

HANDBOOK

FOR OVERSEAS INDIANS



सत्यमेव जयते

Ministry of Overseas
Indian Affairs

**HANDBOOK
FOR
OVERSEAS INDIANS**

This book has been compiled/summarised from information available in official documents/circulars/websites of the Govt. of India, RBI, information received from various States and other reliable sources. Every possible care has been taken to provide current and authentic information. This Handbook for Overseas Indians is intended to serve as a guide to them and does not purport to be a legal document. In case of any variation between what has been stated in this Handbook and the relevant Act, Rules, Regulations, Policy Statements etc., the latter shall prevail.

Vayalar Ravi



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FOREWORD

I am glad to introduce this book "Handbook for Overseas Indians". This book will offer a picture of investment opportunities and entrepreneurial activities in India.

I am sure this Handbook will facilitate greater understanding of the environs and help Overseas Indians to work, invest and flourish in their own country.

(VAYALAR RAVI)

Minister of Overseas Indian Affairs

PREFACE

An important service that the Ministry of Overseas Indian Affairs is striving to extend to the Overseas Indians is that of investment services to enable potential Overseas Indian Investors to benefit from India's rapidly growing economy. As a first step we are bringing out this Handbook for Overseas Indians in which we have attempted to compile the relevant information which an Overseas Indian may require in his initial efforts to establish his business ties with India. The Handbook contains the latest information and has been updated till November 2006 by bringing important but otherwise scattered information from the latest press notes, RBI master circulars, Economic Survey, FDI, Foreign Direct Investment Policy, Manual of DIPP, etc. at one place. The language of the book has been simplified by summarizing the technicalities and details of rules for the comprehension of the general Overseas Indian. Any person who would like to go into detail on the topics included in the Handbook may like to read this book along with the Compendium on Policies, Incentives and Opportunities for Overseas Indians which is also being published by the Ministry of Overseas Indian Affairs (MOIA) alongwith the Handbook. We would welcome suggestions for improving this book in the next edition.

ABOUT THE MINISTRY

The Indian Diaspora constitutes a significant economic, social and cultural force in the world. Overseas Indians estimated at over twenty million are spread across 110 countries. Their industry, enterprise, economic strength, education and professional skills are widely recognised. The bond which holds this vast and diverse overseas Indian community together with India is Indianness. The creation of the Ministry of Overseas Indian Affairs (MOIA) acknowledges the fact that the welfare of Overseas Indians needs mainstream attention. The mission of the Ministry is to promote, nurture and sustain a mutually beneficial and symbiotic relationship between India and its diaspora.

The heterogeneous Indian diaspora spread across eight major regions of the world is a product of different waves of migration over hundreds of years and have distinct expectations from the home country. In facilitating the process of engagement the Ministry seeks to provide for this wide range of roles and expectations.

The ministry also recognizes that the various States are important players in our Union of States. Equally, they are central to sustainable and mutually beneficial engagement between India and its diaspora. It must be recognized that any initiative that Overseas Indians, individually or collectively, take must be anchored in one of the States. The States are therefore encouraged to develop a stake in the entire process of engagement with the diaspora and become natural stakeholder partners.

The Ministry of Overseas Indian Affairs is a young ministry. Initially established in May 2004 as the Ministry of Non-Resident Indian Affairs' it was renamed as 'Ministry of Overseas Indian Affairs' (MOIA) in September 2004. The emigration division of the Ministry of Labour and Employment was attached to the new Ministry in December 2004. The NRI division of the Ministry of External Affairs (MEA) provides support to the MOIA and now functions as the Diaspora division in the Ministry.

The Ministry is headed by a cabinet minister and is organized into four functional service divisions: Diaspora Services, Financial Services, Employment Services, and Social Services. A small team of eleven officers (Deputy Secretary and above) is working in the Ministry in a delayed and multi-task mode.

The Protector General of Emigrants administers the Emigration Act, 1983. He oversees the eight field offices of the protectors of emigrants located at Chandigarh, Chennai, Cochin, Delhi, Hyderabad, Kolkata, Mumbai and Thiruvananthapuram.

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DEFINITIONS

Who is an Overseas Citizen of India (OCI)?

A foreign national, who was eligible to become a citizen of India on 26.01.1950 or was a citizen of India on or at any time after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children, is eligible for registration as an Overseas Citizen of India (OCI). Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh he/she will not be eligible for OCI.

Who is a Non Resident Indian?

Section 2 of the Foreign Exchange Management Act, 1999 (FEMA) deals with various definitions. It defines a person resident in India and a person resident outside India. However, it does not define the term non-resident nor it does define the term Non Resident Indian (NRI).

However, Notification No. 5/2000-RB (dealing with various kinds of Bank Accounts) defines the term Non Resident Indian (NRI) to mean a person resident outside India who is either a citizen of India or is a person of Indian origin. In short, the definition of the term NRI is contextual and can have slightly different connotations for FEMA/Income Tax/Acquisition of Immovable Property etc.

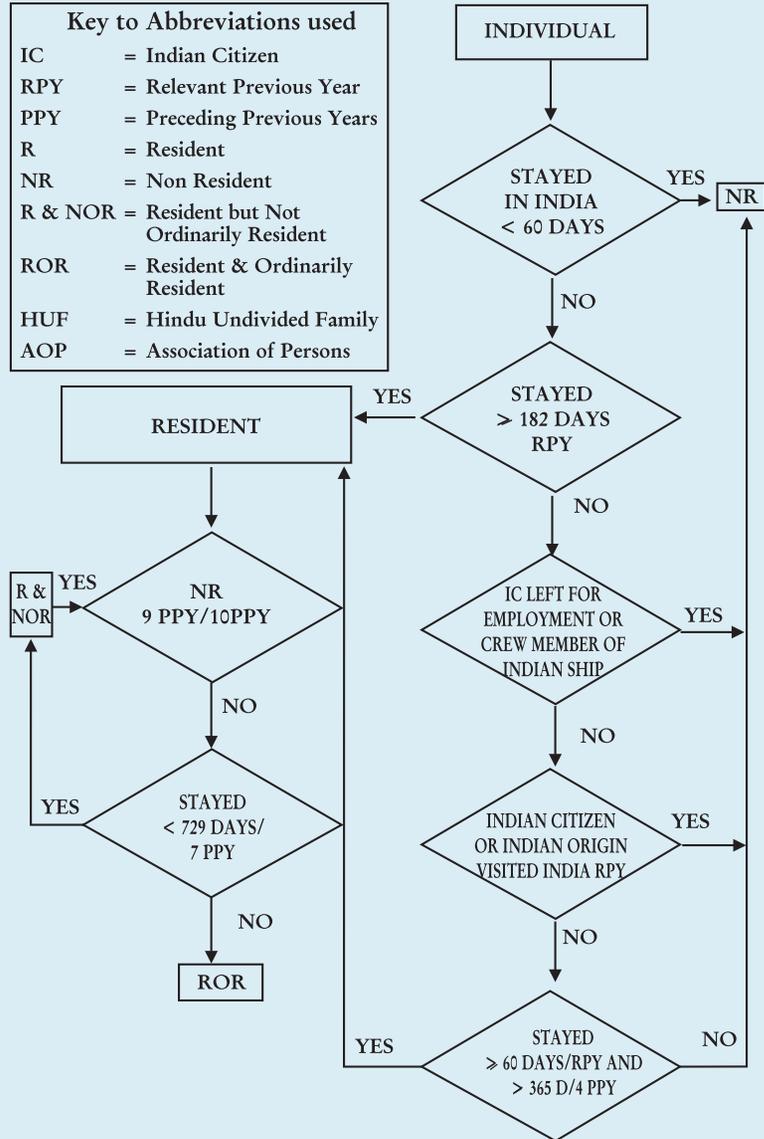
Who is a person resident in India?

Under the FEMA, a person resident in India means a person residing in India for more than 182 days during the course of the preceding financial year and who has come to or stays in India either for taking up employment, carrying on business or vocation in India or for any other purpose, that would indicate his intention to stay in India for an uncertain period. In other words, to be treated as 'a person resident in India' under FEMA a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of the preceding financial year) but has to comply with the condition of purpose/ intention of stay.(For details see FEMA, 1999).

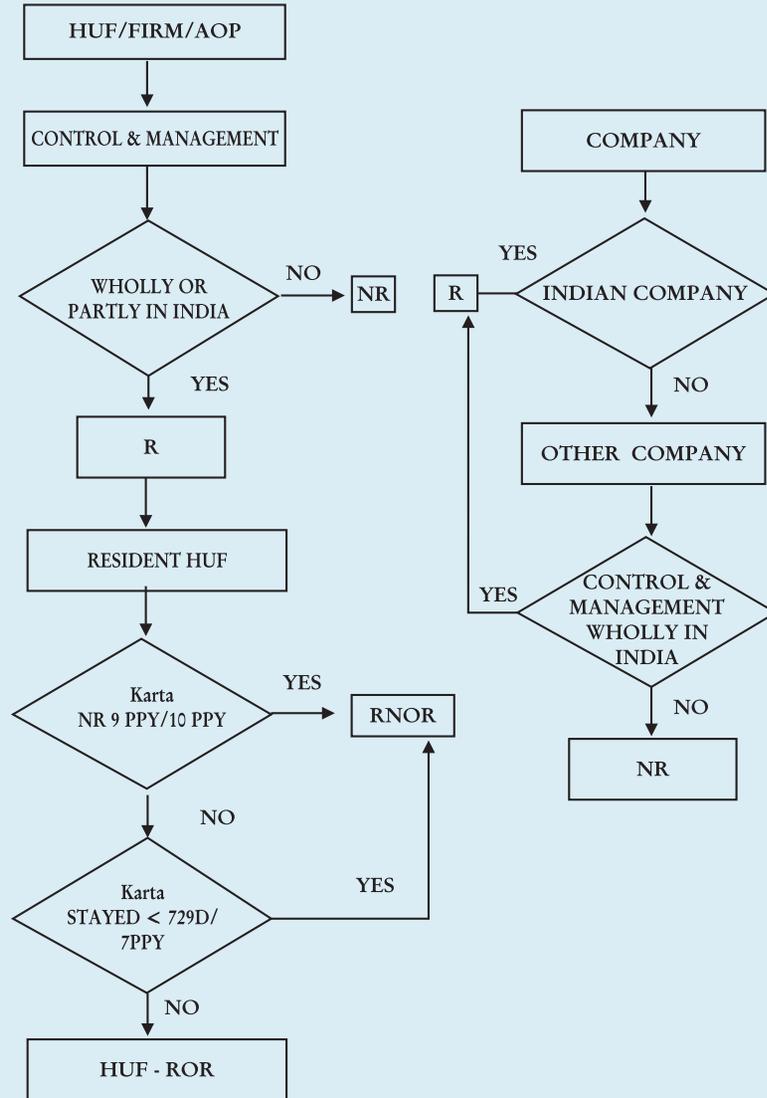
DETERMINATION OF RESIDENTIAL STATUS OF AN ASSESSEE UNDER THE INCOME TAX ACT

The Tests for determining the Residential status of an assessee under the Income Tax Act can be explained with the help of a Flow Chart as follows:

Key to Abbreviations used	
IC	= Indian Citizen
RPY	= Relevant Previous Year
PPY	= Preceding Previous Years
R	= Resident
NR	= Non Resident
R & NOR	= Resident but Not Ordinarily Resident
ROR	= Resident & Ordinarily Resident
HUF	= Hindu Undivided Family
AOP	= Association of Persons



DETERMINATION OF RESIDENTIAL STATUS OF HUF/FIRM/AOP/COMPANY



Who is a Person of Indian Origin (PIO)?

1. For the purposes of availing of the facilities of opening and maintenance of bank accounts and investments in shares/securities in India;

Person of Indian Origin means any person:

- a) who at any time, held an Indian passport; or
- b) he/she or either of his/her parents or his/her grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955(57 of 1955) or
- c) the person is a spouse of an Indian citizen or a person referred to in clause (a) or (b) above.

2. For investment in immovable properties;

Person of Indian Origin means an individual (not being a citizen of Pakistan or Bangladesh or Afghanistan or Bhutan or Sri Lanka or Nepal or China or Iran):

- a) who at any time, held an Indian passport or
- b) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955(57 of 1955)

3. For the purpose of PIO card scheme;

A foreign citizen if he/she at any time held an Indian Passport; or he/she or either of his/her parents or grand parents or great grand parents was born in and permanently resident in India as defined in the Government of India Act,1935 or his/her spouse (for details, see Chapter 5 on PIOs).

What is an Overseas Corporate Body (OCB)?

Prior to deletion of OCB as a class of investors with effect from September 16, 2003 the term 'Overseas Corporate Body' was defined as a company, partnership firm, society and other corporate body wholly owned, directly or indirectly, to the extent of at least sixty percent by Non-Resident Indians and included overseas trusts in which not less than sixty percent beneficial interest is held by Non-Resident Indians, directly or indirectly but irrevocably.

However, OCBs which had prior to September, 16, 2003 availed of investment facilities under various schemes have general permission to continue to hold/transfer/gift (to Non Resident Indians/Residents

in India) their existing investments in shares/convertible debentures/securities of Indian companies. Indian companies can allot bonus shares accruing to the OCBs. Those which are incorporated in the host country and are not under adverse notice of RBI may be considered, for undertaking fresh investments, as incorporated non-resident entities by RBI/Government on case by case basis.

BANK ACCOUNTS

NRIs/PIOs are permitted to open bank accounts in India out of funds remitted from abroad, foreign exchange brought in from abroad or out of funds legitimately due to them in India.

Such accounts can be opened with banks specially authorised by the Reserve Bank in this behalf [Authorised Dealers].

There are three types of Non-Resident accounts:

RUPEE ACCOUNTS

1) Non- Resident (External) Rupee Accounts (NRE Accounts)

NRIs and PIOs are eligible to open NRE Accounts. These are rupee denominated accounts. Accounts can be in the form of savings, current, recurring or fixed deposit accounts. Accounts can be opened by remittance of funds in free foreign exchange. Foreign exchange brought in legally, repatriable incomes of the account holder, etc. can be credited to the account. Joint operation with other NRIs/PIOs is permitted. Power of attorney can be granted to residents for operation of accounts for limited purposes.

The deposits can be used for all legitimate purposes. The balance in the account is freely repatriable. Interest lying to the credit of NRE accounts is exempt from tax in the hands of the NRI.

Funds held in NRE accounts may be freely transferred to Foreign Currency Non Resident (FCNR) accounts of the same account holder. Likewise, funds held in FCNR accounts may be transferred to NRE accounts of the same account holder.

2) Ordinary Non-Resident Account (NRO Accounts)

These are Rupee dominated non-repatriable accounts and can be in the form of savings, current, recurring or fixed deposits. These accounts can be opened jointly with residents in India. When an Indian National /PIO resident in India leaves for taking up employment etc. outside the country, other than Nepal or Bhutan, his bank account in India gets designated as NRO account.

The deposits can be used to make all legitimate payments in rupees. Interest income from NRO accounts is taxable. Interest income, net of taxes is repatriable. Authorised dealers may allow remittances upto US \$ 1 million, per calendar year, out of balances held in NRO account for any bonafide purpose.

FOREIGN CURRENCY ACCOUNTS

3) Foreign Currency Non Resident (Bank) Accounts (FCNR (B) Accounts)

NRIs/PIOs are permitted to open such accounts in US dollars, Sterling Pounds, Japanese Yen, Euro, Canadian Dollars and Australian Dollars. The accounts may be opened in the form of term deposit for any of the three maturity periods viz; (a) one year and above but less than two years (b) two years and above but less than three years and (c) three years only. Now RBI has allowed banks to accept FCNR (B) deposits upto maximum maturity period of five years.

Interest income is tax free in the hands of the NRI until he maintains a non-resident status or a resident but not ordinarily resident status under the Indian tax laws.

FCNR (B) accounts can also be utilised for local disbursement including payment for exports from India, repatriation of funds abroad and for making investments in India, as per foreign investment guidelines.

CHAPTER - 1

INTRODUCTION

1.1 OVERVIEW OF INDIA'S ECONOMY

India: Accelerating Growth

(Simple average of rates of growth of GDP in the preceding ten years)



India is the largest democracy and 4th largest economy (in terms of purchase power parity) in the world. India is also the tenth most industrialized country in the world. With its consistent growth performance and abundant high-skilled manpower, India provides enormous opportunities for investment, both domestic and foreign.

Major reform initiatives have been taken since 1991, in the fields of investment, trade, financial sector, exchange control simplification of procedures, enactment of competition and amendments in the intellectual property right laws, etc.

BASIC ECONOMIC STATISTICS	
GDP at current prices (2004-2005)	2843.9 (Rs Thousand Crore)
GDP growth rate : 2004-05	6.9%
Exchange Rate	Rs. 44.25/ \$ (Average Exchange Rate for April 05-January 06)
Foreign Exchange Reserves	US \$ 140.6 billion (as on July 29, 2005)
Exports 2004-05	US \$ 82.15 billion, Growth Rate : 23.9%
Imports 2004-05	US \$ 118.78 billion, Growth Rate : 48.5%
Foreign Direct Investment 2004-05	US \$ 5.6 billion

The service sector improved its performance significantly from 7.9% in 2002-03 to 9.1% in 2003-04. The strong performance of the capital goods sector coupled with increased imports of capital goods also augurs well for domestic capacity expansion in a large number of industries. The present trend indicates a positive outlook for industrial growth due to improved capacity utilization, improved industrial climate, expanding external and domestic demand and ease in availability of credit.

The strong and positive outlook of both foreign and domestic investors indicates that India is ready for a big push as the growing interest of foreign investors is coinciding with the rising confidence of domestic private investors. The increasing efficiency and competitiveness of domestic producers, liberalized trade, and deregulated interest rate regime are critical contributors to both growth acceleration and macro economic stability.

1.2 BUSINESS ENVIRONMENT IN INDIA

A number of studies in the recent past have highlighted the growing attractiveness of India as an investment destination. According to the study 'Dreaming with BRICS' by Goldman Sachs, Indian economy is expected to continue growing at the rate of 5% or more till 2050. Some of these conclusions are listed below:

- ✓ 2nd most attractive destination - A.T. Kearney Business Confidence Index, 2005
- ✓ 2nd most attractive investment destination among Transnational Corporations – UNCTAD's 'World Investment Report, 2005'
- ✓ Most attractive location for "offshoring" of service activities – A. T. Kearney Global Service Location Index 2005

Government has put in place a liberal, transparent and investor friendly Foreign Direct Investment policy (FDI), wherein FDI upto 100% is allowed under automatic route for most of the sectors/activities, where the investor does not require any prior approval. Only notification to the Reserve Bank of India within 30 days of inward remittance or issue of shares to non-residents is required. Cases requiring prior Government approval are considered by the Foreign Investment Promotion Board (FIPB) in a time bound and transparent manner. The FDI policy in India is considered as one of the most liberal, with very few barriers.

1.3 LIBERALIZED POLICY FRAMEWORK FOR INVESTMENT BY NON-RESIDENT INDIANS

The Government attaches importance to investments by NRIs. Government has provided a liberalized policy framework for approval of NRI investments through both the automatic and the Government route. NRIs are permitted to invest upto 100% equity in the Real Estate and Civil Aviation sectors. Automatic approval is given by the RBI to all NRI proposals with their investment upto 100% for all items/activities (Annexures 3,4,5) except a few exceptions mentioned in Press Note 2 (2000 series) read with sector specific guidelines. Government approval is required for all proposals not qualifying under the Automatic Route.

Proposals for conversion of NRI investment into repatriable equity are hitherto being considered by the FIPB for approval. This procedure has been reviewed in the context of various liberalization measures taken by the Government in the recent past. It is clarified that in terms of Press Note 4 (2001 series), all proposals would qualify for conversion of non-repatriable equity into repatriable equity under the automatic route provided:

- ✓ The original investment by the NRI was made in foreign exchange under the FDI Scheme
- ✓ The sector/activity in which the investment is proposed to be converted into repatriable equity is on the automatic route for FDI.

