SETTING UP BUSINESS IN INDIA
## SETTING UP BUSINESS IN INDIA

### Types of permitted business establishment

<table>
<thead>
<tr>
<th>ONE PERSON COMPANY</th>
<th>PRIVATE LTD COMPANY</th>
<th>PUBLIC LTD COMPANY</th>
<th>SOLE PROPRIETORSHIP</th>
<th>PARTNERSHIP FIRM</th>
<th>LIMITED LIABILITY PARTNERSHIP</th>
<th>FOREIGN COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Companies Act 2013 enables formulation of a new type of entity i.e. One Person Company (OPC). An OPC means a company with only 1 person as a member.</td>
<td>A private company is a company which has the following characteristics: - Shareholders right to transfer shares is restricted - Minimum number of 2 members in company - Number of shareholders is limited to 200 - An invitation to the public to subscribe to any shares or debentures or any type of security is prohibited - 1 Resident director mandatory</td>
<td>A public company is a company which has the following characteristics: - Shareholders right to transfer shares is not restricted - Minimum 7 shareholders - Publishing a prospectus become mandatory incase of public issue - A company which is a subsidiary of a public company, shall be deemed to be a public company even where such subsidiary continues to be private company in AoA - 1 Resident director mandatory</td>
<td>Sole proprietorship is a form of business in which one person owns all the assets of the business, in contrast to partnership or corporations - No legal formalities are required to create a sole proprietorship other than an appropriate licensing to conduct a business and registration of business name if it differs from that sole proprietorship - The owner reports income/loss from this business along with personal income tax return</td>
<td>Partnership firms are created by drafting a partnership deed among the partners. The partnership deed is registered to make a firm - Partnership firms in India are governed by the Indian Partnership Act, 1932 - Maximum no. of partners in a partnership firm can be 20 - The Profit &amp; Loss are shared in manner as agreed in the partnership deed - Min 2 partners required</td>
<td>LLP is an alternative corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm - Introduced in India by way of Limited Liability Partnership Act, 2008. LLP is a separate legal entity - Min 2 partners required - LLP shall have 2 designated partners who are individuals and at least one of them shall be Resident Partner - Individual/Body corporate may be a partner in LLP</td>
<td>Incorporated outside but having a place of business in India (section 2(42)) - Liaison office - To represent parent company in India - Branch office - To undertake activities such as Export, Import of goods; research, consultancy etc. - Project Office - Activities as per contract to execute project - As per company law, a resident having PAN to be appointed for receiving notices in India for foreign company</td>
</tr>
</tbody>
</table>

**Note:**
- Resident Director: sec 149 (3) – Every company should have at least one director who has stayed in India for a total period of not less than 182 days in the financial year (wet. 7th May 2018)
- As per the section 7 (1) resident DP means a person who has stayed in India for at least 182 days during the immediately preceding 1 year
**SETTING UP BUSINESS IN INDIA**

Comparative analysis of different business establishments in India

### Private Company vis-à-vis Public Company vis-à-vis OPC vis-à-vis LLP

<table>
<thead>
<tr>
<th>PARTICULARS</th>
<th>PRIVATE</th>
<th>PUBLIC</th>
<th>OPC</th>
<th>LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Members</td>
<td>2</td>
<td>7</td>
<td>1</td>
<td>2 partners</td>
</tr>
<tr>
<td>Maximum Members</td>
<td>200</td>
<td>Unlimited</td>
<td>1</td>
<td>No Limit</td>
</tr>
<tr>
<td>Minimum Directors</td>
<td>2</td>
<td>15*</td>
<td>1</td>
<td>2 Designated Partners</td>
</tr>
<tr>
<td>Maximum Directors</td>
<td>15*</td>
<td>15*</td>
<td>15*</td>
<td>NA</td>
</tr>
<tr>
<td>Resident Director</td>
<td>1 Mandatory</td>
<td>1 Mandatory</td>
<td>1 Mandatory</td>
<td>1 Designated Partner</td>
</tr>
<tr>
<td>Transfer of ownership</td>
<td>Ownership can be transferred</td>
<td>Ownership can be transferred</td>
<td>Ownership can be transferred</td>
<td>Ownership can be transferred</td>
</tr>
<tr>
<td>Subscription of shares</td>
<td>Public subscription not allowed</td>
<td>Public subscription allowed</td>
<td>Public subscription not allowed</td>
<td>Public subscription not allowed</td>
</tr>
<tr>
<td>Issue of Prospectus</td>
<td>Not Mandatory</td>
<td>Mandator**</td>
<td>Not Mandatory</td>
<td>Not Mandatory</td>
</tr>
<tr>
<td>Managerial Remuneration</td>
<td>No limit for managerial personnel</td>
<td>Shareholder approval is required, if remuneration payable is above limits</td>
<td>NA</td>
<td>Remuneration is based on LLP agreement</td>
</tr>
</tbody>
</table>

