

***FAQ's on Foreign Direct Investment & Electronic
System Design & Manufacturing (ESDM)***

ESDM: Policies & Incentives

Q.1 What are the items covered under ESDM sector?

Electronics System Design & Manufacturing sector includes the following items: Electronic hardware products and components relating to IT, Office Automation, Telecom, Consumer Electronics, Aviation, Aerospace, Defense, Solar Photovoltaic, Nano Electronics, Medical Electronics and Design related activities such as product design, chip designing, VLSI, board design, embedded systems, etc. This is not the complete and comprehensive list. Queries related to items falling under the scope of ESDM sector will be decided by the Ministry of Electronics & Information Technology.

Q.2 What are the objectives of the national policy on electronics?

Government of India has notified the national policy on electronics in 2012. Some of its main objectives include:

- ✓ Achieve Net Zero Import by 2020
- ✓ Achieve a turnover of USD 400 billion by 2020 with investments of USD 100 billion; Generating 28 million jobs
- ✓ Build strong supply chain of raw materials, parts and electronic components

Q.3 Is Foreign Direct Investment allowed in the ESDM sector in India?

Foreign individuals, companies, foreign institutional investors, foreign venture capitalists, foreign trust, private equity fund, pension/provident fund, sovereign wealth fund, partnership/proprietorship firm, financial institutions, non-resident Indians/person of Indian origin, etc. can invest in India, either on their own or in the form of a joint venture. 100% FDI is allowed under the automatic route in the ESDM sector. However, in defense electronics, subject to industrial license, FDI up to 100% is allowed. (Upto 49% under the automatic approval route and above 49% is under Government route on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country). The Government has also approved 100% FDI in medical devices via automatic route. There will be no need for Foreign Investment Promotion Board's permission to acquire an existing company or set up a new manufacturing unit in the medical devices sector. The investor will need to comply with the reporting requirements of the RBI and comply with all other relevant central & state laws & regulations.

Q.4 Are there any incentives or schemes for electronics system design and manufacturing sector unit?

Yes, Ministry of Electronics and Information Technology has launched the following schemes to promote domestic manufacturing of electronics items:

1. Under the Modified Special Incentive Package Scheme (M-SIPS), 25% of Capex is eligible for subsidy (20% for Special Economic Zones (SEZ)) for all investments made in manufacturing of electronic products. Additionally, excise/ CVD paid on capital equipment is reimbursed. The incentive is also available for R&D being carried out for the said products.
2. Production subsidy @10% of turnover (ex-factory) in select high-tech. units.
3. For a unit set up in SEZ, apart from (1) above, additional benefits including the following are available:
 - a. 100% income tax exemption on export income of SEZ units under Section 10AA of the Income Tax Act for the first 5 years, 50% for the next 5 years thereafter and 50% of the ploughed-back export profit for the following 5 years. However Minimum Alternate Tax is applicable which is 18.5% of book profits (surcharge and cess extra).
 - b. No Basic Customs Duty & Excise duty on raw material, inputs, spares & capital equipment.
 - c. Reimbursement of Central Sales Tax on purchases made from domestic suppliers.
4. Merchandise Export from India Scheme (MEIS) of DGFT provides export incentives for export of notified goods in terms of percentage of realized FOB value (in free foreign exchange). The rate of reward is available on the website of DGFT (<http://dgftcom.nic.in/licasp/MEIS/MEIS2016.asp>).
5. In addition to the Modified Special Incentive Package Scheme (M-SIPS), Government has announced Investment Allowance (additional depreciation) of 15% for any investments more than Rs 25 crores (>~USD 4 million) in any year in new plant and machinery. This benefit will be available for investments made up to 31.3.2017.
6. Government provides preference to domestic manufacturers in its procurement to promote domestic manufacturing in the country.
7. Several State Governments give additional incentives like waiver of registration duty, stamp duty, reimbursement of VAT, etc. for fresh investments.
8. Notified items must meet the specified Indian safety standards under the Compulsory Registration Order (CRO). The manufacturing unit has to register with Bureau of Indian Standards and label the goods with the Standard Mark as they are imported / manufactured.

9. A Scheme for Grant-in-Aid is available for setting up / up gradation of quality control / electronic products testing Laboratories by Central / State / Academic Institutions for setting up independent test facilities which could be used for evaluating goods under the CRO.
10. For common facilities to be used by a set of units as part of a supply chain or in any other form of a cluster, assistance @ 50% subject to a ceiling of Rs 50 crores (~ USD 8 million) is available for common facilities. Such common facilities could include testing facilities, training facilities, social infrastructure, as also up gradation of hard infrastructure including supply of water, power, roads and other logistics.
11. Under the skill development scheme, 75-100% of the training fee is reimbursed for any specialized skills that may be required for prospective employees in India (training provided in any training facility recognized by Electronics Sector Skills Council).
12. A scheme to support 3000 additional PhDs.

Refer link for details on incentives: <http://meity.gov.in/esdm/incentive-schemes>

Q.5 Who are the key contact persons in electronics sector to promote development of industry & facilitate foreign investors?