Major initiatives/incentives for NRIs and Foreign Direct Investment

The government took several steps in the current year in the area of foreign direct investment (FDI) in future pursuit of its already committed path of policy transparency and liberalization in FDI. FDI up to 100 per cent is now permitted on the automatic route in all sectors/activities except: (a) activities requiring industrial license under the Industries Development and Regulation Act, (b) proposals where the foreign investor had an existing joint venture/technical collaboration /trademark agreement in the same field of activity, (c) proposal for acquisition of shares in an Indian company in the financial services sector & where SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 is attracted and (d) all proposals falling outside notified sectoral policy /caps or under sectors in which FDI is not permitted. Some of the specific measures, which have been taken are as follows:

- ❖ FDI cap in the domestic airlines sector has been enhanced from 40 per cent to 49 per cent and NRI investment is permitted up to 100 per cent with no direct or indirect equity participation by the foreign airlines.
- ❖ FDI up to 100 per cent under the automatic route is now permitted for development of township, housing, built up infrastructure and construction development projects. The minimum area requirement has been reduced to 10 hectares for serviced housing plots and 50,000 square meters built up area for construction-development projects. For investment by NRIs, the conditions are not applicable.
- ❖ FDI cap has been increased from 49 per cent to 74 per cent in basic and cellular telecom services. The revised cap includes both FDI and portfolio investment.
- ❖ FDI has been permitted in FM Radio Broadcasting up to a maximum of 20 per cent (which is inclusive of FDI, NRI, PIO and FII).

- ❖ Guidelines for approval of foreign/ technical collaborations for project with existing joint venture/ collaboration in the same field have been reviewed.

As a measure towards simplification of the existing procedures in FDI, the following activities have been placed on the general permission route of RBI:

- ❖ Transfer of shares in an existing Indian company from residents to non residents and vice-versa (except in the financial sector and where SEBI takeover code is attracted);
- ❖ Conversion of ECB/loan into equity, provided the activity is covered under the automatic route and the foreign equity after such conversion falls within the sectoral cap;
- ❖ Conversion of preference shares into equity provided the increase in foreign equity participated is within the sectoral cap and the activity is the automatic route; and
- ❖ Conversion of non-repatriable equity invested by NRIs in foreign exchange into repatriable equity allowed under the automatic route provided the original investment was made in foreign exchange under the FDI scheme notified under the FEMA regulation and the sector/activity in which the investment is proposed to be converted into repatriable equity is on the automatic route for FDI.

CHAPTER - 2

FDI/NRI INVESTMENT IN INDIA

2.1 POLICY ON FDI/NRI INVESTMENT

India has among the most liberal and transparent policies on FDI among the emerging economies. FDI up to 100% is allowed under the automatic route in all activities/ sectors (Annexures III,IV,V) except the following that require prior approval of the Government:

1. Activities/items that require an Industrial license (Annexure VI).
2. Proposals in which the foreign collaborator has an existing financial / technical collaboration in India in the 'same' field (Press Note no. 1 of 2005 series),
3. Proposals for acquisition of shares in an existing Indian Company in:
 - ✓ Financial Services Sector and
 - ✓ Where Securities & Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 is attracted;
4. All proposals falling outside notified sectoral policies/caps or under sectors in which FDI is not permitted. (Refer Annexure II)

FDI policy is reviewed on an on going basis and changes in sectoral policy /sectoral equity cap are notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion. All Press Notes are available at the Website (www.dipp.gov.in). Reserve Bank of India (RBI) under Foreign Exchange Management Act (FEMA) also notifies FDI policy. Please refer to RBI website (www.rbi.org.in).

PROHIBITED SECTORS

The extant policy does not permit FDI in the following cases;

1. Gambling and Betting
2. Lottery Business
3. Atomic Energy
4. Retail Trading
5. Agricultural or plantation activities or Agriculture (excluding Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture and Cultivation of Vegetables, Mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than Tea plantations)

2.2 PROCEDURES

PROCEDURE UNDER AUTOMATIC ROUTE

FDI in sector/ activities to the extent permitted under automatic route does not require any prior approval either by Government of India or RBI. The investors are only required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.

PROCEDURE UNDER GOVERNMENT APPROVAL

FDI in activities not covered under the automatic route requires prior Government approval and are considered by the Foreign Investment Promotion Board (FIPB). Approvals of composite proposals involving foreign investment / foreign technical collaboration are also granted on the recommendations of the FIPB.

Such applications for FDI cases, except Non-Resident Indian (NRI) investments and 100% Export Oriented Units (EOUs), should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance.

Applications for NRI and 100% EOU cases should be presented to SIA in Department of Industrial Policy and Promotion.

Applications can also be submitted with Indian Missions abroad who forward them to the Department of Economic Affairs for further processing.

Applications can be made in Form FC-IL which can be downloaded from www.dipp.gov.in. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

GENERAL PERMISSION OF RBI UNDER FEMA

Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors. The companies are required to notify the concerned regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRIs.

GENERAL PERMISSION TO NRIs/PIOs

The Reserve Bank has granted general permission to NRIs/PIOs for undertaking direct investment in Indian Companies under the automatic route, purchase of shares under Portfolio Investment Schemes, investment in companies and proprietorship/ partnership concerns on non-repatriation basis and for remittances of current income. NRIs/PIOs do not have to seek specific permission for approved activities under these schemes.

The Reserve Bank of India has now further simplified financial transactions by NRIs/PIOs by granting general permissions to:

1. Resident individuals, partnership/proprietorship concerns to avail of interest bearing rupee loans from NRIs/PIOs out of funds remitted by them from abroad or out of funds held in their bank accounts in

India, on non – repatriation basis, subject to certain conditions; one of them being that the rate of interest on such loans should not exceed Bank Rate plus two percentage points.

2. NRIs/PIOs to transfer by way of gift shares held by them in Indian companies and to transfer by way of gift immovable property held by them in India subject to compliance with other applicable rules/regulations including the provisions of Foreign Contribution Regulations Act, 1976 by the charitable trust/organisation concerned.
3. All domestic public/private sector mutual funds for issue of units to NRIs/PIOs on both repatriation and non repatriation basis.
4. NRIs/PIOs to place deposits with Indian firms, on non-repatriation basis and with Indian companies on non-repatriation basis out of domestic sources.
5. NRIs/PIOs for sale of shares acquired under direct investment Schemes on stock exchanges in India.
6. NRIs/PIOs for transfer of shares, by way of sale under private arrangement to another NRI or to a resident.
7. RBI permission is not required for drawal of foreign exchange for purchase of trade marks or franchise in India.
8. NRIs/PIOs may remit the sale proceeds of immovable property without the lock in period of 10 years subject to maximum of 1 million USD per calendar year.

NRIs/PIOs have been granted general permission to invest in Government Securities and Treasury Bills.

Taking into account the facilities that are already available, and the above new measures, NRIs/PIOs will not have to seek specific permission of Reserve Bank for a whole variety of approved financial/investment transactions. This should considerably reduce paper work and time taken for undertaking such transactions.

DIRECT INVESTMENT OPPORTUNITIES

NRIs can invest in India as under:

1. Investment under Automatic Route with repatriation benefits
2. Investment with Government approval
3. Other Investments with repatriation benefits
4. Investments upto 100% equity without repatriation benefits
5. Other Investments by NRIs without repatriation benefits.

1. AUTOMATIC ROUTE OF RBI WITH REPATRIATION BENEFITS

NRIs can invest in shares/convertible debentures of Indian companies under the Automatic Route without obtaining Government or RBI permission except for a few sectors where FIPB permission is necessary, or where the investment can be made only upto a certain percentage of paid up capital.

For full details of the Automatic Route, investors may see website of Department of Industrial Policy & Promotion.

2. INVESTMENT WITH GOVERNMENT APPROVAL

Investment not eligible under the Automatic Route, are considered by the Foreign Investment Promotion Board (FIPB), a high Powered inter-ministerial body under the chairmanship of Secretary, Department of Economic Affairs, subject to sectoral limits/norms. These investments also enjoy full repatriation benefits

3. OTHER INVESTMENTS WITH REPATRIATION BENEFITS

<ol style="list-style-type: none"> 1. Investment in units of domestic mutual funds 2. Investment in bonds issued by public sector undertakings 3. Purchase of Shares of Public sector enterprises being disinvested by GOI. 4. Investment in government dated securities (other than bearer securities) or Treasury Bills 	<p>NRIs are permitted to invest in the securities with repatriation benefits.</p>
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4. INVESTMENTS UPTO 100% EQUITY WITHOUT REPATRIATION BENEFITS

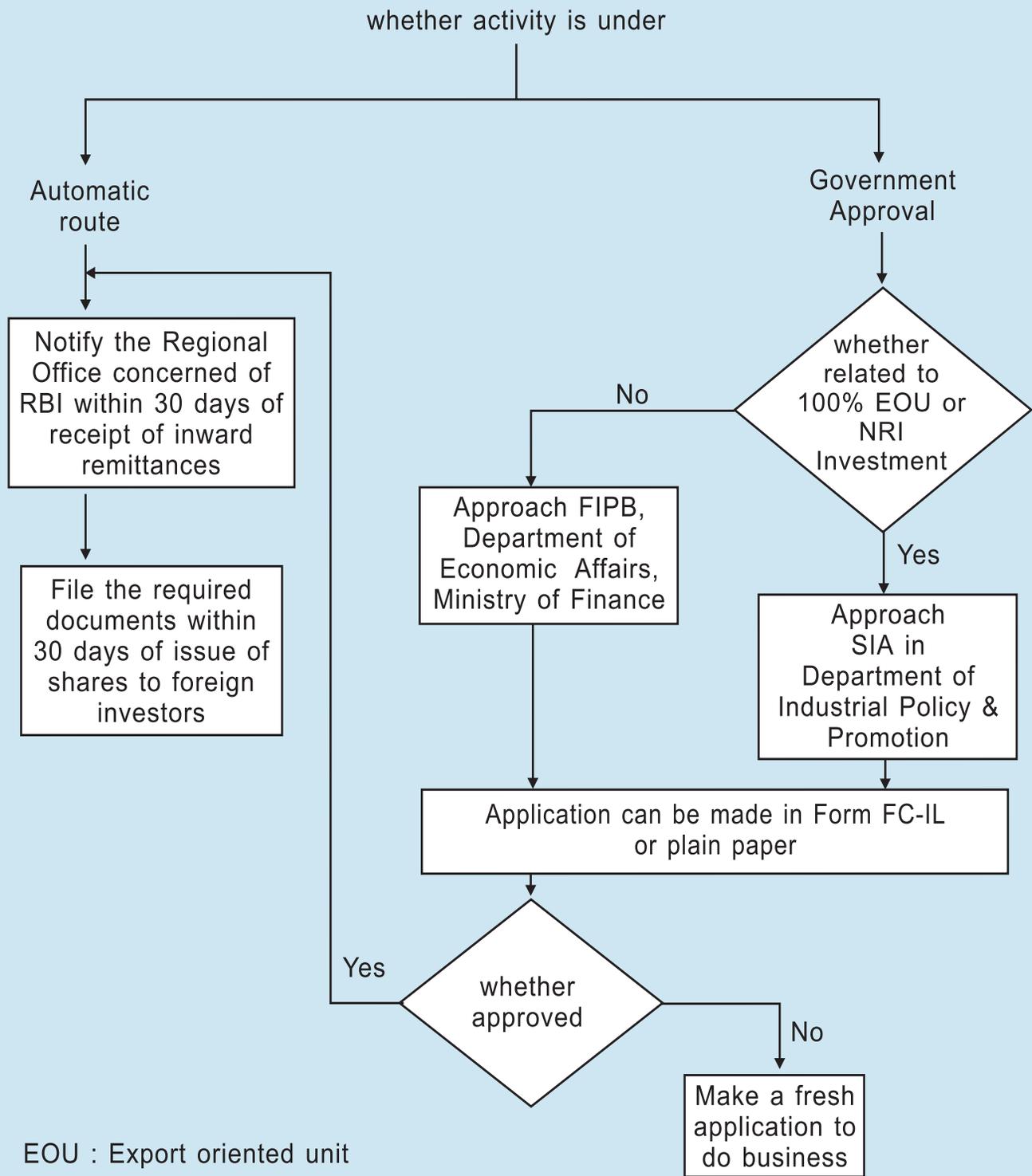
<ol style="list-style-type: none"> 1. Capital contribution to any proprietary or partnership concern 	<p>NRIs can invest by way of capital contribution in any proprietary or partnership concern in India provided the firm or the proprietary concern is not engaged in any agricultural/plantation activities or real estate business or print media on non- repatriation basis subject to certain conditions.</p>
<ol style="list-style-type: none"> 2. New issues of shares/ debentures of Indian companies 	<p>NRIs have been granted general permission to subscribe to the shares/ convertible debentures of an Indian company on non- repatriation basis, and to an Indian company to issue shares or convertible debentures by way of new/ rights/ bonus to NRIs on non- repatriation basis provided that the investee company is not engaged in agricultural/plantation activities or real estate business (excluding real estate development i.e., development of property or construction of houses) or chit fund or is not a Nidhi Company.</p>

5. OTHER INVESTMENTS BY NRIs WITHOUT REPATRIATION BENEFITS.

- (i) Investment in Non Convertible Debentures
- (ii) Money Market Mutual Funds
- (iii) Deposits with companies
- (iv) Commercial Papers

PROCEDURE FOR INVESTMENT IN INDIA

FOREIGN DIRECT INVESTMENT



2.3 ENTRY OPTIONS FOR INVESTORS

ENTRY OPTIONS

A foreign company planning to set up business operations in India has the following options:

AS AN INCORPORATED ENTITY

By incorporating a company under the Companies Act, 1956 through

- i Joint Ventures; or
- ii Wholly Owned Subsidiaries

Foreign Equity in such Indian Companies can be up to 100% depending on the requirement of the investor, subject to any equity caps prescribed in respect of the area of activities under the Foreign Direct Investment (FDI) policy.

AS AN UNINCORPORATED ENTITY

- i) As a foreign Company through
 - i. Liaison Office/Representative Office
 - ii. Project Office
 - iii. Branch Office

Such offices can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch or Office or other place of business) Regulations, 2000.

INCORPORATION OF A COMPANY

For registration and incorporation, an application has to be filed with the Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian Company, it is subject to Indian Laws and regulations as applicable to other domestic Indian companies.

For details please visit the website of Ministry of Company Affairs at www.mca.gov.in.

LIAISON OFFICE/ REPRESENTATIVE OFFICE

The role of liaison office is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Liaison office can not undertake any commercial activity directly or indirectly and can not, therefore, earn any income in India. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).

PROJECT OFFICE

Foreign Companies planning to execute specific projects in India can set up a temporary project /site offices in India. RBI has now granted a general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices can not undertake or carry on any activity other than activity relating and incidental to execution of the project. Project offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI.

BRANCH OFFICE

Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes:

- a. Export/Import of goods
- b. Rendering professional or consultancy services
- c. Carrying out research work, in which the parent company is engaged.
- d. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- e. Representing the parent company in India and acting as buying/selling agents in India.
- f. Rendering services in Information Technology and development of software in India.
- g. Rendering technical support to the products supplied by the parent/ group companies.
- h. Foreign airlines/shipping company

Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines. Permission for setting up branch offices is granted by the Reserve Bank of India (RBI).

BRANCH OFFICE ON “STAND ALONE BASIS” IN SEZ

Such Branch Offices would be isolated and restricted to Special Economic Zone (SEZ) alone and no business activity/ transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India.

No approval shall be necessary from RBI for a company to establish a branch /unit in SEZs to undertake manufacturing and service activities subject to the following conditions:

- a. Such units are functioning in those sectors where 100% FDI is permitted.
- b. Such units comply with part XI of the Companies Act(section 592 to 602)
- c. Such units function on a stand alone basis,
- d. In the event of winding up of business and for remittance of winding-up proceeds, the branch shall approach an authorized dealer in foreign exchange with the document required as per FEMA.

Procedure for Liaison office/Project office/Branch office

Application for setting up Liaison Office/ Project office / Branch Office may be submitted to Chief General Manager, Exchange Control Department (Foreign Investment Division), RBI Central Office, Mumbai-400 001, in the form FNC 1 (available at RBI website at www.rbi.org.in).

INVESTMENT IN A FIRM OR A PROPRIETARY CONCERN BY NRIS

A Non-Resident Indian or a Person of Indian Origin resident outside India may invest by way of contribution to the capital of a firm or a proprietary concern in India on a non-repatriation basis provided,

- i) Amount is invested by inward remittance or out of NRE/FCNR/NRO account maintained with Authorised Dealer.
- ii) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business i.e. dealing in land and immovable property with a view to earning profit or earning income there from.
- iii) Amount invested shall not be eligible for repatriation outside India.

NRIs/PIOs may invest in sole proprietorship concerns/ partnership firms with repatriation benefits with the approval of Department of Economic Affairs, Government of India/ RBI.

2.4 SPECIAL ECONOMIC ZONES

A policy for setting up of Special Economic Zones in the country with a view to provide an internationally competitive and hassle free environment for exports was introduced on 1.4.2000. **Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.** Goods and services going into SEZ areas from Domestic Tariff Area (DTA) are treated as exports and goods coming from SEZ area into DTA area are to be treated as if these are being imported. Special Economic Zones Act, 2005 provides for the establishment, development and management of Special Economic Zones for the promotion of exports and for the matters connected therewith or incidental thereto. The policy provides for setting of SEZ's in the public, private joint sector or by State Governments.

Distinguishing Features

Indian SEZ Act, 2005 has following distinguishing features:

1. The zones are proposed to setup by private sector or by State Govt. in association with Private sector. Private sector is also invited to develop infrastructure facility in the existing SEZs.
2. State Govt. has a lead role in the setting up of SEZ.
3. A framework is being developed by creating special by creating special windows under existing rules and regulations of the Central Govt. and State Govt. for SEZ.

SETTING UP OF SEZ BY DEVELOPER

Setting up of SEZ in the Public, Private, Joint Sector or by the State Govt. :

With a view to augmenting infrastructure facilities for export production it has been decided to permit the setting up of Special Economic Zones (SEZs) in the public, private, joint sector or by the State Govt. The minimum size of the Special Economic Zone shall not be less than 1000 hectares. Minimum area requirement shall, however, not be applicable to product specific and port/airport based SEZ. This measure is expected to promote self contained areas supported by world-class infrastructure oriented towards export production. Any private /public/joint sector or State Govt. or its agencies can set up Special Economic Zone (SEZ)

Criteria for approval

Proposals for setting up SEZ in the Public/Private/Joint/State sector are required to meet the following conditions:

- (i) Minimum size of the SEZ shall not be less than 1000 hectares. This would however, not apply to existing EPZs converting into SEZs as such or for notifying additional area as a part of such SEZ or to product specific port/airport based SEZs.
- (ii) The SEZ and units therein shall abide by local laws, rules , regulations or bye-laws in regard to area planning, sewerage disposal, pollution control and the like . They shall also comply with industrial and labour laws and such other laws /rules and regulations as may be locally applicable.

- (iii) Such SEZ shall make adequate arrangements to fulfill all the requirements of laws, rules and procedures applicable to such SEZ.
- (iv) Only units approved under the SEZ schemes would be permitted to be located in these SEZ.
- (v) At least 25% area of the SEZ shall be used for developing industrial area for setting up such units.