*Note: Resident Director : sec 149(3) – Every company should have at least one director who has stayed in India for a total period of not less than 182 days in the Financial Year

**Company may appoint more than fifteen directors after passing a special resolution, further provided that such class or classes of companies as may be prescribed, shall have at least one woman director (Rule 3 of The Companies (Appointment and Qualification of directors) Rules, 2014)

**In case of public issue

### Commencement of Business/Operations

<table>
<thead>
<tr>
<th>PARTICULARS</th>
<th>PRIVATE</th>
<th>PUBLIC</th>
<th>OPC</th>
<th>LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declaration to be filed prior to commencement</td>
<td>declaration to be filed prior to commencement</td>
<td>Pvt Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>OPC is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>Immediately after obtaining certificate of incorporation LLP is a separate legal entity registered under LLP Act, 2008. The Designated partners of LLP are liable for contraventions under the act</td>
</tr>
</tbody>
</table>

### Legal Status

<table>
<thead>
<tr>
<th>PARTICULARS</th>
<th>PRIVATE</th>
<th>PUBLIC</th>
<th>OPC</th>
<th>LLP</th>
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</thead>
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<tr>
<td>Pvt Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>Public Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>OPC is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act</td>
<td>LLP Act, 2008</td>
<td></td>
</tr>
</tbody>
</table>

### Governing Act/ Law

<table>
<thead>
<tr>
<th>PARTICULARS</th>
<th>PRIVATE</th>
<th>PUBLIC</th>
<th>OPC</th>
<th>LLP</th>
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</thead>
</table>

### Annual Statutory Filings

<table>
<thead>
<tr>
<th>PARTICULARS</th>
<th>PRIVATE</th>
<th>PUBLIC</th>
<th>OPC</th>
<th>LLP</th>
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</thead>
<tbody>
<tr>
<td>Annual statement of accounts &amp; annual return with ROC</td>
<td>Annual statement of accounts &amp; annual return with ROC</td>
<td>Annual statement of accounts &amp; annual return with ROC</td>
<td>LLP return to be filed. Audit mandatory</td>
<td></td>
</tr>
</tbody>
</table>

### Annual Filings & Audit

<table>
<thead>
<tr>
<th>PARTICULARS</th>
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### Note:

*Company may appoint more than fifteen directors after passing a special resolution, further provided that such class or classes of companies as may be prescribed, shall have at least one woman director (Rule 3 of The Companies (Appointment and Qualification of directors) Rules, 2014)

**In case of public issue
## Setting up Business in India

### Commencing Business by a Foreign Investor

Foreign Investor can commence business in India as:

<table>
<thead>
<tr>
<th>FOR CARRYING OUT EXIM, RESEARCH AND PROJECT EXECUTION OPERATIONS</th>
<th>FOR CARRYING OUT MANUFACTURING/ SERVICES AND OTHER RELATED BUSINESS OPERATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A FOREIGN COMPANY</strong>**</td>
<td><strong>AN INDIAN COMPANY</strong>*</td>
</tr>
<tr>
<td>LIAISON OFFICE</td>
<td>To represent parent company in India</td>
</tr>
<tr>
<td>BRANCH OFFICE</td>
<td>To undertake activities such as export, import of goods; research, consultancy etc.</td>
</tr>
<tr>
<td>PROJECT OFFICE</td>
<td>Activities as per contract to execute project</td>
</tr>
<tr>
<td><strong>LIMITED LIABILITY PARTNERSHIP</strong></td>
<td></td>
</tr>
<tr>
<td>LLP</td>
<td>Subject to provisions of LLP Act, 2008</td>
</tr>
</tbody>
</table>

### Notes

- **INcorporate company in India s.t. sectoral caps and requisite approvals.**
- **RBI** guidelines regarding establishment of LO/BO/PO. As per company law, a resident having PAN to be appointed for receiving notices in India for foreign company.
- **For detailed definitions, clarifications/ exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017, Amendment to FDI policy in Jan 2018.**
- **FDI 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***
### Branch Office (BO)
- Permitted activities:
  - BO can be set up by foreign companies. 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.
  - There is a general permission to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities subject to:
    - BOs are functioning in those sectors where 100% FDI is permitted
    - BOs comply with Chapter XXII of the Companies Act, 2013
    - BOs function on a stand-alone basis

### Liaison Office (LO)
- Permitted activities:
  - LO can not undertake any commercial activity and acts as a channel of communication between the principal place of business or head office and entities in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. It cannot earn any income in India.

### Project Office (PO)
- Permitted activities:
  - PO can be set up to execute specific projects in India and cannot undertake or carry on any activity other than the activity relating to execution of the project.

