# IMPROVING THE EASE OF DOING BUSINESS IN INDIA

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To enhance economic growth of a country, it is imperative to create an efficient ethos for businesses. This can be achieved by making regulatory environment more conducive to the setting up and operation of domestic business entities. Further easier regulatory norms and efficient business environment directly influence the inflow of foreign investment which is an important resource for development of an economy as it leads to employment generation, achievement of advanced technology and knowhow etc.

Aiming for economic growth, the new government is taking several initiatives to improve 'ease of doing' business so as to facilitate smooth and efficient functioning of businesses in the country. The government has made emphasis on simplification of procedures, rationalization of the rules and increased use of information technology in order to make governance more efficient, simple and business friendly. To achieve its aim of ease of doing business in India, the government has taken following initiatives.

## Liberalization in FDI Policy

The Government of India (GOI) is constantly taking significant steps in attracting foreign investment inflows in the country. The Foreign Direct Investment Policy (FDI Policy) in several sectors like defense, railways, insurance etc. has been liberalized. The initiatives to liberalize the FDI Policy are discussed hereunder.

### *Alignment of FDI Policy with NIC-2008*

The FDI Policy, issued by DIPP, has been aligned with the upgraded National Industrial Classification (NIC)-2008, issued by National Statistical Organization, Ministry of Statistics & Programme Implementation, GOI. NIC-2008 is an advanced version of industrial classification which provides a basis for the standardized collection, analysis and dissemination of industry (economic activity) wise economic data for India. All the economic activities are classified as per the NIC code and the classification is necessary for seeking industrial licenses. As the structure of NIC-2008 is identical to United Nations International Standard Industrial Classification (ISIC), it allows Indian businesses to be part of globally recognized and accepted classification that facilitate smooth approvals/registration.

### *Carve Out For Medical Devices*

Medical device industry has been carved out from the Pharmaceutical sector and 100% foreign investment in this industry is allowed under the Automatic Route (for both Greenfield and Brownfield projects). Previously, the medical device sector was under pharmaceutical sector where 100% foreign investment was allowed under the Automatic Route for Greenfield projects and 100% foreign investment was allowed under Government Route for Brownfield projects, subject to certain conditions (e.g. Non-compete clause). Since medical device industry was under the pharmaceutical sector, it was also bound by the stringent norms for foreign investment. The carve out of medical device sector from pharmaceutical sector will encourage foreign investment inflows in medical device sector where there is lack of adequate capital and technology.

### *Increase in foreign investment cap in Insurance Sector and Pension Sector*

With a view to increase foreign investment in Insurance Sector and Pension Sector, foreign investment caps of the sectors have been revised to increase the limit from 26% to 49% where foreign investment up to 26% is allowed under the Automatic Route and foreign investment beyond 26% but up to 49% is allowed under Approval Route.

### *Foreign Investment in Railway Sector*

In order to boost development in Railway Transport Sector, GOI has reviewed the FDI Policy to permit 100% foreign investment under the Automatic route in construction, operation and maintenance of specified railway infrastructure sector viz. (a) suburban corridor projects through PPP, (b) high speed train projects, (c) dedicated freight lines, (d) rolling stock including sets, locomotive coaches manufacturing and maintenance facilities, (e) railway electrification, (f) signaling systems, (g) freight terminals, (h) passenger terminals, (i) infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (j) mass rapid transport systems.

### *Relaxation in FDI in Construction, Development Sector*

With an aim to increase foreign investment in construction sector and opportunities for growth and employment, GOI has eased the norms for FDI in construction and development sector. For instance (a) the conditions of minimum land area and minimum capitalization have been removed;(b) easier exit norms have been introduced. Investors are now permitted to exit on completion of the project or after development of trunk infrastructure, or after completion of 3 year lock-in period; and (c) in order to encourage construction of low-cost affordable housings and prevention of proliferation of slums in and around the cities, a categorization has been made for affordable housing projects which are exempt from the minimum land area requirement and minimum capital requirement.

