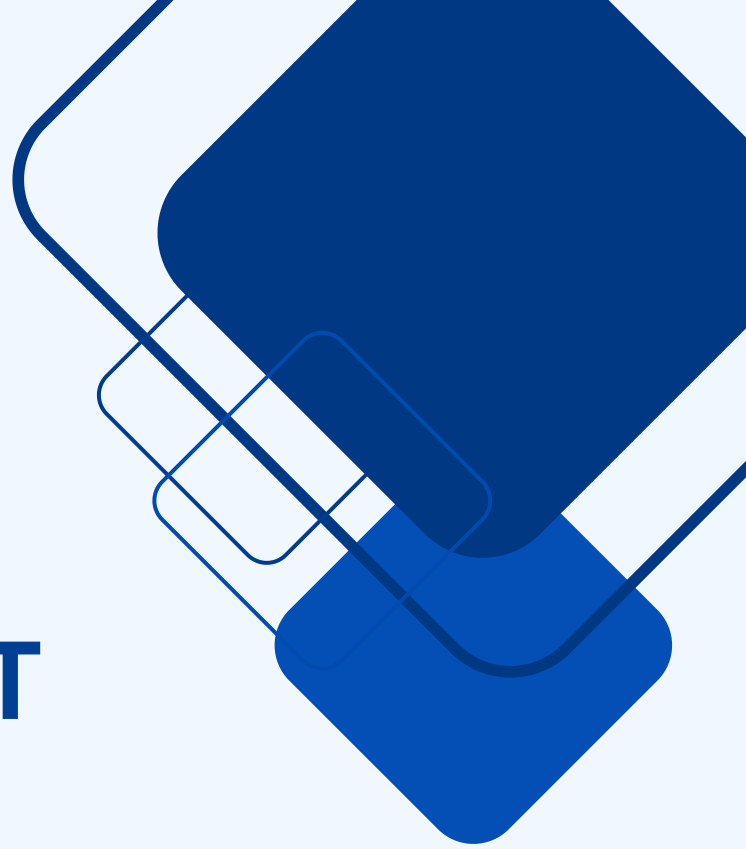


FOREIGN DIRECT INVESTMENT BOOKLET



ACUMEN JURIS LAW OFFICE

Gurugram | Delhi | Bengaluru

CONTACT US

Abhishek Bansal

Mobile No- 9873191956

E-mail id- abhishek.bansal@acumenjuris.com

Laxmi Sinha

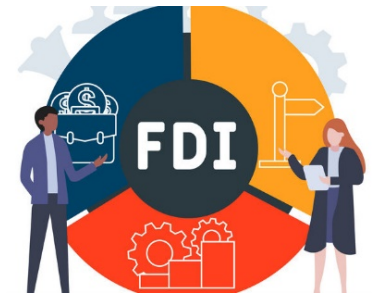
Mobile No- 9650862933

E-mail.id- laxmi.sinha@acumenjuris.com



INTRODUCTION

Foreign Direct Investment (FDI), in addition to being a key driver of economic growth, has been a significant non-debt financial resource for India's economic development. Foreign corporations invest in India to benefit from the country's particular investment privileges such as tax breaks and comparatively lower salaries. This helps India develop technological know-how and create jobs as well as other benefits. Investments have been coming into India because of the government's supportive policy framework, vibrant business climate, rising global competitiveness and economic influence.



The government has recently made numerous efforts, including easing FDI regulations in various industries. India's FDI inflows reached record levels during 2020-21. The total FDI inflows stood at US\$ 81,973 million, a 10% increase over the previous financial year. According to the World Investment Report 2022, India was ranked eighth among the world's major FDI recipients in 2020, up from ninth in 2019. Information and technology, telecommunication and automobile were the major receivers of FDI in FY22. With the help of significant transactions in the technology and health sectors, multinational companies (MNCs) have pursued strategic collaborations with top domestic business groupings, fuelling an increase in cross-border M&A of 83% to US\$ 27 billion.

In the context of Foreign Direct Investment (FDI) in India, the terms "automatic route" and "approval route" refer to two different mechanisms through which foreign investment can be made in various sectors of the Indian economy. These routes determine the level of government approval required for specific FDI activities.

Automatic Route:

Under the automatic route, foreign investors are not required to obtain prior approval from the government or its regulatory agencies for making investments in most sectors of the Indian economy. They can directly invest in these sectors without seeking approval.

Investment under the automatic route is subject to compliance with applicable sector-specific conditions, if any. These conditions are usually outlined in sectoral guidelines issued by the government.

Approval Route:

The approval route, also known as the government route, requires foreign investors to seek prior approval from the government or its relevant authorities before making investments in certain sensitive or restricted sectors.

It's important to note that India has been making efforts to liberalize its FDI policies and reduce the number of sectors requiring approval. Over time, many sectors have been moved to the automatic route to encourage foreign investment and simplify the investment process.

The sector (Other than Financial Services) which is not specified in sectoral list and such sector does not form part of prohibited list of sectors for FDI, then 100% Foreign Investment is permissible for these sectors under Automatic Route.

Sectoral Cap:

Sectoral Cap is defined as the maximum foreign investment permitted by persons resident outside India in equity instruments of a company on repatriation basis, including the indirect foreign investment, unless provided otherwise. This shall be the composite limit for the investee Indian entity.

EXECUTIVE SUMMARY

This Booklet contains the permitted FDI under various sectors along with sectoral cap and conditionalities as per Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 read with consolidated FDI Policy 2020, as amended from time to time.

Updated up to – 22 September 2023

INDEX

SECTORS	SECTORAL CAP	ENTRY ROUTE	PAGE NO
Agriculture And Animal Husbandry	100%	Automatic	7
Plantation	100%	Automatic	8
Mining			9-10
• Mining & Exploration and Mining Coal and Lignite	100%	Automatic	
• Mining and Mineral	100%	Government	
Petroleum And Natural Gas			11
• Exploration Activities of Oil and Natural Gas Fields, Infrastructure	100%	Automatic	
• Petroleum refining by The Public Sector Undertakings (PSU)	49%	Automatic	
Manufacturing	100%	Automatic	12
Defence	100%	Automatic route: up to 74% Government route: beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded.	13-14
Broadcasting			15-17
1. Broadcasting Carriage Services Teleports and Cable Networks	100%	Automatic	
2. Broadcasting Content Services			
• Terrestrial Broadcasting FM and others	49%	Government	
• Uploading/ Streaming of news and current affairs	26%	Government	
• Up-linking of Non-'News & Current Affairs	100%	Automatic	

