

INDIA INVESTMENT PROFILE



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India Investment Profile

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INDIAN ECONOMY

India Overview

India is the 6th biggest country in the world with a population of more than one billion people who collectively speak over 1500 languages. India is a land of marked contrasts and this is without doubt one of its greatest appeals.

Country Fact file

Location	Southern Asia, bordering the Arabian Sea and the Bay of Bengal, between Burma and Pakistan.
Area	3,287,590 sq km
Capital	New Delhi
Population	1.15 billion
Religions	Hindu, Islam, Christian, Sikh
Type of Government	Federal Republic
Currency	Indian rupee (INR)
Border Countries	Bangladesh, Bhutan, Burma, China, Nepal, Pakistan
Time	GMT +5.5
Languages	English is the most preferred language for national, political, and commercial communication; Hindi is the national language and primary tongue of 30% of the people; there are 14 other official languages including Bengali, Tamil, Urdu and Gujarati.
Climate	Varies from tropical monsoon in south to temperate in north
Highest Point	Kanchenjunga 8,598 m

Political framework

- India is the world's largest democracy
- Primacy of rule of law
- Free and vocal media

Judicial framework

- Independent judiciary with minimal interference from the government.
- Supreme Court is vested with powers to enforce Fundamental Rights and act as a guardian of the Constitution.
- High courts in every state and lower courts at the town level

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- Alternative dispute resolution mechanisms to assist in the resolution of pending cases through either arbitration or conciliation.

Brief Economic Profile

India's economy is expected to grow at a rate of about 6.9% during FY10.

While the downside risks are likely to spread in the future, the fall in commodity prices and the coordinated fiscal and monetary stimulus are expected to revive the growth momentum, according to RBI.

RBI has lowered interest rate on 4 March, 2009 after cutting the repo rate by 50 basis points to 5% and reverse repo rate by same margin to 3.5%. Service tax remains unchanged at 10%.

Per Capita Income

In 2009-10, India's per capita income is estimated to be around USD 1100. Further, it is expected to increase to USD 2,660 by 2016-17 and USD 45,430 by 2025.

Advantages of Investing in India

- According to The World Fact Book, India is among the world's youngest nations with a median age of 25 years as compared to 43 in Japan and 36 in USA. Of the BRIC—Brazil, Russia, India and China—countries, India is projected to stay the youngest with its working-age population estimated to rise to 70% of the total demographic by 2030 - the largest in the world. India will see 70 mn new entrants to its workforce over the next 5 years.
- India has the second largest area of arable land in the world, making it one of the world's largest food producers - over 200 mn tones of food grains are produced annually. India is the world's largest producer of milk (100 mn tones p.a), sugarcane (315 mn tones p.a) and tea (930 mn kg p.a) and the second largest producer of rice, fruit and vegetables.
- With the largest number of listed companies - 10,000 across 23 stock exchanges, India has the third largest investor base in the world.
- According to a study by the McKinsey Global Institute (MGI), India's consumer market will be the world's fifth largest (from twelfth) in the world by 2025 and India's middle class will swell by over ten times from its current size of 50 million to 583 million people by 2025.

Foreign Trade

The existing five year (2007-11) foreign trade policy which lays ground rules along with incentives and disincentives for conducting imports and exports has been extended beyond March 2010 to enable the new government to give its policy direction to the country's external engagement.

Exports fell by 4.9% to USD 176 bn in FY09-10 from USD 185 bn in FY08-09. Imports fell by 8.2% to USD 278 bn in FY09-10 from USD 303 bn in FY08-09.

Foreign Exchange Reserves

India's foreign exchange reserves continued to be at a comfortable level and consistent with the rate of growth, the size of external sector in the economy and the size of risk-adjusted capital flow.

The reserves increased by 4.2% from USD 265 bn in 2009 to Rs USD 276 bn in 2010

The investment in Gold increased by 13% from USD 600 mn to USD 700 mn.

FDI Inflows

With continued liberalization of the foreign direct investment (FDI) policy, procedural relaxations, the sustained growth in the economy and a favorable investment regime, India continues to become a favorite destination of foreign Investment.

Capital Market

India's capital markets have experienced sweeping changes since the beginning of the last decade. Its market infrastructure has advanced while corporate governance has progressed faster than in many other emerging market economies.

Sector Overviews – Investing in India

Introduction

India possess pool of skilled managerial and technical manpower that matches the best available in the world and a middle class whose size exceeds the population of the USA or the European Union, provide India with a distinct cutting edge in global competition. Various sectors of India such as Roads & Highways, Ports, Telecom, Power, and Oil & gas are attaining global attention.

INFRASTRUCTURE

Power

The market

- India is World's 6th largest energy consumer accounting for 3.4% of global energy consumption.
- One of the largest electricity generation capacities in the world.
- Large transmission and distribution network.
- Per capita electricity consumption- 612 kWh.
- Per capita electricity consumption target 1000 kWh per capita for 2012.

Industry snapshot

Investment (Xth plan) – Rs 3,600 bn (USD 72 bn).

Investment (XIth plan) – Rs 7,500 bn (USD 150 bn).

Total generating capacity (as on JULY 2009): 151,073 MW.

Regulatory - 100% FDI is allowed in all segments of power sector including Trading.

Prominent players - NTPC, Power grid, ABB, Alstom, Siemens, ArevaT&D ,GMR , Adanigroup,CESC.

Foreign Players - BP, BG Group, Shell, Gaz de France, Chevron and Total

Opportunity

Generation

- Coal based plants at pithead or coastal locations (imported coal).
- Natural Gas/CNG based turbines at load centers or near gas terminals.
- Hydel power potential of 150,000 MW is untapped as assessed by the Government of India.
- Renovation, modernization, up-rating and life extension of old thermal and hydro power plants.

Transmission

- Additional 60,000 circuit km of transmission network expected by 2012.
- Plans to enhance total capacity to 37,000 MW in its 11th plan from 17,000 MW

Distribution

- Privatization of distribution circles in thirteen states that have unbundled /privatized their State Electricity Boards SEBs).

Rural electrification

- An additional US\$ 100 billion is needed for the augmentation of the transmission, sub-transmission and distribution networks, and for rural electrification.

Fiscal initiatives

- Introduction of the Electricity Act 2003 and the notification of the National Electricity and Tariff policies.
- Zero customs duty on imports of capital goods for Mega Power Projects.
- Income tax holiday for generating plants for 10 years.
- Constitution of Independent State Electricity Regulatory Commissions in the states.
- Unbundling of the State Electricity Boards (SEBs) into generation, transmission, and distribution companies for better transparency and accountability.
- No discrimination between domestic or foreign investors.

Power for all by 2012

The Government of India has mission of Power for all by 2012. This mission would require that the installed capacity should be at least 200,000MW by 2012. The power requirement will double by 2020 to 400,000MW.

Oil and Gas

The market

- Oil and gas constitutes about 15% of Indian GDP.
- 100% FDI permitted in Oil and Gas sector.
- It contributes about 45% of India's primary energy consumption.
- There is 3.14 mn sq km of total sedimentary basin in India.
- Large crude importer and consumer.

Industry Snapshot

Crude Oil Domestic Production- reduced by 1.8% in FY09-10 to 33.5 mn tones from 34.11 mn tones in FY08-09.

Demand for Oil and Gas – India's domestic demand of oil and gas is expected to increase to 233.52 mn tonnes of oil equivalent in 2011-12 from 176.40 mn tones of oil equivalent in 2008-09.

Natural Gas- The gas demand is projected to grow at a CAGR of 1.7% during 2011-12 to 2024-25 to reach a level of 391 mn standard cubic meter per day.

Imports- The import of petroleum products during FY08-09 went up by 1.3% over imports made during FY07-08. India imports around 80% of its crude oil requirement.

Regulatory - 100% FDI subject to sectoral policy regulation except in refineries owned by national oil companies.

Foreign Players - BP, BGGGroup, Shell, Gaz de France, Chevron and Total

Outlook

- Crude oil demand is likely to increase to about 199 MMT by 2012.
- Rising global crude oil prices have triggered increased E&P focus to expand domestic production.
- Gas demand is expected to reach 313 MMSCMD by 2012.
- A CAGR of 12% for the next 5 years.
- Increased use of gas for power generation, petrochemicals, fertilizers and city gas distribution will drive demand growth.

Government initiatives

- Allowing 100% foreign direct investment (FDI) in private refineries through automatic route and 26% in government-owned refineries.
- Implementation of the New Exploration Licensing Policy (NELP) in 1997.
- Abolition of the administered pricing policy.
- 100% FDI in petroleum products, exploration, gas pipelines and marketing/retail through the automatic route.

Potential

- Growing demand-supply mismatch provides ample opportunities for investment
- Exploration and production of crude oil, gas and CBM.
- The government is actively promoting the creation of strategic oil and gas reserves through partnerships with the private sector.
- 22% of the Indian sedimentary area is unexplored – discovery of oil fields by investors such as Cairn Energy and “giant” gas fields by Reliance, ONGC, etc. indicate a large potential for profitable investment in exploration
- An investment of Rs 2,000 bn (USD 40 bn) is expected in exploration and production by 2012.

Roads and Highways

India has one of the largest road networks in the world, spanning approximately 3.8 mn km. Roadways accounts for 87% of the passenger traffic and 65% of the freight traffic in the country. Over the past few years, road traffic has been growing at 7-10% and vehicle production at approx 10% annually.

Regulatory Scenario

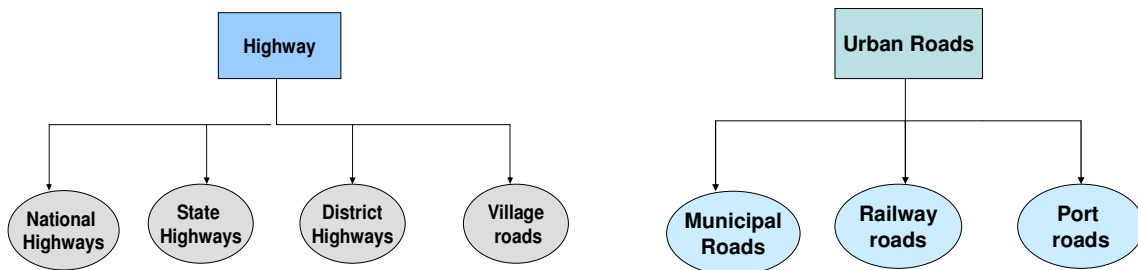
The Department of Road Transport and Highways, under the Ministry of Shipping, Road Transport and Highways, is responsible for all policy matters relating to national highways.

FDI up to 100% under automatic route is permitted in road and highways, toll roads, vehicular bridges, and road transport services.

Recent developments and industry outlook

Over Rs 2,400- 2880 bn (USD 50–60 bn) investment is required over the next 5 years to improve road infrastructure.

Administratively roads are divided into:



The Institutional Framework governing the road sector includes the following:

- § The Ministry of Road Transport and Highway (MORTH) is responsible for all policy matters relating to national highway.
- § The National Highway Authority of India is the implementing agency for select National Highway stretches entrusted to them by MORTH and the National Highway Development Project (NHDP). Implementing Agency (IA) carries out the policy implementation and regulatory functions. The IA ensures that the highway facility is available to all and that there are no unfair or restrictive practices.
- § State Highways, District and Village roads are under the purview of the respective State Government's Public Work Department or the Department of Highways. Urban roads are administered by the urban local body or the organizations concerned.

Investment Opportunities

- § Roads, Bridges and Bypasses
- § Consultancy Services
- § Major Highway Contracts under International Competitive Bidding (ICB)
- § Collaborations for Equipment Manufacture
- § Equipment Leasing
- § Design Engineering

To encourage participation of private sector, the Department of Road Transport and Highways has laid down comprehensive policy guidelines for private sector participation in the Highway sector. The Government has also announced several incentives such as tax exemptions and duty free import of road building equipments and machinery to encourage private sector participation in the highway sector. It has been decided that all the sub-projects in NHDP Phase-III to Phase VII would be taken up on the basis of Public Private Partnership (PPP) on Build, Operate and Transfer (BOT) mode or Annuity mode. The private sector participation envisaged in Phase II of NHDP has also been increased.

