

FOREIGN DIRECT INVESTMENT – REGULATION AND POLICY

INTRODUCTION

To promote Foreign Direct Investment (FDI), the Government has put in place an investor-friendly policy, wherein except for a small negative list, most sectors are open for 100% FDI under the Automatic route. Further, the policy on FDI is reviewed on an ongoing basis, to ensure that India remains attractive & investor friendly destination.

FOREIGN DIRECT INVESTMENTS IN INDIA

FOREIGN DIRECT INVESTMENT POLICY 2016

INTENT AND OBJECTIVE

In a globalized world today, India's growth story is intrinsically linked with the story of both Indian entrepreneurship and Foreign Direct Investment (FDI). **The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible.** This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every year, to capture and keep pace with the regulatory changes, effected in the interregnum. **The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.**

These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail.

GENERAL CONDITIONS ON FDI

WHO CAN INVEST IN INDIA?

A **non-resident entity** can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.

Further, a citizen of **Pakistan** or an entity incorporated in **Pakistan** can invest, only under the **Government route, in sectors/activities other than defence, space and atomic energy and sectors/activities prohibited for foreign investment.**

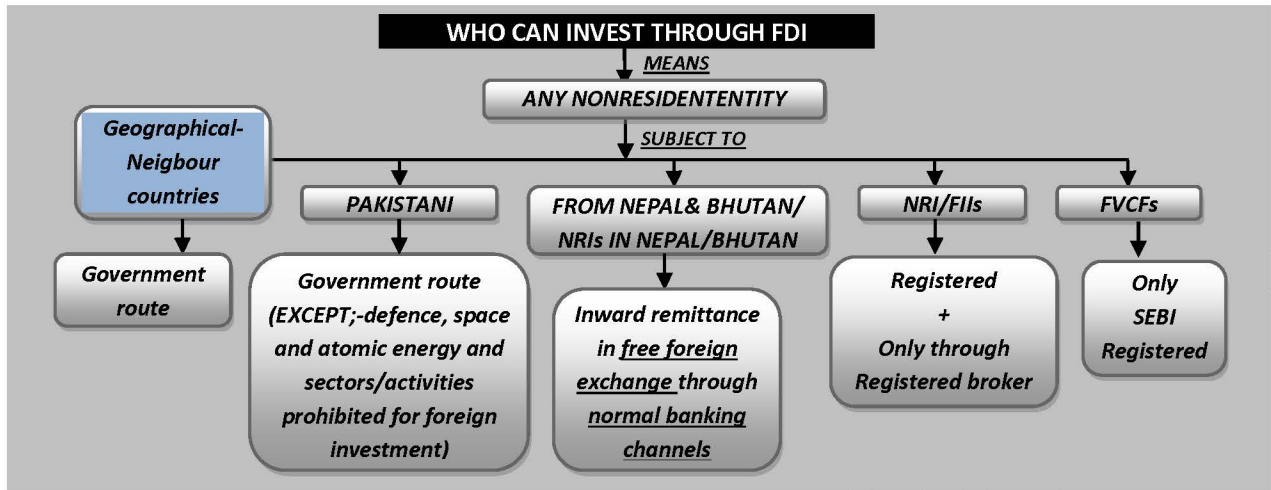
NRIs resident in Nepal and Bhutan as well as **citizens of Nepal and Bhutan** are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

Only **registered FIIs and NRIs** as per Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, can invest/trade through a **registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges.** ASEBI registered Foreign Venture Capital Investor (FVCI) can also invest.

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Telecom Services(including Telecom Infrastructure Providers Category-I) All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.	100%	Automatic up to 49% Government route beyond 49%
Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	Automatic
E-commerce activities	100%	Automatic
Single Brand product retail trading	100%	Automatic up to 49% Government route beyond 49%
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway Infrastructure Construction, operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivity's to main railway line and (x) Mass Rapid Transport Systems.	100%	Automatic
Asset Reconstruction Company	100%	Automatic
Banking- Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%.
Banking- Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20%	Government
Credit Information Companies	100%	Automatic
Infrastructure companies in Securities Markets, namely, stock exchanges, commodity exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49%	Automatic
Insurance Company	49%	Automatic
Insurance Brokers	100%	Automatic
Third Party Administrators	49%	Automatic
Surveyors and Loss Assessors	49%	Automatic

- (e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation/merger/demerger with an existing Indian company, as well as issue of shares on conversion of ECB/royalty/lumpsum technical know-how fee/import of capital goods by units in SEZs, has to be reported in Form FC-GPR.

FOREIGN EXCHANGE MANAGEMENT (MODE OF PAYMENT AND REPORTING OF NONDEBT INSTRUMENTS) REGULATIONS, 2019

FOREIGN EXCHANGE MANAGEMENT (MODE OF PAYMENT AND REPORTING OF NON-DEBT INSTRUMENTS) (AMENDMENT) REGULATIONS, 2020

SCHEDULE II (INVESTMENTS BY FOREIGN PORTFOLIO INVESTORS)

A. Mode of payment

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a Special NonResident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

B. Remittance of sale proceeds

The sale proceeds (net of taxes) of equity instruments and units of REITs, InViTs and domestic mutual fund may be remitted outside India or credited to the foreign currency account or a SNRR account of the FPI.