ACUMEN JURIS

Print Media <ul style="list-style-type: none"> Publishing of newspaper, periodicals and others Publishing or printing of Scientific and Technical Magazine 	26% 100%	Government Government	18-19
Civil Aviation Airports and Other Services under Civil Aviation sector Air Transport Services <ul style="list-style-type: none"> a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline b) Regional Air Transport Service Civil Aviation (Air Transport Services)	100% 100%	Automatic Automatic up to 49% Government route beyond 49% Automatic up to 100% for NRI's and OCI's)	20-23
<ul style="list-style-type: none"> c) Non-Scheduled Air Transport Service d) Helicopter service or seaplane services requiring Directorate General of Civil Aviation approval 	100%	Automatic	
Construction	100%	Automatic	24-26
Industrial Parks	100%	Automatic	27-28
Satellites –Establishment and Operation	100%	Government	29
Private Security Agencies	49%	Government	30
Telecom Services	100%	Automatic	31
Trading Telecom <ul style="list-style-type: none"> A. Cash and Carry Wholesale Trading B. E-Commerce B2B activities and Market place model C. Single Brand Product Retail Trading D. Multi Brand Retail Trading (MBRT) E. Duty Free Shops 	100% 100% 100% 51% 100%	Automatic Automatic Automatic Government Automatic	32-39
Pharmaceuticals <ul style="list-style-type: none"> Greenfield Brownfield 	100% 100%	Automatic Automatic Route up to 74% Government Route beyond 74%	40-42
Railway Infrastructure	100%	Automatic	44
Asset Reconstruction Companies	100%	Automatic	45

ACUMEN JURIS

Banking –Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%	46-47
Banking –Public Sector	20%	Government	48
Infrastructure Companies in The Security Market	49%	Automatic	49
Commodities Spot Exchange	49%	Automatic	50
Power Exchanges	49%	Automatic	51
Credit Information Companies	100%	Automatic	52
Insurance <ul style="list-style-type: none"> Insurance Company Life Insurance Corporation of India Intermediaries or insurance intermediaries 	74% 20% 100%	Automatic Automatic Automatic	53
Pension Sector	49%	Automatic	54
Other Financial Services	100%	Automatic	55
Prohibited Sectors/Persons			56



FOREIGN INVESTMENTS

1. AGRICULTURE AND ANIMAL HUSBANDRY

Sector/ Activity

- a) Floriculture, Horticulture and Cultivation of vegetables and mushrooms under controlled conditions;
- b) Development and production of seeds and planting material;
- c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture; and
- d) Services related to agro and allied sectors.

Note: Other than the above, foreign investment is not allowed in any other agricultural sector or activity.

Sectoral Cap

100%

Entry Route

Automatic

Conditions

The term 'under controlled conditions' covers the following:

'Cultivation under controlled conditions' for the categories of Floriculture, Horticulture, Cultivation of vegetables and mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure micro-climatic conditions are regulated anthropogenically.



FOREIGN INVESTMENTS

2. PLANTATION

Sector/ Activity			
<ul style="list-style-type: none"> a) Tea sector including tea plantations b) Coffee plantations c) Rubber plantations d) Cardamom plantations e) Palm oil tree plantations f) Olive oil tree plantation <p>Note: Foreign investment is not allowed in any plantation sector/ activity other than those listed above.</p>			
Sectoral Cap	100%	Entry Route	Automatic
Conditions			
Prior approval of the State Government concerned is required in case of any future land use change.			



FOREIGN INVESTMENTS

3. MINING

Sector/ Activity			
A. Mining and Exploration			
Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development and Regulation) Act, 1957.			
Sectoral Cap	100%	Entry Route	Automatic
B. Coal and Lignite			
<p>a) Coal and Lignite mining for captive consumption by power projects, iron and steel and cement units and other eligible activities permitted under and subject to the provisions of the Mines and Minerals (Development and Regulation Act), 1957 (67 of 1957) and Coal Mines (Special Provisions) Act, 2015 (11 of 2015).¹</p> <p>b) Setting up coal processing plants like washeries, subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.</p> <p>c) For sale of coal, coal mining activities including associated processing infrastructure subject to the provisions of the Mines and Minerals (Development and Regulation Act, 1957 and the Coal Mines (Special Provisions) Act, 2015 and other relevant Acts on the subject.²</p>			
Sectoral Cap	100%	Entry Route	Automatic

¹ Substituted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance. Previously, it was read as "Coal and Lignite mining for captive consumption by power projects, iron and steel and cement units and other eligible activities permitted under and subject to the provisions of the Coal Mines (Nationalization) Act, 1973."

² Inserted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance

C. Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities

Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation) Act, 1957.

Sectoral Cap	100%	Entry Route	Government
---------------------	------	--------------------	------------

Conditions

- a) Associated Processing Infrastructure” includes coal washery, crushing, coal handling and separation (magnetic and non-magnetic).³
- b) Foreign investment for separation of titanium bearing minerals and ores shall be subject to the following conditions:
 - (i) Value addition facilities are set up within India along with transfer of technology;
 - (ii) Disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.

(b) Foreign investment will not be allowed in mining of "prescribed substances" listed in the Notification No. S.O. 61(E), dated 18.1.2006, issued by the Department of Atomic Energy.

Clarification:

- (i) For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce Synthetic Rutile or Titanium Slag as an intermediate value-added product.
- (ii) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of this Rules can be achieved, the conditions prescribed at (a)(i) above shall be deemed to be fulfilled.

³ Inserted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance



FOREIGN INVESTMENTS

4. PETROLEUM AND NATURAL GAS

Sector/ Activity ¹			
A. Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.			
Sectoral Cap	100%	Entry Route	Automatic
B. Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.			
Sectoral Cap	49%	Entry Route	Automatic

Notwithstanding anything contained at the above provisions, foreign investment up to 100% under the automatic route is allowed in case an “in-principal” approval for strategic disinvestment of a PSU has been granted by the Government.

¹ Substituted vide Press Note 3 (2021 Series) issued by DPIIT File No.: 15(5)/2020-FDI Policy, dated 29.07.2021.



FOREIGN INVESTMENTS

5. MANUFACTURING

Sector/ Activity

Manufacturing activities may be either self-manufacturing by the investee entity or contract manufacturing in India through a legally tenable contract, whether on Principal to Principal or Principal to Agent basis. Further, a manufacturer is permitted to sell his products manufactured in India through wholesale and/ or retail, including through e-commerce without Government approval.⁴

Notwithstanding the provisions of these Rules on trading sector, 100% foreign investment under the government approval route is allowed for trading, including through e-commerce, in respect of food products manufactured and/ or produced in India. Applications for foreign investment in food products retail trading shall be processed in the Department of Industrial Policy and Promotion before being considered by the Government for approval.

Sectoral Cap	100%	Entry Route	Automatic
---------------------	------	--------------------	-----------

⁴ Substituted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance. Previously, it was read as “A manufacturer is permitted to sell its products manufactured in India through wholesale and/ or retail, including through e-commerce without Government approval.”



FOREIGN INVESTMENTS

6. DEFENCE

Sector/ Activity			
Defence Industry subject to Industrial license under the industries (Development & Regulation) Act, 1951; and Manufacturing of small arms and ammunition under the Arms Act, 1959			
Sectoral Cap	100%	Entry Route	Automatic route: up to 74% Government route: beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded.
Conditions			
<p>a) FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses.²</p> <p>b) Infusion of Fresh foreign investment up to 49% in a company not seeking industrial licenser which already has Government approval for FDI in Defence, shall submit a declaration with the Ministry of Defence in cases of change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor, for FDI up to 49% within a period of thirty days of such change and any proposal for raising FDI beyond 49% from such companies shall require Government approval.³</p> <p>c) Licence applications will be considered and licenses shall be given by the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.</p> <p>d) Foreign investment in this sector is subject to security clearance by the Ministry of Home Affairs and guidelines of the Ministry of Defence.</p>			

² Inserted vide notification no. S.O. 4441(E) dated 8th December, 2020 issued by Department of Economic Affairs, Ministry of Finance.

