Foreign Direct Investment

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1. Introduction

1.1 Foreign Direct Investment (FDI) in common parlance is investments in the form of controlling ownership made by a firm or individual in one country, into an entity of another country. It is a critical driver for economic growth and also a source of non-debt financial resource for the economic development of the country. It also assists in improving innovation and increasing productivity & competitiveness in a country receiving FDI. Foreign companies invest in India to take advantage of relatively lower wages, special investment privileges such as tax exemptions, higher interest rates.

1.2 Initially, foreign investment into India was governed by the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No. FEMA 20/2000-RB notified on May 3, 2000). This had evolved over the years owing to the numerous amendments made to it. While the changes may have been necessary, they also resulted in unintended inconsistencies.

To address such inconsistencies, FEMA 20 was superseded by Notification No. FEMA 20(R)/ 2017-RB (hereinafter referred to as "Fema 20(R)) which consolidated all the amendments and introduced certain key changes to ease the process of foreign investment in India in line with the governments focus on ease of doing business. A Master direction titled Master Direction – Foreign Investment in India has been issued by FED Master Direction No. 11/2017-18 as amended from time to time. The Master Directions consolidates instructions on rules and regulations framed by the Reserve Bank from time to time.

Some of the key changes brought about by FEMA 20(R) include the following:

i. Detailed definition of 'capital instruments' has been introduced, listing various modes of investments that non-resident investors can choose from to invest in Indian companies.

ii. The definition of 'foreign investments' now clarifies that investments made on a non-repatriable basis are to be treated as domestic investments.

iii. The new definition of 'foreign direct investment' ("FDI") also differentiates between foreign investments in Indian companies based on whether the investee company is listed or unlisted. Investments into capital instruments of unlisted companies are to be treated as FDI. However, if the investee company is listed, the investment will be treated as FDI only if the investment constitutes more than 10% of the post issue paid-up equity capital of the company, calculated on a fully diluted basis.

iv. Foreign investment in an Indian listed company amounting to less than 10% of the post-issue paid up equity share capital or 10% of the paid-up value in respect of each series of instrument of the company calculated on a fully diluted basis, will be categorised as 'foreign portfolio investment' under FEMA 20(R).

1.2 This Article deals with the overall regulations governing foreign investments in India into an entity. The detailed article covering entire subject of foreign investment has been divided into several parts with series of articles, each part covering a different facet of foreign investment in India in the forthcoming journal/s.

2. <u>Important Terms used in this article</u>

i. 'Foreign Investment' means any investment made by a PROI on a repatriable basis in capital instruments of an Indian company or to the capital of an LLP; A PROI outside India may hold foreign investment as FDI or Foreign Portfolio Investment (FPI).
(*Explanation: If beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.)*

Foreign currency convertible bonds and Depositary Receipts having underlying instruments being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.

ii. FDI means investment through capital instruments by a PROI in an unlisted Indian company; or in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company; if the existing investment falls below the 10 percent level, then too the investment will continue to be FDI.
Direct Investment is related to control or significant influence and tends to be associated with lasting relationship. Direct Investors are actively involved in the management decisions.

iii. FPI means any investment made by a PROI through capital instruments where such investment is less than 10 percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than 10 percent of the paid up value of each series of capital instruments of a listed Indian company.

FPI have lesser role in decision making of an enterprise and are more associated with the financial markets. FPI is only permitted in listed Indian companies.

iv. Capital instruments means equity shares, fully and mandatorily convertible debentures and preference shares and share warrants issued by Indian company.

v. Indian Entity means an Indian company or an LLP.

vi. Sectoral cap means the maximum investment including both foreign investment on a repatriation basis by PROI in capital instruments of a company or the capital of an LLP, as the case may be, and indirect foreign investment, unless provided otherwise.

vii. Indirect Foreign Investment means Investment by an intermediate Indian company, which is not owned and controlled by Resident Indian citizens or which is owned or controlled by PROI into another Indian entity is considered as Indirect Foreign Investment (IFI) or downstream investment.