Key Contact persons at MeitY are:

Name	Designation	Department	Contact Details
Mr. Rajiv Bansal	Joint Secretary	Overall In charge- International Cooperation and Industrial Promotion	rajiv.bansal@nic.in
Mrs. Meenakshi Rai Bhatia	Joint Director	Industrial Promotion- Electronics and Hardware Manufacturing	mrai.bhatia@meity.gov.in
Mr. S.K. Marwaha	Scientist 'F'	FAB Units	smarwah@meity.gov.in
Mrs. Asha Nagia	Scientist 'F'	Standards	anagia@meity.gov.in
Mrs. Vandana Srivastava	Scientist 'F'	MSIPS	vandana.srivastava@nic.in
Mr. Deepak Sharma	Scientist 'F'	e-Newsletter	dsharma@meity.gov.in

Contact directory of MeitY is available at <http://meity.gov.in/content/telephone-directory>

FAQs on various aspects related to Foreign Direct Investment in ESDM

HELP DESK FOR JAPAN & ISRAEL@MEITY: MeitY has set-up Help Desk for to facilitate investments in ESDM sector for Japan & Israel-The details can be seen from the following link- (<http://meity.gov.in/esdm#ita>)

Name	Designation	Help Desk	Contact Details
Mrs. Vandana Srivastava Supported by: Shri Rashmi Rathi Tiwary	Scientist 'F' Scientist 'B'	Japan	vandana.srivastava@nic.in rr.tiwary@meity.gov.in
Mrs. Meenakshi Rai Bhatia Supported by: Dr. Nalin Kumar Srivastava	Joint Director Scientist 'C'	Israel	mr.ai.bhatia@meity.gov.in nalin.ks@meity.gov.in

Some of the JV opportunities are also available on MeitY website and can be seen from the following link-(<http://meity.gov.in/esdm/offers>).

Q.6 When was the M-SIPS launched and what is the duration of the scheme?

MSIPS was launched on 27 July 2012. The scheme was initially opened for 3 years till 26-07-2015. Giving a big boost to electronics manufacturing in the country, the Government in July 2015 approved the amendment of the Modified Special Incentive Package Scheme. The amendment in MSIPS has three major parts. First, the scope of the scheme has been expanded to cover 15 new product categories, which were not covered earlier. Second, the procedures have been simplified. Third, the scheme has been extended for a period of 5 years beyond July 26, 2015. The scheme has been further modified on 30th January 2017. As per the modification, the scheme is open till 31st December 2018 or till an incentive commitment of Rs. 10,000 crore is reached, whichever is earlier. Further, the incentives will be available for a period of 5 years from the date of approval of application by MeitY.

Q.7 Can existing units claim benefits under M-SIPS?

The MSIPS is applicable to investments in new ESDM units and expansion of capacity/modernization and diversification of existing ESDM units. ESDM unit shall mean a unit engaged in design and

manufacturing of the electronics and nano-electronics and their accessories. It includes all stages of value addition and also includes electronics manufacturing services.

Expansion of existing unit would mean increase in the value of fixed capital investment in plant & machinery of an ESDM unit by not less than 25% for the purpose of expansion of capacity/modernization and diversification.

Q.8 What are the items and investment thresholds under M-SIPS?

The list of items eligible for incentives and investment threshold can be seen from the following link-

(http://meity.gov.in/sites/upload_files/dit/files/MSIPS%20Notification.pdf)

Q.9 What is the meaning of capital expenditure for the purpose of claiming benefits under M-SIPS?

The capital expenditure will be the total expenditure in land, building, plant & machinery and technology including R&D. The total cost of land exceeding 2% of the capital expenditure shall not be considered for calculation of incentives in this regard.

Q.10 When are the incentives released under M-SIPS?

The incentives against the capital expenditure may be released after the end of quarter in which the total investment exceeds the threshold value and after meeting all terms and conditions of the approval order. Thereafter, the incentive may be provided on quarterly basis on the value of investment made during the quarter and be restricted to the first 10 years from the date of approval/ application (as the case may be) of the unit under the scheme.

Q.11 What are the types of application under M-SIPS?

M-SIPS include two applications:

- 1) Initial application &
- 2) Follow up application

Initial application: An application submitted by an applicant under the scheme containing requisite information, along with supporting documents along with application fee, and documents showing financial Closure of an amount not less than the threshold value as applicable for the project and also not less than 20% of the complete project.

Follow on application: Follow up application for the purpose of the scheme means an application submitted by an applicant seeking approval of a second or subsequent phase of an approved project. The follow up application would be made in the follow up application form prescribed under the scheme, along with application fee and supporting documents with required financial closure of the amount required to implement the phase of the project proposed in the follow up application. The follow up application can be made only in those projects where the financial closure furnished at the time of initial application is for an amount less than the Approved Project cost.

The details of policy can be seen from the following link-

http://meity.gov.in/sites/upload_files/dit/files/MSIPS%20Notification.pdf

The detailed guidelines including the process of application etc can be seen from the following link-

http://meity.gov.in/sites/upload_files/dit/files/MSIPS_Guidelines.pdf

http://meity.gov.in/sites/upload_files/dit/files/MSIPS%20Guidelines.pdf

The application for MSIPS can be made online through the following link-

<http://www.msips.in/>.

Q.12 Is there any preference for domestically manufactured electronics items?

