

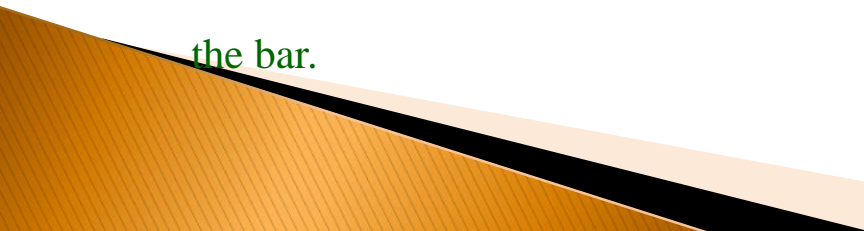
LEX FAVIOS

ADVOCATES & SOLICITORS

JUDICIAL SYSTEM OF INDIA ALONGSIDE THE FDI
NORMS AND INVESTMENT CLIMATE.



OVERVIEW OF THE LEGAL PROFESSION IN INDIA

- ▶ The bar council of India provides for provisional enrolment in state bar council(s) which allow advocates to practice law in those states until they sit for the All India Bar Examination (AIBE).
 - ▶ The Cap to give the AIBE has been reduced to 3 years which permits Advocates to practice all over India. failing to clear the exam will cause the Advocate to lose the licence to Practise all over the Country.
 - ▶ Apart from the Bar Council of India and the State Bar Councils, almost every Court in the country has Bar Associations of advocates
 - That looks after the welfare of advocates,
 - Represent their interests
 - Conduct numerous social and cultural activities of the bar, or even for different sections of the bar.
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KEY ROLE OF FDI

- The investment Climate in India has improved considerably since the opening of the economy in 1991 that brought in Globalisation, Liberalisation and Privatisation which opened the investment markets of India.
- This is largely attributed to ease in in the FDI norms across various sectors of the economy making India, a part of the top 100 club on Ease of Doing Business(EoDB).
- India received the record FDI of 64.37 Bn in 2018-2019.

PERMISSIBLE ROUTES FOR FDI'S IN INDIA

There are 3 categories of permissible routes for bringing in Foreign Investment in India. They are as follows:

- **Category 1-100% FDI permitted through Automatic Route:** under automatic route the non-resident investor or Indian Company does not require any approval from Govt. for the Investment. For Ex: asset reconstruction companies, automobiles, cash& carry wholesale trading (including sourcing from MSEs), chemicals, coal and ignite.
- **Category 2- 100% FDI permitted through Government route:** prior to investments, approval from govt. is required, few examples: core investment company, food products retail trading, print media, satellites (establishment and operation

PERMISSIBLE ROUTES FOR FDI'S IN INDIA

➤ **Category 3- up to 100% FDI permitted under Automatic & Government**

Route: few examples: Banking (private sector)-up to 49%(auto) + above 49%(govt) , defence- up to 74%(auto) + above 74%(govt), healthcare(brownfield) up to 74%(auto)+above 74%(govt) , telecom services- up to 49%(auto) + above 49%(govt).

INDUSTRIES STRICTLY PROHIBITED FOR FDI

There are certain sectors and or/ industries which have been reserved and will not fall under the FDI Scheme of India. they are as follows :

- Atomic energy creation
- Gambling or betting business
- Chit funds
- Nidhi company
- Housing & real estate (exception of townships, commercial projects)

RECENT AMENDMENTS BY GOVERNMENT TO FACILITATE EASY INCOME OF FDI

- The “foreign investment in India- reporting in single master form” provides for all extant reporting structures of various types of Foreign investments in India are now provided under Single Master Form (SMF).


Amendments brought forward in 2019:

- **Single brand retail trading (SBRT):** govt. has relaxed conditions to attract more FDI for SBRT activities in India regardless of 100% permittance under automatic route.
- **Coal mining & sale:** existing FDI policy allowed 100% FDI under automatic route for coal and ignite mining for captive consumption power projects as well as iron & steel and cement units.

