

— FAQ'S

Setting Up Business in India

Foreign Direct Investment

1. Who is a Foreign Portfolio Investor (FPI)?

FPIs refers to a class of investors who invest in financial securities of a country without direct ownership of the underlying company. These are considered liquid investments. Under the recent SEBI FPI Regulations, 2014, Foreign Institutional Investors (FIIs) or sub accounts and Qualified Foreign Investors (QFIs) have been merged into a single category, referred to as FPIs.

2. What permissible foreign investment options into Startups?

RBI through its amendment in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (FEMA 20) vide FEMA 20 (Fifteenth Amendment) Regulations, 2016 dated 10 January 2017, has allowed startups to issue convertible notes to foreign investors apart from FDI in startups by foreign venture capital investors through subscribing to equity or equity linked instruments or debt instruments.

3. Who is a person of Indian origin (PIO)?

'Person of Indian Origin'(PIO) means a citizen of any country other than Bangladesh or Pakistan, if (i) he at any time held Indian Passport; or (ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or (iii) the person is a spouse of an Indian citizen or a person referred to in subclause (i) or (ii).

4. Can anyone buy or sell securities as a FPI in India?

Only registered FIIs/FPIs and NRIs as per Schedules 2,2A and 3 respectively of 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. Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may in terms of Schedule 2 and 2A of FEMA (Transfer or Issue of Security by Persons Resident Outside

India) Regulations, as the case may be, respectively, invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap. Please refer to section 3.1.5 and 3.1.6 of Consolidated FDI Policy at [link](#) for more information.

5. Can a foreigner set up a partnership/ proprietorship concern in India?

No, only NRIs are allowed to set up partnership/ proprietorship concerns in India on non-repatriation basis.

6. What are the permitted activities if I want to set up a Branch office in India?

Foreign Companies can set up their operations in India through setting up a Liaison Office/Representative Office (LO), Project Office (PO) or Branch Office (BO) with specified permitted activities. Branch Office can be set up by companies engaged in manufacturing and trading activities abroad. The permitted activities include export/import of goods; rendering professional or consultancy services; carrying out research work, in which the parent company is engaged; promoting technical or financial collaborations between Indian companies and parent or overseas group company; representing the parent company in India and acting as buying/selling agents in India; rendering services in information technology and development of software in India; rendering technical support to the products supplied by the parent/ group companies and foreign airline/shipping company. BO are permitted to remit profits net of applicable taxes and on submission of requisite documents.

7. What are the ways in which a foreigner can set up business in India?

A foreign company can set up business in India via Foreign Direct Investment (FDI) either by incorporating an Indian company, under the Companies Act, 2013 (as a Joint Venture or a Wholly Owned Subsidiary) or as a Foreign Company (by setting up a Liaison Office, Project Office or a Branch Office of the foreign company) which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of branch office or other place of business) Regulations, 2000. One can also set up an Indian establishment by setting up a Limited Liability

Partnership (LLP) subject to provisions of LLP Act, 2008. It may be noted that FDI is permitted under automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions. There are different criteria, application procedures, remittance rules and reporting requirement for each form of investment. For details regarding the eligibility, permitted activities, sectorial caps, investment routes and regulatory requirements etc. , one can refer to the latest “Consolidated FDI Policy Circular” dated Aug 28, 2017 which is available in the public domain and can be downloaded from the website of Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade, link.

8. Which are the sectors in which a FVCI is permitted to invest?

An FVCI can invest in an Indian company engaged in: i) Biotechnology. ii) IT related to hardware and software development. iii) Nanotechnology. iv) Seed research and development. v) Research and development of new chemical entities in pharmaceutical sector. vi) Dairy industry. vii) Poultry industry. viii) Production of bio-fuels. ix) Hotel-cum-convention centres with seating capacity of more than three thousand. x) Infrastructure sector.