3. Modes & Types of Investment

3.1. Investment can be:

i. With prior approval or on automatic basis
ii. With or without repatriation benefits
iii. In different instruments (debt or capital instruments)
iv. In a company or in a different form of entity
v. Can be a portfolio or direct investment
vi. Can be by issue of capital instruments or transfer of instruments

3.2. Mode of Investment**:**

i. Automatic Route: No prior approval from RBI/Govt is required for investment into that sector or company in India.

ii. Approval Route: prior approval of the concerned Administrative Ministries /Departments is required.

3.3. Types of Investment:

FDI can be done as Greenfield or Brownfield Investment.

i. Greenfield Investment: Foreign company invests into a fresh production facility in India by setting up a new joint venture or a subsidiary in India. It is a situation where an MNC starts a new venture in India by constructing new operational facilities.

ii. Brownfield Investment: Foreign company invests into the existing production facilities in India. Brownfield Investment is done through Share purchase, Amalgamation/Merger/Demerger of companies, conversion of external commercial borrowings, share swap, issue of bonus, rights, sweat equity shares.

4. Various methods of Investment for a PROI

Notification Fema 20(R) comprises of ten schedules that contains the various schemes for inbound investment. In the current article we will be covering Schedule 1, which talks about FDI by a PROI in Indian company; The above mentioned ten schedules are as under.

Sch. 1	Purchase / Sale of capital instruments of Indian company by PROI (i.e. Foreign Direct Investment ('FDI') Scheme)
Sch. 2	Purchase/Sale of capital instruments of listed Indian company on recognised stock exchange in India by Foreign Portfolio Investor (i.e. Portfolio Investment scheme)
Sch. 3	Purchase/Sale of capital instruments of listed Indian company on recognised stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis (i.e. Portfolio Investment Scheme)
Sch. 4	Purchase/Sale of capital instruments or convertible notes of an Indian company or Units or contribution to capital of an LLP by NRI or OCI on non-repatriation basis
Sch. 5	Purchase and Sale of Securities other than capital instruments by a PROI
Sch. 6	Investment in a Limited Liability Partnership (LLP)
Sch. 7	Investment by a Foreign Venture Capital Investor (FVCI)

Sch. 8	Investment by a PROI in an Investment Vehicle
Sch.9	Investment in Depository receipts by a person resident outside India
Sch. 10	Issue of Indian Depository Receipts (IDRs)

Thus capital instrument of a company, issued or transferred on a repatriation basis is covered under schedule 1. Instruments other than capital instruments and investment in LLP is covered under above schedules.

5. <u>Pricing Guidelines</u>

5.1 Pricing of capital instruments issued by an Indian company to a PROI shall not be less than:

i. In case of a listed Indian company or a company going through delisting process - The price worked out as per SEBI guidelines.

ii. The price at which preferential allotment can be made as per SEBI guidelines in case of a listed Indian company or a company going through delisting process.

iii. In case of an unlisted Indian company - The price worked out as per Internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant/SEBI registered merchant banker/practicing cost accountant.

5.2 Pricing of capital Instruments transferred from a PRII to a PROI shall not be less than

The price worked out as per Internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant/SEBI registered merchant banker/practicing cost accountant.

5.3 Pricing of capital instruments transferred from a PROI to a PRII shall not exceed

The price worked out as per Internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant/SEBI registered merchant banker/practicing cost accountant.

5.4 In case of swap of capital instruments, the pricing will have to be computed by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.

5.5 Pricing of shares issued to PROI by way of by way of subscription to Memorandum of Association shall be made at face value subject to entry route and sectoral caps.

5.6 In case of convertible capital instruments, the price of the instrument should be based on conversion formula which has to be determined / fixed upfront. Price at the time of conversion should not be less than the fair value worked out, at the time of issuance of these instruments.

