FOREIGN DIRECT INVESTMENT

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NRI
(DEFINED BY FDI, 2016)

Resident Outside India

- Who is either,
  - Citizen of India

    OR
  - Overseas Citizen of India

    (defined under citizen act,1955)

ELIGIBLE INVESTOR'S

- A non –resident entity can invest in India, subject to FDI Policy except in those sector /activities which are prohibited.
- However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route.

TYPES OF FDI ROUTE

I. AUTOMATIC ROUTE - No need the prior approval of Government to invest.

II. GOVERNMENT ROUTE - Also known as FIPB (Foreign Investment Promotion Board).In this specific route, FIPB approve each foreign investment.

ELIGIBLE INVESTEE ENTITIES

I. FDI in Indian Company.
II. FDI in Partnership Firm/Proprietorship Concern.
III. FDI in Limited Liability Partnership.
IV. FDI in Trust.
V. FDI in investment vehicles.

I. FDI in Indian Company

- Indian companies can issue capital against FDI.

e.g. Equity Shares, compulsorily and mandatorily convertible preference share

<u>FDI through govt route when:</u>

1.Foreign Investment in **sector/activities** under **govt approval route** will be subject to govt approval where

An **Indian Company** is being **established** with **foreign investment**

and

is not **owned or controlled** by **resident entity.**

2. The ownership or control of an existing Indian Company, currently owned or controlled by Resident Indian citizens & Indian companies, which are owned or controlled by resident Indian Citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.
3. Foreign Investment in Indian Co engaged only in the activity of investing in the capital of other Indian co/LLP (Except NBFC-Automatic Route)

II. FDI in Partnership Firm /Proprietorship Concern

- A NRI resident outside India can invest in capital of a firm or a proprietorship concern in India on non-repatriation basis provided ;
  - ✓ Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers / Authorized banks.
  - ✓ The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
  - ✓ Amount invested shall not be eligible for repatriation outside India.

- ❖ Investment with repatriation option: NRO may seek prior permission of Reserve Bank and the application will be decided in consultation with Government of India.
- ❖ An NRI is not allowed to invest in a firm or proprietorship concern in any agricultural/plantation activity or real estate business or print media.

III.FDI in Limited Liability Partnerships

FDI is LLP's is permitted subject to the following conditions

- FDI is permitted under automatic route

  in LLP operating in **sector/activities where 100% FDI is allowed**

  Through **Automatic Route**

  and

  No FDI-linked performance conditions.

- FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

Prohibited Sector

- FDI is Prohibited in:

1. Lottery Business
2. Gambling and Betting
3. Chit Funds
4. Nidhi Company
5. Trading in transferable Development Rights(TDR's)
6. Real Estate Business or Construction Farm Houses
7. Manufacture of Cigars, Cheroots, Cigarettes etc.
8. Activity/sector not open to open to private sector investment
   e.g. (i) Atomic Energy (ii) Railway operations

Permitted Sector

In the following sector/activities, FDI up to limit indicated against such is allowed. In sector not listed below, FDI is permitted up to 100% on automatic route subject to conditions.

- Agriculture & Animal Husbandry
- Plantation Sector
- Mining
- Petroleum & Natural Gas
- Manufacturing
- Defense
- Broadcasting
- Print Media
- Civil Aviation
- Construction Development
- Industrial Parks
- Private Security agencies
- Telecom Services
- Trading
- Railway Infrastructure
- Asset reconstruction Companies
- Banking-Private Sector
- Banking-Public Sector
- Credit Information Companies(CIC)
- Infrastructure Company in the securities Market
- Insurance
- Pension Sector
- Power Exchanges
- White Label ATM Operations
- Non Banking Financial Companies(NBFC)
- Pharmaceuticals

Sector Specific Conditions on FDI

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Agriculture & Animal Husbandry	100%	Automatic
Plantation Sector	100%	Automatic
Mining (Except titanium bearing mineral & Ores)	100%	Automatic
Mining of titanium bearing mineral & Ores	100%	Government
Petroleum & Natural Gas (Except refined by PSU)	100%	Automatic
Petroleum & Natural Gas refined by PSU	49%	Automatic
Manufacturing	100%	Automatic
Defence	49%	Automatic
Broadcasting Carriage services	100%	Up to 49% Automatic
Broadcasting Content Services	49%	Government
Up-Linking of Non-News & Current affairs TV Channels	100%	Automatic
Print Media (Except Scientific magazine and facsimile edition of foreign newspapers)	26%	Government

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Publication of scientific magazine & facsimile edition of foreign Newspaper	100%	Government
Civil Aviation-Airports (Greenfield Projects)	100%	Automatic
Civil Aviation-Airports (Existing Projects)	100%	Up to 74% Automatic
Schedule Air & regional Transport service	49% (100% for NRI)	Automatic
Non Schedule Air Transport Service	100%	Automatic
Helicopter Service/Sea plane service required DGCA approval	100%	Automatic
Other Service under Civil Aviation Sector	100%	Automatic
Construction Development: Township, Housing, Built up Infrastructure	100%	Automatic
Industrial Park-New and existing	100%	Automatic
Satellites-establishment & Operation	100%	Automatic
Private Security Agencies	100	Government

Sector/Activity	% of Equity/ FDI Cap	Entry route
Telecom Services	100%	Up to 49% Automatic
Trading- Cash & carry Wholesale Trading	100%	Automatic
E-Commerce Activities	100%	Automatic
Single Brand Product Retail Trading	100%	Up to 49% Automatic
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway Infrastructure	100%	Automatic
Asset Reconstruction Companies	100%	Automatic
Banking- Private Sector	74%	Up to 49% Automatic
Banking-Public Sector	20%	Government
Credit Information Companies (CIC)	100%	Automatic
Infrastructure Company in the Securities Market	49%	Automatic
Insurance	49%	Automatic

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Pension Sector	49%	Automatic
Power Exchanges	49%	Automatic
White Label ATM Operations	100%	Automatic
Non-Banking Finance Companies	100%	Automatic
Pharmaceuticals-Greenfield	100%	Automatic
Pharmaceuticals-Brownfield	100%	Government

Trading

- Cash & carry wholesale Trading/whole sale Trading

  100% of Equity/FDI Cap- Automatic Entry Route

- *Mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers.*
- Wholesale trading would accordingly, imply sales for the purpose of trade, business and profession, as opposed to sale for the purpose of personal consumption.
- Whole sale trading would include resale, processing and thereafter sale, bulk imports with ex-ports/ex-bonded warehouse business sales and B2B e-commerce.

E-Commerce Activities

100% Equity/FDI Cap-Automatic Entry Route

- E-commerce entities would engage only in business to business(B2B) e-commerce and not in Business to consumer(B2C) e-commerce.

✓ E-commerce entity: Company incorporated under the companies act,2013.

✓ Types of Model

I. Inventory Based Model-mean inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

FDI is not Permitted

II. Marketplace Based Model- mean providing of an information technology platform by e-commerce entity on a **digital & electronic network to act as a facilitator between buyer & seller.**

100% FDI under automatic route is permitted

Conclusion for 100% FDI through Automatic Route

- By Incorporating Company-Because Wholesale Trading of goods would be permitted among companies of the same group(up to 25%)
- NRI firstly invest in trading and then trading unit is sold to other unit and that other unit is sold through e-commerce.