

# FAQ provides brief on various aspects related to foreign direct investment in ESDM sector

Department of Electronics & Information Technology

**As on 27 April, 2014**

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**FAQ's on Investing in India (Foreign Direct Investment Route) in**  
**Electronic System Design & Manufacturing (ESDM)**  
**(As on 27 April, 2014)**  
**By Invest India**

**Section I: ESDM sector & General FDI Queries**

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

Electronics System Design & Manufacturing sector covers electronic hardware products relating to IT and office automation, telecom, consumer electronics, electronic components, etc., It also includes avionics, solar photovoltaic, strategic electronics, nano electronics, medical electronics, space & defence related items, design related activities like product design, chip designing, VLSI, board design, embedded systems etc. This is not the complete list and any queries related to items falling under the scope of ESDM sector will be decided by the Department of Electronics & Information Technology, Ministry of Communications and Information Technology.

The product specific initiatives can be seen from the following link- (<http://deity.gov.in/esdm/product-initiatives>)

**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:**

- ✓ To achieve a turnover of about USD 400 billion by 2020 involving investment of about USD 100 billion and employment to about 28 million people.
- ✓ To build on the emerging chip design and embedded software industry.
- ✓ To build strong supply chain of raw materials, parts and electronic components.
- ✓ To increase exports in ESDM sector from USD 5.5 billion to USD 80 billion by 2020.
- ✓ Its strategies include creation of eco-system, promotion of exports, human resource development, maintenance and development of standards, cyber security etc.

**The detailed policy be seen from the following link-**

[http://deity.gov.in/sites/upload\\_files/dit/files/NPE\\_Notification.pdf](http://deity.gov.in/sites/upload_files/dit/files/NPE_Notification.pdf)

**You may also see the presentation on Electronics sector at the following link-**

[http://deity.gov.in/sites/upload\\_files/dit/files/Esdm\\_Policy.pdf](http://deity.gov.in/sites/upload_files/dit/files/Esdm_Policy.pdf) &

<http://www.iesaonline.org/downloads/IESA-FS-report-Indian-ESDM-Market.pdf>

### **Q.3 Can foreigners invest in ESDM sector in India?**

Foreigners can invest in India, either on their own or as a joint venture. Up to 100% FDI is allowed under the automatic route in ESDM sector. However, in case of defence electronics items, FDI up to 26% is allowed under the government approval route and above 26% is allowed through approval of cabinet committee on security (This is allowed on case to case basis; investments should ensure access to modern and 'state-of-art' technology in the country). The list of defence related items can be seen from the following link- Defence electronics items are mainly covered in M11 and some other section-

[http://dipp.nic.in/English/Investor/Investers\\_Gudlines/defenceProducts\\_LicensingRequired\\_26April2013.pdf](http://dipp.nic.in/English/Investor/Investers_Gudlines/defenceProducts_LicensingRequired_26April2013.pdf)).

- ✓ Investment in defence electronics production requires an industrial license and there is a requirement to comply with other conditions laid down in FEMA. The details can be seen from Page No. 5 to 7 of the following link-  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/285NTI130913S.pdf>
- ✓ The government approval is also required for foreign investment in existing medical devices manufacturing (known as brownfield investment)

*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 industry associations/agencies in electronics sector to promote development of industry, promote collaborations & facilitate foreign investors?**

Yes, India has chambers of commerce and electronics associations which are playing an important role in policy advocacy, promoting industry and helping in match making of foreign companies with Indian counterparts etc.

**Key Points of Contact:**

- ✓ **ELECTRONICS INDUSTRY ASSOCIATIONS & CHAMBERS OF COMMERCE:**  
The details of various chambers of commerce and electronics industry associations can be seen from the following link-  
(<http://deity.gov.in/esdm/associations>)
- ✓ **DEPARTMENT OF ELECTRONICS & INFORMATION TECHNOLOGY (DEITY)**

Key contact persons at DeitY are:

Name	Designation	Department	Contact Detail
Dr. Ajay Kumar	Joint Secretary	Overall In charge- International Cooperation, Industrial Promotion	<a href="mailto:ajay@deity.gov.in">ajay@deity.gov.in</a>
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Mr. Kapil Dev Sharma	Consultant	e-Newsletter	<a href="mailto:kapild.sharma@nic.in">kapild.sharma@nic.in</a>

Contact directory of DeitY is available at:

<http://deity.gov.in/content/telephone-directory>)

**HELP DESK FOR JAPAN & ISRAEL AT DEITY:** DeitY 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://deity.gov.in/esdm/country-initiatives>)

Name	Designation	Department	Contact Detail
Ms. Vandana Srivastava	Additional Director	Japan Help Desk	<a href="mailto:vandana.srivastava@nic.in">vandana.srivastava@nic.in</a>
Ms. Niharika	Consultant	Japan Help Desk	<a href="mailto:niharika.deity@nic.in">niharika.deity@nic.in</a>
Mr. O.P. Sharma	Scientist F	Israel Help Desk	<a href="mailto:opsharma@deity.gov.in">opsharma@deity.gov.in</a>

Some of the technology transfers/JV opportunities are also available on DeitY website and can be seen from the following link-

<http://deity.gov.in/esdm/offers>)

✓ **NODAL OFFICERS FOR ELECTRONICS IN STATE GOVERNMENTS**

Name	Designation	Department	Contact Detail
Indian States	Nodal Officers	Promotion of Electronic Hardware Manufacturing & Applicable Incentives	<a href="http://deity.gov.in/content/state-wise-nodal-officers-promotion-electronic-hardware-manufacturing-and-applicable-policy">http://deity.gov.in/content/state-wise-nodal-officers-promotion-electronic-hardware-manufacturing-and-applicable-policy</a> ) & <a href="http://deity.gov.in/sites/upload_files/dit/files/B&gt;Contact_Details_of_State_IT_Secretary.pdf">http://deity.gov.in/sites/upload_files/dit/files/B&gt;Contact Details of State IT Secretary.pdf</a> )

✓ **Invest India**

Invest India is the national level investment promotion & facilitation agency. The details can be seen from the following link-

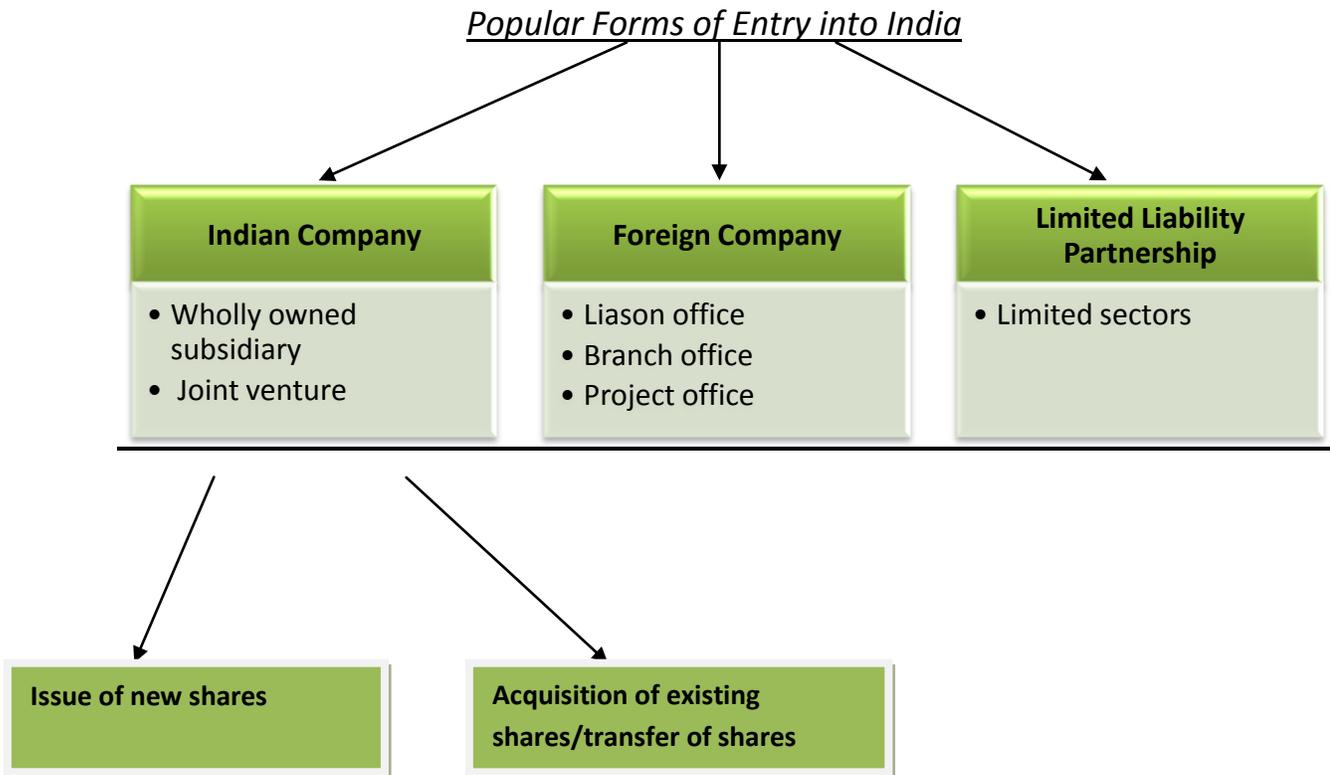
<http://www.investindia.gov.in/>)

Name	Designation	Contact Detail
Mr. Dushyant Thakor	General Manager	<a href="mailto:dushyant.thakor@ficci.com">dushyant.thakor@ficci.com</a>
Mr. Uday Munjal	Manager - Investment Facilitation	<a href="mailto:uday.munjal@ficci.com">uday.munjal@ficci.com</a>

Queries can also be posted on the website – [www.investindia.gov.in](http://www.investindia.gov.in)  
Please click on “**SEND YOUR QUERY**” link on homepage.