³ Inserted vide notification no. S.O. 4441(E) dated 8th December, 2020 issued by Department of Economic Affairs, Ministry of Finance.

- e) Investee company should be structured to be self-sufficient in areas of product design and development. The investee/ joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.
- f) Foreign investments in the Defence sector shall be subject to scrutiny on grounds of national security and Government reserves the right to review any foreign investment in the Defence sector that affects or may affect national security.⁴

⁴ Inserted vide notification no. S.O. 4441(E) dated 8th December, 2020 issued by Department of Economic Affairs, Ministry of Finance.



FOREIGN INVESTMENTS

7. BROADCASTING

Sector/ Activity

1. Broadcasting Carriage Services

- | | |
|----|---|
| a. | <ul style="list-style-type: none"> i. Teleports (setting up of up-linking HUBs/ Teleports); ii. Direct to Home (DTH); iii. Cable Networks (Multi System Operators (MSOs) operating at National or State or District level and undertaking up-gradation of networks towards digitalization and addressability); iv. Mobile TV; v. Head-end-in-the Sky Broadcasting Service (HITS) |
|----|---|

Sectoral Cap

100%

Entry Route

Automatic

- | | |
|----|--|
| b. | Cable Networks (Other MSOs not undertaking up-gradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)). |
|----|--|

Sectoral Cap

100%

Entry Route

Automatic

Note: Infusion of fresh foreign investment for sectors specified in 1a and 1b above, beyond 49 percent in a company not seeking license/ permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.

2. Broadcasting Content Services

- | | |
|----|---|
| a. | Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information and Broadcasting, for grant of permission for setting up of FM Radio stations. |
|----|---|

Sectoral Cap

49%

Entry Route

Government

b.	Up-Linking of 'News & Current Affairs' TV Channels		
	Sectoral Cap	49%	Entry Route
			Government
c.	Uploading/ Streaming of news and current affairs through digital media ⁵		
	Sectoral Cap	26%	Entry Route
			Government
d.	Up-linking of Non-'News & Current Affairs' TV Channels/ Downlinking of TV Channels		
	Sectoral Cap	100%	Entry Route
			Automatic
Conditions			
<p>a) Foreign investment in companies engaged in all the afore-stated services shall be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.</p> <p>b) Foreign investment in the afore-stated broadcasting carriage services shall be subject to the terms and conditions as may be specified by the Ministry of Information and Broadcasting, from time to time, in this regard.</p> <p>c) Licensee shall ensure that broadcasting service installation carried out by it shall not become a safety hazard and is not in contravention of any statute, rule or regulations and public policy.</p> <p>d) In the 2a and 2b sectors above where the sectoral cap is up to 49 percent, the company should be owned and controlled by resident Indian citizens or Indian companies which are owned and controlled by resident Indian citizens.</p> <p>(i) For this purpose, the equity held by the largest Indian shareholder shall be at least 51 percent of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in section 4A of the Companies Act, 1956 or Section 2 (72) of the Companies Act, 2013, as the case may be and the term 'largest Indian shareholder' used in this clause, shall include any or a combination of the following, namely: —</p> <p>(1) In case of individual shareholder: (1a) The individual shareholder (1b) A relative of the shareholder within the meaning of Section 2 (77) of Companies Act, 2013 (1c) A company or group of companies in which the individual shareholder or Hindu Undivided Family to which he belongs has management and controlling interest.</p> <p>(2) In case of an Indian Company: (2a) The Indian company (2b) A group of Indian companies under the same management and ownership control</p>			

⁵ Inserted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance

- (3) For this purpose, "Indian company" shall be a company which must have a resident Indian or a relative as defined under section 2 (77) of Companies Act, 2013/ HUF, either singly or in combination holding at least 51% of the shares
- (4) Provided that, in case of a combination of all or any of the entities mentioned in sub-clauses (d)(i) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.



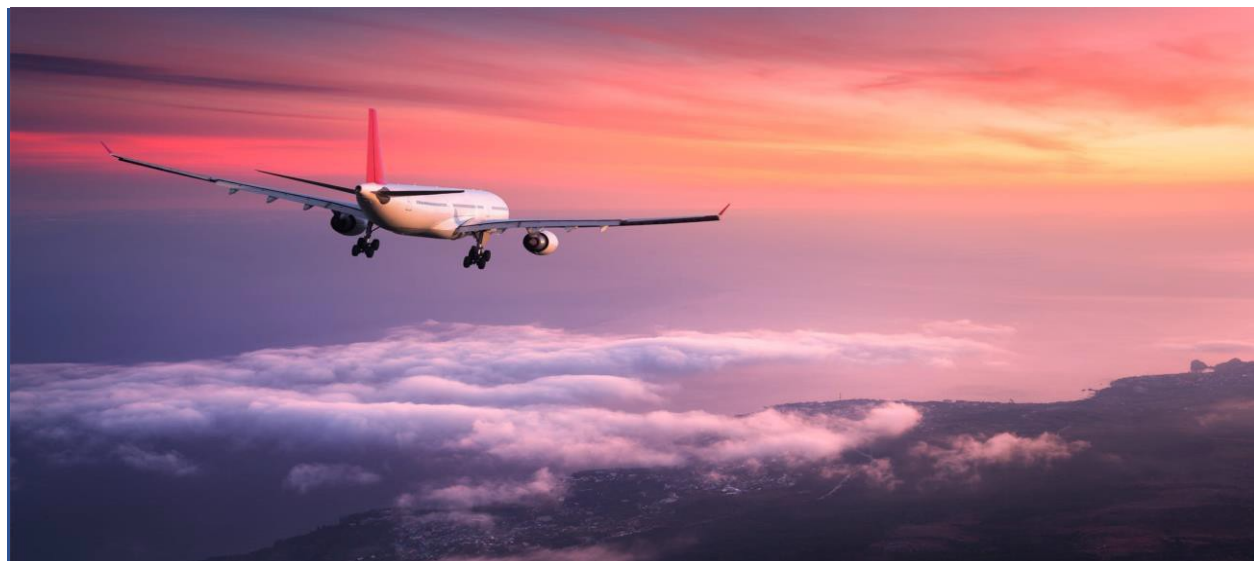
FOREIGN INVESTMENTS

8. PRINT MEDIA

Sector/ Activity			
A. Publishing of newspaper and periodicals dealing with news and current affairs			
Sectoral Cap	26%	Entry Route	Government
B. Publication of Indian editions of foreign magazines dealing with news and current affairs			
Sectoral Cap	26%	Entry Route	Government
Conditions (For A and B above)			
a) 'Magazine', for the purpose of these guidelines, shall be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news. b) Foreign investment shall also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information and Broadcasting on 4-12-2008.			
C. Publishing or printing of Scientific and Technical Magazine or specialty journals or periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.			
Sectoral Cap	100%	Entry Route	Government
D. Publication of facsimile edition of foreign newspapers			
Sectoral Cap	100%	Entry Route	Government

Conditions (For C and D above)

- a) Foreign investment shall be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.
- b) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 2013.
- c) Publication of facsimile edition of foreign newspaper shall also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information and Broadcasting on 31- 3-2006.



