incorporated in **Bangladesh and Pakistan require FIPB approval.**
- **Onus for complying with FDI on the Indian company**

FI- Sectoral Investment Caps-

(November 2017)

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□ Defence	49%
□ Print Media	26%
□ Insurance	49%
□ Pvt security Agencies	49%
□ Multibrand retail trading	51%
□ Satellites - Establishment and operation	74%
□ Banking-private sector	74%
□ Banking-public sector	20%
□ Commodity Exchange	49%
□ Credit Information Companies	74%
□ Power Exchanges	49%
□ Pension Sector	49%

Automatic Route- Reporting-using eBiz portal

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- An Indian company issuing shares or convertible debentures to persons resident outside India , should submit to RBI the details of advance remittance, **not later than 30 days from the date of receipt of the amount of consideration**, in form - Advance Remittance Form (ARF)
- The equity instruments should be issued within **60 days** of the receipt of the inward remittance.
- After issue of shares the Indian company has to file a report in **Form FC-GPR** (Foreign Currency Gross Provisional Return) not later than **30 days** from the date of issue of shares with the Regional Office of RBI under whose jurisdiction the registered office of the company is situated.
- Physical filing of the three FDI returns ARF,FC-GPR and **FC-TRS**(Foreign Currency Transfer of Shares) replaced with the online filing on Government's e-Biz portal (hosted on the National Informatics Centre (NIC) servers).

Simplification of FDI Policy (October 20,2016)

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- In all sectors where there is a limit/cap on foreign investment, such limit/cap shall be reckoned in a composite manner.
- "sectoral cap", i.e., the maximum amount which can be invested by foreign investors in an entity will include all types of foreign investments, **direct and indirect**.
- FCCBs and DRs having underlying of instruments being in the nature of debt, shall not be treated as foreign investment under such composite limit/cap.
- 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 under the composite limit/cap.
- "Total foreign investment" in an Indian company will be the sum total of direct and indirect foreign investments.

Simplification of FDI Policy (October 20,2016)

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- Portfolio investment up to aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance with the sectoral conditions, provided such investment does not result in change in ownership leading to control of Indian entities by non-resident entities.
- Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions .
- The onus of compliance with the sectoral/statutory caps on foreign investment and attendant conditions, shall be on the company receiving foreign investment.

Simplification of FDI Policy (October 20,2016)

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- A company shall be considered as owned by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens.
- 'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.
- Foreign investment in LLP is permitted under the automatic route if the LLP is engaged in sector where 100% FDI is allowed.
- Foreign investment by way of **swap of shares** is permitted provided the resident company in which the investment is made is engaged in an automatic route and irrespective of the amount, valuation of the shares involved in the swap arrangement is made by a MB registered with SEBI or an Investment Banker outside India.

Simplification of FDI Policy (October 20,2016)

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- A Non-resident Indian (NRI) has been permitted to purchase or sell shares, convertible preference shares, convertible debentures and warrants of an Indian company or units of an investment vehicle, on both repatriation basis non-repatriation basis .
- Investment by an NRI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRI, **on non-repatriation basis** will be deemed to be **domestic investment** at par with the investment made by residents.
- Foreign investment up to 100 percent under the automatic route has been permitted in the plantation sector which includes tea plantations, coffee plantations, rubber plantations, cardamom plantations, palm oil tree plantations and olive oil tree plantations

Simplification of FDI Policy (October 20,2016)

35

- "Real estate business" shall mean dealing in land and immovable property with a view to earning profit therefrom and **does not include** development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.
- Earning of rent income on lease of the property, not amounting to transfer, will not amount to "real estate business".
- Manufacturing has been given a precise definition and foreign investment up to 100% under the automatic route is permitted in manufacturing .
- A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.
- An entity engaged in single brand retail trading operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.

Foreign investment in Other Financial Services (October 20,2016)

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- Foreign investment up to 100% is allowed under the automatic route in ‘Other Financial Services’.
- Other Financial Services will include activities which are regulated by any financial sector regulator viz. RBI, SEBI, IRDA, PFRDA(Pension Fund Regulatory and Development Authority),NHB or any other financial sector regulator.
- Such foreign investment shall be subject to conditionalities, including minimum capitalisation norms, as specified by the concerned Regulator/ Government Agency.
- In financial services activities which are not regulated or partly regulated by any financial sector regulator or where there is lack of clarity regarding regulatory oversight, foreign investment will be allowed up to 100% **under the Government approval route.**
- Foreign investment in an activity which is specifically regulated by an Act, will be restricted to foreign investment levels/limits, if any, specified in that Act.
- Downstream investment by any entity engaged in ‘Other Financial Services” will be subject to extant sectoral regulations and provisions of Principal Regulations.