5.6 Pricing guidelines will not be applicable in case of transfer of shares between two PROI, or in case of investment in capital instruments by a PROI on non repatriation basis.

5.7 In order to protect the interest of resident Indians the above pricing is stipulated. Any sale by a PRII to a PROI has a cap on the minimum price needed for transfer, whereas in the case of transfer of capital instruments by a PROI to a PRII there is a cap on the maximum price at which such transfer can take place. (Reg 11 of Fema 20(R))

6. **Transfer of capital Instruments of an Indian company**

A PROI holding capital instruments can transfer the capital instruments of an Indian company or units in accordance with the regulations specified hereunder:

6.1 Transfer under Automatic Route

i. A PROI (including non-resident Indian (NRI) or overseas citizen of India (OCI) holding instruments on repatriable basis) can transfer the capital instruments by way of sale or gift to any PROI.
ii. A PROI can transfer the capital instruments to any PRII or on a stock exchange by way of sale or gift, subject to the adherence to pricing guidelines, documentation and reporting requirements for such transfers.
iii. A PRII (including an NRI or OCI holding the capital instrument on Non Repatriable basis) can transfer by way of sale to a PROI, subject to the adherence to entry routes, sectoral caps/ investment limits, pricing guidelines, documentation and reporting requirements as may be specified by Reserve Bank.
iv. A NRI/OCI holding capital instruments on non repatriable basis can transfer the same by way of Gift to any other NRI/OCI who shall hold it on non repatriable basis.
v. An FPI can transfer the capital instruments by way of sale to a PRII, where the acquisition of capital instruments has resulted in the breach of FPI limits.

6.2 Transfer under Approval Route

i. A PRII (including an NRI or OCI holding the capital instrument on Non Repatriable basis) can transfer by way of gift to a PROI provided:
    a. The donee is eligible to hold such a security under these Regulations.
    b. The gift does not exceed 5 percent (on cumulative basis by a single person to another single person) of the paid up capital of the Indian company/ each series of debentures/ each mutual fund scheme.
    c. The applicable sectoral cap in the Indian company is not breached.
    d. (The donor and the donee shall be 'relatives' within the meaning in section 2(77) of the Companies Act, 2013.
    e. The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of USD50,000.

6.3 Other provisions for transfer

i. Transfer of capital instrument between a PRII and a PROI for an amount not exceeding 25% of the total consideration can be settled through
    a. Payment by buyer on deferred basis within eighteen months from date of transfer agreement.
    b. An escrow account arrangement between the buyer and the seller for a period not exceeding eighteen months from the date of the transfer agreement.
    c. Can be indemnified by the seller for a period not exceeding eighteen months from the date of the payment of the full consideration, if the total consideration has been paid by the buyer to the seller.
ii. PROI holding capital instruments containing Optionality clause & exercising the option may exit without any assured return subject to pricing guidelines and lock in period of 1 year.
iii. Transfer of capital instruments of an Indian company or units of an Investment Vehicle by way of pledge is permitted through following means:
    a. A promoter of a company that has raised External Commercial Borrowing (ECB), may pledge the shares of the borrowing company or its associate resident

companies for the purpose of securing the ECB raised by the borrowing company subject to the following conditions:

- Period of Pledge is co terminus with Maturity of ECB
- In case of invocation of pledge, transfer shall be in accordance with RBI directions
- Statutory Auditor certificate for utilization of ECB proceeds for permitted end use only
- NOC of AD shall be obtained for Pledge

b. A PROI holding capital instruments in an Indian company or units of an investment vehicle may pledge the capital instruments or units, as the case maybe

- In favour of an Indian Bank/RBI registered NBFC to secure credit facilities being extended to such Indian company for bona fide purposes
- In favour of an overseas bank to secure credit facilities being extended to such person or a PROI who is the promoter of such Indian company or the overseas group company of such Indian company

6.4 Prior Government Approval be required for any transfer in case the company is engaged in sector which requires government approval.