National Highway Development Programme

The NHDP is a project to upgrade, rehabilitate and widen major highways in India to a higher standard. The project is comprised of the following phases:

Table 1. National Highway Development Programme (NHDP)

National Highway Development Programme (NHDP)

NHDP Phase	Particulars	Length (in km)	Indicative Cost(Rsbn)
NHDP-I&II	Balance work of GQ and EW-NS corridors	9,000	420
NHDP III	4-laning	10,000	550
NHDP IV	2-laning	20,000	250
NHDP V	6-laning of selected stretches	5,000	175
NHDP VI	Development of expressways	1,000	150
NHDP VII	Ring Roads, Bypasses, Grade Separators, Service Roads etc.	N.A	150
Total		45,000	1695

Investment Incentives

The following provisions have been listed with a view to attract private investment and for facilitating public-private partnership in National Highways:

- Model Concession Agreement (MCA) standardized
- Viability Gap Funding up to 40% of project cost based on competitive bidding for each project.

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- Tax concessions - complete tax holiday for any 10 consecutive years out of 20 years of the concession period.
- Retention of toll by concessionaire for BOT (Toll) projects
- Duty free import of high capacity and modern road construction equipments
- Revenue sharing in the form of negative grant and concession fee
- Protection of the concessionaire from the risks of additional Toll way and competing roads.

Foreign Direct Investment

The provisions relating to Foreign Direct Investment in the road sector include

- Foreign equity participation in the construction and maintenance of roads and bridges (Automatic approval of upto 100%).
- Foreign equity participation in case of land transport support services such as the operation of highway bridges, toll roads and vehicles. (Automatic approval of upto 100 %).
- Ten Year tax holiday with subsequent deductions of 30% for the next five years.

Outlook

- Annual growth projected at 12-15% for passenger traffic, and 15-18% for cargo traffic.
- Over Rs 2,500 bn-Rs 3,000 bn (USD50–60 bn) investment is required over the next 5 years to improve road infrastructure.

PORTS**Size of the Initiatives**

With 13 major ports and 187 minor ports, 7,517 km long Indian coastline plays a pivotal role in the maritime transport helping in the international trade. Traffic handled at major ports during 2009-10 was 560.96 mn tones (MT) an increase of 5.74 per cent over 530.53 MT handled in 2008-09. The ports in India offer tremendous scope for international maritime transport both for passenger and cargo handling.

Target

The Government of India aims to increase the cargo handling capacity of major ports by two folds to reach 1.5 billion metric tonnes (MT) by the year 2012. This will be achieved at an investment of around Rs 1,250 bn (USD 25 bn) through public-private partnerships. A Crisil research on Indian ports and maritime transport estimates that ports will grow by 160% over the 2011-12 period. Cargo handling at the major ports is projected to grow at 7.7% per annum (CAGR) till 2011-12 and the traffic is estimated to reach 877 mn tones by 2011-12, whereas the containerized cargo is expected to grow at 15.5% (CAGR) over a period of 7 years. The New Foreign Trade Policy envisages doubling of India's share in global exports in next five years to Rs.7,500 bn (USD 150 bn). A large portion of the foreign trade to be through the maritime route: 95% by volume and 70% by value.

Government Initiatives

The Government of India has undertaken the expansion and modernization of ports on a priority basis as part of its initiatives in the upgradation of India's infrastructure to achieve the targeted growth rate. The government has initiated numerous plans, which include;

- Formulation of a National Maritime Development Policy to facilitate private investment, improve service quality and promote competitiveness; Rs 566.5 bn (USD 11.33 bn) has been allocated for the same.
- An investment of more than Rs 453.5 bn (USD 9.07 bn) will be made by 2015 for 111 Shipping Sector Projects.
- 100% FDI is permitted for port development projects under the automatic route.
- 100% income tax exemption is provided for a continuous period of 10 years for port developmental projects.
- Opened up of all the areas of port operation for private sector participation.
- Increase in the rail connectivity of ports with the domestic market.
- The experience of operating berths through PPPs at some of the major ports in India has been quite successful; new berths to be constructed through PPPs. A model concession agreement is being formulated for this purpose.

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- The Government has also decided to empower and enable the 12 major ports to attain world-class standards. For attaining this, each port is preparing a perspective plan for 20 years and an action plan for seven years.
- A high level committee has finalized the plan for improving rail-road connectivity of major ports. The plan is to be implemented within a period of three years. Further, changes in customs procedures are being carried out with a view to reducing the dwell time and transaction costs. The government has also delegated powers to the respective Port Trusts for facilitating speedier decision-making and implementation. At the same time, several measures to simplify and streamline procedure related to security and customs are being initiated.
- The National Maritime Development Programme is expected to bring a total investment of over Rs.500 bn (USD 10 bn) in the port infrastructure. Such improvement in the scale and quality of Indian port infrastructure will significantly improve India's competitive advantage in an increasingly globalized world.

Structure

- Government of India dominated maritime activity in the past. Policy direction is now oriented to encouraging the private sector to take the lead in port development activities and operations.
- Many Major ports now operate largely as landlord ports - International port operators have been invited to submit competitive bid for BOT terminals on a revenue share basis.
- Significant investment on BOT basis by foreign players including Maersk (JNPT, Mumbai) and P & O Ports (JNPT, Mumbai and Chennai), Dubai Ports International (Cochin and Vishakhapatnam) and PSA Singapore (Tuticorin).
- Minor ports are already being developed by domestic and international private investors: Pipavav Port by Maersk and Mundra Port by Adani Group (with a terminal operated by P & O)

Policy

- 100% FDI under the automatic route is permitted for port development projects.
- 100% income tax exemption is available for a period of 10 years.

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- Tariff Authority for Major Ports (TAMP) regulates the ceiling for tariffs charged by Major ports/port operators (not applicable to minor ports).
- A comprehensive National Maritime Policy is being formulated to lay down the vision and strategy for development of the sector till 2025.

Outlook

- Cargo handling at the major ports is projected to grow at 7.7% p.a. (CAGR) till 2011-12.
- Traffic estimated to reach 877 mn tones by 2011-12.
- Containerized cargo is expected to grow at 15.5% (CAGR) over the next 7 years.
- The New Foreign Trade Policy envisages doubling of India's share in global exports in next five years to Rs 7,500 bn (USD 150 bn).
- A large portion of the foreign trade to be through the maritime route: 95% by volume and 70% by value

Potential

- Growth in merchandise exports projected at over 13% p.a. underlines the need for large investments in port infrastructure.
- Public–Private partnership is seen by the Government as the key to improve Major and Minor ports
- Investment requirement of Rs. 225 bn (USD 4.5 bn) for improving minor ports.

Telecom

The Indian telecommunications industry is one of the fastest growing in the world and India is projected to become the second largest telecom market globally by 2010.

Policy

- 100% FDI is permitted through the automatic route in telecom equipment manufacturing.
- FDI ceiling in telecom services has been raised to 74 %.
- FIPB approval required for foreign investment exceeding 49% in all telecom services.

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- 100% FDI permitted in telecom equipment manufacturing.
- The government has plans to invest Rs. 409 bn (USD 8.18 bn) under Bharat Nirman programme for connecting 66,822 uncovered villages for providing broadband connectivity.

Additionally, by end of 2010, the government targets:

- 80 mn rural connections.
- Mobile coverage of 90% geographical area.
- Internet Protocol Television (IPTV) in 600 towns.
- Two-fold increase in telecom equipment R&D from the current level of 15%.

India has a Telecom policy that aims to encourage private and foreign investment, such as;

- An independent regulator – the Telecom Regulatory Authority of India (TRAI)
- Revenue-share model for licenses issued by the Government for telecom services in India. Unified access licenses are available for providing telecom services on a pan-India basis.
- Planned opening up of National Long Distance (NLD), International Long Distance (ILD) and other value added services.

Opportunity

- Over 150% projected growth in telecom services.
- India will require large investments in network infrastructure.
- A vast FDI in the sector.
- More competitiveness in the industry means more benefits to the end users.
- The process will bring more transparency in the approach.
- More number of foreign players will directly venture into as active participants bring in new technology and equipments.

Outlook

- India expected to be among the fastest growing telecom markets in the world.
- Over 10 mn new users are added every month – mostly in wireless.

Potential

Favorable demographics and socio economic factors leading to high growth:

- Growth of disposable income combined with changes in lifestyle.
- Increasing affordability - low tariffs, easy payment plans and handset financing.
- Increased coverage and availability of mobile services.

Press Note Telecommunications: 17 February 2009

	Sector	Equity Cap	Entry route	Other Conditions
a)	Basic and cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added telecom services	74% (Including FDI, FII, NRI, FCCBs, ADRs, GDRs, convertible Preference shares, and proportionate foreign equity in Indian promoters/ Investing Company)	Automatic Up to 49%. FIPB beyond 49%.	Subject to guidelines notified in the PN 3(2007)
b)	ISP with gateways, radio-paging, end-to-end bandwidth.	74%	Automatic up to 49%. FIPB beyond 49%.	Subject to licensing and security requirements notified by the Dept. of Telecommunications.
c)	(a) ISP without gateway, (b) infrastructure provider providing dark fiber, right of way, duct space, tower (Category I); (c) Electronic mail and voice mail.	100%	Automatic up to 49%. FIPB beyond 49%.	Subject to the condition that such companies shall divest 26% of their equity in favor of Indian public in 5 years, if these companies are listed in other

				parts of the world. Also subject to licensing and security requirements, where required.
d)	Manufacture of telecom equipments	100%	Automatic	Subject to sectoral requirements.

Special Economic Zone (SEZ)

The Special Economic Zones (SEZs) are specially delineated duty free enclaves created for the manufacture of goods for the purpose of exports. These zones are self contained and integrated with their own infrastructure and support services.

The SEZ Act, 2005 and the accompanying SEZ Rules, 2006 aim to provide an integrated and robust legislative framework, covering all important legal and regulatory aspects for both SEZ developers and Units operating in SEZs. It has over-riding effect over all the other existing laws and the central govt. is empowered to modify the applicability of Central Acts (except labour matters).

Under the Act, SEZ is deemed to be a territory outside the customs territory of India and it provides a single window clearance and approval mechanism for establishment of SEZs as well as production units inside the Zones. The Act provides for enhanced Direct & Indirect Tax Benefits and exemptions from various cess & levies, offers income tax concessions for both SEZ units as well as SEZ developers.

The main objectives of the SEZ Act are:

- (a) generation of additional economic activity
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities;

Incentives and facilities offered to the SEZs

The incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment include:-

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
- 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- Exemption from minimum alternate tax under section 115JB of the Income Tax Act.
- External commercial borrowing by SEZ unit's upto Rs 25,000 mn (USD 500 mn) in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State sales tax and other levies as extended by the respective State Governments.

The major incentives and facilities available to **SEZ developers** include:-

- Exemption from customs/excise duties for development of SEZs for authorized operations approved by the BOA.
- Income Tax exemption on income derived from the business of development of the SEZ in a block of 10 years in 15 years under Section 80-IAB of the Income Tax Act.
- Exemption from Minimum Alternate Tax (MAT) under Section 115 JB of the Income Tax Act.
- Exemption from Dividend Distribution Tax (DDT) under Section 115O of the Income Tax Act.
- Exemption from Central Sales Tax (CST).
- Exemption from Service Tax (Section 7, 26 and Second Schedule of the SEZ Act).

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The SEZ Rules, 2006 stipulates certain requirements of minimum area of contiguous land for different classes of SEZ. These requirements are:

Type of SEZ	Rest of the Country	N-E States, J&K, H.P., Uttaranchal, Goa and the Union Territories
Multi Product SEZs	1000 Hectares	200 Hectares
	25% of the Area earmarked as "Processing Area"	
Sector Specific SEZs		
Electronic Hardware and Software	10 Hectares	
	Minimum 100,000 Sq. Mtr. earmarked as Processing Area	
Technology Park, Biotech Non- Conventional Energy Gem & Jewellery	10 Hectares	
Others	100 Hectares	50 Hectares
	50% of the Area earmarked as "Processing Area"	
SEZs in a Port or Airport	100 Hectares	
SEZ dedicated to Free Trade and Warehousing	40 Hectares	
	Built Up Area not less than 100,000 Sq. Mtr.	

