FOREIGN DIRECT INVESTMENT IN INDIA

AUTHORS: LOKESH SHAH | RUHI JAIN

INTRODUCTION

Foreign Direct Investment ("**FDI**") is a strategic avenue for fostering economic growth and globalization, where a non-resident individual or entity can invest directly in India. Unlike passive investments in stocks or bonds, FDI entails acquiring significant ownership or control in the Indian entities, often including active participation in management and operations. FDI is a vital tool for bridging global markets, offering mutual benefits to investors and recipient countries alike. As per the Ministry of Commerce and Industry since 2014, India has attracted a cumulative FDI inflow of USD 667.4 billion (2014-24). This investment inflow spans 31 States and 57 sectors, driving growth across diverse industries. Most sectors, except certain strategically important sectors, are open for 100% FDI under the automatic route.

For a comprehensive understanding on FDI, this write-up has been bifurcated into two parts, namely, Part (A) Legal and Regulatory Implications and Part (B) Tax Implications.

LEGAL AND REGULATORY IMPLICATIONS

What is FDI?

FDI means investment made by a person resident outside India on a repatriable basis in equity instruments of an unlisted Indian company or ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

Here, equity instruments mean equity shares, convertible debentures, preference shares and share warrants issued by an Indian company.

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

A foreign investor can establish business operations in India by incorporating a company under the Companies Act, 2013 ("**Act**"), or a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008. The investor can operate through various structures, such as a Joint Venture or a Wholly Owned Subsidiary, in compliance with the entry routes, sectoral caps, and other conditions outlined in the FDI Policy and the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

Private Limited Company:

Incorporating private limited company is a preferred mode of entry into India for foreign investors. A private limited company is required to have a minimum of two directors, out of which at least one director should be an Indian resident, and at least two shareholders, who may or may not be a resident of India i.e., . A private limited company is restricted from raising funds from the public at large but has the flexibility to seek investment from private investors. The process of incorporation generally takes around 6-8 weeks which is subject to the receipt of required documents. Any documents related to the non-resident shareholders or directors shall be duly apostilled and notarised, as may be applicable.

Limited Liability Partnership:

An LLP is a partnership firm governed under the LLP Act, 2008. It can be incorporated with a minimum of two designated partners, who must enter into an LLP agreement. While it operates as a partnership, the partners of an LLP enjoy limited liability, and they are not personally liable for the LLP's debts beyond their contribution. Additionally, an LLP has perpetual succession, similar to a company, meaning its existence is not affected by changes in its partners.

The timeline for incorporating an LLP is generally similar to that of a private limited company, i.e., around 6-8 weeks, subject to the receipt of required documents. Any documents related to the non-resident partner shall be duly apostille and notarised, as may be applicable.

What are the instruments for receiving FDI in an Indian company?

Foreign investment is reckoned as FDI only if the investment is made in equity shares, compulsorily convertible debentures, compulsorily convertible preference shares and share warrants issued by an Indian company.

What are the entry routes for investment?

There are 2 (two) entry routes through which the investments can be made by non-residents.

a) Automatic 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.

b) Government route:

Government route means the entry route through which investment by a person resident outside India requires prior Government approval by way of filing an application through foreign investment facilitation portal.

What are the restrictions applicable for investment by countries sharing land border with India?

The Government of India amended the FDI policy vide Press Note 3(2020) dated April 17, 2020 whereby an entity of a country, sharing 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. The countries sharing land border with India will include Afghanistan, Pakistan, Nepal, Bhutan, China, Myanmar, Bangladesh will require prior government approval.

What is the meaning of investment on repatriation basis?

Investment on repatriation basis means an investment made through authorized banking channels for receiving FDI and the sale / maturity proceeds of which are, net of taxes, eligible to be repatriated out of India.

What are the permitted sectors for FDI:

In the sectors and business activities detailed in Annexure A, FDI is allowed up to the specified limits indicated for each sector or activity. These limits are subject to the conditions and regulations set forth under the Foreign Exchange Management Act, 1999 ("**FEMA**") and rules/ regulations made thereunder, and foreign investors must comply with the entry routes, sectoral caps and other requirements to ensure compliance with the FEMA.

What are the prohibited sectors for FDI:

FDI is prohibited in the following sectors:

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

f) Real estate business or construction of farmhouses. Note: *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 which are not open to private sector investment e.g. (i) Atomic Energy and (ii) Railway operations

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.

