

FAQs related to FDI Policy Section

1. What is meant by Foreign Direct Investment (FDI)?

Foreign Direct Investment ('FDI') means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

In case an existing investment by a person resident outside India in equity instruments of a listed Indian company falls to a level below 10% of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI. 'Fully diluted basis' means the total number of shares that would be outstanding if all possible sources of conversion are exercised.

2. What is the role of Department for Promotion of Industry and Internal Trade (DPIIT) in the context of FDI Policy?

DPIIT is the nodal Department for formulation of the policy of the Government on Foreign Direct Investment (FDI). The FDI policy is reviewed on an ongoing basis, with a view to making it more investor-friendly. To attract higher levels of FDI, Government has put in place a liberal policy on FDI, under which FDI up to 100%, is permitted, under the automatic route, in most sectors/activities. Significant changes have been made in the FDI policy regime in recent times, to ensure that India remains an increasingly attractive investment destination. The Department plays an active role in the liberalization and rationalization of the FDI policy. Towards this end, it has been constructively engaged in extensive stakeholder consultations on various aspects of the FDI policy.

DPIIT makes policy pronouncements on FDI through Consolidated FDI Policy Circular/Press Notes/Press Releases (available at (<https://dpiit.gov.in/policies-rules-and-acts/press-notes-fdi-circular>)) which are notified by the Department of Economic Affairs (DEA), Ministry of Finance, Government of India as amendments to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (FEM (NDI) Rules, 2019) under the Foreign Exchange Management Act, 1999 (42 of 1999) (FEMA).

3. What is the regulatory and governing framework for FDI in India?

Foreign investment in India is regulated under codified foreign exchange regulations, sector specific policies/regulations, government policies as well as International agreements. Primarily, foreign investment is regulated through the Foreign Exchange Management Act, 1999 as amended from time to time (**FEMA**) and rules/regulations issued thereunder. The main objective of FEMA is to regulate, consolidate and amend the law relating to foreign exchange to

facilitate foreign investment, external trade and payments and promote the orderly development and maintenance of foreign exchange market in India within the broad policy framework on foreign investment issued by the Government from time to time. Presently, the FDI regime in India is primarily governed by the Consolidated Foreign Direct Investment Policy Circular dated 15.10.2020, as amended through various Press Notes issued by the Department for Promotion of Industry and Internal Trade (**DPIIT**)(**FDI Policy**), sector specific policies/regulations, Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 dated 17.10.2019 notified by the Department of Economic Affairs (DEA), Ministry of Finance (**FEM Non-Debt Instruments Rules 2019**) which superseded the erstwhile Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 Notification No. FEMA 20(R)/2017-RB dated 07.11.2017 (**FEMA 20R Regulations**).

4. Who is the concerned authority to deal with violations of FDI Policy/regulations?

As per Para 3 of Annexure 5 of the Consolidated Foreign Direct Investment Policy Circular dated 15.10.2020 available at https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_1.pdf, “FDI is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA. Reserve Bank of India administers the Foreign Exchange Management Act (FEMA) and Directorate of Enforcement under the Ministry of Finance is the authority for the enforcement of FEMA. The Directorate takes up investigation in any contravention of FEMA.”

5. What is the procedure for mode of payment, remittance of sale/ maturity proceeds and reporting of FDI?

The instructions on mode of payment, remittance of sale/maturity proceeds and reporting requirements are stipulated under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 vide Notification No. FEMA. 395/2019-RB dated 17.10.2019 issued by the RBI available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11723&Mode=0>.

6. How can a foreign investor set up business operations in India through a company?

A foreign investor can set up business operations in India by incorporating a company under the Companies Act, 2013 and operate through various forms

such as Joint Venture/Wholly Owned Subsidiary/Holding Company in compliance of the entry route/sectoral cap and other conditions under the FDI Policy and Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

7. Can foreign entities set up a branch office/liaison office/project office or any other place of business in India?

A person resident outside India can established a branch office/liaison office/project office or any other place of business in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 issued vide Notification No. FEMA 22(R)/2016-RB dated March 31, 2016, as amended from time to time available at <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10327&Mode=0>

8. Can Indian Limited Liability Partnerships (LLPs) receive investments from foreign investors?

Yes. Foreign investment in LLPs is permitted subject to the conditions as stipulated under Para 3.2.4 of the Consolidated FDI Policy Circular dated 15.10.2020 available at https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_1.pdf

9. What is “downstream investment”?

“Downstream investment” means investment made by an Indian entity which has total foreign investment in it, or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity.

10. What is indirect foreign investment?

“Indirect foreign investment” means downstream investment received by an Indian entity from,-

(A) another Indian entity (IE) which has received foreign investment and (i) the IE is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India; or

(B) an investment vehicle whose sponsor or manager or investment manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India:

Indian entity which has received indirect foreign investment shall comply with the entry route, sectoral caps, pricing guidelines and other attendant conditions as applicable for foreign investment.