The total land area of the SEZs approved aggregates to 1129 sq. kms, spread across 331 SEZs.

SEZ Distribution by Size			
	Formal Approval	In-Principal Approval	Total
Average size (sq. kms)			
All SEZs	1.8	7.3	4.2
IT/ITES, Pharma SEZs	0.4	0.8	0.5
All SEZ excl IT/ITES &	4.5	11.1	8.4
Distribution of zones by size (sq. kms)			
<=0.1	8	0	8
0.1-1	120	40	160
1-10	52	57	109
10-50	15	28	43
50-100	0	8	8
>=100	0	3	3
Total	195	136	331

Data as on January 2008. Source: Ministry of Commerce

The smaller IT/ITES and Pharma SEZs account for 53% of the total number of SEZs; however, they only account for 6.4% of the overall area. A large chunk of the SEZs

(83% in area terms and 18% of total in number terms) are proposed to be set up as multi-product SEZs (i.e. no specific sectoral concentration). The other key sectors for which SEZs are being planned are textiles and apparel, engineering, materials and energy. The table details the Sectoral distribution of SEZs

SEZs Distribution by Sector			
	Formal Approval	In-Principal Approval	Total
Multi-Product	27	57	84
IT/ITES	100	13	113
Textiles & Engineering	24	13	37
Materials	6	14	20
Energy	3	15	18
Pharma & IT - Hardware	5	12	17
Automobiles	12	3	15
Others	10	3	13
Total	195	136	331

Data as on January 2008 Source: Ministry of Commerce, sezindia.nic.in

Indian and International companies are aggressively trying to set up Special Economic Zones and convert existing projects into SEZs. It is estimated that about USD 8-9 billion of FDI may be channeled into these Zones by the end of 2008. SEZ development is estimated to generate employment of 1 mn people by Dec 2008.

EXEMPTION FROM SERVICE TAX IN RESPECT OF SERVICES RECEIVED BY A DEVELOPER OR A UNIT IN SPECIAL ECONOMIC ZONE (SEZ)

Services provided to SEZ developers or units in a SEZ were exempted from service tax vide notification no. 4/2004 dated March 31, 2004. The Central Board of Excise and Customs (CBEC) have now come out with notification no. 9/2009 dated March 3, 2009, whereby certain conditions have been imposed for claiming the exemption.

The exemption is now available via a refund mechanism, whereby the developer or the unit first needs to pay the service tax and can claim refund thereafter. The exemption is available in respect of all services, whether provided from within or outside the SEZ.

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However, in order to claim the exemption, the developer or the unit, needs to fulfill the following conditions:

1. The list of services which are required in relation to authorized operation should be approved by the Approval Committee.
2. The services are actually used by the developer or unit in relation to the authorized operations in the SEZ.
3. The developer or unit actually pays the service tax.
4. The developer or unit does not claim CENVAT credit of such service tax.
5. The claim for refund is to be filed within six months (may be extended by Assistant/Deputy Commissioner of Central Excise) of actual payment of service tax by developer or unit.
6. The exemption is available in respect of service tax paid on or after March 3, 2009.

Manufacturing

Automobile

A well developed transport network indicates well developed economy. India automobile industry includes the manufacture of trucks, buses, passenger cars, defense vehicles, two-wheelers, etc. It is broadly divided into: Cars, 2-wheelers and heavy vehicles.

Overview

- A USD 34 bn industry, exports constitutes 5% of revenues.
- The Auto Industry in India has witnessed very high growth rates: approximately 14% CAGR in vehicle production in the last 3 years
- Growth in the Indian auto industry is likely to drive auto components market.

Policy- 100% FDI allowed through the automatic route.

Outlook

- The size of the Indian automotive industry is expected to grow at 13% per annum over the next decade to reach around US\$ 120 billion to US\$ 159 billion by 2016.

India Investment Profile

- Vehicle production expected to increase from 11 mn vehicles in 2006-07 to 17 mn by 2011-12.
- Some segments that outperform
 1. Passenger cars expected to be the fastest growing segment at a CAGR of 15% over next 5 years.
 2. Heavy trucks and small commercial vehicles (below 1.5T payload) to drive growth in commercial vehicles segment.

Potential

- India has several advantages making it an attractive destination for investment the automobile sector
 1. Low-cost, high-skill manpower with an abundance of engineering talent – the second largest in the world.
 2. Well-developed, globally competitive Auto Ancillary Industry.
 3. Established automobile testing and R&D centers.
 4. Among the lowest-cost producers of steel in the world.
- National Automotive Testing and R&D Infrastructure Project (NATRIP), a Rs. 20,000 mn (USD400 mn) initiative by Government of India, a number of State Governments and Indian Automotive Industry which aims to create the state-of-art dedicated Testing, Validation and R&D infrastructure across the country.
- Opportunity to address the global auto market while leveraging the domestic market.
 1. Hyundai, Honda and Suzuki are planning to use India as a global hub for manufacture of small cars and have already committed resources over Rs 100 bn (USD 2 bn) for capacity expansion.
 2. Nissan Renault has set up alliances with local players for entering the lucrative auto segment.
 3. Indian manufacturers – Tata Motors, Mahindra & Mahindra, and Bajaj Auto have major expansion plans planned in commercial vehicles and passenger car segment.

India Investment Profile

4. Toyota has announced plans for a second plant to begin operations in 2010, having an initial annual production capacity of around 100,000 vehicles.
5. Volkswagen has invested in an 110,000-unit passenger car assembly plant, which was made operational in April 2009. Volkswagen's India plans include the manufacture of small cars based on the 'Polo' platform.
6. Opportunity to set up R&D and Engineering centers.

Food processing

Size

- India consumes about Rs. 10,000 bn (USD 200 bn) worth of food products p.a.; 53% of this is processed food – mostly primary processing.
- India has a huge output of agricultural produce, with the second largest arable land area in the world.
 1. The largest producer of milk, pulses, sugarcane and tea in the world.
 2. The 2nd largest producer of wheat, rice, fruits and vegetables in the world.
- Primary food processing (packaged fruit and vegetables, milk, milled flour and rice, tea, spices, etc.) constitutes around 60% of processed foods.
 1. Processing of perishables is only about 6% of the total output.
 2. Only 2% of fruits and vegetables is processed compared to up to 80% in many developing countries

Structure

- The Indian food processing industry has limited private sector participation and has few plants with scale economies.
- Some co-operatives, such as the Gujarat Co-operative Milk Marketing Federation in milk with its Amul brand of dairy products, have transformed certain sub-sectors.
- Major international companies such as Nestle, Cargill, Kellogs, Unilever, Danone, General Mills, PepsiCo and Cadbury are already present in India.

Policy

- 100% FDI is permitted under the automatic route for the Agro-processing industry.
- The policy framework is being made more investment friendly with several steps taken and more underway, such as:
 1. De-licensing, establishment of food parks and exemption from Excise Duty.
 2. Establishment of a regulatory authority and implementation of a unified Food Standards and Safety Law.
 3. Contract farming is already permitted in 19 states/UTs, while other states/UTs are in different stages of implementation.
 4. 12 states have modified the APMC Act that earlier restricted trade in agri-produce to select market yards. Most states are expected to modify the APMC Act over the next 2-3 years

Opportunity

- Agro-based industries are growing rapidly in India.
- Food processing is set to grow at over 12% p.a.

Outlook

- The domestic processed-food market, at USD 70 bn in FY 09, is expected to grow to USD 210 bn by FY 15.
- India aims to increase its share of world trade in this sector from 1.7% currently to 3% by 2015

Potential

- Factors that are likely to fuel rapid growth in demand for processed foods in the domestic market are:
 1. Changing lifestyles and growth in disposable income.
 2. Rising double-income families and proportion of women in the workforce.
 3. Decreasing prices of processed foods, making them more affordable thereby access a much larger market.

India Investment Profile

4. Rapid growth in organized retail (> 20% p.a.) with a variety of retail formats being developed.
5. Estimated investment opportunity of about Rs. 1,200 bn (USD 24 bn) in the next 8 years.
6. Major investment opportunities lie in processing milk, sugar, fruit, vegetables, grain-based snacks and marine products.
7. An estimated 30% of new capacity could be for the export market.

Services

Media and entertainment

The Indian media and entertainment business that grew 15 % annually since 2006 into a Rs. 584 bn (USD 11.68-bn) industry in 2008 is seen to top Rs.1,050 bn (USD 21 bn) over the next five years.

Print media

The print media business, estimated to be Rs. 172.6 bn (USD 3.4 bn) business, is projected to grow at 9% between 2009 and 2013.

Television industry

The television industry valued at Rs.240.5 bn (USD 4.8 bn), is projected to grow by 14.5%.

Indian Film Industry

Size of the Indian film industry is estimated at Rs.109.3 bn (USD 2.1 bn) and projected to grow at 9.1% till 2013.

Radio business

The radio business is projected to grow at 14.2% though its present size is much smaller at Rs. 8,400 mn (USD 175 mn).

Government Initiatives

The Government has initiated major reform measures, which have had a cascading effect on the growth of the industry.

- Permitting 100% foreign direct investment (FDI) through the automatic route for film industry and advertising.

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- Allowing 49% foreign holding in cable TV and DTH.
- Allowing 100% FDI in non-news publications and 26% FDI in news publications.
- The FM radio sector was opened for FDI with a 20% cap.
- Permitting setting up of uplinking hubs for satellite uplinking by private TV broadcasters from the Indian soil.
- Giving industry status to the films segment.
- Opening FM Radio operations to the private sector.

The government has allotted Rs. 2,506 mn (USD 50.13 mn) in the current Five-Year-Plan for various development projects of the film industry. The funds will be utilized to set up a centre for excellence in animation, gaming and visual effects among others.

Information Technology

Overview

Size

- India is the leading destination for providing IT and IT-Enabled Services (ITeS), with revenues of about USD 71.7 bn in FY09
- The total revenues from exports were USD 47.3 billion and revenues from the domestic market was USD 24.3 bn in FY09.
- Exports constituted 66% of the total IT and ITeS revenues.

Structure

- The industry has 3 broad categories of companies:
 - Indian IT and ITeS companies ranging from large companies (Tata Consultancy Services, Infosys, Wipro, HCL) to small niche companies.
 - Global IT companies such as IBM, Dell, Microsoft, HP, Accenture, etc. all of whom have set up development centers in India.
 - Captive back office operations of large global corporations like JP Morgan, American Express, GE, HSBC, British Airways, etc.

Policy

- 100% FDI is permitted in this sector under the automatic route.

India Investment Profile

- SEZs, EOUs and Software Technology Parks have been set up across India – income tax exemptions are available for units in these designated areas/zones.
- IT Act, 2000 legalizes the acceptance of electronic records and digital signatures providing a legal backbone to e-commerce

Opportunity

- World leaders in IT have a significant presence in India.
- ITeS is set to grow three-fold over the next 5 years.

Outlook

- The Indian IT and ITeS industry is expected to grow to Rs. 3,850 bn (USD 77 bn) in 2010.
 1. Over 25% p.a. CAGR expected.
 2. Exports expected to reach Rs. 3,000 bn (USD 60 bn) in 2010.

Potential

- India's inherent IT capabilities - talented workforce and world-class companies.
 1. Availability of technically skilled and English-speaking labour force at a fraction of the costs in USA and Europe.
 2. Quality orientation, project and process management expertise.
 3. Enhanced global service delivery capabilities of Indian companies through a combination of Greenfield initiatives, M&A, alliances and partnerships with local players.
- International recognition of India's strengths.
 1. Increasing awareness among global companies about India's capabilities in higher, value-added activities and in the Global Delivery Model.
 2. Leading international companies have identified custom application development and maintenance as priority areas due to a high offshore able component.
- High growth of domestic IT & ITeS market due to several regulatory and technological factors:

India Investment Profile

1. Increased investments by enterprises in IT infrastructure, applications and IT outsourcing.
 2. Demand for domestic BPOs has been largely driven by faster GDP growth and by sectors such as telecom, banking, insurance, retail, healthcare, tourism and automobiles.
- Opportunity to supply to the global market in addition to serving the growing domestic demand.