**Q.5 As a foreign investor, what kind of a business entity can I set up?**

*The popular forms of business entity that an investor can set up are given below:*

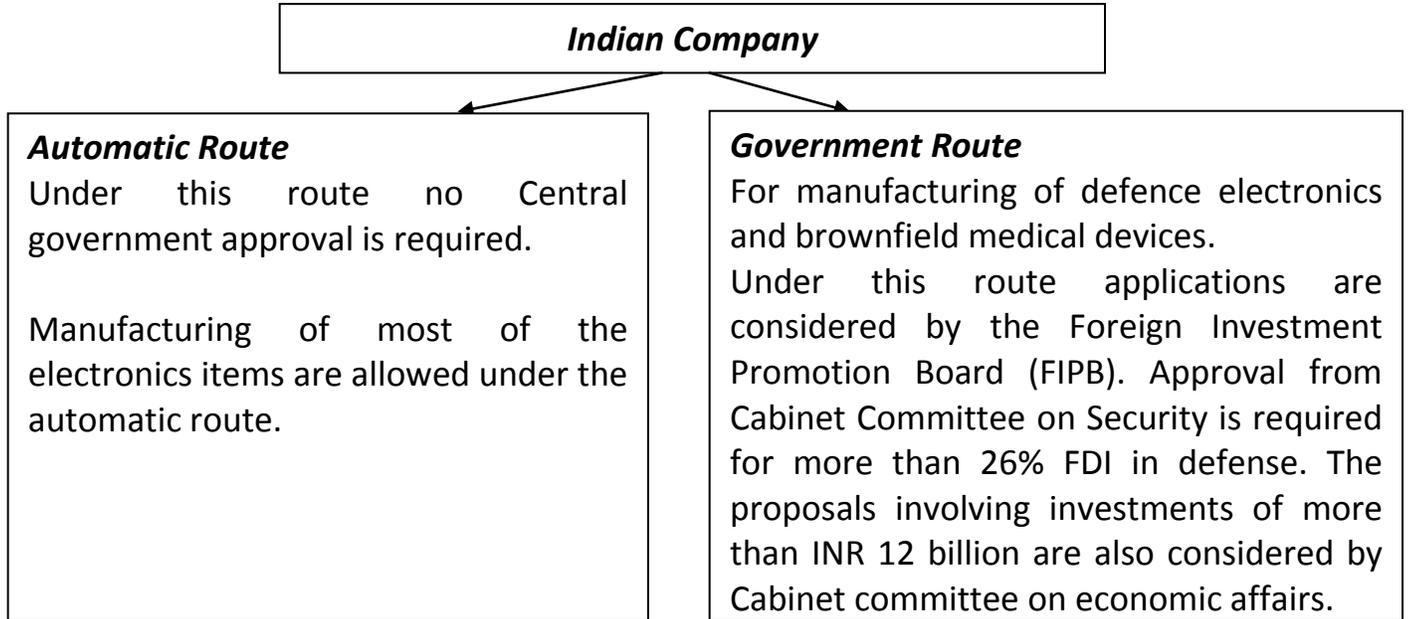


**Q.6 Who all can invest in India, i.e. constitution and nature of investing entity?**

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.7 How does government allow foreign investment in ESDM sector?

Foreign direct investment in an Indian company is considered under the two routes:



- ✓ The Indian company having received FDI either under the **automatic route** or the **government route** is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank of India. The details can be seen from Q.6 of Section I of the following link-
  - (<http://www.rbi.org.in/scripts/FAQView.aspx?Id=26>)
- ✓ Citizens/entities from Pakistan and Bangladesh can invest in an Indian company only through the government route. In addition, an entity/citizen from Pakistan cannot invest in defence, space, atomic energy and sectors prohibited for foreign investments.

Foreign direct investment in a liaison/branch/project office is considered under the routes:

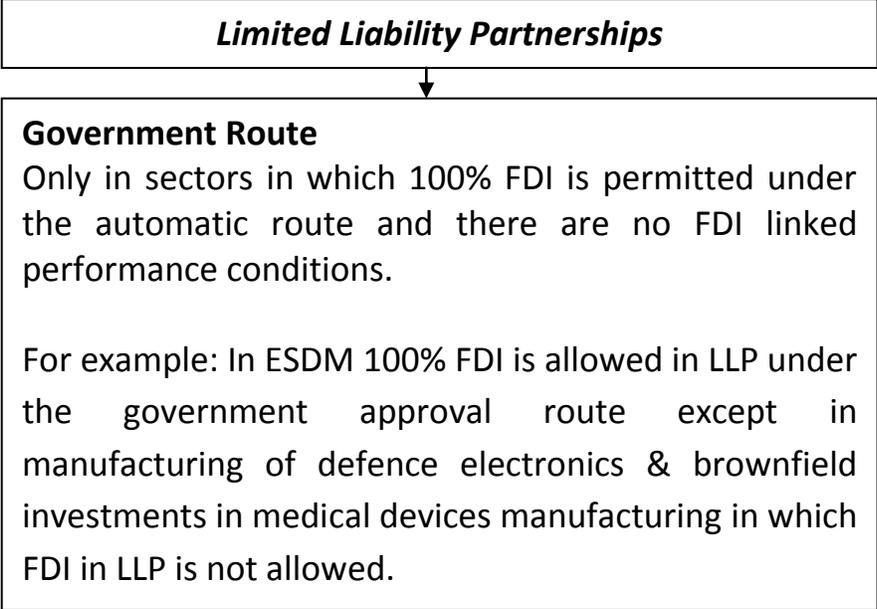
**Foreign Entity: Liaison/Branch/Project Office**

<p><b>Reserve Bank of India Route (RBI Route)</b> Where principal business of the foreign entity falls under sectors where 100 % (FDI) is permissible under the automatic route.</p>	<p><b>Government Route</b> Where principal business of foreign entity falls under the sectors where 100% FDI is not allowed under the automatic route or applications from non-Profit organizations/government bodies departments &amp; certain specified countries etc.</p>	<p><b>General Permission (Automatic Route)</b> General permission has been provided to project and branch offices satisfying certain conditions.</p>
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- ✓ Citizens/Entities of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong & Macau can establish a branch or a liaison office or a project office or any other place of business with the approval of the Reserve Bank of India which takes a decision on the application in consultation with the Government of India.
- ✓ General permission (automatic route) has been provided to project/branch office which satisfies certain conditions and is not from the countries mentioned above or is not under the government route. The details can be seen from point c.2 and g.1 of the following link-
  - ([http://www.rbi.org.in/scripts/BS\\_CircularIndexDisplay.aspx?Id=7312](http://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=7312))

**Other Forms:**

**Limited Liability Partnerships**



**Government Route**

Only in sectors in which 100% FDI is permitted under the automatic route and there are no FDI linked performance conditions.

For example: In ESDM 100% FDI is allowed in LLP under the government approval route except in manufacturing of defence electronics & brownfield investments in medical devices manufacturing in which FDI in LLP is not allowed.

**Note:**

***For all forms of structure: The investor needs to comply with other relevant sectoral & state laws and regulations and also the provisions of Companies Act.***

## Section II: Queries relating to setting up

We give below rules and regulations relating to setting up of:

1. Company
2. Extension of foreign entity or foreign company (Liaison/Branch/Project office)
3. Limited Liability Partnership

### 1. Information on starting a company in India

**Q-8 What are the rules and regulations for setting up a company in India?**

A foreigner can invest and start its operations in India by incorporating a company under the provisions of Companies Act, 2013. It is treated at par with a domestic company and all rules and regulations applicable to an Indian company equally apply to such companies.

Another option is to enter into a joint venture with an Indian by forming a company. The management and running of the JV is influenced by the terms stated in the shareholders agreement.

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

**Public limited company:** A public company is defined as one that is not a private company. A subsidiary of Indian public company is also treated as a public company. A public company is required to have a minimum paid-up share capital of INR 500,000 with minimum of 7 shareholders and 3 directors.

**Private limited company:**

The key features of a private limited company in India are as follows:

- It requires a minimum of two shareholders and two directors (both of them can be foreigners).
- It can be formed with a minimum paid up share capital of INR 100,000. It can raise loans from banks, financial institutions, etc.
- The number of shareholders cannot exceed 200. It cannot invite the public to subscribe for any securities of the company and which by articles restricts the right to transfer its shares.

- It can raise debt in foreign currency in the form of external commercial borrowings.

*Important change as per new companies Act, 2013*

- *Every company in India must have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.*

**Process for setting up a private limited company in India by foreigners:** The brief 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	a. Obtaining the proof of identity and proof of address from the proposed directors ( <b><u>notarized and apostiled in case of foreign directors</u></b> ) 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). c. 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 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 <sup>th</sup> 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

		<p>up share capital of the company is not less than INR 1,00,000.</p> <p>b. Approvals from regulators as required.</p> <p>c. Specimen signatures (attested and verified).</p> <p>d. The company has filled with the registrar a verification of its registered office.</p> <p>e. The above needs to be verified by professional.</p> <p>Note: Time limit for above activity is 182 days from date of incorporation.</p>
V	Post incorporation formalities	<p>a. Obtaining permanent account number (PAN), opening the bank accounts, tax deduction account number (TAN) for the company.</p> <p>b. Filing with Reserve Bank of India for the subscriber (initial) capital.</p>

- ✓ The forms and other details can be seen from the following link- ([http://www.mca.gov.in/MinistryV2/Company\\_Forms\\_NCA.html](http://www.mca.gov.in/MinistryV2/Company_Forms_NCA.html)). Most of the activities can be done online.
- ✓ For foreign parties: The documents like proof of identity, signatures on memorandum & article, etc needs to be notarized and consularised/apostoled.
- ✓ The company can be formed by a foreign party on visit to India provided they are on business visa. (no such requirements in case of persons of Indian origin or overseas citizens of India).
- ✓ The details can be seen from Chapter II of the Act- (<http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>) & the Rules & forms from the following link- ([http://www.mca.gov.in/Ministry/pdf/NCARules\\_Chapter2.pdf](http://www.mca.gov.in/Ministry/pdf/NCARules_Chapter2.pdf))
- ✓ It is preferable to engage the services of a professional agency in carrying out above activities.
- ✓ 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- ([http://www.hcch.net/index\\_en.php?act=text.display&tid=37](http://www.hcch.net/index_en.php?act=text.display&tid=37))

**Alternatively the foreign investor can also acquire shares in existing company:**

Subject to FDI sectoral policy (relating to sectoral caps and entry routes), applicable laws and other conditionality's including security conditions, non-resident investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders.

- ✓ The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.
- ✓ The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category-I bank.
- ✓ Prior permission of RBI in certain cases for transfer of capital instruments: (i) Transfer is at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time and the transaction does not fall under the exception given in para 3.4.5.2. of FDI policy that can be seen from the Page No.22 & 23 of the following link-[http://dipp.nic.in/English/Policies/FDI Circular 01 2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_01_2014.pdf)), (ii) Transfer of capital instruments by the non-resident acquirer involving deferment of payment of the amount of consideration, (iii) Transfer of any capital instrument, by way of gift by a person resident in India to a person resident outside India.
- ✓ Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to the conditions and reporting requirements.
- ✓ General permission is also available for issue of shares/preference shares against lump sum technical know-how fee, royalty, subject to

entry route, sectoral cap and pricing guidelines (as per the provision of para 3.4.2 above) and compliance with applicable tax laws.