### Eligibility
- **Branch Office (BO):** Profit making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 100,000 or its equivalent
- **Liaison Office (LO):** Profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent
- **Project Office (PO):** As per the tenure of the project

### Validity
- **Branch Office (BO):** NA
- **Liaison Office (LO):** Generally for 3 years except in the case of NBFCs and those entities engaged in construction and development sectors, for whom the validity period is two years only
- **Project Office (PO):** As per the tenure of the project

### Remittance
- **Branch Office (BO):** Permitted to remit profits net of applicable taxes and on submission of requisite documents
- **Liaison Office (LO):** NA
- **Project Office (PO):** Intermittent remittances by companies pending winding up permitted s.t. satisfaction of AD Category 1 bank

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**Note:** An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC) (Annex A) from its parent/group company, subject to the condition that the parent/group company satisfies the prescribed criteria for net worth and profit.
Incorporation as a Company: Overview

1. RUN
2. DSC
3. FILING FOR INCORPORATION THROUGH FORM SPICE
   - INCORPORATION OF NEW COMPANY
   - ALLOTMENT OF DIN
   - APPLY FOR PAN/ TAN
4. eMOA
5. eAOA
6. SPICE UPLOAD & FEE PAYMENT
7. INCORPORATION (CRC TO VERIFY)
8. OBTAIN COI
9. DECLARATION OF COMMENCEMENT OF BUSINESS

Note: Notarization & Apostilling / legalization of documents mandatory in case of foreign subscribers / Directors. Some registrations would be applicable based on state in which company is incorporating and nature of business entity.
Incorporation as an LLP: Overview

1. DSC
   - Obtain class 2 or class 3 Digital Signature Certificate (DSC) for at least 1 designated partners of LLP

2. AVAILABILITY CHECK FOR LLP NAME
   - For a quick search on already existing names of LLP a facility is provided by MCA to check list of similar/closely resembling names of existing companies/LLPs. Trademark is also to be checked

3. RESERVATION AND APPROVAL OF NAME FOR LLP THROUGH RUN - LLP
   - Filing the proposed name of LLP for approval from the Registrar of Companies through RUN – LLP and can also be done through FiLLiP

4. FILING FOR INCORPORATION OF LLP/ FLLP/ DIN AND OBTAIN CERTIFICATE OF INCORPORATION
   - FiLLiP is to be duly filled and submitted to RoC for incorporation of LLP. For Foreign LLP (FLLP) Form 27 is to be filed in and digitally signed by FLLP (DIN must be obtained through FiLLiP

5. LLP AGREEMENT
   - Form 3 (Information with regard to LLP agreement and changes, if any made therein) to be filled within 30 days of incorporation of LLP

Note: Some registrations would be applicable based on state in which company is incorporating and nature of business entity.

Note: Notarization & Apostilling / legalization of documents mandatory in case of foreign subscribers / Directors.
SETTING UP BUSINESS IN INDIA

OTHER REGISTRATIONS REQUIRED (AS APPLICABLE) WHILE SETTING UP COMPANY/LLP IN INDIA

- Register for Professional Tax. It is a tax levied by the state government and the tax rate varies from state to state. Time - 12 days. Form - N/A.

- Register with Employees’ Provident Fund Organization for registration of establishment for allotment of PF code number. Guide to Application.*

- Register with ESIC (Medical Insurance) Time - 12 days. Time - 12-15 days. Form - Form F & B. Time - 8 weeks. Without security clearance, 10 weeks with security clearance.

- Register under Shops and Establishments Act. Filing for Government Approval before FIFO for FDI Approval. For Foreigners and NRI’s. A detailed guide to Filing for Application is available at the link**. List of documents required at the time of filing application is available at Annexure I.

*https://www.epfindia.gov.in/site_docs/PDFs/OLRE_PDFs/OLRE_withDSC_RevisedMarch2017.pdf