How to apply

Applications (15 copies) indicating the name and address of the applicant, status of the promoter (whether individual/ private company/ State Govt. /NRIs etc.) along with a project report covering the following particulars shall be submitted to the Chief Secretary of the State:

- i) Location of the proposed zone with details of the existing and proposed infrastructure,
- ii) Area of the proposed SEZ and its area distance from the nearest Sea Port/ Airport/ Rail/ Road head etc.
- iii) Financial details including investment proposed, mode of financing the project and viability of the project.
- iv) Details of foreign equity and repatriation of dividend etc., if any.
- v) Whether the zone will allow only certain specific industries or will be a multinational zone or it is a port /airport based zone.

The State Govt. shall, forward it along with their commitment to the following , to the Department of Commerce , Govt. of India.

The area incorporated in the proposed Special Economic Zone is free from environmental prohibition; Water and Electricity and other services would be provided as required;

Full exemption in electricity duty and tax on sale of electricity for self generated and purchase power; To allow generation, transmission and distribution of power within SEZ.

- vi) Exemption from State Sales Tax, Octroi, Mandi tax, Turnover tax and taxes, duty, cess, levies on supply of goods from Domestic Tariff Area to SEZ units;
- vii) For units inside the Zone, the power under the Industrial Dispute Act and other related Act would be delegated to the Development Commissioner.
- viii) The Zone will be declared as a Public Utility Service under Industrial Dispute Act.
- ix) Single point clearances system would be provided to the units in the Zone under State Laws/ Rules.

The proposal incorporating the commitments of the State Govt. shall be considered by the Board of Approval (BOA) as notified vide notification No 14/ 1 / 2001-EPZ dated 7.8.2001.

On acceptance of the proposal by the Board of Approval , the Department of Commerce will issue a Letter of Permission to the applicant;

Facilities and Incentives for Developers

- ❖ Developers of SEZ may import / procure goods without payment of duty for the development, operation and maintenance of SEZ.
- ❖ Income tax exemption for a block period of 10 year in 15 years at the option of developer as per Section 80IAB of the Income Tax Act .
- ❖ Full freedom in allocation of developed plots to approved SEZ units on a purely commercial basis.
- ❖ Full authority to provide service like water, electricity, security , restaurants, recreation centers etc. on commercial lines.
- ❖ Foreign investment permitted to develop township within the SEZ with residential area , market, play grounds, clubs, recreation centers etc.
- ❖ Develop Standard Design Factory (SDF) building in existing SEZ.
- ❖ Income Tax Exemption to investor's in SEZ's under Section 10(23G) of Income Tax Act.
- ❖ Exemption from Service Tax
- ❖ Investment made by individuals etc. in SEZ company also eligible for exemption u/s 88 of the Income Tax Act.
- ❖ Development promoted to transfer infrastructure facility for operation and maintenance u/s 80-IA of the Income Tax Act.
- ❖ Generation, Distribution and Transmission of Power in SEZs allowed.

SETTING UP OF SEZ ENTERPRISE

Facilities in Special Economic Zone

A new Special Economic Zone (SEZ) scheme has been introduced in the Export and Import policy from 1st April 2000, with a view to provide an internationally competitive & hassle free environment for export production.

INDIAN SEZ – Salient Features and Facilities

- ❖ A designated duty free enclave and to be treated as foreign territory for trade operations and duties and tariffs.
- ❖ No License required for import.
- ❖ Exemption from custom duty on import of capital goods, raw materials, consumable spares etc.
- ❖ Exemption from Central Excise duty on procurement of Capital goods, raw materials, consumables spares etc. from the domestic market.

- ❖ Supplies from DTA to SEZ units treated as deemed exports.
- ❖ Reimbursement of Central Sales Tax paid on Domestic purchases.
- ❖ 100% income tax exemption for a block period of 5 years, 50% tax exemption for next five years u/s 10AA of the Income Tax Act.
- ❖ Carry forwarded of losses.
- ❖ 100% income tax exemption for 5 consecutive years & 50% for 5 years under section 80LA of the income tax Act for off shore banking units
- ❖ Reimbursement of duty paid on furnace oil, procured from domestic oil companies to SEZ units as per the rate of drawback notified by the Directorate General of Foreign Trade.
- ❖ SEZ units may be for manufacturing, trading or service activity.
- ❖ SEZ unit to be positive net foreign net exchange earner within three years.
- ❖ Performance of the unit to be monitored by a committee headed by Development Commissioner and consisting of Customs.
- ❖ 100% foreign direct investment in Manufacturing, sector allowed through automatic route barring a few sectors.
- ❖ Facility to retain 100% foreign exchange receipts in EEFC a/c
- ❖ Facility to realize and repatriate export proceeds within 12 months
- ❖ Re-export imported goods found defective, goods imported from foreign supplier on loan basis etc. without G.R. Waiver under intimation to the Development Commissioner
- ❖ “Write off “of unrealized export bills up to 5%
- ❖ Commodity hedging by SEZ units permitted
- ❖ Capitalisation of import payables.
- ❖ No Cap on foreign investment for SSI reserved items
- ❖ Exemption from industrial licensing requirement for items reserved for SSI sectors
- ❖ Profits allowed to be repatriated freely without any dividend balancing requirement

How to apply

For setting up a unit in an SEZ, three copies of the application in the specified form may be submitted to the Development Commissioner (DC) of the SEZ Concerned.

Proposals for setting up units in the SEZ other than those requiring Industrial Licence may be granted approval by Development Commissioner within 15 Days.

Proposals for setting up units in the SEZ requiring Industrial Licence may be granted approval by the Development Commissioner after clearance of the proposal by the SEZ Board of Approval and Department of Industrial Policy and Promotion within 45 Days.

Letter of permission (LOP) / Letter of Intent (LOI) issued to SEZ units by the Development Commissioner would be construed as a licence for all purposes, including for procurement of raw material and consumables either directly or through canalizing agency.

The LOP/LOI shall specify the items of manufacture/service activity, annual capacity, projected annual export for the first years in dollar terms, Net Foreign Exchange Earning (NFE), limitations, if any, regarding sale of finished goods, by products and rejects in the DTA and such other matter as may be necessary and also impose such conditions as may be required.

Terms and Conditions

SEZ units have to be a Positive Net Foreign Exchange Earner.

Performance of the unit will be monitored by a committee consisting of Development Commissioner of the Zone and Customs.

Units shall maintain proper accounts and furnish details regarding value of import, export etc. to Development Commissioner on a quarterly basis.

Criteria to be Adopted for Automatic Approval of Units under EOU/SEZ Schemes

Approval of New Units

Proposals for setting up units under EOU/SEZ scheme under automatic route shall be considered by the Unit Approval Committee taking into account the following :-

- (i) Residence proof in respect of individual/partnership firms of all Directors/ Partners. (Passport/ ration card/ driving licence /voter identity card or any other proof to the satisfaction of Development Commissioner;
- (ii) Income Tax return of all the promoters for the last three years;
- (iii) Experience of the promoters;
- (iv) Marketing tie-ups
- (v) In case of EOUs, inspection of the project site by an officer
- (vi) A report from other DCs as to whether any case under SEZ/EOU Schemes in regard to diversion of goods etc. is pending.

Whether necessary, the above may be verified through personal interview with the promoters of the project. In the event of the promoters being a well-established entity, the procedure of personal interview may be dispensed with.

The Unit Approval Committee shall meet on Monday, every week. In case of the absence of the Development Commissioner, the meeting will be held by the next senior officer in the Zone. The unit shall intimate the problems being faced by them in advance. In the meetings, apart from the promoters, the other concerned agency with which difficulties are being faced by the unit may also be called.

Recycling of ferrous and non-ferrous metal proposal will be considered only if the unit has Ingots making facility and proposes to achieve value addition.

Sensitive Sectors

Care shall be taken by the Development Commissioner while approving projects in sensitive sectors such as yarn texturising unit, textile processing, pharmaceuticals/ drugs formulations/ recycling of ferrous and non-ferrous metal scraps etc. Projects for setting up units in sensitive sectors under EOU schemes shall be approved by the Development Commissioner after personal verification of the Directors and inspection of the factory site before signing LUT. Verification could also be carried out through General Manager, District Industries Centre or jurisdictional DY/ Assistant Commissioner of Excise/ Customs.

2.5 BUSINESS OPPORTUNITIES IN VARIOUS STATES

Sl. NO	NAME OF STATES	SINGLE WINDOW AGENCY/FIRST SINGLEPOINT CONTACT	WEBSITE	EMAIL: ID	THRUST AREAS FOR INVESTMENT
1	ANDHRA PRADESH	Commissioner of Industries Chirag Ali Lane, Abids, Hyderabad - 500 001 Tel. No: +91 40 23441666, 23441610. Fax: +91 40 23441611 jd_cc@inds.ap.gov.in	aponline.gov.in. www.apind.gov.in	comm_inds@ap.gov.in	Agro and Food processing, Pharmaceuticals and Chemical, Biotechnology, Mining & Mineral, IT, Electronic Hardware, Auto & Auto Components, Steel Plants, Precision Machine Tools, Leather & Textiles.
2	KARNATAKA	KARNATAKA UDYOG MITRA #49, Khanija Bhavan, 3rd Floor Race Course Road & Bangalore-560 001 Phone: 080-22282392/ 5659/6632 Fax: 080-22266063	www.kumbangalore.com	md@kumbangalore.com	Information Technology, Biotechnology, Pharmaceuticals, Engineering Automobiles & Auto components, Manufacturing, Maintenance, Repair Overhaul services for Aerospace, Apparel, Contract Research / R&D, Oil Refining & Petrochemicals, Agro & Food processing Steel & Metallurgy, Cement, Electronics & Telecommunications, Precision Engineering, Machine Tools, Floriculture, Tourism and Infrastructure.
3	GUJARAT	Industrial Extension Bureau (iNDEXTb) (A Government of Gujarat Organization) Block No. 18/2, Udyog Bhavan Gandhinagar 382 017, Gujarat, India Phone: +91-79-232 56009/10/ 11, Fax: +91-79-232 21297	www.indextb.com	indextb@indextb.com	Power, Port, Road, Information Technology, Agro, Mineral, Tourism
4	WEST BENGAL	Director of Industries Government of West Bengal 9th floor, New Secretariat Buildings, KOLKATA-700 001 Phone: 22480238 Fax: 2248-7246	http://www.wbidc.com/	di-wb@hotmail.com mmvrao1111@rediffmail.com	Petrochemicals and downstream industries, Electronics & Information Technology, Iron & Steel, Metallurgical and Engineering, Textiles, Leather & Leather Products, Food Processing, Gems & Jewellery, Development of Medicinal Plants, Rubber, Palm Oil and Tea, Pharmaceuticals, Basic Drugs and Chemicals, Development of Mines & Minerals, Tourism Industrial and Social Infrastructure development.

5	KERALA	Kerala State Industrial Development Corporation Ltd.(KSIDC) Keston Road , Kowdiar, Trivendrum-695 003, Kerala Ph: +91 484-2323010, fax: + +91 484-2323011	www.ksidc.org hotmail.com	E mail: di-wb@ Technology, Business	Tourism& Hospitality, Information Process Outsourcing, Healthcare & Medical Tourism, Manufacturing, Infrastructure, Biotechnology, Food Processing Agriculture & Agro- Industries
6	MADHYA PRADESH	Managing Director Madhya Pradesh State Industrial Development Co. Ltd. (MPSIDC) & TRIFAC" AVN Towers" Plot No. 192, Zone-I Maharana Pratap Nagar, Bhopal- 462011 (MP) Phone: 0755-5270370, 5270246 (D)Fax: 0755-5270280	http://mpsdc.org/	wtcbpl@sancharnet.in inmpsdc@ sancharnet.in	Minerals, Stone Agric, Food Processing, Pharmaceuticals, Herbal, Biotechnology, Gems & Jewellery, Textile, Garments, Tourism, Auto/Auto Component, Education, Forest Based, Information Technology, Power Generation, Infrastructure Hospitality & Services.
7	RAJASTHAN	Commissioner (Investment & NRIs) Bureau of Investment Promotion, Rajasthan Udyog Bhawan , Tilak Marg, Jaipur-302 005, India Ph:(91)(141)2227274, 2227812, 2227713, 2227537 Fax:(91) (141)2227506	http://www.invest rajasthan.com	bipjpr@raj.nic.in	Power, Textile, Cement, Captive Power Plant, Granite, IT, Mineral, Road, SEZ, Tourism, Wasteland Development, Water, Biotechnology, Non- Conventional Energy Sources.
8	MAHARASHTRA	Maharashtra Industrial Development Corporation 'Udyog Sarathi` , Mahakali Caves Road, Andheri (E),Mumbai - 400 093 Board Numbers: 91-022-26870052 / 54 / 73 Fax: 91-022-26871587	http://www.midc india.org, www. sicomindia.com, www.mahara shtra.gov.in	osdfdi@midcindia.org orgceo@midcindia.org	Transport, Roads, Power, Gas, Ports, Special Economic Zones, Information Technology, Bio Technology, Agri Business, Pharmaceutical, Healthcare, Environment Management, Tourism, Development of Industrial Clusters, Auto, Textile, Wine, Entertainment and Leisure, Gems & Jewellery.

9	TAMIL NADU	Tamil Nadu Industrial Guidance & Export Promotion Bureau, Govt Industries Deptt, Secretariat, Chennai - 600 009. Ph : 25671383 Fax : 25670822	http://www.tiic.org	tiicltd@vsnl.com	Mines, Generation of Electricity, Nursing Homes, Packaging, Hotels, Agro, Research & Development, Bore Well Rigs, Road laying equipment, manufacturing, processing or preservation of goods.
10	UTTAR PRADESH	Udyog bandhu, 12 C, Mall Avenue, Lucknow - 226001 Ph. +91-0522 2237726, 2238508 Fax - 2237345 Uttar Pradesh State Industrial Development Corporation, UPSIDC Complex, A-1/4 Lakhanpur, Kanpur. Tel: 0512-2582851, 2582852, 2582853 Fax: 0512-2580797	www.udyogbandhu.org www.upsidc.com	bandhu@sancharnet.in	Textile, Agriculture, Leather, Export Promotion Industrial Park, Software Technology Parks, Special Economic Zones, Power, automobiles and ancillaries.
11	BIHAR	Director, Industries Vikas Bhawan Patna - 800 001. (Bihar) India. Phone : 91-612-2235812(O) Fax : 91-612-2226637	http://gov.bih.nic.in	dirind@doibihar.org dibihar@yahoo.co.in	Agro based industries, Industries based on medicinal and aromatic plants, Sericulture /Tasar, Chemical based industries, Power generating and allied industries, Electronic and computers and IT based industries, Industries based on non-conventional energy, live stock based industries, Industries based on recycling of wastes, eco friendly raw materials and processes, Super speciality Health services, Telecommunications and related products, Food processing industry, Tourism, Plastic and plastic based industries, Pharmaceutical drugs based industries, Leather based industries, Technical Education, Ceramics, Sports goods, Packaging, Metallurgical Industries, Textile, Handicrafts, Natural Gas Based Industries, Housing Fixtures and related industries
12	GOA	Goa Industrial Development Corporation	http://www.goaidc.com/home	goaidc@sancharnet.in	Pharmaceuticals, Information Technology, agro-based, food, fisheries, processing, tourism, electronics, bio-

		Plot No. 13-A-2, EDC Complex, Patto Plaza, Panjim-Goa 403 001. Tel: (91)(832) 2437470 to 73 Fax: (91) (832) 2437478 to 79	http:// www.goaidc.com		technology, light engineering goods, wood carving, automotive parts, gems and jewellery, diamond cutting, garments.
13	ORISSA	1. Industrial Promotion and Investment Corporation of Orissa Limited (IPICOL), 'Shilpa Jyoti' IPICOL House, Janpath, Bhubaneswar-751022, Orissa. Tel.- +91-674- 2542601- 03, Fax- +91-674- 2543766 2. Orissa Investment and Export Promotion Office (OIEPO), Office of Resident Commissioner, Govt. of Orissa, Orissa Niwas, 4 Bordoloi Marg, Chankyapuri, New Delhi-110021. Tel. +91-11-23019771/ 23014250, Fax- +91-11-23010839 3. Director of Industries, (for Small Scale Industries) Killa Maidan, Cuttack-753 001, Orissa. Tel. - +91-671-2301892 Fax - +91-671-2301227	www.ipicolorissa.com www.orissa.gov.in http://rc. orissa.gov.in http://164.100. 140.22/diorissa/	info@ipicolorissa.com rescm-or@nic.in diorissa@ori.nic.in	i. Mining and Mineral based Industry ii. Petroleum and Petrochemicals iii. Thermal Power plants iv. Ancillary, downstream and construction phase industries for the above v. IT and ITES vi. Tourism vii. Agri-business and Food Processing viii. Fisheries and Marine aquaculture ix. Engineering / Auto-component x. Infrastructure development
14	PONDICHERY	PONDICHERY INDUSTRIAL PROMOTION DEVELOPMENT AND INVESTMENT CORPORATION	http://www.pip dic.com/setup.html	pipdic@vsnl.com	

		LIMITED Post Box. No. 19060 Romain Rolland Street Pondicherry - 605 001, India Telephone : 91 - 413 - 2334606, 2335116, 2334361, 2336842, 2334064 Fax: 91 - 413 - 2336842			
15	PUNJAB	Industrial Facilitation Cell, Udyog Sahayak Chief Coordinator, Directorate of Industries, Punjab, 18 Himalya Marg, Udyog Bhawan, Sector 17, Chandigarh 160017 Tel No. 91-0172-2715270, 2715320, 2715344, Fax No. 91-0172-2776992 The Punjab State Industrial Development Corporation Limited Telephones EPABX : 91-172- 702881-84, 702791 Fax:91-172-704145	http://punjabgovt.nic.in/Industry/UdyogSahayak.htm#contact	pws@punjabmail.gov. inpsidc@chd.nic.in , psidc@dot1.net.in	
16	HARYANA	Investment Promotion Centre, Directorate of Industries, Haryana, 30 Bays Building, Sector 17, Chandigarh. Ph.0172 2701346/ 2701221	http://www.haryana.nic.in/ip2005	ipcchd@hry.nic.in	Agro based and Food Processing Industry, Electronics and Information & Communication Technology, Automobiles & Automotive Components, Handloom, Hosiery, Textile and Garments, Manufacturing, Export Oriented Units, Footwear, leather garments and accessories.
17	CHHATTISGARH	Convener, State Investment Promotion Board Near Mantralaya, Renuka Dwar, Shastri Chowk, Raipur Chhattisgarh - 492 001 Ph. 0771-4066351, 4066352 Fax : 0771-4066315	http://www.chhattisgarh.nic.in/departments/sipb/sipb.htm	sipb.cg@nic.in	

18	JHARKHAND	Directorate of Industry, Nepal House, 3rd Floor, Doronda, Ranchi Tel: +91-651-2491844 Fax: +91-651-2491884	www.jharkhandindustry.in	doijharkhand@doijharkhand.net	Mining and mineral based Industries, Agro based Industries, Industries based on medicinal aromatic plants, Sericulture/Tasar, Forest based Industry like shellac, bamboo etc, Engineering, auto component, iron & steel and steel based downstream industries, Chemical based industries, Power generating and allied industries, electronics and computers and IT based Industries, Industries based on non-conventional energy, livestock based industries, Industries based on recycling of wastes, super specialty health services, Telecommunications and related products, Food Processing Industries, Tourism, Cold Storages, Plastic and Plastic bags based industries, Pharmaceutical/drugs based industries, leather based industries, technical education, ceramics, sports goods, packaging, metallurgical industries, textiles, hosiery, knitwear, handicrafts, natural gas based industries, housing fixtures related industries.
19	UTTARANCHAL	State Industrial Development Corporation of Uttaranchal 2, New Cantt Road, Dehradun-248001 Tel: +91-135-2743292/97, 2743838 Fax: 91-135-2743288	www.sidcul.com	sidcul@sidcul.com	Floriculture, Medicinal herbs and aromatic herbs etc. - processing, honey, Horticulture and Agro based industries, Food Processing Industry, Sugar and its by products, Silk and silk products, Wool and wool products, Woven fabrics (Excisable garments), Sports goods, tourism, Pharma products, Eco-tourism, Handicrafts, Bottling of mineral water, Hydro- Power, Forest Products, Herbs & Spices, Minerals, Education, Medical & Health Care, Handlooms, Tea Industry, Information Technology, Biotechnology,
20	ASSAM	Directorate of Industries and Commerce, Government of Assam, Udyog Bhawan, Bamunimaidam, Guwahati 781021 Tel: +91-361-2550242 Fax: 91-361-2550717	http://industriesassam.nic.in/		Food Products, Agro-Forest based products, Paper & Stationery, Rubber & Polymer Products, Chemical & Medical Products, Machinery & Metal Tools, Misc. like - Shoe Polish, Tooth Paste, Water Filter, Leather based Products & Mineral based Industries etc.
21	JAMMU & KASHMIR	(Nov- Apr) Directorate of Information Jammu & Kashmir Government Old Secretariat Mubark Maudi	http://jammukashmir.nic.in	dipjk@jk.nic.in	

		Complex, Jammu-180001 Tel:0191-2544076, 2540088, 2578835 Fax:0191-2544643 (May-Oct.) Directorate of Information Jammu & Kashmir Govt. Opposite Partap Park, Abhi Guzar Lal Chowk, Srinagar. Tel: 0194-2452294, 2452437,2481980, 2459172 Fax No.:0194-2452227			
22	HIMACHAL PRADESH	The Himachal Pradesh State Industrial Development Corporation, New Himrus Building, Circular Road Shimla - 171001 Tel: + 91- 177 2624751/2/4 2625422 Fax: + 91- 177 2624278	www.hpsidc.nic.in	hpsidc@sancharnet.in	Floriculture, Medicinal herbs and aromatic herbs etc. - processing, honey, Horticulture and Agro based industries, Food Processing Industry, Sugar and its by- products, Silk and silk products, Wool and wool products, Woven fabrics (Excisable garments), Sports goods, tourism, Pharma products, Eco-tourism, Handicrafts, Bottling of mineral water, Automobile Manufacturing units, Cold Storage Units, fruits/ vegetables/ spice based wineries, production of ciders/ ale, Sericulture/ handlooms/ Khadi industry, Electronic units etc.