FOREIGN INVESTMENTS

9. CIVIL AVIATION

Sector/ Activity			
A. Airports			
a) Greenfield Projects			
b) Existing projects			
Sectoral Cap	100%	Entry Route	Automatic
B. Air Transport Services			
a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline			
b) Regional Air Transport Service			
Sectoral Cap	100%	Entry Route	Automatic up to 49% Government route beyond 49% Automatic up to 100% for NRI's and OCI's)
c) Non-Scheduled Air Transport Service			
d) Helicopter service or seaplane services requiring Directorate General of Civil Aviation approval			
Sectoral Cap	100%	Entry Route	Automatic
<i>Note: The sectoral caps or entry routes mentioned in s. no. a), b) and c) of point no. 2, are applicable in the situation where there is no investment by foreign airlines.</i>			
C. Other Services under Civil Aviation sector			
a) Ground Handling Services subject to sectoral regulations and security clearance			
b) Maintenance and Repair organizations; flying training institutes and technical training institutions			
Sectoral Cap	100%	Entry Route	Automatic

Conditions

(a) Air Transport Services shall include Domestic Scheduled Passenger Airlines, Non-Scheduled Air Transport Services, helicopter and seaplane services.

(b) Foreign airlines are allowed to make foreign investment in Cargo airlines, helicopter and seaplane services, as per the limits and entry routes mentioned above.

(c) Foreign airlines are allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport, services up to the limit 49 % of the paid-up capital of the Indian investee company.

Such foreign investment would be subject to the following conditions, namely, —

(i) It shall be under the Government approval route.

(ii) The foreign investment shall comply with the relevant regulations of Securities and Exchange Board of India as well as other applicable rules and regulations.

(iii) A Scheduled Operator's Permit may be granted only to a company:

- (1) that is registered and has its principal place of business within India;
- (2) the Chairman and at least two-thirds of the Directors of which are citizens of India; and
- (3) the substantial ownership and effective control of which is vested in Indian citizens.

(iv) All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such foreign investment shall be cleared from security view point before deployment; and

(v) All technical equipment that might be imported into India as a result of such foreign investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.

(d) In addition to the above conditions, foreign investment in M/s Air India Limited shall be subject to the following conditions:

- i. Foreign investment in M/s Air India Ltd., including that of foreign airline(s), shall not exceed 49% either directly or indirectly
- ii. Substantial ownership and effective control of M/s Air India Ltd. shall continue to be vested in Indian Nationals."

(e) FDI in Civil Aviation shall be subject to provisions of the Aircraft Rules, 1937 as amended from time to time.

Note:

- (i) The FDI limits or entry routes for air transport services are applicable in the situation where there is no investment by foreign airlines.
- (ii) Any investment by foreign airlines in companies operating in Air Transport Services, including in M/s Air India Limited shall be subject to entries (b) and (c) above.
- (iii) The dispensation for those NRIs, who are Indian Nationals, regarding FDI up to 100 percent will continue in respect of the investment regime specified at entries (c) (ii) and (d) above.

The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, helicopter services or Seaplane services, Ground Handling Services, Maintenance and Repair organizations, Flying training institutes, and technical training institutions.

For the purposes of the Civil Aviation sector:

- (a) **"Airport"** means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;
- (b) **"Aerodrome"** means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto;
- (c) **"Air transport service"** means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights;
- (d) **"Air Transport Undertaking"** means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;
- (e) **"Aircraft component"** means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;
- (f) **"Helicopter"** means a heavier than air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;
- (g) **"Scheduled air transport service"** means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public;

- (h) **"Non-Scheduled air transport service"** means any service which is not a scheduled air transport service and will include Cargo airlines;
- (i) **"Cargo airlines"** would mean such airlines which meet the conditions as given in the Civil Aviation requirements issued by the Ministry of Civil Aviation;
- (j) **"Seaplane"** means an aeroplane capable normally of taking off from and alighting solely on water;
- (k) **"Ground Handling"** means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.



FOREIGN INVESTMENTS

10. CONSTRUCTION

Sector/ Activity

Construction Development: Townships, Housing, Built-up

Construction-development projects (which shall include development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)

Sectoral Cap

100%

Entry Route

Automatic

Conditions

- (a) Each phase of the construction development project shall be considered as a separate project.
- (b) The investor shall be permitted to exit on completion of the project or after development of trunk infrastructure i.e., roads, water supply, street lighting, drainage and sewerage.
- (c) Notwithstanding anything contained at (b) above, a person resident outside India shall be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in period of three years, calculated with reference to each tranche of foreign investment has been completed.

Further, transfer of stake from a person resident outside India to another person resident outside India, without repatriation of foreign investment will neither be subject to any lock-in period nor to any government approval.

- (d) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building

control regulations, byelaws, rules, and other regulations of the State Government or Municipal or Local Body concerned.

- (e) The Indian investee company shall be permitted to sell only developed plots. For the purposes of this policy "developed plots" shall mean plots where trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage, have been made available.
- (f) The Indian investee company shall be responsible for obtaining all necessary approvals, including those of the building or layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/ bye-Laws/ regulations of the State Government or Municipal or Local Body concerned.
- (g) The State Government or Municipal or Local Body concerned, which approves the building or development plans, shall monitor compliance of the above conditions by the developer.

Note:

- (1) Foreign investment is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs).
- (2) Condition of lock-in period shall not apply to Hotels and Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs or OCIs.
- (3) Completion of the project shall be determined as per the local bye-laws/ rules and other regulations of State Governments.
- (4) Foreign investment up to 100 percent under automatic route is permitted in completed projects for operating and managing townships, malls/ shopping complexes and business centers. Consequent to such foreign investment, transfer of ownership and/ or control of the investee company from persons resident in India to persons resident outside India is also permitted, however, there shall be a lock-in-period of three years, calculated with reference to each tranche of foreign investment and transfer of immovable property or part thereof is not permitted during this period.
- (5) "Transfer", in relation to this sector, includes, —
 - (a.) the sale, exchange or relinquishment of the asset; or
 - (b.) the extinguishment of any rights therein; or
 - (c.) the compulsory acquisition thereof under any law; or

(d.) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

(e.) any transaction, by acquiring capital instruments in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.

- (6) 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;

Explanation: —

- (a) Investment in units of Real Estate Investment Trusts (REITs) registered and regulated under the Securities and Exchange Board of India (REITs) regulations 2014 shall also be excluded from the definition of "real estate business".
- (b) Earning of rent income on lease of the property, not amounting to transfer, shall not amount to real estate business.
- (c) Transfer in relation to real estate includes,
- (i) the sale, exchange or relinquishment of the asset; or
 - (ii) the extinguishment of any rights therein; or
 - (iii) the compulsory acquisition thereof under any law; or
 - (iv) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or
 - (v) any transaction, by acquiring capital instruments in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.
- (7) Real estate broking services shall be excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route.



