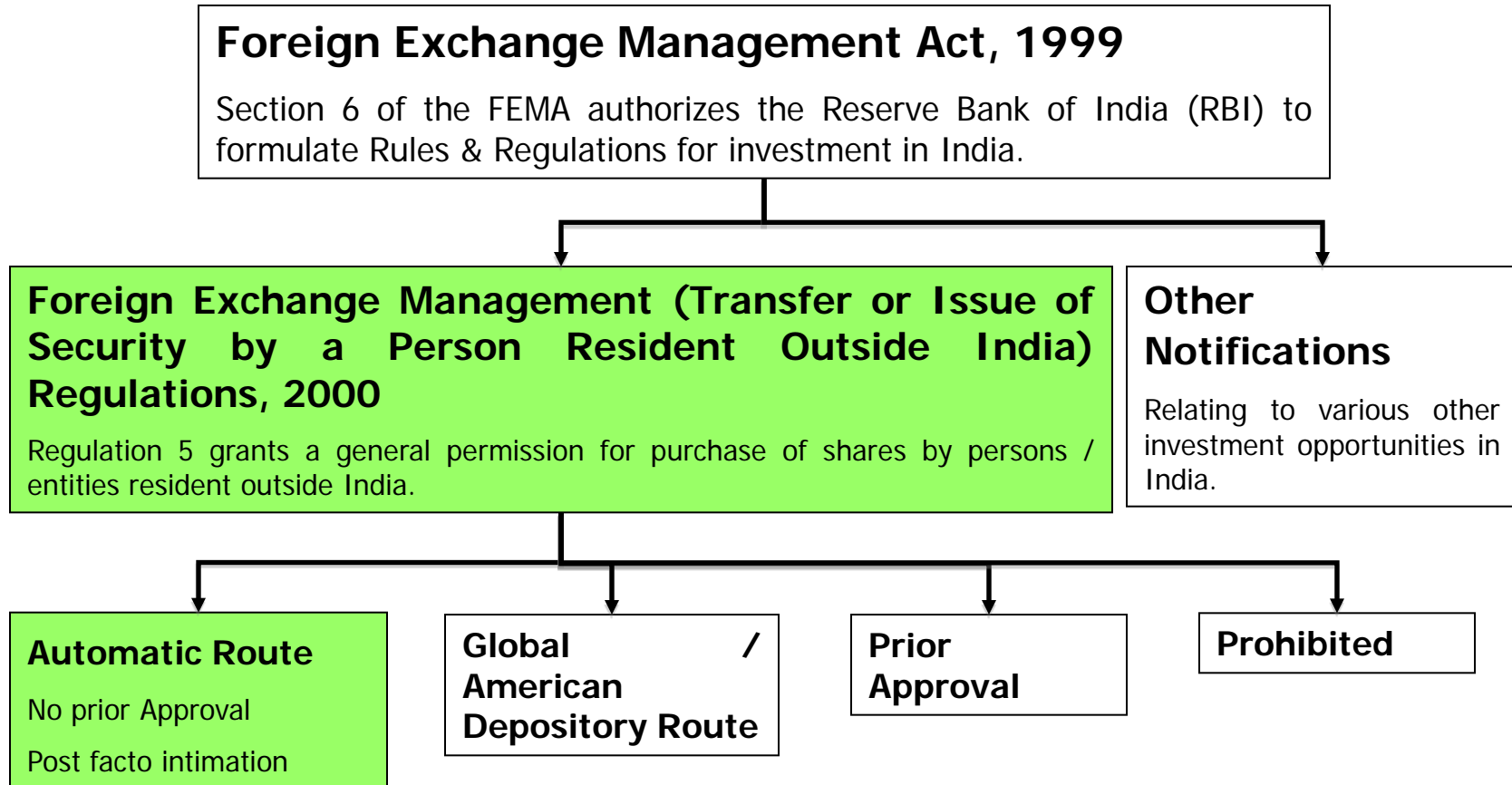


Foreign Investment in India

The Present Status

ZEUS Law



Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000

Regulation 5 grants a general permission :

- To a person resident outside India or an entity incorporated outside India;
- To purchase equity shares or fully & mandatorily convertible debentures / preference shares of an Indian Company;
- Subject to the terms and conditions prescribed in Schedule 1.

Schedule 1 – Overriding Condition

General permission for purchase of equity shares or convertible debentures / preference shares of an Indian Company subject to the terms and conditions prescribed in Schedule 1:

- There shall be no restriction on the purchase of equity shares or convertible debentures / preference shares of the Indian Company by any person resident outside India.
- In the case of purchase of equity shares of the Indian Company, the Indian Company is engaged in a business.

PRIOR PERMISSION WAS REQUIRED

Previous Venture / Tie Up ?!

- An Indian Company or
- An Indian Company
- An Indian Company or name called.

Current Position

This over riding condition has been rescinded vide FDI Circular dated April 1, 2011 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.

