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FOREIGN DIRECT INVESTMENT IN INDIA – A READY RECKONER.

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The Government of India, launched a new initiative christened “*Make in India*” which seeks to project the Government “*not as a permit issuing authority, but as a true business partner*”. The program is “*designed to facilitate investment, foster innovation, enhance skill development, protect intellectual property, and to build best-in-class manufacturing infrastructure*”.

There are above 25 sectors that have been identified as growth drivers under this new initiative. This article provides a summary of the Foreign Direct Investment (“**FDI**”) policy and the sector policy in respect of each of the twenty five identified sectors, to serve as a ready reckoner. This article states the position as in October 2014.

SL.NO.	SECTOR	FOREIGN DIRECT INVESTMENT (“FDI”) POLICY	SECTOR POLICY
1)	Automobile	100% FDI permitted under automatic route.	a) There is no minimum investment criteria. d) As per the Automotive Mission Plan 2006 – 2016, India is to emerge as “ <i>world’s destination of choice for design and manufacture of automobiles and auto components with output reaching a level of USD 145 Billion, accounting for more than 10% of the GDP and providing additional employment to 25 Million people by 2016.</i> ”
2)	Automobile Components	100% FDI permitted under automatic route.	a) There is no minimum investment criteria.
3)	Aviation	i) Greenfield Airport – 100% FDI under automatic route ii) Existing Airport – 74% FDI under automatic route; 100% under the Government route. iii) Domestic Schedule Airline – 49% FDI under automatic route. iv) Non-scheduled Air Transport Service - 49% FDI under automatic route. Above 49% FDI and upto 74% is permitted under Government approval route. v) Helicopter service and Seaplanes – 100% FDI under automatic route. vi) Ground handling services - 49% FDI under automatic route. Above 49% FDI and upto 74% is permitted under Government approval route. vii) Maintenance and repair organisations – 100% FDI under automatic route. viii) Flying Training Institutes – 100% FDI under automatic route. ix) Technical Training Institutes - 100% FDI under automatic route.	Director General of Civil Aviation (“ DGCA ”) is the relevant authority for laying down rules and regulations in this sector, and investments are subject to the regulations and approval of DGCA.
4)	Biotechnology Pharmaceuticals (This one covers 2 of the 25 Sectors)	i) Greenfield – 100% FDI under automatic route ii) Brownfield – 100% FDI through Government approval route.	India has the second highest number of USFDA approved plants, after USA. Guidelines laid down for research in human stem cell.

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5)	Chemicals	<p>i) 100% FDI is permitted under automatic route.</p> <p>ii) Certain products, such as wax candles, laundry soaps, safety matches, fireworks and incense sticks are reserved for Micro, Small and Medium Enterprises – FDI beyond 24% in these reserved products is permitted under Government approval route.</p>	Certain hazardous chemicals are subject to Industrial License.
6)	Construction	<p>i) 100% FDI is permitted under automatic route in townships, housing, built-up infrastructure and construction-development project, including without limitation housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure). The major conditions under which foreign investment can be made in this sector are as given in the Column Sector Policy.</p> <p>ii) Prohibited Sector: Real Estate Business and Construction of Farm houses.</p> <p>iii) Urban Infrastructure – 100% FDI under automatic route.</p> <p>iv) Industrial Parks - 100% FDI under automatic route.</p>	<p>Major Conditions for Foreign Investment</p> <p>a) 10 hectares is the minimum land area for the development of serviced housing plots. 50,000 sq.mts. is the minimum built-up area for construction-development projects. For combination projects, any one of the prior two conditions would suffice. There are specific exemptions for smart cities, housing projects and old age homes.</p> <p>b) A minimum capitalization of USD 10 Million is envisaged for wholly-owned subsidiaries and USD 5 Million for joint ventures with Indian partners. The funds will have to be brought in within six months of date commencement of business of the company.</p> <p>c) The original investment cannot be repatriated before a period of three years from completion of minimum capitalization. The term 'original investment' means the entire amount is brought in as FDI. The lock-in period of three years will be applied from the date of receipt of each instalment/tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier, with prior approval of the government through the Foreign Investment Promotion Board (FIPB).</p>
7)	Defence Manufacturing	<p>i) 49% FDI permitted under the Government route. Above 49% FDI is considered on a case-to-case basis.</p> <p>ii) Investments by FII through portfolio investment is permitted upto 24% under automatic route.</p>	Items under this sector are subject to Industrial License.
8)	Electrical Machinery	100% FDI permitted under automatic route.	The Government has planned a capacity addition of 88.5 GW of power generation before the end of the year 2017.
9)	Electronic Systems	<p>i) Other than defence related: 100% FDI permitted under automatic route.</p> <p>ii) Defence related: As in Serial No. 7 above.</p>	As per the National Policy on Electronics, the country aims to attract investment of USD 100 Billion and generate employment for 20 Million people at different levels.
10)	Food Processing	<p>i) 100% FDI permitted under automatic route except those reserved for micro and small industries.</p> <p>ii) Items reserved for micro and small industries – 24% FDI permitted under automatic route, above 24% is approved through the Foreign Investment Promotion Board ("FIPB") route.</p>	a) Alcoholic beverages require industrial license.
11)	Information Technology (IT) Business Process Management (BPM)	100% FDI is permitted under automatic route.	The National Policy on Information Technology aims to increase revenues of IT and BPM industry to USD 300 Billion by 2020.