FOREIGN INVESTMENTS

11. INDUSTRIAL PARKS

Sector/ Activity			
Industrial parks			
Sectoral Cap	100%	Entry Route	Automatic
Conditions			
<p>Foreign investment in Industrial Parks shall not be subject to the conditionalities applicable for construction development projects etc., provided the Industrial Parks meet with the undermentioned conditions:</p> <p>(a) it shall comprise of a minimum of 10 units and no single unit shall occupy more than 50 % of the allocable area;</p> <p>(b) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66 % of the total allocable area.</p>			

For the purpose of this sector:

- (a) **"Industrial Park"** is a project in which 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.
- (b) **"Infrastructure"** refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), railway line/ sidings including electrified railway lines and connectivity to the main railway line, water supply and sewerage, common effluent treatment facility,

telecom network, generation and distribution of power, air conditioning.

(c) **"Common Facilities"** refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), railway line/ sidings including electrified railway lines and connectivity to the main railway line, water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/ conference halls, parking, travel desks, security service, first aid centre, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.

(d) **"Allocable area"** in the Industrial Park means—

(i) in the case of plots of developed land - the net site area available for allocation to the units, excluding the area for common facilities.

(ii) in the case of built-up space - the floor area and built-up space utilized for providing common facilities.

(iii) In the case of a combination of developed land and built-up space - the net site and floor area available for allocation to the units excluding the site area and built-up space utilized for providing common facilities.

(e) **"Industrial Activity"** means manufacturing; electricity; gas and water supply; post and telecommunications; software publishing, consultancy and supply; data processing, database activities and distribution of electronic content; other computer related activities; basic and applied research and development on bio-technology, pharmaceutical sciences or life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.



FOREIGN INVESTMENTS

12. SATELLITES – ESTABLISHMENT AND OPERATION

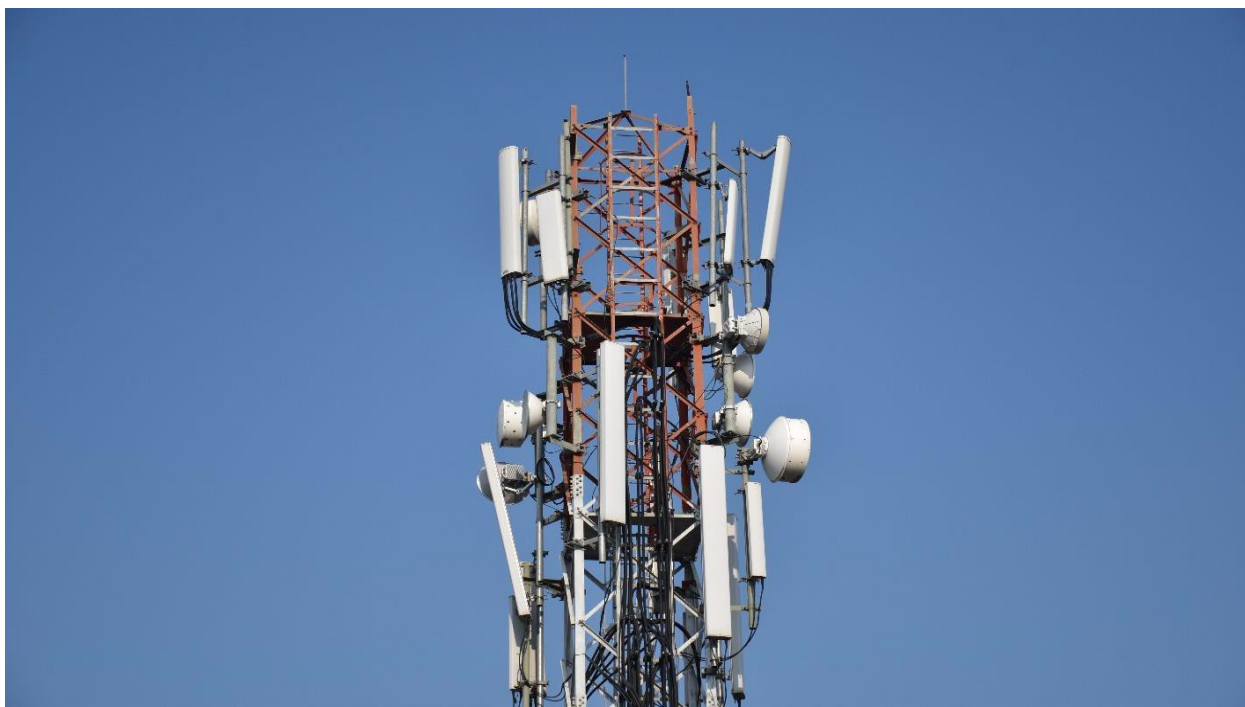
Sector/ Activity			
Satellites Establishment and operation, subject to the sectoral guidelines of Department of Space/ ISRO			
Sectoral Cap	100%	Entry Route	Government



FOREIGN INVESTMENTS

13. PRIVATE SECURITY AGENCIES

Sector/ Activity			
Private Security Agencies			
Sectoral Cap	49%	Entry Route	Government



14. TELECOM SERVICES (INCLUDING TELECOM INFRASTRUCTURE PROVIDERS CATEGORY-I)

Sector/ Activity			
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), Other Service Providers and such other services as may be permitted by the Department of Telecommunications (DoT).			
Sectoral Cap	100%	Entry Route	Automatic*
Conditions			
The licensing, security and any other terms and conditions as specified by Department of Telecommunications from time to time, shall be observed by licensee/entities providing services as, as well as investors.			

Note*: The above entry route has been amended from the date 06.10.2021 vide Press note no. 4 (2021 Series) by the Ministry of Commerce and Industry under Department for Promotion of Industry and Internal Trade of FDI Policy Section.



FOREIGN INVESTMENTS

15. TRADING

Sector/ Activity

A. Cash and Carry Wholesale Trading/ Wholesale Trading (including sourcing from MSEs)

Definition:

- (a) Cash and Carry Wholesale trading (WT)/ Wholesale trading, shall mean sale of goods or merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers.
- (b) Wholesale trading shall, accordingly, imply sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not shall be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading shall include resale, processing and thereafter sale, bulk imports with export/ ex-bonded warehouse business sales and B2B e-Commerce.

Sectoral Cap

100%

Entry Route

Automatic

Conditions (for Cash and Carry Wholesale Trading/ Wholesale Trading (including sourcing from MSEs))

- (a) For undertaking 'WT', requisite licenses/ registration/ permits, as specified under the relevant Acts or Regulations or Rules or Orders of the State Government or Government Body or Government Authority or Local Self-Government Body under that State Government shall be obtained.

(b) Except in cases of sales to Government, sales made by the wholesaler shall be considered as 'cash and carry wholesale trading/ wholesale trading' with valid business customers, only when WT is made to the following entities:

- (i) Entities holding sales tax or VAT registration or service tax or excise duty or Goods and Services Tax (GST) registration; or
- (ii) Entities holding trade licenses i.e., a license or registration certificate or membership certificate or registration under Shops and Establishment Act, issued by a Government Authority or Government body/ Local Self-Government Authority, reflecting that the entity or person holding the license or registration certificate or membership certificate, as the case may be, is itself or himself or herself engaged in a business involving commercial activity; or
- (iii) Entities holding permits or license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities or Local Self Government Bodies; or
- (iv) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self-consumption.