The Ministry of Electronics and Information Technology (MeitY) has notified the policy for providing preference to domestically manufactured electronic products in Government procurement for its own use and not with a view to commercial resale or with a view to use in the production of goods for commercial sale on 23.12.2013. The Domestically Manufactured Electronic Products (DMEPs) are products manufactured by companies registered in India and engaged in Manufacture in India and including Contract Manufacturers, but excluding traders. The electronic products to be notified under this policy shall meet the minimum 25% domestic value-addition in terms of Bill of Material (BoM) from domestic manufacturers. The percentage of procurement to be made from DMEP(s) shall not be less than 30% of the total procurement value of that electronic product(s). The policy is applicable to all Ministries / Departments (except Ministry of Defence) and their agencies for electronic products purchased for Governmental purposes and with a view to commercial resale or with a view to use in goods for commercial sale. This is also applicable for procurement of electronic products made under all Centrally Sponsored Schemes and grants made by Central Government.

Refer link for details on (PMA): <http://deity.gov.in/esdm/pma>

Q.13 Do state governments provide any incentives on setting up a manufacturing unit?

Each state government has its own incentive policy, which offers various types of incentives based on the amount of investments, project location, employment generation, etc. The incentives differ from state to state and are generally laid down in each state's industrial policy. Some states also have an electronics policy.

Type of Manufacturing Locations and Electronic Manufacturing Clusters

Q.1 What are Special Economic Zones (SEZ) and Free Trade Warehousing Zones (FTWZ)?

The SEZ scheme seeks to provide an internationally-competitive and free environment for exports. These zones are designated duty-free enclaves and are treated like foreign territories for the purpose of trade operations, duties and tariffs. The SEZ policy offers several fiscal and regulatory incentives to units operating within these zones.

Units in SEZ or FTWZ shall be a positive net foreign exchange earner (NFE). NFE shall be calculated cumulatively for a period of five years from the commencement of production. A branch office can undertake manufacturing activities in an SEZ unit.

Incentives available for a unit set-up in SEZ are as follows:

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units. (Raw materials, capital goods, consumables, components & spares for authorized operations)
- 100% income tax exemption on export income SEZ units under Section 10AA of the Income Tax Act for the first 5 years, 50% for the next 5 years thereafter and 50% of the ploughed-back export profit for the following 5 years.
- Exemption from Central Sales Tax, exemption from service tax. Exemption from state sales tax and other levies as extended by the respective state governments.
- Single-window clearance for central and state level approvals.
- A minimum alternate tax @18.5% and DDT are applicable in case of units operating in SEZs and other export-oriented parks.

Q.2 What are different Electronic Manufacturing Clusters?

- a) The Greenfield EMC are undeveloped or underdeveloped geographical Industrial area, preferably contiguous where the focus is on creation and development of basic infrastructure, amenities and other common facilities for the Electronics System Design and Manufacturing (ESDM) units for attracting investments in electronics.

- b) Brownfield EMC is a Geographical area where a significant no. of existing ESDM units are located and the focus is on upgrading infrastructure and providing common facilities for the ESDM units.

Q.3 What are the financial assistance provided for EMC's?

The financial support under EMC Scheme is provided in terms of Grant-in-Aid from Government of India as mentioned hereunder:

- a) Greenfield EMC: The financial assistance for setting up of Greenfield EMC is restricted to 50% of the project cost subject to ceiling of Rs. 50 crore for every 100 acres of land. For larger area, pro-rata ceiling applies. For lower extent, the extent of support is decided by the Steering Committee for Cluster (SCC) subject to a ceiling of Rs. 50 crore. The remaining project cost will be financed by other stakeholders of EMC with a minimum contribution of 25% of the project cost from the units within the EMC.
- b) Brownfield EMC: The assistance for setting up of Brownfield EMC will be restricted to 75% of project cost subject to ceiling of Rs. 50 crore. The remaining project cost will be financed by other stakeholders of the EMC with a minimum contribution of 15%, from the units within the EMC.

Q. 4 How to get land for Greenfield EMC?

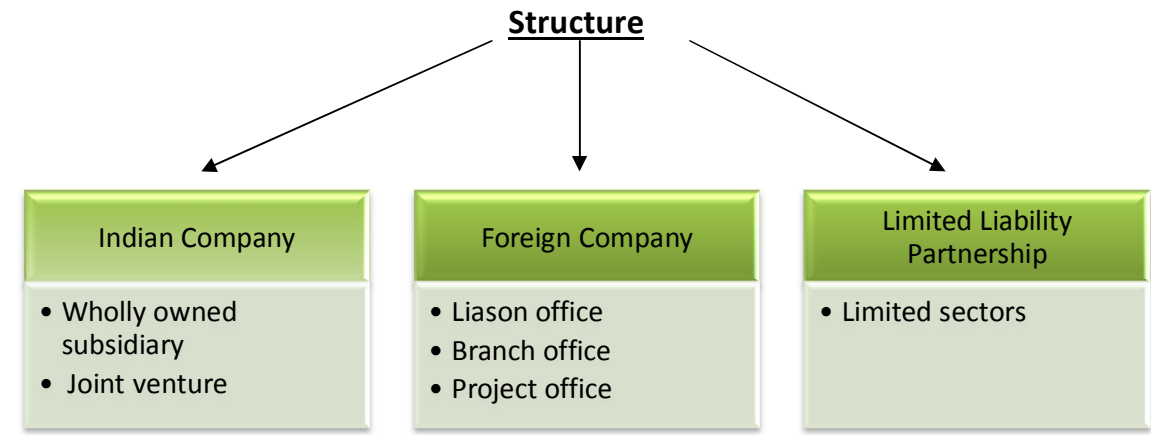
The land for the EMC may be acquired by the applicant through one of the following modes:

- Outright purchase or long term lease (with a minimum period of 30 years) from private parties
- Sale (outright or conditional), or long lease of land (with a minimum period of 30 years) by central or state or local government or its agency
- Centre or state or local government or its agency participating as equity partner in the SPV wherein the cost of land is provided as its share.