### *Foreign Investment in White Label ATMs*

Foreign investment in White Label ATM operation up to 100% under the Automatic Route has been recently permitted to ease and expedite foreign investment inflows in the sector and to enhance ATM networks in semi-urban and rural areas. White Label ATM operators are non-banking companies which operate and run ATMs. The move will increase the penetration of ATMs across the country and promote financial inclusion.

### *Increase in Foreign Investment Cap in Defense Sector*

The majority of India's requirement in defense is catered by imports. To save outflow of foreign currency, increase foreign investment in the defense sector, help build domestic capabilities, bring in top-notch technology, and strengthen exports in the long run, foreign investment cap of the sector was increased in 26th August, 2014 from 26% to 49% under Government Route and investments beyond 49% required approval of Cabinet Committee on Security. In a further attempt to attract foreign investment in this sector, the government has recently revised sectoral route and cap for defense sector to permit 100% foreign investment in this sector wherein foreign investment up to 49% can be raised under the Automatic route and foreign investment beyond 49% can be raised under Government route and approval of Cabinet Committee on Security shall not be required.

### *Foreign Investment in Retail*

Conditions for foreign investment in single brand retail trading have been relaxed. Entities may now undertake wholesale/ cash & carry trader and single brand retail trading simultaneously subject to maintaining of separate books of accounts. Also in case of entities operating in high technology segments having state of art and cutting edge technology and where local sourcing is not required, the government may relax 30% sourcing norms.

### *Foreign Investment in Ecommerce*

Indian entities engaged in single brand retail trading operating physical stores are now permitted to engage in retail trading through e-commerce. Indian manufacturers are also now permitted to sell, whether in wholesale or retail, their own products through ecommerce platform.

### *Foreign Investment in Other Sectors*

To further ease, rationalize and simplify the process of foreign investments in the country and to put more and more FDI proposals on automatic route instead of Government route, FDI Policy has been recently revised. Some of the key changes of the amendments are: (a) Foreign investment in duty free shops are now permitted under the Automatic route subject to compliance stipulated under the Customs Act, 1962 and other laws, rules and regulations. (b) Foreign investment in broadcasting carriage sector is also increased from 74% to 100%. (c) Foreign Investment in tea plantation has been brought under the Automatic route. Up to 100% of foreign investment under the Automatic route has been permitted in coffee, rubber, cardamom, palm oil tree and olive tree plantation. (d) Foreign Investment limit in private banking has been increased from 74% to 100%. (e) NRIs are now permitted to make investment through an overseas trust, company or partnership firm owned and controlled by the NRI and such investment will be deemed domestic investment at par with the investment made by residents. (f) 100% foreign investment has been allowed under the Automatic route in LLPs operating in sectors under the Automatic route and without FDI linked performance conditions. LLPs are also permitted to make downstream investment in an Indian company or LLP engaged in sectors under the Automatic route and without FDI linked performance conditions.

### Simplification in Industrial Licensing

The process for applying for industrial license has been made online and the service is made available on the e-biz platform. Initial validity period of the Industrial License was also increased from 2 years to 3 years in July 2014 and later in October, 2014 two extensions of 2 years each, up to 7 years, in the initial validity of the Industrial License was made. In April 2015, the initial validity of Industrial licenses for Defense Sector was increased from 3 years to 7 years. Recently in September 2015 the validity was increased to 15 years and further extendable up to 18 years for existing as well as future license. The move to increase the validity of Industrial Licensing is made keeping in mind the long gestation period of Defense Contracts.

This has enabled the licensees to have more time for implementation of the Industrial License by way of obtaining the necessary clearances/approvals from local authorities, putting in place the security aspects, machinery manpower, implementation of technology, etc.

### Boost in Manufacturing Sector

Further in order to boost foreign investment in manufacturing sector, the government has de-reserved the items reserved for exclusively manufacturing by Micro Small and Medium Enterprises (MSME). So far manufacturing of 20 items, including bread, wax

candles, exercise books and registers, steel almirah, domestic utensils, were reserved for MSME sector.