**http://www.fifp.gov.in/Forms/SOP.pdf
### Setting Up Business in India

Central Level Process/Compliances

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Obtain Director Identification Number (DIN)</td>
<td>DIN is a unique identification number issued by the Ministry of Corporate Affairs (MCA) for a designated partner of an existing LLP or a person intending to become a director of a company. DIN can be obtained by filing application Form DIR-3 online. All designated partners of the proposed LLP shall obtain &quot;Designated Partner Identification Number (DPIN)&quot; through SPICe (if DIN is not available). Note - Application for DIN (for a person proposed to be appointed as a Director of an existing company or Designated Partner of an existing LLP) to be filed in Form DIR-3. Change in particulars to be intimated in Form DIR-6 within 30 days.</td>
</tr>
<tr>
<td>2. Digital Signature Certificate (DSC) for proposed Directors</td>
<td>DSC can be obtained by approaching Certifying Authorities (CAs) with original supporting documents and self-attested copies. A licensed Certifying Authority (CA) issues the digital signature. The CA means a person who has been granted a license to issue a digital signature certificate under Section 24 of the Indian IT Act 2000.</td>
</tr>
<tr>
<td>3. Approval for proposed Company/LLP Name</td>
<td>For LLP name search facility (of existing companies/LLPs) is available on MCA portal. The system will provide the list of similar/closely resembling names of existing companies/LLPs based on the search criteria filled up. For registration of name RUN LLP to be filed. The applicant must file e-form RUN with the Central Registration Center (CRC), India for approval of name. The name reserved for company shall be available for adoption of name for a period of 20 days. In case of laps of the said period, fresh approval needs to be taken from RUN or RUN-LLP to be taken. For LLP name is reserved for 3 months. In case of change of name of company, the reserved name is available for 60 days.</td>
</tr>
<tr>
<td>4. Finalization of supporting documents</td>
<td>Filing of electronic Memorandum of Association (eMoA-INC 33) &amp; Articles of Association (eAoA-INC 34). Payment of stamp duty/filing fees. Incase of foreign subscribers physical MOA and AOA is to be filled in.</td>
</tr>
<tr>
<td>5. Filing of e-forms with CRC</td>
<td>SPICe is duly filled and submitted to CRC for incorporation of company. MCA form FillIP for LLP would be required. Form 27 is required for Foreign LLP (FILLP). After payment of all fees &amp; stamp duties, CRC scrutinizes all forms and may suggest changes in forms and/or attachments.</td>
</tr>
<tr>
<td>6. Verification of documents</td>
<td>Issue of Certificate of Incorporation by CRC. Once all the Forms are duly approved by CRC, the digitally signed &quot;Certificate of Incorporation&quot; is issued.</td>
</tr>
<tr>
<td>7. Consent to establish &amp; operate</td>
<td>In case of LLP, LLP agreement is required to be signed and submitted to ROC within 30 days of incorporation of LLP. Once the Incorporation Certificate is received, LLP can start its operations. A company having share capital is required to file a declaration of receipt of subscription amount and verification of registered office within 180 days of incorporation and prior to commencement of business.</td>
</tr>
</tbody>
</table>
SETTING UP BUSINESS IN INDIA
Central level process/compliances

<table>
<thead>
<tr>
<th>Obtain Permanent Account Number (PAN)</th>
<th>Registration for Tax Account Number (TAN)</th>
<th>Grant for BIS License</th>
<th>Quality Marking Certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAN number shall be allotted based on the information filled in Form SPICe at the time of incorporation of a company. Note: PAN is not allotted to LLPs on incorporation.</td>
<td>TAN number shall be allotted based on the information filled in Form SPICe at the time of incorporation of a company. Note: TAN is not allotted to LLPs on incorporation.</td>
<td>Applicant has to submit application in the prescribed form &amp; self-evaluation-cum-Verification Report along with prescribed documents and original test report(s) for considering grant of license under Product Certification Scheme of BIS. List of products that mandatory require BIS license are listed in Annexure I.</td>
<td>Quality Marking certificate are provided by Quality Marking Centre of the State Government.</td>
</tr>
</tbody>
</table>
## SETTING UP BUSINESS IN INDIA

### State level process/compliances

<table>
<thead>
<tr>
<th>Process/Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registering / categorization of unit in State</td>
</tr>
<tr>
<td>Approval for State Incentives (Optional)</td>
</tr>
<tr>
<td>Industrial Entrepreneurs Memorandum / EM Registration</td>
</tr>
<tr>
<td>MSME Registration</td>
</tr>
<tr>
<td>Acquisition of Land</td>
</tr>
<tr>
<td>Environment, Forest and Wildlife Clearance</td>
</tr>
<tr>
<td>Permission for Land Use</td>
</tr>
<tr>
<td>Pollution Board</td>
</tr>
<tr>
<td>Industrial License</td>
</tr>
<tr>
<td>Consent to Establish</td>
</tr>
<tr>
<td>Factory Layout Plan Approval</td>
</tr>
<tr>
<td>Factory Registration</td>
</tr>
<tr>
<td>Power for Construction</td>
</tr>
<tr>
<td>Provisional Fire Approval</td>
</tr>
<tr>
<td>Approval for lifts &amp; Escalator</td>
</tr>
<tr>
<td>Consent to Operate</td>
</tr>
<tr>
<td>Building Completion Certificate</td>
</tr>
<tr>
<td>Final Fire Approval</td>
</tr>
<tr>
<td>Water Connection</td>
</tr>
<tr>
<td>Authorization for Hazardous Waste</td>
</tr>
<tr>
<td>Registration of Boilers</td>
</tr>
<tr>
<td>Building Plan Approval</td>
</tr>
<tr>
<td>Registration under Contract Labour Act 1970</td>
</tr>
<tr>
<td>Registration under BOCW Act</td>
</tr>
<tr>
<td>Power</td>
</tr>
<tr>
<td>GST Registration</td>
</tr>
<tr>
<td>Professional Tax Registration</td>
</tr>
<tr>
<td>Central Excise Registration</td>
</tr>
<tr>
<td>Shops &amp; Establishment Act</td>
</tr>
<tr>
<td>Employee Registration with ESIC</td>
</tr>
<tr>
<td>Employer Registration with EPFO</td>
</tr>
<tr>
<td>Trademark/ Brand Registration</td>
</tr>
<tr>
<td>Importer Exporter Code (IEC)</td>
</tr>
<tr>
<td>Customs: Special Valuation Branch</td>
</tr>
</tbody>
</table>
FOREIGN DIRECT INVESTMENT
FOREIGN DIRECT INVESTMENT IN INDIA

