

A Comprehensive Guide to Regulatory Frameworks, Per Steps

Overview: Foreign Direct Investment (FDI) in India is governed primarily by the Foreign Exchange Management Act, 1999 (FEMA), DPIIT's Consolidated FDI Policy, and Reserve Bank of India (RBI) regulations. Foreign companies must evaluate (1) the permitted entry route, (2) the applicable sectoral cap, and (3) the correct legal entity structure before committing capital or commencing operations.

1. FDI Entry Routes at a Glance

Route	Process	Applicable Sectors (examples)
Automatic Route	No prior RBI/Govt approval needed. File FC-GPR with AD Bank within 30 days of allotment.	Most sectors (e-commerce, manufacturing, IT, pharma greenfield, etc.)
Government / FIPB Route	Prior approval from DPIIT/concerned ministry required before receiving funds.	Defence >74%, Print media, multi-brand retail, banking (>49%), satellites
Prohibited Sectors	FDI not allowed under any route.	Lottery, gambling, Chit funds, Nidhi companies, Real estate (buying/selling), Tobacco

2. Key Sector-wise FDI Caps & Routes

Sector / Activity	Key Requirement / Cap	Route
Manufacturing (non-sensitive)	100% — No restrictions	✓ Auto Route
IT / Software / ITES	100% — No restrictions	✓ Auto Route
E-Commerce (marketplace model)	100% — Inventory model not permitted	✓ Auto Route
Single-Brand Retail	100% — Local sourcing norms >51% FDI	■ Govt/RBI Approval
Multi-Brand Retail	51% — 30% mandatory local sourcing	■ Govt/RBI Approval
Telecom Services	100% (up to 49% auto; beyond via Govt)	■ Govt/RBI Approval
Banking – Private Sector	74% (49% auto; beyond via RBI)	■ Govt/RBI Approval
Banking – Public Sector	20% (Govt approval)	■ Govt/RBI Approval
Insurance	74% — IRDAI registration required	■ Govt/RBI Approval
Defence & Aerospace	74% auto; beyond 74% via Govt	■ Govt/RBI Approval
Pharma – Greenfield	100%	✓ Auto Route

Sector / Activity	Key Requirement / Cap	Route
Pharma – Brownfield	74% auto; beyond via Govt	■ Govt/RBI Approval
Media – Digital News	26% — Press Note 3 conditions	■ Govt/RBI Approval
Real Estate (construction dev.)	100% — Subject to lock-in conditions	✓ Auto Route
Real Estate (buying/selling plots)	Not permitted under FDI	✗ Prohibited
Gambling / Betting / Lottery	Not permitted under any route	✗ Prohibited
Agriculture & Plantations	100% (floriculture, horticulture, seeds)	✓ Auto Route
Civil Aviation	100% (49% auto for foreign airlines)	■ Govt/RBI Approval
Fintech / Payment Aggregators	100% — RBI Payment System Authorisation	✓ Auto Route

Note: Caps are on paid-up equity capital on a fully diluted basis. Convertible instruments are counted. Always verify the latest DPIIT Consolidated FDI Policy circular as sectoral caps are revised periodically.

■ 3. Choosing the Right Legal Entry Structure

Structure	Best Suited For	Tax / Liability	Key Compliance
Private Limited Company (WOS / JV)	Full business operations, fundraising, hiring	25% CIT (MAT 15%); limited liability	ROC filing, Board meetings, audit, transfer pricing if related party
Limited Liability Partnership (LLP)	Service firms, professional services	30% tax on LLP income; FDI allowed in most sectors	LLP Form 8 & 11; FEMA filing via FC-GPR equivalent
Branch Office (BO)	Trading, research, export/import of services	Taxed as foreign company (40%+surcharge); parent liable	RBI approval mandatory; annual activity certificate
Liaison Office (LO)	Market representation only; NO revenue generation	No tax on LO per se; expenses remitted from HQ	RBI approval; valid 3 years (extendable); annual report
Project Office (PO)	Specific contracts (infrastructure, EPC)	Taxed as foreign company; limited scope	RBI approval; ceases on project completion

■ 4. Step-by-Step Setup Checklist (Private Limited / WOS)

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Pre-Entry Due Diligence

Confirm sector permissibility under DPIIT FDI Policy · Determine route (Auto/Govt) · Assess applicable sectoral cap · Check Press Notes restrictions · Tax treaty analysis (DTAA)

2	Name Reservation & Incorporation (MCA21) File RUN (Reserve Unique Name) on MCA portal · Prepare MOA/AOA with permitted objects · File SPICE+ form for incorporation · Obtain CIN, PAN, TAN automatically
3	RBI / FEMA Compliance (Pre-Remittance) Open NRE/FCNR or Escrow account with AD Category-I bank · Obtain Entity Master Form (EMF) registration on FIRMS portal · For Govt route sectors: file SIA application with DPIIT prior to capital receipt
4	Receive Foreign Inward Remittance Receive funds via banking channels (SWIFT) · AD bank issues FIRC (Foreign Inward Remittance Certificate) · Obtain KYC certificate of investor from bank
5	Allot Shares & File FC-GPR Board resolution for allotment within 60 days of receipt of funds · File Form FC-GPR on FIRMS/RBI within 30 days of allotment · Attach: FIRC, valuation certificate (DCF/NAV), CS certificate
6	Post-Incorporation Registrations GST Registration (if turnover threshold met or B2B supplies) · Shops & Establishments Registration (state-wise) · Import Export Code (IEC) from DGFT (if trading/importing) · Professional Tax Registration · ESI & PF if >10/20 employees
7	Transfer Pricing & Annual Compliance Maintain TP documentation for all related-party transactions · File Form FC-TRS for any secondary transfer of shares · Annual Performance Report (APR) if overseas investment · ROC annual filings: AOC-4, MGT-7 · Statutory Audit