- ✓ Issue of equity shares under the FDI policy is allowed under the Government route for the following: (i) import of capital goods/ machinery/ equipment (excluding second-hand machinery), subject to compliance with the conditions & (ii) pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to compliance with the conditions

The details on forms, conditions and guidelines can be seen from the Page No.20 to 29 of the following link-

([http://dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_01_2014.pdf))

#### **Q.9 What are the instruments allowed for receiving FDI?**

**The instruments for receiving FDI include:** Investments made in equity shares, fully and mandatorily convertible preference shares and fully and mandatorily convertible debentures with the pricing being decided upfront as a figure or based on the formula that is decided upfront. Issue of warrants, partly paid shares etc require prior approval of FIPB.

- ✓ Issue of non-convertible, optionally convertible or partially convertible preference shares/debentures needs to comply with the external commercial borrowing (ECB) guidelines of the RBI.
- ✓ The inward remittances received by the Indian company vide issuance of Depository Receipts and Foreign Currency Convertible Bonds are treated as FDI and counted towards FDI.

#### **Q.10 What are the rules relating to pricing of issue of shares?**

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

- ✓ The price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company is listed on any recognized stock exchange in India;
- ✓ 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

- ✓ 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.20 of the following link-([http://dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_01_2014.pdf))

#### **Q.11 How can a foreign investor transfer funds into an Indian company?**

**The modes of transfer allowed are:** (i) inward remittance through normal banking channels. (ii) debit to NRE/FCNR account of a person concerned and maintained with an Authorized Dealer category-I bank-(AD category-1 bank) (<http://rbidocs.rbi.org.in/rdocs/FEMAMASTER/PDFs/1061.pdf>) (iii) conversion of royalty/lump sum/technical knowhow fee due for payment, or conversion of ECB, shall be treated as consideration for issue of shares (iv) conversion of import payables/pre incorporation expenses/share swap can be treated as consideration for issue of shares with the approval of FIPB (v) 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.

#### **Q.12 What are the reporting requirements of the Reserve Bank of India?**

**Reporting requirements to the RBI:** 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 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 in the prescribed form. The RBI will issue a registration number to the company which is to be mentioned for future correspondence with the RBI, while repatriating funds, etc.

- ✓ 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 NRE/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.

- ✓ Apart from the company needs to comply with reporting requirements of Registrars of companies like filling form 2 etc.
- ✓ Reporting of transfer of shares between residents and non-residents and vice-versa is to be done in Form FC-TRS within 60 days.
- ✓ Details of issue of shares against conversion of ECB have to be reported to the Regional Office concerned of the RBI
- ✓ The Indian company issuing ADRs / 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.
- ✓ The details and forms can be seen from the Page No.83 to 118 of the following link-  
([http://dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_01_2014.pdf))

**Q.13 Are investments and profits earned in India repatriable?**

All foreign investments are freely repatriable (net of applicable taxes) except in cases where: i) the foreign investment is in a sector like defence wherein the foreign investment is subject to a lock-in period (3 years); Further, dividends (net of applicable taxes) declared on foreign investments can be remitted freely through an authorized dealer bank. The details can be seen from the Page No.77-82 of the following link-

([http://dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_01_2014.pdf))

**Q.14 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; he 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/MCA21/CloseCompany.html>

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

**Q.15 What are the rules and regulations for the establishment of a Branch office or other place of business in India?**

As can be seen from Q.7 the LO/BO/PO can be opened under 3 routes (refer Question 7 of Section I). In case of “RBI route” and “Government route”, the application needs to be submitted to the RBI

**The process of opening a LO/BO/PO is as follows:** Foreign companies/entities desirous of setting up of Liaison office/Branch office (LO/BO) are required to submit their application in Form FNC along with the documents mentioned therein to Foreign Investment Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai, through an authorised dealer bank.

For sanctioning of LO/BO, the RBI also considers the track record and net worth of the foreign entities. The details can be seen from page no.2 and 3 of the following link-

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/07LO280313FL.pdf>

**Project Office:** The RBI 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 and (i) the project is funded directly by inward remittance from abroad; or (ii) the project is funded by a bilateral or multilateral International Financing Agency; or (iii) the project has been cleared by an appropriate authority; or (iv) 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.

The RBI has also provided the general permission 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.

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

**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>) & Rules- ([http://www.mca.gov.in/Ministry/pdf/NCARules\\_Chapter22.pdf](http://www.mca.gov.in/Ministry/pdf/NCARules_Chapter22.pdf))

**The other rules and regulations relating to LO/BO/PO can be seen from the RBI master circular-** ([http://www.rbi.org.in/scripts/BS\\_CircularIndexDisplay.aspx?Id=7312](http://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=7312)).

**Q.16 What are the permissible activities which LO/BO can undertake?**

**LO/BO can undertake only the activities specified below:**

**Liaison Office:** A LO (also known as Representative Office) can undertake only liaison activities, i.e., it can act as a channel of communication between the head office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the head office outside India. Permission to set-up a LO in India is initially granted for a period of 3 years and this is likely to be extended from time to time. Upon expiry of the validity period, these entities have to either close down or be converted into a Joint Venture (JV) / Wholly Owned Subsidiary (WOS), in conformity with the extant Foreign Direct Investment policy.

**Specified Activities:** (i) Representing in India the parent company/group companies; (ii) Promoting export/import from/to India; (iii) Promoting

technical/financial collaborations between parent/group companies and companies in India; (iv) Acting as a communication channel between the parent company and Indian companies.

**Branch Office:** The BO should be engaged in the activity in which the parent company is engaged. Retail trading activities of any nature are not allowed for a BO in India. A BO is, also not allowed to carry out manufacturing (except in an SEZ) or processing activities in India, directly or indirectly. Profits earned by BO are freely remittable from India, subject to payment of applicable taxes

**Specified Activities:** (i) Export/import of goods; (ii) Rendering professional or consultancy services; (iii) Carrying out research work, in areas in which the parent company is engaged; (iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company; (v) Representing the parent company in India and acting as buying/selling agent in India; (vi) Rendering services in information technology and development of software in India; (vii) Rendering technical support to the products supplied by parent/group companies; (viii) Foreign airline/shipping company.

**Q.17 What are the repatriation rules, reporting requirements, etc., in case of LO/BO/PO?**

The details of reporting and repatriation rules for LO/BO/PO are available in the RBI master circular which can be seen from the following link- ([http://www.rbi.org.in/scripts/BS\\_CircularIndexDisplay.aspx?Id=7312](http://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=7312)) As per the new circular, the entity establishing LO/BO/PO is also required to report to the Director General of Police of the concerned state government. The details can be seen from the following link- (<http://rbi.org.in/Scripts/NotificationUser.aspx?Id=7589&Mode=0>)

**Q.18 Can LO/BO/PO be closed down?**

The winding up procedure for LO/BO/PO are laid down in the RBI guidelines. For details visit the following link- ([http://www.rbi.org.in/scripts/BS\\_CircularIndexDisplay.aspx?Id=7312](http://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=7312)) Apart from above provisions of Companies Act, 2013 would also apply on closure.

### 3.Information on other forms of business

#### Q.19 What is a Limited Liability Partnership?

**Limited Liability Partnerships:** The LLP format allows corporate business entity along with the benefits of limited liability. At the same time, it allows the members the flexibility of organizing their internal structure as a partnership based on mutually-agreed terms. Like a private limited company, LLP is a body corporate having a distinct legal entity. The LLPs are governed by the LLP Act 2008. However, the RBI has still not notified the LLP structure in FEMA.

FDI will be allowed through the government approval route, only in LLPs operating in sectors/activities where 100% FDI is allowed through the automatic route and sectors are not subject to additional conditions.

**The other details can be seen from page numbers 15 and 16 of the following link-[http://dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_01_2014.pdf)**

The LLP act and rules can be seen from the following link-  
<http://www.mca.gov.in/LLP/>).

The details of registering a New LLP and reporting requirements can be seen from the following links-

<http://www.mca.gov.in/LLP/RegisterNewComp.html>),  
<http://www.mca.gov.in/LLP/CARFiling.html>)

#### Q.20 Is it possible to dissolve the LLP in India?

- ✓ The details of LLP closure can be seen from the following link-  
<http://www.mca.gov.in/LLP/CloseCompany.html> ).
- ✓ LLP's are subject to LLP Act & Rules the same can be seen from the followinglinks-  
[http://www.mca.gov.in/Ministry/actsbills/pdf/LLP\\_Act\\_2008\\_15jan2009.pdf](http://www.mca.gov.in/Ministry/actsbills/pdf/LLP_Act_2008_15jan2009.pdf)) & <http://www.mca.gov.in/Ministry/pdf/LLPRulesasnotified.pdf>)
- ✓ Recently RBI has also notified provision for foreign investment in LLP-  
<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=8844&Mode=0>)
- ✓ LLP's are not required to have board meetings, AGM etc.

## Section III: Queries relating to business compliances

**Q.21 What are other main registrations required by a head office of a company or BO/PO/LO in India?**

The following registrations need to be obtained:

- 1) Permanent Account Number (PAN)
- 2) Tax Deduction Account Number (TAN)
- 3) Service Tax
- 4) Value Added Tax
- 5) Excise Registration
- 6) Foreign Regional Registration Officer (if required)
- 7) Import Export Code (if required)
- 8) Shops and Commercial Establishment Act (if required)

**Q.22 What are the other auditing and annual reporting requirements to be followed in case of companies & BO/PO/LO operating in India?**

We list the most essential compliances below:

**Accounting:** All businesses in India need to maintain accounting records, which meet the generally-accepted accounting principles. In India, a business entity has to mandatory close books of accounts on a financial year basis from April 1 to March 31 of next year. However holding or subsidiary incorporated outside India can follow different year after taking the approval from tribunal.

**Employment Payroll:** Business is needed to draft appropriate employment contracts keeping in view the income tax laws and employment regulations.