6.5 Pricing guidelines shall not be applicable for any transfer by way of sale done in accordance with SEBI regulations where the pricing is prescribed by SEBI. (Reg 10 of Fema 20(R))

7. Reporting Requirements

Following are the reporting requirements for any Investment by a PROI

No	Particulars	Form
1.	For any kind of allotment of capital instruments (includes Fresh Shares /Partly paid shares/Bonus /Rights Shares /ESOP/ Convertible Debentures / Convertible Preference Shares /Conversion of ECB / Royalty / Lumpsum Technical Know-how Fee / Import of Capital Goods by SEZs /Pre-operative/Pre-incorporation Expenses/Legitimate dues/ Amalgamation/ Merger) - within 30 days of issue	FC-GPR
2.	Return on Foreign Assets & Liabilities - before 15th July every year	FLA
3.	For Transfer of Capital Instruments between -PROI (repatriable basis) & PROI (non repatriable basis) -PROI(repatriable basis) & PRII -Transfer by PROI on stock exchange -Transfer of cap instruments on deferred basis -Transfer of participating rights in oil fields - within 60 days of transfer of capital instrument or receipt of funds whichever is earlier	FC-TRS
4.	Indian company issuing ESOP to PROI who are its employees/ directors or employees/ directors of its holding company/ joint venture/ wholly owned overseas subsidiaries - within 30 days of issuing stock Option	ESOP
5.	Domestic Custodian issuing or transferring depositary receipts - within 30 days of close to the issue	DRR
6.	An LLP receiving sums for capital contribution & acquisition of profit shares – within 30 days from the date of receipt of the amount of consideration	LLP (I)
7.	Transfer/Disinvestment of capital contribution/Profit share between a PRII and a PROI – within 60 days of receipt of amount of consideration	LLP (II)
8.	Indian Entity making downstream investment (DI) – within 30 days from date of allotment of capital instrument	DI

9.	Indian startup company issuing Convertible Notes (CN) (Discussed ahead) to a PROI - within 30 days of such issue.	CN
10.	An Investment vehicle that has issued units to PROI - within 30 days	InVi

7.1. With a view to promoting the ease of reporting of transactions under foreign direct investment (FDI), the RBI, through A.P (DIR Series) Circular No.30 June 07, 2018 ("New Reporting Circular"), has integrated all forms for reporting foreign investment like FC-TRS, FC-GPR, ESOP, DI, Form LLP-I, Form LLP- II, Form DRR, Form InVi into one Single Master Form(SMF).

7.2. Reporting in case of sale of by Non-resident Indian ('NRI') / Non-resident ('NR') on the stock exchange – Issue in FDI Policy

i. Form FC-TRS requires details of non resident shareholding pre and post the relevant transaction, But in cases where the NRI acquires shares from another NRI reporting under FEMA is not required. Subsequently when the shares are sold on stock exchange by the NRI form FC-TRS is required to be filled.
ii. For a NR who has acquired the shares by way of secondary acquisition and is not part of the FDI, it usually has no connection with the issuing company and hence cannot access the shareholding pattern. Also, in a listed company, it is not possible for a NR transferee to get the latest shareholding pattern.
iii. Despite the above difficulty in getting latest information which prevents submission of a complete and accurate Form FC-TRS, RBI regulation on submission of Form FC-TRS is stringent and non-compliant parties are subject to penalties & compounding under FEMA.
iv. It is therefore suggested to suitably fill up the available information in form FC-TRS complying with above requirements.

8. <u>Downstream Investment</u>

i. FDI can be made directly in the Indian company, or indirectly through an intermediate Indian company. Investment by an intermediate Indian company, which is not owned and controlled by Resident Indian citizens or which is owned or controlled by PROI into another Indian entity is considered as Indirect Foreign Investment (IFI) or downstream investment.

ii. Ownership of a company means beneficial holding of more than 50 percent of the capital instruments of such company. Ownership of an LLP' shall mean contribution of more than 50 percent in its capital and having majority profit share.

iii. Control means

a. the right to appoint majority of the directors or
b. to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.