CHAPTER - 3

TAX INCENTIVES FOR NON-RESIDENTS

RESIDENTIAL STATUS FOR TAX PURPOSES

In India, as in many other countries, the charge of income-tax and the scope of taxable income varies with the factor of residence. There are two categories of taxable entities viz. (1) Residents and (2) Non-Residents. Residents are further classified into two sub-categories (i) Resident and ordinarily Resident and (ii) Resident but not Ordinarily Resident. The law prescribes two alternative technical tests of residence for individual taxpayers. Each of the two tests relate to the physical presence of the taxpayer in India in the course of the "previous year" which would be the twelve months from April 1 to March 31.

A person is said to be "Resident" in India in any previous year if he -

- (a) is in India in that year for an aggregate period of 182 days or more; or
- (b) having within the four years preceding that year been in India for a period of 365 days or more, is in India in that year for an aggregate period of 60 days or more.

The above provisions are applicable to all individuals irrespective of their nationality. However, as a special concession for Indian citizens and foreign citizens of Indian origin, the period of 60 days referred to in Clause (b) above, will be extended to 182 days in two cases: (i) where an Indian citizen leaves India in any year for employment outside India; and (ii) where an Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.

In the above context, an individual visiting India several times during the relevant "previous year" should note that judicial authorities in India have held that both the days of entry and exit are counted while calculating the number of days stay in India, irrespective of however short the time spent in India on those two days may be.

A "Non-Resident" is merely defined as a person who is not a "Resident" i.e. one who does not satisfy either of the two prescribed tests of residence.

An individual, who is defined as Resident in a given financial year is said to be "Not Ordinarily Resident" in any previous year if he has been a Non-Resident in India nine out of the 10 preceding previous years or he has during the seven preceding previous years been in India for a period of, or periods amounting in all to, 729 days or less.

Till 31st March, 2003, "Not Ordinarily Resident" was defined as a person who has not been resident in India in nine out of 10 preceding previous years or he has not during the seven preceding previous years been in India for a period of, or periods amounting in all to, 730 days or more.

TAX EXEMPTIONS FROM INCOME TAX

Income from the following investments made by NRIs/PIOs out of convertible foreign exchange is totally exempt from tax:

- (a) Deposits in under mentioned bank accounts
 - (i) Non Resident External Rupee Account (NRE)
 - (ii) Foreign Currency Non Resident Account (FCNR)

- (b) Units of Unit Trust of India and specified mutual funds, other specific securities, bonds and savings certificates (subject to conditions prescribed under the Income-tax laws and regulations).
- (c) Dividend declared by Indian company.
- (d) Long term capital gains arising from transfer of equity shares in a company and/or equity oriented schemes of Mutual Funds, which are subject to Securities Transaction Tax.

It should be noted that the tax exemptions relating to NRE bank deposits will cease immediately upon the NRI/PIO becoming a resident in India whereas the interest on FCNR bank deposits will continue to be tax free as long as the NRI maintains the status of Resident but Not Ordinarily Resident or until maturity, whichever is earlier.

TAX EXEMPTIONS FROM WEALTH TAX

Where an NRI/PIO returns to India for permanent residence, the money and the value of assets brought by him into India and the value of assets acquired by him out of such money within one year immediately preceding the date of his return and at any time thereafter are totally exempt from wealth tax for a period of seven years after return to India.

The above exemption may not have much relevance now since the Finance Act 1992 has considerably reduced the scope of wealth tax. With effect from 1st April, 1993, wealth tax is being levied only on non-productive assets like urban land, buildings (except one house property), jewellery, bullion, vehicles, cash over Rs.50,000/- etc. The current rate of wealth-tax is 1% on the aggregate market value of chargeable assets as on 31st March every year in excess of Rs.1.5 million.

However, it may be noted that NRIs are also liable to pay wealth tax if the market value of taxable assets as on 31st March exceeds Rs 1.5 million.

TAX EXEMPTIONS FROM GIFT TAX

Gift Tax Act, 1958 has been repealed with effect from 1st October, 1998 and as such, Gift Tax is not chargeable on any gifts made on or after that date.

With regard to gifts of foreign exchange or specified assets made by NRIs to their relatives in India, it should be noted that

1. Gifts made by an NRI/PIO to his or her spouse, minor children or son's wife will involve clubbing of income and wealth in the hands of the donor-NRI/PIO.
2. In the case of gifts to minor children the clubbing of income, as above, will cease upon such children attaining the age of 18 years.
3. The clubbing provisions will apply, in case of gift to spouse or son's wife in India, only to the first-stage of income from the original gift. Second-stage income arising from investment of the income from the original gift is not clubbed and this will constitute the separate wealth/income of the donee- spouse.

Generally, the income of minor children, from any source (including income from gifts from parents) is clubbed with the income of the parent whose total chargeable income is greater.

Other matters to be noted regarding gifts are:

1. All gifts received by residents from NRIs/PIOs may be subject to the tax authorities requiring the recipient to provide evidence as regards the identity and financial capacity of the donor and genuineness of the gift.
2. Under the Foreign Exchange Management Act, 1999 no approval from Reserve Bank of India (RBI) is necessary for the resident donee to hold gifted immovable property outside India provided the said property is gifted by a person resident outside India. General permission, subject to certain conditions, is granted by RBI for the resident donees to hold foreign moveable properties such as shares and securities gifted by NRI/PIO donors.
3. The Income Tax Act has now provided that any sum of money exceeding Rs.25, 000 received without consideration (i.e., gift) by an individual from any person on or after 1st September, 2004, the whole of such sum will be chargeable to income-tax in the assessment of recipient (i.e., donee) under that head "Income from other sources" for and from assessment year 2005-06 and onwards.

However, the above provisions will not apply to any sum of money (gift) received

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer.

The term "Relative" is defined as:

- (1) spouse of the individual;
- (2) brother or sister of the individual;
- (3) brother or sister of the spouse of the individual;
- (4) brother or sister of either of the parents of the individual;
- (5) any lineal ascendant or descendant of the individual;
- (6) any lineal ascendant or descendant of the spouse of the individual; and
- (7) spouse of the person referred to in (2) to (6).

Scope of Receipts

- As per plain reading of the provision, any receipt without consideration, save exclusions, whether capital or otherwise, may be considered as income.
- Similar receipts by any person (such as a partnership firm, a company, and Association of Persons AOP etc.), other than an individual or a Hindu Undivided Family, would not constitute income in its hands.
- The provision would apply to an individual irrespective of his residential status. Accordingly, any receipt in India by a non-resident of the nature discussed above would be considered as income in his hands.

- Gifts on occasion other than marriage, for example, birthday, marriage anniversary and other social occasions, religious ceremonies etc., would be taxable as income. Gifts received on the occasion of the marriage of the individual, irrespective of any limit, (but within reasonable limits) would not constitute income.
- The receipts should be in the form of money. Accordingly, any gift in kind would not be taxable.

The receipts must be without consideration, implying in the nature of gift.

CHAPTER - 4

OTHER INVESTMENT OPPORTUNITIES IN INDIA

4.1 SHARES AND SECURITIES

Portfolio Investment Scheme for NRIs

Schedule 2 and 3 of the Notification No. FEMA 20/2000 RB contains provisions relating to Portfolio Investment by NRIs. OCBs are not allowed to make fresh investments in India under the Portfolio Investment Scheme vide Notification No. FEMA 46 dated 29th November 2001. Further, in September 2003, RBI has banned OCBs from investing in any manner in India. In fact, the category of OCB has been abolished. However, they can continue to hold and sell shares purchased before 29th November 2001.

Portfolio investment is covered by general permission subject to following condition/provisions.

- (i) Investment is permitted on repatriation as well as non-repatriation basis.
- (ii) Purchases, sale of shares (Preference and Equity) and/or convertible debentures are covered.
- (iii) Purchase/sale is done through a registered broker of a recognised stock exchange.
- (iv) One bank branch must be designated by NRIs and all purchase/sale must be routed through that designated bank branch only.
- (v) All transactions of sales and purchase must be delivery based. Speculative transactions are not allowed.
- (vi) Mode of investment may be in any of the following ways:
 - (a) For investment on Repatriation basis
 - inward remittances through normal banking channels
 - out of FCNR/NRE account.
 - (b) For investment on non-repatriation basis

Besides the above two, investment can be made out of NRO account.

(vii) Ceiling on Investment

- (a) Per investor (Each NRI)
 - 5% of the paid-up value of shares of an Indian Company on both repatriation and non-repatriation basis.
 - 5% of the value of each issue of convertible debenture of an Indian Company on both repatriation and non-repatriation basis.
- (b) Per investee Company

(Total holding by all NRIs put together on both repatriable as well as non-repatriable basis.)

10% of paid-up value of shares of an Indian Company.

10% of paid-up value each series of convertible debenture.

This ceiling of 10% could be increased to 24%, if the General Body of concerned Indian Company passes a special resolution to that effect.

(viii) Repatriation of Sale/Maturity Proceeds

- (a) Sales proceeds of Investment held on repatriation basis can be credited to NRE/FCNR/NRO account after payment of applicable taxes.
 - (b) If investment is on non-repatriation basis, credit of sale/maturity proceeds is permitted in NRO account.
- (ix) Existing OCBs (i.e. prior to Sep 16, 2003) must intimate the designated bank branch immediately on the holding/interest of NRIs in the OCB becoming less than 60%.
- (x) NRIs are allowed to enter into forward contracts to hedge their investment made in India.
- (xi) NRI is also permitted to invest in exchange traded derivatives contracts approved by SEBI from time to time out of his Rupee funds held in India on Non-Repatriable basis subject to the limits prescribed by SEBI.
- (xii) NRIs can also invest without limit on repatriable basis in Government dated securities, treasury bills, units of domestic mutual funds, bonds issued by PSUs, shares in Public Sector Enterprises which are being disinvested by Government. They can also invest without limit on non-repatriable basis in Government Dated Securities, Treasury Bills, units of Domestic Mutual Funds, units of Money Market Mutual Funds. However, NRIs are not permitted to make Investments in Small Savings Schemes including PPF.

4.2 LOANS & OVERDRAFTS

Borrowing in Foreign Exchange by Residents

There is general permission to borrow up to US\$ 250,000 or its equivalent in foreign exchange on a repatriable basis by an individual Resident from his close relatives (as defined in Section 6 of the Companies Act) resident outside India subject to -

- ✓ The loan is free of interest
- ✓ The minimum maturity period of the loan is 1 year.
- ✓ The amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender.

Non-Repatriable Borrowing in Rupees by Residents

A resident, not being a company incorporated in India, may borrow in rupees on non-repatriation basis from NRI or PIO subject to:

The term of the loan shall not exceed 3 years.

The loan has to be utilised for meeting the borrower's personal requirement or for his business purposes and under no circumstances be used for relending or for investment in shares, securities or immovable property.

The rate of interest shall not exceed 2% over the bank rate prevailing on the date of availing of loan.

Loan in Rupees against Shares / Immovable Property

Authorised Dealers (ADs) may grant loan in rupees to NRIs against the security of shares or immovable property in India for personal or business purposes and housing loans against the security of houses/flats to be acquired for residential accommodation in India. Restriction has been removed on the use of loan and allows it to be applied for any purpose other than the basic embargoes on chit funds, Nidhi companies, agricultural and or plantation activities, etc. It cannot also be applied for trading in Transferable Development Rights (TDRs) or investment in capital market including margin trading and derivatives.

The loan is non-repatriable. Hence the loan amount cannot be credited to the NRIs NRE/FCNR accounts.

The repayment of the loans should be by direct remittance from abroad or by way of debit to the NRE / FCNR account or by way of sale of shares and immovable property.

Loan against NRE, FCNR & NRO

Since the account holder can withdraw from NRE saving deposits at any time, banks should not mark any type of lien, direct or indirect, against these deposits. ADs may grant loans to the account holder against the security of term deposits. The repayments of the loan may be made either by adjusting the deposit against the loan or by fresh remittances from abroad.

Loan can be given to account holder for the acquisition of flat / house in India against NRE or FCNR fixed deposits on repatriable basis, provided the amount to be repatriated is governed by Foreign Exchange Management Regulation (Acquisition and Transfer of Immovable Property in India).

A branch outside India of an Authorised Dealer may grant loan against the security of NRE/FCNR deposit. Authorised Dealers may grant forex loans in India against security of FCNR to the account holder only and not to third parties, with approval of board of bank, provided the loan period does not exceed the maturity period of the deposit and the loan is not used for investment in India. The document should be executed by the deposit holder himself and not by his Power of Attorney holder.

The repayment of the loan may be made either by adjusting the deposit against the loan or by fresh remittances from abroad. Repayment may be made by using the NRO account also. However in that case, interest has to be charged at full commercial rate in force.

Loan to Third Parties in India

ADs may grant loans to Residents against the collateral of NRE deposits provided there is no direct or indirect foreign exchange consideration to the NRI depositor for agreeing to pledge his deposits and the loan is to be used for personal purposes of Resident or for carrying on business activities other than agricultural or plantation activities.

Change in the Residential Status of Borrower

An AD may allow continuance of loan/overdraft granted to a Resident who subsequently becomes a Resident Outside India if he is satisfied about the reasons to continue the loan or overdraft. The repayment shall be made either by inward remittance from outside India through normal banking channels or from the funds held in the Non-Resident related accounts of the borrower.

Temporary Overdrawings

Authorised Dealers may allow overdrawings in NRE savings bank accounts, up to a limit of Rs 50,000. Such overdrawings together with the interest should be cleared within 2 weeks, out of inward remittances through normal banking channels or by transfer of funds from other NRE/FCNR accounts.

Change in the Residential Status of the Lender

In case a rupee loan was granted by a Resident to another Resident and the lender subsequently becomes a non-resident, the repayment of the loan by resident borrower should be made by credit to the NRO account of the lender.

4.3 IMMOVABLE PROPERTY

Under FEMA regulations a foreign citizen who is resident in India can purchase Immovable Property (IP) in India without any approval from RBI. He is also not required to file any declaration at the time of purchase of such IP.

Citizens of eight countries, namely, (Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, or Bhutan (whether resident in India or not) are prohibited from acquiring or transferring any IP in India without prior approval of the RBI. However, such a prohibition is not applicable to IP acquired on lease for a period not exceeding five years.

General Prohibition

Investment in agricultural property, plantation and farmhouse is prohibited for all classes of persons resident outside India, be it NRIs/OCBs/ foreign citizens or other foreign entities.

Table-1 : Transaction of Immovable Property

Indian Citizen Resident Outside India may				
	NRI	PIO	Resident	Note
Purchase Property From	Yes	Yes	Yes	
Sell Property To	Yes	Yes	Yes	
Receive Gift From	Yes	Yes	Yes	
Give Gift To	Yes	Yes	Yes	
Agricultural Property				
Purchase Property From	No	No	No	
Sell Property To	No	No	Yes	
Receive Gift From	No	No	No	
Give Gift To	No	No	Yes	
Person of India Origin who is Resident Outside India may				
Purchase Property From	Yes	Yes	Yes	Forex or NRI
Sell Property To	No	No	Yes	Bank Accounts
Receive Gift From	Yes	Yes	Yes	
Give Gift To	Yes	Yes	Yes	
Agricultural Property				
Purchase Property From	No	No	No	
Sell Property To	No	No	Yes	Citizen of India
Receive Gift From	No	No	No	
Give Gift To	No	No	Yes	Citizen of India

All situations not falling in the category of the general permissions, including requests for acquisition of agricultural land by any ROI may be made to The Chief General Manager, Reserve Bank of India, Exchange Control Department, Foreign Investment Decision (III), Mumbai-400 001 (India).

Remittance of Rent

NRIs/PIOs can freely rent out their immovable property, whether purchased through application of forex or otherwise, without seeking any permission from the RBI. The rental income being a current account transaction is repatriable outside India, only if proper tax is paid or provided for.

Where the house is purchased through housing finance and the house is rented out, the entire rental income, even if it is more than the prescribed instalment, should be adjusted towards repayment of the loan. If the rental income is less than the prescribed instalment, the borrower should remit the amount of the extent of the shortfall from abroad or pay it out of his NRE, FCNR or NRO account in India.

(Refer: RBI Master Circular No. /02/2006-07 at Annexure VII)

4.4 REMITTANCE FACILITIES FOR NRIs/PIOs

Remittance of capital assets in India held by a person whether resident in or outside India would require approval of the Reserve Bank except to the extent provided in the Foreign Exchange Management Act, 1999 (FEMA) or Rules or Regulations made under the Act.

1. Remittance of assets by NRIs/PIOs

NRI/PIO may remit upto \$1,000,000 per year out of the balance in his Non Resident (Ordinary) account/sale proceeds of assets (inclusive of inheritance/settlement).

2. Repatriation of sale proceeds of residential property purchased by NRIs/PIOs out of foreign exchange

There is no lock-in period for sale of residential property purchased by NRI/PIO out of foreign exchange. However, repatriation of sale proceeds of residential property purchased by NRI/PIO out of foreign exchange is restricted to not more than two such properties.

Remittance representing refund of application/earnest money on account of non allotment is permitted together with interest if the original payment was made out of NRE/FCNR account of the account holder or the remittance was from outside India through normal banking channels.

3. Remittance of current income

Remittance of current income like rent, dividend, pension, interest etc. of NRIs /PIOs who do not maintain NRO Account is freely allowed on the basis of appropriate certification by a Chartered Accountant certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for.

NRIs/PIO have the option to credit the current income to their Non-Resident (External) Rupee account provided the authorized dealer is satisfied that the credit represents current income of the non-resident account holder and income tax thereon has been deducted/provided for.

4. International Credit Cards

Banks may issue International Credit Cards to NRIs/PIOs without prior approval of the RBI.