Healthcare

The Indian healthcare market is one of the largest services sectors contributing ~3% to the country's GDP. It has grown by more than 50% since 2005 and is expected to quadruple to Rs. 7,200 bn (USD150bn) by 2017 from the current size of Rs. 1,750 bn (USD 35bn). Notwithstanding the rapid growth of the sector, the spending on healthcare in India as a percentage of GDP at 5% is very low compared with the developed economies and comparable developing countries.

Structure

- The industry is fragmented with a large number of independent, privately run hospital and healthcare centers
- Private sector corporate entities like the Apollo Hospitals, Wockhardt Hospitals and Fortis Healthcare have aggressive expansion plans
- Indian hospitals are gaining reputation globally as “quality” service providers
- Many Indian hospitals have secured accreditation from the British Standards Institute and Joint Commission on Accreditation of Healthcare Organizations

NHS, UK has indicated India to be a preferred destination for surgery

Policy

- 100% FDI is permitted for all health-related services under the automatic route.
- Infrastructure status has been accorded to hospitals.
- Income tax exemption for 5 years to hospitals in rural areas, Tier II and Tier III cities.

Opportunity

- Healthcare delivery is one of the largest service sector industry in India
- World-class healthcare facilities are available in India.

Outlook

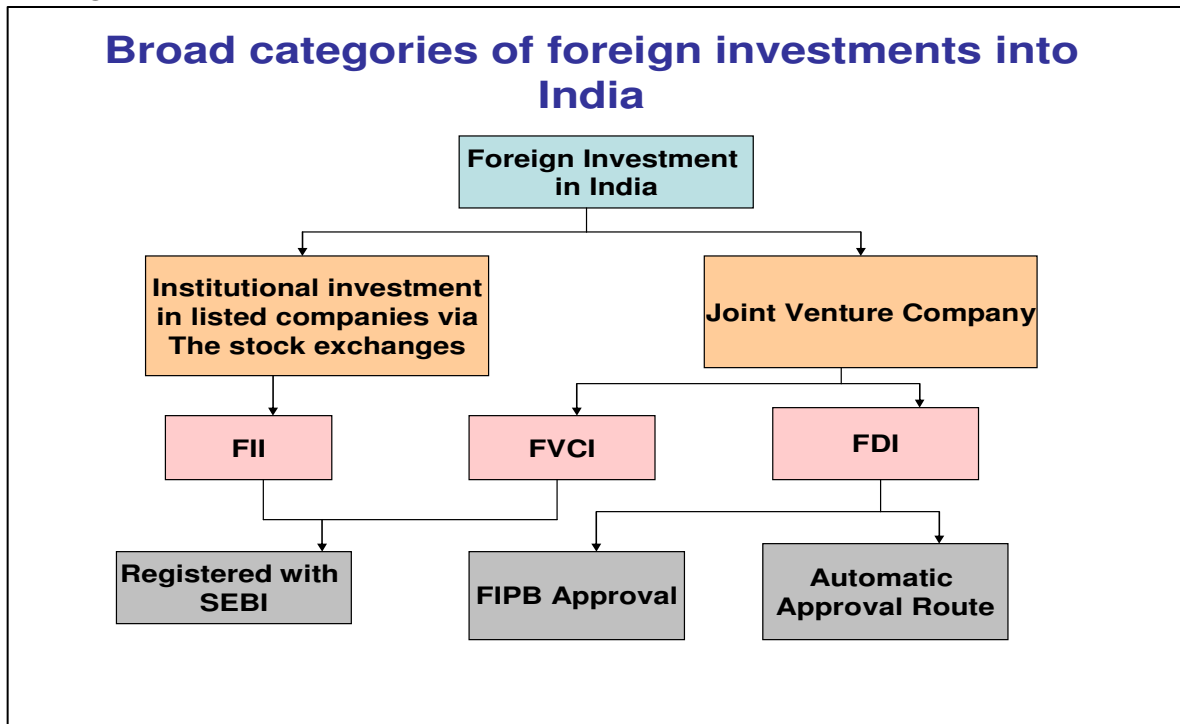
- The industry is expected to grow to Rs. 7,200 bn (USD 150 bn) by 2017.
- Medical tourism is expected to become a Rs. 110 bn (USD 2.2 bn) industry by 2012.

Potential

- High-growth in the domestic market arising from:
 - Increasing health awareness: share in total private consumption expected to increase by 10%.
 - Increasing penetration of health insurance.
 - Rapid growth in private sector companies owning and managing hospitals
- High-growth in medical tourism
 - Cost of comparable treatment is on average 1/8th to 1/5th of those in western countries.
- Opportunities exist in multiple segments along the value chain
 - Service providers: curative and preventive in primary, secondary and tertiary care.
 - Diagnostics services: imaging and pathology labs.
 - Infrastructure: hospitals, diagnostic centers.
 - Health insurance: less than 10% of the population is covered by health insurance. The medical insurance premium income is expected to grow to Rs. 190 bn (USD 3.8 bn) by 2012.

REGULATORY FRAMEWORK FOR INVESTING IN INDIA

Foreign direct investment in India



The primary objective of India's foreign Direct Investment (FDI) policy is to invite and encourage foreign investment in India. Foreign exchange reserves as on May 2010 were USD 276 bn, as against USD 281 bn on September 2009.

During the April-February period of 2009-10, India attracted total foreign investments of INR 117,880 bn (USD 24 bn).

Types of Foreign investments

For calculating indirect foreign investment in a Company B, all types of foreign investments i.e. FDI, FIIs, FVCIs, NRIs, ADRs, GDRs, FCCBs, convertible preference shares and convertible debentures would be considered.

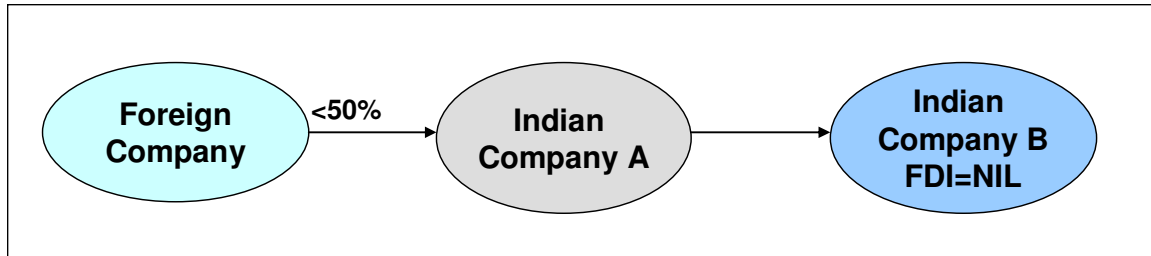
Treatment of beneficial interest:

A declaration under Section 187 C of Companies Act, 1956 provides that a person is holding the shares of a company as a nominee of the original investor (registered owner) then the beneficial interest in such shares would be vested in the original investor. Press Note 2 (2009) provides that if there is a declaration under section 187 C of Companies Act, 1956, the investment in such shares would be counted as foreign

investment regardless of the fact that such investment was made by a resident Indian citizen.

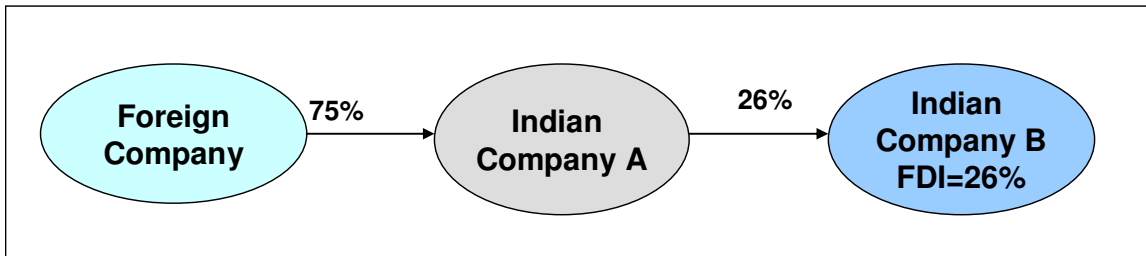
This can be illustrated by the following diagrams.

Case 1



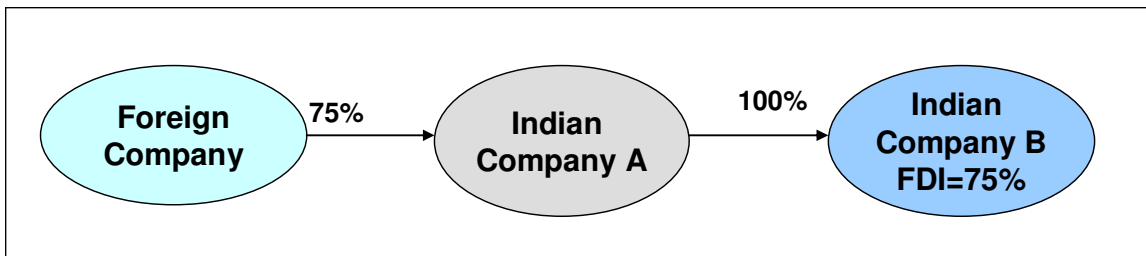
In the first scenario the Indian Company holds less than 50% foreign investment. The Company B will not be taken as having any indirect foreign investment through Company A. i.e. FDI=NIL

Case 2



In the second scenario if the Company A has foreign investment of 75% and invests 26% in the Company B, then the entire 26% will be treated as indirect foreign investment in Company B.

Case 3



If the Company A has foreign investment of 75% and Company B is the wholly owned subsidiary of Company A, then only 75% would be treated as indirect foreign equity and balance 25% would be treated as resident held equity.

The indirect foreign equity in Company B would be computed in the ratio of 75:25 in the total investment of Company A in Company B.

Exempt sectors/activities:

The sectors such as insurance where methodology for calculating foreign investment is prescribed under sector specific statute or rules, the policy and methodology under the Press Notes shall not be applicable.

Press Note 3 (2009): 13 February 2009

According to Press Note 3 (2009)

• **Exempt sectors/activities:**

• The Press Note 3 (2009) does not apply to sectors/activities where there are no foreign investment caps.

• **Transfer of 'ownership' or 'control':**

In cases of Indian companies that are engaged in sectors that have prescribed sectoral caps, in the following situations, prior Foreign Investment Promotion Board ("FIPB") approval would be required:

- The Indian company has received foreign investments and is owned or controlled by non-resident entity;
- The control or ownership of the Indian company currently owned or controlled by resident Indian citizens on a look through basis, is being or will be transferred to non resident entities either through fresh foreign investment or when such transfer is affected through direct acquisition or through corporate reorganizations, i.e. amalgamations or mergers.

Press Note 4 (2009 series): 25 February 2009

The revamp of the foreign investment policy and procedures was initiated with release of Press Note 2 and Press Note 3 (2009 series) in the week of February 16, 2009. In continuation, the Department of Industrial Policy and Promotion (DIPP), part of the Ministry of Commerce & Industry and the policy wing of the Foreign Investment Promotion Board (FIPB) has issued another important Press Note [Press Note 4 (2009 Series)] laying down the guidelines for downstream investments by Indian companies. Press Note 2 and Press Note 3 (2009 Series) lay down the guidelines for calculation of direct and indirect foreign investment in Indian companies and for transfer of ownership or control of Indian companies

Historical policy

An Indian company with foreign investment previously required prior approval of FIPB to be categorized as a 'Holding company' or 'Operating-cum-Holding company'. The need for such express approval from the Government of India has been a matter of debate in absence of clear policy articulation. In 1999, notwithstanding the interpretative aspect of the need for approval, the scope of downstream investment by such companies was specified including eligibility for automatic route for such investment subject to conditions including sectoral policy / caps and valuation norms.

New Guidelines

The new guidelines provide greater clarity on the requirement for companies to obtain such an approval and the scope of downstream investment.

Press note 4 (2009 series) clarifies guidelines for downstream investment by Indian companies.

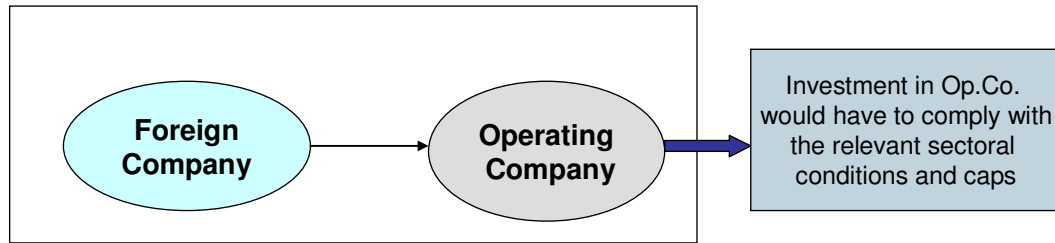
'Downstream investment' has been defined to mean indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Press Note 2 (2009 Series).