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

v. Downstream investment by an LLP not owned and not controlled by resident Indian citizens or owned or controlled by PROI is allowed in an Indian company operating in sectors where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

vi. Total Foreign Investment means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis.

8.1. Calculation of Downstream Investment

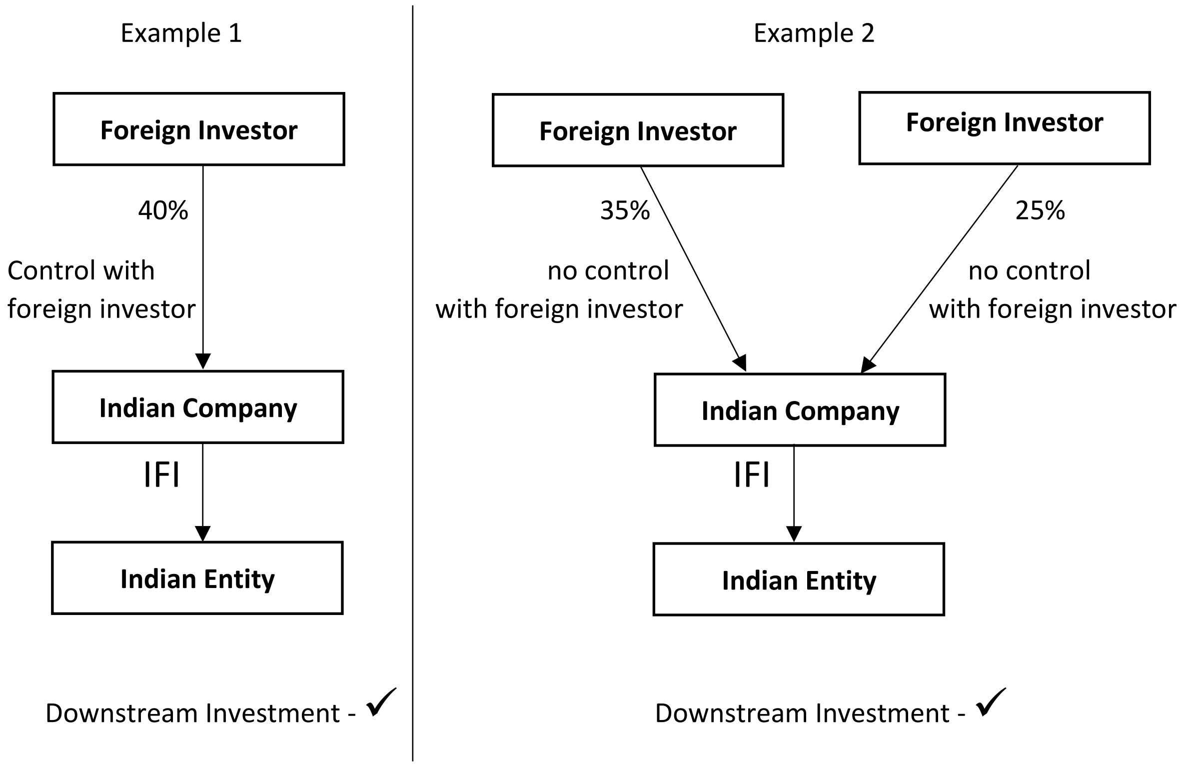
i. Foreign investment in an Indian company shall include investment under:

a. FDI
b. Investment by FII / FPI (calculated as of March 31 of the previous financial year in which the downstream investment is made)
c. NRI investment (Repatriable)
d. Investment by Investment vehicles
e. Fully, compulsorily and mandatorily convertible preference shares/ debentures / units of an Investment Vehicle

ii. Methodology for calculation will apply at each stage of Investment.

iii. The indirect foreign investment received by a wholly owned subsidiary of an Indian company will be limited to the total foreign investment received by the company making the downstream investment. Reg 14 of Fema 20 (R)