(Refer: RBI Master Circular No. /04/2006-07 at Annexure VIII)

4.5 PHILANTHROPY BY NON GOVERNMENTAL ORGANISATIONS (NGOs)

Introduction

Any organisation working for a social, cultural, economic, educational or religious cause is termed as an NGO. NGOs have made favorable indents to needy sections of Indian society at par with a constantly changing socio-economic climate. NGOs have reached out to all sections of society including women, children, pavement dwellers, unorganised workers, youth, slum-dwellers and landless labourers.

An NGO can be formed under various legal identities:

- (i) Society registered under Societies Registration Act, 1860.
- (ii) Trust (Formed under the Trust deed and registered with Income Tax Authority.)
- (iii) Limited company incorporated under section 25 of the Companies Act, 1956

SOCIETY

A Society is formed when people come together to do something with some common purpose which is legal and useful for others. A society should generally not get into profit making activities.

TRUST

What is a Charitable Trust?

A charitable trust is a legal entity which can be set up by anyone who has decided to commit themselves in principle to setting aside some of their assets or income for charitable causes. Trusts are completely independent of government or any external control. The main obligation is to work within the charitable purposes and the powers set out in the Trust Deed.

Features of a Trust

A Trust is created when a donor attaches a legal obligation to the ownership of certain property based on his confidence placed in and accepted by the donee or trustee, for the benefit of another.

The persons who intends to create the trust with regard to certain property for a specified beneficiary and who places his confidence in another for this arrangement is called the Author of the Trust; the person who accepts the confidence is called the Trustee; the person whose benefit the confidence is accepted is called the Beneficiary; the subject matter of the trust is called Trust Property.

Charity is a matter for State control, so different States of India have their own legislation in the form of Trusts or Endowment Acts to govern and regulate public charitable NGOs.

Trustees control the Trust

The Trustees control the trust's assets and decide how the income (and capital) of the trust is to be distributed, and ensure that it is in line with the charitable purposes of the trust.

The author of the trust must indicate with reasonable certainty the following:

- Intention to create trust
- Purpose of the trust
- Beneficiaries of the trust, and
- The trust property

A public trust is of permanent and indefinite character. A public trust benefits the public at large or at least a section of the community.

The property forming subject matter of the trust must be capable of being transferable to the beneficiary - thus property which is inalienable by virtue of public policy or statute does not form valid subject matter for a trust. In terms of section 8 of the Indian Trusts Act, there cannot be as a trust of a beneficial interest under a trust i.e. there cannot be a trust upon a trust.

Flexibility in naming your Trust

You can choose what to call your trust - your family name, or that of an honorable person. The organisation can also be called a "foundation" or "charity" or any similar terms as these words are practically interchangeable in a legal sense.

NON - PROFIT COMPANY

Non - Profit Company is identical to an ordinary company in all respects except that it is not established for profit and commercial gain. It is also called a Section 25 Company and is a voluntary association of people, registered under the Indian Companies Act, 1956.

Objectives of a non-profit company can include promotion of commerce, art, science, religion, charity or any other useful object. Profits are applied for promoting only the objects of the company and no dividend is paid to its members (Section 25 (1) (a) and (b) of the Companies Act, 1956). A non-profit company may be public or private. If the non-profit company is a private company a minimum of only two members are required to form it. However, if the non-profit company is for a public purpose, then a minimum of seven are needed. A 'section 25 company' is eligible for certain exemption from provisions of law and concessional rate of fees etc.

FOREIGN CONTRIBUTION

Prior Permission always

The Foreign Contribution (Regulation) Act, 1976 (FCRA) requires all Indian NGOs that receive foreign contributions to receive clearance from the Ministry of Home Affairs, in the form of either permanent FCRA registration or prior permission on a case-to-case basis.

The procedure for obtaining prior permission from the FCRA is as follows:

1) Apply in Form FC - 1A

Applicant (s) to file Form FC - 1A along with required documents

2) FCRA permission

Within 90 days thereafter, you will receive a registered letter from the Department either granting the permission or stating rejection of your request.

3) Appeal against rejection

You can re-apply after ascertaining and rectifying objections on your file. You can also file an appeal in the High Court within 60 days of the date of letter.

4) Applying again

One party can apply for prior permission more than once if needed - considering that projects are varied and or are under different agencies.

When FCRA permission is not needed:

Prior permission from the FCRA is not required for receiving amounts in the following forms:-

- (a) Salary, wages or other remuneration either to individual or payment for business purposes.
- (b) Payment for international trade or for business transacted by him outside India.
- (c) By way of a gift or presentation received as member of any Indian delegation.
- (d) Gift not exceeding Rs. 8,000/- per annum.

Profit-oriented organisations are not covered by FCRA.

Bank Account for foreign funds

An NGO is required to open and use bank account exclusively for foreign funds under FCRA.

Income Tax Benefits on foreign funds

1. Benefits for the NGO

Incomes received by any religious or charitable trust or institution registered with the income tax authorities, is not taxable as long as this income is applied for the objects of the organisation.

2. Benefits to Donors :

The donors are also entitled to get an exemption on their donation where exemption can be 50% or 100% depending on the category of organisations.

Illustrative example of NGOs handling foreign money/materials:

Sponsorships by foreign parties:-

An occasion can arise where a moneyed foreign person agrees to kindly sponsor an NGOs annual charity festival and the foreign funds are forwarded directly to the printers for printing of catalogues for this festival by them, the NGO accepting the catalogues has accepted foreign contribution and is under an obligation to intimate the Central Government. If the NGO does not have requisite FCRA registration or prior permission it cannot accept the sponsorship in the first place.

- Form FC-3 is to be filed at the end of each financial year (by 31st July). Filing required to be done annually till such time the FCRA funds are exhausted.
- Documents to attach with Form FC-8 - Attach one copy of each of the following documents
 1. Certificate from the concerned District Collector/Department of State Government/Ministry or Department of Central Government;
 2. Activity report for past three years;
 3. Audited Statements of Account for past three years;
 4. List of state or districts of focus of work;
 5. Note on socio-economic background of the beneficiaries and of the region to be covered;
 6. Where NGO is a society, then also attach certified copy of Registration Certificate issued by the Registrar of Societies;
 7. Certified copy of registered Trust Deed (if NGO is a Trust);
 8. Certified copies of (a) Memorandum and Articles of Association, (b) registration certificate issued by the Registrar of Companies, (c) section 25 license issued by the Regional Director, Department of Company Affairs (if NGO is a non-profit company);
 9. FCRA does not allow mixing up of Indian funds and FCRA funds. This means both funds are to be maintained separately.

Scholarships from foreign sources

Indians receiving a foreign scholarship or stipend from foreign source have to intimate the Central Government of the amount, propose, source and intervals of such payment.

CHAPTER - 5

OTHER IMPORTANT MATTERS

5.1 OVERSEAS CITIZENSHIP OF INDIA (OCI)

OCI SCHEME IS OPERATIONAL FROM 02.12.2005

The Constitution of India does not allow holding Indian citizenship and citizenship of a foreign country simultaneously. Based on the recommendation of the High Level committee on Indian Diaspora, the Government of India decided to grant Overseas Citizenship Of India(OCI). The scheme is operational from December 2, 2005. OCI has been introduced by statute as a new category of citizenship to facilitate life-long visa, free travel to India and certain economic, educational and cultural benefits. This is not to be construed as 'dual citizenship' since it does not confer political rights. Any Overseas Indian applicant who is comfortable with his present citizenship status in the country of his residence can apply for OCI. Till October 2006, about 65,000 OCI documents have been issued, mostly to overseas Indians in the USA, Canada, UK, Australia and New Zealand.

Persons of Indian Origin (PIOs) of certain category, as specified below, who migrated from India and acquired citizenship of a foreign country other than Pakistan and Bangladesh, are eligible for grant of OCI.

Registered OCIs shall be entitled to following benefits:

- (i) Multiple entry, multi-purpose life long visa to visit India;
- (ii) Exemption from registration with Police authorities for any length of stay in India; and
- (iii) Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties.

Persons registered as OCI have not been given any voting rights, election to Lok Sabha / Rajya Sabha / Legislative Assembly / Council, holding Constitutional posts such as President, Vice President, Judge of Supreme Court / High Court etc.

Any further benefits to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under section 7B (1) of the citizenship Act, 1955.

A person registered as OCI for five years is eligible to apply for grant of Indian citizenship under section 5(1) (g) of the Citizenship Act, 1955 if he/she has been residing in India for one year out of the five years before making the application.

1. Eligibility Criteria:

A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children.

2. Application form and procedure:

A family consisting of spouses and upto two minor children can apply in the same form i.e. Form XIX. The form can be filed online or downloaded from the website www.mha.nic.in.

Application has to be submitted in duplicate along with the following documents:

1. Proof of present citizenship.
2. Evidence of self or parents or grand parents,
 - (a) being eligible to become a citizen of India at the time of commencement of the Constitution; or
 - (b) belonging to a territory that became part of India after 15th August, 1947; or
 - (c) being citizen of India on or after 26th January, 1950

These could be:

- (i) Copy of the passport: or
 - (ii) Copy of the domicile certificate issued by the competent authority; or
 - (iii) Any other proof.
3. Evidence of relationship as parent / grand parent, if their Indian origin is claimed as basis for grant of OCI.
4. Application fee by way of Demand Draft (US \$ 275 for each applicant or equivalent in local currency; US \$ 25 or equivalent in local currency for each PIO card holder)
5. PIO card holders must also submit a copy of their PIO card.

The application form completed in all respects along with enclosures should be submitted in duplicate to the Indian Mission / Post of the country of applicant's citizenship or where he/she is not in the country of citizenship to the Indian Mission / Post of the country in which he / she is ordinarily resident. If the applicant is in India, he / she can apply to the Foreigners Regional Registration Officer (FRRO) at Delhi, Mumbai, Kolkata or Amritsar or Chief Immigration Officer (CHIO) Chennai or to the Under Secretary, OCI Cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs (MHA), Jaisalmer House, 26 Mansingh Road, New Delhi - 110011.

3. Procedure for granting registration:

After Preliminary scrutiny, if there is no adverse information available against the applicant, the Indian Mission / Post shall register a person as OCI within 30 days of application and the case shall be referred to MHA for post verification of the antecedents of the applicant. If during the post verification, any adverse information comes to the knowledge of the MHA, the registration as OCI already granted by the Indian Mission / Post shall be cancelled by an order under Section 7D of the Citizenship Act, 1955.

After preliminary scrutiny, if there is any adverse information against the applicant, prior approval of MHA shall be required before grant of registration. MHA may approve or reject the grant of registration within 120 days from the date of the receipt of the application. If the grant of registration as OCI is approved by MHA, the Indian Mission / Post shall register the person as OCI.

If the application is filed in India, registration shall be granted by MHA by following the above procedure.

After grant of registration, a registration certificate in the form of booklet will be issued and a multiple entry, multi-purpose life long OCI 'U' Visa Sticker will be pasted on the foreign passport of the applicant.

4. OCI for PIO card holders:

PIO card holders who are otherwise eligible for registration as OCI may apply in the same Form i.e. Form XIX and they will be considered for grant of registration in the same manner as other applicants. PIO card holders have to pay a fee of US \$ 25 or equivalent in local currency instead of US \$ 275 for normal applicant. PIO cardholders will have to surrender his/her PIO card after knowledge of acceptance of application.

5. OCI for persons who have applied on the earlier prescribed application form:

All such applications will be considered for grant of OCI on the same line as in 3 above without seeking fresh application and fees.

6. Cancellation of OCI registration

If it has been found that the registration as an OCI was obtained by means of fraud, false representation or concealment of any material fact or the registered OCI has shown disaffection towards the Constitution of India or comes under any of the provisions of Section 7D of the Citizenship Act, the registration of such person will not only be cancelled forthwith but he / she will also be blacklisted for visiting India.

7. Help Desk:

For any clarification/query on the scheme, please visit the website www.mha.nic.in. or visit the website of the local Indian Mission / Post or contact the Indian Mission / Post or OCI Cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi - 110011.

APPLICATION FEES

For application to be filed in India, an amount of Rs. 12,650 has to be paid for each applicant by Demand Draft in Favor of " Pay and Account Officer (Secretariat), Ministry of Home Affairs" payable at New Delhi. In case of PIO Card holder, an amount of Rs.1,150 has to be paid.

In case of application to be filed outside India, for the amount of fee to be paid in local currency, please visit the web site of the respective Indian Mission / Post.

Frequently Asked Questions

1. Who was eligible to become Citizen of India on 26.01.1950?

Any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who was ordinarily residing in any country outside India was eligible to become citizen of India on 26.01.1950.

2. Which territories became part of India after 15.08.1947 and from what date?

The territories which became part of India after 15.08.1947 are:

- (i) Sikkim from 26.04.1975
- (ii) Pondicherry from 16.08.1962
- (iii) Dadra & Nagar Haveli from 11.08.1961
- (iv) Goa, Daman and Diu from 20.12.1961

3. Can the spouse of the eligible person apply for OCI

Yes, if he/she is eligible in his /her own capacity.

4. Can children of parents, wherein one of the parents is eligible for OCI, can apply for OCI?

Yes.

5. Can application form be filled and submitted on line?

Yes. Part A of the application form can be filed online at website www.mha.nic.in. Part B can be downloaded and printed on computer or by hand in Block letters. Printed Part A and Part B of the application form have to be submitted to the Indian Mission/Post/Office.

6. Whether applicant(s) have to go in person to submit the application(s)?

No. Application(s) can be sent by post.

7. Whether the applicant(s) have to take oath before the Counsel of the Indian Mission/Post?

No. Earlier provision in this regard has been done away with.

8. Can a person apply in the country where he is ordinarily residing?

Yes.

9. What are the consequences of furnishing wrong information or suppressing material information?

All the applications will be subject to pre or post enquiry depending on whether any adverse information is available or not. If the Government comes to the knowledge that any false information was furnished or material information was suppressed, the registration as OCI already granted shall be cancelled by an order under Section 7D of the Citizenship Act, 1955. The persons will also be blacklisted banning his/her entry into India.

10. What is the fee for application for registration as OCI?

US \$ 275 or equivalent in local currency for each applicant. In case of PIO card holder, US \$ 25 or equivalent in local currency for each applicant.

11. What is the time taken for registration as OCI?

Within 30 days of the application, if there is no adverse information available against the applicant. If any adverse information is available against the applicant, the decision to grant or otherwise is taken within 120 days.

12. If the registration as OCI is not granted, what amount will be refunded?

An amount of US \$ 250 or equivalent in local currency shall be refunded, if registration is refused. US \$ 25 is the processing fees, which is non-refundable.

13. Will the PIO Card holder be granted OCI registration gratis?

No. He/she has to make a payment of US \$ 25 equivalent in local currency along with the application.

14. Will a separate OCI passport be issued?

No. The visa sticker will be pasted on the foreign passport. For this purpose, the applicant has to send the original passport to the Indian Mission / Post after receipt of the acceptance letter/ verifying the status of the application online.

15. Will a duplicate certificate of registration as OCI will be issued?

Yes. For this purpose, an application has to be made to the Indian Mission / Post with evidence for loss of certificate. In case of mutilated/damaged certificate an application has to be made enclosing the same. The applications in both the cases have to be made to the same Indian Mission / Post which issued the certificate alongwith with payment of fee of US \$ 25 or equivalent in local currency.

16. Will a new OCI visa sticker be issued on the new foreign passport after the expiry of the old passport?

Yes. On payment of requisite fee, a new OCI 'U' visa sticker will be issued. However, the application can continue to carry the old passport for visiting India without seeking a new visa, as the visa is for lifelong.

17. Can a person holding OCI travel to protected area/restricted area without permission?

No. He/she will be required to seek PAP/RAP (Protected/Restricted Area Permission) for such visits.

18. Would the Indian civil/criminal laws be applicable to persons registered as OCI?

Yes. For the period OCI is living in India.

19. Can a person registered as OCI be granted Indian citizenship?

Yes. As per the provisions of Section 5(1) (g) of the Citizenship Act, 1955, a person who is registered as OCI for 5 years and residing in India for 1 year out of the aforementioned 5 year, is eligible to apply for Indian citizenship.

20. Will OCI be granted gratis to certain categories of people?

No.

21. Can OCI be granted to foreign nationals who are not eligible for OCI, but married to persons who are eligible for OCI?

No.

22. Will foreign-born children of PIOs be eligible to become OCI?

Yes, provided one of the parent is eligible to become OCI.

23. What are the advantages of OCI when compared to PIO cardholders?

OCI is entitled to life long visa free travel to India whereas for PIO cardholder, it is for 15 years.

PIO cardholder is required to register with the local police authority for stay exceeding 180 days in India on any single visit whereas OCI is exempted from registration with police authority for any length of stay in India.

25. Whether an OCI be entitled to apply for and obtain a normal Indian passport, which is given to a citizen of India?

No. Indian Passport is given only to Indian citizen.

26. Whether nationals of commonwealth countries are eligible for OCI?

Yes, if they fulfil the eligibility criteria.

27. Can a person renounce OCI?

Yes. He/she has to declare intention of renunciation in Form XXII to the Indian Mission /Post where OCI registration was granted. After receipt of the declaration, the Indian Mission/Post shall issue an acknowledgement in Form XXII A.

5.2 PIO CARD

THE PIO CARD SCHEME

In a significant step towards granting dual citizenship to Overseas Indians, the Government approved the person of Indian origin (PIO) card scheme to permit all such individuals visa-free entry into the country.

Definition of Person of Indian Origin (PIO)

"Person of Indian Origin" means a foreign citizen [not being a citizen of Pakistan, Bangladesh and other countries as may be specified by the central government from time to time] if,

- i. He/she at any time held an Indian passport;
- ii. He/she or either of his/her parents or grand parents or great grand parents was born in and permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the specified countries; or
- iii. He/she is a spouse of a citizen of India or a person of Indian origin covered under (i) or (ii) above.

Procedure for Application for PIO Card

The card would be issued to eligible applicants through the concerned Indian Embassies/ High Commission / Consulates (Annexure II) and for those staying in India on a long term visa, from the concerned Foreigners Regional Registration Officer (Delhi, Mumbai, Kolkata, Chennai) and also from the Ministry of Home Affairs, Foreigners Division, Lok Nayak Bhawan, Khan Market, New Delhi-110003.

The fees for the card, which will have a validity of 15 years, would be Rs.15,000/- and for the minor (below 18 years), the fees is Rs.7,500/-.

Benefits of Person of Indian Origin (PIO) Card Scheme

Besides making their journey back to their roots simpler, easier and smoother, this scheme entitles the PIOs to a wide range of economic, financial, educational and cultural benefits.

The benefits envisaged under the scheme include:-

- (i) No requirement of visa to visit India;
- (ii) No separate "Student Visa" or "Employment Visa" required for admission in colleges/ institution or for taking up employment respectively;
- (iii) No requirement to register with the Foreigners Registration Officer if continuous stay does not exceed 180 days. Registration is required to be done within a period of 30 days after expiry of 180 days;
- (iv) Parity with Non-Resident Indians in respect of facilities available to the latter in economic, financial, educational fields, etc. These facilities will include:

- (a) Acquisition, holding, transfer and disposal of immovable properties in India except for agricultural/plantation properties;
 - (b) Admission of children in educational institution in India under the general category quota for NRIs-including medical/engineering colleges, IITs, IIMs etc.;
 - (c) Various housing schemes of Life Insurance Corporation of India, State Government and other Government agencies;
 - (d) Special counters at the immigration check post for speedy clearance.
- (v) All future benefits that would be extended to NRIs would also be made to PIO Card holders
- (vi) They however cannot enjoy political rights in India.

Issue of Gratis PIO Card

Gratis PIO Card may be issued to an exceptionally eminent person of Indian Origin, who plays an important role in building bridges between India and the country of his/her adoption, if he/she expresses a desire to obtain the PIO Card.

