



WHAT DOES FDI IN INDIAN BUSINESSES HOLDS POST COVID-19 PANDEMIC AND THEIR COMPLIANCES IN INDIA IN THESE INCONSISTENT SCENARIO

COVID-19 has brought the economies of not just of India but also of the entire world to a point of standstill. But this article is not about the effect of the present pandemic on the world economy but rather what to expect from the Indian economy post COVID-19. In these ordeal times when the major businesses of the world have lost more than 25% of their value¹, concerns of hostile takeover and leveraged buyout are on its crest². Keeping in mind these circumstances, developed economies of the world including the US, Japan, Australia, Italy and other European countries³ have already placed economic and foreign investment sanctions on their businesses⁴.

Post COVID-19 times expect to bring an inimitable meaning of development and growth to the Indian Economy. Recently vide a circular dated 17.04.2020 the Indian Government has announced stringent regulations on foreign direct investment (FDI) to check hostile takeover and leveraged buyout from countries sharing land borders with India⁵. As per these regulations investment coming from all the countries which share a land border with India would now require government approval, closing the automatic routes used by the companies to set up businesses in India. The relevant content of the notification issued by the Ministry of Commerce and Industry of the Government of India under Press Note No. 3 (2020 series)⁶ is as follows:

Subject: Review of Foreign Direct Investment (FDI) policy for curbing opportunistic takeovers/ acquisitions of Indian companies due to the current COVID-19 pandemic

The Government of India has reviewed the extant FDI policy for curbing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic and

¹ <https://www.cnb.com/2020/03/19/techs-big-five-lost-1-trillion-in-market-value-in-past-month.html>

² <https://www.indiatoday.in/business/story/world-wakes-up-to-china-hostile-takeovers-of-companies-amid-covid-19-pandemic-1669240-2020-04-21>

³ <https://www.bloombergquint.com/coronavirus-outbreak/impact-of-covid-19-on-fdi-regimes>

⁴ <https://theconversation.com/how-coronavirus-is-changing-the-rules-on-foreign-investment-in-essential-areas-135660>

⁵ <https://economictimes.indiatimes.com/news/economy/foreign-trade/keeping-a-check-on-the-chinese/articleshow/75223704.cms?from=mdr>

⁶ https://dipp.gov.in/sites/default/files/pn3_2020.pdf



amended para 3.1.1 of extant FDI policy as contained in Consolidated FDI Policy, 2017 as under:

1. Present Position

Para 3.1.1: A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

2. Revised Position

Para 3.1.1:

3.1.1(a) A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, an entity of a country, which shares a land border with India or where the beneficial owner of investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.”

3.1.1(b) In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval.

3. The above decision will take effect from the date of FEMA notification.

MODE OF INVESTMENT

There are two routes by which a foreign entity or individual can invest in India – **Automatic Route** and **Approval Route**. The automatic route, as the name suggests is the mode of investment aimed for those sectors that are less restricted and where no Government or Reserve



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Bank of India approval is required⁷. This route also aimed to avoid wasteful procedural delay and intent to promote investment in such sectors which are specified by the Government of India.

A recent example of the investment through automatic route is the Facebook-Jio deal wherein Facebook would buy 9.99% share in Reliance Jio Platform Ltd⁸. The other example of investment through automatic route is the gigantic Walmart Flipkart deal⁹ in India.

Whereas, for the investment through the approval route the company or individual, who intend to invest in India, have to obtain prior approval from the Government of India and or the specified bodies of the Government like RBI (Reserve bank of India), FIPB (Foreign Investment and Promotion Board), DEA (Department of Economic Affairs), DIPP (Department of Industrial Promotion and Policy), etc. The company will have to apply through the Foreign Investment Facilitation Portal, which facilitates single-window clearance. The application is then forwarded to the respective ministries, which will approve/reject the application in consultation with the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce. DPIIT will issue the Standard Operating Procedure (SOP) for processing of applications under the existing FDI policy¹⁰.

WHAT TO EXPECT FROM INDIAN ECONOMY POST THE PANDEMIC?