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12)	Leather	100% FDI is permitted under automatic route	Assistance is provided for technology benchmarking and environment management for the upgradation of Common Effluent Treatment Plants (CETPs), for Solid Waste Management, under the Indian Leather Development Programme.
13)	Media and Entertainment	<p>i) Teleports, Direct-to-home (DTH), cable networks, mobile TV, Headend-in-the-sky broadcasting service – 49% FDI is permitted under automatic route, upto 74%, is permitted under the Government route.</p> <p>ii) FM Radio – 26% FDI under the Government route.</p> <p>iii) News and Current Affairs TV Channels – 26% FDI under the Government route.</p> <p>iv) Non-news and Current Affairs TV Channels – 100% FDI under the Government route.</p> <p>v) Publishing of Newspapers, Periodicals dealing in news and current affairs – 26% FDI under the Government route.</p> <p>vi) Publishing Indian edition of foreign magazines dealing in news and current affairs – 26% FDI under the Government route.</p>	Investments are subject to meeting security conditions and the regulations of the Ministry of Information and Broadcasting.
14)	Mining	<p>i) Non-fuel and non-atomic minerals (including diamonds and precious metals) – 100% FDI is permitted under automatic route.</p> <p>ii) Titanium bearing minerals and ores, its value addition and integrated activities – 100% FDI under the Government route.</p>	Foreign Direct Investment in Coal mining is permitted for captive consumption only.
15)	Oil & Natural Gas	Oil and natural gas fields exploration, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product / natural gas pipelines – 100% FDI under automatic route.	The Petroleum and Natural Gas Regulatory Board Act, 2006, regulates refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas.
16)	Ports	Construction and maintenance of ports and harbours – 100% FDI under the automatic route.	Major ports (12) are under the jurisdiction of Government of India. Non-major ports are under the jurisdiction of the maritime board of the respective state government.



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17)	Railways	i) Construction, Operation and maintenance of sub-urban corridor projects through public private partnership. ii) High Speed Trains Project iii) Dedicated Freight Lines iv) Rolling Stock including train sets and locomotive/coaches manufacturing and maintenance facilities v) Railway Electrification, Signaling Systems, Freight Terminals, Passenger Terminals, vi) Infrastructure in industrial Parks pertaining to railway line/siding including electrified railway lines and connivities to main railway line. vii) Mass Rapid Transport Systems 100% FDI under the automatic route is permitted.	This sector was opened up in the year 2014.
18)	Renewable Energy	Renewable Energy – generation and distribution – 100% FDI under automatic route.	Electricity Act, 2003, is the governing statute for renewable energy businesses.
19)	Roads and Highways	100% FDI under automatic route	Environmental clearance is delinked from forest clearance. 100,000 Kms (62,500 Miles) of National Highways at the end of Year 2017.
20)	Space	Statellite – Establishment and Operation – 74% FDI under the Government route.	India has about 30 spacecrafts in different orbital paths, and has co-operation arrangements with space agencies of 33 countries, and 3 multinational bodies.
21)	Textiles and Garments	100% FDI under automatic route.	India ranks 1 st in global jute production, is the 2 nd largest producer of silk and cotton, and is the 2 nd largest textile manufacturer in the world. Till date 57 Textile Parks have been sanctioned and by 2017, 25 more are expected to be sanctioned.
22)	Thermal Power	100% FDI under automatic route, except atomic energy and Power Exchanges. Power Exchanges – 49% under automatic route of which 26% FDI and 23% from Foreign Institutional Investors.	Electricity Act, 2003, is the governing statute.
23)	Tourism and Hospitality	100% FDI under automatic route.	This sector contributes 6.8% of the total GDP and the country has 30 world heritage sites.
24)	Wellness	Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homeopathy – 100% FDI under automatic route.	Central Council of Indian Medicine and Central Council of Homeopathy are the regulatory bodies in this Sector.

Automatic Route – Does not require any approval of any regulatory body for investing in the sector. Suffice to report the foreign investment to the Reserve Bank of India.

Government Route – Application to make investment is required to be made to the Foreign Investment Promotion Board (“FIPB”). For defence projects, where investor proposes to invest in more than 49%, approval of the Cabinet Committee on Security is required to be obtained. For proposals that involve more than INR 12 Billion investment, the same is considered by Cabinet Committee on Economic Affairs.



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Ease of Doing Business: The Government has recognised that being ranked 132 of the 183 countries surveyed in the Starting a Business indicator of World Bank's Doing Business 2013 Ranking, is a situation that is a “clear call to action”, and has taken initiatives to improve the ease of doing business in India. To this effect, is in the process of setting-up a web based portal that would act as the “1 Stop Shop” for applying for all licenses and paying for the same, that would provide end-to-end transaction and reduce inter-department wait time, and targets at eliminating in-person visits to the regulators office. In the first year of its operation, this online portal targets to provide 18 Central (Federal) and 11 State services, and keep adding additional services in the year to come.