Miscellaneous

Q.1 What kind of business entities can a foreign investor set up?

The popular forms of business entities that an investor can set up are:



Q.2 Who all can invest in India, i.e. constitution and nature of investing entity?

The investing entity can be an individual, company, foreign institutional investor, foreign venture capital investors, foreign trust, private equity fund, pension/provident fund, sovereign wealth fund, partnership/proprietorship firm, financial institution, non-resident Indians/person of Indian origin, others, etc.

Q.3 Is there any act to regulate competition in India?

Competition Act: The government of India enacted a modern competition law in the form of Competition Act, 2002 and established the Competition Commission of India to carry out the objectives of the Act.

Q.4 Can companies in India enter into foreign technology agreements?

Technology Agreements: Foreign investment in technology agreements effecting payments for royalty, lump sum fee for transfer of technology and payments for use of trademark/brand name are allowed under the automatic route, i.e., without any approval of the Government of India. Foreign

technology includes technical know-how, design, drawing, engineering service and royalty. Use of foreign brand names/trademarks is permitted for sale of goods in India.

Q.5 What are the laws and regulations relating to protection of brands etc in India?

The Patents Act, 1970 was amended in 1999, 2002 & 2005. The amended Act, in accordance with TRIPS, has provided for product patents in foods, medicines and chemical substances. India became signatory to PCT in 1998. As a consequence, patent filing including PCT National Phase Applications have increased exponentially. Considerable changes have been made in the patenting procedure through the introduction of Patents Rules, 2003, which were further amended in 2005 and 2006, resulting in new practices and procedure. Recognising the importance of the modernisation of IPOs for the economy, the Government has implemented projects for modernization of Patent Offices, Trade Marks Registry (TMR) and Geographical Indications Registry (GIR). The focus of these projects was commissioning of four state-of-the-art offices in Delhi, Kolkata, Chennai and Mumbai, creation of additional posts in the Patent Office and TMR, providing initial level of computerisation and Internet facilities, launching of electronic filing (e-filing) of patent and trade mark applications, establishment of online search facilities, establishment of Intellectual Property Training Institute (IPTI) to provide training and develop strategies for awareness creation.

The Union Cabinet has recently approved the National Intellectual Property Rights (IPR) Policy that aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

Q.6 What are the various types of Visas?

Government of India issues the following visas: Business Visa, Conference Visa, Diplomatic Visa, Employment Visa, Emergency Visa, Entry Visa, Journalist Visa, Medical Visa, Missionaries Visa, and permit to re-enter within 2 months, Research Visa, Student Visa, Tourist Visa, and Transit Visa.

Please follow the link for details on Visa Provision and supporting documents -

<https://indianvisaonline.gov.in/visa/>

Section II: Queries relating to company setup

1. Information on starting a company in India

Q.1 What are the rules and regulations for setting up a company in India?

An Investor (Including Foreigner entity¹) can start operations in India by incorporating a company under the provisions of Companies Act, 2013 including related Rules, Circulars, Notifications, Orders and subsequent Amendments (<http://www.mca.gov.in/MinistryV2/companiesact.html>).

This Act regulates incorporation of a company, manner of conducting the affairs of a company, responsibilities of its directors and dissolution of a company. Ministry of Corporate Affairs (MCA) is responsible for ensuring compliance with provisions of the Companies Act, 2013 through the offices of Registrar of Companies (ROC) and the Regional Directors (RD).

As company set-up in India can either be private limited or public limited.

1. **Private limited company:** The key features of a private limited company in India are as follows:
 - a. It requires a minimum of two shareholders and two directors (both of them can be foreigners). One of the directors has to be resident in India.
 - b. The number of shareholders cannot exceed 200.
 - c. It cannot invite the public to subscribe for any securities of the company and which by articles restricts the right to transfer its shares.
 - d. It can raise debt in foreign currency in the form of external commercial borrowings.

2. **Public limited company:** A public company is defined as one that is not a private company.
 - a. A subsidiary of Indian public company is also treated as a public company.
 - b. A public company is required to have minimum of 7 shareholders and 3 directors. One of the directors has to be resident in India.
 - c. Limits are placed on remuneration paid to the directors

In order to facilitate the investors for setting up companies in India, Government of India has developed an e-Filing portal called MCA21 (<http://www.mca21.gov.in/>). Applicant is required to do e-Filing for Companies/ Limited Liability Partnerships (LLPs) registration on MCA21 portal, where he/she has a facility to download the e-Form and fill it in an offline mode (<http://www.mca.gov.in/MinistryV2/AboutFiling.html>).

Applicant would need to be connected to the internet to carry out the pre-fill and pre-scrutiny functions for e-filing. The filled up e-Form as per relevant instruction kit needs to be uploaded on the MCA21 portal. On successful upload, the Service Request Number (SRN) would be generated and Applicant would be directed to make payment of the statutory fees. Once the payment has been made the status of payment and filing status can be tracked on the MCA portal by using the 'Track Your Payment Status' and 'Track Your Transaction Status' link respectively.