Investment climate in India has improved considerably since the opening up of the economy in 1991. This is largely attributed to ease in FDI norms across sectors of the economy. India, today is a part of top 100 club on Ease of Doing Business (EoDB) and globally ranks 1st in the greenfield FDI ranking. India jumps 65 positions from 142nd (2014) to 77th (2018) in ‘World Bank’s Ease of Doing Business Ranking 2018’.

<table>
<thead>
<tr>
<th>CATEGORY 1</th>
<th>100% FDI allowed through Automatic route</th>
</tr>
</thead>
<tbody>
<tr>
<td>CATEGORY 2</td>
<td>100% FDI allowed through Government route</td>
</tr>
<tr>
<td>CATEGORY 3</td>
<td>Upto 100% FDI allowed through Government + Automatic route</td>
</tr>
<tr>
<td>CATEGORY 4</td>
<td>Upto 51% FDI allowed through Government/ Automatic route</td>
</tr>
</tbody>
</table>

Note:
1. In sectors/activities not listed above, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditions.
2. All the information/contents provided herein is basis Consolidated FDI Policy dated August 28, 2017 issued by DPIIT from time to time as amended from time to time.

For detailed definitions, clarifications/exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017*

*For detailed definition, clarifications/exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017, amendment to FDI policy in Jan 2018
**Greenfield and existing projects.
***Air Transport Services- Non Scheduled Air Transport Service / Helicopters services/ seaplane services requiring DGCA approval
****Construction Development: development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships, Real estate Broking business
*****Other services include ground Handling Services subject to sectoral regulations and security clearance & Maintenance and Repair organizations; flying training institutes; and technical training institutions

World Bank’s Ease of Doing Business Ranking 2018

India jumps 65 positions from 142nd (2014) to 77th (2018) in EoDB and globally ranks 1st in the greenfield FDI ranking.

India, today is a part of top-100 club on Ease of Doing Business attributed to ease in FDI norms across sectors of the economy. This is largely since the opening up of the economy in 1991.

Investment climate in India has improved considerably in last two decades (Since 1991), attributed to ease in FDI norms across sectors of the economy.

FOREIGN DIRECT INVESTMENT IN INDIA

Category 1:
100% FDI permitted through Automatic route*

- Agriculture & Animal Husbandry
- Plantation (Tea, Coffee, Rubber, Cardamom, Palm oil tree, Olive oil tree)
- Mining & Exploration of metals & non-metals ores excluding titanium bearing minerals and its ores
- Coal & Lignite mining for captive consumption in respect of eligible activities
- Single Brand Retail Trading, Duty Free Shops

Category 2:
100% FDI permitted through Government route

- Airports & Railway Infrastructure
- Air Transport Services
- Construction Development projects
- Civil Aviation – Greenfield & Brownfield

Category 3:
Upto 100% FDI permitted through Government + Automatic route

- Exploration of Petroleum & Natural Gas (including marketing of petroleum products & natural gas)
- Broadcasting Carriage Services
- Market Place E-commerce Activities
- Asset Reconstruction & Credit Information Companies
- Other Services at Airport

Category 4:
Upto 51% FDI permitted through Government/ Automatic route

- Up-link of non-News & Current Affairs’ TV Channels, Down linking of TV channel
- Other Financial Services (registered/regulated entity)
- Pharmaceuticals – Greenfield Sector and Medical device manufacturing
- White Label ATM Operations
- Industrial Park

- Other Services at Airport
- Duty Free Shops
- Civil Aviation – Greenfield & Brownfield

- Hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships
- Real estate Broking business
- Ground Handling Services subject to sectoral regulations and security clearance & Maintenance and Repair organizations; flying training institutes; and technical training institutions

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100% FDI permitted through Automatic route*

- Agriculture & Animal Husbandry
- Plantation (Tea, Coffee, Rubber, Cardamom, Palm oil tree, Olive oil tree)
- Mining & Exploration of metals & non-metals ores excluding titanium bearing minerals and its ores
- Coal & Lignite mining for captive consumption in respect of eligible activities
- Single Brand Retail Trading, Duty Free Shops