**Statutory Audit:** The Companies Act mandates that businesses have their account audited.

**Tax Audit:** LO is not required to do a tax audit. Companies are also required to undergo a VAT audit.

Annual return on Foreign Liabilities and Assets-Refer to Page Nos. 100 to 107 of the following link-

([http://dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_01_2014.pdf))

**Every company is required to file the following documents with the ROC:**

- 1) Annual Return
- 2) Compliance Certificate
- 3) Other documents as per requirements of new companies Act, 2013

**Other compliances:**

[http://www.mca.gov.in/MinistryV2/Download\\_eForm\\_choose.html](http://www.mca.gov.in/MinistryV2/Download_eForm_choose.html)

- ✓ Board meeting: Every company shall hold the first meeting of the board of directors within 30 days of the date of its incorporation and thereafter hold a minimum number of 4 meetings of its board of directors every year in such manner that no more than 120 days shall intervene between two consecutive meetings of the board.
- ✓ Annual general meeting: Within 180 days from the date of closing of financial year. The first AGM can be held within 9 months of from the date of closing of the financial year and not more than 15 months shall elapse between the date of one AGM meeting of the company and that of the next.
- ✓ Annual return with ROC: Within 60 days of holding the AGM
- ✓ Corporate tax return: September 30 and November 30;
- ✓ Tax audit report: September 30 and November 30;
- ✓ Transfer pricing report: November 30;
- ✓ TDS returns: Quarterly;
- ✓ Other reports, submissions, payments like excise, service tax returns etc: monthly
- ✓ The filling requirements under the Companies Act can be seen from the following link-<http://www.mca.gov.in/MinistryV2/AnnualFiling.html> )
- ✓ The reporting requirements of BO/PO/LO can be seen from the following link-  
[http://www.rbi.org.in/scripts/BS\\_CircularIndexDisplay.aspx?Id=7312](http://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=7312)  
& [http://www.mca.gov.in/Ministry/pdf/NCARules\\_Chapter22.pdf](http://www.mca.gov.in/Ministry/pdf/NCARules_Chapter22.pdf)
- ✓ The reporting, auditing requirements of Limited Liability Partnerships can be seen from the following FAQ available on the following link-  
[http://www.mca.gov.in/LLP/faq\\_llp\\_basic\\_concept.html](http://www.mca.gov.in/LLP/faq_llp_basic_concept.html)

## Comparative summary of entry operations in India:

S. No.	Particulars	Liaison Office	Project Office/Branch Office	Company	Limited Liability Partnership
1	Legal status	Represents the parent company	Extension of parent company	Independent legal status	Independent legal status
2	Setting up requirements	Prior approval of RBI required	Prior approval of RBI required for BO (other than undertaking manufacturing and service activities in SEZ's), Prior approval not required to set up PO if certain conditions are fulfilled	If activities/sector fall under the ambit of the automatic route, no prior approval required but only post-facto filings to be undertaken with the RBI. In other cases, GoI/FIPB approval required and thereafter post-facto filings required to be undertaken with RBI	Foreign investments allowed in sectors, which are under 100% automatic route with prior GoI/FIPB approval. The sectors should also not be subject to performance linked conditions
3	Permitted activities	Only liaison/representation/communication role permitted. No commercial or business activities allowed to be undertaken	Activities listed/permitted by RBI allowed to be undertaken, manufacturing and processing activities (except in SEZ units) not permitted for BO. PO is permitted to undertake only specific activities in relation and incidental to the execution of the project	Any activity specified in the memorandum of association of the company. Wide range of activities permitted, subject to FDI guidelines	LLP should be engaged in sectors/activities for which 100% FDI is allowed without any approval. LLP's with foreign investment will not be eligible to make any downstream investments
4	Funding of local operations	Local expenses to be met out of inward remittances received from abroad from the head office through normal banking channels	Local expenses to be met through inward remittances from head office or from earnings from permitted operations	Funding to be through equity or other forms of permitted capital infusion or borrowings (local as well as overseas as per prescribed norms) or internal accruals.	Contribution in the capital of the LLP should be through inward remittance or by debit to NRE/FCNR account of the designated partner. LLP's are not eligible to raise ECB
5	Limitation of liability	Parent company liable for acts of LO	Parent company liable for acts of BO/PO	Liability limited to the extent of equity participation in the Indian company	Liability of the partners is limited to their agreed contribution to the LLP except in case of fraud, wrongful act, etc
6	Compliance requirements under companies act	Registration and periodical filing of accounts/other documents	Registration and periodical filing of accounts/other documents	Significantly high statutory compliance and filing requirements	Registration with ROC required. Filing annual accounts and submitting annual statement on solvency

S. No.	Particulars	Liaison Office	Project Office/Branch Office	Company	Limited Liability Partnership
7	Compliance requirements under foreign exchange management regulations	Required to file an annual activity certificate (from auditors in India with RBI). In case of multiple LO's the nodal office could file a combined annual activity certificate with respect to all its offices in India	Required to file an annual activity certificate (from auditors in India with RBI) In case of multiple BO's the nodal office could file a combined annual activity certificate in respect of its offices in India	Required to file periodic and annual filings relating to foreign liabilities and assets, receipt of capital and issue of shares to foreign investors	No filing requirements prescribed as of now
8	Compliance requirements under the Income tax act	Since LO is not permitted to undertake any business activity in India, it is typically not subject to tax in India. However, LO is required to undertake annual compliance by filing annual information in the prescribed form	Liable to be taxed on income earned at the rate applicable to foreign corporations. 40% plus surcharge and education cess. In case above tax is not applicable than MAT is considered to be applicable to BO/PO at rate of 18.5% plus surcharge and education cess of its book profits. No further tax on repatriation of profits, which are permissible in both cases. Indian transfer pricing regulations are applicable	Liable to be taxed on global income at 30% plus surcharge and education cess on a net income basis. In case above tax is not applicable than Subsidiary company liable to MAT of its book profits. Dividend declared freely remittable but subject to distribution tax of 15% plus surcharge and education cess on dividends, pursuant to which dividend is tax free for all shareholders. Distribution tax to be paid only on amount of dividend.	Liable to be taxed on global income at 30% plus education cess on net income basis. In case above tax is not applicable then LLP liable to MAT at the rate of 18.5% plus cess of its book profits no DDT levied on profit distribution and Indian transfer pricing regulations are applicable
9	Permanent establishment (PE)	LO's generally do not constitute PE under DTAA due to limited scope of activities in India. However, if the activities of the LO go beyond the realm of preparatory or auxiliary character as provided for in the DTAA, a PE/taxable presence is likely to be constituted	Generally constituting a PE and a taxable presence under DTAA and domestic IT provisions	An independent taxable entity and not a PE of the foreign company	An independent taxable entity; however, whether interest in LLP results in PE for a foreign partner, is still an ambiguous position under LLP

S. No.	Particulars	Liaison Office	Project Office/Branch Office	Company	Limited Liability Partnership
10	Repatriation of funds on ongoing basis	Typically the LO is not permitted to undertake any business activity in India; as such, there may not be any repatriations from the LO. However, in case of closure of the LO, any surplus money may be repatriated with RBI approval	Approval not required for remittance of post-tax profits to the HO outside India, subject to filing of requisite documents to the RBI	Subsidiary does not require any approval for remittance of post-tax profits; dividends declared will be subject of distribution tax	LLP does not require any approval for remittance of post tax profits
11	Exit mechanism	Prior approval of RBI, ROC and income tax authorities	Prior approval of RBI, ROC and income tax authorities	Exit can be through sale of shares or winding up or liquidation	Foreign partner permitted to transfer its stake in LLP and can also dissolve the LLP

**Office space:** Business entities are free to buy or lease the office space/land for business purposes. In case of BO/PO/LO from specified countries require prior approval of the RBI.

## Section IV: Queries relating to starting a manufacturing unit

**Q.23 What are the different steps for starting a manufacturing unit?**

**Setting up a company or any other form of business:** The business structure can be a company, a branch office in an SEZ, or the LLP. The details about each form are given in Section I and Section II.

**Project Approval:** Preparing the detailed project report and getting an approval from the concerned state government department.

### ***Approvals/Registration/Filing information for setting up a project***

<b>Procedure</b>	<b>Applicability</b>	<b>Authority</b>
SSI Registration	Small Scale Units	District Industries Centre (DIC) of the district where the unit is to be located
Industrial Entrepreneur's Memorandum (IEM)	The small and medium enterprises as classified are required to file EM Part-I for starting an industrial project. On completion of the project, the entrepreneur is required to file Entrepreneurs Memorandum (EM) Part-II.	District Industries Centre/ Industries Commissionerate
Filing Industrial Entrepreneur's Memorandum (IEM) (IEM)	Industries exceeding Investment of INR 5 Cr (which are exempt from the provisions of industrial licensing)	Secretariat for Industrial Assistance, Ministry of Commerce and Industry, Government of India
Letter of Intent (LOI)	Industries where licensing is required	Secretariat for Industrial Assistance, Ministry of Commerce and Industry, Government of India, New Delhi

Under the Micro, Small and Medium Enterprises Development Act 2006 by Government of India, Micro, Small and Medium Enterprises are classified as under:

<b>Manufacturing Sector</b>	
<b>Enterprises</b>	<b>Investment in plant &amp; machinery</b>
Micro Enterprises	Does not exceed INR twenty five lakh
Small Enterprises	More than INR twenty five lakh rupees but does not exceed INR five crore
Medium Enterprises	More than INR five crore but does not exceed INR ten crore
<b>Service Sector</b>	
<b>Enterprises</b>	<b>Investment in equipments</b>
Micro Enterprises	Does not exceed INR ten lakh
Small Enterprises	More than INR ten lakh but does not exceed INR two crore
Medium Enterprises	More than INR two crore but does not exceed INR five crore

**Industrial License (If required):** No industrial license is required for setting up electronics manufacturing unit. However if the company is engaged in defence electronics items manufacturing than there is requirement of an industrial license-The details where industrial licensing is required can be seen from the following links-

(<https://www.ebiz.gov.in/industriallicense>),  
 ([https://www.ebiz.gov.in/EbizWeb/page/ebiz/portal/faqdetails&ServiceCode=Central\\_DIPP\\_0013](https://www.ebiz.gov.in/EbizWeb/page/ebiz/portal/faqdetails&ServiceCode=Central_DIPP_0013))

**Factory Land/Office Space:** While setting up a factory, acquiring an industrial land with a clear title is the key step. State governments have empowered industrial development corporations (IDC's) which develop land for industrial use. These IDC's require that an application may be submitted specifying the desired area size along with the proposed business plan. Applications are reviewed and merits considered before land is allotted.

The land for factory can be acquired in various areas like

- ✓ Special economic zones
- ✓ Electronic manufacturing clusters
- ✓ National investment & manufacturing zones

- ✓ Export oriented zones/Software technology parks/Electronic hardware technology parks
- ✓ Industrial zones
- ✓ Industrial areas &
- ✓ Private land
- ❖ Invest India the national level investment promotion & facilitation agency provides facilitation services for obtaining information on land, arranging location visits for investors and connecting them to state IDC's/SEZ/NIMZ's etc. (<http://www.investindia.gov.in/>)
- ❖ The list of various states & UT's can be seen from the following link- (<http://www.ibef.org/economy/directory/indian-states-directories>)
- ❖ The list of various state investment promotion agencies can be seen from the following link- (<http://www.ibef.org/economy/directory/state-investment-promotion-agencies>)
- ❖ The general information on various state governments can be seen from the presentations available on each state government on the following link-(<http://www.ibef.org/states.aspx>). In this download the state report.

**Factory Construction:** Once the land is indentified and before commencing construction, the company has to submit a factory plan which will normally require an approval by the concerned industrial corporation. Each state industrial corporation has its own building bye-laws. In addition, there are other clearances or approvals. Once construction is complete, an industrial corporation normally requires the company to obtain the completion certificate.