Duplicate PIO Card

Duplicate PIO Card can be obtained in case of loss, etc., on a request supported by FIR and other documents. A duplicate PIO Card shall be issued on depositing a fee of US \$ 100. Duplicate PIO Cards will be issued by the same office that issued the original one.

PIO cards issued earlier as per PIO Card Scheme for US \$1000 will continue to remain valid without any extra fee, with validity extendable by 10 more years.

Comparative chart on NRI/PIO/PIO CARD HOLDERS/OCI

	NRI	PIO	PIO Card holder	OCI
1. Who?	An Indian citizen who is ordinarily residing outside India and holds an Indian passport	A person who or whose any of ancestors was an Indian national and who is presently holding another country's citizenship/ nationality i.e. he/she is holding foreign passport	A person registered as PIO card Holder under MHA's scheme vide Notification No. 26011/4/98-F.I dated 19.08.2002.	A person registered as Overseas Citizen of India (OCI) under section 7A of the citizenship Act,1955
2. Who is eligible?	-	-	Any person who at any time held an Indian passport; or he or either of his parents or grand parents was born in or was permanently resident in India as defined in government of India Act, 1935 and other territories that become part of India thereafter provided neither was at any time a citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka, Or who is a spouse of a citizen of India or a person of Indian origin as mentioned above.	A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that become part of India after 15.08.1947 and his/her children and grand children is eligible for registration as overseas citizen of India (OCI) Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI..
3. How can one get?	-	-	Eligible persons to apply in the prescribed form alongwith enclosures.Form available on MHA's website: www.mha.nic.in .	Eligible persons to apply on line /down load application form from MHA's website: www.mha.nic.in .

4. Where to apply?	-	-	To the Indian Mission/Post in the country where the applicant is ordinarily resident; if in India on long term visa (more than one year), to the FRRO, Delhi, Mumbai, Kolkata, Amritsar, CHIO, Chennai or to the joint secretary (foreigners),MHA.	To the Indian Mission/Post of the country of applicant's citizenship or where he/she is not in the country of citizenship, to the Indian Mission/Post of the country in which he/she is ordinarily resident. If the applicant is in India he/she can apply to the FRRO at Delhi, Mumbai, Kolkata, Amritsar, CHIO, Chennai or to the Under Secretary, OCI Cell, Citizenship Section Foreigners Division, Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi-110011.
5. Fees?	-	-	Rs. 15000/- or equivalent in local currency for adults. For the children upto the age of 18 years, the fee is Rs. 7500/- or equivalent in local currency.	US \$ 275 or equivalent in local currency. In case of PIO card holders, it is US \$ 25 or equivalent in local currency.
6. Which nationals are eligible?	-	-	PIO of all countries except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka	PIOs of all countries except Pakistan and Bangladesh.
7. What benefits one is entitled to?	All benefits as available to Indian citizen subject to notification issued by the Government from time to time.	No specific benefits.	(1) Shall not require a separate visa to visit India. (2) Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days.	(1) A multiple entry multi-purpose life long visa for visiting India. (2) Exemption from registration with local police authority for any length of stay in India. (3) Parity with non resident Indians (NRIs) in

			<p>(3) In the event of continuous stay in India exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned FRRO/FRO.</p> <p>(4) Parity with NRIs in respect of all facilities available to the later in the economic, financial and educational fields excepts in matters relating to the acquisition of agricultural/ plantation properties. No parity shall be allowed in the sphere of political rights.</p>	<p>respect of economics financial and educational fields except in relation to the acquisition of agricultural or plantation properties. No parity shall be allowed in the sphere of political rights. Any other benefit to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under section 7B (1) of the Citizenship Act 1955.</p>
8. Does he/she require visa for visiting India?	No	Yes and of specific type depending on his /her purpose of visit.	Can visit India without visa for 15 year from the date of issue of PIO card.	Can visit India without visa for life long.
9. Is he required to register with local police authorities in India	No	Yes	Yes, one time when the stay in India exceeds 180 days for the first time	No
10. What activities can be under taken in India?	All activities	Activity as specified in the visa	All activities except mountaineering, missionary and research work and existing PAP/ RAP which require specific permit.	All activities except mountaineering, missionary and research work and existing PAP/ RAP which require specific permit

<p>11.How can one acquire Indian</p>	<p>He/she is an Indian citizen</p>	<p>As per section 5 (1) (a) & 5(1) (c) of the Citizenship Act, he/she has to reside in India for minimum 7 years before making application for granting Indian citizenship</p>	<p>As per section 5 (1) (a) & 5(1) (c) of the Citizenship Act, he/she has to reside in India for minimum 7 years before making application for granting Indian citizenship</p>	<p>Registered OCI may be granted Indian citizenship after 5 years from date of registration provided he/she stays for one year in India before making application</p>
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5.3 OTHER IMPORTANT SCHEMES OF THE MINISTRY

1. E-remittance gateway

Overseas Indians have limited choice of either using the fast but expensive facility or the economic but relatively slow facility to remit money back home. Keeping this in view, the ministry has partnered with the UTI bank to develop an integrated, universal, electronic remittance gateway that combines the virtues of economy, speed and convenience. This portal will also extend advisory services on investment, taxation and real estate to potential and interested overseas Indians, which would enable overseas Indians to remit money to India to designated accounts in any of the 14,500 bank branches, operating on Real Time Gross Settlement (RTGS) network of the RBI. The facility is operational between Doha and India at present. In the last two months over 9000 remittances totaling about Rs 8040 lakhs have been made. The advisory services are fully operational and are available on the www.overseasindian.in portal. The remittance gateway is targeted to be fully operational in the GCC countries, to begin with by January 2007.

2. AAPI India Health Initiative

A MOU was signed with the American Association of Physicians of Indian Origin during the Pravasi Bharatiya Divas 2006. The main objective of the scheme is to promote, establish and operate primary health care project through public private partnership with AAPI. The focus of the scheme will be to implement innovative and best practices to enhance access to healthcare, extend education and training to trainers and other health workers for promotion of preventive health care practices in five diseases entities - Heart disease, Deafness in children, Diabetes, Carcinoma Cervix and Prostate cancer by leveraging the knowledge, skills and resources of AAPI and its members.

The project would develop best practice guidelines for delivery of health care in the pilot villages which will be replicated by in the other areas. The scheme would initiate capacity building of the community to ensure prescribed health care standards in primary health care.

The scheme will be implemented in partnership with the AAPI in the selected states of Bihar and Andhra Pradesh. To begin with pilot projects will be initiated in one village in all the districts of both the states. The funding will be done by the Central Government and Partner states while AAPI will be the knowledge partner. To achieve the objectives intensive training of trainers from primary to tertiary level will be organized by AAPI in collaboration with local partners.

3. PRAVASI BHARATIYA BIMA YOJANA, 2006

A compulsory Insurance Scheme for the emigrants going abroad for employment known as Pravasi Bharatiya Bima Yojana (PBBY) 2003 came into force from 25.12.2003. The PBBY, 2003 has now been upgraded as the Pravasi Bhartiya Bima Yojana, 2006 to provide broader coverage to the emigrant workers. The PBBY, 2006 has come into effect from 01.02.2006. The emigrant workers will now get a minimum insurance cover of Rs. 5 lakhs (instead of Rs. 2 lakhs) and the policy will be for the entire period of employment contract. An additional cover of Rs. 25,000/- for the legal expenses incurred by the emigrants in connection with their employment has also been included. The salient features of the PBBY, 2006 are listed below:

- The Pravasi Bhartiya Bima Yojana, 2006 provides for an insurance cover of a minimum sum of Rs. 5.00 lakhs payable to the nominee/legal heir in the event of death or permanent disability of any Indian

emigrant who goes abroad for employment purpose after obtaining emigration clearance from the concerned Protector of Emigrants (POE).

- In the case of death, besides the cost of transporting the dead body, the Insurance Company shall also reimburse the cost incurred on one-way airfare of one attendant.
- If a worker is not received by the employer on his arrival to the destination abroad or there is any substantive change in Employment Contract to his disadvantage or if the employment is pre-maturely terminated within the period of employment for no fault of the emigrant, the Insurance Company shall reimburse one way economy class airfare provided the grounds of repatriation are certified by the concerned Indian Mission/Post.
- In cases where the Indian Mission/Post arranges the repatriation, the Insurance Company shall reimburse the actual expenses to the concerned Indian Mission/Post.
- The Insured person shall be reimbursed actual one way economy class airfare by the Insurance Company if he falls sick or is declared medically unfit to commence or continue working and the service contract is terminated by the Foreign Employer within twelve months of taking the insurance.
- The Insurance Policy shall be valid for a minimum period of two years or the actual period of contract, whichever is longer.
- The Insurance Policy shall also provide medical cover of a minimum of Rs. 50,000/- as cash-less hospitalization and/or reimbursement of actual medical expenses of the insured emigrant workers on grounds of accidental injuries and/or sickness/ailments/diseases occurring during the period of insurance whether in India or in the country of his employment.
- An insured person shall be covered for a minimum sum of Rs. 25,000/- in connection with the legal expenses incurred by him in any litigation relating to his/her employment.
- The Insurance Policy shall also provide maternity benefits, subject to a minimum cover of Rs. 20,000/- in case of women emigrants. In case of medical treatment in the country of employment, the maternity benefits would be provided if the concerned Indian Mission/Post certifies the requisite documents.
- The family of emigrant worker in India consisting of spouse and two dependent children up to twenty one years of age shall be entitled to hospitalization cover in the event of death or permanent disability of the insured person for a maximum amount of Rs. 25,000/- per annum.
- The Insurance Companies shall charge fair and reasonable premium. Service tax will be charged as applicable.

4. PRE- DEPARTURE ORIENTATION AND SKILL UPGRADATION OF EMIGRANT WORKERS

The scheme of Pre Departure Orientation & Awareness programme for workers and skill upgradation of Indian Workers is started by the Ministry of Overseas Indian Affairs to impart orientation training and to upgrade the skills of Indian Workers intended to go abroad to give them competitive edge over the workers from other countries.

In the changing competitive environment of world economy Indian workers were going abroad are slowly losing their jobs to the more skilled workers coming from other countries. The orientation programme and skill up gradation training will help Indian workers retain their jobs and also enable them to earn more wages and return more money as remittance in the country. There would be inputs on human behavior, recruitment, visa and emigration procedures as well as elementary inputs in bookkeeping

The scheme is implemented through the state Government labour departments and overseas manpower corporations who will arrange the training of the potential overseas Indian workers. MOIA will give funds upto Rs. 1 crore to each of the participating state during the financial year for the training of at most 10,000 workers.

5. SCHOLARSHIP PROGRAMME FOR DIASPORA CHILDREN (SPDC)

The specific objective of the Scholarship Scheme is to make higher education in India accessible to the children of Overseas Indians and publicise India as an education hub. Through this scheme, it is hoped that the students selected for such scholarships would become brand ambassadors for India and its educational institutions. Under the proposed Scholarship Scheme, Ministry of Overseas Indian Affairs (MOIA) provides 100 scholarships to Indian students each year starting from 2006-07. The students are selected on the basis of an entrance test conducted by M/s Educational Consultants India Limited (Ed.CIL), an autonomous body under MHRD with whom the Ministry is working on a partnership basis. Children from developing countries where there are no extant educational facilities or have less opportunities for higher studies and where there are large concentration of the diaspora are targetted. The scholarship amount provided in 2006-07 would cover approximately 60-70% of the tuition fees, depending on the courses selected.

6. KNOW INDIA PROGRAMME (KIP)

The Know India Programme (KIP) is an on-going programme of the Ministry of Overseas Indian Affairs, which aims at associating closely the younger generation of the Indian Diaspora with India. It provides a unique forum for students and young professionals of Indian origin to share their views, expectations and experience and bond closely with contemporary India. This is a 3-week comprehensive orientation programme organized by the Ministry of Overseas Indian Affairs. Participants are expected to make full use of this time and the opportunities given by way of connection extensively with each segment in the programme. The Ministry proposes to organize KIP 3-4 times a year including the one with Pravasi Bharatiya Divas held every year on 9 January.

Under KIP, full local hospitality is provided by the Government. Selected Interns are received and seen off at the airport. They have to pay only the international airfare. The Ministry of Overseas Indian Affairs issues a circular to all Indian Missions/Posts abroad in this regard. Interested students and young professionals from Indian diaspora should get in touch with the Indian Mission/Post nearer to them for detailed information in this regard. The age of the Intern should be between 18 and 25 years. The main objectives of the program are to create awareness about the phenomenal transformation taking place in India and the country's progress from just a destination for culture, heritage and art to an emerging powerhouse in the global economic system, build linkages to bridge the information gap and to prepare a blueprint for creating a sustained mechanism for engaging the Diaspora youth with India.

7. SOCIAL SECURITY AGREEMENTS

The Ministry signed a Social Security Agreement (SSA) on November 3, 2006 with Belgium further strengthening bilateral economic cooperation between the two countries. The importance of this agreement is that it is a bilateral instrument that best meets the needs of a rapidly globalising economy such as India where there is increasing circular movement of technically qualified and trained persons with other countries.

The Social Security Agreement negotiated by the Ministry Of Overseas Indian Affairs with Belgium provides for the following benefits to Indians and Belgians working in each other's countries:

1. Those working on a short-term contract of up to sixty months are exempted from social security contributions in the host country provided they continue to make social security payments in their home countries.
2. Those who live and work for periods longer than sixty months and make social security contributions under the host country laws will be entitled to the export of the social security benefits should they relocate to the home country on completion of their contract or on retirement.
3. These benefits will also be available to employees sent by a company to the host country from a third country.
4. Self-employed Indians in Belgium contributing to the Belgian social security system will be entitled to the export of social security benefits should they choose to relocate to India.

The Ministry of Overseas Indian Affairs is already negotiating similar agreements with countries like The Netherlands and France.

5.4 BAGGAGE RULES AND VISA RULES

BAGGAGE RULES

Baggage Rules is an aspect of customs network which the common man going abroad or returning from abroad has to deal with at customs.

Under the General Baggage Rules,

- (1) used personal effects, and
- (2) new articles up to a value of Rs. 12,000/- per adult passenger (Rs. 25,000/- if the person returns to India after more than three days) are exempt.

A lower Free Allowance of Rs. 6,000/- is allowed to passengers coming (after 3 days) from Nepal, Bhutan, Burma or China provided they do not come across land borders with these countries.

Passengers returning from Pakistan by road are allowed duty free baggage up to Rs. 12,000/-.

For child passengers (below 10 years of age), free allowance is 50% of the allowance admissible to an adult passenger of that category.

The General Free Allowance of passenger is not clubbable with similar allowance of another passenger (for example, husband or wife or any other relative traveling with the passenger) to permit clearance of a costly article of baggage.

Laptop computer (computer notebook) brought by a passenger of the age of 18 years and above has been exempted w.e.f from 9-1-2004.

Alcoholic liquor or wines up to two litres, 200 cigarettes and jewellery upto Rs. 20,000/- for a lady and Rs. 10,000/- for a gentleman can be brought as part of the free baggage allowance. Import of cinematography films, exposed but not developed, brought as part of baggage has also been made duty free.

In case a single article exceeding the limit of Rs. 12,000 (or Rs. 25,000 in value) is brought, 35% flat rate of duty with no SAD or CVD is payable on excess value. 40% without SAD & CVD is also the effective rate of duty for any article of bona fide baggage brought in excess of free allowance except for fire arms, cartridges of fire arms exceeding 50 and excess cigarettes, cigars or tobacco.

But in terms of exemption Notification No. 49/96-Cus., dated 23-7-1996, specified goods covered under listed Headings and Notifications therein attract merit rate (as applicable to cargo) even if imported as baggage. Conditions, if any, prescribed in the listed Notification will apply to imports under baggage also. Free allowance is restricted in case of visit to contiguous countries like Maldives, Sri Lanka, Nepal and Bhutan.

'Baggage' does not include motor vehicle, fire arms and goods of commercial nature or in commercial quantities.

There are value/ quantity restrictions on bringing jewellery, cigarettes and liquor. However, primary gold up to ten kgs. per passenger and silver up to one hundred kgs. per passenger can be imported on payment of normal duties in convertible foreign exchange provided the concerned passenger is coming to India after at

least six months' stay abroad. For crew members of a vessel or aircraft, free allowance for petty gifts is Rs 600/-.

Transfer of Residence

In the case of passengers transferring their residence to India after stay abroad of two years or more, personal and household effects in use abroad and six new specified household gadgets are exempt from duty but 15 % flat duty without SAD has to be paid on 17 listed articles of consumer durables within value ceiling of 5 lakhs. In the case of transfer of residence after stay abroad of at least one year, other personal and household effects in use abroad and not exceeding Rs. 75,000/- in aggregate value can be brought in free. In addition, there are free allowances of varying value for professional artisans coming to India after 3 months/6 months (duty free household article worth Rs. 12,000/- and professional equipment worth Rs. 20,000/- /40,000/).

Allowance for gifts as well as for travel souvenirs in the case of foreign tourists is Rs. 8,000/- (Rs.6,000/- in the case of tourists from Pakistan origin), apart from personal effects in use of the tourist. Peak rate of duty for baggage goods of Heading 98.03 is 150% non-bona fide baggage is in addition to fine and penalty.

Foreign Travel Tax and Inland Air Travel Tax have been exempted for all passengers with effect from 9-1-2004.

Passengers not carrying any dutiable goods can walk through the Green Channel. Others are required to come to the Red Channel and report at customs counter. There are now no restrictions on resale of baggage goods.

Passengers importing / exporting commercial samples as accompanied baggage should follow the procedure laid down in this behalf. If an importer is desirous of paying duty on an article at the cargo rate but by mistake he has brought the said article as baggage, he can rectify the error by filling an application before the authorities along with submission of a bill of entry (Collector v. A.K.Dhawan).

Please visit the website www.cbec.gov.in for the complete Baggage Rules 1998.

VISA RULES

GENERAL VISA REQUIREMENTS FOR ENTRY / STAY IN INDIA

UNITED STATES OF AMERICA

Visa application forms (available at www.indiacgny.org) should be accompanied for all types of visas by two photographs and applicant's original passport should have validity of six months.

Type of Visa	Other requirements/conditions
Tourist Visa	Nil
Transit Visa	Copy of airline tickets
Entry Visa	Issued to People of Indian Origin only
Business Visa	Letter from the sponsoring organization indicating nature of applicant's business, probable duration of stay, validity of visa, places and organizations to be visited and also a guarantee to meet maintenance expenses etc.
Employment Visa	Contract with the employer
Student Visa	A letter confirming admission to the institution along with evidence of financial arrangements for stay in India. In case of admission in medical or paramedical courses in India, NOC from Ministry of Health, Govt. of India. In case of admission in graduate or post graduate courses in engineering/technical institutions in India, NOC from Ministry of Human Resources Development (Department of Education)
Research Visa	Approval of Ministry of Human Resource Development
Journalist Visa	Given to professional journalists and photographers for upto three months stay in India
Conference Visa	Letter of invitation from the organizer of the conference

UNITED KINGDOM

Visa application forms (available at <http://www.hcilondon.net>) should be accompanied for all types of visas by two photographs and applicant's original passport should have validity of six months.

Type of Visa	Other requirements/conditions
Tourist Visa	Nil
Business Visa	Letter explaining the nature of business and duration from UK company and letter of invitation from an Indian Company
Conference Visa	Letter of invitation from the conference organizer
Transit Visa	Evidence of onward travel outside India is required
Entry Visa	Issued to People of Indian Origin only
Long Term Visa	This settlement visa is issued to people of Indian origin
Student Visa	Letter of admission from recognized educational institution with duration of the course
Journalist Visa	Letter from employer where applicable
Employment Visa	An employment contract signed by both the parties should be submitted

SOUTH AFRICA

Visa application forms (available at <http://www.indconjoburg.co.za>) should be accompanied for all types of visas by two photographs, original passport (South Africa or any other country), one air ticket copy (except two for business visa) and birth certificate/South African ID.