Category 2:
100% FDI permitted through Government route

- Airports & Railway Infrastructure
- Air Transport Services
- Construction Development projects
- Civil Aviation – Greenfield & Brownfield

Category 3:
Upto 100% FDI permitted through Government + Automatic route

- Exploration of Petroleum & Natural Gas (including marketing of petroleum products & natural gas)
- Broadcasting Carriage Services
- Market Place E-commerce Activities
- Asset Reconstruction & Credit Information Companies
- Other Services at Airport

Category 4:
Upto 51% FDI permitted through Government/ Automatic route

- Up-link of non-News & Current Affairs’ TV Channels, Down linking of TV channel
- Other Financial Services (registered/regulated entity)
- Pharmaceuticals – Greenfield Sector and Medical device manufacturing
- White Label ATM Operations
- Industrial Park

- Other Services at Airport
- Duty Free Shops
- Civil Aviation – Greenfield & Brownfield

- Hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships
- Real estate Broking business
- Ground Handling Services subject to sectoral regulations and security clearance & Maintenance and Repair organizations; flying training institutes; and technical training institutions

- For detailed definition, clarifications/exceptions, please refer to Consolidated FDI Policy, effective from August 28, 2017, amendment to FDI policy in Jan 2018

- Greenfield and existing projects.
- Air Transport Services- Non Scheduled Air Transport Service / Helicopters services/ seaplane services requiring DGCA approval
- Construction Development: development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships, Real estate Broking business
- Other services include ground Handling Services subject to sectoral regulations and security clearance & Maintenance and Repair organizations; flying training institutes; and technical training institutions

World Bank’s Ease of Doing Business Ranking 2018

India jumps 65 positions from 142nd (2014) to 77th (2018) in EoDB and globally ranks 1st in the greenfield FDI ranking.

India, today is a part of top-100 club on Ease of Doing Business attributed to ease in FDI norms across sectors of the economy.
**Category 2:**
100% FDI permitted through Government Route

- Mining and minerals separation of titanium bearing minerals & ores its value addition & integrated activities
- Retail Trading including through e-commerce in respect of food products manufactured and/or produced in India
- Publishing/printing of scientific and technical magazines/specialty journals/periodicals
- Publication of facsimile edition of foreign newspapers
- Satellites-establishment and operations

**GOVERNMENT ROUTE**
(Approval from various Administrative Ministries/ Government Department)*

Foreign investment in core investment companies (CIC) and other investing companies, engaged in the activity of investing in the capital of other company/ies/LLP, is permitted under Govt. approval route. CICs will additionally have to follow RBI regulatory framework.

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**Category 3:**
Up to 100% FDI permitted through Government + Automatic route

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Up to</th>
<th>Automatic Route</th>
<th>Above</th>
<th>Government Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecom Services*</td>
<td>49%</td>
<td>Automatic</td>
<td>49%</td>
<td>Government</td>
</tr>
<tr>
<td>Defence Industry</td>
<td>49%</td>
<td>Automatic</td>
<td>49%</td>
<td>Government</td>
</tr>
<tr>
<td>Pharmaceutical - Brownfield</td>
<td>74%</td>
<td>Automatic</td>
<td>74%</td>
<td>Government</td>
</tr>
<tr>
<td>Air Transport Services **</td>
<td>49%</td>
<td>Automatic</td>
<td>49%</td>
<td>Government</td>
</tr>
<tr>
<td>Banking – Private Sector</td>
<td>49%</td>
<td>Automatic</td>
<td>49%</td>
<td>Government</td>
</tr>
<tr>
<td>Private Security Agencies***</td>
<td>49%</td>
<td>Automatic</td>
<td>49%</td>
<td>Government</td>
</tr>
</tbody>
</table>

* All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United 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 PLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.

** Air Transport Services- Scheduled Air Transport Services/ Domestic Scheduled Passenger Airline, Regional Air Transport Service- 49% automatic. Could go up to 100% via Govt. approval.

*** FDI in Private Security Agencies is subject to compliance with Private Security Agencies (Regulation) (PSAR) Act, 2005, as amended from time to time.
FOREIGN DIRECT INVESTMENT IN INDIA