Shares against pre-incorporation/ pre-operative expenses (October 24,2016)

37

- A WOS set up in India by a non-resident entity, operating in a sector where 100 % foreign investment is allowed in the automatic route may issue equity shares or preference shares or convertible debentures or warrants to the said non-resident entity against pre-incorporation/ pre-operative expenses incurred by the said non-resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less, subject to conditions.
- Within 30 days from the date of issue, but not later than one year from the date of incorporation or such time as RBI or GOI permits, the Indian company shall report the transaction in the Form FC-GPR to RBI.

Foreign investment in the Pension Funds

November 04, 2016

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- Foreign investment in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.
- Entities bringing in foreign investments as equity shares or preference shares or convertible debentures or warrants shall obtain necessary registration from the PFRDA.
- An Indian pension fund shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by the Government of India / PFRDA as per the rules/regulation issued by them.



Deposits

- Keeping of deposits with an Indian company by persons resident outside India under Section 160 of the Companies Act 2013 was clarified to be a current account transaction which would not require any approval from RBI (April 13,2016)



Units issued by Trusts

- A person resident outside India including Registered Foreign Portfolio investors and NRIs to be allowed to invest in the units issued by Real Estate Investment Trusts, Infrastructure Investment Trusts and Alternate Investment Funds on repatriation basis
(April 21,2016)



NRI investment on Non Repatriation basis

- **Investment on non-repatriation basis by NRI without limit except investment in**
 - **Nidhi company**
 - **Agricultural or plantation business**
 - **Real estate business or construction of farm houses**
- **Payment by**
 - **Inward remittance**
 - **Debit to FCNR/NRE/NRO a/c**
 - **Sale proceeds not repatriable**



NRI Investment in NPS

- **The National Pension System(NPS) was enabled as an investment option for the NRIs under FEMA, provided such subscriptions were through normal banking channels and the person was eligible to invest under PFRDA Act (October 29,2015)**



Disinvestment

- FDI not subject to any lock-in period
- ADs allowed to remit sale proceeds out of India subject to:
 - The security was held on repatriable basis
 - The security has been sold on the floor of a stock exchange at market determined prices/RBI approval has been obtained
 - No-objection/tax clearance certificate from the Income Tax authorities



FIIIs

- An institution established/ incorporated outside India which proposes to make investments in India in securities
- Allowed to operate in India from September 1992 – original guidelines given by government of India
- SEBI guidelines issued in November 1995
- Pension funds ,Mutual funds, Investment trusts, Asset management companies, Institutional portfolio managers, University funds, Endowments ,Foundations etc



FPI

- 'Foreign Portfolio Investor (FPI)' means a person registered in accordance with the provisions of Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.
- Any Foreign Institutional Investor (FII) or a sub account registered under the Securities Exchange Board of India (Foreign Institutional Investors) Regulations, 1995 and holding a valid certificate of registration from Securities and Exchange Board of India shall be deemed to be a FPI till the expiry of the block of three years from the enactment of the Securities Exchange Board of India (FPI) Regulations, 2014.
- FIIs, Sub-Accounts and Qualified Foreign Investors (QFIs) are merged into a single and new investor class called "Foreign Portfolio Investors" (FPIs). {K.M. Chandrasekhar committee recommendations on rationalising investment routes and monitoring foreign portfolio investments}



Reserve Bank Approval Would Enable FIIs To

- Open foreign currency account - different accounts for different currencies allowed
- Special non-resident rupee account (SNRR) for crediting sale proceeds, income from dividends & interest
- Transfer funds from foreign currency account to special rupee account & vice-versa
- Make investments out of balance in rupee account
- Repatriate capital gains & income subject to deduction of tax