¹ with exceptions as mentioned in section 3.1 of FDI Circular 2015 by Department of Industrial Policy & Promotion (DIPP)

The major steps required for setting up a company are as follows:

Phases	Activity	Steps
I	Obtaining Director's Identification Number # (DIN) & Digital Signature (DSC) for the proposed directors <i>Refer to note on E Form INC-29</i>	a. Obtaining the proof of identity and proof of address from the proposed directors (<u>notarized and apostiled in case of foreign directors</u>) b. Filing of DIN for the proposed directors and obtaining DSC
II	Filing of name approval	a. Filing of form for seeking name availability with Registrar of Companies (In case there are corporate shareholders, the company would have to draft a board resolution for seeking name approval. The board resolution and powers to incorporate a company). b. Obtaining name approval.
III	Filing of charter, location of correspondence office and details of directors	a. Drafting of charter of company (memorandum and articles of association) and other forms for filing with Registrar of Companies (ROC). b. Sending the subscriber's sheet for execution & authentication, in case of non-resident shareholders. c. Declarations from professional & directors. d. Affidavits from subscriber to the charters and first directors. e. Particulars of subscribers. f. Particulars of first directors including their interest and consent. g. Filing of forms with ROC. h. Obtaining Certificate of Incorporation & Corporate identity number Note: The company needs to have registered office from the 15 th day of its incorporation and the same needs to be reported within 30 days of incorporation.
IV	Declaration -commencement of business	A company having share capital shall not commence any business or exercise any borrowing power unless filling of following: a. Declaration by director that every subscriber has paid the value of shares agreed to be taken by him and paid up share capital of the company b. Approvals from regulators as required. c. Specimen signatures (attested and verified). d. The company has filled with the registrar a verification of its registered office. e. The above needs to be verified by professional. Note: Time limit for above activity is 182 days from date of incorporation.
V	Post incorporation formalities	a. Obtaining permanent account number (PAN), opening the bank accounts, tax deduction account number (TAN) for the company. b. Filing with Reserve Bank of India for the subscriber (initial) capital.

Note:

1. *For foreign parties: The documents like proof of identity, signatures on memorandum & article, etc needs to be notarized and consularised/apostoled. The process of notarization and apostillment is different for each country. The details of the countries signatory to Hague convention can be seen from the following link(<https://www.hcch.net/en/states/hcch-members>)*
2. *E Form INC-29: E-Form INC-29 deals with the single application for approval of name of the company, incorporation of a new company and/or application for allotment of DIN. This eForm is accompanied by supporting documents including details of Directors & subscribers, MoA and AoA etc. Once the eForm is processed and found complete, company would be registered and CIN would be allocated. Also DINs gets issued to the proposed Directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company. This e-form is newly introduced under rules notified under the Companies Act, 2013.*

Q.2 What are the instruments allowed for receiving FDI?

The instruments for receiving Foreign Direct Investment (FDI) include Investments made in equity shares, fully and mandatorily convertible preference shares and fully & mandatorily convertible debentures with the pricing being decided upfront as a figure or based on the formula that is decided upfront. Partly paid equity shares and warrants issued by an Indian company in accordance with the provision of the Companies Act, 2013 and the SEBI guidelines, as applicable, shall be treated as eligible FDI instruments w.e.f. July 8, 2014 subject to compliance with FDI scheme. The pricing and receipt of balance consideration shall be as stipulated in terms of A.P. (DIR Series) Circular No.3 dated July 14, 2014 as modified from time to time.

Any foreign investment into an instrument issued by an Indian company which:

- Gives an option to the investor to convert or not to convert it into equity or Does not involve upfront pricing of the instrument as on date would be reckoned as External Commercial Borrowings (ECB) and would have to comply with the ECB guidelines.

The FDI policy provides that the price/ conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant Foreign Exchange Management Act (FEMA) regulations (<https://www.rbi.org.in/scripts/Fema.aspx>) [valuation as per any internationally accepted pricing methodology on arm's length basis for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies] without any assured return².

Q.3 What are the rules relating to pricing of issue of shares?

Price of shares issued to persons resident outside India under the Foreign Direct Investment (FDI) Policy, shall not be less than -

² Accessed from <https://www.rbi.org.in/scripts/FAQView.aspx?id=26> on May 12th 2016

1. The price worked out in accordance with the Securities Exchange Board of India (SEBI) guidelines, as applicable, where the shares of the company is listed on any recognized stock exchange in India;
2. The fair valuation of shares done by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company is not listed on any recognized stock exchange in India ; and
3. The price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, 2013, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme. The above information can be seen from the Page No.17 of the following link-http://dipp.nic.in/English/policies/FDI_Circular_2015.pdf

Q.4 How can a foreign investor transfer funds into an Indian company?

The various modes of transfer of funds by foreign investors into an Indian company are:

1. Inward remittance through normal banking channels.
2. Debit to Non-Resident External (NRE)/ Foreign Currency (Non-Resident) Accounts (FCNR) account of a person concerned and maintained with an Authorized Dealer (AD) category-I bank (<http://rbidocs.rbi.org.in/rdocs/FEMAMASTER/PDFs/1061.pdf>)
3. Conversion of royalty/ lump sum/technical knowhow fee due for payment, or conversion of External Commercial Borrowings (ECB), shall be treated as consideration for issue of shares
4. Conversion of import payables/ pre incorporation expenses/ share swap can be treated as consideration for issue of shares with the approval of Foreign Investment Promotion Board (FIPB).
5. Debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD category-I bank and is maintained with the AD category I bank on behalf of residents and non-residents towards payment of share purchase consideration.