Well, there can be no straight jacket formula to predict the flow of economy in India but looking at the global trends and also the negative sentiments towards China, it can be assumed that a lot of businesses may shift to India. America, Japan, South Korea and the whole of Europe have indicated their inclination in shifting their dependency from China to other Asian countries¹¹. In fact, the Trump administration has ordered U.S. companies to find an alternative to China¹².

⁷ <https://m.rbi.org.in/Scripts/FAQView.aspx?Id=26#Q10>

⁸ <https://economictimes.indiatimes.com/tech/internet/facebook-buys-9-99-stake-in-reliance-jio-for-5-7-billion/articleshow/75283735.cms?from=mdr#:~:text=today%20announced%20the%20signing%20of,to%20a%20US%20dollar,%E2%80%9D>

⁹ <https://www.thehindu.com/business/Industry/flipkart-deal-in-line-with-govts-fdi-policy-walmart/article24312278.ece#:~:text=%E2%80%9CIn%20line%20with%20government's%20FDI,marketplace%20model%2C%E2%80%9D%20Walmart%20said.>

¹⁰ <https://m.rbi.org.in/Scripts/FAQView.aspx?Id=26#Q10>

¹¹ <https://www.vifindia.org/article/2020/april/23/fallout-of-covid-19-japanese-and-koreans-to-shift-base-from-china-to-india>

¹² <https://economictimes.indiatimes.com/news/economy/foreign-trade/india-looks-to-lure-more-than-1000-american-companies-out-of->



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Recently Apple Inc. has officially stated that they are willing to shift 20% of their business from China to India¹³. So in the coming times, India holds a lot of business opportunities by way of FDI.

Among these businesses there are few sectors which in particular would attract a major share of FDI in India. The most important reason for such shift is not just the negative sentiments against China but also that the Companies have realized that they cannot put all their eggs in one basket. They need to scatter their production to different companies and for that they are already considering India. The other reason for the shift is the geographical advantage that the companies will have by setting up their businesses in the second biggest peninsula of the world. The third reason for this shift of businesses is the cheap skilled labour and favorable government policies in India¹⁴.

THE UPCOMING SECTOR AND THE CONDITIONS OF THE FDI IN INDIA THESE SECTORS¹⁵

Sectors	FDI through Automatic Route	FDI through Approval Route
Banking - Private Sector	Up to 49%	Above 49%
Banking - Public Sector		20%
Infrastructure	100%	
Industrial Park	100%	

china/articleshow/75595400.cms?from=mdr#:~:text=India%20looks%20to%20lure%20more%20than%201%2C000%20American%20companies%20out%20of%20China,-

Bloomberg%20%7C%20Updated%3A%20May&text=India%20is%20seeking%20to%20lure,role%20in%20the%20coronavirus%20pandemic.

¹³ <https://www.timesnownews.com/business-economy/companies/article/apple-plans-to-shift-20-of-production-capacity-from-china-to-india-eying-40-billion-export-revenue/590043>

¹⁴ <https://www.thehindubusinessline.com/opinion/india-as-the-worlds-skilled-labour-hub/article8677846.ece>

¹⁵ https://dipp.gov.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf



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IT and Business Process Management	100%	
Healthcare (Brownfield)	Up to 74%	Above 74%
Healthcare (Greenfield)	100%	
Biotechnology (Brownfield)	Up to 74%	Above 74%
Biotechnology (Greenfield)	100%	
Manufacturing	100%	
Pharmaceutical (Brownfield)	Up to 74%	Above 74%
Pharmaceutical (Greenfield)	100%	
Ports and Shipping	100%	
Food Processing	100%	