Law

The General Permission

PROHIBITED

List of Items :

- Lottery Business;
- Gambling and Betting;
- Chit Fund;
- Nidhi Company;
- Trading in Transferable Development rights;
- Real Estate Business or Construction of Farm Houses;
- Manufacturing of Cigars, Cheroots, Cigarillos and Cigarettes of tobacco or tobacco substitutes;
- Agriculture or plantation activities (Except activities specifically permitted under FDI Policy);
- Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems);

RESTRICTED

List of Items for which Automatic Route is not available:

- Tea Sector (100%);
- Mining (titanium) (100%);
- Defense and Strategic Industries (26%) (beyond 26% CCS);
- Broadcasting;
- Print Media (26% - 100%);
- Non Scheduled Air Transport & Ground Handling (49% ≤ 74%);
- Establishment and Operation of Satellite (74%);
- Private Security Agencies (49%);
- Telecom Service (above 49%);
- Single Brand Product Retail Trading (above 49%);
- Multi Brand Retail Trading (51%);
- Asset Reconstruction Companies (above 49%);
- Banking Public Sector (20%);
- Drugs & Pharmaceuticals (Brown Field Projects) (100%);
- Pharmaceuticals Brownfield (100%)

Law

The General Permission

THE AUTOMATIC ROUTE – Covers (Sectoral Cap)

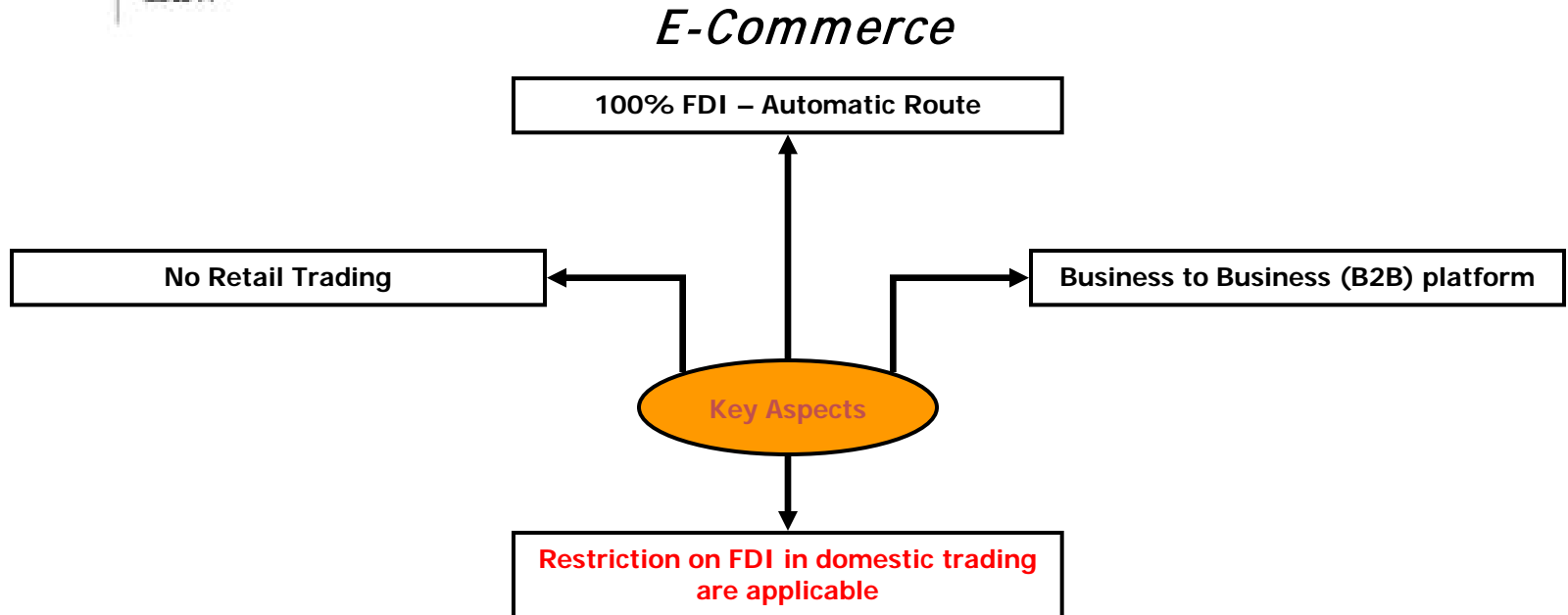
List of Items :

- Broadcasting (i) Teleports; (ii) DTH; (iii) Cable Networks; (iv) Mobile TV; (v) HITS [\leq 49% automatic] [49% to 74% Govt.];
- Petroleum Refining by PSU (49%);
- Airports (for existing projects/Brown field) (74%) - (beyond 74% Govt.);
- Scheduled Air Service (49%);
- Ground Handling (\leq 49% automatic) (49% to 74% Govt.);
- Non Scheduled Air Transport Service (\leq 49% automatic) (49% to 74% Govt.);
- Private Sector Banking (\leq 49% automatic);(49% to 74% Govt.);

List of Items :

- Single Brand Product Retail Trading (\leq 49% automatic) (above 49% Govt.);
- Asset Reconstruction Companies (\leq 49% automatic) (above 49% Govt.);
- Commodity Exchange & Infrastructure company in security market [49% (26% FDI & 23% FII)];
- Credit Information Companies (74% FII & FDI);
- Insurance (26%);
- Telecom Service (\leq 49% automatic)– (above 49% Govt.);
- Power Exchange (FII) – (49%) (26% FDI and 23% FII).