FPI investment on repatriation basis

- ~~(a) dated Government securities/ treasury bills;~~
- (b) non-convertible debentures/ bonds issued by an Indian company;
- (c) commercial papers issued by an Indian company;
- (d) units of domestic mutual funds;
- (e) Security Receipts (SRs) issued by Asset Reconstruction Companies up to 100 percent of each tranche, subject to directions/ guidelines of the Reserve Bank;
- (f) Perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital
- (g) non-convertible debentures/ bonds issued by Non-Banking Financial Companies categorized as 'Infrastructure Finance Companies'(IFCs) by the Reserve Bank;
- (h) Rupee denominated bonds/ units issued by Infrastructure Debt Funds;
- (i) Credit enhanced bonds;
- (j) Listed non-convertible/ redeemable preference shares or debentures
- (k) Security receipts issued by securitization companies
- (l) Securitised debt instruments

Limits on Investments



- No minimum/maximum limit on volume of investment
- No lock in period
- Does not include foreign investment under the foreign direct investment under automatic approval route, GDRs etc
- Individual FII limit - 10% of the paid up capital of a company
- Portfolio investment for all FIIs subject to a ceiling of 24% of the issued share capital of a company – raised to the sectoral cap for the industry if special a resolution is passed by company



Mode of payment and Repatriation

- By inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account
- The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule
- **Remittance of sale proceeds**
- The sale proceeds (net of taxes) of the investments may be remitted outside India or may be credited to the foreign currency account or a SNRR account of the FPI.



FPI-Investment Limits revised-(October 6,2015)

- The limits for FPI investment in debt securities to be announced/ fixed in Rupee terms.
- The limits for FPI investment in the Central Government securities will be increased in phases to reach **5 per cent** of the outstanding stock by March 2018.
- A separate limit for investment by all FPIs in the State Development Loans (SDLs), to be increased in phases to reach **2 per cent** of the outstanding stock by March 2018.
- The existing requirement of investments being made in G-sec (including SDLs) with a minimum residual maturity of **three years** will continue to apply to all categories of FPIs.
- Aggregate FPI investments in any Central Government security would be capped at **20%** of the outstanding stock of the security.

Foreign investment limits in corporate debt

-April 13,2016

- FPI Limit in corporate debt to be fixed in rupees
 - The issuance of Rupee denominated bonds overseas to be within the aggregate limit of foreign investment permitted in corporate debt.
 - The current limit of USD 51 billion for foreign investment in corporate debt, has been fixed in Rupee terms at Rs. 2443.23 billion.
 - Issuance of Rupee denominated bonds overseas will be within this aggregate limit of foreign investment in corporate debt.



Participation of FPIs in Government securities on NDS-OM platform (October 20,2016)

- FPIs are currently permitted to transact in the Over-The-Counter (OTC) market for Government securities with T+2 settlement.
- With effect from December 1, 2016, FPIs are allowed to trade Government securities in the secondary market through the primary members of NDS-OM including the Web-module.
- The primary members of NDS-OM shall be responsible for settlement of the trades, which will be on T+1 basis.

NRI-PIS-Repatriation basis

- NRIs can purchase/sell shares on a recognised stock exchange through a registered broker/AD
- Scheme under both options of repatriation and non-repatriation
- NRI has to designate one branch of the AD for routing all transactions for sale/purchase
- Limit for individual NRI 5% of the paid up capital of a company for both repatriation & non-repatriation basis
- Total NRI ceiling of 10%
- Condition applicable to convertible debentures also
- Ceiling for NRI investment can be raised to 24% by the company by passing special resolution



NRI-PIS-Repatriation basis

Mode of payment & Repatriation by NRIs

- As inward remittance from abroad through banking channels or out of funds held in a Non-Resident External (NRE) account
- The NRE account will be designated as an NRE (PIS) Account and the designated account shall be used exclusively for putting through transactions permitted under this Schedule.
- **Remittance of sale proceeds**
- The sale proceeds (net of taxes) of the capital instruments may be remitted outside India or may be credited to NRE (PIS) account of the person concerned.
- Any account designated as NRO (PIS) shall be re-designated as NRO account.



NRE (PIS) Account

- An NRI may open a designated NRE account called an **NRE (PIS) Account** with a designated branch of an AD for routing the receipt and payment for transactions relating to sale and purchase of shares /convertible preference shares/ convertible debentures/ warrants/ units.
- AD shall ensure that sale proceeds of securities or units which have been acquired by modes other than PIS such as underlying shares acquired on conversion of ADRs / GDRs, shares / convertible preference shares / convertible debentures /warrants acquired under FDI Scheme or purchased outside India from other NRIs or acquired under private arrangement from residents/non-residents or purchased while resident in India, **do not** get credited in the NRE (PIS) Account and vice-versa.