**Other state/central level regulations:** Yes, there will be additional state level regulations/registrations that will be required, the details of which can be seen from Q.24 below:

**Human Resource Hiring and Management:** It includes complying with various labour laws. The details of which can be obtained from the labour department of the state government. Some of the important laws are Industrials disputes Act, 1947, Trade unions Act, Payment of bonus Act, 1965, Payment of gratuity

act, 1972, Minimum wages Act, 1948, Payment of wages Act, 1936, Factories Act, 1948, etc.,.

### Key Labor Requirements:

1	Maximum hours worked by employees	48 hours per week
2	Number of Indian employees which trigger employer obligation to provide employees state insurance	10
3	Number of Indian employees which triggers employer obligation under Provident Fund Scheme, Bonus Act	20
4	Number of years of continuous service which makes an employee eligible for gratuity	5 years
5	Minimum bonus to be paid to an employee drawing a basic wage of INR 10000 or less	8.33%
6	Prohibited age of employing young children in factories	14 years
7	In case of retrenchment due to/or closure, number of employees which trigger employer obligation to seek prior government approval	100
8	On retrenchment/lay off/closure	Compensation is payable to employee

\* **Link to Ministry of labour-**(<http://labour.nic.in/content/>).

### Q.24 Are there any other state/Central level regulations?

Yes, there are many other state-level regulations like getting approvals from the fire department, the pollution control board, and environment ministry in some cases. The rules and regulations are different in each state.

The Government of India is soon going to launch an initiative for all business interactions with the government under one single window known as “eBiz” (<https://www.ebiz.gov.in/homebook>). License & permit wizard of this eBiz project gives an indication of the license and permits required for setting up the project. The details can be seen from following link- (<https://www.ebiz.gov.in/servicesbook>). The link gives only the indicative list of approvals required for 5 areas.

***“Single window” clearance facilities are available in various states to simplify the approval process for new ventures. For example in National investment and manufacturing zones, Special purpose vehicles (SPV) will provide the***

*facilitation services of getting some of the approvals. Details can be seen from the following link-*

[http://dipp.nic.in/English/policies/National\\_Manufacturing\\_Policy\\_25October2011.pdf](http://dipp.nic.in/English/policies/National_Manufacturing_Policy_25October2011.pdf)

We provide below, some of the clearances that may be required.

S.No.	Details	Registration/Approving Authority
1	Building Plan	State Land Authority
2	Factory Drawing, Application for Factory License	Chief Inspector of Factories
3	Contractual Labor (if employed)	Registration with Labor Commissioner under Contract Labor Act, 1970
4	Consent to Establish, consent to operate, pollution control certificate, generator installation	State Pollution Control Board
5	Importer Exporter Code Number	DGFT
6	Factory employing more than 20 Employees	Registration of Provident Fund
7	Factory employing more than 10 Employees	Registration with ESI
8	Central Excise Registration	Central Board of Excise & Customs
9	LPG/Petrol Installed In Factory	Petroleum & Explosive Safety Organization
10	Power & Water Connection	State municipal authority
11	Factory Occupation Certificate	Inspector of factories of respective states

- **The above is an indicative list only.**

**Q.25 What are the financing or funding options available to carry a business in India?**

**Various forms of sources are available like:**

- ✓ Capital Markets: Listing of shares by going public (Private limited company will have to convert into public company) The conditions relating to listing can be seen from the following link- [http://www.nseindia.com/getting\\_listed/content/eligibility\\_criteria.htm](http://www.nseindia.com/getting_listed/content/eligibility_criteria.htm)
- ✓ Loans from special financial institutions like IDBI (<http://www.idbi.com/index.asp>) EXIM (<http://www.eximin.net/>) &

SIDBI (<http://www.sidbi.in/>)

- ✓ Non-banking finance companies. The list of NBFC can be seen from the following link-([http://www.rbi.org.in/scripts/BS\\_NBFCList.aspx](http://www.rbi.org.in/scripts/BS_NBFCList.aspx))
- ✓ External commercial borrowing (foreign sources). The rules relating to ECB's and Trade credit can be seen from the following link-(<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/12MCECB290613.pdf>)
- ✓ Retained profits or reinvestment of profits
- ✓ Bank credit in the form of loans, cash credit, overdraft and discounting of bills. The list of banks can be seen from the financial intermediaries section of the following link(<http://www.rbi.org.in/scripts/sitemap.aspx>)  
The current base lending rates of banks are b/w 9.80-10.5%
- ✓ Customer advance, accounts receivable financing, Installment credit & trade credit

## Section V: Type of manufacturing locations and Electronic Manufacturing Clusters

### Q.26 What are Special Economic Zones and Free Trade Warehousing Zones?

- ✓ Special Economic Zones (SEZ)/Free Trading & 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. The details on SEZ/FTWZ like rules, areas, act, etc can be seen from the following link-(<http://www.sezindia.nic.in/index.asp>)
- ✓ 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.
- ✓ The details of operational SEZ and FTWZ can be seen from the following link-(<http://www.sezindia.nic.in/about-osi.asp>)
- ✓ *A branch office can undertake manufacturing activities in an SEZ unit.*

### **Various kinds of incentives are available for a unit set-up in SEZ is 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. **It should, however, be noted that a minimum alternate tax @18.5% and DDT are applicable in case of units operating in SEZs and other export-oriented parks.**

**Q.27 What are Export Oriented Units (EOU's), Export Technology Hardware Parks (ETHP) & Software Technology Parks (STP's)?**

- ✓ Units can be set up as an Export Oriented Unit or in Export Technology Hardware Park or Software Technology Park. Units undertaking exports of their entire production of goods and services, except permissible sales in DTA, may be set up as an EOU/EHTP or STP
- ✓ Income tax holiday of 10 years for the competing policies like STPI/EHTP/BTP etc are already over. (Ended on 31 March 2011).
- ✓ Rest of the incentives is similar to those available for SEZ units given in Q.26 above.

**Q.28 What is national manufacturing policy and national investment and manufacturing zones (NIMZs)?**

The National manufacturing policy, approved on October 25, 2011, is the first of its kind for the manufacturing sector as it tries to address some critical constraints for Indian manufacturing sector in the area of regulations, infrastructure, skill development, technology, availability of finance, exit mechanism etc. The policy envisages the creation of National Investment and Manufacturing Zones (NIMZs). NIMZs will be large areas (minimum 5000 hectares) of developed land, with requisite eco-system for promoting world class manufacturing activity. NIMZ will be a self-governing and autonomous body.

There will not be any fiscal incentives like available for SEZs but some of the incentives include:

- ✓ Relief from capital gains tax on sale of plant and machinery of a unit located in NIMZ will be granted in case of re-investment of sale consideration within a period of 3 years for purchase of new plant and machinery in any other unit located in the same NIMZ or another NIMZ
- ✓ The transfer of assets belonging to a firm which has been declared sick will be facilitated by the SPV of the concerned NIMZ

- ✓ The policy provides for specific incentives for technology development and there is a special focus on green/clean technology.
- ✓ Special focus on skills development
- ✓ Special benefits/measures for SMEs in national manufacturing policy.
- ✓ NIMZs notified:

Ahmedabad-Dholera investment Region, Gujarat	Shendra-Bidkin Industrial Park city near Aurangabad, Maharashtra
Manesar-Bawal investment Region, Haryana	Khushkhera-Bhiwadi-Neemrana Investment Region, Rajasthan
Pithampur-Dhar-Mhow Investment Region, Madhya Pradesh	Dadri-Noida-Ghaziabad Investment Region, Uttar Pradesh
Dighi-Port Industrial Area, Maharashtra	Jodhpur-Pali-Marwar region, Rajasthan
Kuhi and umred taluka of Nagpur district, Maharashtra	Tumkur, Karnataka
Chittoor, Andhra Pradesh	Medak, Andhra Pradesh
Prakasam, Andhra Pradesh	

The details can be seen from the following link-

[http://dipp.nic.in/English/Policies/National\\_Manufacturing\\_Policy\\_25October2011.pdf](http://dipp.nic.in/English/Policies/National_Manufacturing_Policy_25October2011.pdf)

#### Q.29 What are Electronic Manufacturing Clusters?

#### Electronic Manufacturing Clusters/Information Technology Investment Regions:

- A) Brownfield electronic manufacturing clusters are those existing areas which are notified by DeitY. For a unit to be eligible for Modified Special Incentive Package Scheme (M-SIPS) it should be located within the brownfield EMC. DeitY notifies brownfield EMC considering geographical area, infrastructure availability etc. So it is possible to notify new brownfield EMC if it is already not notified.
- B) The brownfield EMC's & ITIR's already notified can be seen from the following link-<http://deity.gov.in/esdm/itir>& <http://deity.gov.in/esdm>

*The focus is on upgrading infrastructure and providing common facilities for ESDM units.*

C) Greenfield electronic manufacturing clusters are new industrial areas which are being promoted for attracting investments in electronics. The list of zones thus far approved by DeitY can be seen from the following link-([http://deity.gov.in/sites/upload\\_files/dit/files/EMC Appraisal.pdf](http://deity.gov.in/sites/upload_files/dit/files/EMC_Appraisal.pdf))

The list of nodal officer to be contacted for EMC can be seen from the following link-

([http://deity.gov.in/sites/upload\\_files/dit/files/Nodal-officer EMC.pdf](http://deity.gov.in/sites/upload_files/dit/files/Nodal-officer EMC.pdf))

### **Q.30 What is the mode of implementing the scheme of EMCs?**

The scheme is implemented through the special purpose vehicle (SPV) which will carry out the business of developing, operating and maintaining the infrastructure, amenities and other common facilities created in EMCs.

### **Q.31 Who will be the chief promoter?**

Chief promoter for the purpose of the scheme is a legal entity which initiates the proposal for a project in a brownfield or greenfield EMC and takes such steps as are necessary for getting the project approved under the scheme, getting the SPV formed and entrusting the project to an SPV in accordance with the scheme and guidelines. A chief promoter may be an individual, registered company or society, industry association, financial institution, R&D institution, state or local government or their agencies or unit/units within an EMC.

### **Q.32 What are the financial assistance provided for EMC's?**

**Brownfield EMC:** The assistance will be restricted to 75% of project cost subject to ceiling of INR 0.5 Billion. The remaining project cost shall be financed by other stakeholders of the EMC with a minimum industry contribution of 15% of the project cost.

**Greenfield EMC:** The assistance will be restricted to 50% of the project cost subject to ceiling of INR 0.5 Billion for every 100 acres of land. The remaining

project cost shall be financed by other stakeholders of EMC with a minimum industry contribution of 25% of the project cost.

The administrative expenses would be restricted to 3% of the central assistance in the project. Expenses towards preparation of detailed project report would also be considered a part of project cost.