11. How is total foreign investment in an Indian company/LLP calculated?

The guidelines for calculation of total foreign investment, both direct and indirect in an Indian company/LLP, at every stage of investment, including downstream investment, are detailed under Annexure 5 of the Consolidated FDI Policy Circular dated 15.10.2020 available at https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_1.pdf

12. What are the entry routes for FDI?

Permissible FDI can be made under “Automatic route” or “Government route”.

“Automatic route” means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government.

“Government Route” means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations.

13. What is the procedure and documents required to apply for Government approval for FDI?

Proposals for foreign investment in sectors/activities requiring Government approval as per the Consolidated FDI Policy dated 15.10.2020, as amended from time to time (FDI Policy) and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 dated 17.10.2019, as amended from time to time are required to be filed online through the Foreign Investment Facilitation Portal (FIFP) <https://www.fifp.gov.in> as per the guidelines and requirements prescribed under Standard Operating Procedure (SOP) for processing FDI proposals, as amended from time to time available at <http://fifp.gov.in/Forms/SOP.pdf>.

For further information may refer to FAQs related to Foreign Investment Facilitation Portal (FIFP) given at https://fifp.gov.in/FIFP_FAQ.aspx.

14. What are sectors/activities in which FDI is prohibited?

As per Para 5.1 of the Consolidated FDI Policy Circular dated 15.10.2020 available at https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_1.pdf , FDI is prohibited 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

'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

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 (other than permitted activities mentioned in permitted sectors).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business, Gambling and Betting activities.

15. Are there any restrictions/provisions related to FDI from land bordering countries?

Para 3.1.1 of the FDI Policy as amended vide Press Note 3 of 2020 dated 17.04.2020 (available at https://dpiit.gov.in/sites/default/files/pn3_2020.pdf) enforced through the corresponding amendment under Rule 6(a) of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (available at <https://egazette.nic.in/WriteReadData/2020/219107.pdf>) states the following:-

3.1.1(a) A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

3.1.1(b) In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval."

Accordingly, in terms of Press Note 3 of 2020, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Additionally, any transfer of ownership of any existing or future FDI in an entity in India resulting in the beneficial ownership falling within the aforesaid jurisdiction(s) will also require Government approval.

16. What is PN3 Proposal?

PN3 Proposals are those proposals which require prior Government approval under the provisions of Para 3.1.1 of the FDI Policy as amended vide Press Note 3 of 2020 dated 17.04.2020 (available at https://dpiit.gov.in/sites/default/files/pn3_2020.pdf) enforced through the corresponding amendment under Rule 6(a) of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (available at <https://egazette.nic.in/WriteReadData/2020/219107.pdf>). For details, please see Question No. 15 above.

17. What are the sectoral caps and entry routes for various sectors/activities?

Following are the specified sectoral caps and entry routes under the FDI Policy (subject to applicable laws/regulations; security and other conditionalities):

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
1.	Agriculture			

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
	Agriculture & Animal Husbandry a) Floriculture, Horticulture, and Cultivation of Vegetables & Mushrooms under controlled conditions; b) Development and Production of seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture; and d) Services related to agro and allied sectors Note: Besides the above, FDI is not allowed in any other agricultural sector/activity	100%	100%	-
	Plantation Sector (i) Tea sector including tea plantations (ii) Coffee plantations (iii) Rubber plantations (iv) Cardamom plantations (v) Palm oil tree plantations (vi) Olive oil tree plantations	100%	100%	-

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
	Note: Besides the above, FDI is not allowed in any other plantation sector/activity.			
2.	MINING			
	Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores (excluding titanium bearing minerals and its ores)	100%	100%	-
	Coal & Lignite (1) Coal & Lignite mining for captive consumption by power projects (2) Setting up coal processing plants. (3) For sale of coal, coal mining activities	100%	100%	-
	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	100%	-	100%

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
3.	PETROLEUM & NATURAL GAS			
	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas.	100%	100%	-
	Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	49%	-
	MANUFACTURING	100%	100%	-
4.	Defence			
	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951; and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Upto 74%	Above 74% (wherever it is likely to result in access to modern technology or for other reasons to be recorded)
5.	BROADCASTING			

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
	BROADCASTING CARRIAGE SERVICES (1)Teleports(setting up of up-linking HUBs/Teleports); (2)Direct to Home (DTH); (3)Cable Networks (Multi System operators (MSOs); (4)Mobile TV; (5)Headend-in-the Sky Broadcasting Service(HITS)	100%	100%	-
	Cable Networks	100%	100%	-
	Broadcasting content services (FM radio, Up- linking of News & current Affairs TV Channels)	49%	-	Upto 49%
	Up-linking of „News & Current Affairs" TV Channels	49%	-	Upto 49%
	Uploading/Streaming of News & Current Affairs through Digital Media	26%	-	Upto 26%
	Up-linking of Non- „News & Current Affairs" TV Channels/ Down-linking of TV Channels	100%	100%	-
	PRINTMEDIA			
6.	(Publishing of newspaper and periodicals dealing with news and current affairs)	26%	-	Upto26%