Type of Visa	Other requirements/conditions
Tourist Visa	Nil
Business Visa	Two copies of invitation letter from India and two copies of letter from South African company
Study Visa	Letter from School, Institution or college (Duration of study must be mentioned)
Employment Visa	Employment Letter from company and letter of NOC from Ministry of Labour, India
Sports Visa	Invitation Letter from India

MAURITIUS

Visa application forms (available at <http://indiahighcom.intnet.mu>) should be accompanied for all types of visas by three passport size photographs, photocopy of confirmed return air ticket and applicant's original passport should have validity of six months.

Type of Visa	Proof/ Other requirements/conditions
Tourist Visa	Hotel booking in cities intended to travel in India Travellers cheques or receipt of exchange of money in the name of applicant \$50 per day per person for stay in India or notarized letter of sponsorship from person residing in India, guaranteeing all expenses of stay, travel etc of the applicant in India or Credit Cards accompanied by covering letter of Bank
Business Visa	Business in Mauritius Letter from company in Mauritius showing exact nature of business to be transacted and details of person deputed for the purpose and Letter from company in India, indicating the details of person, visiting India and the nature of Business
Education Visa for freshers	Eligibility certificate from concerned university Nil
Student Visa Extension	Eligibility certificate from concerned university Photocopy of college Identity Card, Bonafide certificate, Residence permit photocopy

Note: the above VISA rules are not applicable to the holders of diplomatic and official passport.

MALAYSIA

Visa application forms (available at <http://www.indianhighcommission.com.my>) should be accompanied for all types of visas by three photographs and applicant's original passport should have validity of six months.

Type of Visa	Other requirements/conditions
Transit Visa	Confirmed Air Ticket
Tourist Visa	Nil
Business Visa	Proof of business in India
Student Visa	Proof of admission in recognized institution in India
Employee Visa	Proof of employment in India
Other Visa	Consult the counter

UNITED ARAB EMIRATES

Visa application forms (available at www.indianembassy.org.sa) should be accompanied for all types of visas by two photographs, Saudi exit/re-entry visa on the passport and applicant's original passport should have validity of two months beyond the validity of visa,

Type of Visa	Other requirements/conditions
Tourist Visa	Letter of recommendation from sponsor
Business Visa	Letter of request from business establishment in Saudi Arabia
Transit Visa	Letter of recommendation from sponsor
Student Visa	Provisional admission letter from recognized educational institution in India. Letter of financial support/guardian along with a bank guarantee worth Saudi riyals Seven Thousand. Letter of recommendation from sponsor
Visa to visit relatives or for Medical Treatment	Names and complete addresses of relatives to be visited in India. Medical Reports/Hospital References in case of medical treatment. Letter of recommendation from sponsor.
Employment Visa	Copy of contract signed with the employer in India or letter regarding offer of appointment in India. Letter of recommendation from sponsor.
Diplomatic/Official Visa	Note verbale from the applicant's embassy indicating the purpose of the visit

CANADA

Visa application forms (available at <http://www.hciottawa.ca>) should be accompanied for all types of visas by one photograph for the business visa and two photographs for the rest and a valid passport.

Type of Visa	Others requirements/conditions
Business Visa	Letter from the applicant's company stating the purpose of visit and another letter from Indian company inviting the applicant Additional Business Information Sheet to be filled in
Student Visa	Letter of admission from Government of India recognized school/institution
Long Term Visa	Sufficient reason with documentary proof for granting long term visa

5.5 FREQUENTLY ASKED QUESTIONS

1. What are the forms in which businesses can be conducted by a foreign company in India?

Ans. Foreign companies can make investments or operate their business in a number of ways such as Liaison/ Representative Office, Project Office, Branch Office, 100% Wholly owned subsidiary and Joint venture company. The requisite approval can be granted by Reserve Bank of India (RBI) or Foreign Investment promotion Board (FIPB). Any company set up with FDI has to be incorporated under the Indian Companies Act with the Registrar of Companies, Department of Company Affairs and all Indian operations would be conducted through this company.

2. What proposals require an Industrial Licence (IL) and how is it obtained?

Ans. In the New Industrial Policy, all industrial undertakings are exempt from licensing except for those industries given in Annexure I and II and those reserved for the Small Scale Sector. The project should not be located within 25 kilometres of a city with a population of more than one million as per 1991 Population Census.

The Government has substantially liberalised the procedures for obtaining an Industrial Licence. The application in form IL-FC should be filed with the SIA. Approvals normally granted within 6-8 weeks.

3. What is the procedure for a delicensed sector?

Ans. An Industrial undertaking exempted from licensing needs only to file information in the Industrial Entrepreneurs Memorandum (IEM) with the SIA, which will issue an acknowledgement. No further approvals are required.

4. What is the Taxation Policy in India?

Ans. Foreign nationals working in India are generally taxed only on their Indian income. Income received from sources outside India is not taxable unless it is received in India. The Indian tax laws provide for exemption of tax on certain kinds of income earned for services rendered in India. Further, foreign nationals have the option of being taxed under the tax treaties that India may have signed with their country of residence.

5. What are the important Labour Rules/ Regulations applicable in India?

Ans. Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre. Some of the important Labour Acts, which are applicable for carrying out business in India, are

- Employees- Provident Fund and Miscellaneous Provisions Act, 1952
- Employees- State Insurance Act 1948
- Workmen's Compensation Act, 1923
- Maternity Benefit Act, 1961
- Payment of Gratuity Act, 1972

- Factories Act, 1948
- Dock Workers (Safety, Health & Welfare) Act, 1986
- Mines Act, 1972
- Minimum Wages Act
- Payment of Bonus Act 1965
- Contract Labour [Regulation & Abolition] Act 1970
- Payment of Wages Act, 1936

6. What is the situation regarding Intellectual Property Rights protection in India?

Ans. India is a signatory to the agreement concluding the Uruguay Round of GATT negotiations and establishing the World Trade Organisation (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which came into force from 1st January 1995. It lays down minimum standards for protection and enforcement of Intellectual Property Rights in member countries, which are required to promote effective and adequate protection of Intellectual Property Rights with a view to reducing distortions and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standards of protection within the member country's legal systems and practices.

As regards the status of various Intellectual Property laws in India and standards in respect of various areas of intellectual property, a law on Trade Marks has been passed by Parliament and notified in the gazette on 30.12.1999. This law repeals and replaces the earlier Trade & Merchandise Act, 1958. A new law for the protection of Geographical Indications, viz., the Geographical Indications of Goods (Registration and the Protection) Act, 1999 has also been passed by the Parliament and notified on 30.12.1999. The Rules required under the Act were notified vide Notification No. G.S.R. 176 (E) dated 8th March, 2002. The Act and the Rules have been brought into force simultaneously with the setting up of Intellectual Property Appellate Board (IPAB) under the Trade Marks Act, 1999 on September 15, 2003. A law called the Designs Act, 2000 relating to Industrial Designs which repeals and replaces the earlier Designs Act, 1911 has also been passed by Parliament in its Budget Session, 2000. The Act has been brought into force from 11.05.2001. A Bill on Patents to amend the Patents Act, 1970 was passed by Parliament on 14.05.2002. The amendment to the patent law has been made operational in May 2003.

7. Is Investment by Non-Resident Indians (NRIs) permitted?

Ans. The Government attaches importance to investments by NRIs. Government has provided a liberalised policy framework for approval of NRI investments through both the Automatic and the Government route. NRIs are permitted to invest up to 100% equity in the Real Estate and Civil Aviation Sectors. Automatic Approval is given by the RBI to all NRI proposals with their investment up to 100% for all items/activities except a few exceptions mentioned in Press Note 2 (2000 series) read with sector specific guidelines. Government approval is given for all proposals not qualifying for Automatic Approval.

8. Can profits, dividends, royalty, know how payments be repatriated from India?

Ans. All profits, dividends, royalty, know how payments that have been approved by the Government/RBI can be repatriated. Some sectors like investment in development of integrated township, NRI Investment in real estates, etc. may attract a lock-in period.

9. What are the formalities a joint venture company has to complete to increase the foreign equity holding?

Ans: The following formalities are required for the joint ventures that want to increase in their foreign equity holding by acquisition of shares or by any other means.

- a) If only the quantum of foreign equity increased without change in percentage then Press Note no. 7 (1999 series) may be followed.
- b) For increase in percentage of foreign equity by way of expansion of capital base, automatic route or FIPB / Government route would apply depending upon the nature of proposal in terms of Press Note No. 2 (2000 series)
- c) Cases involving increase in percentage in foreign equity by way of acquiring existing shares in an Indian company would necessarily require prior approval of FIPB/Government.
- d) In cases involving inclusion of an additional foreign collaborator, guidelines laid down in Press Note No. 18 (1998 series) would have to be satisfied.

10. What is the policy of conversion of non-repatriable shares into repatriable shares?

Ans. FIPB approval is required. Where original investment was made in foreign exchange, the change is allowed without any conditions; if not, the sale proceed will have to be repatriated to India by opening an NRO account.

11. What is the mechanism for publicizing the changes in the FDI Policies?

Ans. Changes in FDI policies are brought out in the form of Press Notes by Department of Industrial Policy & Promotion (DIPP). Soon after releasing the Press Notes to the media, it is also loaded on the Departmental website (<http://dipp.nic.in>).

The detailed guidelines regarding the Indian investment abroad may be seen at the website (www.iic.nic.in) of India Investment Centre, Department of Economic Affairs, Ministry of Finance.

12. What is International Centre for Alternative Dispute Resolution (ICADR)?

Ans. International Centre for Alternative Dispute Resolution (ICADR) has been established as an autonomous organization under the aegis of Ministry of Law, Justice and Company Affairs to promote settlement of domestic and international disputes by different modes of alternate dispute resolution. ICADR has its headquarters in New Delhi and has regional office in Lucknow and Hyderabad. More information on ICADR can be obtained from the website:

13. What are the regulation for companies exporting and importing products from /into India?

(A) Exports:

Reserve Bank has made the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 relating to export of goods and services from India, notified vide Notification No. FEMA 23/2000-RB, dated 3rd May, 2000; as amended from time to time.

The basic requirements under the exchange control regulations are that the exports are to be declared in :

- GR (for all export transactions other than through the postal channel),
 - PP (for transactions through the postal channel) and
 - Softex forms (for software exports).
- (i) Exemptions from Declarations

The requirement of declaration of export of goods and software in prescribed form will not apply in certain cases such as

- Goods sent for testing abroad, subject to re-import.
- Gift of goods exceeding rupees one lakh in value require approval of the Reserve Bank.
- For export promotion subject to a specific ceiling (Rs. 5 lakhs).

Import trade is regulated by the Directorate General of Foreign Trade (DGFT) under Ministry of Commerce & Industry, Department of Commerce, Government of India. Authorised dealers, while undertaking import transactions, should ensure that the imports into India are in conformity with the Export Import Policy in force and relevant provisions of FEMA.

(i) Import Licenses

Authorised dealers are allowed to open letters of credit and allow remittances for import of goods unless they are included in the negative list requiring licence under the EXIM Policy in force.

Detailed FAQs on Export / Import are available on the DIPP web site (<http://dipp.nic.in>)

14. What is the procedure to be followed upon change of Residential Status?

Ans. Upon change of residential status, intimation should be given to the bankers about the change of Residential Status, so that the existing NRE, NRO or FCNR account is designated as a Resident Account, with tenure and interest rates remaining unchanged and When a person resident in India becomes a Non-Resident, so that the existing account is designated as a Non-Resident Ordinary Account (NRO).

15. If any permission from RBI is required to acquire or transfer agricultural land / plantation property/ farm house by a person resident outside India or a foreign national, to whom should the application be made? Is there any prescribed form for the application?

Ans. All requests for acquisition or transfer of agricultural land /plantation property/farm house by any person resident outside India or a foreign national may be made to the Chief General Manager, Reserve Bank

of India, Central Office, Exchange Control Department, Foreign Investment Division (III), Mumbai-400 001 (India). No application form has been prescribed.

16. Is there any restriction on number of residential properties that may be purchased by an NRI? Is there any restriction on period of holding for such properties?

Ans. There are no restrictions on number of residential properties that may be bought by an NRI. However, repatriation is allowed only in respect of two such properties and that, too, after three years from date of acquisition of such property or from date of payment of final instalment, whichever is later.

17. Can NRI repatriate the full consideration upon the sale of his property?

Ans. India is a fully convertible on current account and **partial on capital account**. Remittance of sale proceed is limited to the cost of property only and the amount of gain on sale of property, can not be repatriated.

18. Is there any general prohibition from accepting any foreign contribution?

Ans. Yes, the following categories of persons are prohibited from accepting any foreign contribution either, directly or indirectly or through any other person (which includes Non Resident Indian citizen for the benefits of such categories of person:

- (a) candidate for election
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,
- (c) Judge, Government Servant or employee of any government corporation / undertaking,
- (d) Member of any Legislature,
- (e) Political party or office bearer thereof.

However, certain exemption from general prohibition has been granted in Sec 8 of FCRA.

19. Should an association /trust/society get registered under the F.C.R.Act?

Ans. An association /trust/ society having definite culture, economic, educational, religious, or social programme cannot accept foreign contribution unless it registers itself with the Central Government by applying in Form No FC- 8 or gets prior permission by applying in Form FC-1A.

The Form has to be submitted to Ministry of Home Affairs, Lok Ayut Bhavan , Khan Market, New Delhi. The registration process takes at least 5/6 months to complete while permission process takes 90 days.

5.6 LIST OF IMPORTANT WEBSITES

Website addresses of Important Ministers/Departments

Ministry of Overseas Indian Affairs	http://moia.gov.in
Department of Biotechnology	http://dbtindia.nic.in
Bureau of Indian Standards	http://www.bis.org.in
Department of Chemicals & Petrochemicals	http://chemicals.nic.in
Ministry of Civil Aviation	http://civilaviation.nic.in
Department of Commerce	http://commerce.nic.in
Ministry of Coal	http://coal.nic.in
Ministry of Company Affairs	http://dca.nic.in
Department of Education	http://education.nic.in
Ministry of Environment and Forests	http://envfor.nic.in
Department of Explosives	http://explosives.nic.in
Ministry of External Affairs	http://www.meanindia.nic.in
Ministry of Finance	http://finmin.nic.in
Directorate General of Foreign Trade	http://dgft.delhi.nic.in
Department of Heavy Industries	http://dhi.nic.in
Department of Industrial Policy & Promotion	http://dipp.nic.in
Ministry of Information and Broadcasting	http://mib.nic.in
Department of Information Technology	http://www.mit.gov.in
Ministry of Labour	http://labour.nic.in
Ministry of Mines	http://mines.nic.in
Ministry of Non-Conventional Energy Sources	http://mnes.nic.in
Office of The Controller General Of Patents	http://patentoffice.nic.in
Ministry of Petroleum And Natural Gas	http://petroleum.nic.in
Ministry of Power	http://powermin.nic.in
Ministry of Railways	http://www.indianrailways.gov.in
Reserve Bank of India	http://www.rbi.org.in
Department of Road Transport & Highways	http://morth.nic.in
Department of Shipping	http://shipping.nic.in
Ministry of Small Scale Industries	http://ssi.nic.in
Ministry of Statistics and Programme Implementation	http://mospi.nic.in
Department of Telecommunication	http://www.dotindia.com
Ministry of Textile	http://texmin.nic.in
Ministry of Tourism	http://tourismofindia.com
Ministry of Urban Development	http://urbanindia.nic.in
Ministry of Water Resource	http://wrmin.nic.in

Website Addresses of States/Union Territories

Andaman & Nicobar (UT)	http://andaman.nic.in
Andhra Pradesh	http://www.aponline.gov.in
Assam	http://assamgovt.nic.in
Bihar	http://bihar.nic.in
Chandigarh(UT)	http://chandigarh.nic.in
Chhattisgarh	http://chattisgarh.nic.in
Dadra & Nagar Haveli	http://odc.nic.in
Daman & Diu	http://daman.nic.in
Delhi	http://delhigovt.nic.in
Goa	http://goagovt.nic.in
Gujarat	http://www.gujratindia.com
Haryana	http://haryana.nic.in
Himachal Pradesh	http://himachal.nic.in
Jammu & Kashmir	http://jammukashmir.nic.in
Jharkhand	http://jharkhand.nic.in
Karnataka	http://www.karnataka.nic.in
Kerala	http://www.kerala.gov.in
Lakshdweep(UT)	http://lakshadweep.nic.in
Madhya Pradesh	http://www.mp.nic.in
Maharashtra	http://maharashtra.gov.in
Manipur	http://manipur.nic.in
Meghalaya	http://meghalaya.nic.in
Mizoram	http://mizoram.nic.in
Nagaland	http://nagaland.nic.in
Orissa	http://orissagov.nic.in
Pondicherry(UT)	http://pondicherry.nic.in
Punjab	http://punjabgovt.nic.in
Rajasthan	http://www.rajasthan.gov.in
Tripura	http://tripura.nic.in
Uttar Pradesh	http://upgovt.nic.in
Uttranchal	http://gov.ua.nic.in
West Bengal	http://www.wbgov.com
Sikkim	http://sikkimgov.nic.in
Tamil Nadu	http://www.tn.gov.in

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ANNEXURES

DETAILS OF SELECTED AGENCIES/ DEPARTMENTS INVOLVED WITH VARIOUS CLEARANCES/APPROVALS AND THEIR WEB-SITES

Subject Matter	Concerned Ministry/Department of Govt. of India	Website address
Industrial Entrepreneur Memorandum for delicensed industries	Department of Industrial Policy & Promotion	http://dipp.gov.in
Approval for Industrial License / carry-on-business License	Department of Industrial Policy & Promotion	http://dipp.gov.in
Approval for Technology Transfer: (i) Automatic route (ii) Government approval (PAB)	Reserve Bank of India Department of Industrial Policy & Promotion	http://www.rbi.org.in http://dipp.gov.in
Approval for financial collaboration: (i) Automatic route (ii) Government approval (FIPB)	Reserve Bank of India Department of Economic Affairs	http://www.rbi.org.in http://finmin.nic.in
Approval of Industrial Park (i) Automatic route (ii) Non-Automatic route (Empowered Committee)	Department of Industrial Policy & Promotion	http://dipp.gov.in
Registration as a company & certificate of commencement of business	Ministry of Company Affairs (Registrar of Companies)	http://mca.gov.in
Matters relating to FDI policy and its promotion and facilitation as also promotion and facilitation of investment by Non-Resident Indians (NRIs)	Department of Industrial Policy & Promotion	http://www.dipp.gov.in

Matters relating to Foreign Exchange	Reserve Bank of India	http://www.rbi.org.in
Matters relating to Taxation	Department of Revenue	http://finmin.nic.in
Matters relating to Direct Taxation	Central Board of Direct Taxes	http://incometaxindia.gov.in
Matters relating to Excise & Customs	Central Board of Excise & Custom	http://www.cbec.gov.in
Matters relating to Industrial Relations	Ministry of Labour	http://labour.nic.in
Import of Goods	Directorate General of Foreign Trade	http://dgft.delhi.nic.in
Matters relating to Environment & Forest clearance	Ministry of Environment and Forests	http://envfor.nic.in
Overseas investment by Indians	Ministry of Overseas Indian Affairs	www.moia.gov.in
Allotment of land/shed in industrial areas, acquisition of land, change in land use, approval of building plan, release of water connection etc.	Departments Concerned of State Governments	Web site address of the State/UT is given at 5.6 in this book