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/ FCNR (B)/ Escrow account, the amount shall be refunded. Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.³

Q.5 What are the reporting requirements of the Reserve Bank of India?

The Company has to report within 30 days of receiving the application money (inward remittance). Intimation is to be made to the concerned regional office of the Reserve Bank of India (RBI) in respect of the inward bank remittance received in the prescribed form. The company is also required to intimate the RBI within the 30 days of issuing shares to the foreign investor. The RBI will issue a

³ Accessed from <https://www.rbi.org.in/scripts/FAQView.aspx?id=26> on 12th May 2016

registration number to the company which is to be mentioned for future correspondence with the RBI, while repatriating funds, etc. Some additional reporting requirements are listed below:

1. The capital instruments should be issued within 180 days from the date of receipt of the inward remittance received through normal banking channels including escrow account opened and maintained for the purpose or by debit to the Non-Resident External (NRE)/ Foreign Currency (Non-Resident) Accounts (FCNR) (B) account of the non-resident investor. In case, the capital instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and would attract penal provisions.
2. Company also needs to comply with reporting requirements of Registrars of companies like filling Form 2, etc.
3. Reporting of transfer of shares between residents and non-residents and vice-versa is to be done in Form FC-TRS within 60 days.
4. Details of issue of shares against conversion of External Commercial Borrowings (ECB) have to be reported to the Regional Office concerned of the RBI.
5. The Indian company issuing American Depository Receipts (ADRs) / Global Depository Receipts (GDRs) has to furnish to the Reserve Bank, full details of such issue in the prescribed form, within 30 days from the date of closing of the issue.

Q.6 Are investments and profits earned in India repatriable?

Foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after payment of taxes due, provided the investment was made on a repatriation basis.

Profits earned by an Indian company can be repatriated as dividends after payment of Dividend Distribution Tax (DDT) without RBI's Permission (through an authorized dealer bank), subject to compliance with certain specified conditions.

The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

Q.7 Can a company in India be wound up?

Winding up of a company is a process whereby all the affairs of the company are wound up, all assets sold, liabilities paid off and the balance, if any, is distributed to its shareholders. An administrator, called a liquidator, is appointed; collects the debts of the company and distributes any surplus among the members. A company may be wound up either by compulsory winding up by court or voluntary winding up by shareholders or creditors. For details, visit the following link- (<http://www.mca.gov.in/MinistryV2/CloseCompany.html>)

There are three modes in which a company may be wound up.

- I. Winding up by the court
- II. Voluntary winding up :
 - a. Voluntary winding up
 - b. Creditors Voluntary winding up
- III. Winding up subject to supervision of the court.

Under mode II; A company may voluntarily wind up itself, either by passing an ordinary resolution, where the purpose for which the company was formed has completed, or the time limit for which the company was formed, has expired.

Or

By way of special resolution

Both types of resolution shall be passed in the general meeting of the company. Once the resolution of voluntarily winding up is passed, and then the company may be wound up, either through:

- Members voluntarily winding up, or
- Creditors voluntarily winding up

The only difference between the above two, is that in case of members voluntarily winding up, Board of Directors have to make a declaration to the effect, that company has no debts.

The Official Liquidators (http://companyliquidator.gov.in/winding_up.html) are officers appointed by the Central Government under Section 448 of the Companies Act, 1956 and are attached to various High Courts. The Official Liquidators are under the administrative charge of the respective Regional Directors, who supervise their functioning on behalf of the Central Government.

2. Information on starting a Liaison Office/ Branch Office/ Project Office in India

Q.8 What are the rules and regulations for the establishment of a Branch office or other place of business in India?

Categories of Establishment of Offices Permissible in India:

A corporate body incorporated outside India can establish office in the following categories in India⁴

- I. **Branch Office (BO):** Branch office in relation to a company, means any establishment described as such by the company. BOs are permitted to represent the parent / group companies and undertake restricted activities as permissible by Reserve Bank in India. The details of permissible activities have been given in Question no. 9.
- II. **Liaison Office (LO):** Liaison office means a place of business to act as a channel of communication between the principal place of business or Head office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

⁴ <https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=10327>

- III. **Project Office (PO):** Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a LO. A foreign company means any corporate body incorporated outside India⁵.
- IV. **Site Office (SO):** Site Office means a sub-office of the Project Office established at the site of a project but does not include a Liaison Office.
- V. **Stand Alone Basis :**'Stand-alone basis' means such branch offices which would be isolated and restricted to the Special Economic Zone alone and no business activity/ transaction will be allowed outside the Special Economic Zones in India which includes branches/subsidiaries of its parent office in India.

Process and Criteria for Establishment of Such Offices:

A corporate body incorporated outside India (including a firm or other association of individuals), desirous of opening a LO/ BO in India will have to obtain permission from the AD Category 1 Bank under provisions of FEMA 1999. The applications from such entities in Form FNC)-
https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=10398&fn=5&Mode=0

Application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India in the following cases:⁶

- a. The applicant is a citizen of or is registered/incorporated in Pakistan;
- b. The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- c. The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting. In the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. There shall be no requirement of any approval from RBI also only for such cases;
- d. Applicants / entities which fall under the category Non - Government Organisations / Non - Profit Organisations/ Government Bodies/ Departments

Such applications will be decided in consultation with Government of India.