As per the FDI Policy, foreign investment in manufacturing sector is allowed under the Automatic route. However, if any Industrial undertaking, not being an MSME, was engaged in the manufacturing of items reserved for the MSME sector, then it had to obtain government approval for raising foreign investment. Such undertakings were also required to obtain industrial license and to undertake an export obligation of minimum 50% of the new or additional annual production of the MSME reserved items within a maximum period of three years.

Due to de-reservation of MSME items, the segregation in the foreign investment norms for MSMEs and non-MSMEs has been done away with. Therefore, at present, foreign investment in the manufacturing sector is 100% under the Automatic Route for MSMEs and non-MSMEs.

### E-biz

In a bid to create a business and investor friendly ecosystem, a government-to-business portal, viz. e-biz portal, has been launched. This will create an investor centric online single window model for providing clearances and filing compliances thereby reducing time, cost and effort taken in obtaining clearances and permits and meeting compliance requirements. The e-biz platform provides end-to-end online submission and processing of forms and integrated payment gateway. So far 14 services have been integrated with the e-biz portal, including process to apply for industrial license and industrial entrepreneur memorandum, importer exporter code license, issue of TAN, PAN, name availability for incorporation of companies, certificate for incorporation of a company etc.

Further to bring transparency and accuracy in the regulatory compliances and to trigger healthy competition among States, DIPP has also released a framework to assess and rank States in terms of ease of doing business. Under the framework, a comparative study of various States is done and the assessment is done on the basis of various factors enabling ease of doing business such as securing permits and licenses, availability of land, taxation, labor compliances, environment clearances etc.

### Ease in Setting Up and Operating Companies

As an initiative to make it easier for corporate to do business, the Companies Act, 2013 has been amended.

Easier Incorporation Norms: (a) The Companies Act, 2013 required Private Companies and Public Companies to have a minimum paid-up capital of Rs. 100,000 and Rs. 500,000 respectively. The Amendment has removed these requirements. Thus no initial capital is required to incorporate a company (both private and public companies). (b) An integrated process for incorporation of a company has been introduced. The application for allotment of DIN, reservation of name, incorporation of company and appointment of directors of the proposed company can be filed in an integrated form no. INC-29. (c) The requirement of common seal has been made optional. As a substitute, authorization by two directors and Company Secretary can be accepted. (d) The requirement to obtain certificate of commencement of business has also been done away with.

Loan to Wholly Owned Subsidiary Companies: (a) Now the holding companies/ parent companies are permitted to give loans to its wholly owned subsidiaries and guarantees and security to its subsidiary companies, if the loans are utilized for their principal business activity.

*Related Party Transactions*: Earlier, approval of shareholders by way of 'Special Resolution' was required in certain related party transactions. Now such related party transactions may be approved by passing 'Ordinary Resolution' and not 'Special Resolution'.

Exemptions to Private Companies: With a view to provide easier and simpler legal framework for private companies, Ministry of Corporate Affairs, GOI, has notified amendments to exempt private companies from certain provisions of the Companies Act, 2013.

*Related Party Transactions*: The definition of 'related party' has been amended for private companies to exclude holding, subsidiary and associate company and other subsidiary(ies) of the holding company of the private company. Therefore any contract or arrangement of private companies with such entities shall not be regarded as related party transactions and will not come under the ambit of section 188 that requires shareholders resolution.

Also section 188 restricts related party to vote on resolution to approve any contract or arrangement on which it is interested. Now this restriction is not applicable to private companies. Therefore every member, including those who are related party, of private company is entitled to vote on such resolutions.

*Provisions for General Meeting and Restriction on Power of Board*: Private Companies are now exempted from filing Board Resolutions with the Registrar of Companies. Provisions with respect to general meetings relating to notice of meetings, statement to be annexed to notice, quorum for meetings, chairman of meetings, proxies, restriction on voting rights, voting by show of hands and demand for poll has also been exempted for private companies. Further, the Board of Directors of a private company can exercise borrowing powers, dispose of an undertaking of the company, and remit any debt due from a director etc., without obtaining Shareholders' approval.