SECTOR SPECIFIC GUIDELINES FOR FOREIGN DIRECT INVESTMENT

S. No.	Sector/Activity	FDI Cap / Equity	Entry Route	Other conditions	Relevant Press Note issued by D/o IPP
1.	Airports-				
a.	Greenfield projects	100%	Automatic	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic.in	PN 4 / 2006
b.	Existing projects	100%	FIPB Beyond 74%.	Subject to sectoral regulations notified By Ministry of Civil Aviation www.civilaviation.nic.in	PN 4 / 2006
2.	Air Transport Services	49%- FDI; 100%- for NRI Investment	Automatic	Subject to no direct or Indirect participation by foreign airlines. Government Of India Gazette Notification dated 2.11.2004 issued by Ministry Of Civil Aviation www.civilaviation.nic.in	PN 4/2006
3.	Alcohol Distillation & Brewing	100%	Automatic	Subject to license by appropriate authority	PN 4 / 2006
4.	Asset Reconstruction Companies	49% (only FDI)	FIPB	Where any individual investment exceeds 10% of the equity, provisions of Section 3(3)(f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should be complied with. www.finmin.nic.in	

5.	Atomic Minerals	74%	FIPB	Subject to guidelines issued by Department of Atomic Energy vide Resolution No. 8/1 (1)/97-PSU/1422 dated 6.10.98.	
6.	Banking - Private sector	74% (FDI+FII)		Subject to guidelines for setting up branches / subsidiaries of foreign banks issued by RBI. www.rbi.org.in	PN 2 / 2004
7.	Broadcasting				
a.	FM Radio	FDI+FII investments up to 20%	FIPB	Subject to guidelines notified by Ministry of Information & Broadcasting www.mib.nic.in	PN 6 / 2005
b.	Cable network	49% (FDI+FII)	FIPB	Subject to Cable Television Network Rules (1994) Notified by Ministry of Information & Broadcasting www.mib.nic.in	
c.	Direct To Home	49% (FDI+FII) within this limit FDI Component not to exceed 20%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	
d.	Setting up hardware facilities such as up-linking, HUB, etc	49% (FDI+FII)	FIPB	Subject to Up-linking Policy notified by Ministry of Information & Broadcasting www.mib.nic.in	PN 1 / 2006
e.	Up-linking a News & Current Affairs TV Channel	26% FDI+FII	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	PN 1 / 2006
f.	Up-linking a Non-News & Current Affairs TV Channel	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	PN 1 / 2006
8.	Cigars & Cigarettes Manufacture	100%	FIPB	Subject to industrial license under the Industries (Development & Regulation) Act, 1951	PN 4 / 2006

9.	Coal & Lignite mining for captive consumption by power projects, and iron & steel, cement production and other eligible activities permitted under the Coal Mines (Nationalization) Act, 1973.	100%	Automatic	Subject to provisions of Coal Mines (Nationalization) Act, 1973 www.coal.nic.in	PN 4 / 2006
10.	Coffee & Rubber processing & warehousing	100%	Automatic		PN 4 / 2006
11.	Construction Development projects, including housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure, townships.	100%	Automatic	Subject to conditions notified vide Press Note 2 (2005 Series) including: a. minimum capitalization of US\$ 10 million for wholly owned subsidiaries and US\$ 5 million for joint venture. The Fund would have to be brought within six months of commencement of business of the Company. b. Minimum area to be developed under each project 10 hectares in case of development of serviced housing plots; and built up area of 50,000 sq. mts in case of construction development project; and any of the above in case of a combination project. [Note:For investment by NRIs, the conditions mentioned in Press Note 2/2005 are not applicable.]	PN 2 / 2005 & PN 2 / 2006

12.	Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.	100%	FIPB	Subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the State. www.indiapost.gov.in	PN 4 / 2001
13.	Defence production	26%	FIPB	Subject to licensing under Industries (Development & Regulation) Act, 1951 and guidelines on FDI in production of arms & ammunition.	PN 4 / 2001 & PN 2 / 2002
14.	Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, aqua-culture, cultivation of vegetables, mushrooms, under controlled conditions and services related to agro and allied sectors.	100%	Automatic		PN 4 / 2006
15.	Hazardous Chemicals, viz., hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and diisocyanates of hydrocarbon.	100%	Automatic	Subject to industrial license under the Industries (Development & Regulation) Act, 1951 and other sectoral regulations.	PN 4 / 2006
16.	Industrial explosives- Manufacture	100%	Automatic	Subject to industrial license under Industries (Development & Regulation) Act, 1951 and regulations under Explosives Act, 1898	PN 4 / 2006

17.	Insurance	26%	Automatic	Subject to licensing by the Insurance Regulatory & Development Authority www.irda.nic.in .	PN 10 / 2000
18.	Investing companies in infrastructure services sector (except telecom sector)	49%	FIPB	Foreign investment in an investing company will not be counted towards sectoral cap in infrastructure /services sector provided the investment is up to 49% and the management of the company is in Indian hands.	PN 2 / 2000 & PN 5 / 2005
19.	Mining covering exploration and mining of diamonds & precious stones; gold, silver and minerals.	100%	Automatic	Subject to Mines & Minerals (Development & Regulation) Act, 1957 www.mines.nic.in Press Note 18 (1998) and Press Note 1 (2005) are not applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and / or the particular mineral.	PN 2 / 2000 PN 3 / 2005 & PN 4 / 2006
20.	Non Banking Finance Companies- approved activities				
i) ii) iii) iv) v) vi) vii) viii) ix) x) xi)	Merchant banking Underwriting Portfolio Management Services Investment Advisory Services Financial Consultancy Stock Broking Asset Management Venture Capital Custodial Services Factoring Credit Reference	100%	Automatic	Subject to: a. minimum capitalization norms for fund based NBFCs - US\$ 0.5 million to be brought upfront for FDI up to 51 %; US\$ 5 million to be brought upfront for FDI above 51 % and up to 75%; and US\$ 50 million out of which US\$ 7.5 million to be brought upfront and the balance in 24 months for FDI beyond 75% and up to 100%.	PN 2/2000 PN 6/2000 & PN 2/2001

<p>xii) Agencies Credit Rating Agencies xiii) Leasing & Finance xiv) Housing Finance xv) Forex Broking xvi) Credit Card Business xvii) Money changing Business xviii) Micro credit xix) Rural credit.</p>				<p>b. minimum capitalization norms for non-fund based NBFC activities- US\$ 0.5 million. c. foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities subject to bringing in US\$ 50 million without any restriction on number of operating subsidiaries without bringing additional capital. d. joint venture operating NBFC's that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities subject to subsidiaries also complying with the applicable minimum capital inflow. e. compliance with the guidelines of the RBI.</p>	
<p>21. Petroleum & Natural Gas sector</p>					
<p>a.</p>	<p>Other than Refining and including market study and formulation; investment financing; setting up infrastructure for marketing in Petroleum & Natural Gas sector.</p>	<p>100%</p>	<p>Automatic</p>	<p>Subject to sectoral regulations issued by Ministry of Petroleum & Natural Gas; and in the case of actual trading and marketing of petroleum products, divestment of 26% equity in favour of Indian partner/ public within 5 years. www.petroleum.nic.in</p>	<p>PN 1/2004 & PN 4/2006</p>

b.	Refining	26% in case of PSUs 100% case Private companies	FIPB (in case of PSUs) Automatic (in case of private companies)	Subject to sectoral policy www.petroleum.nic.in	PN 2/2000
22. Print Media					
a.	Publishing of newspaper and periodicals dealing with news and current affairs	26%	FIPB	Subject to guidelines notified by Ministry of Information & Broadcasting. www.mib.nic.in	
b.	Publishing of scientific magazines / specialty journals/ periodicals	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in	PN 1 / 2004
23.	Power including generation (except Atomic energy); transmission, distribution and Power Trading.	100%	Automatic	Subject to provisions of the Electricity Act. 2003 www.powermin.nic.in	PN 2 / 1998 PN 7 / 2000 & PN 4 / 2006
24.	Tea Sector. Including tea plantation	100%	FIPB	Subject to divestment of 26% equity in favour of Indian partner/Indian public within 5 years and prior approval of State Government for change in land use.	PN 6 / 2002
25. Telecommunication					
a.	Basic and cellular, Unified Access Services, National/international Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global	74%(Including FDI, FII, NRI, FCCBs, ADRs, GDRs, convertible preference shares, and proportionate foreign equity	Automatic Up to 49% FIPB Beyond 49%	Subject to guidelines notified in the PN 5 (2005 Series).	PN 5 / 2005

	Mobile Personal Communications Services (GMPCS) and other value added telecom Services	in Indian promoters/ Investing Company)			
b.	ISP with gateways, radio-paging, end to end bandwidth.	74%	Automatic up to 49% FIPB Beyond 49%	Subject to licensing and security requirements notified by the Department of Telecommunications www.dotindia.com	PN 4 / 2001
c.	ISP without gateway, infrastructure provider providing dark fibre, electronic mail and voice mail	100%	Automatic up to 49% FIPB Beyond 49%	Subject to the condition that such companies shall divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world. Also subject to licensing and security requirements, where required. www.dotindia.com	PN 9 / 2000
d.	Manufacture of telecom equipments	100%	Automatic	Subject to sectoral requirements. www.dotindia.com	PN 2 / 2000
26.	Trading				
a.	Wholesale / cash & carry trading	100%	Automatic	Subject to guidelines for FDI in trading issued by Department of Industrial Policy & Promotion vide Press Note 3 (2006Series).	PN 4 / 2006
b.	Trading for exports	100%	Automatic		
c.	Trading of items sourced from small scale sector	100%	FIPB		
d.	Test marketing of such items for which a company has approval for manufacture	100%	FIPB		

e.	Single Brand Product retailing	51%	FIPB		
27.	Satellites Establishment And operation	74%	FIPB	Subject to sectoral guidelines issued by Department of Space /ISRO www.isro.org	
28.	Special Economic Zones And Free Trade Warehousing Zones covering setting up of these Zones and setting up units in the Zones	100%	Automatic	Subject to Special Economic Zones Act, 2005 and the Foreign Trade Policy. www.sezindia.nic.in	PN 9 / 2000 PN 2 / 2006 PN 4 / 2006

ILLUSTRATIVE LIST OF SECTORS UNDER AUTOMATIC ROUTE FOR FDI UPTO 100%

- Most manufacturing activities
- Non-banking financial services
- Drugs and pharmaceuticals
- Food processing
- Electronic hardware
- Software development
- Film industry
- Advertising
- Hospitals
- Private oil refineries
- Pollution control and management
- Exploration and mining of minerals other than diamonds and precious stones
- Management consultancy
- Venture capital funds/companies
- Setting up/development of industrial park/model town/SEZ
- Petroleum Products Pipeline

ILLUSTRATIVE LIST OF INFRASTRUCTURE SECTORS WITH FDI UPTO 100% UNDER AUTOMATIC ROUTE

- Electricity Generation (except Atomic energy)
- Electricity Transmission
- Electricity Distribution
- Mass Rapid Transport System
- Roads & Highways
- Toll Roads
- Vehicular Bridges
- Ports & Harbours
- Hotel & Tourism
- Townships, Housing, Built-up Infrastructure and Construction Development Project

ILLUSTRATIVE LIST OF SERVICES SECTOR WITH FDI UPTO 100%

UNDER AUTOMATIC ROUTE

- Advertising and Films
- Computer related Services
- Research and Development Services
- Construction and related Engineering Services
- Pollution Control and Management Services
- Urban Planning and Landscape Services
- Architectural Services
- Health related & Social Services
- Travel related services
- Road Transport Services
- Maritime Transport Services
- Internal Waterways Transport Services

INDUSTRIAL LICENSING

At present industrial license for manufacturing is required only for the following :

- i. Industries retained under compulsory licensing,
- ii. Manufacture of items reserved for small scale sector by non-SSI units; and
- iii. When the proposed location attracts locational restriction

INDUSTRIES REQUIRING COMPULSORY LICENSING

The following industries require compulsory industrial license :

- i. Distillation and brewing of alcoholic drinks.
- ii. Cigars and cigarettes of tobacco and manufactured tobacco substitutes;
- iii. Electronic Aerospace and defence equipment: all types;
- iv. Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose and matches;
- v. Hazardous chemicals;
 - a. Hydrocyanic acid and its derivatives
 - b. Phosgene and its derivatives
 - c. Isocyanates and di-isocyanates of hydrocarbon, not elsewhere specified (example: Methyl Isocyanate).

EXTRACTS FROM MASTER CIRCULAR ON FOREIGN INVESTMENTS IN INDIA

1. Acquisition and Transfer of Immovable Property in India.

1.1 A person resident outside India who is a citizen of India (NRI) can acquire by way of purchase any immovable property in India other than agricultural/ plantation /farm house. He may transfer any immovable property other than agricultural or plantation property or farm house to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India or a person resident in India . He may transfer, agricultural land/ plantation property/ farm house only to Indian citizens permanently residing in India.

1.2. A person resident outside India who is a person of Indian Origin (PIO) can acquire any immovable property in India other than agricultural land/ farm house/ plantation property :-

- a) By way of purchase out of funds received by way of inward remittance through normal banking channels or by debit to his NRE/FCNR(B)/NRO account.
- b) By way of gift from a person resident in India or a NRI or a PIO.
- c) By way of inheritance from a person resident in India or a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force or FEMA regulations at the time of acquisition of the property.

1.3 A PIO may transfer any immovable property other than agricultural land/Plantation property/farmhouse in India

- a) By way of sale to a person resident in India.
- b) By way of gift to a person resident in India or a Non Resident Indian or a PIO..

1.4 A PIO may transfer agricultural Land/ Plantation property /farmhouse in India by way of sale or gift to person resident in India who is a citizen of India

2. Purchase/ Sale of Immovable Property by Foreign Embassies/ Diplomats/ Consulate General

Foreign Embassy/Consulate as well as Diplomatic personnel in India are allowed to purchase/ sell immovable property in India other than agricultural land/ plantation property / farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channel.

3. Acquisition of Immovable Property for carrying on a permitted activity

A person resident outside India who has a branch, office or other place of business, (excluding a liaison office) for carrying on his business activity with requisite approvals, in India may acquire an immovable property in India which is necessary for or incidental to carrying on such activity provided that all applicable laws, rules, regulations or directions for the time being in force are duly complied with. The entity/concerned person is required to file a declaration in the form IPI with the Reserve Bank, within ninety days from the date of such acquisition. The non-resident is eligible to transfer by way of mortgage the said immovable property to an authorised dealer as a security for any borrowing.

4. Repatriation of sale proceeds

In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by NRI/PIO, the authorised dealer will allow repatriation of sale proceeds outside India provided;

- i) The immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of FEMA Regulations;
- ii) The amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account or (b) the foreign currency equivalent as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property.
- iii) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- iv) In the case of sale of immovable property purchased out of Rupee funds, ADs may allow the facility of repatriation of funds out of balances held by NRIs/PIO in their Non-resident Rupee(NRO) accounts upto US\$ 1 mio per calendar year subject to production of undertaking by the remitter and a certificate from the Chartered Accountant in the formats prescribed by the CBDT.

5. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

5.1 No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan shall acquire or transfer immovable property in India, other than lease, not exceeding five years without prior permission of Reserve Bank.

5.2 Foreign national of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India.

5.3 Foreign Nationals of non Indian origin who have acquired immovable property in India with the specific approval of the Reserve Bank cannot transfer such property without prior permission of the Reserve Bank.

EXTRACTS FROM THE MASTER CIRCULAR - Remittance facilities for Non-Resident Indians/Persons of Indian Origin/Foreign Nationals

Remittance facilities for NRIs/PIO and Foreign Nationals

The guidelines for transfer of assets outside India by a person whether resident in India or not are given in the Notifications No. FEMA 13/2000-RB and FEMA 21/2000-RB both dated May 3, 2000 and the amendments issued thereto from time to time.

According to the above Notifications, remittance of capital assets in India held by a person whether resident in or outside India would require approval of the Reserve Bank except to the extent provided in the Act or Rules or Regulations made under the Act.

1. Remittance of assets by a foreign national of non-Indian origin

1.1 A foreign national of non-Indian origin who has retired from an employment in India or who has inherited assets from a person resident in India or who is a widow of an Indian citizen resident in India may remit an amount not exceeding USD one million, per calendar year, on production of documentary evidence in support of acquisition/ inheritance of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.10/2002 dated October 9, 2002.

1.2 These remittance facilities are not available to a citizen of Nepal and Bhutan.

1.3 The remittance facility in respect of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

2. Remittance of assets by NRI/PIO

2.1 A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit an amount upto USD one million, per calendar year, out of the balances held in his Non-Resident (Ordinary) Rupee (NRO) account/ sale proceeds of assets (inclusive of assets acquired by way of inheritance or settlement), for all bonafide purposes, to the satisfaction of the authorized dealer, on production of an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.10/2002 dated October 9, 2002.

2.2 NRI/PIO may remit sale proceeds of immovable property purchased by him out of Rupee funds or as a person resident in India as indicated in para 2.1 above.

2.3 In respect of remittance of sale proceeds of assets acquired by way of inheritance or legacy or settlement for which there is no lock-in period, NRI/PIO may submit documentary evidence in support of inheritance

or legacy of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.10/2002 dated October 9, 2002.

2.4 It is clarified that settlement is also a mode of inheritance from the parent, the only difference being that the property under the settlement passes to the beneficiary on the death of the owner/parent without any legal procedures/hassles and helps in avoiding delay and inconvenience in applying for probate, etc

2.5 The remittance facility in respect of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

3. Repatriation of sale proceeds of residential property purchased by NRIs/PIOs out of foreign exchange

3.1 There is no lock-in period for sale of residential property purchased by NRI/PIO out of foreign exchange. However, repatriation of sale proceeds of residential property purchased by NRI/PIO out of foreign exchange is restricted to not more than two such properties.

3.2 Authorized dealers may permit repatriation of amounts representing the refund of application/earnest money/purchase consideration made by the house building agencies/seller on account of non-allotment of flat/plot/cancellation of bookings/deals for purchase of residential/ commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/FCNR account of the account holder, or remittance from outside India through normal banking channels and the authorized dealer is satisfied about the genuineness of the transaction. Such funds may also be credited to the NRE/FCNR account of the NRIs/PIOs, if they so desire.

3.3 Authorized dealers may allow repatriation of sale proceeds of residential accommodation purchased by NRIs/PIOs out of funds raised by them by way of loans from the authorized dealers/housing finance institutions to the extent of such loan/s repaid by them out of foreign inward remittances received through normal banking channel or by debit to their NRE/FCNR accounts.

4. Remittance of current income

4.1 Remittance of current income like rent, dividend, pension, interest etc. of NRIs/PIOs who do not maintain NRO Account is freely allowed, on the basis of appropriate certification by a Chartered Accountant certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for.

4.2 NRIs/PIOs have the option to credit the current income to their Non-Resident (External) Rupee account, provided the authorized dealer is satisfied that the credit represents current income of the non-resident account holder and income tax thereon has been deducted/provided for.

5. Facilities for students

5.1 Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA.

5.2 As Non-Residents, they will be eligible to receive remittances from India (i) upto USD 100,000 from close relatives in India on self declaration towards maintenance, which could include remittances towards their studies also and (ii) upto USD 1 million out of sale proceeds of assets/balances in their account maintained with an AD in India.

5.3 All other facilities available to NRIs under FEMA are equally applicable to the students.

5.4 Educational and other loans availed of by them as residents in India will continue to be available as per FEMA regulations.

6. Income- tax clearance

The remittances will be allowed to be made by the authorized dealers on production of an undertaking by the remitter and a Certificate from a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No.10/2002 dated October 9, 2002. [cf. our AP(DIR Series) Circular No.56 dated November 26, 2002].

7. International Credit Cards

Authorized dealers have been permitted to issue International Credit Cards to NRIs/PIOs, without prior approval of RBI. Such transactions may be settled by inward remittance or out of balances held in the cardholder's FCNR/NRE/Non-Resident (Ordinary) Rupee accounts.

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