RECENT AMENDMENTS BY GOVERNMENT TO FACILITATE EASY INCOME OF FDI

- **E-commerce:** The govt. has now decided to allow retail trading through online trade prior to opening physical stores. Subject to condition that SBRT entities open brick and mortar stores within 2 years from start of online retail.
- **Contract manufacturing:** manufacturing is already permitted 100% approval for FDI, but the Govt. has provided clarity by allowing 100% FDI automatic route in “contract manufacturing” in India.
- **Defence Sector:** FDI in Defence sector in automatic route has been increased from 49% to 74%.

CORELEVANCE OF ARBITRATION AND FDI

- In accordance to the Amended Arbitration and Conciliation Act of 2019, the time restriction for International Commercial Arbitrations have been duly removed.
 - The extension period for completion of Arbitral Proceedings has increased by incorporating a 12-monh time frame post completion of the pleadings.
 - The total cap for limitation regarding the Arbitral Award is now 2 years.
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EASE OF FDI FOR START-UPS

- The Govt. of India has further liberalised the FDI norms which has uncomplicated the process for start-ups, SMEs and MSMEs.
- Investors from across the globe like google are funding start-ups in India and believe in the start-up market that it has to offer.
- The introduction of Standard operating Procedures (SOPs) for FDI proposals, allowing start ups to issue convertible notes to foreign investors, permitting 100% FDI automatic route for trading will benefit the MSMEs in India.
- Start-ups can get company identification number(CIN) ,PAN, GSTIN, ESIC in one application at MCA portal for convenience and fast track application process.

STATISTICAL DATA OF FDI GROWTH IN INDIA & NEW ENTERIES IN THE MARKET.

- FDI equity inflows rose 28% in the first quarter of 2019-20 to \$16.3 billion from \$12.7 billion in the year-ago period in India.
- Among various sectors, telecommunications garnered the maximum FDI at \$4.2 billion followed by services sector at \$2.8 billion.
- The national capital region (Delhi, part of Uttar Pradesh and Haryana) attracted FDI of \$5.04 billion, the highest among the states.
- Qualcomm, word leader in 3G and next-generation mobile technologies, is the latest player in the market having invested upto \$150million in strategic investments in the Country.
- Amazon India announced investment of US\$ 1 billion for digitising small and medium businesses.

FDI SECTORAL CAPS

Sector/ Activity	Cap	Govt. Approval
Mining and mineral separation of titanium bearing minerals and ores	100%	Upto 100%
Food Product Retail Trading	100%	Upto 100%
Defence	100%	Beyond 49%
Publishing/printing of scientific and technical magazines/specialty journals/periodicals	100%	Upto 100%
Publication of facsimile edition of foreign newspapers	100%	Upto 100%
Print Media – Publishing of newspaper and periodicals dealing with news and current affairs	26%	Upto 26%

FDI SECTORAL CAPS

Sector/ Activity	Cap	Govt. Approval
Print Media – Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Upto 26%
Air Transport Service – Scheduled, and Regional Air Transport Service,	100%	Beyond 49%
Investment by Foreign Airlines	100%	Upto 49%
Satellites–establishment and operation	100%	Upto 100%
Telecom Services	100%	Beyond 49%
Pharmaceutical – Brownfield	100%	Beyond 74%
Banking – Private Sector	74%	Beyond 49%
Banking– Public Sector	20%	Upto 20%

FDI SECTORAL CAPS

Sector/ Activity	Cap	Govt. Approval
Private Security Agencies	74%	Beyond 49%
Broadcasting Content Service a) FM Radio b) Up linking of 'News & Current Affairs' TV Channels	49%	Upto 49%
Trading – MBRT	51%	Upto 51%

RESTRICTIONS ON FDI

- ▶ The Government of India has recently amended the foreign direct investment (FDI) policy and put into effect the requirement of prior clearance for investments from countries with which India shares its land border
- ▶ The Department of Economic Affairs notified the new norms under the Foreign Exchange Management Act (FEMA), days after the Department for Promotion of Industry and Internal Trade (DPIIT) issued Press Note 3 detailing the changed rules.
- ▶ The Press Note 3 of 2020 states that in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval.



CONTACT

Mr. Sumes Dewan

Managing Partner

Tel: 91-11-32084941 (D)

91-11-43851366 (Ext 7)

Mobile: 91-9811113391

Email: sumes.dewan@lexfavios.com

Website: www.lexfavios.com