**Q.33 What is the land ownership in EMC?**

The scheme supports any of the following different models of land ownership for an EMC:

- ✓ The land for the EMC & Project is owned by the applicant.
- ✓ The land for the project is owned by the applicant but remaining land is not owned by the applicant. In such cases, it is for the applicant to demonstrate his ability to meet the terms of scheme and guidelines with the involvement of the constituents units in the EMC.

**Q.34 How to get land for Greenfield EMC?**

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

- ✓ Outright purchase or long lease from private parties
- ✓ Sale (outright or conditional), or long lease of land 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.

**Q.35 Does national manufacturing policy applies to EMC?**

Yes, national manufacturing policy shall be applicable to Greenfield EMC which would fall within the NIMZs. A collection of EMCs, geographically outside the proposed NIMZs may be treated as a single virtual NIMZ for governance purposes.

**Q.36 What are the dates for applicability of EMC scheme?**

The scheme will be open for applications for 5 years from the date of notification (November 07, 2012) further period of 5 years shall be available

for disbursement of funds to approved applicants. The applications received under the scheme will be appraised on an ongoing basis.

**Note:**

- ✓ The details of electronic manufacturing cluster scheme can be seen from the following link-  
([http://deity.gov.in/sites/upload\\_files/dit/files/Scan EMC-Notification-Gazette.pdf](http://deity.gov.in/sites/upload_files/dit/files/Scan_EMC-Notification-Gazette.pdf))
- ✓ The detailed guidelines for electronic manufacturing clusters can be seen from the following link-  
([http://deity.gov.in/sites/upload\\_files/dit/files/EMC-Guidlines\\_Final.pdf](http://deity.gov.in/sites/upload_files/dit/files/EMC-Guidlines_Final.pdf))
- ✓ The benefits of SEZ are not applicable to unit operating in EMC unless and until EMC is classified as SEZ.

## **Section VI: Taxation Aspects**

**Q.37 What are various forms of taxation in India?**

### **Indirect taxes**

**Indirect taxes are of the following types:**

- 1) Customs duty: Payable on imports into India
- 2) Excise duty: Payable on manufacturing in India
- 3) Service Tax: Payable on rendering of services
- 4) Central sales tax/value added tax: Tax on value addition at each level of the distribution network. Tax levied interstate is known as Central Sales Tax.
- 5) R&D cess: It is a cess on all payments made by an industrial concern for imported technology.
- 6) Other indirect taxes include: Stamp duty, octroi, property tax etc.

- ✓ **Most of the taxes are cenvatable that is it can be squared off against paid taxes.**

✓ Government of India is actively considering Goods & Services Tax which will subsume several of above indirect taxes.

✓ India is signatory to ITA which provides for ZERO duty rates on import of specified items. The ITA agreement can be seen from the following links-

[http://deity.gov.in/sites/upload\\_files/dit/files/Information%20Technology%20Agreement%20\(1996\)%20\(54%20KB\).pdf](http://deity.gov.in/sites/upload_files/dit/files/Information%20Technology%20Agreement%20(1996)%20(54%20KB).pdf)&

<http://deity.gov.in/esdm/ita>

### Indirect Taxes

S.No.	Type of Tax	Company	BO/LO/PO
7	Excise Duties- Levied on manufacture of goods in India. However, may be recovered by vendors for procurements.	Peak Rate is 12.36%	Peak Rate is 12.36%
8	Service Tax	Peak Rate is 12.36%.	Peak Rate is 12.36%.
9	Import Duties/Customs Duty (India is signatory to ITA-1 which provides for ZERO basic custom duty rate on import of specified items)	<p>The peak rate of basic custom duty is 10% (this rate can vary depending upon the item specification).</p> <p>The above rate is basic rate of duty which is further increased by countervailing duty (12%), additional CVD (4%), and education cess @3% of taxes) etc.</p> <p>General peak effective rate – 28.8%</p>	<p>The peak rate of basic custom duty is 10% (this rate can vary depending upon the item specification).</p> <p>The above rate is basic rate of duty which is further increased by countervailing duty (12%), additional CVD (4%), and education cess @3% of taxes) etc.</p> <p>General peak effective rate – 28.8%</p>

		Imports of specified capital goods is allowed at zero basic custom duty rate  Import of certain input items used in manufacturing of electronic items under ITA-1 are allowed at ZERO basic custom duty rate	Imports of specified capital goods is allowed at zero basic custom duty rate  Import of certain input items used in manufacturing of electronic items under ITA-1 are allowed at ZERO basic custom duty rate
10	Central Sales Tax (Interstate sales)	Rate is 2% or local Value Added Tax rate applicable in the State from where goods are sold within India	Rate is 2% or local Value Added Tax rate applicable in the State from where goods are sold within India

✓ **Taxes at State Government Level:**

S.No.	Type of Tax	Company	BO/LO/PO
1	Value Added Tax	Different Rate of taxes on different goods generally 1%, 5% and 12.5%	Different Rate of taxes on different goods generally 1%, 5% and 12.5%
2	Entry Tax/Octroi (If applicable)	Certain states impose entry tax/octroi in specific goods	Certain states impose entry tax/octroi in specific goods
3	Property Tax	Property tax/real estate tax is payable as per local municipal laws on commercial and residential property owned.	Property tax/real estate tax is payable as per local municipal laws on commercial and residential property owned.
4	Profession Tax	Certain states in India levy a profession tax on employees	Certain states in India levy a profession tax on employees

- ✓ **Most of the indirect taxes are cenvatable that is it available for set-off**
- ✓ **The exact rate of import duty can be calculated from the calculator available at the following link-(<https://www.icegate.gov.in/Webappl/>)**
- ✓ **The basic rate of duty for project imports is 7.5%**
- ✓ **The calculator above may not take exemptions under FTA's/CEPA's**

- ✓ India has FTA's and CEPA's with certain countries. The details can be seen from the following link-  
([http://commerce.nic.in/trade/international\\_ta.asp?id=2&trade=i](http://commerce.nic.in/trade/international_ta.asp?id=2&trade=i))
- ✓ FAQ's on FTA's can be seen from the following link-  
([http://commerce.nic.in/WhatsNew/FAQ\\_on\\_FTA\\_9April2014.pdf](http://commerce.nic.in/WhatsNew/FAQ_on_FTA_9April2014.pdf))
- ✓ Product specific tariff structures-(<http://deity.gov.in/esdm/tariff>)

## Direct taxes

Direct taxes are of following types:

Corporate tax (Taxes on net income), minimum alternate tax (in case company gets exemption on corporate tax), tax on royalty/fee for technical services, dividend distribution tax, withholding tax, withholding tax on interest etc.

Carry forward of losses are allowed for 8 years and companies are allowed to have depreciation and amortization allowances.

**Transfer Pricing:** Any international transaction between two or more associated enterprise must be at arm's length price.

- ✓ India also has advance pricing arrangements option which help in avoiding into entering into any dispute with tax authorities.
- ✓ The FAQ on APA's can be seen from the following link-  
([www.itatonline.org/info/?dl\\_id=1215](http://www.itatonline.org/info/?dl_id=1215))
- ✓ The government of India has notified safe harbor rules in case of transfer pricing the detailed rules can be seen from the following link-  
([http://law.incometaxindia.gov.in/DIT/File\\_opener.aspx?page=NOTF&schT=&csId=19f86a75-b517-4f86-a93c-4fa437032867&NtN=&yr=ALL&sec=&sch=&title=Taxmann%20-%20Direct%20Tax%20Laws](http://law.incometaxindia.gov.in/DIT/File_opener.aspx?page=NOTF&schT=&csId=19f86a75-b517-4f86-a93c-4fa437032867&NtN=&yr=ALL&sec=&sch=&title=Taxmann%20-%20Direct%20Tax%20Laws))

**Minimum Alternate Tax:** (18.5%+Surcharge +Education Cess)- Indian tax law requires MAT to be paid by corporations in cases where the tax payable according to the regular tax provisions is less than 18.5% of their book profits. However MAT credit (MAT-actual tax) can be carried forward in next 10 years

for set-off against regular tax payable (up to level of MAT liability) during the subsequent years subject to certain conditions.

**Withholding Tax:** Businesses need to withhold tax on specified payments viz salary, contractual, brokerage, commission, professional fee etc.

✓ **Taxes at Central Government Level: (Direct Taxes)**

S.No.	Type of Tax	Company	BO/LO/PO
1	Tax on Profits (Income Tax) -Financial Year 2013-14 (From April 2013 to March 2014)	If income is less than INR 10 million then rate is 30.9%, If income is between INR 10 million to INR 100 million then rate is 32.44% and if income exceeds INR 100 million then tax rate is 33.99%	If Income is less than INR 10 million then rate is 41.2%, If income is between INR 10 million to INR 100 million then rate is 42.02% and if income exceeds INR 100 million then tax rate is 43.26%
2	Personal Income Tax	As per slabs of income	As per slabs of income
3	Tax on distributed profits	Rate is 16.99%-on distribution of dividends by the Indian company	No tax on distributed profits
4	Wealth Tax	A company is liable to pay tax on certain assets such as motor car, etc in excess of INR 3 million in India @ 1%	A project Office is liable to pay tax on certain assets such as motor car, etc in excess of INR 3 million in India @ 1%
5	Social Security Benefits	Every establishment in India, employing 20 or more persons is required to register with the social security authorities unless they are an exempt establishment. For Indian passport holders, social security contribution is optional for employees if their salary exceeds INR 6,500 per month.	Every establishment in India, employing 20 or more persons is required to register with the social security authorities unless they are an exempt establishment. For Indian passport holders, social security contribution is optional for employees if their salary exceeds INR 6,500 per month.
	a) Employee	12% of salary	12% of salary

	Contribution		
	b) Employer Contribution	12% of salary	12% of salary
6	International Worker	International worker may get exemption from social security regulations, if there is SSA with the country, and the worker is contributing in his/her own country and for defined terms and conditions in relevant SSA.	International worker may get exemption of social security regulations if there is SSA with the country, and the worker is contributing in his/her own country and for defined terms and conditions in relevant SSA.

**In case of LLP the tax on income are as follows:**

- ✓ **Business income: 30% plus surcharge and education cess**
- ✓ **Alternate Minimum Tax:** The concept to AMT is similar to the Minimum Alternate Tax (MAT), as applicable to the Companies but since there is no concept of book profits in case of LLP, the LLP's will be liable to pay AMT on their adjusted total income (equivalent to adjusted taxable income). Similar to Company, LLP paying AMT can claim its credit for 10 assessment years. But as opposed to Company, LLP will not be liable to pay AMT on those income, which are exempt under provisions of Income Tax like long term capital gain under section 10 (38) and income from dividend under section 10 (34) etc
- ✓ **There is no dividend distribution tax on LLP's.**

**Royalty Rates**

The rates of royalty country wise can be seen from the following link-  
[http://law.incometaxindia.gov.in/DIT/File\\_opener.aspx?fn=http://law.incometaxindia.gov.in/Directtaxlaws/dtrr2005/R10.htm](http://law.incometaxindia.gov.in/DIT/File_opener.aspx?fn=http://law.incometaxindia.gov.in/Directtaxlaws/dtrr2005/R10.htm)

**Q.38 Does India has double taxation avoidance agreements and free trade agreements?**

India has Double Taxation Avoidance Agreements signed with various countries; the list of countries can be seen from the following link- (<http://law.incometaxindia.gov.in/DIT/intDtaa.aspx>).