The 'guiding principle is that downstream investment by companies 'owned' or 'controlled' by non resident entities would require to follow the same norms as a direct foreign investment i.e. only as much can be done by way of indirect foreign investment through downstream in terms of Press Note 2 (2009 series) as can be done through direct foreign investment and what can be done directly can be done indirectly under same norms.

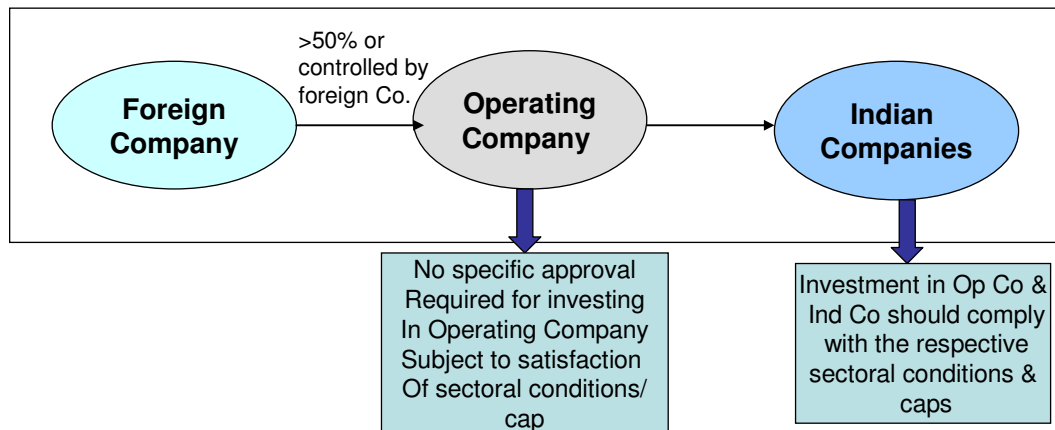
The guidelines for calculations of total foreign investment, both direct and indirect in an Indian company, at every stage of investment, including downstream investment, have been detailed in Press Note 2 of 2009 which enables determination of total foreign investment in any/all Indian Companies.

The policy of Downstream Investment applies to:

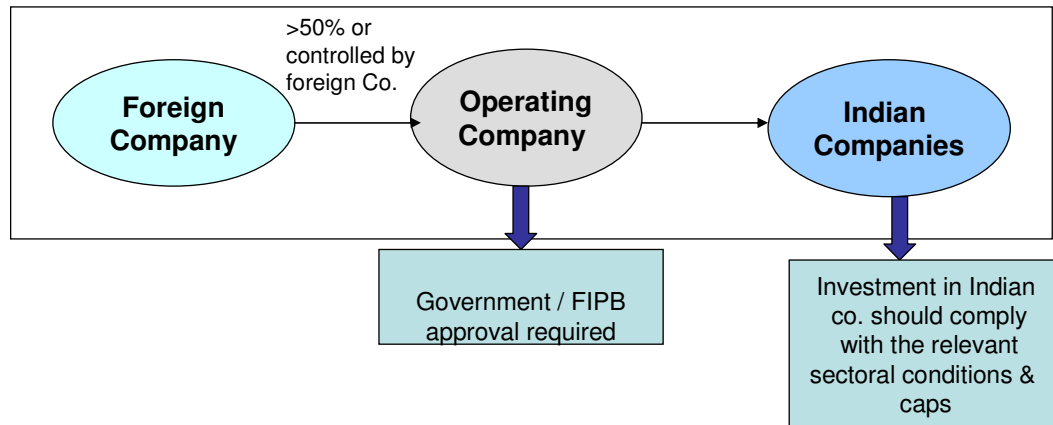
- **Operating Companies:** 'Operating Company' is an Indian company which is undertaking operations in various economic activities and sectors. Foreign Investment in Operating Companies must comply with the sectoral conditions and caps with regard to the sectors in which these companies are operating.



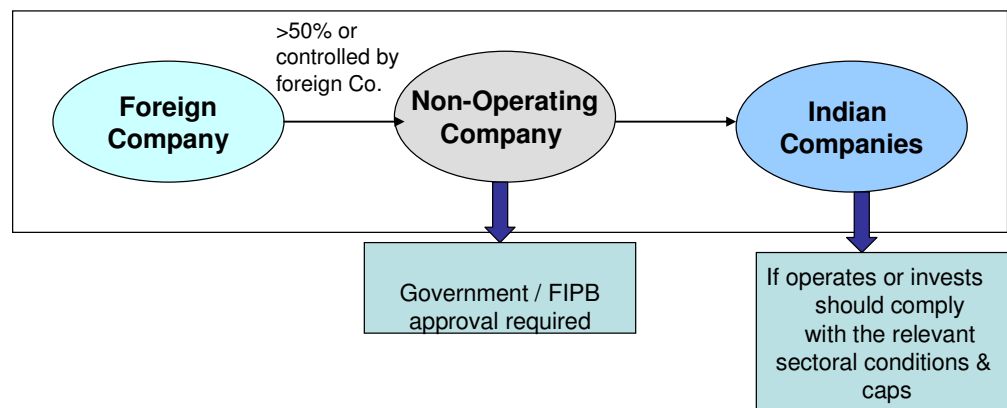
- Operating cum Investing companies:** Foreign Investment in such companies as well as the Indian Companies in which downstream investment is made by such companies must comply with the sectoral caps and conditions of the sector in which they are operating.



- Investing companies:** 'Investing Company' means an Indian company holding only investments in another Indian company, directly or indirectly, other than for trading of such holdings / securities. Foreign Investment in investing companies will require prior approval of Government/FIPB regardless of the amount or extent of foreign investment. Indian Company in which downstream investment is made by such companies must comply with the sectoral caps and conditions of the sector in which they are operating.



- Companies having no operations:** For companies which do not have any operations and also do not have any downstream investments, for infusion of foreign investment into such companies, Government / FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such company commences business or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditions and caps.



The Downstream investment shall be subject to following conditions:

- Company making investment must within 30 days notify SIA (Secretariat for Industrial Assistance), DIPP (Department of Industrial Policy and Promotion) and FIPB of such investment.
- Resolution by the Board of Directors supported by the Shareholders Agreement, if any for the induction of foreign equity.

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- Issue/transfer pricing/valuation shall comply with the SEBI/RBI Guidelines.
- Investing companies need to bring the requisite funds from abroad rather than using leverage funds from domestic market. This does not restrict the downstream operating companies to raise debt in the domestic market.

Conclusion

The new guidelines provide clarity of policy and flexibility of operations to Operating-cum-investing companies (owned or controlled by foreign investors) which have or propose to have downstream investments.

Moreover, with Press Note 4 not articulating any restrictions on Indian companies with foreign investment, although not owned or controlled by foreign investors as defined in Press Note 2, the logical outcome is that such entities will not be saddled with the foreign investment norms and procedures for their downstream investments, other than in circumstances specifically defined in Press Note 2.

New Definitions

- **Resident Indian citizen** means a person resident in India and a citizen of India.
- **Non-resident entity** is a person resident outside India.
- **Investing Company** means an Indian company making equity/preference/CCD (Compulsory Convertible Debentures) investment into another Indian Company.
- **Owned** by resident Indian citizen and Indian companies, which are owned and controlled by resident Indian citizen means that more than 50% of the equity interest is beneficially owned by resident Indian citizen and Indian companies, which are owned and controlled by resident Indian citizens.
- **Controlled** by resident Indian citizen and Indian companies, which are owned and controlled by resident Indian citizen means that resident Indian citizen and Indian companies, which are owned and controlled by resident Indian citizen have the power to appoint majority of its directors.

Defense Production: 17 February 2009

FDI up to 26% is permitted, under FIPB route for Defense Production subject to licensing under Industries (Development & Regulations) Act 1951 and guidelines on FDI in production of arms and ammunition.

FDI Policy for Air Transport Services Sector: 17 February 2009

Government has allowed the following:

- No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Service Undertaking;
- FDI up to 49% and investment by Non-resident Indians (NRI) up to 100% will be allowed on the automatic route in Domestic Scheduled Passenger Airline Sector;
- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% will be allowed on the automatic route in Non Scheduled airlines, Chartered airlines, and Cargo airlines;
- FDI up to 74% and investment by NRI up to 100% will be allowed on the automatic route in Ground Handling Services; and
- FDI up to 100% will be allowed on the automatic route in Maintenance and Repair organizations; flying training institutes; technical training institutions; and helicopter services/seaplane services.

Automatic Route

The automatic route does not require prior regulatory approval but only requires post filing/intimation with the RBI through the Authorized Dealer/Bankers:

- Filing of intimation by the Indian Company with the RBI in the prescribed format, within 30 days of receipt of foreign direct investment in India.
- Filing of prescribed form and documents by the Indian Company with the RBI within 30 days of issue of share to foreign investors.

FDI in most of the sectors falls under the Automatic route and very few falls under cases requiring prior Government/FIPB approval.

Approval Route

The FDI in sectors requiring prior Government Approval is categorized as falling under the approval route. Such approval is granted by the Government of India, Ministry of Finance, and The foreign Investment Promotion Board (FIPB).

The FIPB Route:

Foreign Investment Promotion Board's (FIPB) main function is to approve all those cases where the parameters of automatic approval are not fulfilled. The processing time taken by FIPB is between 4 to 6 weeks. The processing is done liberally for all

India Investment Profile

sectors and all types of proposals, and rejections are few. In case foreign investor wishes to hold less than the entire equity of the company, it is not necessary for him to have a local partner. The equity proportion not proposed to be held by the foreign investor can be offered to the public.

Approval by FIPB is necessary for the following categories of industries by NRI/OCB and other investors.

- FIPB is necessary for those proposals which require an Industrial License.
- Proposals where the foreign collaborator has a previous venture/tie-up in India in the same or allied field. This condition does not apply to proposals pertaining to Information Technology industry.
- Investors investing more than 24% in the equity capital of units manufacturing items reserved for small scale industries
- FIPB route is also necessary in the items requiring an Industrial License in terms of the location policy notified by Government under the New Industrial Policy of 1991.
- Proposals meant to acquire shares in an existing Indian company.
- All proposals not inside the notified sectoral policy/caps or under sectors for which FDI is not permitted
- If any investor chooses to submit proposals through the FIPB route bypassing the automatic route.

Government Approval

Proposals for Foreign Direct Investment which are not covered under the automatic route are considered by Foreign Investment Promotion Board (FIPB) on the basis of transparent guidelines. Government approval is required for:

- § New Investment by a foreign investor in a field in which the investor already has an existing joint venture or collaboration with another Indian partner
- § New Investment of more than 24% foreign equity is proposed to be inducted for manufacture of items reserved for the Small Scale sector

The following table gives the FDI cap limits for various sectors

Table 1: FDI Cap limits

Sector with less than 100% FDI cap		
S.NO	Sector/Activity	FDI cap/equity
1.	Defence Production	26%
2.	Asset Reconstruction Companies	49% (Only FDI)
3.	FM radio	FDI+FII Invest. up to 20%
4.	Cable network	49% (FDI+FII)
5.	Direct to home	49% (FDI+FII)
6.	Setting up hardware facilities such as up-linking, HUB, etc	49% (FDI+FII)
7.	Up-linking a News & current affairs TV channel	26% (FDI+FII)
8.	Commodity Exchanges	49% (FDI+FII)
9.	Credit Information Companies	49% (FDI+FII)
10.	Refining	49% for PSUs
11.	Publishing of newspaper & periodicals dealing with news & current affairs	26%
12.	Single Brand product retailing	51%
13.	Satellites-Establishment & operation	74%

Sector with 100% FDI subject to FIPB approval		
S.NO	Sector/Activity	FDI cap/equity
1.	Tea Sector	100%
2.	Mining & mineral separation of titanium bearing minerals & ores, its value addition & integrated activities	100%
3.	Cigars & Cigarettes - Manufacture	100%
4.	Up-linking a Non-news & Current Affairs TV Channel	100%
5.	Courier services	100%
6.	Investing companies in infrastructure/services sector (except telecom sector)	100%
7.	Publishing of scientific magazines/speciality journals/periodicals.	100%
8.	Trading of items sourced from small scale sector.	100%
9.	Test marketing of such items for which a company has approval from manufacture	100%

Source: Ministry of Commerce

Sectors prohibited for FDI

FDI is not permissible in the following cases

- § Retail trading (except Single Brand Product retailing)
- § Atomic energy
- § Lottery business
- § Gambling and Betting
- § Business of chit fund
- § Trading in Transferable Development Rights (TDRs).
- § Activity/sector not opened to private sector investment.