Note: An Entity, to whom WT is made, may fulfil any one of the 4 conditions at (b) (i) to (iv) above.

(c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/ license/ permit etc. number, amount of sale etc. shall be maintained on a day-to-day basis.

(d) WT of goods shall be permitted among companies of the same group. However, such WT to group companies taken together shall not exceed 25% of the total turnover of the wholesale venture.

(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.

(f) A wholesale or cash and carry trader can undertake single brand retail trading, subject to the conditions mentioned under single brand retail trading. An entity undertaking wholesale/ cash and carry as well as retail business shall be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. Conditions under these rules for wholesale or cash and carry business and for retail business have to be separately complied with by the respective business arms.

B. E-Commerce

i) B2B E Commerce activities

Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.

Sectoral Cap

100%

Entry Route

Automatic

ii) Market place model of e-commerce

Sectoral Cap	100%	Entry Route	Automatic
Conditions (for E-commerce)			
<p>(a) E-commerce' means buying and selling of goods and services including digital products over digital & electronic network;</p> <p>(b) 'E-commerce entity' means a company incorporated under Companies Act 1956 or the Companies Act, 2013</p> <p>(c) 'Inventory based model of e-commerce' means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly;</p> <p>(d) 'Market place model of e-commerce' means providing of an information technology platform by an e-commerce entity on a digital and electronic network to act as a facilitator between buyer and seller.</p> <p>(e) Digital and electronic network shall include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobile etc.</p> <p>(f) Marketplace e-commerce entity shall be permitted to enter into transactions with sellers registered on its platform on B2B basis.</p> <p>(g) E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfilment, call centre, payment collection and other services.</p> <p>(h) E-commerce entity providing a marketplace shall not exercise ownership over the inventory i.e. goods purported to be sold. <i>Explanation:</i> Inventory of a vendor shall be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies which shall render the business into inventory-based model.</p> <p>(i) An entity having equity participation by e-commerce marketplace entity or its group companies or having control on its inventory by e-commerce marketplace entity or its group companies, shall not be permitted to sell its products on the platform run by such marketplace entity.</p> <p>(j) Goods/ services made available for sale electronically on website shall clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction shall be responsibility of the seller.</p> <p>(k) Payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines issued by the Reserve Bank in this regard.</p>			

- (l) Any warranty or guarantee of goods and services sold shall be the responsibility of the seller.
- (m) E-commerce entities providing marketplace shall not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and non-discriminatory manner.
Explanation: Such services shall include but not limited to fulfilment, logistics, warehousing, advertisement or marketing, payments, financing etc. Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.
- (n) Guidelines on cash and carry wholesale trading as given above shall apply to B2B e-commerce activities.
- (o) No e-commerce marketplace entity shall mandate any seller to sell any of their product exclusively on its platform.
- (p) E-Commerce marketplace entity with FDI shall have to obtain and maintain a report of statutory auditor by 30th September every year for the preceding financial year confirm the compliance of the e-commerce guidelines.⁶

Note:

- i. Foreign investment is not permitted in inventory-based model of e-commerce.
- ii. Sale of services through e-commerce shall be under automatic route subject to the sector specific conditions applicable laws/ regulations, security and other conditionalities.

C. Single Brand Product Retail Trading

Foreign investment in Single Brand Product Retail Trading (SBRT) is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

Sectoral Cap	100%	Entry Route	Automatic ⁷
---------------------	------	--------------------	------------------------

⁶ Substituted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance. Previously, point (p) was read as "All existing investments shall have to be in compliance with the above conditions from the date of issue of this Notification."

⁷ Substituted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance. Previously, the entry route was read as "Automatic upto 49%, Government route beyond 49%"

Conditions (for SBRT)

- (a) Products to be sold should be of a 'Single Brand' only.
- (b) Products should be sold under the same brand internationally i.e.; products shall be sold under the same brand in one or more countries other than India.
- (c) 'Single Brand' product-retail trading shall cover only products which are branded during manufacturing.
- (d) A person resident outside India, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner.
- (e) In respect of proposals involving foreign investment beyond 51 per cent, sourcing of 30% of the value of goods procured, shall be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing shall be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company shall be required to maintain. The procurement requirement is to be met in the first instance as an average of five years total value of goods procured beginning 1st April of the year of the commencement of SBRT business (i.e. opening of first store or start of online retail, whichever is earlier). Thereafter, SBRT entity shall be required to meet the 30% local sourcing norms on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company incorporated in India, which is the recipient of foreign investment for the purpose of carrying out single brand product retail trading.
- (f) For the purpose of meeting local sourcing requirement laid down at entry (e), all procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported. SBRT entity is also permitted to set off sourcing of goods from India for global operations against the mandatory sourcing requirement of 30%. For this, purpose, 'sourcing of goods from India for global operations' shall mean value of goods sourced from India for global operations for that single brand (in INR terms) in a particular financial year directly by the entity undertaking SBRT or its group companies (resident or non-resident), or indirectly by them through a third party under a legally tenable agreement.
- (g) A SBRT entity operating through brick-and-mortar stores, can also undertake retail trading through e-commerce. However, retail trading through e-commerce can also be undertaken prior to opening

of brick-and-mortar stores, subject to the condition that the entity opens brick and mortar stores within two years from date of start of online retail.⁸

Note:

- 1) Conditions mentioned at (b) and (d) above shall not be applicable for undertaking SBRT of Indian brands.
- 2) Indian brands should be owned and controlled by resident Indian citizens and/ or companies which are owned and controlled by resident Indian citizens.
- 3) Sourcing norms shall not be applicable up to three years from commencement of the business i.e. opening of the first store or start of online retail, whichever is earlier⁹, for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, condition mentioned at (e) above shall be applicable. A Committee under the Chairmanship of Secretary, DPIIT, with representatives from NITI Aayog, concerned Administrative Ministry and independent technical expert(s) on the subject shall examine the claim of applicants on the issue of the products being in the nature of 'state-of-art' and 'cutting-edge' technology where local sourcing is not possible and give recommendations for such relaxation.

D. Multi Brand Retail Trading (MBRT)

Sectoral Cap	51%	Entry Route	Government
--------------	-----	-------------	------------

Conditions (for MBRT)

- (a) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, can be unbranded.
- (b) Minimum amount to be brought in as foreign investment would be USD 100 million.
- (c) At least 50 % of the total foreign investment brought in the first tranche of USD 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' shall include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure shall include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, shall not be counted for purposes of back-end infrastructure. Subsequent investment in the back-end infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.

⁸ Point (e), (f) and (g) substituted vide notification no. S.O. 4355(E) dated 5th December, 2019 issued by Department of Economic Affairs, Ministry of Finance.

⁹ Inserted vide notification no. S.O. 1374(E) dated 27th April, 2020 issued by Department of Economic Affairs, Ministry of Finance.