NRI Investment-Repatriation Basis

- (a) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
- (b) Bonds issued by a Public Sector Undertaking (PSU) in India;
- (c) Shares in Public Sector Enterprises being disinvested by the Central Government
- (d) Bonds/ units issued by Infrastructure Debt Funds;
- (e) Listed non-convertible/ redeemable preference shares or debentures
- (2) perpetual debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital
- (3) An NRI may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.

NRI Investment Non Repatriation Basis



- Dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of money Market Mutual Funds, or National Plan/ Savings Certificates.
- Listed non-convertible/ redeemable preference shares or debentures
- Subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf.

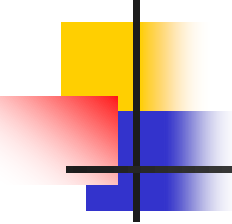


Investment by Foreign Central Banks, Multilateral Development Bank and long term investors

- A Foreign Central Bank may purchase and sell dated Government securities/ treasury bills in the secondary market subject to the conditions as may be stipulated by the Reserve Bank.
- A Multilateral Development Bank which is specifically permitted by Government of India to float rupee bonds in India may purchase Government dated securities.
- Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds which are registered with Securities and Exchange Board of India as eligible investors in Infrastructure Debt Funds may purchase on repatriation basis
- Rupee Denominated bonds/ units issued by Infrastructure Debt Funds.

Investment by Long Term Investors

- Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks registered with Securities and Exchange Board of India may purchase, on repatriation basis the following instruments and subject to such terms and conditions as may be specified by the Reserve Bank and the Securities and Exchange Board of India:
 - (a) dated Government securities/ treasury bills;
 - (b) commercial papers issued by an Indian company;
 - (c) units of domestic mutual funds;
 - (d) listed non-convertible debentures/ bonds issued by an Indian company;
 - (e) listed and unlisted non-convertible debentures/ bonds issued by an Indian company in the infrastructure sector.
 - (f) non-convertible debentures/bonds issued by Non-Banking Finance Companies categorized as 'Infrastructure Finance Companies (IFCs)' by the Reserve Bank;
 - (g) security Receipts (SRs) issued by Asset Reconstruction Companies up to 100 percent of each tranche, subject to directions/ guidelines of the Reserve Bank;
 - (h) perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital (Tier I capital and Tier II capital
 - (i) primary issues of non-convertible debentures/ bonds
 - (j) credit enhanced bonds;
 - (k) listed non-convertible/ redeemable preference shares or debentures
 - (l) security receipts (SRs) issued by securitization companies



Investment in Limited Liability Partnership (LLP)

- A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh), **not being a Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI)**, may contribute to the capital of an LLP operating in sectors/ activities where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.
- Payment by an investor towards capital contribution of an LLP shall be made by way of an inward remittance through banking channels or out of funds held in NRE or FCNR(B) account
- **Remittance of disinvestment proceeds**
- The disinvestment proceeds may be remitted outside India or may be credited to NRE or FCNR(B) account of the person concerned.

Investment in Partnership Firm / Proprietary Concern

- A NRI or PIO resident outside India may invest by way of contribution to the capital of a firm or a proprietary concern in India ***on non-repatriation basis*** provided
- a) Amount is invested by inward remittance or out of NRE / FCNR / NRO account maintained with AD.
- b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or print media sector.

Investment in Partnership Firm / Proprietary Concern

- Investment in sole proprietorship concern / partnership firm ***with repatriation benefits***
- NRIs / PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/ partnership firms with repatriation benefits.

Depository Receipts

- A person will be eligible to issue or transfer eligible securities to a foreign depository, for the purpose of converting the securities so purchased into depository receipts in terms of Depository Receipts Scheme, 2014.
- A company can issue DRs, if it is eligible to issue eligible instruments to person resident outside India
- The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible securities.
- The eligible securities shall not be issued or transferred to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue or transfer of such securities to domestic investors.
- A domestic custodian may purchase eligible instruments on behalf of a person resident outside India, for the purpose of converting the instruments so purchased into depository receipts in terms of DR Scheme 2014.
- The domestic custodian shall report the issue of depository receipts as per DR Scheme 2014 to the Reserve Bank as per the reporting guidelines for DR Scheme 2014.