What is the mode of payment for purchase or sale of equity instruments of an Indian company by a person resident outside India?

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ Escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

What is the timeline for issuance of equity instruments by an Indian company?

Equity instruments shall be issued to the person resident outside India making such investment within 60 (Sixty) days from the date of receipt of the consideration.

If the equity instruments are not issued within 60 (Sixty) 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, as the case may be within 15 (Fifteen) days from the date of completion of 60 (Sixty) days.

What are the reporting requirements for any investment made by a person resident outside India?

An Indian company issuing equity instruments to a person resident outside India and where such issue is reckoned as FDI, shall report such issue in form FC-GPR, within 30 (Thirty) days from the date of issue of equity instruments.

Any FDI received pursuant to a secondary transaction, i.e., pursuant to a purchase or sale of equity instruments by a person resident of India to a person resident outside India on a repatriation basis, or vice-versa, shall be reported by the person resident in form FC-TRS within 60 (Sixty) days of such transfer of equity instruments or receipt / remittance of money, whichever is earlier, in form FC-TRS.

The reporting as stated above is made to the Foreign Exchange Department of the Reserve Bank of India through Authorized Dealer Banks (AD Banks) on Foreign Investments Reporting and Management Systems (FIRMS) portal.

What is the consequence of not reporting the foreign investment?

As per the notification issued by the Reserve Bank of India dated September 30, 2022, if the foreign investment is not reported within 30 (Thirty) days from the date of issue of equity instruments, the company will be liable to pay late submission fees of INR 7500+(0.025%*A*N)

"A" is the amount involved in the delayed reporting.
"N" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.

What is the process for issuance of convertible note and reporting requirements?

A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered or incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of INR 25,00,000 (Indian Rupees Twenty-Five Lakh only) or more in a single tranche.

A person resident outside India may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments.

The Indian start-up company issuing convertible notes to a person resident outside India shall file form CN within 30 (Thirty) days of such issue through Foreign Investments Reporting and Management Systems (FIRMS) portal. Further, a person resident in India, who may be a transferor or transferee of convertible notes issued by an Indian start-up company shall report such transfers to or from a person resident outside India, as the case may be, in Form CN within 30 (Thirty) days of such transfer.

What is the annual reporting requirement for a company which has received FDI or made overseas direct investment?

Annual return on Foreign Liabilities and Assets ("**FLA**") has been notified under FEMA 1999 (A.P. (DIR Series) Circular No. 45 dated March 15, 2011) and it is required to be submitted by all the India-resident companies/ LLPs / Others (include SEBI registered Alternative Investment Funds (AIFs), Partnership Firms, Public Private Partnerships) which have received FDI and/ or made overseas investment in any of the previous year(s), including the current year based on audited/ unaudited accounts of the entity by July 15 every year.

What are the pricing guidelines applicable for FDI?

A person resident outside India may subscribe to/ purchase the shares of an Indian company in accordance with the pricing guidelines as specified under Foreign Exchange Management (Non-debt Instruments) Rules, 2019. However, the said pricing guidelines do not apply to shares issued by way of rights, initial subscription to memorandum of association, issuance of employee stock options at a pre-determined price and bonus shares.

However, in case of disposal of equity instruments under Section 62(1)(a)(iii) of Companies Act, 2013 to a person resident outside India under rights issue or acquisition of equity instrument by a person resident outside India who has acquired a right from a person resident in India by way of renunciation, such issuance/acquisition shall be subject to the pricing guidelines under Rule 21 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("**NDI Rules**").

The pricing guidelines as per Rule 21 of the NDI Rules is detailed below:

a) Issuance of shares:

The price of equity instruments of an Indian company issued by such company to a person resident outside India shall not be less than the fair market value determined as per Rule 21 of the NDI Rules.

In case of unlisted company, the valuation of equity instruments shall be determined as per any internationally accepted pricing methodology duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant.

In case of listed company, the price of the equity instrument shall be worked out in accordance with the Securities and Exchange Board of India guidelines.

b) Transfer between a person resident in India and a person resident outside India:

The price of equity instruments of an Indian company:

i. transferred from a person resident in India to a person resident outside India shall not be less than the fair market value determined as per Rule 21 of the NDI Rules.

ii. transferred from a person resident outside India to a person resident in India shall not exceed the fair market value determined as per Rule 21 of the NDI Rules.