Meaning of Downstream Investment - Example



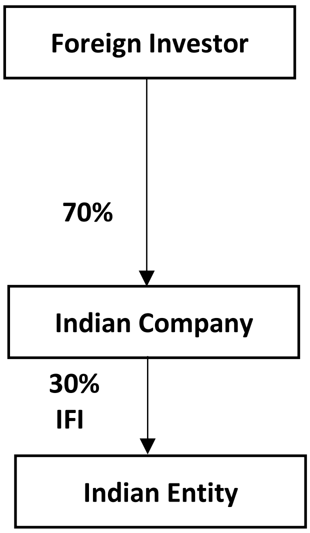
In both the above cases there is downstream investment. Either because control is with PROI or because ownership of more than 50% is with PROI.

8.2. Valuation of shares:

i. Valuation of shares will apply in case of transfer of shares in the capital of downstream company by a PRII to the holding company. Though the transfer is from resident to resident, but since the shares are transferred to a company owned and controlled by foreigner, valuation of shares will have to be done in compliance with the valuation norms.
ii. Once the foreign investment in the holding company increases to more than 50%, investment in the operating company by holding company is a downstream investment even if no further investment is done by holding company.
iii. Until the shareholding of holding company is lower than 50%, valuation of holding company will have to be carried out for the purpose of reporting. Once downstream investment is made or the operating company becomes downstream company, valuation of downstream as well as holding company will have to be carried out for the purpose of reporting.
iv. In a case where holding company is only an investment holding company, valuation of only operating company will be required for the purpose of reporting.

8.3 Calculation of Downstream Investment: If an Indian company is considered as Indirect foreign investor, The entire investment by Indian company will be considered as Indirect Foreign Investment, there is no proportionality. Thus if there is foreign investment of 70% in IC, investment by IC in downstream company will be entirely considered as IFI. IFI will not be restricted to 70%.

Example



In the above example, entire 30% will be considered as downstream investment and not just 21%(70% of 30)

8.4. Issues in FDI Policy for Downstream Investment

i. Company X has 51% Indian shareholding and 49% NRI shareholding. When it makes a downstream investment in Company Y to the extent of 51% and offers 49% shareholding of Company Y to NRIs, the total foreign investment in Company Y is 49% (being 49% direct foreign investment in Company Y + 0% Indirect Foreign Investment as Company X is owned and controlled by resident Indian citizens).

ii. Thus, in the above arrangement, NRI shareholding is 49% in Company X and it is also 49% in Company Y. Consequently, the beneficial ownership with NRIs in Company Y is not 49% but is actually 73.99% (49% of 51% in Company Y + 49% direct NRs in Company Y). **Admittedly, the NRIs are not in control of Company X and consequently also not in control of Company Y, but in case of entitlement to dividend flow and also to capital gains on dis-investment, the NRIs would take benefit of 73.99% and not 49%.**

iii. Further, if the sectoral cap for the sector in which the downstream entity is operating is 49%, the above arrangement would meet with the norms, however the beneficial ownership of all NRIs in Company Y would exceed 49%.

9. <u>Automatic Route of Investment to PROI – Sch. 1</u>

Eligible persons allowed to invest under Sch 1:

i. A PROI may purchase capital instruments of a listed Indian company on a stock exchange in India provided that the PROI making the investment has already acquired control of such company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and continues to hold such control – This clause permits existing shareholders to increase their stake in the company. Thus a PROI may be entitled to subscribe to the capital by way of preferential allotment or purchase the shares on stock exchange only if he has control as per SEBI guidelines or else PROI is required to acquire the shares, only if offered is made under SEBI code.

ii. A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100% foreign investment is allowed in the automatic route and there are no FDI linked performance conditions, may issue capital instruments to the said non-resident entity against pre-incorporation/ preoperative expenses incurred by the said non-resident entity up to a limit of five percent of its authorised capital or USD 500,000 whichever is less subject to filing of Form FC-GPR and utilization certificate of statutory auditor.

iii. An Indian company may issue capital instruments to a PROI, if the Indian investee company is engaged in an automatic route sector, against:
   a. Swap of capital instruments; or
   b. Import of capital goods/ machinery/ equipment (excluding second-hand machinery); or
   c. Pre-operative/ pre-incorporation expenses (including payments of rent etc.).