Category 4:
Up to 51% FDI permitted through Government/ Automatic route

<table>
<thead>
<tr>
<th>AUTOMATIC ROUTE</th>
<th>GOVERNMENT ROUTE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>49%</strong> Insurance</td>
<td>49% Up-linking of ‘News &amp; Current Affairs’ TV Channels</td>
</tr>
<tr>
<td><strong>49%</strong> Petroleum Refining by PSUs*</td>
<td>49% Terrestrial Broadcasting FM (FM Radio)</td>
</tr>
<tr>
<td><strong>49%</strong> Infrastructure Companies in Securities Markets</td>
<td>51% Multi-Brand Retail Trading **</td>
</tr>
<tr>
<td><strong>49%</strong> Power Exchanges</td>
<td>20% Banking Public Sector</td>
</tr>
<tr>
<td><strong>49%</strong> Pension Sector</td>
<td>26% Print Media - Publishing of Newspapers &amp; Periodicals Publication of Indian editions of foreign magazines dealing with news and current affairs***</td>
</tr>
</tbody>
</table>

* Petroleum refining by the PSU without any disinvestment or dilution of domestic equity in existing PSUs – 49%, Automatic
** In specified states
***Print Media- Publishing of newspaper and periodicals; Indian editions of foreign magazines dealing with news and current affairs 49% in Air India- Govt. route (amended vide PdU of 2018)
**FOREIGN DIRECT INVESTMENT IN INDIA**

## Prohibited Sectors

- **Lottery Business including Government/private lottery, online lotteries, etc.*
- **Gambling and Betting including casinos**
- **Chit funds**
- **Nidhi company**
- **Trading in Transferable Development Rights (TDR)**
- **Real Estate Business or Construction of farm houses**
- **Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes**
- **Sectors not open to private sector investment: atomic energy, railway operations (other than permitted activities mentioned under Consolidated FDI Policy)**

### Notes

*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.*

**Real estate business shall not include development of town shops, construction of residential/ commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014**
FOREIGN DIRECT INVESTMENT IN INDIA

Eligible Investors & Instruments

**ELIGIBLE INVESTORS**

- Any non-resident entity / Individual
- NRI resident & citizens of Nepal & Bhutan
- Erstwhile OCB incorporated outside India & not under adverse notice of RBI with Govt./RBI approval
- Company, trust or partnership firm incorporated outside India & owned and control by NRI
- FPI in terms of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations 2017
- NRI as per schedule 3 & 4 in terms of FEMA (Transfer or Issue of Security by PROI) Regulations
- NRI/PIO resident outside India can invest in Partnership Firm / Proprietary Concern
- Indian companies can issue capital against FDI

**REGULATORY POLICY**

- FDI policy 2017
- Amendment vide PN1 of 2018
- FEMA Regulations
- SEBI Regulations

**ELIGIBLE INVESTEES ENTITIES**

- VCF registered as Trusts and regulated by SEBI and Investment Vehicle (REIT/INVIT/AIF)
- LLPs in sectors wherein FDI is 100% allowed through automatic route & no FDI linked performance condition
- Startup companies can issue equity/ equity linked instruments or debt instruments or convertible notes
- Non Residents (other than NRI/PIO) can invest in Partnership Firm / Proprietary Concern
- NRI/PIO resident outside India can invest in Partnership Firm / Proprietary Concern
- Indian companies can issue capital against FDI

**Types of Instruments for FDI**

- Capital instruments - Equity, CCPS, CCDs
- DRs & FCCBs
- Others - Warrants & Paid up shares
- Sponsored ADR/ GDRs

**Note:** Currently as per the extant FEMA regulations, a firm or a proprietorship concern is restricted from receiving any funds from a non-resident (other than NRI/PIO). However, RBI on making a specific application and post consideration of the facts may allow the same on a case to case basis. Accordingly, a specific RBI application for approval would have to be made in case where a firm or proprietorship concern is willing to receive from a non-resident.
DPIIT is the nodal agency entrusted to formulate FDI Policy which issues press notes to make amendments in the existing policy and also issues consolidated FDI Policy on annual basis.

FDI in India is administered under Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notification dated November 01, 2017.

The procedural instructions are issued by the Reserve Bank of India vide A.P. (DIR Series) Circulars. The regulatory framework, over a period of time, thus, consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

The revised level of approvals for cases under the Government route are summarized in the new notification dated 5 June, 2017.

Steps to get FDI approval through government route:

**FILLING OF APPLICATION**

Proposal for foreign investment, along with supporting documents to be filed online, on the Foreign Investment Facilitation Portal, at the following url: www.fifp.gov.in/

**INTERNAL PROCEDURE FOR APPROVALS**

- DPIIT will identify the concerned Ministry/Department and thereafter, circulate the proposal within 2 days. In addition, once the proposal is received, the same would also be circulated online to the RBI within 2 days for comments from FEMA perspective.
- Proposed investments from Pakistan and Bangladesh would also require clearance from the Ministry of Home Affairs.
- DPIIT would be required to provide its comments within 4 weeks from receipt of online application, and Ministry of Home Affairs (if applicable) to provide comments within 6 weeks.
- Pursuant to the above, additional information/clarifications may be asked from the applicant which is to be provided within 1 week.
- Proposals involving FDI exceeding INR 50 Bn (approx. USD 775 Mn) shall be placed before the cabinet Committee of Economic Affairs.