Press Note 1 (2009 Series): 14 January 2009

Foreign investment in Print Media dealing with news and current affairs

- Policy for FDI in publication of facsimile edition of foreign newspaper
 - FDI up to 100% permitted with prior government approval.
- Policy for foreign investment in publication of Indian edition of foreign magazines dealing with news and current affairs
 - Foreign investment, including FDI and investment by NRIs/PIOs/FII upto 26%, is permitted with prior government approval.

Press Note 2 (2009): 13 February 2009

According to Press Note 2 (2009)

Definitions of “Owned” and “Controlled”:

For the purpose of computing indirect foreign investments, “Owned” by resident Indian citizens would mean that the resident Indian citizens on a look through basis beneficially own more than 50% of the equity interest of the Company A. “Controlled” by resident Indian citizens would similarly mean that the resident Indian citizens on a look through basis have the power to appoint a majority of directors of the Company A.

Principle for computing indirect foreign investment:

The Company B would not be treated as having indirect foreign investments as long as the Company A in which there are foreign investments, is ultimately ‘owned and controlled’ by Indian resident citizens. However, the foreign investments through the Company A would be considered for computing indirect foreign investments in the Company B if the Company A is not ‘owned and controlled’ by Indian resident citizens

on a look through basis or if the Company A is 'owned' or 'controlled' by 'non resident entities'. In these cases, the entire investment by the Company A into the Company B would be categorized as indirect foreign investments into the Company B. As a matter of added clarification, **Press Note 2 (2009) states** that in case of investment into an Company B which is 100% owned by the Company A, the extent of indirect foreign investment in the Company B, shall be taken to be the percentage of actual foreign investments in the Company A. It has also been clarified that the method of computation of indirect foreign investments would be made applicable at each layer of investments in Indian companies.

Venture Capital

In recognition of growing importance of Venture Capital as one of the sources of finance for Indian industry, particularly for the smaller unlisted companies, the Government has announced a policy governing the establishment of Venture Capital Funds/Companies.

Venture capital funds can be structured in the following manner:

§ Domestic Funds

§ Offshore Funds

Domestic funds

For domestic venture funds (funds raised within India), the structure that is most commonly used is that of a domestic vehicle for the pooling of funds from the investors and a separate investment adviser for carrying on asset management activities. For the domestic vehicle, there are two options viz a trust or a company. India at present does not have a limited partnership structure which is a common practice in countries like the US.

The 'Trust' structure has been more commonly used since the company structure does have some drawbacks mostly arising from the provisions of the Companies Act, 1956 which may conflict with some of the basic underlying principles of venture capital investments.

Offshore funds

Commonly there are two alternatives available to offshore investors participating in Indian venture capital investments. The offshore investors can either use an

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§ Offshore Structure

§ Unified structure

Under the offshore structure, an investment vehicle, which could be a Limited Liability Company or a Limited Partnership organized in a jurisdiction outside India, makes investments directly into Indian portfolio companies. There would generally be an offshore manager for managing the assets of the fund and an investment advisor in India for identifying deals and to carry out preliminary due-diligence on prospective investment opportunities.

Structuring of funds is important for foreign investors to avoid the potential double taxation of income both in India and the home country. In the event that the home country of the investor does not have a Tax Treaty with India, it is important to structure the investment through a tax favorable jurisdiction. Mauritius has emerged as the most favorable jurisdiction for investing into India. The India-Mauritius Tax Treaty provides for favorable tax treatment in respect of dividends and capital gains. Under the Tax Treaty, any capital gains earned by a Mauritius entity on shares held in an Indian company are exempt from tax in India. Further, Mauritius does not impose any capital gains tax and hence, if structured properly, the investor would be taxed directly in his home jurisdiction.

The Unified structure is generally used where domestic (i.e. Indian) investors are expected to participate in the fund. Under this structure, a Trust or a Company is organized in India. The domestic investors would directly contribute to the Trust whereas overseas investors pool their investments in an offshore vehicle and this offshore vehicle invests in the domestic Trust. The portfolio investments are made by the Trust. The Trust would generally have a domestic manager or an adviser. The offshore fund may also have its own offshore manager/adviser. This structure also enables the domestic manager to draw its share of carry directly from the trust.

The regulatory framework for VC Funds

Domestic and offshore VC funds investing in India are regulated by the Securities Exchange Board of India (SEBI) under the following regulations:

§ The SEBI (Venture Capital Funds) Regulations, 1996

§ The SEBI (Foreign Venture Capital Investors) Regulations, 2000 (FVCI Regulations).

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The VCFs are permitted to invest only in venture capital undertakings (VCUs) which are not engaged in activities that have been classified under the negative list which broadly includes undertakings engaged in non-banking financial services, gold financing etc. Furthermore, the VCU has to be a domestic company whose shares are not listed on a recognized stock exchange but can invest in initial public offerings (IPOs).

Eligibility criteria

For registering as a VCF, the VCF Regulations require, inter alia, that:

- § The main objective of the VCF (whether a company or a trust) should be to carry on the activity of a venture capital fund;
- § The constituting documents (memorandum and articles of association in the case of a company and the trust deed in case of a trust) should contain a prohibition from making an invitation to the public to subscribe to its securities.
- § In the case of a trust seeking registration, the eligibility criteria prescribed requires that, the instrument of trust should be registered under the provisions of the Registration Act, 1908 of India.

Investment conditions and restrictions

SEBI has prescribed certain investment restrictions on the VCF both in terms of acceptance of contributions as well as for making down line investments in portfolio companies. These are as follows:

- § Minimum investment to be accepted from any investor should be Rs. 500,000 (Approx. USD 10,000) except in the case of employees, principal officers or directors of the VCF, employees of the manager of the VCF where lower amounts may be accepted.
- § Minimum firm capital commitments from its investors should be Rs. 50 mn
- § A VCF is not permitted to invest more than 25% of its corpus in any one VCU and at least 66.66% of its investible funds are required to be invested in unlisted equity shares or equity linked instruments: Provided, if the VCF wants to gain the tax benefits, it will have to exit from such investments within a period of one year from

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the date of listing of the shares of the VCU on a recognized stock exchange in India.

- § A VCF may also invest up to 33.33% of its investible funds by way of: (i) subscription to an initial public offering of a VCU whose shares are proposed to be listed on a recognized stock exchange subject to a lock in period of one year; or (ii) in debt or debt instruments of a VCU in which it has already made an investment by way of equity.
- § A VCF is also not permitted to invest in associated companies which have been defined to mean companies which exercise control over the VCF or where VCF exercises control over the companies.
- § The venture capital fund shall not invest in the equity shares of any company or institution providing financial services

No venture capital fund shall be entitled to get its units listed on any recognized stock exchange till the expiry of three years from the date of the issuance of units by the venture capital fund

The SEBI (Foreign Venture Capital Investor) Regulations, 2000 (FVCI)

An FVCI has been defined under the FVCI Regulations to mean an investor incorporated or established outside India, which proposes to make investments in venture capital fund(s) or venture capital undertakings in India and is registered under these Regulations.

Unlike the VCF Regulations which seem to make it mandatory for VCFs to register with the SEBI, the FVCI Regulations does not make it mandatory for an offshore venture capital investor to register with SEBI as an FVCI. However, there are certain benefits extended to funds registered under the FVCI Regulations

Eligibility criteria

In order to determine the eligibility of an applicant, SEBI would consider, inter alia,

- § The applicant's track record, professional competence, financial soundness, and experience, whether the applicant is regulated by an appropriate foreign regulatory authority or is an income tax payer
- § The applicant can be a pension fund, mutual fund, investment trust, investment company, investment partnership, asset management company, endowment fund,

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university fund, charitable institution or any other investment vehicle incorporated and established outside India.

Investment conditions and restrictions

The investment restrictions applicable to FVCI are similar to those applicable to VCFs under the VCF Regulations (as listed above) except for the following:

- § No minimum corpus or capital commitment requirement for FVCIs;
- § No minimum individual contribution prescribed under the FVCI Regulations;
- § No mandatory exit clause in respect of investments by an FVCI in unlisted securities; and
- § Not invest more than 25% of the funds committed for investments to India in one Venture Capital Undertaking
- § It can invest its total funds committed in one venture capital fund, however at least 75% of the investible funds shall be invested in unlisted equity shares or equity linked instruments.
- § Not more than 25% of the investible funds may be invested by way of:

Subscription to initial public offer of a venture capital undertaking whose shares are proposed to be listed subject to lock-in period of one year;

Debt or debt instrument of a venture capital undertaking in which the [foreign venture capital investor has already made an investment by way of equity.

The FVCI Regulations make it mandatory for a FVCI to appoint a domestic custodian for the purpose of custody of securities and for entering into an arrangement with a designated bank for the purpose of opening a special non-resident Indian rupee or foreign currency account. SEBI acts as a nodal agency for all necessary approvals including the permission of the Reserve Bank of India for opening of the bank account. In addition to the above investment conditions and restrictions, there are certain reporting and disclosure requirements that need to be satisfied by a registered FVCI on a continuing basis.

Benefits of registering under the SEBI (Foreign Venture Capital Investor) Regulations, 2000

- § Generally, on the purchase of shares of an unlisted company by a non-resident, the minimum price to be paid would be linked to the net asset value of the shares. Similarly, for exits involving transfer from a non-resident to a resident, the exit price is capped at the price of the shares on the stock exchange (listed company) or to the net asset value (unlisted company). However, a special exemption has been carved out for FVCI's in as much that an FVCI may acquire or sell its Indian shares/ convertible debentures/units or any other investment at a price that is mutually acceptable to both the parties. Thus, there are no entry or exit pricing restrictions applicable to an FVCI. This could be a very significant benefit for FVCI's, especially in the case of a strategic sale or buy-back arrangement with the promoters at the time of exit from unlisted companies.
- § The transfer of shares from FVCIs to promoters is exempted from the public offer provisions under the SEBI (Substantial Acquisitions of Shares and Takeover) Regulations, 1997 ("Takeover Code"), if the portfolio company gets listed on a stock exchange post the investment. This ensures that if the promoters have to buy-back the shares from the FVCIs, they will not be burdened with the public offer requirement which would otherwise require an offer to the other shareholders of the company to buy up to 20% of the paid-up capital of the company.
- § The term "promoter" and "promoter group" have been broadly defined under the SEBI DIP (Disclosure and Investor Protection) Guidelines to include any person who plays an instrumental role in the decisions of a company making a public offer. The SEBI has clarified that a SEBI registered venture capital fund or an FVCI would generally not be treated as promoters for the purpose of the above guidelines.
- § Under the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("SEBI DIP Guidelines"), the pre-issue share capital of a company, which is in the process of an IPO, is locked-in for a period of one year from the date of allotment. However, an exemption has been granted to VC funds registered under the SEBI VCF Regulations and SEBI FVCI Regulations. This would facilitate the FVCI to exit from their investments post-listing. However, in the case of securities subscribed to in an

initial public offering (“IPO”), there would be a lock-in of one year applicable to such investments.

Portfolio Investment

Besides direct investment in India, non-residents can also make portfolio investments. Foreign institutional investors (FIIs) are allowed to invest in the primary and secondary capital markets in India under the Portfolio Investment Scheme (PIS). The term FII is defined as an institution established or incorporated outside India for making investment in Indian securities and also includes a sub-account of an FII. FIIs must register themselves with SEBI and comply with the exchange control regulations of the RBI.