Benefits of DTAA:

- ✓ Lower Withholding Taxes (Tax Deduction at Source)
- ✓ Complete Exemption of Income from Taxes
- ✓ Underlying Tax Credits
- ✓ Tax Sparing Credits
  
- ✓ DTAA provides lower rate or exemption for taxes on capital gains (gains made by selling the business unit)
  
- ✓ **It also provides taxability of business profits if the company has permanent establishment in India. A building site or construction, installation or assembly project constitutes a permanent establishment only if it continues for a period of more than 183 days in any fiscal year.**

**India also has free trade agreements providing for concessional import duties. The details of FTA's and other agreements can be seen from the following link-** ([http://commerce.nic.in/trade/international ta.asp?id=2&trade=i](http://commerce.nic.in/trade/international_ta.asp?id=2&trade=i))

**Q.39 What are the reporting requirements related to taxes?**

Tax liability in India can either be discharged through the advance tax mechanism or the tax withholding mechanism. Under the advance tax mechanism, one estimates the entire year's tax liability and deposits through three annual installments, i.e. September 30 (30%), December 15 (30%) and March 15 (40%).

An LO is not required to pay corporation or withholding tax as there is no income.

**The important changes in last 2 year budgets relating to taxes can be seen from the following links-**

2013/14-

([http://deity.gov.in/sites/upload\\_files/dit/files/Budget%20announcements%202013-14 Brief.pdf](http://deity.gov.in/sites/upload_files/dit/files/Budget%20announcements%202013-14%20Brief.pdf))

2014-15-

([http://deity.gov.in/sites/upload\\_files/dit/files/Budget%202014-15%20\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/Budget%202014-15%20(1).pdf))

## Section VII: Visa Types

### Q.40 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.

[\(http://indianvisaonline.gov.in/visa/\)](http://indianvisaonline.gov.in/visa/).

*Preferable visas from an industry point of view are business visa, employment visa and conference visa.*

- FAQs relating to work-related visas (business/employment) issued by India can be seen from the following link-  
([http://mha1.nic.in/pdfs/Businessvisa\\_080114.pdf](http://mha1.nic.in/pdfs/Businessvisa_080114.pdf))&  
([http://mha1.nic.in/pdfs/EmploymentVisa\\_080114.pdf](http://mha1.nic.in/pdfs/EmploymentVisa_080114.pdf))
- FAQ related to project visa-  
([http://mha1.nic.in/pdfs/ProjectVisa\\_080114.pdf](http://mha1.nic.in/pdfs/ProjectVisa_080114.pdf))
- FAQ relating to conference visa can be seen from the following link-  
(<http://mha.nic.in/pdfs/ForeigD-FAQs-on-ConferenceVisa.pdf>)
- Other FAQ's-(<http://mha1.nic.in/foreigDiv/FAQs.html>)

### Q.41 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. The details can be seen from the following link-

([http://www.cci.gov.in/images/media/competition\\_act/act2002.pdf?phpMyAdmin=QuqXb-8V2yTtoq617iR6-k2VA8d](http://www.cci.gov.in/images/media/competition_act/act2002.pdf?phpMyAdmin=QuqXb-8V2yTtoq617iR6-k2VA8d))

### Q.42 Can companies in India enter into foreign technology agreements?

**Technology Agreements:** Foreign investment in technology agreements effecting payments for royalty, lumpsum 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.

## **Section VIII: Information on various types of Incentives**

### **Q.43 What are the various types of incentives available?**

There are various types of incentives available from Central and state government departments for establishing a manufacturing unit. The incentives differ among the states and registration will be required to obtain various kinds of incentives.

#### **Central Government Incentives:**

**Incentives on exports:** The foreign trade policy provides various kinds of incentives for export of goods and services. The various types of incentives are as follows:

##### ✓ **Duty exemption/remission scheme:**

**Advance Authorization:** Duty free imports of inputs allowed for exports provided minimum 15% value addition is achieved. The scheme also requires import to be completed in 12 months and exports within 18 months.

**Annual Advance Authorization:** It is available only to exporters with at least 2 years of exports. The entitlement will be equivalent to 300% of the FOB value or INR 10 million whichever is more. The authorization will be valid for 12 months.

**Duty Free Import Authorization:** Under this exporters are allowed to import inputs free of basic customs and or additional/SAD duty. Scheme covers only products under standard inputs output norms. It also required minimum value addition of 20%.

**Duty Drawback:** Duty Drawback is the rebate of duty chargeable on imported material or excisable material used in the manufacturing of goods in and is exported. The exporter may claim drawback or refund of excise and customs duties being paid by his suppliers. Drawback Schedule covers now about 4600 products.

- ✓ **Export promotion capital goods scheme**-Under the scheme import of capital goods at a zero basic custom duty is allowed for export purposes. The capital goods for pre/post production stage also permitted. The exports to be effected equivalent to 6 times the duty saved on capital goods. Exports to be completed in 6 years.
- ✓ **Focus Market Scheme:** The basic objective is to offset high freight cost and other externalities to select international market. The benefit of 3% transferable duty free credit entitlement for specified countries. The special focus markets to get 4% benefits.
- ✓ **Focus Product Scheme:** The basic objective is to encourage products with high export intensity/employment. Benefit of 2 or 5% transferable duty free credit entitlement for specified products. Certain products to get 2% bonus benefits.
- ✓ **Market Linked Focus Product Scheme:** The basic objective is to incentivize exports with high employment intensity in rural and semi-urban areas. The benefit of 2% transferable duty free credit entitlement for specified products.
- ✓ The list of electronic items covered under FPS & MLFPS can be seen from the following link-  
(<http://deity.gov.in/esdm/promotion>)
- ✓ **Market Access Initiatives:** Under MAI scheme, financial assistance is provided for export promotion activities on focus country, focus product basis. Financial assistance is available for Export Promotion Councils (EPCs), Industry and Trade Associations (ITAs), Agencies of State Government, Indian Commercial Missions (ICMs) abroad and other national level institutions/eligible entities as may be notified.
- ✓ **Incremental exports incentivisation scheme:** A duty credit scrip @ 2% on the incremental growth (achieved by the IEC holder) during the current year is given. (Incremental growth shall be in respect of each exporter (IEC holder) without any scope for combining the exports for Group Company). The scheme is region specific and covers exports to

USA, Europe and Asia. In addition, 53 countries in Latin America and Africa

- ✓ **The details of various exports incentives schemes and procedures can be seen from the Foreign trade policy and procedures available on the following link- (<http://dgft.gov.in/exim/2000/download-ftp1213.htm>)**
- ✓ For the incentives and facilities offered to units in SEZs please refer Q.26
- ✓ **North Eastern States:** There is an incentive scheme of central government for undertaking established in north eastern states. The details can be seen from the following link- (<http://dipp.nic.in/English/Schemes/ner.aspx>)
- ✓ Incentives for other specified states like Jammu & Kashmir, Uttrakhand, Himachal Pradesh can be seen from the following links- (<http://dipp.nic.in/English/Schemes/Category states.aspx>)
- ✓ **R&D concessions:** There are some deduction incentives for research and development expenditure.
- ✓ **Investment allowance (additional depreciation)** at the rate of 15 percent to manufacturing companies that invest more than INR 1 billion in plant and machinery during the period 1.4.2013 to 31.3.2015.
- ✓ *Incentives available for unit in NIMZ please refer to Q.28*
- ✓ *Apart from above additional incentives are given under various schemes in ESDM sector and by the state governments. The details of which can be seen from Q.44 to 60*
- ✓ *Summary on various kind of taxes are also available in India chapter of following-link- (<http://www.pwc.com/qx/en/tax/corporate-tax/worldwide-tax-summaries/assets/pwc-worldwide-tax-summaries-corporate-2013-14.pdf>)*

**Q.44 Are there any incentives or schemes for electronics system design and manufacturing sector unit?**

Yes, Department of Electronics and Information Technology has launched the following schemes to promote domestic manufacturing of electronics items: (<http://deity.gov.in/esdm/incentive-schemes>)

- Modified special incentive package scheme (M-SIPS) provides for subsidy of 25% of capital expenditure in non-SEZs (and 20% in SEZs) for investments made for 10 years. In addition, reimbursement of central taxes and duties on specified projects is also provided for period of 10 years. The support is available for any stage of value-addition of the electronic product. Incentives start only when initial capital expenditure cross minimum threshold and thereafter it is given on annual capital expenditure.
- Preference to domestically manufactured electronic goods in government procurement is provided.

**Q.45 When was the M-SIPS launched and what is the duration of the scheme?**

MSIPS was launched on 27 July 2012 and it will be applicable for 3 years from this date.

**Q.46 Can existing units claim benefits under M-SIPS?**

The MSIPS will be 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.47 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://deity.gov.in/sites/upload\\_files/dit/files/MSIPS%20Notification.pdf](http://deity.gov.in/sites/upload_files/dit/files/MSIPS%20Notification.pdf) )

**Q.48 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.49 When are the incentives released under M-SIPS?**

The incentives against the capital expenditure shall be released after the end of financial year in which the total investment exceeds the threshold value. Thereafter, the incentive shall be provided on annual basis on the value of investment on the value of investments made during the year and be restricted to the first 10 years from the date of approval of the unit under the scheme. The re-imbursment of central taxes and duties actually paid shall be released after the end of financial year in which unit commences production. Thereafter the incentive is released every year for 10 years.

**Q.50 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://deity.gov.in/sites/upload\\_files/dit/files/MSIPS%20Notification.pdf](http://deity.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://deity.gov.in/sites/upload\\_files/dit/files/MSIPS\\_Guidelines.pdf](http://deity.gov.in/sites/upload_files/dit/files/MSIPS_Guidelines.pdf))**

It is advisable to hire the services of the consultancy firm or industry association or chartered accountant to file an application for M-SIPS or EMC. The application for MSIPS can also be made online through the following link- (<http://www.msips.in/MSIPS/>).