SCHEDULE VIII (INVESTMENT BY A PERSON RESIDENT OUTSIDE INDIA IN AN INVESTMENT VEHICLE)

A. Mode of payment:

The amount of consideration shall be paid as inward remittance from abroad through banking channels or by way of swap of shares of a Special Purpose Vehicle or out of funds held in NRE or FCNR(B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

B. Remittance of sale/ maturity proceeds:

The sale/ maturity proceeds (net of taxes) of the units may be remitted outside India or may be credited to the NRE or FCNR(B) or SNRR account, as applicable of the person concerned.

REPORTING REQUIREMENTS

The reporting requirement for any Investment in India by a person resident outside India shall be as follows:

- (1) Form Foreign Currency-Gross Provisional Return (FC-GPR):** An Indian Company issuing equity instruments to a person resident outside India and where such issue is reckoned as Foreign Direct Investment, defined under the rules, shall report such issue in Form FC-GPR, not later than thirty days from the date of issue of equity instruments.
- (2) Annual Return on Foreign Liabilities and Assets (FLA):** An Indian Company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year including the current year, shall submit form FLA to the Reserve Bank on or before the 15th day of July of each year.
- (3) Form Foreign Currency-Transfer of Shares (FC-TRS):** Form FCTRS shall be filed for transfer of equity instruments in accordance with the rules, between:

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| i. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and person resident outside India holding equity instruments on a non-repatriable basis; and |
| ii. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India |

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

(5) **Form Depository Receipt Return (DRR):** The Domestic Custodian shall report in **Form DRR**, the issue / transfer of depository receipts issued in accordance with the Depository Receipt Scheme, 2014 within 30 days of close of the issue.

(6) **Form LLP (I):** A Limited Liability Partnerships (LLP) receiving amount of consideration for capital contribution and acquisition of profit shares shall file Form LLP (I), within 30 days from the date of receipt of the amount of consideration.

(7) **Form InVI:** An Investment vehicle which has issued its units to a person resident outside India shall file Form InVI within 30 days from the date of issue of units.

FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) REGULATIONS, 2019

RESTRICTION ON INVESTMENT BY A PERSON RESIDENT OUTSIDE INDIA

Regulations 3 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 states that save as **otherwise provided in the Foreign Exchange Management Act, or rules or regulations** made thereunder, **no person resident outside India shall make any investment in India.** It may be noted that here investment means to subscribe, acquire, hold or transfer any debt instrument or unit issued by a person resident in India.

Provided that an investment made in accordance with the Foreign Exchange Management Act or the rules or the regulations framed thereunder and held on the date of commencement of **Foreign Exchange Management (Debt Instruments) Regulations, 2019**, shall be deemed to have been made under the Regulations and shall accordingly be governed by the Regulations.

Provided further that the **Reserve Bank may**, on an application made to it and for sufficient reasons, **permit** a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

RESTRICTION ON RECEIVING INVESTMENT

Regulations 4 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 provides that **save as otherwise provided in the Foreign Exchange Management Act or rules or regulations made thereunder, an Indian entity or a mutual fund, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books.**

Provided that the **Reserve Bank may**, on an application made to it and for sufficient reasons, **permit** an Indian entity or a mutual fund, or a venture capital fund or a Firm or an Association of Persons or a proprietary concern to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.

PURCHASE AND SALE OF DEBT INSTRUMENTS BY A PERSON RESIDENT OUTSIDE INDIA

Permission to person's resident outside India

A. Permission to Foreign Portfolio Investors (FPIs)

An FPI may purchase the following debt instruments on repatriation basis subject to the terms and conditions specified by the **Securities and Exchange Board of India** and the **Reserve Bank**:

a) dated Government securities/ treasury bills;
b) non-convertible debentures/ bonds issued by an Indian company;
c) commercial papers issued by an Indian company;
d) units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;
e) Security Receipts (SRs) issued by Asset Reconstruction Companies;
f) debt instruments issued by banks, eligible for inclusion in regulatory capital;
g) Credit enhanced bonds;
h) Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;
i) Securitised debt instruments, including any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s with banks, Financial Institutions or NBFCs as originators;
j) Rupee denominated bonds/ units issued by Infrastructure Debt Funds;
k) Municipal Bonds;

B. Permission to Non-resident Indians (NRIs) or Overseas Citizens of India (OCIs) – Repatriation basis

(1) A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may, without limit, purchase the following instruments on repatriation basis,

a. Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;
b. Bonds issued by a Public Sector Undertaking (PSU) in India;
c. Bonds issued by Infrastructure Debt Funds;
d. Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;

(2) An NRI or an OCI may purchase on repatriation basis debt instruments **issued by banks**, eligible for inclusion in regulatory capital.

EXPORT OF GOODS AND SERVICES

Export of goods and services is regulated by the provisions of Sections 7 and 8 of FEMA, 1999 and Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

Export includes the taking or sending out of India goods by land, sea or air, on consignment or by way of sale, lease, hire purchase or under any other arrangement by whatever name called. In the case of software, export also includes transmission of any data through any electronic medium.

In general, all exports are free.