9. Can a foreign investor invest in Rights shares issued by an Indian company at a discount?

There are no restrictions under FEMA for investment in Rights shares issued at a discount by an Indian company, provided the rights shares so issued are being offered at the same price to residents and non-residents. The offer on right basis to the persons resident outside India shall be: a. At a price as determined by the company in the case of shares of a company listed on a recognized stock exchange in India, b. At a price which is not less than the price at which the offer on right basis is made to resident shareholders in the case of shares of a company not listed on a recognized stock exchange in India

10. What are the regulations regarding Portfolio Investments by registered Foreign Portfolio Investors (FPIs)?

Investment by FPI registered in accordance with SEBI guidelines including deemed RFPI (erstwhile FII) is permitted in the capital of an Indian company under the Portfolio Investment Scheme. Investment by individual FPIs should be less than 10 % of the paid up capital of the Indian company on a fully diluted basis. The aggregate investment by FPIs should not exceed 24 % of the paid up capital of an Indian Company on a fully diluted basis. This aggregate limit of 24 % can be increased by

the Indian company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap.

11. What is the procedure for making portfolio investments in India for a Non-Resident Indian?

An NRI needs to apply to a designated branch of a bank, which deals in Portfolio Investment. An NRI can purchase shares up to 5% of the paid-up capital of an Indian Company on a fully diluted basis. All NRIs taken together cannot purchase more than 10% of the paid-up value of the Company. The aggregate limit of up to 24%, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively. For more information, [click here](#).

12. Which are the permissible ways in which an FVCI can make the investment?

The FVCI is permitted to:

- a) Purchase the securities/ instruments (permitted for FVCI) either from the issuer of these securities/ instruments or from any person holding these securities/ instruments.
- b) Invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time.
- c) Acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security/ instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer.
- d) Receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes/ funds set up by the VCFs or Cat-I AIFs.

13. Are foreign investments permitted in investment vehicles?

Yes. Foreign investments are permitted in investment vehicles under the automatic route. However, an entity registered / incorporated in and a citizen of Pakistan/ Bangladesh is not permitted to invest in investment vehicles.

14. What are investment vehicles?

Investment Vehicles refer to an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and include Real Estate Investment Trusts

(REITs), Infrastructure Investment Trusts (Invlts) and Alternative Investment Funds (AIFs). For more information, [click here](#).

15. What are Depository Receipts (DRs)?

DRs refer to negotiable securities representing INR denominated equity shares (held as a deposit by custodian bank) of a company and issued outside of India by a Depository bank on behalf of the company. The DRs listed and traded in US markets are known as American Depository Receipts (ADRs). The DRs listed and traded except in the US markets are known as the Global Depository receipts (GDRs).

16. How can the FVCI make payment for the investment?

The amount of consideration for all investment by an FVCI has to be made through inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account maintained by the FVCI with an AD bank in India. The foreign currency account and SNRR account shall be used only and exclusively for transactions under the relevant Schedule.

17. How can an Indian company receive foreign investment?

Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by respective Administrative Ministry/Department. Foreign investment in sectors/activities under government approval route will be subject to government approval where: a) An Indian company is being established with foreign investment and is not owned by a resident entity. b) An Indian company is being established with foreign investment and is not controlled by a resident entity. c) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and 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 nonresident entities through amalgamation, merger/demerger, acquisition etc. d) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens

and 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 nonresident entities through amalgamation, merger/demerger, acquisition etc. e) It is clarified that Foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 9 (LLPs), 10 (DRs) and 11 (Investment Vehicles) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, 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. f) Investment by NRIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident outside India) Regulations will be deemed to be domestic investment at par with the investment made by residents. g) A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations and such investment will also be deemed domestic investment at par with the investment made by residents.

18. What are the modes of payment allowed to receive FDI in an Indian company?

Indian company issuing shares /convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares /convertible debentures by: (i) Inward remittance through normal banking channels. (ii) Debit to NRE / FCNR (B) account of a person concerned maintained with an AD category I bank. (iii) Debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration. (iv) Conversion of royalty / lump sum / technical know-how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares v. conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB. (vi) Conversion of pre-incorporation/ pre-operative expenses incurred by the a non-resident entity up to a limit of 5% of its capital or \$ 500,000 (whichever is less) (vii) Against any other funds payable to a person resident outside India, the remittance of which does not require the prior approval of the Reserve Bank or the Government of India and (viii) Swap of capital instruments, provided where the Indian investee company is engaged in a Government route sector, prior Government approval shall be required.

19. What is the process of reporting FDI received in my company?

On receipt of funds from foreign entity, the Indian company would need to report the details to the Regional RBI office within 30 days of receipt in the Form ARF through an AD Category I bank as well as allocate shares within 180 days of receipt of the amount. Post issue of shares, a duly filled-in Form FC-GPR needs to be submitted not later than 30 days from date of issue of shares.