*Participation of Interested Directors:* Section 184 (2) refrains director(s) in participating in the board meetings where contract or arrangement in which they are interested is to be discussed. Now interested directors of private companies will be permitted to participate in the board meetings after they make disclosure of their interest.

## Relief to Overseas Indians

### *Liberalization of FDI norms for NRI, PIO and OCI*

In order to enhance FDI inflows, FDI norms for NRIs, PIOs (Person of Indian Origin) and OCI (Overseas Citizen of India) have been liberalized. The definition of NRI will now include OCI cardholders as well as PIO cardholders. Also investment by NRIs, PIOs and OCIs on non-repatriable basis will be deemed to be domestic investment at par with the investment made by residents. Therefore with a view to channelize the funds from NRIs, non-repatriable investments by NRIs will now be treated as domestic investment.

### *Simplification of Immigration norms*

The Citizenship Act, 1955 is also amended to simplify the immigration process. After the amendment, all PIO cardholders are now deemed to be OCI cardholders with effect from January 9, 2015. Thus PIOs are entitled to the following benefits: (a) PIOs will be entitled to a lifelong visa allowing them to visit India at any time and for any purpose. Earlier, PIO cardholders had the benefit to visit India without any visa only for a period of 15 years from the date of the issue of PIO card. (b) There will be no requirement for registration at the concerned jurisdictional FRRO/FRO. Earlier, a PIO was required to get the registration done within 30 days if their stay in India exceeds 180 days. Further a minor child whose both parents are citizens of India or one of the parents is a citizen of India will

now be eligible to apply for registration as an OCI cardholder.

### *Listing Reforms*

To make it easier for startups to raise funds from the domestic market, SEBI has notified a new set of listing norms for such entities on a separate platform namely, Institutional Trading Platform (ITP). The new norms provide significant relaxations in the disclosure requirement, lock-in period etc.

i. Minimum lock-in period of Promoter's capital is only 6 months, against 3 year for normal IPOs.

ii. There is no need to make detailed disclosures on how the IPO funds will be used.

iii. Regulations of normal IPO relating to advertisement, allotment, underwriting, pricing will not be applicable.

iv. An option to migrate to the main board after 3 years is also given to the entities which will be listed in the ITP.

v. Minimum 75% of the net offer is to be allotted to institutional investors and the minimum application size is Rs. 1 million. Therefore, only institutional investors and high net-worth individuals can invest under the new platform.

### Ease of Visa

The Government of India has launched Tourist Visa on arrival enabled by Electronic Travel Authorization on 27th November 2014 initially for 43 countries at 9 airports. The facility is now extended to 113 countries at 7 more Indian airports.

Under e-tourist Visa scheme, foreign tourists can apply for a Visa by uploading their passport and photograph and paying the Visa fee online. The authorities then process the application and send an electronic travel authorization, or e-visa through email within 72 hours.

The government has taken a series of initiatives to bring positive changes in the business environment. As per news reports in recent months, to further facilitate the "ease of doing" business, the government has proposed certain measures for simplification of tax procedures, such as reduction in the rate of corporate tax from 30% to 25% over the next 4 years, abolition of wealth tax, and introduction of GST. The government is constantly engaged in discussion with the representatives of e-tailers in resolving outstanding taxation issues, requirement of road permits for entering certain states for the goods entering and exiting its territory. To further smoothen the route of foreign investment, government is also contemplating to remove sectoral conditions from the FDI Policy such as minimum capitalization, shareholding restrictions and non-compete clauses for foreign investors.

As per DIPP Foreign Direct Investment database, India has witnessed significant growth in foreign investment in the past one year. The increased inflow of FDI in India indicates faith in overseas investors in India's economy and the reforms initiated by the government towards ease of doing business.

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