However, Government approval shall be obtained if the Indian investee company is engaged in a sector under Government route. It may be noted that the limits as provided in paragraph 9.2 is not applicable in this case.

iv. An Indian company may issue equity shares against any funds payable by it to a person resident outside India, provided such remittance:
   a. Is permitted under the Act or the rules and regulations, or
   b. Does not require prior permission of the Central Government or the RBI, or
   c. has been permitted by the RBI.

In case where permission has been granted by the RBI for making remittance, the Indian company may issue equity shares against such remittance provided all regulatory actions with respect to the delay or contravention under FEMA or the rules or the regulations framed thereunder have been completed.

9.1. Mode of Payment:

The amount of consideration shall be paid as inward remittance through banking channels or out of funds held in NRE/ FCNR(B)/ Escrow account along with compliance of KYC requirements.

9.2. Investment under Approval route:

i. Investment is only permitted for investment in sectors that fall under the Automatic route. For sectors falling under the Approval route, the work of granting approval for foreign investment under the extant FDI Policy and FEMA Regulations, has been entrusted to the concerned Administrative Ministries / Departments after abolition of FIPB w.e.f 05.06.2017.
ii. Currently there are ten notified sectors/activities requiring government approval, these are Defence/cases relating to FDI in small arms, Broadcasting, Print media, Civil Aviation, Satellites, Telecom, Private Security Agencies, Multi brand Retail, Financial services not regulated or regulated by more than one regulator/ Banking Public and Private (as per FDI Policy) and Pharmaceuticals.
iii. The Department of Industrial Policy and Promotion, Ministry of Commerce & Industry has been given the responsibility of overseeing the applications filed on the Foreign Investment Facilitation Portal (fifp.gov.in) and to forward the same to the concerned Administrative Ministry.
iv. A Standard Operating Procedure (SOP) developed by DIPP in consultation with the concerned Administrative Ministries is being followed for processing of the FDI applications. Approval letters in Standard Format will be uploaded on the Portal itself for the benefit of the Investors.

9.3. Eligible Investors for FDI:

i. PROI other than citizen of Pakistan, entities of Pakistan.
ii. Bangladesh Citizens & entities only with prior approval of Foreign investment promotion board.

9.4. Sch 1 permits investment in an unlisted company. Investment of a single share also in an unlisted company is considered as FDI.

10. <u>Investment in Indian company – Other Modes</u>

10.1. A PROI having investment in an Indian company may make investment in capital instruments (other than share warrants) issued by such company as a rights issue or a bonus issue provided that

i. Price offered to PROI is not lower than that offered to PRII.
ii. Such issue does not result in breach of sectoral cap.
iii. The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in non resident external/ Foreign currency non resident bank account. Reg 6 of Fema 20(R)

10.2. Under a scheme of merger/amalgamation approved by NCLT, the transferee Indian company may issue capital instruments to the existing holders of the transferor company resident outside India, subject to the condition of sectoral cap. Such transaction should be reported to RBI within

30 days of such NCLT order of amalgamation with percentage of capital held by PROI in transferor, transferee or new company before or after the transfer. Reg 9 of Fema 20(R)

10.3. Indian company may issue “employees’ stock option” and/or “sweat equity shares” to its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India subject to conditions.
Reg 7 of Fema 20(R)

10.4. A PROI (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/ incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.

