

European Union Investment Facilitation Desk

Frequently Asked Questions

Abbreviations

DTA	Domestic Tariff Area
ECB	External Commercial Borrowing
FC-GPR	????
FDI	Foreign Direct Investment
FIPB	Foreign Investment Promotion Board
NBFC	????
NRI	Non Resident Indian
OCB	Overseas Corporate Bodies
PIO	Persons of Indian origin
ROC	Registrar of Companies
SEBI	Securities and Exchange Board India
TDR	Transferable Development Rights

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1. What are the forms in which business can be conducted in India ?

- Subject to the FDI policy, a foreign company can be set up as an Indian company incorporated under the Companies Act, 1956. Such a company can be a:
 - Joint Venture or;
 - Wholly owned subsidiary
- A foreign company can also set up an office in India through any one of the following modes:
 - Liaison Office
 - Project Office
 - Branch Office

Such offices can undertake activities that are generally permitted / approved specifically in accordance with the provisions of the Foreign Exchange Management (Establishment in India of Branch or other place of business) Regulations, 2000 (<http://www.rbi.org.in/scripts/FEMA.aspx>)

2. What are the steps to get a private limited company incorporated ?

- Select few suitable names, not less than four; Ensure that the name does not resemble the name of any other company already registered and also does not violate the provisions of Emblems and names (prevention of improper use) Act, 1950.
- Apply to the concerned ROC to ascertain the availability of name in [Form-1 A](#) of General Rules and Forms along with application fees
- Draft a Memorandum and Articles of Association and vet the same by ROC
- Arrange for stamping of the Memorandum and Articles with the appropriate stamp duty.
- Get the Memorandum and Articles signed by at least two subscribers.
- Get the following forms duly filled up and signed:-
 - Declaration of compliance – [Form-1](#)
 - Notice of situation of registered office of the company – [Form-18](#).
 - Particulars of Director, Manager or Secretary – [Form-32](#).

2. What are the steps to get a private limited company incorporated ? Contd.....

- Pay the Registration and Filing Fee along with the following documents to the ROC:-
 - The stamped and signed copies of Memorandum and Articles of Association (2 copies).
 - Form-1, 18 & 32 in duplicate.
 - Name availability letter issued by ROC.
- Power of Attorney from the subscribers in favour of any person for making corrections on their behalf in the documents and papers filed for registration.
- Obtain Certificate of Incorporation from ROC.
- For additional information and respective forms please visit:
<http://dca.nic.in/steps.htm>

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

No

- Only Non Resident Indians (NRI's) / Persons of Indian origin (PIO's) are allowed to set up partnership/proprietorship concerns in India.
- Even for NRIs/PIOs investment is allowed only on non-repatriation basis

4. How can foreign companies open Liaison / Project / Branch office in India ?

- Foreign company can set up Liaison/Branch Offices in India after obtaining prior approval from Reserve Bank of India.
- Reserve Bank of India has given general permission to foreign companies to establish Project Offices in India subject to certain conditions.

5. How does a foreign company invest in India?

I Automatic route

- FDI up to 100% is allowed under the automatic route in all activities / sectors except the following which require prior approval of the Government:
 - Where provisions of Press Note I (2005 Series) issued by the Government of India are attracted - <http://siadipp.nic.in/policy/changes.htm>
 - Where more than 24% foreign equity is proposed to be inducted for manufacture of items reserved for the small scale sector
- FDI in sectors / activities to the extent permitted under Automatic Route does not require any prior approval either by the Government of India or Reserve Bank of India
- The investors are only required to notify the Regional Offices concerned of the Reserve Bank of India (<http://www.rbi.org.in/home.aspx>) within 30 days of receipt of inward remittances and file the required documents along with Form FC-GPR with that office within 30 days of issue of shares to the non resident investors.
http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx

... Investing in India

II Government route

- FDI in activities not covered under the Automatic Route requires prior Government approval and considered by the Foreign Investment Promotion Board (FIPB), Ministry of Finance.
- The FIPB meets once every fortnight ensuring speedy disposal of applications

See Check list for FIPB Plain paper application
(<http://siadipp.nic.in/policy/fccheck.doc>)

6. Is a foreign company treated at par with a domestic company?

- A foreign company registered under the Companies Act is treated differently with respect to:
 - Taxation
 - exchange control and reporting requirement under law, with any domestic Indian company.