The valuation report obtained under NDI rules should not be more than 90 (Ninety) days old as on the date of allotment/transfer of shares.

What are the compliances applicable for issuance of employee stock options by an Indian company?

An Indian company may issue employees stock option to its employees or directors or employees or directors of its holding company or joint venture or wholly owned overseas subsidiary or subsidiaries who are resident outside India.

Provided further that an individual who is a person resident outside India exercising an option which was issued when he or she was a person resident in India shall hold the shares so acquired on exercising the option on a non-repatriation basis.

An Indian company issuing employees' stock option to persons resident outside India who are its employees/ directors or employees/directors of its holding company/ joint venture/wholly owned overseas subsidiary/ subsidiaries shall file Form-ESOP, within 30 days from the date of issue of employees' stock option.

In addition, allotment of shares upon exercise of stock options granted to a person resident outside India shall be reported to the Reserve Bank of India in form FC-GPR within 30 (Thirty) days of the allotment.

TAX IMPLICATIONS

What are the tax considerations for the choice of entity to be set up in India?

Setting up of an entity in India can be in the form of either incorporated entities (Private Limited Company or LLP) or unincorporated entities (branch office and liaison office). The tax implications differ depending on the choice of entity.

The corporate tax rate for each entity, subject to applicable surcharge and cess, has been tabulated below:

Private Limited Company[1]	LLP[2]	Branch Office	Liaison Office
22%[3]	30%	35%	-[4]

What are the different options for repatriation with respective tax implications?

Repatriation of funds from India can be in the form of dividend, buy-back or repatriation pursuant to liquidation/winding up. The tax treatment of each of these differs.

a) Dividend:

Dividend declared, distributed or paid is taxable in the hands of shareholder. A non-resident investor shall be liable to pay tax on dividend income, at the rate of 20% plus applicable surcharge and cess. However, this is subject to tax treaty benefit, if any, available to the non-resident investor.

b) Buy-back:

Special provisions were introduced in 2013 in the Income Tax Act, 1961 ("IT Act") to tax buy back of shares in the hands of company. However, the Finance (No. 2) Act 2024 has significantly changed the position for tax on buy-back.

With effect from October 01, 2024, buy-back is to be treated as dividend income. Thus, it will be taxable under the head "income from other sources" in the hands of the shareholders rather than the company. However, the company undertaking buy back shall withhold tax, subject to tax treaty benefit, if any, available to the non-resident investor.

Additionally, no deduction of expenses shall be allowed against this dividend income. The cost of acquisition paid by shareholders shall be treated as a "capital loss." This capital loss can be carried forward and be set off against other relevant capital gains income.

c) Repatriation pursuant to liquidation/winding up:

Any distribution to the shareholders of a company, on liquidation, to the extent of accumulated / distributable profits, is taxable as dividend income. Thus, the tax consequences, as elucidated in paragraph (a) above, shall remain same to this extent.

Further, the proceeds from liquidation (over and above the amount offered to tax as dividend income) shall be chargeable to tax as 'capital gains' in respect of the money so received or the market value of other assets on the date of distribution.

The nature of capital gains may be, long term ("**LTCG**") or short term ("**STCG**"), depending upon the period of holding of the asset. As per Section 2(42A) of the IT Act, the period of holding of the asset shall be computed from the date of allotment/purchase of such asset. Further, the cost of acquisition of such asset in the hands of non-resident investor shall be the fair market value of such asset on the date of distribution.

The tax rates at which capital gains are liable to tax in the hands of the company, subject to applicable surcharge and cess, are tabulated below:

1. *A private limited company is also subject to minimum alternate tax @15% on its book profits subject to certain exemptions.*
2. *LLP is also subject to alternate minimum tax @18.5% on its book profits subject to certain exemptions.*
3. *The beneficial tax rate of 22% is applicable only upon fulfillment of certain conditions as prescribed under section 115BAA of the Income Tax Act, 1961.*
4. *A liaison office is not subject to tax in India since it is not permitted to undertake any business activity.*

Nature of capital gains	Period of holding	Tax rate (for non-resident investor)[5]
LTCG	More than 2 years	12.5%
STCG	Not more than 2 years	30%

What are some other tax considerations while making investment in India?