The applicants shall be evaluated on the following conditions by Reserve Bank while sanctioning Liaison or Branch offices of foreign entities in India

- 1. The application for establishing BO/ LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the General Manager, Foreign Exchange Department, Central Office Cell, Reserve Bank of India,
- 2. Previous record of the Applicant

⁵ <http://www.mca.gov.in/SearchableActs/Section2.htm>

⁶ <https://rbi.org.in/scripts/NotificationUser.aspx?Id=10398&Mode=0>

- a) For Branch Office — a profit making track record during the immediately preceding five financial years in the home country.
- b) For Liaison Office — a profit making track record during the immediately preceding three financial years in the home country.
3. Net Worth of the Applicant
 - a) For Branch Office — not less than USD 100,000 or its equivalent
 - b) For Liaison Office — not less than USD 50,000 or its equivalent.
4. English version of the Certificate of Incorporation/ Registration or Memorandum & Articles of Association attested by Indian Embassy/ Notary Public in the Country of Registration.
5. Latest Audited Balance Sheet of the applicant entity
6. Applicants which are subsidiaries and which do not satisfy the abovementioned eligibility criteria may submit a Letter of Comfort⁷ from their parent company, subject to the condition that the parent company satisfies the eligibility criteria as prescribed above, such applications may then be considered by RBI for approval
7. A person from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau opening a branch office or a liaison office or a project office or any other place of business in India shall have to register with the concerned State Police Authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi.

Procedure of application:

The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC [link https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9861#AN1], to a designated AD Category - I bank (i.e. an AD Category – I bank identified by the applicant with whom they intend to pursue banking relations) along with the prescribed documents mentioned in the Form and the LOC, wherever applicable.

The AD Category-I bank shall, after exercising due diligence in respect of the applicant's background, and satisfying itself as regards adherence to the eligibility criteria for establishing BO/LO/PO, antecedents of the promoter, nature and location of activity of the applicant, sources of funds, etc., and compliance with the extant KYC norms, grant approval to the foreign entity for establishing BO/LO/PO in India. The AD Category-I banks may frame appropriate policy for dealing with these applications in conformity with the FEMA Regulations and Directions.

The applicants which have been granted permission for establishing BO/LO in India on Reserve Bank's website, the AD Category-I bank shall before issuing the approval letter to the applicant forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, for allotment of Unique Identification Number (UIN) (www.rbi.org.in/scripts/Fema.aspx) to each BO/LO. After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India.⁸

⁷ https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9861#AN2

⁸ <https://rbi.org.in/scripts/NotificationUser.aspx?Id=10398&Mode=0>

The BOs/ LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.⁹

Reserve Bank of India has provided a general permission to foreign companies for establishing POs in India, provided they have secured a contract from an Indian company to execute a project in India. A project office can be established by a foreign company¹⁰ in India given the following criteria:

1. The project is funded directly by inward remittance from abroad
2. The project is funded by a bilateral or multilateral International Financing Agency
3. The project has been cleared by an appropriate authority
4. A company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project. However, if the above criteria are not met, then such applications need to be forwarded to the RBI.

Reserve Bank of India has also provided the general permission¹¹ for opening a BO in SEZs provided such units are functioning in those sectors where 100% FDI is permitted; such units comply with the Part XI of the Company's Act 1956 and function on a standalone basis.

It should, however be noted that general permission in case of PO/ BO is not available to investors from Pakistan, Afghanistan, Bangladesh, Sri Lanka, Iran and China.

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the State Police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi for necessary action and record.¹²

Within 30 days of obtaining approval from the RBI, a Form of Establishment (Form FC-1), is required to be filled with the RoC along with the prescribed documents and fees.

The LO/ BO/ PO also needs to comply with Chapter XXII and corresponding rules of the company's Act 2013. (Section 379 to 393). The provisions of the Act and rules can be seen from the following links-Act (<http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>) & (http://www.mca.gov.in/Ministry/pdf/NCARules_Chapter22.pdf)

The validity of an LO is generally for three years [as provided in Regulation 4.d. of the Notification], except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity is two years only. The validity of the PO is for the tenure of the project.¹³ The validity of LO/ BO may be extended. For further details Section 9 of the following link – (<https://rbi.org.in/scripts/NotificationUser.aspx?Id=10398&Mode=0>) may be referred to.

⁹ https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9861#C

¹⁰ <http://www.mca.gov.in/SearchableActs/Section2.htm>

¹¹ General permission means no prior approval is required from RBI subject to prescribed conditions.

¹² <https://rbi.org.in/scripts/NotificationUser.aspx?Id=10398&Mode=0>

¹³ <https://rbi.org.in/scripts/NotificationUser.aspx?Id=10398&Mode=0>

Approval of the Reserve Bank in certain cases for establishment of branch office, liaison office or project office or any other place of business in India has been illustrated in the link (<https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&id=10327>).

Q.9 What are the permissible activities which LO/ BO can undertake?

Permitted activities for Liaison Office

Liaison Office can take following activities as permissible by Reserve Bank:

1. To represent in India the parent company/ group companies.
2. To promote export/ import from/ to India.
3. To promote technical/ financial collaborations between parent/ group companies and companies in India.
4. To act as a communication channel between the parent company and Indian companies.