- (d) At least 30 % of the value of procurement of manufactured or processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant and machinery not exceeding USD 2 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status shall be reckoned only at the time of first engagement with the retailer and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of USD 2 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives shall also be considered in this category. The procurement requirement shall have to be met, in the first instance, as an average of five years total value of the manufactured/ processed products purchased, beginning 1st April of the year during which the first tranche of foreign investment is received. Thereafter, it shall have to be met on an annual basis.
- (e) Self-certification is required by the company, to ensure compliance of the conditions at serial nos. (b), (c) and (d) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.
- (f) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per the 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms. Around the municipal or urban agglomeration limits of such cities; retail locations shall be restricted to conforming areas as per the Master or Zonal Plans of the concerned cities and provision shall be made for requisite facilities such as transport connectivity and parking.
- (g) Government shall have the first right to procure agricultural products.
- (h) The above policy is an enabling policy only and the State Governments or Union Territories shall be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States or Union Territories which have agreed, or agree in future, to allow foreign investment in MBRT under this policy. The States or Union Territories which have conveyed their agreement are Andhra Pradesh, Assam, Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman and Diu and Dadra and Nagar Haveli (Union territories). Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy and Promotion and additions shall be made to the said list. The establishment of the retail sales outlets shall be in compliance of applicable State/ Union Territory laws or regulations, such as the Shops and Establishments Act etc.
- (i) Retail trading, in any form, by means of e-commerce, shall not be permissible, for companies with foreign investment engaged in multi-brand retail trading.

(j) Applications shall be processed in the Department of Industrial Policy and Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered for Government approval.

E. Duty Free Shops

Sectoral Cap	100%	Entry Route	Automatic
---------------------	------	--------------------	-----------

Conditions

- (a) Duty Free Shops would mean shops set up in custom bonded area at International Airports or International Seaports and Land Custom Stations where there is transit of international passengers
- (b) Foreign investment in Duty Free Shops is subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations.
- (c) Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country.

Definition:

- a) Cash and Carry Wholesale trading (WT)/ Wholesale trading, shall mean sale of goods or merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers.
- b) Wholesale trading shall, accordingly, imply sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not shall be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading shall include resale, processing and thereafter sale, bulk imports with export/ex-bonded warehouse business sales and B2B e-Commerce



FOREIGN INVESTMENTS

16. PHARMACEUTICALS

Sector/ Activity			
A. Greenfield			
Sectoral Cap	100%	Entry Route	Automatic
B. Brownfield			
Sectoral Cap	100%	Entry Route	Automatic Route upto 74% Government Route beyond 74%

Conditions

- (a) 'Non-compete' clause shall not be allowed except in special circumstances with the Government approval.
- (b) The prospective investor and the prospective investee are required to provide a certificate given at Annexure 1 along with the application submitted for Government approval.
- (c) Government approval may incorporate appropriate conditions for foreign investment in brownfield cases.
- (d) Foreign investment in brownfield pharmaceuticals, irrespective of entry route, is further subject to the following conditions:
 - (i) The production level of National List of Essential Medicines (NLEM) drugs and/ or consumables and their supply to the domestic market at the time of induction of foreign investment, being maintained over the next five years at an absolute quantitative level. The benchmark for this level would be decided with reference to the level of production of NLEM drugs and/ or consumables in the three financial years, immediately preceding the year of induction of foreign investment. Of these, the highest level of production in any of these three years shall be taken as the level.
 - (ii) Research and Development (R&D) expenses being maintained in value terms for 5 years at an absolute quantitative level at the time of induction of foreign investment. The benchmark for this level would be decided with reference to the highest level of R&D expenses which has been incurred in any of the three financial years immediately preceding the year of induction of foreign investment.
 - (iii) The administrative Ministry shall be provided complete information pertaining to the transfer of technology, if any, along with induction of foreign investment into the investee company.
 - (iv) The administrative Ministry (s) i.e., Ministry of Health and Family Welfare, Department of Pharmaceuticals or any other regulatory Agency/Development as notified by Central Government from time to time, shall monitor the compliance of conditionalities.

Note:

- (1) Foreign investment up to 100% under the automatic route is permitted for manufacturing of medical devices. The abovementioned conditions shall, therefore, not be applicable to greenfield as well as brownfield projects of this industry.
- (2) Medical device means: -
 - (a) Any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of: -
 - (aa) Diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;
 - (ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or disability;

(ac) investigation, replacement or modification or support of the anatomy or of a physiological process;

(ad) supporting or sustaining life;

(ae) disinfection of medical devices;

(af) control of conception;

and which does not achieve its primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means;

(b) an accessory to such an instrument, apparatus, appliance, material or other article;

(c) "In-vitro diagnostic device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system, whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of examination of specimens derived from the human bodies or animals

Annexure 1

Certificate to be furnished by the Prospective Investor as well as the Prospective Recipient Entity

It is certified that the following is the complete list of all inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity

1.
2.
3.

(Copies of all agreements to be enclosed)

It is also certified that none of the inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity contain any non-compete clause in any form whatsoever.

It is further certified that there are no other contracts/agreements between the foreign investor(s) and investee brownfield pharma entity other than those listed above.

The foreign investor(s) and investee brownfield pharma entity undertake to submit to the FIPB any inter-se agreements that may be entered into between them subsequent to the submission and consideration of this application.



FOREIGN INVESTMENTS

17. RAILWAY INFRASTRUCTURE

Sector/ Activity

Construction, operation and maintenance of the following:

1. Suburban corridor projects through PPP
2. high-speed train projects
3. Dedicated freight lines
4. Rolling stock including train sets, and locomotives/ coaches manufacturing and maintenance facilities
5. Railway Electrification
6. Signaling systems
7. Freight terminals
8. Passenger terminals
9. Infrastructure in industrial park pertaining to railway line/ sidings including electrified railway lines and connectivity to main railway line and
10. Mass Rapid Transport Systems.

Sectoral Cap

100%

Entry Route

Automatic

Conditions

- (a) Foreign investment in this sector open to private-sector participation is subject to sectoral guidelines of Ministry of Railways.
- (b) Proposals involving foreign investment beyond 49 % in sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case-to-case basis.



FOREIGN INVESTMENTS

18. ASSET RECONSTRUCTION COMPANIES**Sector/ Activity**

Asset Reconstruction Companies

Sectoral Cap	100%	Entry Route	Automatic
--------------	------	-------------	-----------

Conditions

- (a) Investment limit of a sponsor in the shareholding of an ARC shall be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Similarly, investment by institutional or non-institutional investors shall also be governed by the said Act.
- (b) FPIs can invest in the Security Receipts (SRs) issued by ARCs. FPIs may be allowed to invest up to 100% of each tranche in SRs issued by ARCs, subject to directions/ guidelines of Reserve Bank. Such investment shall be within the relevant regulatory cap as applicable.
- (c) All investments shall be subject to provisions to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

19. BANKING – PRIVATE SECTOR

46

Regulatory and Development Authority of India (IRDAI) in order to ensure that the 49 % limit of investment applicable for the insurance sector is not breached.