Registration eligibility

The FII guidelines require FIIs to meet certain qualifying conditions for registration. For example, they are required to have a good track record and be professionally competent. They must be registered with the appropriate foreign regulatory authority, and satisfy the ‘fit and proper’ requirements. SEBI also examines whether the grant of registration is in the interest of the development of the Indian securities market.

The following categories of institutional investors are eligible for registration as Foreign Institutional Investors who propose to invest on their own behalf

- § Pension Funds
- § Mutual Funds
- § Investment Trust
- § Insurance or reinsurance companies
- § Endowment Funds
- § University Funds
- § Foundations or Charitable Trusts or Charitable Societies

The following categories of institutional investors are eligible for registration as Foreign Institutional Investors who propose to invest their proprietary funds or on behalf of "broad based" funds

- § Asset Management Companies
- § Nominee Companies

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- § Institutional Portfolio Managers
- § Trustees
- § Power of Attorney Holders
- § Bank

Indian asset management companies and portfolio managers registered with SEBI can also register themselves as FIIs. These entities are subject to the same regulatory and reporting requirements as stipulated in the FII Guidelines. They can raise funds abroad if they are also registered with the appropriate foreign regulatory authority. In other cases, they are only permitted to manage funds raised by an FII incorporated abroad as its agents. In such cases, the overseas FII is responsible for compliance with the regulatory requirements.

Registered FIIs are permitted to open rupee and foreign currency denominated account(s) in designated banks to undertake the following transactions:

- § To transfer sums from the foreign currency accounts to the rupee account and vice versa.
- § To make investments in securities in India out of the balances in the rupee account.
- § To transfer the after-tax proceeds from the rupee account to the foreign currency accounts.
- § To repatriate the capital, capital gains, dividends, income received by way of interest, any compensation received towards sale / renouncement of rights offerings of shares, etc, subject to the deduction of withholding taxes.

Investment limits

The investment limits as laid down in the FII Guidelines and the RBI Regulations are as follows:

Foreign Institutional Investors (FIIs) /sub-accounts under the 70:30 route can invest in listed Corporate Debt without prior approval from The Securities and Exchange Board of India (SEBI) till the cautionary limit of USD450 million and in Government debt securities till the cautionary limit of US\$ 540 million is reached.

An FII and each of its sub-accounts can individually invest up to 10 percent of the paid-up share capital of an Indian company. However, an FII together with all its sub

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accounts cannot hold more than 10 percent of the paid-up capital of an Indian company. A lower limit of 5 percent applies to foreign corporations and foreign individuals as sub-accounts.

FII's can cumulatively hold up to 24 percent of the paid-up share capital of a company, but they may increase their holding up to the applicable sectoral limits on various sectors with the approval of the Board of the investee Indian company and the general body of the company passing a special resolution to that effect. The foreign investment under PIS is in addition to amounts invested as FDI in the Indian company.

Unless a FII is registered as a debt fund, the total investment in equity and equity related instruments should not be less than 70 percent of the aggregate of all its investments. An FII registered as a debt fund can invest the entire amount in debt securities.

The above investment restrictions do not include investments made by an FII through offshore funds, GDRs, ADRs or Euro-convertible Bonds. FII's are allowed to tender their shares in case of an open offer following a takeover bid by an acquirer. They are also permitted to take forward cover on their equity and debt exposures to hedge against currency fluctuations. However, they are not allowed to short sell and can only engage in delivery-based trading.

Indian asset management companies and portfolio managers registered with SEBI can also register themselves as FII's. These entities are subject to the same regulatory and reporting requirements as stipulated in the FII Guidelines. They can raise funds abroad if they are also registered with the appropriate foreign regulatory authority. In other cases, they are only permitted to manage funds raised by an FII incorporated abroad as its agents. In such cases, the overseas FII is responsible for compliance with the regulatory requirements.

Registration of sub-accounts

Besides entities that are eligible as FII's, other foreign investors are also eligible for registration as sub-accounts. The sub-accounts may be

- § Collective investment funds and institutions
- § Proprietary funds, or
- § Foreign corporations and individuals

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The FII through whom an application is made for sub-account registration must be authorized to manage the investments on behalf of the sub-account. A fund or portfolio, which is already registered as a sub-account of a FII or registered as a FII, is not permitted to be registered as a sub-account of another FII. The FIIs are required to undertake proper due diligence about the legitimacy of the source of funds. The additional information / undertaking required from sub-accounts, who are foreign corporates or foreign individuals, include the following:

- § The applicant is subjected to outside taxation authorities and is regularly filing the tax returns;
- § The income of the applicant is from known and legitimate sources; and
- § The applicant is not a NRI registered with the RBI
- § Investments by each sub-account under the category of foreign corporates and foreign individuals must not exceed 5 percent of the issued capital of the investee company

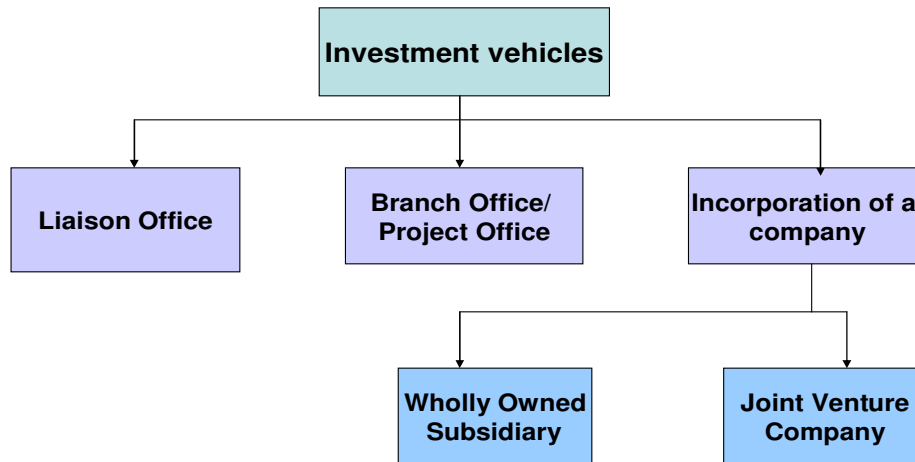
PREFERRED BUSINESS STRUCTURE

Foreign corporations conducting business in India may operate in various forms. Common business structures employed by foreign investors in India are private limited companies (mostly wholly owned subsidiaries of the foreign companies), liaison offices, branches offices, and project offices. These business structures are discussed in the following paragraphs:

As an Indian Company

A foreign investor can commence operations in India by incorporating a company under the Companies Act, 1956 through Joint Ventures (JVs) or Wholly Owned Subsidiaries (WOS). Foreign equity in such Indian companies can be up to 100% depending on the requirements of the investor, subject to equity caps in respect of the area of activities under the Foreign Direct Investment (FDI) policy.

Investment Vehicles for Foreign Investors



Joint Venture

Foreign Companies can set up their operations in India by forging strategic alliances with Indian partners. Joint Venture may entail the following advantages for a foreign investor:

- § Established distribution/ marketing set up of the Indian partner
- § Available financial resource of the Indian partners
- § Established contacts of the Indian partners which help smoothen the process of setting up of operations

Wholly Owned Subsidiary Companies

Foreign corporations can set up their subsidiary companies (in the form of private companies) in India. Setting up of a corporation in India requires compliance with the procedures of incorporation laid down under the Companies Act, 1956. The subsidiary company, incorporated under the laws of India, is treated as a domestic company for tax purposes. In comparison with the branch office and liaison office a subsidiary company provides the maximum flexibility for conducting business in India.

Following are some of the features of a subsidiary company:

- § Funding could be via equity, debt (both foreign and local) and internal accruals;
- § Indian transfer pricing regulations shall apply; and

- § No approval required for repatriation of dividends

As a Foreign Company

Foreign Companies that do not wish to enter into Joint Ventures or setup wholly owned subsidiaries can set up their operations in India through

- § Liaison Office/Representative Office
- § Project Office
- § Branch Office

Such offices can undertake any permitted activities. Companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India.

Branches

Foreign corporations engaged in manufacturing and trading activities abroad may open branch offices to conduct business in India. The branch office can carry the same or substantially the same activities as the ones carried on by the foreign corporation overseas. A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. For opening a branch office in India, foreign corporations require a specific approval from the RBI. Such approval prescribes the activities that a branch office may undertake in India. Consequently, a foreign corporation cannot undertake any activity in India that is not specifically permitted by the RBI. A branch office is also required to register itself with the registrar of companies and comply with certain procedural formalities prescribed under the Companies Act, 1956.

A branch office is permitted to undertake the following activities:

- § Export / import of goods.
- § Rendering professional or consultancy services.
- § Carrying out research work, in which the parent company is engaged.
- § Promoting technical or financial collaboration between Indian companies and parent or overseas group company.
- § Representing the parent company in India and acting as buying / selling agent in India.

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- § Rendering services in IT and development of software in India.
- § Rendering technical support to the products supplied by parent / group companies.
- § Activities of foreign airline / shipping company.

For income tax purposes, a branch office is treated as an extension of the foreign corporation in India and taxed at the rate applicable to foreign companies. Some key tax and regulatory aspects of a branch office are as follows:

- § Transactions between a branch and the foreign corporation are subject to Indian transfer pricing regulations.
- § The branch office is permitted to acquire immovable property necessary or incidental to carry on activities approved by the RBI.
- § Post tax profits are freely repatriable to the foreign corporation.
- § Surplus funds post winding up of the branch office can be repatriated to foreign corporation subsequent to obtaining RBI approval.

As regards Branch Office on “Stand Alone Basis”, such Branch Offices would be isolated and restricted to the Special Economic zone (SEZ) alone and no business activity/transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India. No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to specified conditions.

Liaison or Representative Offices

Foreign corporations are permitted by RBI to open liaison offices in India for undertaking liaison activities on its behalf. These offices act as a communication channel between the foreign corporation and Indian customers. Such offices are normally established by foreign corporations to promote their business interests in the country by spreading awareness of their products and exploring opportunities for setting up a more permanent presence in India.

The setting up of a liaison office in India is also subject to the conditions outlined in the permission granted by RBI. The liaison office also requires registration with the registrar of companies. The RBI permits liaison offices to undertake only specific activities in India and is subject to the following conditions:

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- § No commission or fee or any other remuneration may be charged by the Indian liaison office of the foreign corporation.
- § The liaison office cannot undertake any activity of a trading, commercial or industrial nature.
- § All expenses of the liaison office should be met exclusively by remittances from abroad through normal banking channels.
- § The liaison office should submit an auditor's certificate to the RBI annually.

Project Offices

A foreign corporation, which has secured a contract from an Indian company to execute a project in India, may establish a project office in India without obtaining prior permission from the RBI. The exchange control norms also prescribe the following additional requirements:

- § The project should be funded directly by inward remittance from abroad; or
- § The project should be funded by a bilateral or multilateral international financing agency; or
- § The project must be cleared by an appropriate authority; or
- § The Indian company awarding the contract should have been granted a term loan by a public financial institution or a bank in India for the project. However, the foreign corporation would be required to furnish a prescribed report to the concerned regional office of the RBI under whose jurisdiction the project office is set up.

Taxes on Corporate Income and Gains

India has a well developed tax structure with the authority to levy taxes divided between the central and the state governments. The central government levies direct taxes such as personal income tax, wealth tax, corporate tax and indirect taxes such as customs duty, excise duty, central sales tax and service tax. The states are empowered to levy professional tax and state sales tax apart from various other local taxes such as entry tax, octroi, etc.

Administration

The power of the administration, supervision and control in the area of direct taxes lies with the central board of direct taxes (CBDT). The CBDT works under the MoF and exercises significant influence over the working of direct tax laws of the country in order to ensure effective discharge of executive and administrative functions

Further central board of excise and customs under the MoF, deals with the formulation of policy concerning levy and collection of customs, central excise duties and service tax

The Indian fiscal year runs from April 1 to March 31. A corporation's tax year also ends on the same date. All corporations are required to file tax returns by October 31 and must file the same even in the event of loss. Non resident corporations must file Indian income tax returns if they carry on the business in India or have any office in India or earn income from Indian source, asset, and property or business connection.