20. Who all are the eligible entities that are permitted to invest via FDI in India?

A number of entities are permitted to invest in India. The investing entity can be an individual, company, foreign institutional investor, foreign venture capital investor, foreign trust, private equity fund, pension/provident fund, sovereign wealth fund, partnership/proprietorship firm, financial institution, non-resident Indian/person of Indian origin, others, etc. The investments can be via the automatic approval or the Government approval route as per the specified policies. However, there are certain restrictions for Bangladesh and Pakistan. i) A non-resident entity, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh 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 ii) 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. iii) Erstwhile OCBs incorporated outside India and not under the adverse notice of RBI can make fresh investments under FDI Policy as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government route; and with the prior approval of RBI if the investment is through Automatic route iv) A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs. v) Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap. vi) SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian company engaged in any activity mentioned in Schedule 6 of Notification No. FEMA 20/2000, including startups irrespective of the sector in which it is engaged, under the automatic route.

21. Are there any restrictions on investing in India from certain countries?

Yes. A citizen of Bangladesh or an entity incorporated in Bangladesh 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.

22. Are there any restrictions on the sectors for FDI in India?

Yes, investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. as per the latest FDI policy.

23. Are the investments and profits earned in India repatriable?

All foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after payment of taxes due, except in cases where the investment is made or held on non-repatriation basis or where the sectoral condition specifically mentions non-repatriation. Repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time. i. Repatriation of Interest: Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes) ii. Repatriation of Dividend: Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time. Further, dividends/ profits (net of applicable taxes), on foreign investments, being current income can be remitted outside India through an Authorised Dealer bank.

24. What is the institutional framework governing FDI in India?

FDI in India is regulated under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Original notification is available at [link](#); subsequent amendment notifications are available at [link2](#)). Besides FEMA, 1999, FDI is also

subject to other regulations as per Reserve Bank of India (RBI) and DPIIT. DPIIT is the nodal agency entrusted to formulate FDI Policy. It issues press notes to make amendments in the existing policy and also issues consolidated FDI Policy on an annual basis.

25. Are foreign investments permitted in investment vehicles?

Yes. Foreign investments are permitted in investment vehicles under the automatic route. However, an entity registered / incorporated in and a citizen of Pakistan/ Bangladesh is not permitted to invest in investment vehicles.

26. What is apostille and how to get the documents apostilled and notarized from the foreign country?

An "apostille" is a form of authentication/certification issued to documents for use in countries that participate in the Hague Convention of 1961. Apostille is to confirm the legal authenticity of any document. A list of countries that accept apostilles is provided by the US State Department. Apostilles are affixed by Competent Authorities designated by the government of a state which is party to the convention. A list of these authorities is maintained by the Hague Conference on Private International Law. Examples of designated authorities are embassies, ministries, courts or (local) governments. An Apostille Certificate is official government Certificate printed or stamped onto the reverse side of a single page document or attached to multiple paged documents with green notary ribbon making it become one inseparable document. It authenticates the seal and or signature of the public official or authority such as a notary or registrar issuing the document.

27. Can one increase the Company's authorized capital to get more external funding?

The authorized capital of a Company can be increased at any time as per the Companies Act, 2013 and in case the Article of Association does not allow this, the AoA can be amended by passing a "special resolution". One may also consider getting External Commercial Borrowings. For more information, [click here](#).

28. How can foreign investors put money in Portfolio Investments in India?

Investment by FPI registered in accordance with SEBI guidelines including deemed RFPI (erstwhile FII) is permitted in the capital of an Indian Company under the Portfolio Investment Scheme.

Investment by individual FPIs should be less than 10% of the paid-up capital of the Indian Company on a fully diluted basis. The aggregate investment by FPIs should not exceed 24% of the paid-up capital of an Indian Company on a fully diluted basis. This aggregate limit of 24% can be increased by the Indian Company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, cannot exceed sectoral/statutory cap. For more information, [click here](#).

29. What are the regulations for a foreign company to set up business operations in India?

A foreign company can set up business in India via Foreign Direct Investment (FDI) either by incorporating an Indian company or foreign company or LLP under the Companies Act, 2013 or by setting up a Liaison Office, Project Office or a Branch Office of the foreign company. Entry into India is however as per the provision of FDI policy and FEMA rules. For more information, [click here](#).