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
	(Publication of Indian editions of foreign magazines dealing with news and current affairs)	26%	-	Upto 26%
	Publishing/printing of scientific and technical magazines/specialty journals/periodicals.	100%	-	Upto 100%
	Publication of facsimile edition of foreign newspapers	100%	-	Upto 100%
7.	CIVIL AVIATION			
	AIRPORTS(Greenfield projects ,Existing projects)	100%	100%	-
	AIR TRANSPORT SERVICES (1) (a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline (b) Regional Air Transport Service	100%	Automatic upto 49% (Automatic upto 100% for NRIs)	Above 49%
	(2) Non-Scheduled Air Transport Services	100%	100%	-
	(3) Helicopter services/seaplane services requiring DGCA approval	100%	100%	-
	OTHER SERVICES UNDER CIVIL AVIATION SECTOR	100%	100%	-

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
	(1) Ground Handling Services. (2) Maintenance and Repair organizations; flying training institutes; and technical training institutions.			
8.	Construction development (township, housing, Build-up Infrastructure)	100%	100%	-
9.	Industrial parks Industrial Parks -new and existing	100%	100%	-
10.	Satellites- establishment and operation	100%	-	100%
11.	Private Security Agencies	74%	Upto 49%	Beyond 49% and upto 74%.
12.	Telecom Services(including Telecom Infrastructure Providers Category-I)	100%	100%	-
13.	Trading Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	100%	-
14.	E-Commerce Activities	100%	100%	-
15.	Single Brand Product Retail Trading	100%	100%	-

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
16.	Multi Brand Retail Trading	51%	-	51%
17.	Duty Free Shops	100%	100%	-
18.	Railway Infrastructure	100%	100%	-
19.	Financial Services			
	Asset Reconstruction Companies	100%	100%	-
	Banking- Private Sector	74%	Upto 49%	Above 49% and upto 74%
	BANKING- PUBLIC SECTOR (Banking- Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80.	20%	-	20%
	Credit Information Companies (CIC)	100%	100%	-
	Infrastructure Company In The Securities Market	49%	49%	-
20.	Insurance			
	Insurance Company	74%	74%	-
	Intermediaries or Insurance Intermediaries	100%	100%	-

Sl. No	Sector	Sectoral Cap (in %)	Entry Route (subject to provisions of Press Note 3(2020) dated 17.04.2020. Please refer to FAQ No. 15 & 16 above)	
			Automatic	Government
21.	Pension Sector	49%	49%	-
22.	POWER EXCHANGES Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49%	49%	-
23.	White Label ATM Operations	100%	100%	-
24.	OTHER FINANCIAL SERVICES Financial Services activities regulated by financial sector regulators,	100%	100%	-
25.	PHARMACEUTICALS			
	Greenfield	100%	100%	-
	Brownfield	100%	Upto 74%	Beyond 74%

18. What is the mechanism for notifying the amendments under the FDI Policy?

Amendments under the FDI Policy are notified in the form of Press Notes issued by the DPIIT on the website (<https://dpiit.gov.in/policies-rules-and-acts/press-notes-fdi-circular>) which are notified by the Department of Economic Affairs (DEA), Ministry of Finance, Government of India as amendments to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 under the Foreign Exchange Management Act, 1999 (42 of 1999) (FEMA). These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified

otherwise therein. In case of any conflict, the relevant Notification under Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 will prevail.

19. Where can I get FDI data/Statistics?

DPIIT compiles and maintains the data of Foreign Direct Investment regarding FDI Equity inflow in the country as reported by the Reserve Bank of India. It is published on a quarterly basis on the department's website (<https://dpiit.gov.in/>). It is published in 'FDI Statistics' and 'FDI Newsletter (formerly SIA Newsletter)' and uploaded on the website under the heading 'Publications' at the links: <https://dpiit.gov.in/publications/fdi-statistics> and <https://dpiit.gov.in/publications/si-news-letters>, respectively.

20. How can I get clarifications on issues related to Foreign Direct Investment (FDI) Policy?

Foreign Direct Investment (FDI) Policy related queries may be submitted in prescribed proforma as given in the following link: <https://fifp.gov.in/Forms/FDIPolicyForm.pdf> and emailed to fdi-clarification@gov.in.

21. How can I get clarifications on issues related to Foreign Investment Facilitation Portal (FIFP)?

Foreign Investment Facilitation Portal (FIFP) related Technical Queries may be emailed to fifp-dipphelpdesk@gov.in.