Some other tax considerations follow when an entity is set up in India. These considerations include assessment of risk of permanent establishment ("**PE**"), transfer pricing considerations, applicability of general anti-avoidance rule ("**GAAR**"), applicability of thin capitalization, applicability of indirect transfer tax provisions.

a) Assessment of PE Risk:

The concept of PE has been created to grant the right to country A to tax profits of an enterprise of country B. In other words, if an entity in country A creates a taxable presence of a foreign company established in country B, then, country A has the right to tax profits attributable to the taxable presence.

Thus, in case a foreign company operates without a separate taxable presence in India, it may create risk of PE in India.

In such a case, profits attributable to such taxable presence is liable to tax in India, on a net income basis (after deduction of expenditure) at the rate of 35% (plus applicable surcharge and cess).

Based on OECD and UN commentaries and judicial precedents, there can be three types of PE, namely, fixed place PE, service PE or a dependent agent PE. A factual analysis in light of the respective tax treaty needs to be undertaken in order to assess PE risk from tax perspective.

b) Transfer pricing considerations:

India's transfer pricing ("**TP**") regulations are broadly in line with the OECD's [6] guidelines on Transfer Pricing for multinational companies and tax authorities.

According to India's transfer pricing regulations, international transactions[7] and specified domestic transactions[8] between associated enterprises ("**AEs**"), must be conducted at arm's length price.

India's TP regulations provides for a three-tier TP documentation structure:

i. Local file;
ii. Master file; and
iii. Country-by-Country (CbC) reporting.

Additionally. every person who has entered into an international transaction or specified domestic transactions is required to obtain a report (in Form 3CEB) from a Chartered Accountant (Indian CPA) and furnish it to the tax authorities before the due date, every year.

India also has an established following mechanism for Alternate Dispute Resolution for TP matters:

i. Safe Harbour Rules (SHR)[9]
ii. Advance Pricing Agreement (APA)[10]
iii. Mutual Agreement Procedure (MAP)[11]

c) Applicability of General Anti-Avoidance Rule (GAAR)

The General Anti-Avoidance Rules were formally introduced into legislation with the Finance Act of 2012 and became effective on April 1, 2017.

Before the introduction of a formal General Anti-Avoidance Rules in India, the country's courts addressed tax avoidance by referencing to English court cases such as the Duke of Westminster[12] and

5. *The applicable tax rate for a non-resident investor is subject to availability of tax treaty benefit, if any.*
6. *Organisation for Economic Co-operation and Development.*
7. *An international transaction is defined as one between two or more AEs, where at least one is a non-resident, impacting the profits, income, losses, or assets of the enterprises.*
8. *TPRs cover transactions with related domestic companies, units eligible for tax holidays, or new domestic manufacturers with lower tax rates.*
9. *Safe Harbour Rules (SHR), define situations where tax authorities accept a taxpayer's declared transfer price as arm's length.*
10. *The Advance Pricing Agreement (APA) program, allowing taxpayers and the tax authorities to agree on transfer prices in advance for goods and services between group entities, preventing disputes. APAs can be unilateral, bilateral, or multilateral.*
11. *The Mutual Agreement Procedure (MAP) is a mechanism provided by tax treaties that enables the Competent Authorities (CAs) of the relevant countries to settle disputes related to double taxation through discussions. CAs typically engage the taxpayer during the stages of information gathering, fact-finding, and explanation. However, the taxpayer is not permitted to take part in the actual negotiations between the CAs.*
12. *Inland Revenue Commissioners v. Westminster (Duke), [1936] AC 1 (HL).*

Ramsay[13] and the Indian Supreme Court's ruling in the McDowell case[14]. It was established that if a document or transaction is genuine, tax authorities cannot break it down to uncover a different underlying substance. This principle has found a strong echo in the Indian rulings – particularly in the Azadi Bachao[15] and Vodafone[16] rulings -- of the Indian Supreme Court.

However, Courts have also established that when transactions are deemed 'colorable' or 'dubious,' they can be set aside using principles like piercing the corporate veil and substance over form. Additionally, transactions specifically crafted to evade taxes were addressed through Specific Anti-Avoidance Rules ("**SAAR**"), including Transfer Pricing regulations. Consequently, a need was felt for the establishment of a codified GAAR to address the persistent issues of tax avoidance, as opposed to mere tax mitigation.

The essence of GAAR lies in the principle of substance over form. It provides tax authorities with the power to reclassify transactions if they believe the primary purpose was to gain tax benefits. Transactions deemed to lack genuine commercial substance are labeled as impermissible avoidance arrangements (IAA).[17] Once tax authorities identify an arrangement as an IAA, the burden shifts to taxpayers to prove otherwise. However, GAAR provisions only apply where aggregate Tax benefits in relevant assessment year arising to all the parties to the arrangement exceed INR 30 million.

d) Applicability of Thin Capitalisation[18]

Interest and dividends are the most common forms of compensation for financing an enterprise through debt and equity, respectively. However, their tax consequences differ significantly. Dividends are not permitted to be deducted as an expense by taxpayers and are typically taxable in the hands of the recipient. In contrast, interest payments on debt are generally deductible for taxpayers and are taxable for the recipient.

When an entity has substantial debt vis-à-vis equity, a concern may arise regarding whether its capital structure is designed for a potential larger claim of interest deductions from its taxable income. Therefore, in line with BEPS Action Plan 4, India introduced a framework[19] in the IT Act outlining the fixed ratio approach, to prevent the erosion of India's tax base, through excess interest-related payments to non-resident group entities.

India's thin capitalisation rule provides that Indian companies and the Permanent Establishments (PEs) of foreign companies in India can only deduct interest-related expenditures made to their foreign AEs up to 30% of their EBITDA. However, any disallowed interest exceeding this limit can be carried forward for up to eight consecutive years.

e) Applicability of indirect transfer tax provisions

The gains arising from transfer of shares of a foreign company, which derives its value substantially from the assets located in India, is liable to tax in India (referred to as ("**Indirect Transfer**").

The Indirect Transfer Tax was introduced in India's income tax laws in 2012. The 2012 amendment was a direct response to the India's Supreme Court's ruling in the landmark Vodafone[20] case, which had stated that without a 'look-through' tax provision, gains from the transfer of shares of a foreign company, which are outside India, are not taxable in India.

The Indirect Transfer tax treats capital gains from the offshore transfer of shares or interests as taxable in India, if these shares derive substantial value from assets located in India. The shares of a foreign company are deemed to derive its value substantially from the assets located in India, if:

i. the Fair Market Value of such assets, without reducing the liabilities in respect of such assets is more than INR 100 million; and

ii. such assets constitute 50% or more of the value of assets owned by the company (i.e. company indirectly owing the Indian subsidiary).

Global investors and foreign companies with operations in India need to factor in these tax provisions while evaluating their investment(s) in India.

13. *IRC v. WT Ramsay Ltd (1981) ([1982] AC 300).*
14. *McDowell & Co. Ltd. v. CTO (1985) 3 SCC 230.*
15. *Union of India v. Azadi Bachao Andolan 263 ITR 706 (SC).*
16. *Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613.*
17. *According to Section 96 of the Act, an "impermissible avoidance arrangement" is any arrangement made where the main purpose is to obtain a tax benefit and such an arrangement (a) has resulted in the misuse of the Act's provisions, whether directly or indirectly, or (b) lacks or is judged to lack commercial substance in whole or in part, or (c) was made using any means or method that is typically not used for legitimate/bona fide purposes, or (d) creates rights and obligations not normally created between parties dealing at arm's length.*
18. *An entity that is financed largely through a higher amount of debt as compared to equity is considered a thinly capitalised entity.*
19. *Section 94B of the Income-tax Act, 1961, enacted with effect from 01.04.2018.*
20. *Vodafone International Holdings B.V v Union of India ([2012] 1 S.C.R. 573).*

ANNEXURE A – SECTORAL CAPS[21]

Sl. No.	Sector/Cap	FDI permitted	Entry route
1.	**Agriculture and 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%	Automatic
2.	**Plantation Sector:** a) Tea sector including tea plantations b) Coffee plantations c) Rubber plantations d) Cardamom plantations e) Palm oil tree plantations f) Olive oil tree plantations *Note: Besides the above, FDI is not allowed in any other plantation sector/activity.*	100%	Automatic
3.	Mining and Exploration of metal and non-metal ores	100%	Automatic
4.	Coal & Lignite	100%	Automatic
5.	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	100%	Government
6.	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic
7.	Petroleum refining by the Public Sector Undertakings ("**PSU**"), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic

21. *The sectoral limits in the annexure is captured as on the date of this note and the same shall be read with the subsequent amendments, if any.*