Permitted activities for Branch Office

Following activities as permissible by Reserve Bank:

1. Companies incorporated outside India and engaged in manufacturing or trading activities- Such Branch Offices are permitted to represent the parent/ group companies and undertake the following activities in India:
 - a) Export / Import of goods;
 - a) Render professional or consultancy services;
 - b) To carry out research work, in areas in which the parent company is engaged;
 - c) To promote technical or financial collaborations between Indian companies and parent or overseas group company;
 - d) To represent the parent company in India and acting as buying/ selling agent in India;
 - e) To render services in information technology and development of software in India;
 - f) To render technical support to the products supplied by parent/group companies;
 - g) Foreign airline/ shipping company
2. Branch Office should be engaged in the activity in which the parent company is engaged.
3. Retail trading activities of any nature is not allowed for a Branch Office in India.
4. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.
5. Branch Office in Special Economic Zones (SEZs) in India.

Reserve Bank has given general permission to foreign companies for establishing branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is subject to the following conditions:

- a) Such units are functioning in those sectors where 100 per cent FDI is permitted;
- b) Such units comply with part XI of the Companies Act,1956 (Section 592 to 602);
- c) Such units function on a stand-alone basis.

Additional Activities for Branch and Liaison Office

1. Additional Activities -Requests for undertaking activities in addition to what has been permitted initially by the Reserve Bank may be submitted through the designated

Authorised Dealer (AD) Category -I bank to the General Manager, Foreign Exchange Department, Reserve Bank of India

2. Additional Branch or Liaison Office -Requests for establishing additional BO / LOs may be submitted through fresh FNC form (https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9861#AN1) duly signed by the authorized signatory of the foreign entity in the home country to the Reserve Bank of India

Q.10 What are the repatriation rules, reporting requirements, etc., in case of LO/ BO/ PO?

Repatriation guidelines in case of LO/BO/PO are given below:

1. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes;
2. Authorised Dealer (AD) Category-I bank may extend fund and/or non-fund based facilities to branch office and project offices based on the guidelines issued by the Reserve Bank in this regard;
3. Branch office may remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the AD Category-I bank through whom the remittance is effected:
 - a) A certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year;
 - b) A Chartered Accountant's certificate certifying the manner of arriving at the remittable profit, the entire remittable profit has been earned by undertaking the permitted activities and the profit does not include any profit on revaluation of the assets of the branch.
4. AD Category – I bank may permit intermittent remittances by project offices pending winding up / completion of the project subject to submission mentioned in Master Circular Notification No **FEMA 22(R)/RB-2016**¹⁴.

Reporting Methodology in case of LO/ BO/ PO is given below:

1. All new entities setting up LO/ BO shall submit a report containing information, as per format provided in Annex (https://rbidocs.rbi.org.in/rdocs/content/pdfs/54MC01072015_AN3.pdf) within five working days of the LO/BO becoming functional to the Director General of Police (DGP) of the state concerned in which LO/BO has established its office. If there is more than one office of such a foreign entity, in such cases to each of the DGP concerned of the state where it has established office in India¹⁵;
2. Branch Offices/ Liaison Offices have to file Annual Activity Certificates (AAC) (Annex 4) (https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9861#AN4) from Chartered Accountants, at the end of the financial year (March 31), along with the audited Balance Sheet on or before September 30 of that year. In case the annual accounts of the

¹⁴ <https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=10327>

¹⁵ https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9861#C

LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet to the designated AD Category I bank, and a copy to the Directorate General of Income Tax (International Taxation), New Delhi along with the audited financial statements including receipt and payment account. The designated AD Category - I bank shall scrutinize the AACs and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given. In the event of any adverse findings reported by the auditor or noticed by the designated AD Category -I bank, the same should immediately be reported to the General Manager¹⁶;

3. A copy of the report in Annex 3 shall be filed with the DGP concerned on annual basis along with a copy of the annual certificate, and also with the AD concerned¹⁷;
4. The certificates are to be filed by the following offices as applicable:
 - a) Single Branch or Liaison Office –Certificates and reporting to be undertaken by the respective Branch Office ;
 - b) Multiple Branch or Liaison Office- A combined Annual Activity Certificate in respect of all Offices in India by the Nodal Office of the BO/LOs.

Q.11 Can LO/ BO/ PO be closed down?

Requests for closure of the branch office/liaison office may be submitted to the Authorised Dealer (AD) Category - I bank along with the following documents¹⁸:

1. Copy of the Reserve Bank's/Authorised Dealer Category-I bank's approval for establishing the office
2. Auditor's certificate :
 - a) Indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;
 - b) Confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for;
 - c) Confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
3. Confirmation from the applicant/ parent company that no legal proceedings in any Court in India are pending against the office and that there is no legal impediment to the remittance.
4. In case of winding up of the branch office/ liaison in India, a report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013.

¹⁶ <https://rbi.org.in/scripts/NotificationUser.aspx?Id=10398&Mode=0>

¹⁷ https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9861#AN1

¹⁸ <https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=10327>

5. Any other document(s), specified by the Reserve Bank/ Authorised Dealer Category-I bank while granting approval.

AD Category-I bank shall send a consolidated list (as per Annex) of all the BOs/LOs/ POs for which a UIN has been granted by RBI, excluding those of banks and insurance companies, closed by them during the month, by the fifth of the succeeding month, to the General Manager, Reserve Bank of India, CO Cell, New Delhi¹⁹.

The Remittances of winding up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of assets) Regulations²⁰.

Apart from above, provisions of Companies Act, 2013 shall also apply on closure. The Act may be referred at the link - <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>

¹⁹ <https://rbi.org.in/scripts/NotificationUser.aspx?Id=10398&Mode=0>

²⁰ <https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=10327>