The foreign company is required to act within the scope of its approval

7. Which are the sectors where FDI is not allowed in India, under the automatic route as well as the Government route?

- Retail trading (Except single brand retail trading)
- Atomic Energy
- Lottery Business
- Gambling and Betting
- Business of Chit Fund
- Nidhi Company
- Agricultural (Except Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, aqua-culture, cultivation of vegetables, mushrooms, under controlled conditions and services related to agro and allied sectors)
- Plantation (Other than Tea plantations)
- Housing and Real Estate Business (Except development projects, including housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure townships)
- Trading in Transferable Development Rights (TDR's)

8. Which are the sectors which attract limit on foreign ownership ?

- Coal and Lignite
- Atomic Minerals
- Banking
- Telecom
- Courier Services
- Mining
- Insurance
- Domestic Airlines
- Petroleum Refining – in Public Sector
- Investing Companies in infrastructure / service sectors

...contd.. Sectors with limit on foreign ownership

- Defense industry sector
- Broadcasting
- Small scale industries
- Satellites
- Print Media

The FDI limits for each of these sectors are in the Appendix. With respect to investments in the above sector, prior approval of the FIPB or the regulators concerned with the above sectors need to be obtained

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

- All foreign investments are freely repatriable except for the cases where Non Resident Indians choose to invest specifically under the non-repatriable scheme or where the investments are made by erstwhile overseas corporate bodies (OCB's)/ NRI owned foreign companies
- Dividends declared on foreign investments can be remitted freely through an Authorized Dealer.
- Certain sectors (such as Real Estate construction/development, NBFC) may have restrictions on the period within which the initial/ minimum investment can be repatriated.

10. What are the customs duties on Import and Exports to/from India ?

- For Imports into India, the basic peak customs duty rate is currently at 10%. A countervailing duty (@16.48%), Cess (@ 3%) and an Additional Customs Duty (@ 4%) results in the effective rate being around 34%. There should be no customs duty on exports from India. However, respective countries would impose import customs

11. What is the Taxation percentage on profits/ Capital in India ?

- An Indian company's profits are taxed at **33.99%**. There is an additional Dividend Distribution Tax (@ 16.95%) on any dividend declared and paid by the Indian company. There is no (withholding) tax on dividend income in the hands of the recipient. Capital gains tax on sale of a capital asset is taxed either as long term capital gain (@ 22.33%) or as short term capital gain (@ 33.99%).

New table added

	Foreign Company	Indian Company
Tax rate applicable on profits (i.e. after initial 5 year holiday)	42.23%	33.99%
Dividend Distribution Tax	NA	16.995%
Effective Tax Rate	42.23%	43.58%

12. Are there any double taxation treaties between my country and India?

- India has a extensive DTA network covering about 69 countries.
- All the E.U Nations are covered except :
 - Estonia
 - Latvia
 - Lithuania
 - Luxembourg
 - Slovakia

13. What are the guidelines on issue and valuation of shares in case of existing companies?

- In case of listed companies, valuation shall be as per the Reserve Bank of India / Securities and Exchange Board India (SEBI) guidelines
- In case of unlisted companies, valuation shall be done in accordance with the guidelines issued by the erstwhile Controller of Capital Issues
- However, there are separate RBI guidelines for transfer of shares between residents and non residents

14. Can I invest through Preference Shares ? What are the regulations applicable in case of such investments?

- Foreign investment in fully and compulsorily convertible preference share is considered as part of share capital and fall outside the External Commercial Borrowing (ECB) guidelines/cap.
- All other kinds of preference shares are treated as part of ECB and need to comply inter alia with the ECB norms.

See <http://finmin.nic.in/> for details

15. Can I invest in unlisted shares issued by a company in India?

- Yes. As per the regulations/Foreign Direct Investment guidelines issued by the Reserve Bank of India/Government of India, investment can be made in unlisted shares of Indian companies under the automatic / non automatic route.
- There are some activities in which foreign investment is prohibited.

16. What are the dividend declaration norms in India?

- Post tax profits can be distributed as dividends subject to payment of appropriate dividend distribution tax and a percentage (up to 10%) of the profits can be transferred to reserves
- Declaration of dividends out of reserves is subject to meeting the guidelines under the Companies Act.