Rate of Corporate Tax

Normal Rate

Domestic corporations are subject to tax at a basic rate of 30% enhanced by a 30% surcharge. Foreign Corporation's are subject to a basic tax rate of 40% enhanced by a 2.5% surcharge. Further tax payable by all corporations is enhanced by an education cess at the rate of 2% on tax payable, inclusive of surcharge.

Corporations are subject to wealth tax at then rate of 1%, if the net wealth exceeds US\$ 33,000 (Approx. Rs 1.5 million)

Notes:

- § Royalties and fees for technical services earned in pursuance of agreements made after March 31, 2003 that are effectively connected with the foreign corporation's permanent Indian establishment are taxed at the rate of 40% (plus surcharge and education Cess) on a net income basis
- § Royalties and fees for technical services (not effectively connected with the foreign corporation's permanent Indian establishment) that are not received from the government or where received from Indian corporation under agreements not approved by the government or which are not in accordance with the industrial

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policy are also taxed at the rate of 40% (plus surcharge and education Cess) on a net income basis

The above rates may be subject to more beneficial provisions contained in a tax treaty entered into between India and the country in which the tax payer is resident.

All tax rates mentioned above, excluding the rates prescribed under the relevant treaty must be enhanced by a surcharge of 2.5%. Further the tax payable by all the corporations should be enhanced by an education cess at the rate of 2% on the tax payable inclusive of surcharge

Dividend Income

Dividend income distributed by domestic company is exempt in the hands of the recipients. Only a domestic company (not a foreign company) is liable for the tax. Rate of dividend distribution tax is 14.025% (including 10% surcharge and 2% education Cess thereon) on dividends distributed by them

Interest on Foreign Currency Loans

Non resident corporations earning interest on foreign currency loans extended to Indian business enterprises or to the government of India are taxed at the rate of 20% on gross amount of interest

Overseas Financial Organizations

Specified overseas financial organizations earning income from units of specified mutual funds, purchased in foreign currency, are taxed at the rate of 10% on gross amount of such income. Long term capital gains arising on the transfer of such units are also taxed at the rate of 10%. However, if the transaction is liable to securities transaction tax (STT), then no tax is leviable on long term capital gains, whereas short term capital gains are subject to taxes at the rate of 10%

FII's are taxed at the rate of 10% on long term capital gains and at the rate of 30% for short term capital gains arising from the transfer of securities. However, if transaction is liable to STT, long term capital gains may be exempt and short term capital gains will be liable to tax at 10%. The above rates (excluding DDT) may be subject to more beneficial provisions contained in a tax treaty entered into between India and the country in which the tax payer is resident. All tax rates mentioned above, excluding the rates prescribed under the relevant treaty must be enhanced by a surcharge of 2.5%.

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Further the tax payable by all the corporations should be enhanced by an education cess at the rate of 2% on the tax payable inclusive of surcharge

Minimum Alternate Tax (MAT)

The Indian tax law provides for MAT to be paid by the corporations on the basis of profits disclosed in the financial statements. Corporations must pay 18% (plus applicable surcharge of 7.5% for domestic companies and 2.5% for foreign companies and 2% education cess thereon for both) of book profits as tax, if the tax payable as per regular tax provisions is less than 10% of its book profits for this purpose are computed by making the prescribed adjustments to the net profit disclosed by the corporations in their financial statements.

MAT paid by corporations for income years beginning on or after April 1, 2005 may be carried forward for seven years and MAT paid for prior years (that is, for income years ending on or before March 31, 2000) may be carried forward for 5 years and offset against income tax payable under normal provisions of Income Tax Act, 1961. The maximum amount that can be set off against regular income tax is equal to the difference between the tax payable on the total income as computed under the income tax act and the tax that would have been payable under the MAT provisions for that year. A report from chartered account certifying the amount of book profits must be filed together with the corporate tax return

Tax Incentives

The government of India has been extending a host of incentives and concessions to eligible corporations in certain industries. Broadly the tax incentives include tax holidays for corporate profits, accelerated depreciation allowances and deductibility of certain expenses subject to the fulfillment of prescribed conditions. Some of the key direct tax incentives have been outlined in the following section

Profits from New Undertakings

New undertakings are defined as undertakings that are formed by means other than the division or reconstruction of a business already in existence or the transfer of a new business of machinery or a plant previously used in India for another purpose.

The available tax exemptions are listed in the table below:

Table 2: Tax exemptions

Type of Business Activities	Quantum of Exemption	
	% of Profit	Period
Undertakings engaged in the generation or generation and distribution of power or laying a network of new transmission or distribution lines or carrying out substantial renovation and modernization of the existing transmission or distribution lines (a)(c)	100	10 years
Companies (or consortium of companies) carrying on the business of developing or maintaining and operating or developing operating and maintaining infrastructural facilities (b)	100	10 years
Undertakings which develop and operate an industrial park or a notified special economic zone on or before March 31, 2006 (a)	100	10 years
Undertaking located in areas other than North Eastern region of India that begins commercial production of mineral oil or refining of mineral oil	100	7 years
Undertakings engaged in developing and constructing housing projects, approval by local authorities before March 31 2007 and completed within 4 years from such approval and fulfillment of other prescribed conditions	Entire profit derived from the project	
Undertakings manufacturing or producing any article or thing , not being specified articles or things in specified zones or areas in Sikkim, Himachal Pradesh Uttranchal and the North Eastern states (d)(e)	100	10 years
Undertakings manufacturing or producing any article	100	10 years

Type of Business Activities	Quantum of Exemption	
or thing , being specified articles or commence any specified operations in Sikkim, Himachal Pradesh Uttranchal and the North Eastern states (d)(e)		
Undertakings engaged in the integrated business of handling, storing and transporting food grains	100	5 years
Undertakings engaged in the collecting and processing or treating of biodegradable waste for generating power producing bio fertilizers bio pesticides or other biological agents, producing bio gas or making pallets or briquettes for fuel or organic manure	100	5 years
Undertakings engaged in the business of processing, preservation and packaging of fruits and vegetables	100	5 years
Undertakings engaged in operating and maintaining hospitals in rural areas	100	5 years

Source: Department of Industry Policy and Promotion, Ministry of Commerce, Central Board of Taxes

- (a) The exemption is available for a continuous period of 10 years falling within the period of the initial 15 years
- (b) The exemption is available for a period of 10 years falling within a period of initial 20 years. However in the case of ports , airports , inland ports , inland waterways, the exemption may be available for 10 years falling within the period of initial 15 years
- (c) Substantial renovation / modernization if undertaken should be completed by March 31, 2010. Generation and / or transmission and / or distribution should commence before March 31, 2010
- (d) Profit derived from substantial expansion undertaken by the existing undertaking or enterprise also eligible for exemption
- (e) 30% for the last 5 years for Himachal Pradesh and Uttranchal

A tax deduction equal to 100% of the profits derived from the export of articles things or computer software by the following types of undertakings: units located in FTZs, HTPs / STPs, SEZs (established before March 31, 2005) and 100% EOUs. The deduction is calculated by applying to the taxable income the ratio of export turnover to total turnover and it is available up to the income year 2008-09

Company law

(a) Types of Companies

A company can be a public or a private company and could have limited or unlimited liability. A company can be limited by shares or by guarantee. In the former, the personal liability of members is limited to the amount unpaid on their shares while in the latter, the personal liability is limited by a pre-decided nominated amount. For a company with unlimited liability, the liability of its members is unlimited.

Apart from statutory government owned concerns, the most prevalent form of large business enterprises is a company incorporated with limited liability. Companies limited by guarantee and unlimited companies are relatively uncommon.

(i) Private Companies

A private company incorporated under the Act has the following characteristics:

- The right to transfer shares is restricted.
- The maximum number of its shareholders is limited to 50 (excluding employees).
- No offer can be made to the public to subscribe to its shares and debentures.
- Private companies are relatively less regulated than public companies as they deal with the relatively smaller amounts of public money. A private company is deemed to be a public company in the following situations:
 - When 25 percent or more of the private company's paid-up capital is held by one or more public company.
 - The private company holds 25 percent or more of the paid-up share capital of a public company.
 - The private company accepts or renews deposits from the public.
 - The private company's average annual turnover exceeds Rs. 250 million during a period of 3 consecutive financial years.

(ii) Public Companies

A public company is defined as one which is not a private company. In other words, a public company is one on which the above restrictions do not apply. Regarding the necessary procedures to be followed for registering the company, a flow chart presents the summary of the steps involved in formation of a company with Registrar of Companies.

(iii) Foreign Companies

Foreign investors can enter into the business in India either as a foreign company in the form of a liaison office/representative office, a project office and a branch office by registering themselves with Registrar of Companies (ROC), New Delhi within 30 days of setting up a place of business in India or as an Indian company in the form of a Joint Venture and wholly owned subsidiary. For opening of the foreign company specific approval of Reserve Bank of India is also required.

Tax Incentives

India has a well developed tax structure. The power to levy taxes and duties is distributed among the three tiers of Government, in accordance with the provisions of the Indian Constitution. The main taxes/duties that the Union Government is empowered to levy are: - Income Tax (except tax on agricultural income, which the State Governments can levy), Customs duties, Central Excise and Sales Tax and Service Tax. The principal taxes levied by the State Governments are:- Sales Tax (tax on intra-State sale of goods), Stamp Duty (duty on transfer of property), State Excise (duty on manufacture of alcohol), Land Revenue (levy on land used for agricultural/non-agricultural purposes), Duty on Entertainment and Tax on Professions & Callings. The Local Bodies are empowered to levy tax on properties (buildings, etc.), Octroi (tax on entry of goods for use/consumption within areas of the Local Bodies), Tax on Markets and Tax/User Charges for utilities like water supply, drainage, etc.

In the wake of economic reforms, the tax system in India has under gone a radical change, in line with the liberal policy. Some of the changes include:- rationalization of tax structure; progressive reduction in peak rates of customs duty ; reduction in corporate tax rate; customs duties to be aligned with ASEAN levels; introduction of value added tax ; widening of the tax base; tax laws have been simplified to ensure better compliance. Tax policy in India provides tax holidays in the form of concessions for various types of investments. These include incentives to priority sectors and to

industries located in special area/ regions. Tax incentives are available also for those engaged in development of infrastructure.

Labour Laws

Labour Laws may be classified under the following heads:

I. Laws related to Industrial Relations such as:

- Trade Unions Act, 1926
- Industrial Employment Standing Order Act, 1946.
- Industrial Disputes Act, 1947.

II. Laws related to Wages such as:

- Payment of Wages Act, 1936
- Minimum Wages Act, 1948
- Payment of Bonus Act, 1965.

III. Laws related to Working Hours, Conditions of Service and Employment such as:

- Factories Act, 1948.
- Plantation Labour Act, 1951.
- Mines Act, 1952.
- Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955.
- Merchant Shipping Act, 1958.
- Motor Transport Workers Act, 1961.
- Beedi & Cigar Workers (Conditions of Employment) Act, 1966.
- Contract Labour (Regulation & Abolition) Act, 1970.
- Sales Promotion Employees Act, 1976.
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
- Dock Workers (Safety, Health & Welfare) Act, 1986.

- Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.

IV. Laws related to Equality and Empowerment of Women such as:

- Maternity Benefit Act, 1961
- Equal Remuneration Act, 1976.

V. Laws related to deprived and Disadvantaged Sections of the Society such as:

- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition & Regulation) Act, 1986
- Children (Pledging of Labour) Act, 1933

VI. Laws related to Social Security such as:

- Workmen's Compensation Act, 1923.
- Employees' State Insurance Act, 1948.
- Employees' Provident Fund & Miscellaneous Provisions Act, 1952.
- Payment of Gratuity Act, 1972.

Amendment of Labour Laws

Law is a framework and its provisions need review and revision with a view to remain relevant in a changed scenario. Labour laws are no exception. Currently, amendments to the following laws are either on consultation by state with the social partners or on the basis of consideration by other concerned authorities:

1. The Payment of Wages Act, 1936.
2. The Minimum Wages Act, 1948.
3. Employees' Provident Fund & Misc. Provisions Act, 1952.
4. The Employees' State Insurance Act, 1948.
5. Contract Labour (Regulation & Abolition) Act, 1970.
6. The Factories Act, 1948.
7. The Mines Act, 1952.
8. The Workmen's Compensation Act, 1923.

9. Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979.