- **Infrastructure and Industrial Park** – Infrastructure in India consist of real estate and urban development industry. Infrastructure has always been the key source of investment in India and that is why the Indian policies for FDI in infrastructure have been extremely relaxed. Indian Government is targeting to reach \$5 trillion economy mark by 2024-25¹⁶ and for which they will invest around \$1.4 trillion in the coming years into the infrastructure sector¹⁷. Also the legal reforms like Real Estate Regulatory Authority Act, Specific Relief (Amendment) Act, 2018, Insolvency and Bankruptcy Code etc. were formulated to streamline litigation regarding such projects. Hence, the sector is particularly lucrative in India. Legal compliance of power sector is governed by Electricity Act 2003; airports are governed by Airport Authority of India 1994, the Aircraft Act 1934 and the Aircraft Rules 1937; roads are governed by National Highway Act 1956 and National Highway Authority of India Act 1988; water transportation sector is governed by National Water Policy 2002; oil and natural gas sector is governed by Oilfields (Regulation and Development) Act 1948, Petroleum and Natural Gas Rules 1959, Mines Act 1952, Oil Mines Regulations 2017 and Petroleum and Natural Gas (Safety in Offshore Operations) Rules 2008.

¹⁶ <https://www.businesstoday.in/current/economy-politics/indian-economy-to-reach-usd-5-trn-by-2025-morgan-stanley/story/246784.html>

¹⁷ <https://www.bloomberg.com/news/articles/2019-12-31/india-plans-1-5-trillion-infrastructure-spending-to-spur-growth>



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- **Information Technology** – India is already a software capital of the world and it is also not alien to the world that in terms of innovation India is progressing rapidly. This coupled with the fact that India has highest number of engineering graduates in a year in the world¹⁸, has made India an investment hotspot of the world. Meaning thereby the companies will have adequate skilled labour not to mention with relaxed labour laws. India is transforming into a digital economy with over 451 million Internet users, second highest in the world¹⁹. In India regulations of information technology is governed by Information Technology Act, 2000 along with Information Technology (reasonable security practices and procedures and sensitive personal data or information) Rules, 2011. In 2017 the Supreme Court of India in a unique judgment Justice K. S. Puttaswamy (Retd.) and Anr. Vs. Union Of India And Ors.²⁰ identified right to privacy as fundamental right. Therefore, it is affirmative that the IT law is evolving with changing online ecosystem and now it has become legislative bedrock for the online edifice in the country.
- **Healthcare, Pharmaceutical and Biotechnology** – India is the largest manufacturer of generic drugs in the world²¹. In the year 2017 the Indian pharmaceutical industry was valued at US \$33 Billion²². Looking at the size and turnover of business, Indian government has formulated strict compliances to regularize and mechanize this industry. Therefore this sector is always favorable for FDI in India. There are certain laws that govern legal compliance in these sectors. Few of them are – Essential Commodity Act 1955, Food Safety and Standards Act 2006, Biological Diversity Act 2002, Drugs and Cosmetics Act 1940, Drug (Price Control) Order 2013, New Drugs and Clinical Trial Rules, Medical Devices Rule and so on.
- **Manufacturing** – Manufacturing has emerged as the highest growing sector in India. In fact India is expected to become the fifth largest manufacturing country in the world by the end of 2020²³. Under the Make in India initiative, the Government of India aims to increase the share of the manufacturing sector to the gross domestic product (GDP) to 25 per cent by 2022, from 16 per cent, and to create 100 million new jobs by 2022²⁴. India is on the path of

¹⁸ <https://trak.in/tags/business/2018/01/22/india-produces-25-percent-world-engineers/>

¹⁹ <https://economictimes.indiatimes.com/tech/internet/india-has-second-highest-number-of-internet-users-after-china-report/articleshow/71311705.cms?from=mdr>

²⁰ <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/>

²¹ <https://www.gbreports.com/article/the-worlds-pharmacy-indias-generic-drug-industry>

²² <https://www.pharmaworldmagazine.com/indian-pharmaceutical-market-strong-the-weight-of-generics/>

²³ https://www2.deloitte.com/in/en/pages/manufacturing/articles/global-manufacturing-competitiveness-index_msm_moved.html

²⁴ <https://www.ibef.org/industry/manufacturing-sector-india.aspx#:~:text=Under%20the%20Make%20in%20India,sector%20continue%20to%20remain%20positive.>

Office At:
Contact:

New Delhi Pune Allahabad Nagpur
info@arkjuris.com; