INVESTING IN INDIA

Foreign Direct Investment-Policy & Procedures

Secretariat for Industrial Assistance
Department of Industrial Policy & Promotion
Ministry of Commerce & Industry
Government of India
New Delhi [1]

[1] This booklet on '**Investing in India**-Foreign Direct Investment- Policy and Procedures' is intended to serve as a guide to prospective investors/entrepreneurs and does not purport to be a legal document. In case of any variance between what has been stated in this booklet and the relevant Act, Rules, Regulations, Policy Statements, etc., the latter shall prevail.

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INDIA AT A GLANCE

- India is a Union of States with parliamentary system of Government

- Land area: 3.29 million square kilometers

- Coastline: 7, 516.6 km encompassing the mainland, Lakshadweep Islands, and the Adaman & Nicobar Islands.

- Capital: New Delhi

- Population: 1.028 billion (March 1, 2001)

- Climate: mainly tropical with temperature ranging from 10^{o} – 40^{o} C in most parts

- Time zone: GMT + 5 1/2 hours

- **Literacy:** the literacy rate in the Country stands at 64.84 per cent, 75.26% for males and 53.67% for females (March 1, 2001)

- **Environment – Current Issues:** Air pollution control, energy conservation, solid waste management, oil and gas conservation, forest conservation, etc.

- **Environment – International Agreements:** Rio Declaration on environment and development, Cartagena Protocol on biosafety, Kyoto Protocol to the United Nations Framework Convention on climatic change, World Trade Agreement, Helsinki Protocol to LRTAP on the reduction of sulphur emissions of nitrogen oxides or their transboundary fluxes (Nox Protocol), and Geneva Protocol to LRTAP concerning the control of emissions of volatile organic compounds or their transboundary fluxes (VOCs Protocol).

- Major international airports: New Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Thiruvananthapuram

- Major ports of entry: Chennai, Ennore, Haldia,Jawaharlal Nehru, Kolkata, Kandla, Kochi, Mormugao, Mumbai,New Mangalore, Paradip and Tuticorin, Vizag,

BASIC ECONOMIC STATISTICS

- GDP at current prices(2005-06): Rs.32,00,611 Crore (Rs.32,006 billion),
  2006-07: Rs. 37,17,500 Crore (Rs.37175 billion)

- GDP (in terms of PPP) (2005) =US $ 3,699 billion, $4,164 billion (2006 est.) (4th largest in the world after USA, China and Japan)

- GDP growth rate : 2005-06: 8.1%, 2006-07:9.2%

- GDP – per capita: 2005-06: US $ 571 , 2006-07:US $ 831

- GDP – composition by sector: services 54%, agriculture 22% and industry 24%.

- Inflation rate: 3.26% (as on Sept, 2007)

- Exchange rate: Rs.39.4/ $ (as on Ist Jan., 2008)

- Foreign Exchange reserves: US$ 270 billion (as on November, 2007)

- Exports: 2006-07: US $ 124.6 billion,
  Growth Rate: 23.8%

- Imports: 2006-07: US $ 181 billion,
  Growth Rate: 29 %

- Foreign Direct Investment: 2004-05: US $ 5.535 billion
  2005-06: 7.5 billion
  2006-07:19.7 billion

- Portfolio Investment: 2006-07 : US $ 15.62 billion

CHAPTER I

FOREIGN DIRECT INVESTMENT

Introduction

1.1 India, the largest democracy and 4th largest economy (in terms of purchase power parity) in the world. India is also the tenth most industrialized country in the world. With its consistent growth performance and abundant high-skilled manpower, India provides enormous opportunities for investment, both domestic and foreign.

Since the beginning of economic reforms in 1991, major reform initiatives have been taken in the fields of investment, trade, financial sector, exchange control simplification of procedures, enactment of competition and amendments in the intellectual property rights laws, etc. India provides a liberal, attractive, and investor friendly investment climate. Main features of policy on Foreign Direct Investment are dealt with in this chapter.

Investment Outlook

1.2 A number of studies in the recent past have highlighted the growing attractiveness of India as an investment destination. According to the study 'Dreaming with BRICS' by Goldman Sachs, Indian economy is expected to continue growing at the rate of 5% or more till 2050. Some of these conclusions are listed below:

- 2nd most attractive destination – A.T. Kearney's 2007, Foreign Direct Investment Confidence Index,
- 2nd most attractive investment destination among Transnational Corporations for FDI for 2007-09 – UNCTAD's 'World Investment Report, 2007'

Policy on Foreign Direct Investment

1.3 India has among the most liberal and transparent policies on FDI among the emerging economies. FDI up to 100% is allowed under the automatic route in all activities/sectors except the following which require prior approval of the Government :

i. Manufacture of Cigars & Cigarettes of tobacco and manufactured tobacco substitutes ;
ii. Manufacture of Electronic aerospace and defence equipments : all types
iii. Manufacture of items exclusively reserved for Small Scale Sector with more than 24% FDI;
iv. Proposals in which the foreign collaborator has an existing financial / technical collaboration in India in the 'same' field [Refer Press Note No.1 (2005 series)];
v. All proposals falling outside notified sectoral policy/caps (Refer Annexure II).

1.4 FDI policy is reviewed on continued basis and changes in sectoral policy/sectoral equity cap are notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy & Promotion (DIPP). All Press Notes are available at DIPP website (www.dipp.gov.in). FDI Policy is also notified by Reserve Bank of India (RBI) under Foreign Exchange Management Act (FEMA) 1999.

Procedure under Automatic Route	1.5 FDI in sectors/activities to the extent permitted under automatic route does not require any prior approval either by the Government or RBI. The investors are only required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.
Procedure under Government Approval	1.6 FDI in activities not covered under the automatic route according to para 1.3 above, requires prior Government approval. Such proposals are considered by the Foreign Investment Promotion Board (FIPB).
	1.7 Application for all FDI cases, except Non-Resident Indian (NRI) investments, Export Oriented Units (EOUs) and for FDI in retail trading (single branded product) should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance. Application for NRI investment, EOU and for FDI in retail trading (single branded product) cases should be submitted to SIA in DIPP. Applications can also be submitted with Indian Missions abroad who forward them to the DEA for further processing. Application can be made in Form FC-IL, which can be downloaded from http://www.dipp.gov.in. Plain paper applications carrying all relevant details are also accepted. No fee is payable.
Prohibited Sectors	1.8 The extant policy does not permit FDI in the following cases: i. Gambling and betting ii. Lottery Business iii. Atomic Energy iv. Retail Trading (except Single Branded product retailing)
Investment in a firm or a proprietary concern by NRIs	1.9 A Non-Resident Indian (NRI) or a Person of Indian Origin (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 , i) Amount is invested by inward remittance or out of NRE/FCNR/NRO account maintained with Authorised Dealer (AD). ii) 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. iii) Amount invested shall not be eligible for repatriation outside India. NRIs/PIO may invest in sole proprietorship concerns/ partnership firms with repatriation benefits with the approval of Department of Economic Affairs, Government of India /RBI.
Issue and Valuation Of Shares In Case	1.10 According to RBI / Securities and Exchange Board of India's (SEBI) guidelines, in case of listed companies, the issue price shall be either at: (a) The average of the weekly high and low of the closing prices of related shares

Of Existing Companies	quoted on the stock exchange during the six months preceding the relevant date, or (b) The average of the weekly high and low of the closing prices of related shares quoted on the stock exchange during the two weeks preceding the relevant date.

The stock exchange referred to is the one at which the highest trading volume in respect of the share of company has been recorded during the preceding six months prior to the relevant date.

The relevant date is the date thirty days prior to the date on which the meeting of the General Body of the shareholder is convened.

In all other cases a company may issue shares as per the RBI regulation in accordance with the guidelines issued by the erstwhile Controller of Capital Issues.

Other relevant guidelines of SEBI / and RBI, including the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, wherever applicable, would need to be followed. Further information could be obtained at SEBI website : www.sebi.gov.in

Issue of Rights/ Bonus Shares

1.11 General permission of the RBI is available to Indian companies to issue right/bonus shares, subject to certain conditions. Entitlement of rights shares is not automatically available to investors who have been allotted such shares as Overseas Corporate Bodies (OCBs). Such issuing companies would have to seek specific permission from RBI, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai for issue of shares on right basis to erstwhile OCBs.

Issue Of Shares Under Merger/ Amalgamation

1.12 Where a Scheme of merger or amalgamation of two or more Indian companies has been approved by a court in India, the transferee company may issue shares to the shareholders of the transferor company resident outside India, subject to ensuring that the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the percentage specified in the approval granted by the Central Government or the Reserve Bank of India. This entitlement of rights shares is not automatically available to investors who have been allotted such shares as OCBs. For this specific permission from RBI is necessary.

Issue Of Shares Under ESOP Scheme

1.13 Under this Scheme a company may issue shares to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, directly or through a Trust, subject to the condition that the scheme has been drawn in terms of relevant regulations issued by the SEBI and face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5% of the paid-up capital of the issuing company.

Transfer Of Shares/Debentures

1.14 Transfer of shares in the following categories of cases is allowed under automatic route:

(a) Transfer of shares from resident to non-resident including acquisition of shares in an existing company subject to sectoral policy on FDI where approval of RBI/SEBI/IRDA is required and also subject to prescribed pricing guidelines.

(b) Conversion of ECB/Loan into equity provided the activity of the company is covered under automatic route, the foreign equity after such conversion falls within the sectoral cap and also complies with prescribed pricing guidelines.

(c) Cases of increase in foreign equity participation by fresh issue of shares as well as conversion of preference shares into equity capital provided such increase within the sectoral cap in the relevant sectors, are within the automatic route and also complies with prescribed pricing guidelines.

1.15 General permission of the RBI has been granted to non-residents/NRIs for transfer of shares and convertible debentures of an Indian company as under:

(i) A person resident outside India (Other than NRI and OCB) may transfer by way of sale or gift shares or convertible debentures to any person resident outside India (including NRIs); provided transferee has obtained prior permission of SIA/FIPB, in terms of Press Note No.1 (2005 Series) to acquire the shares if he has an existing venture or tie-up in India in the same field in which the Indian company whose shares are being transferred is engaged.

(ii) NRI or OCB may transfer by way of sale or gift the shares or convertible debentures held by him or it to another non-resident Indian; provided transferee has obtained prior permission of Central Government in terms of Press Note No.1 (2005 Series) to acquire the shares if he has an existing venture or tie-up in India in the same field in which the Indian company whose shares are being transferred, is engaged.

(iii) The person resident outside India may transfer any security to a person resident in India by way of gift.

(iv) A person resident outside India may sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered broker

ADR/GDR

1.16 An Indian corporate can raise foreign currency resources abroad through the issue of American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) by issuing its Rupee denominated shares to a person resident outside India being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/ or American Depository Receipts (ADRs), subject to the conditions that:

b) the ADRs/GDRs are issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government thereunder from time to time

c) The Indian company issuing such shares has an approval from the Ministry of Finance, Government of India to issue such ADRs and/or GDRs or is eligible to issue ADRs/ GDRs in terms of the relevant scheme in force or notification issued by the Ministry of Finance, and

d) Is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations.

There is no limit up to which an Indian company can raise ADRs/GDRs. However, the Indian company has to be otherwise eligible to raise foreign equity under the extant FDI policy.

There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets.

The FCCB issue proceeds need to conform to external commercial borrowing end use requirements. In addition, 25 per cent of the FCCB proceeds can be used for general corporate restructuring.

Regulation 4 of Schedule-I of FEMA Notification No. 20 deal with the issue of ADR/GDR by an Indian company.

1.17 A company engaged in the manufacture of items covered under Automatic route, whose direct foreign investment after a proposed GDRs/ADRs/FCCBs issue is likely to exceed the equity limits under the automatic route, or which is implementing a project falling under Government approval route, would need to obtain prior Government clearance through FIPB before seeking final approval from the Ministry of Finance.

Foreign Currency Convertible Bonds (FCCB)

1.18 FCCBs are issued in accordance with the [Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments;

1.19 The eligibility for issue of Convertible Bonds or Ordinary Shares of Issuing Company is as under:

a) An issuing company desirous of raising foreign funds by issuing Foreign Currency Convertible Bonds or ordinary shares for equity issues through Global Depositary Receipt

i. Can issue FCCBs up to US$50 Million under the Automatic route,
ii. From US$50 –100 Million, the companies have to take RBI approval,
iii. From US$100 Million and above, prior permission of the Department of Economic Affairs is required.

Preference Shares

1.20 Foreign investment means investment in the capital of an Indian company and capital means equity shares, preferential shares and convertible debentures

- foreign investment through preference shares is treated as Foreign Direct equity for the purposes of sectoral caps on foreign equity, where such caps are prescribed, provided they carry a conversion option. Preference shares structured without such conversion option fall outside the foreign direct equity cap.
- considered as part of the share capital and fall outside the External Commercial Borrowing (ECB) guidelines/cap.

1.21 The route, whether Automatic or Government approval depends upon the activity / sector of the company.

1.22 The Duration of conversion shall be as per the maximum limit prescribed under the Companies Act or what has been agreed to in the shareholders agreement, whichever is less.

1.23 The dividend rate would not exceed the limit prescribed by the Ministry of Finance.

1.24 Issue of preference shares should conform to the guidelines prescribed by the SEBI and RBI and other statutory requirements.

FDI in SSI Units

1.25 A small-scale unit can not have more than 24 per cent equity in its paid up capital from any industrial undertaking, either foreign or domestic. If the equity from another company (including foreign equity) exceeds 24 per cent, even if the investment in plant and machinery in the unit does not exceed Rs 10 million, the unit looses its small-scale status and shall require an industrial license to manufacture items reserved for small-scale sector. FDI in such units would require prior Government Approval if the FDI exceeds 24%.

FDI inflows on account of Import Payables

1.26 FDI inflows are required to be under the following mode:

i. By inward remittances through normal banking channels or
ii. By debit to the NRE/FCNR account of person concerned maintained in an authorized dealer/authorized bank.

Issue of equity to non-residents against other modes of FDI inflows or in kind is not permissible, except issue of equity shares against lump-sum fee and royalty payable for technology collaborations and external commercial borrowings (ECBs) in convertible foreign currency which are permitted under the automatic route subject to meeting all applicable tax liabilities and sector specific guidelines.

CHAPTER II – INDUSTRIAL LICENSING

Industrial Licensing Policy

2.1 Industrial Licenses are regulated under the Industries (Development & Regulation) Act, 1951. With progressive liberalization and deregulation of the economy the requirement of industrial licensing have been substantially reduced. At present industrial licence for manufacturing is required only for the following:

i. Industries retained under compulsory licensing,
ii. Manufacture of items reserved for small scale sector by non-SSI units; and
iii. When the proposed location attracts locational restriction

Industries Requiring Compulsory Licensing

2.2 The following industries require compulsory industrial license under I (D&R) Act / appropriate authority:

i. Distillation and brewing of alcoholic drinks.
ii. Cigars and cigarettes of tobacco and manufactured tobacco substitutes;
iii. Electronic Aerospace and defence equipment: all types;
iv. Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose and matches;
v. Hazardous chemicals;
   a. Hydrocyanic acid and its derivatives
   b. Phosgene and its derivatives
   c. Isocyanates and di-isocyanates of hydrocarbon, not elsewhere specified (example: Methyl Isocyanate).

Small-Scale Sector

2.3 An industrial undertaking is defined as a small-scale unit if the capital investment in plant and machinery does not exceed Rs 10 million.

Small-scale units can get registered with the Directorate of Industries/District Industries Centre of the State Government. Such units can manufacture any item, and are also free from locational restrictions.

The Government has reserved certain items for exclusive manufacture in the small-scale sector. (List available at www.dipp.gov.in)

Manufacture of items reserved for small-scale sector

2.4 Non small-scale units can manufacture items reserved for the small-scale sector only after obtaining an industrial license. In such cases, the non-small scale unit is required to undertake an obligation to export 50 per cent of the production of SSI reserved items.

Locational Restrictions

2.6 Industrial undertakings are free to select the location of their projects. Industrial License is required if the proposed location is within 25 KM of the Standard Urban Area limits of 23 cities having population of 1 million as per 1991 census. These cities are Urban area limits of Greater Mumbai, Kolkata, Delhi, Chennai, Hyderabad, Bangalore, Ahmedabad, Pune, Kanpur, Nagpur, Lucknow, Surat, Jaipur, Kochi, Coimbatore, Vadodara, Indore, Patna, Madurai, Bhopal, Visakhapatnam, Varanasi and Municipal Corporation limits of Ludhiana.

The Locational restriction does not apply:

i) If the unit were to be located in an area designated as an ''industrial area'' before the 25th July, 1991.

ii) In the case of Electronics, Computer software and Printing and any other industry, which may be notified in future as “non polluting industry”.

The location of industrial units is subject to applicable local zoning and land use regulations and environmental regulations.

Procedure for obtaining Industrial License:

2.7 Industrial License is granted by the Secretariat for Industrial Assistance (SIA) on the recommendation of the Licensing Committee.

Application in the prescribed form. (Form FC-IL) accompanied with a crossed demand draft of Rs.2500/- may be submitted to the PR&C section in SIA .

Decisions are usually taken within 4-6 weeks of filing the application..

Policy for Industries exempt from licensing - IEM

2.8 Industrial undertakings exempt from industrial license are only required to file an Industrial Entrepreneur Memoranda (IEM) in Part ‘A’, in the prescribed format (Form IEM)

Procedure for IEM

2.9 The Application in the prescribed form. (Form IEM) can be filed with the PR&C section in SIA either in person or by post. The IEM should be submitted along with a crossed demand draft of Rs.1000/- for up to 10 items proposed to be manufactured For more than 10 items, an additional fee of Rs. 250 for up to 10 additional items needs to be paid.

On filing the IEM, an acknowledgement containing the SIA Registration Number, for future reference, is issued. In case IEM is sent by post, the acknowledgement is sent by post & no further approval is required.

An IEM would stand cancelled if the proposal requires compulsory license.

Upon commencement of commercial production, Industrial undertakings need to file information in Part ‘B’ of the IEM to PR&C Section in SIA. No fee is to be paid for filing Part B.

All industrial undertakings whether or not exempt from compulsory industrial licensing, are statutorily required to submit monthly production return in the prescribed proforma every month. This should reach the Industrial Statistics Unit (ISU) of the Department positively by the 10^{th} of the following month.

Note: FC-IL and IEM forms are available in the Public Relation and Complaint Section (PR&C) of the SIA, all outlets dealing in Government Publications, Indian Embassies, and can be downloaded from the web site http://www.dipp.gov.in.

Carry on Business (COB) Licence

2.10 Small- scale units by virtue of their natural growth may exceed the investment limit prescribed for small-scale units. In such cases these units need to obtain a Carry-on-Business (COB) License based on the best production in the preceding three years. No export obligation is fixed on the capacity for which the COB license is granted.

The application for COB licence should be submitted in revised form “EE”, which can be downloaded from the web site http://www.dipp.gov.in along with a crossed demand draft of Rs.2500/-.

However, on further expansion of its capacity beyond the capacity included in

COB license, the unit would need to obtain an industrial license.

Payment of prescribed fee	2.11 The fee prescribed for various applications, licenses are to be paid through crossed demand draft drawn in favour of the Pay & Accounts Officer, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, payable at New Delhi.
Environmental Clearances	2.12 Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment as may be necessary, for setting up an industrial project for 31 categories of industries in terms of Notification S.O. 60(E) dated 27.1.94 as amended from time to time, issued by the Ministry of Environment & Forests under The Environment (Protection) Act, 1986. This list includes petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper, etc.
	2.13 However, if investment in the project is less than Rs. 1 billion, such Environmental clearance is not necessary, except in cases of pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of certain parameters, tarred roads in Himalayan areas, distilleries, dyes, foundries and electroplating industries.
	Setting up industries in certain locations considered ecologically fragile (e.g. Aravalli Range, coastal areas, Doon valley, Dahanu, etc.) are guided by separate guidelines issued by the Ministry of Environment and Forests.
	Details can be obtained at the website of Ministry of Environment and Forests (http://envfor.nic.in).

CHAPTER III

FOREIGN TECHNOLOGY AGREEMENTS

General Policy

3.1 For promoting technological capability and competitiveness of the Indian industry, acquisition of foreign technology is encouraged through foreign technology collaboration agreements. Induction of know-how through such collaborations is permitted either through automatic route or with prior Government approval.

Scope of Technology Collaboration

3.2 The terms of payment under foreign technology collaboration, which are eligible for approval through the automatic route and by the Government approval route, includes technical know how fees, payment for design and drawing, payment for engineering service and royalty.

Payments for hiring of foreign technicians, deputation of Indian technicians abroad, and testing of indigenous raw material, products, indigenously developed technology in foreign countries are governed by separate RBI procedures and rules pertaining to current account transactions and are not covered by the foreign technology collaboration approval. For details please refer to the website of the RBI.

Automatic Route

3.3 Payment for foreign technology collaboration by Indian companies are allowed under the automatic route subject to the following limits:

(i) the lump sum payments not exceeding US$2 million;

(ii) royalty payable being limited to 5 per cent for domestic sales and 8 per cent for exports, without any restriction on the duration of the royalty payments. The royalty limits are net of taxes and are calculated according to standard conditions.[Press Note No.19 (1998 series) and Press Note No. 2 (2003 series)].

The royalty will be calculated on the basis of the net ex-factory sale price of the product, exclusive of excise duties, minus the cost of the standard bought-out components and the landed cost of imported components, irrespective of the source of procurement, including ocean freight, insurance, custom duties, etc.

Use of Trademarks and Brand name

3.4 Payment of royalty up to 2% for exports and 1% for domestic sales is allowed under automatic route for use of trademarks and brand name of the foreign collaborator without technology transfer. Royalty on brand name/trade mark shall be paid as a percentage of net sales, viz., gross sales less agents'/dealers' commission, transport cost, including ocean freight, insurance, duties, taxes and other charges, and cost of raw materials, parts and components imported from the foreign licensor or its subsidiary/affiliated company(Press Note No.1 of 2002).

In case of technology transfer, payment of royalty includes the payment of royalty for use of trade mark and brand name of the foreign collaborator.

Procedure for Automatic Route

3.5 Authorised Dealers (ADs) appointed by the RBI allow remittances for royalty, payment of lump-sum fee and remittance for use of Trade mark /Franchise in

India within the limits prescribed under the automatic route.

RBI's prior approval is required for remittance towards purchase of trade mark/franchise.

Government Approval – Project Approval Board (PAB)	3.6 Royalty payment in the following cases requires prior Govt. approval(through PAB when only technical collaboration is proposed and FIPB where both financial & technical collaboration are proposed): a) Sectors/activities which are not on the automatic route for FDI, or b) Proposals not meeting any of the parameters for automatic approval as in para 3.3.
Procedure for Government Approval	3.7 Proposals for foreign technology collaboration not covered under the automatic route are considered by the Project Approval Board (PAB) in the Department of Industrial Policy and Promotion. Application in such cases should be submitted in Form FC-IL to the Secretariat for Industrial Assistance. Proposals where both financial & technical collaboration are proposed, application is to be submitted to FIPB. No fee is payable.

CHAPTER IV

ENTRY OPTIONS FOR FOREIGN INVESTOR

Entry Options	4.1 A foreign company planning to set up business operations in India has the following options:
As an Incorporated Entity	i) By incorporating a company under the Companies Act,1956 through i. Joint Ventures; or ii. Wholly Owned Subsidiaries Foreign equity in such Indian companies can be up to 100% depending on the requirements of the investor, subject to any equity caps prescribed in respect of the area of activities under the Foreign Direct Investment (FDI) policy.
As an Unincorporated Entity	ii) As a foreign Company through i. Liaison Office/Representative Office ii. Project Office iii. Branch Office Such offices can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office of other place of business) Regulations, 2000.
Incorporation of Company	4.2 For registration and incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies. For details please visit the website of Ministry of Company Affairs at http://dca.nic.in
Liaison Office/Representative Office	4.3 The role of liaison office is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Liaison office can not undertake any commercial activity directly or indirectly and can not, therefore, earn any income in India**.** All expenses of Liasion offices have to be met by inward remittances. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).
Project Office	4.4 Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices can not undertake or carry on any activity other than the activity relating and incidental to execution of the project. Project Offices may remit outside India the surplus of the project, after meeting the tax liabilities, on its completion.

Branch Office

4.5 Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for t he following purposes:

a. Export/Import of goods
b. Rendering professional or consultancy services
c. Carrying out research work, in which the parent company is engaged.
d. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
e. Representing the parent company in India and acting as buying/selling agents in India.
f. Rendering services in Information Technology and development of software in India.
g. Rendering technical support to the products supplied by the parent/ group companies.
h. Foreign airline/shipping company.

Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines. Permission for setting up branch offices is granted by the Reserve Bank of India (RBI).

Branch Office on "Stand Alone Basis" in SEZ

4.6 Such Branch Offices would be isolated and restricted to Special Economic Zone (SEZ) alone and no business activity/transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India.

No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to the following conditions:

a. Such units are functioning in those sectors where 100% FDI is permitted,
b. Such units comply with part XI of the Company's Act (Section 592 to 602),
c. Such units function on a stand-alone basis,
d. In the event of winding up of business and for remittance of winding-up proceeds, the branch shall approach an authorized dealer in foreign exchange with the documents required as per FEMA.

Application for setting up Liaison Office/ Project Office/ Branch Office may be submitted to Chief General Manager, Exchange Control Department(Foreign Investment Division), RBI Central Office, Mumbai-400001, in form FNC 1 (available at RBI website at www.rbi.org.in)

CHAPTER V

EXCHANGE CONTROL

Foreign Exchange Management Act

5.1 The Reserve Bank of India's Exchange Control Department, administers Foreign Exchange Management Act, 1999, (FEMA).

Repatriation of Investment Capital and Profits Earned in India

5.2 (i) All foreign investments are freely repatriable, subject to sectoral policies and except for cases where NRIs choose to invest specifically under non-repatriable schemes. Dividends declared on foreign investments can be remitted freely through an Authorised Dealer.

(ii) Non-residents can sell shares on stock exchange without prior approval of RBI and repatriate through a bank the sale proceeds if they hold the shares on repatriation basis and if they have necessary NOC/tax clearance certificate issued by Income Tax authorities.

(iii) For sale of shares through private arrangements, Regional offices of RBI grant permission for recognized units of foreign equity in Indian company in terms of guidelines indicated in Regulation 10.B of Notification No. FEMA.20/2000 RB dated May '2000. The sale price of shares on recognized units is to be determined in accordance with the guidelines prescribed under Regulation 10B(2) of the above Notification.

(iv) Profits, dividends, etc., (which are remittances classified as current account transactions) can be freely repatriated.

Current Account Transactions

5.3 Current account transactions are regulated under the Foreign Exchange Management (Current Account Transactions) Rules 2000. { No. G.S.R. 381(E),dated 3.5.2000] . Prior approval of the RBI is required for acquiring foreign currency above specified limits for the following purposes:

a. Holiday travel over US$10,000 p.a.
b. Gift / donation over US$5,000 / US$10,000 per beneficiary p.a.
c. Business travel over US$25,000 per person
d. Foreign studies as per estimate of institution or US$100,000 per academic year
e. Architectural / consultancy services procured from abroad over US$1,000,000 per project
f. Remittance for purchase of Trade Mark / Franchise
g. Reimbursement of pre incorporation expenses over US$100,000
h. Remittances exceeding US$25,000 p.a. (over and above ceilings prescribed for other remittances mentioned above) by a resident individual for any current account or capital account transaction.

The above figures are for the purpose of general guidance of the investors. It is suggested that investors must reconfirm, the permissible limits before undertaking transactions.

Acquisition of Immovable Property By Non-Resident**:**	5.4 A person resident outside India, who has been permitted by Reserve Bank of India to establish a branch, or office, or place of business in India (excluding a Liaison Office), has general permission of Reserve Bank of India to acquire immovable property in India, which is necessary for, or incidental to, the activity. However, in such cases a declaration , in prescribed form (IPI), is required to be filed with the Reserve Bank, within 90 days of the acquisition of immovable property. Foreign nationals of non-Indian origin who have acquired immovable property in India with the specific approval of the Reserve Bank of India can not transfer such property without prior permission from the Reserve Bank of India. Please refer to the Foreign Exchange Management (Acquisition and transfer of Immovable Property in India) Regulations' 2000 [Notification No.FEMA.21/2000-RB dated May 3, 2000].
Acquisition Of Immovable Property By NRI	5.5 An Indian citizen resident outside India (NRI) can acquire by way of purchase any immovable property in India other than agricultural/ plantation /farm house. He may transfer any immovable property other than agricultural or plantation property or farm house to a person resident outside India who is a citizen of India or to a Person of Indian Origin resident outside India or a person resident in India. Please refer to the Foreign Exchange Management (Acquisition and transfer of Immovable Property in India) Regulations' 2000 [Notification No.FEMA.21/2000-RB dated May 3, 2000].
Acquisition Of Immovable Property By Non-resident / NRI incidental to its activities in India.	5.6 As per FEMA (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, the automatic route of RBI for investment from persons resident outside India is not available for agriculture (including plantation). However, if the FDI company establishes any business activity in India subject to FDI route / guidelines, the same has to be treated as a resident entity under FEMA and as such it would have the same freedom as a resident entity for purchase of immovable property in India for purpose of carrying out business activity or any activity incidental to its business activity which is permitted under the FEMA Regulations, as per Regulation 5 of FEMA Regulations, 2000.

CHAPTER VI

PORTFOLIO INVESTMENT

Portfolio Investment Scheme(PIS)

6.1 Foreign Institutional Investors (FIIs) registered with SEBI and Non-Resident Indians are eligible to purchase shares and convertible debentures under the Portfolio Investment Scheme. The FII should apply to the designated AD for opening a foreign currency account and/or a Non Resident Rupee Account

6.2 Investment by FIIs is regulated under SEBI (FII) Regulations,1995 and Regulation 5(2) of FEMA Notification No.20 dated May 3, 2000. SEBI acts as the nodal point in the entire process of FII registration. FIIs are required to apply to SEBI in a common application form in duplicate. RBI approval is also required under FEMA to enable an FII to buy/sell securities on Stock Exchanges and open foreign currency and Indian Rupee accounts with a designated bank branch.

Foreign Institutional Investors(FII)

6.3 FIIs include Asset Management Companies, Pension Funds, Mutual Funds, Investment Trusts as Nominee Companies, Incorporated/Institutional Portfolio Managers or their Power of Attorney holders, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies.

Policy On FII Investments

6.4 Main features of the policy on investment by FII are:

a. FIIs are required to allocate their investment between equity and debt instruments in the ratio of 70:30. However, it is also possible for an FII to declare itself a 100% debt FII in which case it can make its entire investment in debt instruments.
b. FIIs can buy/sell securities on Stock Exchanges. They can also invest in listed and unlisted securities outside Stock Exchanges where the price has been approved by RBI.
c. No individual FII/sub-account can acquire more than 10% of the paid up capital of an Indian company.
d. All FIIs and their sub-accounts taken together cannot acquire more than 24% of the paid up capital of an Indian Company.
e. Indian Companies can raise the above mentioned 24% ceiling to the Sectoral Cap / Statutory Ceiling as applicable by passing a resolution by its Board of Directors followed by passing a Special Resolution to that effect by its General Body in terms of Press Release dated Sept.20, 2001 and FEMA Notification No.45 dated Sept. 20, 2001.

No permission from RBI is needed so long as the FIIs purchase and sell on recognized stock exchange. All non-stock exchange sales/purchases require RBI permission.

Portfolio Investments by NRIs

6.5 NRIs/PIOs are permitted to purchase/sell shares/convertible debentures of Indian companies on Stock Exchanges under Portfolio Investment Scheme. For this purpose, the NRI/PIO has to apply to a designated branch of a Bank which deals in Portfolio Investment. All the sale/purchase transaction are routed through the designated branch.

An NRI can purchase shares up to 5% of the paid up capital of an Indian company. All NRIs taken together cannot purchase more than 10% of the paid up value of the company. This limit can be increased by the Indian company to 24% by passing a General Body resolution.

Investment can be made both on repatriation basis or non-repatriation basis The sale of shares will be subject to payment of applicable taxes.

Details regarding portfolio investment scheme available at the websites of RBI (www.rbi.org.in) and SEBI (www.sebi.gov.in).

CHAPTER VII

INCORPORATION OF COMPANY

Company's Act 1956	7.1 Incorporation of a company in India is governed by the Companies Act, 1956. Part II of the Act deal with the incorporation of a company and matters related to.
Private Company	7.2 Private company means a company which has a minimum paid-up capital of Rs,1,00,000/- or such higher paid-up capital as may be prescribed, and by its articles, (a) restricts the rights to transfer its shares, if any; (b) limits the number of its members to fifty, not including i) persons who are in the employment of the company ; and ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment have continued to be members after the employment ceased; and (c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; (d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.
Public Company	7.3 A public company is a company which is not a private company and has a minimum paid-up capital of Rs,5,00,000/-or such higher paid-up capital, as may be prescribed.
Formation of a Private Limited Company	7.4 A private Company can be formed either by i. incorporation of a new company for doing a new business , or ii. conversion of existing business of a sole proprietory concern or partnership firm into a company.
Name of Company	7.5 The name of a corporation is the symbol of its personal existence. Any suitable name may be selected for registration subject to the following guidelines: a. The promoters should select three to four alternative names, quite distinct from each other. b. The names should include, as far as possible, activity as per the main objects of the proposed company. c. The names should not too closely resemble with the name of any other registered company. d. The official guidelines issued by the Central Government should be followed while selecting the names. Besides, the names so selected should not violate the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950. e. Apply in form 1-A to the Registrar of Companies having jurisdiction along with a filing fee of Rs. 500.
Memorandum Of	7.6 An important step in the formation of a company is to prepare a document

Association

called Memorandum of Association. It is the charter of the company and it contains the basic conditions on which the company is incorporated.

The Memorandum contains the name, the State in which the registered office is to be situated, main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects, liability of the members and the authorized capital of the company. The main purpose of the memorandum is to state the scope of activities and powers of the company.

Articles Of Association

7.7 Articles of Association of the company contain rules, regulation and bye-laws for the general management of the company. It is compulsory to get the Articles of Associations registered along with the Memorandum of Association in case of a private company.

The Articles are subordinate to the Memorandum of Association. Therefore, the Articles should not contain any regulation, which is contrary to provisions of the Memorandum or the Companies Act. The Articles are binding on the members in relation to the company as well as on the company in its relation to members.

Registration of Company And Issue Of Capital

7.8 After completion of the preliminaries, as enumerated above, the application with necessary documents are required to be filed with the Registrar of Companies of the State in which the company is proposed to be incorporated. These include:

a. Memorandum of Association (duly stamped) and a duplicate thereof.
b. Articles of Association (duly stamped) and a duplicate thereof
c. The agreement, if any, which the company proposes to enter into with any individual for appointments as its managing or whole time director or manager.
d. A copy of the letter of the Registrar of Companies intimating the availability of the proper name
e. Documents evidencing payment of prescribed registration and filing fee, i.e. a bank draft or a treasury challan.
f. Documents evidencing the directorship and situation of Registered Office in Form 32 and Form 18 respectively and declaration of compliance with requirements of the Companies Act in Form No.1 and Form 29 for giving consent to act as a Director in case of public company be also given.

7.9 The amount of registration fee payable is regulated with reference to the amount of authorized capital of the proposed company.

Certificate Of Incorporation

7.10 Upon compliance with all requirements, the Registrar will register the company and issue a Certificate of Incorporation of company. It brings the company into existence as a legal entity.

Issue Of Share Capital

7.11 After obtaining registration, the company proceeds with its business for which it requires funds. In case of a private company, the capital is to be raised by way of private arrangements whereas a Public Ltd. company can raise funds from the public. First of all, the company will issue shares to the subscribers to its memorandum and other members of the company. The issued capital must not exceed the authorized capital of the company.

It is necessary for a public limited company to obtain the Certificate of Commencement of Business before commencing the business.

For more details please contact Ministry of Company Affairs at http://www.dca.nic.in

CHAPTER VIII

OTHER SCHEMES AND INCENTIVES

SPECIAL ECONOMIC ZONES (SEZs) AND EXPORT ORIENTED UNITS (EOUs)

Policy For Setting Up Special Economic Zone (SEZ

8.1 SEZ is a specifically delineated duty free enclave and is deemed to be foreign territory for the purposes to trade operations and duties and tariffs. Goods and services going into the SEZ area form DTA are treated as exports and goods coming from the SEZ area into DTA are to be treated as if these are being imported. A SEZ may be set up in the Public, Private or Joint Sector or by State government(s). Proposals as per criteria under appendix 14 II O available at DGFT website (http://dgft.delhi.nic.in) are considered by Board of Approvals and Department of Commerce issues the letter of permission.

Procedure

8.2 The applicant should follow the following procedure:

a. Submission of 10 copies of application along with project report to Chief Secretary of the concerned State.
b. Forwarding of application along with comments by the State government to Board of Approvals in the Department of Commerce.
c. Issue of letter of permission by Department of Commerce

Policy For FDI/NRI Investment for setting up SEZ/FTWZ

8.3 100% FDI is permitted under automatic route for setting up Special Economic Zones and Free Trade Warehousing Zones subject to Special Economic Zones Act, 2005 and the Foreign Trade Policy. FDI in setting up of SEZs & units in SEZ are exempt from Press Note No. 2 (2005), governing FDI in Construction Development projects.

Policy for setting up EOUs/Units in SEZ under Automatic Route

8.4 Development Commissioners (DCs) of Special Economic Zones (SEZs) accord automatic approval to projects where

(a) Activity proposed does not attract compulsory licensing or falls in the services sector except R&D, Software & IT enabled services;
(b) Location is in conformity with the prescribed parameters;
(c) Units undertake to achieve positive net foreign exchange earning;

An EOU unit may be shifted to SEZ with the approval of DCs provided the EOU unit has achieved pro-rata obligation under the EOU scheme.

8.5 If the Unit is amenable to bonding by customs authorities; conversion of existing Domestic Tariff Area (DTA) units into EOU is also permitted under automatic route, if the DTA unit satisfies the parameters in para 8.1. In case there is an outstanding export commitment under the EPCG scheme, it will be subsumed in the export performance of the unit. If the unit is having outstanding export commitment under the Advance Licensing Scheme, it will apply to ALC for reducing its export commitment in proportion of the quantum of duty free material actually utilized for production and permitted to carry forward the unutilized material imported against the Advance License.

Policy for Setting

8.6 Proposals not covered by the automatic route are forwarded by the

up EOUs/ Units in SEZ under Government Route	Development Commissioner to the Board of Approval (BoA), Department of Commerce for consideration. On consideration of the proposal by the Board, the decision would normally be conveyed within 45 days.
Procedure For Approval	8.7 Applications in the prescribed form for EOUs and units in SEZ should be submitted to the concerned DCs of the SEZs. The application should be submitted along with a crossed demand draft of Rs.5000/- drawn in favour of the "the Pay & Accounts Officer, Department of Commerce, Ministry of Commerce and Industry", payable at New Delhi. Application form and detailed procedure may be obtained from the website of Department of commerce at http://commerce.nic.in . The form is also available at all outlets dealing in Government publications.
Policy For FDI/ NRI Investment For EOUs/ Units in SEZ	8.8 Details about the type of activities permitted are given in the Foreign Trade Policy issued by Department of Commerce (web site - http://commerce.nic.in). Proposals not covered under the automatic route are considered by the FIPB.

SETTING UP OF INDUSTRIAL PARKS, INDUSTRIAL MODEL TOWNS AND GROWTH CENTRES

Policy Under Automatic Route	8.9 The Government notified Industrial Park scheme on 1.4.2002 (available at www.dipp.gov.in) for setting up Industrial Parks/ Industrial Model Towns. SIA in DIPP accord approval to set up the Industrial Parks/ Industrial Model Towns, which meet the criteria laid down for approval under the automatic route within fifteen days.
Approval By Empowered Committee	8.10 Proposals not meeting any or all of the parameters for automatic route require approval of Empowered Committee set up in the DIPP, Ministry of Commerce & Industry. The decision of the Committee is usually conveyed within six weeks.
Procedure For Approval and availing 100% Tax Exemption	8.11 Application in the Form-IPS-1, available on this Department's web site (http://dipp.gov.in), for obtaining approval for setting up an Industrial Park and for availing 100% tax exemption available under section 80 IA of the Income Tax Act, should be made to the PR&C Section of the DIPP. Application for automatic route has to be submitted in duplicate and for non-automatic approval, in six sets. The application must be accompanied by a fee of Rupees 6,000/- by a demand draft drawn in favour of the Pay and Accounts Officer, DIPP payable at New Delhi.
Policy For FDI/NRI Investment	8.12 100% FDI is permitted under automatic route for setting up of Industrial Parks/ Industrial Model Towns. The procedure mentioned in para 1.5 will be applicable for seeking requisite approval. 8.13 The conditions of Press Note. 2(2005 Series) would not apply for FDI up to 100% under the automatic route both in setting up and in established

industrial parks subject to the following qualifying conditions:

(i) an 'industrial park' would be an area allotted for development of infrastructure facilities or built-up space with common facilities or earmarked for the purposes of industrial use;

(ii) Industrial activity permitted in the area designated as an 'industrial park' would be Manufacturing, Electricity, gas and water supply, Post and telecommunications, Software publishing, consultancy and supply, Data processing, Database activities and distribution of electronic content, other computer related activities, Research and experimental development on natural sciences and engineering, Business and management consultancy activities and Architectural, engineering and other technical activities.

(iii) The Industrial Park would in addition have the following features;

(a) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;

(b) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.

Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) Schemes

8.14 In order to provide impetus to the electronics industry, to enhance its export potential and to develop an efficient electronic component industry, EHTP and STP schemes offer a package of incentives and facilities like duty free imports on the lines of the EOU Scheme, deemed exports benefits and tax holidays.

Automatic Route

8.15 The Directors of STPs in respect of STP proposals; and the Designated Officers in respect of EHTP proposals accord automatic approval within 2 weeks if:

(a) items do not attract compulsory licensing;

(b) location is in conformity with the prescribed parameters;

(c) Units undertake to achieve positive net foreign exchange earning;

Proposals for FDI/NRI investments in EHTP/STP units are eligible for approval through automatic route subject to parameters listed under Para 1.3

Government Approval

8.16 All proposals for setting up of these projects, which do not meet any or all of the parameters for automatic approval, need to be considered and approved by the Ministry of Information Technology through the Inter-Ministerial Standing Committee. The decision of the Committee is usually conveyed within six weeks.

Procedure

8.17 Application, in the prescribed form, should be submitted to the concerned Directors of STPs or the Designated Officers of EHTPs and to the Ministry of Information Technology for Government approval. The application should be submitted along with a crossed demand draft for Rs. 5000/- drawn in favour of the “the Pay & Accounts Offer, Department of Commerce, Ministry of Commerce & Industry”, payable at New Delhi. The form is available in any outlet dealing with Government Publications.

Procedure For FDI/NRI Investment

8.18 All proposals for FDI/NRI investment in EHTP/STP Units are eligible for approval under automatic route subject to parameters listed in Para 1.3 . For proposals not covered under automatic route, the applicant should seek separate approval of the FIPB, as per the procedure outlined in Para 1.6.

CHAPTER IX

TAXATION IN INDIA

Taxation System In India

9.1 India has a well developed tax structure Income Tax (except tax on agricultural income, which the State Governments can levy), Customs duties, Central Excise and Sales Tax and Service Tax are the main taxes levied by the Central Government. Value Added Tax, (Sales Tax where VAT is yet not in force), Stamp Duty, State Excise, Land Revenue, Tax on Professions and are the principal taxes levied by the State Governments. Local Bodies are empowered to levy tax on properties, Octroi and for utilities like water supply, drainage, etc.

Personal Income Tax

9.2 The rates of personal income tax are:

Income range (Rupee)	**Tax rate(%)**
0 -1,00,000	NIL
1,00,000 -1,50,000	10
1,50,000 - 2,50,000	20
2,50,000 and above	30

Surcharges of 10% is levied on income exceeding Rs.10,00,000.

Senior citizens with income up to Rs.1,85,000 are exempt from Income Tax.

Rates of Withholding Tax

9.3 Current rates for withholding tax for payment to non-residents are

(i)	Interest	20%
(ii)	Dividends	Dividends paid by domestic companies : Nil
(iii)	Royalties	20%
(iv)	Technical Services	10%
(v)	Any Other Services	Individuals: 30% of the income Companies: 40% of the net income

The above rates are general and in respect of countries with which India does not have a Double Taxation Avoidance Agreement (DTAA).

Corporate Tax

9.4 Current rates of Corporate tax are

- 30 % in the case of domestic companies and surcharge @ 10% of the tax. Companies incorporated in India under the applicable law are treated as domestic company for the purpose of taxation.
- 40% in the case of foreign companies and surcharge @ 2.5% of the tax.
- Education cess is levied @ 2% on the amount of tax and surcharge in all cases.

TAX CONCESSIONS

India offers attractive tax incentives to encourage investments in Special Economic Zones, priority industries and to promote industrialization of industrially dis-advantageous areas.

Special Economic Zones (SEZs)

9.5 'THE SPECIAL ECONOMIC ZONES ACT, 2005', notified by the Government of India in June 2005, provides following concessions for the establishment, development and management of the Special Economic Zones for the promotion of exports. The tax concessions available to developers of Special Economic Zones and units located in such zones are as follows:

Units which begin to manufacture or produce articles or things or provide any services, on or after 01-04-2005 are eligible for 15 year tax benefit in relation to export profits, in the following manner :-

(i) 100 % deduction for 5 years, 50 % deduction for next 5 years, 50 % deduction of the profits ploughed back into business for the next 5 years.

(ii) 100 % deduction of profits derived by an undertaking / enterprise from the business of developing an SEZ, notified on or after 1st April, 2005. The deduction is available for 10 out of 15 years beginning from the year in which SEZ has been notified.

(iii) Exemption of capital gains arising on transfer of capital assets in case of shifting of industrial undertaking from urban area to any Special Economic Zone.

(iii) Minimum Alternate Tax (chargeable @ 7.5 % of the book profit) is not applicable to the income arising on or after 1st April, 2005 to SEZ units or developers of SEZs.

(v) Exemption of developers of SEZ from dividend distribution tax on dividends to be distributed by them on or after 1st April, 2005.

(vi) Exemption of interest income received by a non-resident or not ordinarily resident on deposits made on or after 01-04-2005 with Offshore Banking Units.

(vii) No tax to be deducted by Offshore Banking Units from the interest paid on deposit made by, or borrowing from, a non-resident or a person not ordinarily resident in India, on or after 01-04-2005.

Capital Gains On Infrastructure Funds

9.6 Income by way of dividend, interest, or long-term capital gain of an infrastructure capital company or an infrastructure capital fund is 100% tax-exempt. However infrastructure capital companies are liable to pay minimum alternative tax. Income of venture capital company or venture capital fund set up to raise funds for investment in a venture capital undertaking is also tax-exempt.

Tax Exemptions

9.7. Following tax exemptions are available for priority sectors and incentives to industries located in special area/regions :

Deduction of 100% of the profit from business of

a. Development or operation and maintenance of ports, airports , roads, highways, bridges, rail systems, inland waterways, inland ports, water supply projects, water treatment systems, irrigation projects, sanitation and sewage projects, solid waste management systems..
b. Generation, distribution and transmission of power
c. Development, operation and maintenance of an Industrial Park or SEZ
d. By undertakings set up in certain notified areas or in certain thrust sector industries in the North-eastern states and Sikkim.
e. By undertakings set up in certain notified areas or in certain thrust sector industries in Uttaranchal & Himachal Pradesh

f. By undertakings set up in Jammu & Kashmir
g. Derived from export of articles or software by undertakings in FTZ / EHTP / STP
h. Derived from export of articles or software by undertakings in SEZ
i. Derived from export of articles or software by 100% EOU
j. An offshore banking unit situated in a SEZ from business activities with units located in the SEZ.
k. Derived by undertakings engaged in the business of developing and building housing projects.
l. By undertakings from the business of operating and maintaining Hospital.
m. Derived by an undertaking engaged in the integrated business of handling, storage and transportation of food grains..
n. Derived by an undertaking engaged in the commercial production or refining of mineral oil
o. Derived by an undertaking from export of woodbased handicraft

Double Taxation Relief

9.8 India has entered into DTAA with 69 countries including countries like U.S.A., U.K., Japan, France, Germany, etc. In case of countries with which India has double taxation avoidance agreements. The Comprehensive DTAA's, countrywise, may please be seen thru website of Income Tax India at http://incometaxindia.gov.in

AUTHORITY FOR ADVANCE RULING

9.9 With a view to avoid a dispute in respect of assessment of income-tax liability in the case of a non-resident (and also specified categories of residents), a Scheme of Advance Ruling was incorporated in the Income Tax Act. The Authority for Advance ruling (AAR) pronounces rulings on the applications of the non-resident/residents submitted and such rulings are binding both on the applicant and the Income-Tax Department. Thus, the applicant can avoid expensive and time consuming litigation which would have arisen from normal income tax assessment proceedings. The application in such cases should be addressed to

The Commissioner of Income-Tax Authority of Advance Rulings,
5th Floor, N.D.M.C. Building,
Yashwant Place, Satya Marg,
Chankyapuri,
New Delhi -110021.

CHAPTER X

INVESTMENT GUIDANCE AND FACILITATION

INVESTMENT GUIDANCE

Secretariat For Industrial Assistance (SIA)	10.1 Secretariat for Industrial Assistance (SIA) has been set up in the Department of Industrial Policy & Promotion (DIPP) in the Ministry of Commerce and Industry to provide a single window for entrepreneurial assistance, investor facilitation, conveying Government decisions on applications filed, assisting entrepreneurs and investors in setting up projects, (including liaison with other organisations and State Governments) and in monitoring implementation of projects. It also notifies all Government policy relating to investment and technology.
Assistance to Entrepreneurs	10.2 PR&C Section of the SIA provides assistance to entrepreneurs on various subjects concerning investment decisions. It receives all papers/ applications related to industrial approvals i.e. IEMs, Industrial Licences, Foreign Investment, Foreign Technology Agreements, EHTP, STP Schemes, etc. and immediately issues a computerised acknowledgement, which also has an identity/reference number. All correspondence with the SIA should quote this number. It also provides information regarding the current status of applications filed for various industrial approvals.
Web Site (http://dipp.gov.in)	10.3 DIPP's website www.dipp.gov.in ensures easy availability of information to the investors about investment policies and procedures, investment climate, state industrial policies, publications, notifications and press notes/releases.

The web site contains the following:

- Manual on Foreign Direct Investment in India - Policy and Procedures (also available in English/French/German/Spanish/Korean/Japanese/Chinese and Italian language)
- SIA Newsletter-monthly issues
- SIA Statistics- monthly issues
- FDI Statistics
- Press Notes, Notifications and Press Releases
- List of SSI reserved items & NIC Codes
- Industrial Policy Statements
- Latest Annual Report
- Information about Intellectual Property Rights
- Status of SIA applications
- Important Legislations
- Information about Attached and Subordinate Offices
- Profile of selected industrial sectors
- Link to websites of other Ministries/Departments
- Link to websites of all States/Union Territories
- All relevant application forms

National Industrial Classification (NIC) Code	10.4 In all the forms required for various approvals including FDI, description of activities are required to be given as per the *National Industrial Classification of All Economic Activities (NIC),* 1987, DIPP website provides a link this list for the benefit of the users.
Online Chat And Bulletin Board Services	10.5 The web site has the facility of on line chat between 11AM to 12 Noon & 4.00 to 5.00 P.M. (Indian Standard Time, GMT+5 ½) on all working days where investors can seek clarification on any issue relating to FDI Policies and related issues. The web site also has provision of bulletin board service. If the investor cannot avail the on line chat facility, he/she can post the question on bulletin board at any time. All efforts are made to send a reply within 24 hours.
Information About Various Other Clearances and Approvals	10.6 In addition to the approval for bringing FDI in India, other clearances and approvals, such as registration of company, environment and forest clearance, land acquisition, power and water connection, etc., may be required for starting a business in India. Details of concerned Departments/Agencies along with their web site addresses are given in Annex-IV**.**
Publications	10.7 Following publications are brought out by DIPP and updated regularly for the guidance of investors: a. Foreign Direct Investment in India – Policy & Procedure. b. Investing in India –Flyer c. Entry Strategies for foreign Investors –Flyer d. Taxation in India –Flyer e. Investment Opportunities in infrastructure sectors f. Single Window System in States & Union Territories g. Compendium of Pressnotes on FDI policy. These publications are available through the PR&C of the SIA or Investment Promotion Cell, DIPP; as also from Indian Missions abroad. These can also be down loaded from the web site **www.dipp.gov.in**
SIA News Letter	10.8 This is a monthly publication on Foreign Direct Investment / NRI Investment / sectoral breaks-ups / country-wise break-ups, all actual FDI inflows and policy notifications issued during the month. The monthly publication is uploaded on Department's website at **www.dipp.gov.in** . Annual issues of SIA Newsletter are also published and available on payment from Controller of Publications, 1, Civil Lines, Delhi - 110 054 or from any outlet dealing in Government publications.
SIA Statistics	10.9 This is also a monthly publication on data relating to Industrial Licences, Foreign Technical Collaboration, etc., monthly data on industrial production of 209 select industry groups, as well as policy announcements by Government during the month. Annual issues of SIA Statistics are available on payment from Controller of Publications, 1 Civil lines, Delhi - 110 054 or from any outlet dealing

in Government publications

INVESTMENT FACILITATION

Foreign Investment Implementation Authority (FIIA)

10.10 FIIA has been established to facilitate quick implementation of FDI approvals and assist foreign investors in getting necessary approvals. Fast Track Committees have been set up in 30 Ministries/Departments for regular review of FDI mega projects (with proposed investment of Rs. 1 billion and above), and resolution of any difficulties. Details of the fast track committees set up in various ministries is available at http://dipp.gov.in. Investors can approach FIIA through website http://dipp.gov.in.

Foreign Investment Promotion Board (FIPB)

10.11 The Government has set up the FIPB to consider FDI proposals requiring prior Government approval.

The reconstituted FIPB comprises of:

(i) Secretary, Department of Economic Affairs - Chairman
(ii) Secretary, Department of Industrial Policy & Promotion - Member
(iii) Secretary, Department of Commerce - Member
(iv) Secretary (Economic Relations), Ministry of External Affairs - Member
(v) Secretary, Ministry of Overseas Indian Affairs, - Member

Business Ombudsperson

10.12 To facilitate expeditious redressal of grievances and attend to complaints relating to delays in grant and implementation of industrial approvals and facilitate their disposal, the Government has appointed a BUSINESS OMBUDSPERSON in the Ministry of Commerce & Industry. Additional Secretary & Financial Adviser, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi-110011 has been nominated to act as Business Ombudsperson(e mail: nc@ub.nic.in).

Grievances Officer-Cum-Joint Secretary

10.13 Grievances and complaints are also received by the Grievances Officer-cum-Joint Secretary, DIPP, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi-110011, either through post or through the mail box in the PR&C of the SIA, or at Reception of the Ministry of Commerce and Industry at Gate No.12 , Udyog Bhavan, New Delhi-110011. Such communications are handled expeditiously and steps are taken to redress the grievance.

ANNEXURE – I

SECTOR SPECIFIC GUIDELINES FOR FOREIGN DIRECT INVESTMENT

In the following sectors/activities, FDI upto the limit indicated below is allowed subject to other conditions as indicated. In Sectors/Activities not listed below, FDI is permitted up to 100% on the automatic route subject to sectoral rules/ regulations applicable.

. o.	Sector/Activity	FDI Cap / Equity	Entry Route	Other conditions
	Civil Aviation			
1.1.	**Airports-**			
a.	Greenfield projects	100%	Automatic	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic. in
b.	Existing projects	100%	FIPB beyond 74%	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic. in
1.2.	**Air Transport Services** including Domestic Scheduled Passenger Airlines; Non-Scheduled Airlines; Chartered Airlines; Cargo Airlines; Helicopter and Seaplane Services			
. a.	Scheduled Air Transport Services/ Domestic Scheduled Passenger Airline	49%- FDI; 100%- for NRI investment	Automatic	Subject to no direct or indirect participation by foreign airlines.
b.	Non-Scheduled Air Transport Service/ Non-Scheduled airlines, Chartered airlines, and Cargo airlines	74%- FDI 100%- for NRIs investment	Automatic	Subject to no direct or indirect participation by foreign airlines in Non-Scheduled and Chartered airlines. Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines.
c.	Helicopter Services/Seaplane services requiring DGCA approval	100%	Automatic	Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines.
1.3.	**Other services under Civil Aviation Sector**			
a.	Ground Handling Services	74%- FDI 100%- for NRIs investment	Automatic	Subject to sectoral regulations and security clearance.
b.	Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic	

2.	Alcohol-Distillation & Brewing	100%	Automatic	Subject to license by appropriate authority
3..	Asset Reconstruction Companies	49% (only FDI)	FIPB	Where any individual investment exceeds 10% of the equity, provisions of Section 3(3)(f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should be complied with. www.finmin.nic.in
4	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities. FDI will not be allowed in mining of "prescribed substances" listed in Government of India notification No. S.O. 61(E) dt. 18.1.2006 issued by the Department of Atomic Energy.	100%	FIPB	Subject to sectoral regulations and the Mines and Minerals (Development & Regulation) Act, 1957 and the following conditions- i. value addition facilities are set up within India along with transfer of technology; ii. disposal of tailing during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such Atomic Energy (Radiation Protection) Rules 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules 1987.
5.	Banking - Private sector	74% (FDI+FII)	Automatic	Subject to guidelines for setting up branches / subsidiaries of foreign banks issued by RBI. www.rbi.org.in
6.	**Broadcasting**			
a.	FM Radio	FDI +FII investment up to 20%	FIPB	Subject to Guidelines notified by Ministry of Information & Broadcasting. www.mib.nic.in
b.	Cable network	49% (FDI+FII)	FIPB	Subject to Cable Television Network Rules (1994) Notified by Ministry of Information & Broadcasting. www.mib.nic.in
c.	Direct-To-Home	49% (FDI+FII). Within this limit, FDI component not to exceed 20%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in

d.	Setting up hardware facilities such as up-linking, HUB, etc	49% (FDI+FII)	FIPB	Subject to Up-linking Policy notified by Ministry of Information & Broadcasting. www.mib.nic.in
e.	Up-linking a News & Current Affairs TV Channel	26% FDI+FII	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in
f.	Up-linking a Non-news & Current Affairs TV Channel	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in
7.	Cigars & Cigarettes-Manufacture	100%	FIPB	Subject to industrial license under the Industries (Development & Regulation) Act, 1951
8.	Coal & Lignite mining for captive consumption by power projects, and iron & steel, cement production and other eligible activities permitted under the Coal Mines (Nationalisation) Act, 1973.	100%	Automatic	Subject to provisions of Coal Mines (Nationalization) Act, 1973 www.coal.nic.in
9.	Coffee& Rubber processing & warehousing	100%	Automatic	
10	Commodity Exchanges	49% (FDI+FII) Investment by Registered FII under PIS will be limited to 23% and Investment under FDI Scheme limited to 26%	FIPB	FII purchases shall be restricted to secondary market only. No foreign investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies.
11	Construction Development projects, including housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure,	100%	Automatic	Subject to conditions notified vide Press Note 2 (2005 Series) including: a. minimum capitalization of US$ 10 million for wholly owned subsidiaries and US$ 5 million for joint venture. The funds would have to be brought within six months of commencement of business of the Company.

	townships.			b. Minimum area to be developed under each project- 10 hectares in case of development of serviced housing plots; and built-up area of 50,000 sq. mts. in case of construction development project; and any of the above in case of a combination project. [Note 1: For investment by NRIs, the conditions mentioned in Press Note 2 / 2005 are not applicable. Note 2: For investment in SEZs, Hotels & Hospitals, conditions mentioned in Press Note 2(2005) are not applicable]
12	Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.	100%	FIPB	Subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the State. www.indiapost.gov.in
13.	Defence production	26%	FIPB	Subject to licensing under Industries (Development & Regulation) Act, 1951 and guidelines on FDI in production of arms & ammunition.
14.	Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, Aqua-culture and Cultivation of Vegetables & Mushrooms, under controlled conditions and services related to agro and allied sectors.	100%	Automatic	
15.	**Financial Infrastructure in securities markets**			
a.	Stock Exchanges	49% (FDI+FII)	FIPB	FII purchases shall be restricted to secondary market only.

b. c.	Depositories Clearing Corporations	Investment by Registered FII under PIS will be limited to 23% and Investment under FDI Scheme limited to 26%		No foreign investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies
16.	Credit Information Companies	49 % (FDI+FII) Investment by Registered FII under PIS will be limited to 24% only in the CICs listed at the Stock Exchanges within the overall limit of 49% foreign investment.	FIPB	Foreign Investment in CIC will be subject to Credit Information Companies (Regulation) Act, 2005. FII investment will be subject to the conditions that: (a) No single entity should directly or indirectly hold more than 10% equity (b) Any acquisition in excess of 1% will have to be reported to RBI as a reporting requirement; and (c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.
17.	Hazardous chemicals, viz., hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and diisocyantes of hydrocarbon.	100%	Automatic	Subject to industrial license under the Industries (Development & Regulation) Act, 1951 and other sectoral regulations.
18.	Industrial explosives-Manufacture	100%	Automatic	Subject to industrial license under Industries (Development & Regulation) Act, 1951 and regulations under Explosives Act, 1898
19.	Industrial Parks both setting up and in established Industrial Parks	100%	Automatic	Conditions in Press Note 2(2005) applicable for construction development projects would not apply provided the Industrial Parks meet with the under-mentioned conditions- i. it would comprise of a minimum of 10 units and no single unit shall occupy

				more than 50% of the allocable area; ii. the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.
20	Insurance	26%	Automatic	Subject to licensing by the Insurance Regulatory & Development Authority www.irda.nic.in
21	Investing companies in infrastructure / services sector (except telecom sector)	100%	FIPB	Where there is a prescribed cap for foreign investment, only the direct investment will be considered for the prescribed cap and foreign investment in an investing company will not be set off against this cap provided the foreign direct investment in such investing company does not exceed 49% and the management of the investing company is with the Indian owners.
22.	Mining covering exploration and mining of diamonds & precious stones; gold, silver and minerals.	100%	Automatic	Subject to Mines & Minerals (Development & Regulation) Act, 1957 www.mines.nic.in Press Note 18 (1998) and Press Note 1 (2005) are not applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and /or the particular mineral.
23.	**Non Banking Finance Companies**			
i) ii) iii) iv) v)	Merchant banking Underwriting Portfolio Management Services Investment Advisory Services Financial	100%	Automatic	Subject to: a. minimum capitalization norms for fund based NBFCs - US$ 0.5 million to be brought upfront for FDI up to 51%; US$ 5 million to be brought upfront for FDI above 51% and up to 75%;

vi) vii) viii) ix) x) xi) xii) xiii) xiv) xv) xvi) xvii) xviii)	Consultancy Stock Broking Asset Management Venture Capital Custodial Services Factoring Credit Rating Agencies Financial Leasing & Hire Purchase Finance Housing Finance Forex Broking Credit card business Money changing business Micro credit Rural credit			and US$ 50 million out of which US$ 7.5 million to be brought upfront and the balance in 24 months for FDI beyond 75% and up to 100%. b. minimum capitalization norms for non-fund based NBFC activities- US$ 0.5 million. c. foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities subject to bringing in US$ 50 million without any restriction on number of operating subsidiaries without bringing additional capital. d. joint venture operating NBFC's that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities subject to the subsidiaries also complying with the applicable minimum capital inflow. e. compliance with the guidelines of the RBI. f. The minimum capitalization norms would apply would be applicable where the foreign holding in a NBFC(both direct and indirect) exceeds the limits indicated at (a) above g. The capital for the purpose of minimum capitalization norms shall consist of ordinary shares only.
24.	**Petroleum & Natural Gas sector**			
a.	Other than	100%	Automatic	Subject to sectoral

	Refining and including market study and formulation; investment/ financing; setting up infrastructure for marketing in Petroleum & Natural Gas sector.			regulations issued by Ministry of Petroleum & Natural Gas www.petroleum.nic.in
b.	Refining	49% in case of PSUs 100% in case of Private companies	FIPB (in case of PSUs) Automatic (in case of private companies)	Subject to Sectoral policy www.petroleum.nic.in and no divestment or dilution of domestic equity in the existing PSUs.
25.	**Print Media-**			
a.	Publishing of newspaper and periodicals dealing with news and current affairs	26%	FIPB	Subject to Guidelines notified by Ministry of Information & Broadcasting. www.mib.nic.in
b.	Publishing of scientific magazines/ specialty journals/ periodicals	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in
26.	Power including generation (except Atomic energy); transmission, distribution and Power Trading.	100%	Automatic	Subject provisions of the Electricity Act, 2003 www.powermin.nic.in
27.	Tea Sector, including tea plantation	100%	FIPB	Subject to divestment of 26% equity in favour of Indian partner/Indian public within 5 years and prior approval of State Government concerned in case of any change in future land use.
28.	**Telecommunications**			
a.	Basic and cellular, Unified Access Services, National/ International	74% (Including FDI, FII, NRI, FCCBs,	Automatic up to 49%. FIPB	Subject to guidelines notified in the PN 3(2007)

	Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added telecom services	ADRs, GDRs, convertible preference shares, and proportio-nate foreign equity in Indian promoters/ Investing Company)	beyond 49%.	
b.	ISP with gateways, radio-paging, end-to-end bandwidth.	74%	Automatic up to 49%. FIPB beyond 49%.	Subject to licensing and security requirements notified by the Dept. of Telecommunications. www.dotindia.com
c.	(a) ISP without gateway, (b) infrastructure provider providing dark fibre, right of way,duct space,tower (Category I); (c) electronic mail and voice mail	100%	Automatic up to 49%. FIPB beyond 49%.	Subject to the condition that such companies shall divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world. Also subject to licensing and security requirements, where required. www.dotindia.com
d.	Manufacture of telecom equipments	100%	Automatic	Subject to sectoral requirements. www.dotindia.com
29	**Trading**			
a.	Wholesale/cash & carry trading	100%	Automatic	Subject to guidelines for FDI in trading issued by Department of Industrial Policy & Promotion vide Press Note 3 (2006 Series).
b.	Trading for exports	100%	Automatic	
c.	Trading of items sourced from small scale sector	100%	FIPB	
d.	Test marketing of such items for which a company has approval for manufacture	100%	FIPB	

e.	manufacture Single Brand product retailing	51%	FIPB	
30.	Satellites - Establishment and operation	74%	FIPB	Subject to Sectoral guidelines issued by Department of Space/ISRO www.isro.org
31.	Special Economic Zones and Free Trade Warehousing Zones covering setting up of these Zones and setting up units in the Zones	100%	Automatic	Subject to Special Economic Zones Act, 2005 and the Foreign Trade Policy. www.sezindia.nic.in

Note:

(i) FDI has been permitted in Agriculture, Plantation/Real Estate Sector only in the activities specifically mentioned in the table above. FDI is not allowed in any other activities in these sectors.

Annex-II

FDI Permitted in Various Sectors/ Activities

I. **FDI PROHIBITED**

- i. Retail trading(**except Single Brand Product retailing**)
- ii. Atomic energy
- iii. Lottery business
- iv. Gambling and betting sector

II. FDI **up to 26 %** allowed

- i. Broadcasting
  (a) FM Radio – FDI + FII investment up to 20% with prior Government approval subject to guidelines by Ministry of Information & Broadcasting.
  (b) Uplinking a news and current affairs TV Channel – up to 26% (FDI + FII) with prior FIPB approval.
- ii. Print media: Publishing newspaper and periodicals dealing with news and current affairs - FDI up to 26% with prior Government approval
- iii. Defence industries - FDI up to 26% with prior Government approval
- iv. Insurance - Foreign equity (FDI+FII) up to 26% under the automatic route
- v. Petroleum and Natural Gas Sector – Refining in case of PSUs: up to 26% with prior FIPB approval.

III. FDI **up to 49 %** allowed

- i. Broadcasting
  - a. Setting up hardware facilities such as up-linking, HUB, etc.- FDI+FII equity up to 49% with prior Government approval subject to up-linking Policy notified by Ministry of Information & Broadcasting.
  - b. Cable network- Foreign equity (FDI+FII) up to 49% with prior Government approval subject to Cable Television Network Rules (1994) notified by Ministry of Information & Broadcasting.
  - c. DTH - Foreign equity (FDI+FII) up to 49% with prior Government approval. FDI can not exceed 20% subject to guidelines by Ministry of Information & Broadcasting.
- ii. Domestic Scheduled Passenger Airline Sector - FDI up to 49% under the automatic route with no direct or indirect participation of foreign airlines.
- iii. Asset reconstruction companies – up to 49% (only FDI) with prior FIPB approval.

iv. Petroleum refining by PSUs. No divestment of domestic equity in existing PSUs would be permitted for increasing the FDI up to 49%.

v. Commodity exchanges – FDI +FII up to 49% with a sub-limit for FII at 23% and for FDI at 26%.

vi. Stock exchanges - FDI +FII up to 49% with a sub-limit for FII at 23% and for FDI at 26%.

vii. Credit Information Companies- FDI +FII up to 49% with a sub-limit for FII at 24% in the CICs listed on the Stock Exchanges.

IV. Sectors where FDI up to 51% is allowed

Single Brand product retailing- with prior Government approval subject to:-

a) Products being sold under the same brand internationally.
b) Products sold being of a single brand. Retailing of multiple products sold under different brand names, even if produced by the same manufacturer, would not be allowed.
c) Single Brand product retailing would cover only such products as are branded at the manufacturing point.

V. FDI **up to 74%** allowed

i. Telecommunication services: basic and cellular – FDI up to 74% allowed. **FDI up to 49% is under automatic route. Beyond 49% and upto 74% requires FIPB approval. Foreign equity includes FDI, FII, NRI, FCCBs, ADRs, GDRs, convertible preference shares, and proportionate foreign equity in Indian promoters/ Investing Company.**

i. ISP with gateways, radio-paging, end-to-end bandwidth – FDI up to 74% with FDI beyond 49% requiring prior Government approval

ii. Establishment and operation of satellites - FDI up to 74% with prior Government approval.

iii. Private sector banks - Foreign equity (FDI + FII) up to 74% under the automatic route.

iv. Non-Scheduled airlines, Chartered airlines - FDI up to 74% under the automatic route subject to no direct or indirect participation by foreign airlines.

v. Cargo airlines and Ground handling- FDI up to 74% allowed under the automatic route.

viii. Private sector banks - Foreign equity (FDI + FII) up to 74% under the automatic route

VI. FDI **up to 100 %** allowed subject to conditions

i. **Development of Existing Airports – FDI up to 74% under automatic route and beyond this under FIPB route**

ii. **Exploration and mining of coal and lignite for captive consumption – FDI up to 100% under automatic route subject to provisions of Coal Mines (Nationalization) Act, 1973**

iii. Trading: Trading of items sourced from small scale sector under Govt approval route

iv. Trading: Test marketing of such items for which a company has approval for manufacture under Govt approval route

v. Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.- prior Government approval subject to existing laws and subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the State.

vi. Tea Sector, including tea plantation – prior Government approval subject to divestment of 26% equity within five years

vii. Non Banking Finance Companies – FDI up to 100% under the automatic route subject to minimum capitalization norms

viii. Construction Development projects- FDI up to 100% on the automatic route subject to minimum capitalization norms; minimum area development and lock-in on original investment.

ix. ISP without gateway, infrastructure provider providing dark fibre, right of way, duct space, tower (Category I); electronic mail and voice mail – FDI up to 49% under automatic route. Beyond 49% and upto 100% subject to FIPB approval subject to divestment of 26% equity in 5 years if the investing companies are listed in other parts of the world.

x. Domestic Scheduled/ Non-Scheduled & Chartered airlines/Air transport services – NRI investment up to 100% permitted under the automatic route with no direct or indirect participation of foreign airlines.

xi. Power trading –upto 100% subject to compliance with Regulations under the Electricity Act, 2003;

xii. **Cigars & Cigarettes – up to 100% with prior FIPB approval and Subject to industrial license under the Industries (Development & Regulation) Act, 1951.**

xiii. **Alcohol distillation and brewing - 100% FDI under automatic route subject to licence by appropriate authority.**

PRESS NOTES ISSUED DURING YEAR 2005

PRESS NOTE NO. 1 (2005) : Guidelines pertaining to approval of foreign/technical collaborations under the automatic route with previous/tie-up in India

The Government has reviewed the guidelines notified vide Press Note 18 (1998 series) which stipulated approval of the Government for new proposals for foreign investment/ technical collaboration where the foreign investor has or had any previous joint venture or technology transfer/ trademark agreement in the same or allied field in India.

2. New proposals for foreign investment/technical collaboration would henceforth be allowed under the automatic route, subject to sectoral policies, as per the following guidelines:

i) Prior approval of the Government would be required only in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement in the 'same' field. The onus to provide requisite justification as also proof to the satisfaction of the Government that the new proposal would or would not in any way jeopardize the interests of the existing joint venture or technology/ trademark partner or other stakeholders would lie equally on the foreign investor/ technology supplier and the Indian partner.

ii) Even in cases where the foreign investor has a joint venture or technology transfer/ trademark agreement in the 'same' field prior approval of the Government will not be required in the following cases:

   a. Investments to be made by Venture Capital Funds registered with the Security and Exchange Board of India (SEBI); or
   b. where in the existing joint-venture investment by either of the parties is less than 3%; or
   c. where the existing venture/ collaboration is defunct or sick.

iii) In so far as joint ventures to be entered into after the date of this Press Note are concerned, the joint venture agreement may embody a 'conflict of interest' clause to safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the 'same ' field of economic activity.

3. These guidelines would come into force with immediate effect.

PRESS NOTE NO. 2 (2005) : Guidelines for FDI in development of Townships, Housing, Built-up infrastructure and Construction-development projects

With a view to catalysing investment in townships, housing, built-up infrastructure and construction-development projects as an instrument to generate economic activity, create new employment opportunities and add to the available housing stock and built-up infrastructure, the Government has vide Press Note no 2 (2005 series) decided to allow FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure), subject to the following guidelines:

a. Minimum area to be developed under each project would be as under:
   i. In case of development of serviced housing plots, a minimum land area of 10 hectares
   ii. In case of construction-development projects, a minimum built-up area of 50,000 sq.mts
   iii. In case of a combination project, any one of the above two conditions would suffice

b. The investment would further be subject to the following conditions:
   i. Minimum capitalization of US$10 million for wholly owned subsidiaries and US$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.
   ii. Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.

c. At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell undeveloped plots.

   For the purpose of these guidelines, “undeveloped plots” will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.

d. The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.

e. The investor shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/ Municipal/Local Body concerned.

f. The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer.

2. Para (iv) of Press Note 4 (2001 Series), issued by the Government on 21.5.2001, and Press Note 3 (2002 Series), issued on 4.1.2002, stand superceded.

PRESS NOTE No. 3 (2005) : Clarification regarding Guidelines pertaining to approval of foreign/ technical collaborations under the automatic route with previous/tie-up in India

Government of India

Ministry of Commerce & Industry

Department of Industrial Policy & Promotion

(Secretariat for Industrial Assistance)

PRESS NOTE NO. 3 (2005 SERIES)

Subject: Clarification regarding Guidelines pertaining to approval of foreign/technical collaborations under the automatic route with previous ventures/tie-ups in India.

1. The Government, vide Press Note 1 (2005 Series) dated 12.1.2005, notified fresh guidelines for approval of new proposals for foreign/technical collaboration under the automatic route with previous venture/tie up in India. According to these guidelines, prior approval of the Government would be required for new proposals for foreign investment/technical collaboration, in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement in the same field in India.

2. The Government had, earlier vide Press Note 10 (1999 Series) notified the definition of “same field” as the 4 digit National Industrial Classification (NIC) 1987 Code. It is hereby reiterated that for the purposes of Press Note 1 (2005 Series), the definition of ‘same’ field would continue to be 4 digit NIC 1987 Code.

3. It is also clarified that proposals in the Information Technology sector, investments by multinational financial institutions and in the mining sector for same area/mineral were exempted from the application of Press Note 18 (1998 Series) vide Press Note 8 (2000), Press Note 1(2001) and Press Note 2(2000) respectively. Investment proposals in these sectors would continue to be exempt from Press Note 1 (2005 Series).

4. From para 2(i) of the guidelines notified vide Press Note 1 (2005 Series), it is clear that prior Government approval for new proposals would be required only in cases where the foreign investor has an existing joint venture, technology transfer/trademark agreement in the 'same' field subject to provisions of para 2(ii) of the Press Note 1 (2005 Series).

5. For the purpose of avoiding any ambiguity it is reiterated that joint ventures, technology transfer/trademark agreements existing on the date of issue of the said Press Note i.e. 12.1.2005 would be treated as existing joint venture, technology transfer/trademark agreement for the purposes of Press Note 1 (2005 Series).

(UMESH KUMAR)
Joint Secretary to the Government of India

PRESS NOTE NO. 4 (2005) : Revised guidelines for conversion of NRI investment into repatriable equity.

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
(SIA-FC Section)

Press Note No. 4 (2005 Series)

Vide Press Note 4 (2001 Series), investment by Non-resident Indians (NRI) made in foreign exchange on non-repatriable basis was allowed to be made fully repatriable whereas investment made in Indian rupees through rupee account continued to remain non-rapatriable.

2. Proposals for conversion of NRI investment into repatriable equity are hitherto being considered by the FIPB for approval. This procedure has been reviewed in the context of various liberalization measures taken by the Government in the recent past.

3. It is clarified that in terms of Press Note 4 (2001 series), all proposals would qualify for conversion of non-repatriable equity into repatriable equity under the automatic route provided:

(a) the original investment by the NRI was made in foreign exchange under the FDI Scheme (Schedule I of FEMA Regulations 20/2000 dated 3.5.2000); and

(b) the sector/activity in which the investment is proposed to be converted into repatriable equity is on the automatic route for FDI.

(R.S.Julaniya)
Director

PRESS NOTE NO. 5 (2005) : Enhancement of FDI ceiling from 49% to 74% in Telecom sector.

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Secretariat for Industrial Assistance

PRESS NOTE NO. 5 (2005 SERIES)

Subject: Enhancement of the Foreign Direct Investment ceiling from 49 percent to 74 per cent in the Telecom sector

1. In pursuance of the Government's commitment to liberalise the FDI regime, it has been decided to enhance the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in certain telecom services [such as Basic, Cellular, Unified Access Services, National/International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added services], subject to the following conditions:-

A. The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs),Global Depository Receipts (GDRs), convertible preference shares,proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. Thus, 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company. Hence, the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.

1 B. The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens, enforced through licence agreement. The appointment to these positions from among resident Indian citizens shall

be made in consultation with serious Indian investors. Serious investor has been defined below in para G(ii).

C. The Share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and CEO shall be resident Indian citizens and shall also envisage the
conditions of adherence to Licence Agreement.

D. FDI upto 49 per cent will continue to be on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.

E. The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

F. FDI shall be subject to laws of India and not the laws of the foreign country/countries.

G. Department of Telecommunications (DoT) will enforce the above and the conditions mentioned below through appropriate amendment in licence:-

(i) There shall be a non-obstante clause in the licence which confers powers upon the licensor to cancel the licence under certain defined circumstances.

(ii) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.

(iii) The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the licence agreement shall automatically lead to the company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.

(iv) Chief Technical Officer (CTO)/Chief Finance Officer (CFO) shall be resident Indian citizens. The Licensor/DoT shall also be empowered to notify key positions to be held by resident Indian citizens.

(v) The Company shall not transfer the following to any person/ place outside India:-

(a) any accounting information relating to subscriber (except for roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ;

(b) user information (except pertaining to foreign subscribers using Indian Operator’s network while roaming); and

(c) details of their infrastructure/network diagram except to telecom equipment suppliers/manufacturers who undertake the installation, commissioning etc. of the infrastructure of the licensee Company on signing of non-disclosure agreement.

(vi) The Company when entering into roaming agreements with service providers outside India must provide, on demand, the list of such users (telephone numbers, in case of foreign subscribers using Indian Operator’s network while roaming).

(vii) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavor to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.

(viii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India.

(ix) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency out side the country for any maintenance/repairs by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming non-functional for a prolonged period, subject to meeting the following conditions:-

(a) An identified Government agency (Intelligence Bureau) will be notified, when RA is to be provided.

(b) Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance.

(c) The control of Remote Access i.e. activation, transfer of data, termination etc. shall be within the country and not at a Remote location, abroad.

(d) The Government agency will be given all support to record the transactions for on-line monitoring.

(e) Any equipment or software that forms part of the overall monitoring shall not be permitted to have remote access under any circumstances.

(f) DoT will define appropriately the terms catastrophic software failure, major part of the network, and prolonged period used under this clause.

(x) It shall be open to the Department of Telecommunications to restrict the Licensee Company from operating in any sensitive area from the National Security angle.

(xi) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.

(xii) For monitoring traffic, the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.

(xiii) In case of not adhering to Licence conditions envisaged in para G, the licence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance bank guarantee(s) and the licensor shall not be liable for loss of any kind.

2. The conditions at para 1 above shall also be applicable to the existing companies operating telecom service(s) which had the FDI cap of 49%.

3. The relevant provisions of FDI policy for ‘investment companies’, as given in Press Note 2 (2000 series) dated 11.2.2000 issued by Department of Industrial Policy and Promotion will no longer be applicable to telecom sector.

4. An initial correction time of 4 months from the date of issue of this notification shall be allowed to the existing licensee companies providing telecom services mentioned in para 1 above for ensuring adherence to the aforesaid conditions. An unconditional compliance to the aforesaid conditions shall be submitted to the licensor within this period.

5. Press Note 15 (1998 series) and Press Note 2 (2000 series) issued by Department of Industrial Policy & Promotion stand modified to the above extent.

(Umesh Kumar)
Joint Secretary to the Government of India

PRESS NOTE NO. 6 (2005) : FDI in Terrestrial Broadcasting FM

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

PRESS NOTE NO. 6 (2005 SERIES)

:*Subject: FDI in Terrestrial Broadcasting FM.*

Till now, foreign investment was permitted in Terrestrial Broadcasting up to 20% under the Portfolio Investment Schemes under Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India)Regulations, 2000 and Foreign Direct Investment (FDI) was not permitted by foreign entities..

2. Government of India has recently announced Phase II of the programme for expansion of FM radio broadcasting services through private agencies to supplement and complement the efforts of the All India Radio by operationalising radio for providing programmes with local content and relevance, improving the quality of fidelity in reception and generation, encouraging participation by local talent and generating employment.

3. The Government has now decided to permit foreign investment, including FDI, NRI and PIO investments and portfolio investments up to 20% equity for FM Radio's Broadcasting Services subject to such terms and conditions as specified from time to time by Ministry of Information and Broadcasting for grant of permission for setting up of FM Radio Stations.

(Umesh Kumar)
Joint Secretary to the Government of India

Press Note No.1 of 2006

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

Press Note No. 01 (2006 Series)

Subject: Foreign Direct Investment (FDI) in Up-linking of TV Channels

At present, FDI up to 49% is permitted for setting up hardware, Up-linking HUB, etc., subject to compliance with the Broadcasting Laws and Regulationsand subject to the detailed guidelines for Up-linking announced by the Ministry of Information and Broadcasting from time to time.

2. Under the revised guidelines for Up-linking notified on 2.12.2005, the Government has decided to allow FDI in the Up-linking of TV Channels as under:

a) FDI up to 49% would be permitted with prior approval of the Government for setting up Up-linking HUB/ Teleports;

b) FDI up to 100% would be allowed with prior approval of the Government for Up linking a Non-News & Current Affairs TV Channel;

c) FDI (including investment by Foreign Institutional Investors (FIIs) up to 26% would be permitted with prior approval of the Government for Uplinking a News & Current Affairs TV Channel subject to the condition that the portfolio investment in the form of FII/ NRI deposits shall not be “persons acting in concert”with FDI investors, as defined in the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The Company permitted to uplink the channel shall certify the continued compliance of this requirement through the Company Secretary at the end of each financial year.

While calculating foreign equity of the applicant company, the foreign holding component, if any, in the equity of the Indian shareholder companies of the applicant company will be duly reckoned on pro-rata basis, so as to arrive at the total foreign holding in the applicant company. However, the indirect FII equity in a company as on 31st March of the year would be taken for the purposes of pro-rata reckoning of foreign holdings.

3. FDI for Up-linking TV Channels will be subject to compliance with the Uplinking Policy of the Government of India notified by the Ministry of Information & Broadcasting from time to time.

(Umesh Kumar)
Joint Secretary to the Government of India

Press Note No. 2 of 2006

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

PRESS NOTE NO. 2 (2006 SERIES)

Subject: Clarification regarding Foreign Direct Investment (FDI) in townships, housing, built-up infrastructure and construction-development projects.

The Government, vide Press Note 2 (2005 Series) dated 2.3.2005, had notified the policy for Foreign Direct Investment (FDI) in townships, housing, built-up infrastructure and construction-development projects. The Government has received few requests from investors seeking clarifications on applicability of these policy guidelines to some other sectors such as Special Economic Zones, Hotels, Hospitals, etc.

2. The matter has been considered in the light of the policy prevailing prior to issue of the subject Press Note. FDI up to 100% was already allowed under the automatic route in the Hotel and tourism sector vide Press Note 4 (2001 Series) and in the Hospital sector vide Press Note 2 (2000 Series). Special Economic Zones are separately regulated under the Special Economic Zone Act, 2005.

3. It is clarified that the provisions of Press Note 2 (2005 Series) shall not apply to Special Economic Zones; neither shall it apply to establishment and operation of hotels and hospitals which shall continue to be governed by Press Note 4 (2001 Series) and Press Note 2 (2000 Series) respectively.

(Umesh Kumar)
Joint Secretary to the Government of India

Press Note 3 (2006 Series)

Subject: Guidelines for FDI in Retail Trade of 'Single Brand' Products

The Government has decided to allow FDI up to 51%, with prior Government approval, in retail trade of 'Single Brand' products. This is, inter alia, aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

2. FDI up to 51% in retail trade of 'Single Brand' products would be subject to the following conditions:

i. Products to be sold should be of a 'Single Brand' only.
ii. Products should be sold under the same brand internationally.
iii. 'Single Brand' product-retailing would cover only products which are branded during manufacturing.

3. FDI would be allowed only with prior approval of the Government. Application seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The application would specifically indicate the product/ product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/ product categories to be sold under 'Single Brand' would require a fresh approval of the Government.

4. Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the products proposed to be sold satisfy the notified guidelines, before being considered by the FIPB for Government approval.

5. These guidelines would come into force with immediate effect.

(Umesh Kumar)
Joint Secretary to the Government of India

Press Note No. 4 of 2006

Subject: Rationalisation of the FDI Policy

The policy on Foreign Direct Investment (FDI) has been reviewed on a continuing basis and several measures announced from time to time for rationalization / liberalization of the policy and simplification of procedures.

2. Government of India has recently further reviewed the policy on FDI and decided as under:

a. To allow under the automatic route, FDI up to 100%, for :

   i. distillation & brewing of potable alcohol;
   ii. manufacture of industrial explosives;
   iii. manufacture of hazardous chemicals;
   iv. manufacturing activities located within 25 kms of the Standard Urban Area limits which require Industrial license under the Industries(Development & Regulation)Act, 1951;
   v. setting up Greenfield airport projects;
   vi. laying of Natural Gas/LNG pipelines, market study & formulation and Investment financing in the Petroleum & Natural Gas sector; and
   vii. cash & carry wholesale trading and export trading.

b. To increase FDI caps to 100% and permit it under the automatic route for:

   i. coal & lignite mining for captive consumption;
   ii. setting up infrastructure relating to marketing in Petroleum & Natural Gas sector; and
   iii. exploration and mining of diamonds & precious stones.

c. To allow FDI up to 100% under the automatic route in

   i. power trading subject to compliance with Regulations under the Electricity Act, 2003;
   ii. processing and warehousing of coffee and rubber.

d. To allow FDI up to 51 % with prior Government approval for retail trade of 'Single Brand' products, detailed guidelines for which have been notified vide Press Note 3 (2006 Series).

e. To allow under the automatic route transfer of shares from residents to non-residents in financial services, and where Securities & Exchange Board of India (Substantial Acquisition and Takeover) Regulations are attracted, in cases where approvals are required from the Reserve Bank of India/ Securities & Exchange Board of India (Substantial Acquisition and Takeover) Regulations /Insurance Regulatory & Development Authority. With this, transfer of shares from residents to non-residents, including acquisition of shares in an existing company would be on the automatic route subject to sectoral policy on FDI.

f. To dispense with the requirement of mandatory divestment of 26% foreign equity in B2B e-Commerce.

3. FDI/NRI investment under the automatic route shall continue to be governed by the Sectoral regulations/licensing requirements.

4. A summary of the FDI policy and regulations applicable in various sectors / activities is at the Annex.

(Umesh Kumar)
Joint Secretary to the Government of India

F, No. 5(3)/2005-FC dated 10 –2-2006

Policy on Foreign Direct Investment (FDI)

IV. Sectors prohibited for FDI

i. Retail trading (except Single Brand Product retailing)
ii. Atomic energy
iii. Lottery business
iv. Gambling and Betting .

II. All Activities/ Sectors would require prior Government approval for FDI in the following circumstances:

i. where provisions of Press Note 1(2005 Series) are attracted;
ii. where more than 24% foreign equity is proposed to be inducted for manufacture of items reserved for the Small Scale sector.

III. In Sectors/Activities not listed below, FDI is permitted up to 100% on the automatic route subject to sectoral rules / regulations applicable.

IV. Sector-specific policy for FDI

S.N	Sector/Activity	FDI Cap / Equity	Entry Route	Other conditions	Relevant Press Note issued by D/o IPP www.dipp.gov.in
1.	**Airports-**				
a.	Greenfield projects	**100%**	Automatic	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic. in	PN 4 / 2006
b.	Existing projects	**100%**	FIPB beyond 74%.	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic. in	PN 4 / 2006
2.	**Air Transport Services**	**49%- FDI; 100%- for NRI investment**	Automatic	Subject to no direct or indirect participation by foreign airlines. Government of India Gazette Notification dated 2.11.2004 issued by Ministry of Civil Aviation www.civilaviation.nic. in	.

3.	**Alcohol - Distillation & Brewing**	**100%**	Automatic	Subject to license by appropriate authority	PN 4 / 2006
4.	**Asset Reconstruction Companies**	**49%** **(only FDI)**	FIPB	Where any individual investment exceeds 10% of the equity, provisions of Section 3(3)(f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should be complied with. www.finmin.nic.in	
5.	**Atomic Minerals**	**74%**	FIPB	Subject to guidelines issued by Department of Atomic Energy vide Resolution No. 8/1(1)/97-PSU/1422 dated 6.10.98.	
6.	**Banking - Private sector**	**74%** **(FDI+FII)**	Automatic	Subject to guidelines for setting up branches/ subsidiaries of foreign banks issued by RBI. www.rbi.org.in	PN 2 / 2004
7.	**Broadcasting**				
a.	FM Radio	FDI +FII investment up to **20%**	FIPB	Subject to Guidelines notified by Ministry of Information & Broadcasting www.mib.nic.in	PN 6 / 2005
b.	Cable network	**49%** (FDI+FII**)**	FIPB	Subject to Cable Television Network Rules (1994) Notified by Ministry of Information & Broadcasting www.mib.nic.in	
c.	Direct-To-Home	**49%** (FDI+FII**).** Within this limit, FDI	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting	

		component not to exceed 20%		www.mib.nic.in	
d.	Setting up hardware facilities such as up-linking, HUB, etc	**49%** (FDI+FII**)**	FIPB	Subject to Up-linking Policy notified by Ministry of Information & Broadcasting www.mib.nic.in	PN 1 / 2006
e.	Up-linking a News & Current Affairs TV Channel	**26% FDI+FII**	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	PN 1/ 2006
f.	Up-linking a Non-news & Current Affairs TV Channel	**100%**	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	PN 1 / 2006
8.	**Cigars & Cigarettes-** Manufacture	**100%**	FIPB	Subject to industrial license under the Industries (Development & Regulation) Act, 1951	PN 4 / 2006
9.	**Coal & Lignite mining** for captive consumption by power projects, and iron & steel, cement production and other eligible activities permitted under the Coal Mines (Nationalisation) Act, 1973.	**100%**	Automatic	Subject to provisions of Coal Mines (Nationalization) Act, 1973 www.coal.nic.in	PN 4 / 2006
10.	**Coffee & Rubber processing & warehousing**	**100%**	Automatic		PN 4 / 2006
11.	**Construction Development projects,** including housing, commercial	**100%**	Automatic	Subject to conditions notified vide Press Note 2 (2005 Series) including: a. minimum	PN 2 / 2005 & PN 2 / 2006

	premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure, townships.			capitalization of US$ 10 million for wholly owned subsidiaries and US$ 5 million for joint venture. The funds would have to be brought within six months of commencement of business of the Company. b. Minimum area to be developed under each project- 10 hectares in case of development of serviced housing plots; and built-up area of 50,000 sq. mts. in case of construction development project; and any of the above in case of a combination project. **[Note: For investment by NRIs, the conditions mentioned in Press Note 2 / 2005 are not applicable.]**	
12.	**Courier services** for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.	**100%**	FIPB	Subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the State. www.indiapost.gov.in	PN 4 / 2001
13.	**Defence production**	**26%**	FIPB	Subject to licensing under Industries (Development &	PN 4 / 2001 & PN 2 / 2002

				Regulation) Act, 1951 and guidelines on FDI in production of arms & ammunition.	
14.	**Floriculture, Horticulture**, **Development of Seeds, Animal Husbandry**, **Pisciculture, aqua-culture, cultivation of vegetables,, mushrooms, under controlled conditions** and services related to agro and allied sectors.	**100%**	Automatic		PN 4 / 2006
15.	**Hazardous chemicals,** viz., hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and di-isocyantes of hydrocarbon.	**100%**	Automatic	Subject to industrial license under the Industries (Development & Regulation) Act, 1951 and other sectoral regulations.	PN 4 / 2006
16.	**Industrial explosives-** Manufacture	**100%**	Automatic	Subject to industrial license under Industries (Development & Regulation) Act, 1951 and regulations under Explosives Act, 1898	PN 4 / 2006
17.	**Insurance**	**26%**	Automatic	Subject to licensing by the Insurance Regulatory & Development Authority www.irda.nic.in .	PN 10 / 2000
18.	**Investing companies in infrastructure /**	**49%**	FIPB	Foreign investment in an investing company will not be counted	PN 2 / 2000 & PN 5 / 2005

	services sector (except telecom sector)			towards sectoral cap in infrastructure /services sector provided the investment is up to 49% and the management of the company is in Indian hands.	
19.	**Mining** covering exploration and mining of diamonds & precious stones; gold, silver and minerals.	**100%**	Automatic	Subject to Mines & Minerals (Development & Regulation) Act, 1957 www.mines.nic.in Press Note 18 (1998) and Press Note 1 (2005) are not applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and / or the particular mineral.	PN 2 / 2000, PN 3 / 2005,& PN 4 / 2006
20.	**Non Banking Finance Companies- approved activities**				
i) ii) iii) iv) v) vi) vii) viii) ix) x) xi) xii) xiii) xiv)	**Merchant banking** **Underwriting** **Portfolio Management Services** **Investment Advisory Services** **Financial Consultancy** **Stock Broking** **Asset Management** **Venture Capital** **Custodial Services** **Factoring** **Credit Reference Agencies** **Credit Rating Agencies** **Leasing & Finance** **Housing Finance**	**100%**	Automatic	Subject to: a. minimum capitalization norms for fund based NBFCs - US$ 0.5 million to be brought upfront for FDI up to 51%; US$ 5 million to be brought upfront for FDI above 51% and up to 75%; and US$ 50 million out of which US$ 7.5 million to be brought upfront and the balance in 24 months for FDI beyond 75% and up to 100%.	PN 2 / 2000, PN 6 / 2000, & PN 2 / 2001

xv) xvi) xvii) xviii) xix)	**Forex Broking** **Credit card business** **Money changing business** **Micro credit** **Rural credit.**			b. minimum capitalization norms for non-fund based NBFC activities- US$ 0.5 million. c. foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities subject to bringing in Under Secretary 50 million without any restriction on number of operating subsidiaries without bringing additional capital. d. joint venture operating NBFC's that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities subject to the subsidiaries also complying with the applicable minimum capital inflow. e. compliance with the guidelines of the RBI.	
21.	**Petroleum & Natural Gas sector**				
a.	Other than Refining and including market study and	**100%**	Automatic	Subject to sectoral regulations issued by Ministry of Petroleum & Natural Gas; and	PN 1 / 2004 & PN 4 / 2006

	formulation; investment/ financing; setting up infrastructure for marketing in Petroleum & Natural Gas sector.			in the case of actual trading and marketing of petroleum products, divestment of 26% equity in favour of Indian partner/public within 5 years. www.petroleum.nic.in	
b.	Refining	**26% in case of PSUs** **100% in case of Private companies**	FIPB (in case of PSUs) Automatic (in case of private companies)	Subject to Sectoral policy www.petroleum.nic.in	PN 2 / 2000
22.	**Print Media-**				
a.	Publishing of **newspaper and periodicals** dealing with news and current affairs	**26%**	FIPB	Subject to Guidelines notified by Ministry of Information & Broadcasting. www.mib.nic.in	
b.	**Publishing of scientific magazines/ specialty journals/ periodicals**	**100%**	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in	PN 1 / 2004
23	**Power** including generation (except Atomic energy); transmission, distribution and Power Trading.	**100%**	Automatic	Subject provisions of the Electricity Act, 2003 www.powermin.nic.in	PN 2 / 1998, PN / 7 2000, & PN 4 / 2006
24.	**Tea Sector**, including tea plantation	**100%**	FIPB	Subject to divestment of 26% equity in favour of Indian partner/Indian public within 5 years and prior approval of State Government for change in land use.	PN 6 / 2002
25.	**Telecommunication**				
a.	Basic and cellular,	**74%**	Automatic	Subject to guidelines	PN 5 / 2005

	Unified Access Services, National/International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added telecom services	(Including FDI, FII, NRI, FCCBs, ADRs, GDRs, convertible preference shares, and proportionate foreign equity in Indian promoters/ Investing Company)	up to 49%. FIPB beyond 49%	notified in the PN 5 / 2005 Series	
b.	ISP with gateways, radio-paging, end-to-end bandwidth.	**74%**	Automatic up to 49%. FIPB beyond 49%	Subject to licensing and security requirements notified by the Department of Telecommunications www.dotindia.com	PN 4 / 2001
c.	ISP without gateway, infrastructure provider providing dark fibre, electronic mail and voice mail	**100%**	Automatic up to 49%. FIPB beyond 49%	Subject to the condition that such companies shall divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world. Also subject to licensing and security requirements, where required. www.dotindia.com	PN 9 / 2000
d.	Manufacture of telecom equipments	**100%**	Automatic	Subject to sectoral requirements. www.dotindia.com	PN 2 / 2000
26.	**Trading**				
a.	Wholesale / cash & carry trading	**100%**	Automatic	Subject to guidelines for FDI in trading issued by Department of Industrial	PN 4 / 2006

b.	Trading for exports	**100%**	Automatic	Policy & Promotion vide Press Note 3 (2006 Series).	
c.	Trading of items sourced from small scale sector	**100%**	FIPB		
d.	Test marketing of such items for which a company has approval for manufacture	**100%**	FIPB		
e.	Single Brand product retailing	**51%**	FIPB		
27.	**Satellites - Establishment and operation**	**74%**	FIPB	Subject to Sectoral guidelines issued by Department of Space / ISRO www.isro.org	
28.	Special Economic Zones and Free Trade Warehousing Zones covering setting up of these Zones and setting up units in the Zones	**100%**	Automatic	Subject to Special Economic Zones Act, 2005 and the Foreign Trade Policy. www.sezindia.nic.in	PN 9 / 2000; PN 2 /2006; & PN 4 / 2006

Annexure - IV

Details of Selected Agencies/ Departments involved with Various Clearances/Approvals and their Web-Sites

Subject Matter	Concerned Ministry/Department of Govt. of India	Website address
Industrial Entrepreneur Memorandum for delicensed industries	Department of Industrial Policy & Promotion	http://dipp.gov.in
Approval for Industrial License / carry-on-business License	Department of Industrial Policy & Promotion	http://dipp.gov.in
Approval for Technology Transfer: (i) Automatic route (ii) Government approval (PAB)	Reserve Bank of India Department of Industrial Policy & Promotion	http://www.rbi.org.in http://dipp.gov.in
Approval for financial collaboration: (i) Automatic route (ii) Government approval (FIPB)	Reserve Bank of India Department of Economic Affairs	http://www.rbi.org.in http://finmin.nic.in
Approval of Industrial Park (i) Automatic route (ii) Non-Automatic route (Empowered Committee)	Department of Industrial Policy & Promotion	http://dipp.gov.in
Registration as a company & certificate of commencement of business	Department of Company Affairs (Registrar of Companies)	http://dca.gov.in
Matters relating to FDI policy and its promotion and facilitation as also promotion and facilitation of investment by Non-resident Indians (NRIs)	Department of Industrial Policy & Promotion	http://dipp.gov.in
Matters relating to Foreign Exchange	Reserve Bank of India	http://www.rbi.org.in
Matters relating to Taxation Matters relating to Direct Taxation Matters relating to Excise & Customs	Department of Revenue Central Board of Direct Taxes Central Board of Excise & Custom	http://finmin.nic.in http://incometaxindia.gov.in http://www.cbec.gov.in
Matters relating to Industrial Relations	Ministry of Labour	http://labour.nic.in
Import of Goods	Directorate General of Foreign Trade	http://dgft.delhi.nic.in
Matters relating to Environment & Forest clearance	Ministry of Environment and Forests	http://envfor.nic.in
Overseas investment by Indians	Ministry of Overseas Affairs	http://iic.nic.in
Allotment of land/Shed in Industrial areas, acquisition of land, change in land use, approval of building plan, release of water connection etc.	Departments Concerned of State Governments	A link for Web site address of the state/UT is given at www.dipp.gov.in

Annexure V

ADDRESSES FOR FILING APPLICATION ETC:

Sl.No.	**Application for**	**Address for filing**
1.	Industrial Licence/COB Licence	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
2.	IEM	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
3.	Monthly Production Returns	Jt.Director, Industrial Statistics Unit (ISU), Department of Industrial Policy & Promotion,Room No. 326, Udyog Bhavan, New Delhi –11. India Fax:011-23014564 E-mail: vishu@ub.nic.in
4.	FDI Application with NRI Investment & 100% EOU application and FDI in Retail Trading	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
5.	Foreign Technology Agreement under Government Approval	Project Approval Board, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
6.	Approval for Industrial Park, Model town/Growth Center under Government Approval	PR&C Section, SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi –11. India
7.	FDI under automatic route	Regional Office concerned of Reserve Bank of India(Addresses are available at RBI website)
8	FDI application under government route	FIPB Unit, Department of Economic Affairs, Ministry of finance, North Block, New Delhi –110001. India
9.	For registration and incorporation of company	Registrar of Companies, Ministry of Company Affairs,B Block, 2nd floor, Paryavaran Bhavan, CGO complex,New Delhi –110003. India
10.	For setting up liaison / Project/ Branch office of a foreign company	Reserve bank of India, Central Office, Foreign Investment Division, Shaheed Bhagat Singh Road, Mumbai –400001, India

Annexure VI

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