**Q.51 Is Government of India encouraging semiconductor wafer manufacturing facilities?**

The Government of India (GoI) has accorded “in principle” approval for establishing two semiconductor wafer fabrication (FAB) manufacturing facilities in India and has also decided to apprise all other semiconductor wafer fabrication manufacturers, of the quantum of subsidy/ other benefits/ support being offered. The department has provided range of incentives for the units. The details of the same can be seen from the following link- (<http://deity.gov.in/esdm/semiconductor>)

**Q.52 Is there any preference for domestically manufactured electronics items?**

Yes, the government has laid down the policy for providing preference to domestically manufactured electronic products. The electronics products having security implications and agencies deploying them will be notified. The notified agencies will be required to procure the notified electronic product from a domestic manufacturer to the extent prescribed in the notification. The details can be seen from the following link- (<http://deity.gov.in/esdm/pma>)

**Q.53 Is the procurement policy applicable to all ministries?**

Yes, the policy will be applicable to all ministries/departments and their agencies (except defence) for electronic products purchased for government

purposes and not with view to commercial resale or with the view to use in the production of goods for commercial re-sale.

**Q.54 What is the meaning of domestically manufactured item?**

The domestically manufactured electronic products are manufactured by companies that are registered and established in India and engaged in manufacturing in India and would include contract manufacturers. The electronics products shall meet the graded domestic value additions in terms of bills of materials. The electronic items manufactured by foreign companies registered in India are considered as domestically manufactured electronic products.

The details of products covered, guidelines and scheme can be seen from the following link-

<http://deity.gov.in/esdm#pma>)

**Q.55 Does state governments provide any incentives on setting up a manufacturing unit?**

Yes, 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 of the states have separate electronics policies. The details can be seen from the following link-<http://deity.gov.in/esdm/electronics-activity>)

**The details of Nodal officers can be seen from the following links-**

- ✓ **Nodal officer for M-SIPS-**  
[http://deity.gov.in/sites/upload\\_files/dit/files/Nodal\\_Officer.pdf](http://deity.gov.in/sites/upload_files/dit/files/Nodal_Officer.pdf))
- ✓ **Nodal officer for states-**  
<http://deity.gov.in/content/state-wise-nodal-officers-promotion-electronic-hardware-manufacturing-and-applicable-policy>)

**Q.56 What were the electronics related interventions in last budget?**

Various initiatives and measures were announced in last budget for electronics sector. The details can be seen from the following link-

[http://deity.gov.in/sites/upload\\_files/dit/files/Budget%20announcements%202013-14 Brief.pdf](http://deity.gov.in/sites/upload_files/dit/files/Budget%20announcements%202013-14%20Brief.pdf)

**2014-15 budget provisions-**

[http://deity.gov.in/sites/upload\\_files/dit/files/Budget%202014-15%20\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/Budget%202014-15%20(1).pdf)

**Q.57 Is there any scheme for skill development in ESDM sector?**

Yes, DeitY has launched scheme for financial assistance to select states /union territories for skill development in ESDM sector. The scheme was launched on 31 October, 2013 and will be operational for 4 years.

<http://deity.gov.in/esdm/hrd>

**Q.58 What is grant available in the scheme and who all will be the beneficiaries?**

The estimated grant in aid support from central government will be INR 1 billion. Target beneficiaries will be student studying at IX/X standards onwards, ITI's, Polytechnics, under graduate (non-engineering), school drop outs from 8<sup>th</sup> pass onwards, ITI certificate holders, diploma holders, graduates, registrants in employment exchanges, unemployed sources in the non-formal sector.

**Q.59 What is the number of students targeted under the scheme and what will be the financial assistance?**

The scheme is targeting approximately 90,000 students with skill based targets and financial assistance includes assistance upto 75% of course fee (100% for scheduled castes/scheduled tribes or economically weaker section).

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

[http://deity.gov.in/sites/upload\\_files/dit/files/ESDM%20Scheme%20Notification.pdf](http://deity.gov.in/sites/upload_files/dit/files/ESDM%20Scheme%20Notification.pdf)

**Q.60 Is there any scheme for skill development in electronic product design?**

Yes, DeitY launched the scheme for capacity building in the areas of electronic product design and product technology at the estimated total cost of INR

49.69 Crore on 1 May 2013. The scheme will be operational for 5 years. The area of coverage will be manpower development. The details of the scheme can be seen from the following link-

[http://deity.gov.in/sites/upload\\_files/dit/files/Capacity%20building%20in%20Electronic%20Product%20Design%20and%20Production%20Technology%20at%20CDAC%20and%20NIELIT%20\(2012\)%20\(115%20KB\)\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/Capacity%20building%20in%20Electronic%20Product%20Design%20and%20Production%20Technology%20at%20CDAC%20and%20NIELIT%20(2012)%20(115%20KB)(1).pdf)

Other reports and schemes on human resources development can be seen from the following link-(<http://deity.gov.in/esdm/hrd>)

## **Section IX: Information on safety standards of electronic items**

**Q.61 What are the policies relating to safety standards of electronics items?**

For curbing inflow of sub-standard goods into the country, a scheme introducing safety standards for electronic goods has been approved through the “Electronics and IT Goods (Requirements for Compulsory Registration) Order, 2012 and the same has been notified on Oct 3, 2012. This scheme introduces a new paradigm for ensuring quality electronic goods in the country and enhancing safety of consumers. The details can be seen from the following link-(<http://electronicstds.gov.in/CREITG/>)

& (<http://deity.gov.in/esdm/standards>)

- ✓ The other aspects relating to standards can be seen from the following link-(<http://deity.gov.in/esdm/standards>)
- ✓ The FAQ on electronics and IT goods registration can be seen from the following link-  
([http://deity.gov.in/sites/upload\\_files/dit/files/FAQsR5-11072013.pdf](http://deity.gov.in/sites/upload_files/dit/files/FAQsR5-11072013.pdf))
- ✓ The circular relating to BIS certification of electronic and IT goods can be seen from the following link-  
([http://deity.gov.in/sites/upload\\_files/dit/files/CIRCULAR-No %203.pdf](http://deity.gov.in/sites/upload_files/dit/files/CIRCULAR-No %203.pdf))
- ✓ The list of labs for BIS testing can be seen from the following link-  
([http://deity.gov.in/sites/upload\\_files/dit/files/List\\_of%20lab\\_name.pdf](http://deity.gov.in/sites/upload_files/dit/files/List_of%20lab_name.pdf))
- ✓ Nodal officer for ESDM standards-  
([http://deity.gov.in/sites/upload\\_files/dit/files/Office%20Order%20for%20Nodal%20Officer%20-CR%20Extension.pdf](http://deity.gov.in/sites/upload_files/dit/files/Office%20Order%20for%20Nodal%20Officer%20-CR%20Extension.pdf))

## **Section X: Information related to Intellectual Property Rights**

**Q.62 What are the laws and regulations relating to protection of brands etc in India?**

The details relating to each aspect can be seen from the following link- (<http://ict-ipr.cdac.in/index.php>)

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. Schemes, orders and reports can be seen from the following link- (<http://deity.gov.in/esdm/rdip>)

The details relating to Semiconductor integrated circuits layout design registry can be seen from the following link- (<http://sicldr.gov.in/>)

## **Section XI: e-waste**

**Q.63 What is e-waste and are there any rules prescribed by DeitY in this regard?**

E-waste has been defined as “waste electrical and electronic equipment, whole or in part or rejects from their manufacturing and repair process, which are intended to be discarded”. The annual e-waste generation in India has been estimated to be 0.8 million tonne by 2012. There is a need to encourage recycling of all useful and valuable material from e-waste so as to conserve the ever depleting natural resources. The E-waste (Management & Handling) Rules, 2011 have been notified with primary objective to channelize the E-waste generated in the country for environmentally sound recycling which is largely controlled by the un-organized sector who are adopting crude practices that results into higher pollution and less recovery, thereby causing wastages of precious resources and damage to environment. The details can be seen from the following link-(<http://deity.gov.in/esdm/e-waste>)

## **Section XII: Sources of Information**

**Q.64 Does DeitY publishes newsletters?**

Yes, DeitY publishes monthly e-newsletters giving information on current happening in ESDM sector, information schemes, status of M-SIPS applications etc. The newsletters and public releases can be access from the following link-(<http://deity.gov.in/esdm/newsletter>)

The department also has national awards schemes for ESDM units. The details can be seen from the following link-(<http://deity.gov.in/esdm/awards-scheme>)

**Q.65 Is there any national-level investment facilitation agency in India?**

Yes, Invest India is the national investment promotion and facilitation agency for India. It has been set up as a not-for-profit joint venture between DIPP, Ministry of Commerce & Industry), state governments and FICCI. Invest India acts as the first point of reference for foreign investors, handholding them through the pre-investment phase, execution and after-care phases. (website:[www.investindia.gov.in](http://www.investindia.gov.in)). If you require any assistance or still have some more questions, please send in your query by filling the form available on the following link-(<http://invest-india.info/qms/index.php>)

**Abbreviations:**

FDI: Foreign Direct Investment  
FIPB: Foreign Investment Promotion Board  
CCEA: Cabinet Committee on Economic Affairs  
RBI: Reserve Bank of India  
LO: Liaison Office  
BO: Branch Office  
PO: Project Office  
LLP: Limited Liability Partnership  
JV: Joint Venture  
INR: Indian Rupees  
MCA: Ministry of Corporate Affairs  
NRI: Non-Resident Indian  
NRE: Non Resident External Account  
FCNR: Foreign Currency Non Residential  
AD Category I: Authorized Dealer Category I Bank  
ECB: External Commercial Borrowing  
SEZ: Special Economic Zone  
EHTP: Electronic Hardware Technology Park  
EOU: Export Oriented Unit  
BTP: Biotechnology Park  
DIN: Director Identification Number  
DSC: Digital Signature Certificate  
PAN: Permanent Account Number  
ROC: Registrar of Companies  
FEMA: Foreign Exchange Management Act  
DTA: Domestic Tariff Area  
EPCG: Export Promotion Capital Goods  
DIPP: Department of Industrial Policy & Promotion  
DTAA: Double Taxation Avoidance Agreements  
TDS: Tax Deducted at Source  
M-SIPS: Modified Special Incentive Package Scheme  
EMC: Electronic Manufacturing Clusters  
DeitY: Department of Electronics & Information Technology  
ESDM: Electronic System Design & Manufacturing  
ITA: Information Technology Agreement-I

Please note:

- ✓ The FAQs are based on best information available basis and does not provide a right to entitlement. Situation with respect to some provisions may change from time to time and if so, the current position as per extant rules would apply.
- ✓ Readers and users are welcome to provide feedback for any corrections/updation.
- ✓ Information regarding any questions relating to investment in Electronics System Design and Manufacturing and not covered in the FAQs may be sought from Shri Deepak Sharma, Additional Director, DeitY (Email: [dsharma@deity.gov.in](mailto:dsharma@deity.gov.in))