■ 5. Ongoing Compliance Master Checklist

- FC-GPR filing within 30 days of allotment
- FC-TRS filing on share transfer (buyer & seller)
- Annual Return on Foreign Liabilities & Assets (FLA) – by July 15
- FIRMS Entity Master Form – keep updated
- Transfer Pricing Study Report (Form 3CEB if applicable)
- GST monthly/quarterly returns (GSTR-1, GSTR-3B)
- Advance tax deposits (June 15, Sept 15, Dec 15, Mar 15)
- ROC: AOC-4 (financials) within 30 days of AGM
- ROC: MGT-7 (annual return) within 60 days of AGM
- Board meetings: minimum 4 per year (≥21 days gap)
- Statutory Audit (mandatory, any turnover)
- Secretarial Audit (listed / paid-up >₹50 Cr / turnover >₹250 Cr)
- FEMA reporting for downstream investments
- RBI KYC / CKYC update for investor entity
- DPIIT sector-specific reporting (defence, pharma, etc.)
- ESIC & EPFO monthly challan (if applicable)
- Professional Tax returns (state-specific)
- Equalization Levy (2% on e-commerce supplies by foreign cos)
- Country-by-Country Reporting (if global group turnover >₹5,500 Cr)
- SEBI filings if FPI / listed entity involvement

6. Prohibited Instruments & Critical Conditions

Sector / Activity	Key Requirement / Cap	Route
Prohibited Instruments	Partly paid shares, warrants not permissible for FDI · Convertible notes only for DPIIT-recognised startups (up to USD 3M, max 5 years) · No participatory notes (P-Notes) for direct FDI	✗ Prohibited
Downstream Investment Rules	Indian entity with foreign investment investing in another Indian company — must comply with FDI Policy on sectoral caps & routes of the investee company	■ Govt/RBI Approval
Pricing Guidelines	Issue price ≥ Fair Value (DCF for unlisted; market price for listed) · Transfer price ≤ Fair Value (for resident transferring to non-resident) · Mandatory valuation certificate from CA/Merchant Banker	■ Govt/RBI Approval
Repatriation Conditions	Dividends freely repatriable after applicable TDS (20% + surcharge for non-treaty countries) · Royalties, technical fees subject to withholding tax · Loan repayments regulated by ECB norms	✓ Auto Route

7. Quick-Reference Filing Timelines

Filing / Action	Deadline	Authority
FC-GPR (share allotment reporting)	Within 30 days of allotment	RBI via FIRMS
FC-TRS (share transfer reporting)	Within 60 days of transfer	RBI via FIRMS
FLA Annual Return	On or before July 15 each year	RBI
Form 3CEB (TP Audit Report)	By October 31 (AY)	Income Tax Dept.
Income Tax Return (company)	By October 31 (AY)	Income Tax Dept.
ROC Annual Filings (AOC-4 + MGT-7)	Within 30/60 days of AGM	MCA / RoC
GST Annual Return (GSTR-9)	December 31 of following FY	GSTN
LO/BO/PO Annual Activity Certificate	Within 30 days of year-end	AD Bank / RBI

8. Tax Considerations for Foreign Investors

- **Corporate Income Tax (CIT):** Domestic companies — 22% (new regime) or 25% (turnover ≤ ₹400 Cr) + surcharge + cess. Foreign companies (Branch/PO) — 40% + surcharge.

- **Minimum Alternate Tax (MAT):** 15% of book profits applicable to companies (unless opting for concessional 22%/15% regime).
- **Dividend Distribution:** Dividends taxed in hands of recipient. TDS @ 20% (or lower DTAA rate) for non-resident shareholders.
- **Capital Gains on Exit:** LTCG (>24 months) @ 10% on listed equity above ₹1 lakh; unlisted shares 20% with indexation (for residents). Non-residents: as per DTAA.
- **Transfer Pricing (TP):** Arm's length pricing mandatory for all international transactions. Advance Pricing Agreements (APAs) available for certainty.
- **Equalisation Levy:** 6% on digital advertising; 2% on e-commerce supplies by non-resident operators to Indian customers.
- **Goods and Services Tax (GST):** 18% standard rate on most B2B services; IGST on imports. GST registration mandatory if supplies exceed ₹20 lakh (₹10 lakh for NE states).
- **DTAA Benefits:** India has DTAA with 90+ countries (USA, UK, Singapore, UAE, Netherlands, etc.). Tax Residency Certificate (TRC) + Form 10F needed to claim treaty benefits.

■ **Key Advisory:** The FDI framework in India is dynamic. Press Notes issued by DPIIT, RBI Master Directions, and sector-specific guidelines can change with short notice. Foreign investors should engage experienced Indian legal counsel and chartered accountants for structuring, ongoing FEMA compliance, and tax optimisation. Non-compliance can attract compounding penalties under FEMA and may jeopardise the company's ability to repatriate funds.