Indian Depository Receipts (IDRs)

- Companies incorporated outside India may issue IDRs through a Domestic Depository, to persons resident in India and outside India, subject to the following conditions
- (1) the issue of IDRs is in compliance with the Companies (Registration of Foreign Companies) Rules, 2014 and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (2) any issue of IDRs by financial/ banking companies having presence in India, either through a branch or subsidiary, shall require prior approval of the sectoral regulator(s);
- (3) IDRs shall be denominated in Indian Rupees only;
- (4) the proceeds of the issue of IDRs shall be immediately repatriated outside India by the companies issuing such IDRs.



Indian Depository Receipts (IDRs)

- An FPI or an NRI or an OCI may purchase, hold or sell IDRs, subject to the following terms and conditions:
 - (1) NRIs or OCIs may invest in the IDRs out of funds held in their NRE/ FCNR(B) account
 - (2) Limited two way fungibility of IDRs shall be permissible
 - (3) IDR shall not be redeemable into underlying equity shares before the expiry of one year from the date of issue;
- Redemption/ conversion of IDRs into underlying equity shares of the issuing company shall be a compliance the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.



Transfer of shares

- General permission for NR/NRIs for transfer of shares and CDs to any person resident outside India
- NRIs can transfer by way of sale or gift the shares or CDs to another NRI
- Person resident outside India may transfer any security to a person resident India by way of gift and also can sell them on a recognised stock exchange in India through a registered stock broker.
- **Pricing not applicable for transfers between two Non-Residents**



Transfer of shares

Form FC-TRS

- Reporting of transfer of shares between residents and non-residents and vice-versa is to be made in Form FC-TRS.
- The Form FC-TRS to be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration.
- The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India.
- The onus of complying with the sectoral cap/limits prescribed under FDI policy as well as other guidelines/regulations would rest with the buyer and seller/issuer.

Transfer of shares from Resident to Non-Resident

- Price of shares shall not be less than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis

Transfer of shares from Non-Resident to Resident

- Price of shares shall not be more than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis



Transfer of shares

- In case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, **not more than twenty five per cent** of the total consideration can be paid by the buyer on a deferred basis within a period **not exceeding eighteen months** from the date of the transfer agreement.
- For this purpose, an **escrow arrangement** may be made between the buyer and the seller for an amount not >25% of the total consideration for a period not exceeding 18 months from the date of the transfer agreement.
- The total consideration finally paid for the shares must be compliant with the applicable pricing guidelines.



Foreign Venture Capital Investor (FVCI) -Investments

- FVCI may invest in the sectors
- (1) Biotechnology
- (2) IT related to hardware and software development
- (3) Nanotechnology
- (4) Seed research and development
- (5) Research and development of new chemical entities in pharmaceutical sector
- (6) Dairy industry
- (7) Poultry industry
- (8) Production of bio-fuels
- (9) Hotel-cum-convention centres with seating capacity of more than three thousand.
- (10) Infrastructure sector.



FVCI-Investments

- IVCU-- a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI.
- VCF is defined as a fund established in the form of a trust, a company including a body corporate and registered under the SEBI (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations.



Conversion of ECB etc. to Equity

- General permission for Issue of equity against
 - Conversion of ECB (subject to sectoral cap, pricing guidelines and Govt. approval if falling under approval route)
 - Lump-sum technical know-how fee, royalty, under automatic route or approval route, subject to compliance with pricing guidelines and applicable tax laws
 - import of capital goods by SEZ units subject to valuation by Development Commissioner and Customs

Reporting

- Issue of shares
- ARF—within 30 days from the date of receipt of remittance along with FIRC and KYC
- FCGPR—within 30 days of issue of shares. Shares have to be issued within 60 days of inward remittance

Transfer-FCTRS

- Within 60 days from the date of transfer. Refund, if any, has to be within 60 days
- FLA

ESOP

- Indian company to RBI,RO within 30 days.
- Form DRR—Domestic custodian to CO within 30days
- LLP1(issue—30 days)and LLP2(transfer)— 60days
- Portfolio investment—LEC (FPI) & LEC(NRI)—by Ads to RBI CO on a daily basis
- Form CN—to AD who will forward to RO. Issue & transfer—30 days. FCGPR to be filed when CNs are converted to shares



THANK YOU

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