**FINAL APPROVAL**

Once the proposal is complete in all aspects (which should be within 6-8 weeks from receipt of the online application), the same shall be processed and approval/rejection shall be conveyed to the applicant within 2 weeks (such approval/rejection letters shall be sent online).

Where the online application is digitally signed by an authorised signatory, there is no requirement for physical submission of the application. However, for applications without a digital signature, once the e-filing of the application is complete, the applicant is required to file one signed copy of the printed application, along with duly authenticated copies of the documents attached with the application, with the nodal officers of the concerned Ministry/Department.
INSTITUTIONAL & REGULATORY SET-UP

Applicable regulatory framework for business entities

<table>
<thead>
<tr>
<th>Companies Act, 2013</th>
<th>Limited Liability Partnership Act, 2008</th>
<th>The Indian Partnership Act, 1932</th>
<th>Competition Act, 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013.</td>
<td>• A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership.</td>
<td>• An Act to define and amend the law relating to partnership. It lays out the complete structure of a partnership firm constituting definition of partnership firm, its registration, management and dissolution procedure, and interrelation between partners. State governments have made rules regarding certain provisions of the act.</td>
<td>• An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets.</td>
</tr>
<tr>
<td>• The act governs companies, their incorporation, allocation of share capital, administration, management, reporting and filing, dissolution and compliances of all types of companies under its ambit. It also lays down guidelines for memorandum of association and articles of association for different types of companies.</td>
<td>• The Act defines of LLP’s, their incorporation, conversion to LLP, contribution of partners, administration, management, reporting and filing, and dissolution.</td>
<td>• The Act lays down rules and procedures for formation of the competition commission, its administration and management, and its duties, powers and functions. It also talks about the organisation and working of Competition Appellate Tribunal.</td>
<td></td>
</tr>
</tbody>
</table>

**Taxation Overview in India**

Over the last few years, the Government of India (GoI) and various State (provincial) Governments have undertaken various policy reforms and process simplification towards great predictability, fairness & automation. This has consequently, lead to India’s meteoric rise to the top 100 in the World Bank’s Ease of Doing Business (EoDB) ranking in 2017.

Key Features of India’s taxation System: Taxes in India are levied by the Central Government and the State Governments. Some minor taxes are also levied by the local authorities such as the Municipality and Local Government.

**Major Central Taxes**

- Income Tax
- Central Goods & Services Tax (CGST)
- Integrated GST (IGST)
- Custom Duty

**Major State Taxes**

- State Goods & Services Tax (SGST)
- Stamp Duty & Registration

A resident company is taxed on its worldwide income. A non-resident company is taxed only on income that is received in India, or that accrues or arises, or is deemed to accrue or arise, in India. Company whether Indian or foreign is liable to taxation, under the Income Tax Act, 1961. Corporation tax is a tax which is levied on the incomes of registered companies and corporations. Taxes in India are primarily into 2 categories - Direct and Indirect Tax.
### Goods and Services Tax (GST)

Goods and Services Tax (GST) is a unified indirect tax across the country on products and services. It is a comprehensive levy on manufacture, sale and consumption. It is a destination-based consumption tax.

- The GST, dual in nature is levied by both the Centre and State. The Central GST (CGST) is levied on intra state supply of goods and / or service and State GST (SGST) is levied by the States.

- Integrated GST (IGST) is levied and administered by the Centre on every inter-state supply of goods and services.

- Import of goods or services is treated as inter-state supplies and is subject to IGST in addition to Basic Custom duty.

- CGST, SGST and IGST is levied at uniform rates, mutually agreed upon by the Centre and the States under the aegis of the GST Council (GSTC).

- All goods and services are covered under GST except alcohol for human consumption and specified petroleum products.

### INSTITUTIONAL & REGULATORY SET-UP

Applicable regulatory framework for business establishments

#### Old Regime

- Central T axes
  - Custom Duty
  - Central Excise Duty (CENVAT)
  - Additional Excise Duties and the Excise Duty levied under the Medicinal and Toiletries Preparations Act, 1955
  - Service Tax
  - Additional Customs Duty (CVD)
  - Special Additional Duty of Customs (SAD)
  - Surcharges and Cesses levied by the Centre
  - Central Sales Tax

- State T axes
  - VAT/ sales tax
  - Octroi and Entry Tax
  - Purchase Tax
  - Luxury tax
  - Taxes on lottery, gambling and betting
  - Entertainment tax (unless levied by the local bodies)
  - Surcharges & State Cesses (related to the supply of goods and services)

#### GST Regime*

- Custom Duty
- Central GST
- Integrated GST
- Central GST
- Integrated GST

- State GST/
- Union Territory GST

*Cess as may be applicable

#### Assessment and filing on GST Network (GSTN)