- (d) Transfer of shares under FDI from residents to non-residents shall require approval of the Reserve Bank and/ or the Government, wherever applicable.
- (e) The policies and procedures prescribed by RBI and other institutions such as Securities and Exchange Board of India, Ministry of Corporate Affairs and IRDAI on these matters shall apply.
- (f) RBI guidelines relating to acquisition by purchase or otherwise of capital instruments of a private bank, if such acquisition results in any person owning or controlling 5 percent or more of the paid-up capital of the private bank shall apply to foreign investment as well.
- (g) Setting up of a subsidiary by foreign banks:
 - (i) Foreign banks shall be permitted to either have branches or subsidiaries but not both.
 - (ii) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria shall be allowed to hold 100 % paid-up capital to enable them to set up a wholly-owned subsidiary in India.
 - (iii) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 % in a private bank. foreign
 - (iv) A bank shall be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank shall be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 % of the paid-up capital of the private sector bank is held by residents at all times consistent with para (c) above.
 - (v) A subsidiary of a foreign bank shall be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.
 - (vi) Guidelines for setting up a wholly-owned subsidiary of a foreign bank shall be issued separately by RBI.
 - (vii) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India shall have to be made to the RBI.
- (h) The present limit of 10 % on voting rights in respect banking companies may be noted by the potential investor.
- (i) All investments shall be subject to the guidelines prescribed for the banking sector under the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934.



FOREIGN INVESTMENTS

20. BANKING – PUBLIC SECTOR

Sector/ Activity

Banking - Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts, 1970/ 80. This ceiling is also applicable to the State Bank of India.

Sectoral Cap	20%	Entry Route	Government
---------------------	-----	--------------------	------------



21. INFRASTRUCTURE COMPANIES IN THE SECURITY MARKET

Sector/ Activity

Infrastructure companies in Securities Markets, namely, stock exchanges, commodity derivative exchanges, depositories and clearing corporations, in compliance with Securities and Exchange Board of India Regulations.

Sectoral Cap

49%

Entry Route

Automatic

Conditions

- (a) Foreign investment, including investment by FPIs, shall be subject to the Guidelines or Rules or Regulations issued by the Central Government, Securities and Exchange Board of India and the Reserve Bank from time to time.



FOREIGN INVESTMENTS

22. COMMODITIES SPOT EXCHANGE

Sector/ Activity			
Commodities Spot Exchange			
Sectoral Cap	49%	Entry Route	Automatic
Conditions			
Investment shall be subject to guidelines prescribed by the Central or State Government.			



23. POWER EXCHANGES

Sector/ Activity			
Power Exchanges under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.			
Sectoral Cap	49%	Entry Route	Automatic
Conditions			
(a) A person resident outside India including persons acting in concert should not hold more than 5 %.			
(b) The investment shall be in compliance with Securities and Exchange Board of India Regulations, other applicable laws/ rules/ regulations, security and other conditionalities.			



FOREIGN INVESTMENTS

24. CREDIT INFORMATION COMPANIES

Sector/ Activity

Credit Information Companies

Sectoral Cap	100%	Entry Route	Automatic
--------------	------	-------------	-----------

Conditions

- (a) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005 and regulatory clearance from the Reserve Bank.
- (b) FPI investment shall be permitted subject to the following conditions:
 - (i) A single entity shall directly or indirectly hold below 10 percent equity;
 - (ii) Any acquisition in excess of 1 percent shall have to be reported to Reserve Bank as a mandatory requirement; and
 - (iii) FPIs investing in Credit Information Companies shall not seek a representation on the Board of Directors based upon their shareholding.



FOREIGN INVESTMENTS

25. INSURANCE

Sector/ Activity			
1. Insurance Company			
Sectoral Cap	74*%	Entry Route	Automatic
2. Life Insurance Corporation of India			
Sectoral Cap	20%	Entry Route	Automatic
3. Intermediaries or insurance intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time. ¹¹			
Sectoral Cap	100%	Entry Route	Automatic
Conditions			
Conditions shall be as prescribed by Department for Promotion of Industry and Internal Trade vide Press Note 1 (2022 Series) https://dpiit.gov.in/sites/default/files/Press_Note_1_2022_14March2022.pdf			

Note*: The limit has been amended dated 14.06.2021 vide Press note no. 2 (2021 series) by the Ministry of Commerce & Industry under the Department for Promotion of Industry and Internal Trade of FDI Section Policy.

¹¹ Inserted vide notification no. S.O. 1374(E) dated 27th April, 2020 issued by Department of Economic Affairs, Ministry of Finance



FOREIGN INVESTMENTS

26. PENSION SECTOR**Sector/ Activity**

Pension Sector

Sectoral Cap

49%

Entry Route

Automatic

Conditions

- (a) Foreign investment in this sector shall be in accordance with the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.
- (b) Foreign investment in Pension Funds shall be subject to the condition that entities investing in capital instruments issued by an Indian Pension Fund as per Section 24 of the PFRDA Act, 2013 shall obtain necessary registration from the PFRDA and comply with other requirements as per the PFRDA Act, 2013 and Rules and Regulations framed under it for so participating in Pension Fund Management activities in India.
- (c) An Indian pension fund shall ensure that its ownership and control remain at all times with resident Indian entities as determined by the Government of India/ PFRDA as per the rules or regulation issued by them.

FINANCIAL



FOREIGN INVESTMENTS

27. OTHER FINANCIAL SERVICES

Sector/ Activity

Other Financial Services

Sectoral Cap	100%	Entry Route	Automatic
---------------------	------	--------------------	-----------

Conditions

- Other Financial Services shall mean financial services activities regulated by financial sector regulators, viz., Reserve Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India.
- Foreign investment in 'Other Financial Services' activities shall be subject to conditionalities, including minimum capitalization norms, as specified by the concerned Regulator/Government Agency.
- 'Other Financial Services' activities need to be regulated by one of the Financial Sector Regulators. In all such financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight, foreign investment upto 100% will be allowed under Government approval route subject to conditions including minimum capitalization requirement, as may be decided by the Government.
- Any activity which is specifically regulated by an Act, the foreign investment limits shall be restricted to those levels/ limit that may be specified in that Act, if so mentioned.
- Downstream investments by any of these entities engaged in "Other Financial Services" that is treated as indirect foreign investment for the investee entity shall be subject to these rules.

1. PROHIBITED SECTORS/PERSONS

A. Investment by a person resident outside India is prohibited in the following sectors:

1. Lottery Business including Government/ private lottery, online lotteries.
2. Gambling and betting including casinos.
3. Chit funds
4. Nidhi company
5. Trading in Transferable Development Rights (TDRs).
6. Real Estate Business or Construction of farm houses.

Explanation: 'Real estate business shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.

7. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
8. Activities/sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
9. 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.



B. Investment in any sector irrespective of the sectoral cap/ entry route enlisted in above table, by an entity 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, shall be made under the Government route.

C. A person who is a citizen of Pakistan or an entity incorporated in Pakistan can, only with the prior Government approval, invest in sectors/ activities other than defence, space, atomic energy and sectors/ activities prohibited for foreign investment.

D. 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 point-B and point-C above, such subsequent change in beneficial ownership shall also require government approval.

References

- [Reserve Bank of India - Master Directions \(rbi.org.in\)](http://rbi.org.in)
- [Reserve Bank of India - Notifications \(rbi.org.in\)](http://rbi.org.in)
- [Press Note No \(dpiit.gov.in\)](http://dpiit.gov.in)