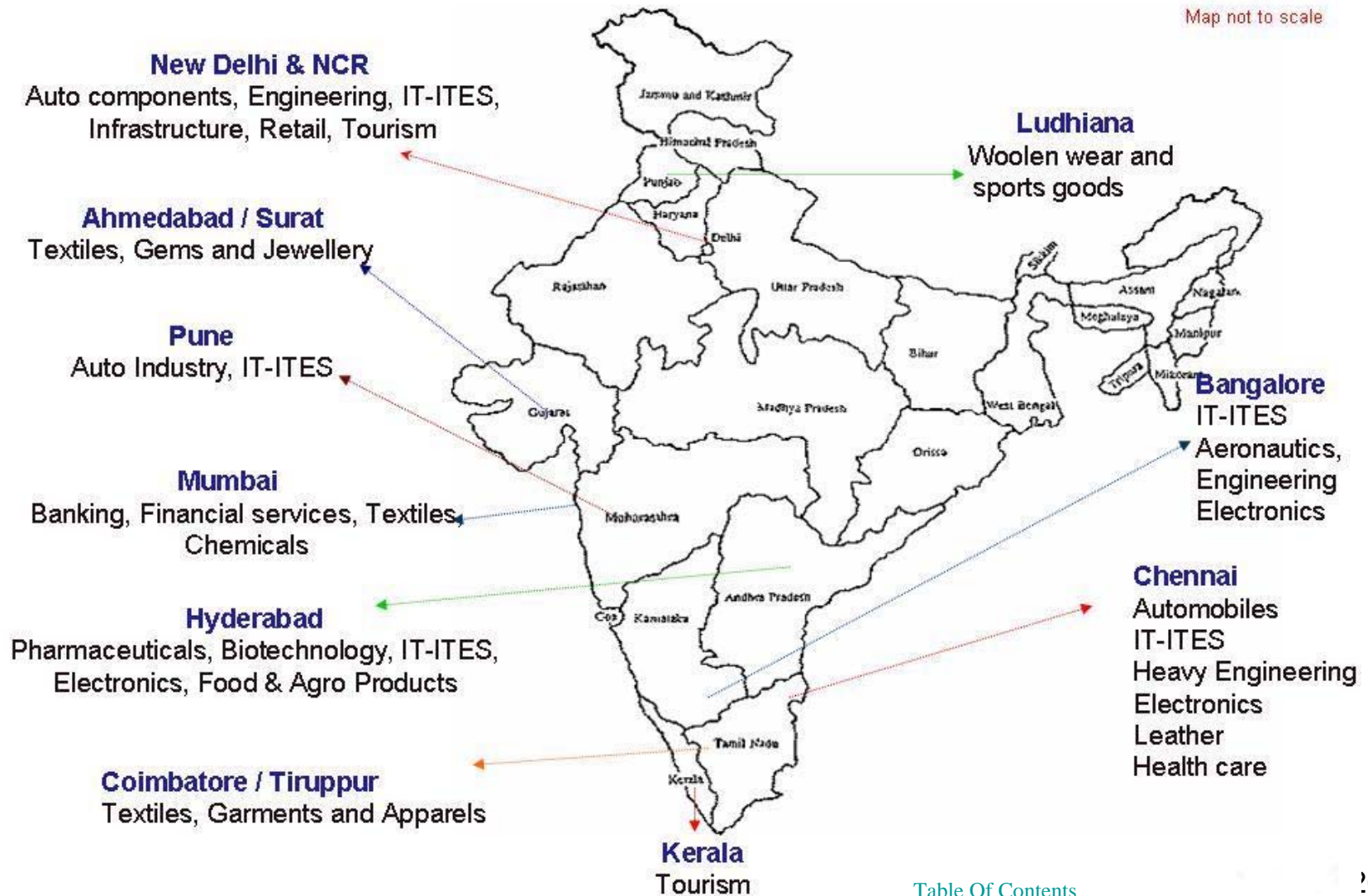
17. Is the Indian rupee fully convertible?

- No. The INR is not fully convertible.
- While the current account is generally free from restrictions, there are restrictions in place for transactions under the capital account

18. What are the Labour Laws/Regulations in India ?

- Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre. Some of the important Labour Acts, which are applicable for carrying out business in India are:
 - Shops & Establishments Act (Of respective states)
 - Factories Act, 1948
 - Employees' Provident Fund and Miscellaneous Provisions Act, 1952
 - Employees' State Insurance Act, 1948
 - Workmen's Compensation Act, 1923
 - Maternity Benefit Act, 1961
 - Payment of Gratuity Act, 1972
 - Minimum Wages Act
 - Payment of Bonus Act 1965
 - Contract Labour [Regulation & Abolition] Act 1970
 - Payment of Wages Act, 1936

19. Which are the major Industrial Areas in India ?



20. How are the prices of Basic Utilities in the major Indian cities like ?

Electricity

<u>Location</u>	<u>Price (€/KwH)</u>
Chennai	0.082
Delhi	0.102
Kolkata	0.084
Mumbai	0.086
Kerala	0.07
Karnataka	0.088
Andhra Pradesh	0.069

For Large Industry 1000 KW