Sl. No.	Sector/Cap	FDI permitted	Entry route
8.	Defence	100%	Automatic up to 74% Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded
9.	a) Teleports (setting up of up-linking HUBs/Teleports) b) Direct to Home (DTH) c) Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability) d) Mobile TV e) Headend-in-the Sky Broadcasting Service (HITS)	100%	Automatic
10.	Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)	100%	Automatic
11.	Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49%	Government
12.	Up-linking of 'News & Current Affairs' TV Channels	49%	Government
13.	Uploading/Streaming of News & Current Affairs through Digital Media	26%	Government
14.	Up-linking of Non- 'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic
15.	Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government
16.	Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government
17.	Publishing/printing of scientific and technical magazines/ specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
18.	Publication of facsimile edition of foreign newspapers	100%	Government
19.	**Airports** a) Greenfield projects b) Existing projects	100%	Automatic

Sl. No.	Sector/Cap	FDI permitted	Entry route
20.	a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline b) Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs)
21.	Non-Scheduled Air Transport Services	100%	Automatic
22.	Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
23.	Ground Handling Services subject to sectoral regulations and security clearance	100%	Automatic
24.	Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic
25.	Construction-development projects (which would include development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)	100%	Automatic
26.	Industrial Parks -new and existing	100%	Automatic
27.	Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government
28.	Private Security Agencies	74%	Automatic up to 49% Government route beyond 49% and up to 74%
29.	Telecom Services (including Telecom Infrastructure Providers Category-I)	100%	Automatic up to 49% Government route beyond 49%
30.	Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	Automatic
31.	E-commerce activities	100%	Automatic
32.	Single Brand Product Retail Trading	100%	Automatic
33.	Multi Brand Retail Trading	51%	Government
34.	Duty free shops	100%	Automatic
35.	Railway infrastructure	100%	Automatic
36.	Asset reconstruction companies	100%	Automatic
37.	Banking private sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%
38.	Banking-public sector	20%	Government
39.	Credit information companies	100%	Automatic
40.	Information company in the securities market	49%	Automatic
41.	Insurance company	49%	Automatic

Sl. No.	Sector/Cap	FDI permitted	Entry route
42.	Intermediaries or Insurance Intermediaries	100%	Automatic
43.	Pension sector	49%	Automatic
44.	Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49%	Automatic
45.	White Label ATM Operations	100%	Automatic
46.	Financial Services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India.	100%	Automatic
	Pharmaceuticals		
	Greenfield	100%	Automatic
47.	Brownfield	100%	Automatic up to 74% Government route beyond 74%

INDUSLAW
THOUGHT LEADERSHIP ... APPLIED

www.induslaw.com

OUR OFFICES

BENGALURU
101, 1st Floor, "Embassy Classic"# 11
Vittal Mallya Road
Bengaluru 560 001
T: +91 80 4072 6600
F: +91 80 4072 6666
E: bangalore@induslaw.com

HYDERABAD
204, Ashoka Capitol, Road No. 2
Banjarahills
Hyderabad 500 034
T: +91 40 4026 4624
F: +91 40 4004 0979
E: hyderabad@induslaw.com

CHENNAI
#11, Venkatraman Street, T Nagar,
Chennai - 600017 India
T: +91 44 4354 6600
F: +91 44 4354 6600
E: chennai@induslaw.com

DELHI & NCR
2nd Floor, Block D
The MIRA, Mathura Road, Ishwar Nagar
New Delhi 110 065
T: +91 11 4782 1000
F: +91 11 4782 1097
E: delhi@induslaw.com

9th Floor, Block-B
DLF Cyber Park
Udyog Vihar Phase - 3
Sector - 20
Gurugram 122 008
T: +91 12 4673 1000
E: gurugram@induslaw.com

MUMBAI
1502B, 15th Floor
Tower – 1C, One Indiabulls Centre
Senapati Bapat Marg, Lower Parel
Mumbai – 400013
T: +91 22 4920 7200
F: +91 22 4920 7299
E: mumbai@induslaw.com

#81-83, 8th Floor
A Wing, Mittal Court
Jamnalal Bajaj Marg
Nariman Point
Mumbai – 400021
T: +91 22 4007 4400
E: mumbai@induslaw.com

DISCLAIMER

This note is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice, and you should seek legal advice before you act on any information or view expressed herein.

Although we have endeavored to accurately reflect the subject matter of this note, we make no representation or warranty, express or implied, in any manner whatsoever in connection with the contents of the note.

No recipient or reader of this note should construe it as an attempt to solicit business in any manner whatsoever.