Convertible Note’ means an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.
Issue of equity shares against such convertible notes shall be in compliance with the entry route, sectoral caps, pricing guidelines & other conditions for foreign investment. Reg 8 of Fema 20(R)

11. Prohibited Activities for Investment by a PROI

i. Lottery Business including Govt/Pvt/Online lottery
ii. Gambling & Betting, including casinos
iii. Chit Funds

(The Registrar of Chits/Authorised officer, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians and Overseas Citizens of India who shall be eligible to subscribe, through banking channel and on non-repatriation basis, to such chit funds, without limit subject to the conditions stipulated by RBI)

iv. Nidhi Company
v. Trading in Transferable Development Rights
vi. Real Estate Business/Construction of Farmhouse
Real estate business’ means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships
Earning of rent income on lease of the property, not amounting to transfer, will not amount to real estate business
vii. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
viii. Activities/ sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations
ix. Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities Reg 15 of Fema 20(R)

12. Sectoral Caps

i. Sectoral cap for the following sectors/ activities is the limit indicated against each sector.
ii. In Sectors/Activities not listed in the schedule or not prohibited under Reg 15 of Fema 20(R), (Para ii) foreign investment is permitted up to 100 percent under Automatic route.
iii. Foreign Investment in investing companies not registered as Non-Banking Financial Companies with the Reserve Bank and in core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities, will require prior Government approval.
iv. Foreign investment in investing companies registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank, will be under 100% automatic route.
v. An Indian company which does not have any operations and also has not made any downstream investment, may receive investment in its capital instruments from PROI under automatic route, for undertaking activities which are under automatic route and without FDI linked performance conditions. As and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps. Reg 16 of Fema 20(R)

Investment under Automatic Route

Sector/Activity	Sectoral Cap
Agriculture & Animal Husbandry	100%
Plantation (like tea, coffee, rubber, cardamom, etc)	100%
Mining (of metal and non-metal ores including diamond, gold, silver,etc)	100%
Petroleum & Natural Gas	100%
Manufacturing	100%
Construction Development: Townships, Housing, Built-up infrastructure	100%
Industrial Parks (quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity)	100%
Trading	100%
Railway Infrastructure (foreign investment beyond 49 percent sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration)	100%

Partly Automatic & Partly under Government route with/ without conditions

Sector/ Activity	Automatic	Approval
Defence	Up to 49%	Beyond 49%
Broadcasting	100% Automatic or 49% Approval depending on activity	
Print Media	26% / 100% under Automatic route depending on activity	
Civil Aviation (like Airports, Helicopter services)	100%Upto 49% for air transport service)	Beyond 49% for air transport service
Satellites - Establishment and operation	-	100%
Private Security Agencies	-	49%

Telecom Services	Up to 49%	Beyond 49%
E- Commerce	100%	Multi Brand Retail Trading -51%
Pharmaceuticals	Greenfield – 100% Brownfield upto 74%	Brownfield beyond 74%
Financial Services	20%,49%,74%, and 100% for automatic as well as approval route depending on activity	

13. Conclusion

The Indian government's favourable policy regime and robust business environment have ensured that foreign capital keeps flowing into the country. The government has taken many initiatives in recent years such as relaxing FDI norms across sectors such as defence, PSU oil refineries, telecom, power exchanges, and stock exchanges, among others.

According to Department for Promotion of Industry and Internal Trade (DPIIT), FDI equity inflows in India in 2018-19 stood at US$ 44.37 billion vis-à-vis US$ 44.85 billion in 2017-18.

Data for 2018-19 indicates that the services sector attracted the highest FDI equity inflow of US$ 9.16 billion, followed by computer software and hardware – US$ 6.42 billion, trading – US$ 4.46 billion and telecommunications – US$ 2.67 billion. Most recently, the total FDI equity inflows for the month of March 2019 touched US$ 3.60 billion.

During 2018-19, India received the maximum FDI equity inflows from Singapore (US$ 16.23 billion), followed by Mauritius (US$ 8.08 billion), Netherlands (US$ 3.87 billion), USA (US$ 3.14 billion), and Japan (US$ 2.97 billion).