Any other Sector / Activity – if not included in Prohibited / Restricted Items (100%)



E-commerce activities refer to the activity of *buying and selling* by a company through the e-commerce platform.

[Clause 6.2.16.2 of FDI Policy]

Whole Sale trading includes B2B e-Commerce. Hence. guidelines for WT are also applicable for B2B e-Commerce.

[Clause 6.2.16.1.1 of FDI Policy]

Law *Guidelines for Cash & Carry Whole Sale Trading /
Whole Sale Trading (WT)*

- For undertaking WT, requisite licenses/registration/ permits under the relevant Acts / Regulations of competent authority to be obtained.
- Except in case of sales to Government, sales made by the wholesaler would be considered as WT with valid business customers, only when WT are made to the following entities:
 - Entities holding sales tax / VAT registration / service tax / excise duty registration; or
 - Entities holding trade licenses i.e. a license/registration certificate under Shops and Establishment Act reflecting that the entity/person holding the license/ registration certificate is itself engaged in a business involving commercial activity; or
 - Entities holding permits/license etc. for undertaking retail trade; or
 - Institutions having certificate of incorporation or registration as a society/public trust for self use.

Note: An Entity, to whom WT is made, may fulfill any one of the 4 conditions.

- Full records like name & kind of entity, registration/license/permit etc. number, amount of sale etc. to be maintained on a day to day basis.
- WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.
- A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.
- *WT of goods among companies of the same group should not exceed 25% of the total turnover of the wholesale venture.*

Law

The General Permission

THE AUTOMATIC ROUTE – Provided

No industrial License is required under the Industrial (Development & Regulation) Act; OR locational policy notified by the Government of India under the Industrial Policy of 1991, as amended from time to time, except for the following :

- Atomic Energy and Atomic Material;
- Railway Transport
- Distillation and Brewing of Alcoholic Drinks
- Cigars and Cigarettes of Tobacco and their substitutes;
- Electronic Aerospace and Defence Equipment;
- Industrial Explosives;
- Hazardous Chemicals.

A Small Scale Sector Industry is governed by Micro, Small and Medium Enterprises Development Act, 2006 :

Investment in Plant and Machinery

Manufacturing Sector

- Micro Enterprise : upto 25 lac
- Small Enterprise : 25 lac < 5 Cr.
- Medium Enterprise : 5 Cr. ≤ 10 Cr.

Service Sector:

- Micro Enterprise : upto 10 lac
- Small Enterprise : 10 lac < 2 Cr.
- Medium Enterprise : 2 Cr. ≤ 5 Cr.

List of 20 Industries – Annexed.

Funds are not being generated with a view to acquire shares of an Indian Company.

Business Reserved for Small Scale Sectors

S.No.	Description of Business
	Food and Allied Industries
1	Pickles and Chutneys
2	Bread
3	Mustard Oil (except solvent extracted)
4	Ground Nut Oil (except solvent extracted)
	Wood and Wood Products
5	Wooden furniture and fixtures
	Paper Products
6	Exercise books and registers
	Other Chemicals and Chemicals Products
7	Wax candles
8	Laundry soap
9	Safety matches
10	Fire works
11	Agarbatties

S.No.	Description of Business
	Glass and Ceramics
12	Glass bangles
	Mechanical Engg. Excluding Transport Equipment
13	Steel almirah
14	Rolling shutters
15	Steel chairs- All types
16	Steel tables-All other types
17	Steel furniture - All other types
18	Padlocks
19	Stainless steel utensils
20	Domestic utensils-Aluminium

The General Permission



THE AUTOMATIC ROUTE – Sundry Issues

ISSUE PRICE
 For a non-listed Company, it is the fair valuation done by a Chartered Accountant as per the discounted cash flow method.

DIVIDENDS
 ➤ Freely repatriable; (Net after TDS and Dividend Distribution Tax)

Royalty
 ➤ Freely repatriable; (Net after Withholding Tax and Service Tax)

BONUS / RIGHTS ISSUE
 General Permission has been granted subject to:

- The issue not resulting in the breach of the permitted Sectoral caps;
- Price is not lower than at which offered to resident shareholders;
- The same conditions which the original shares suffer;
- Compliance of the Regulations.

THANK YOU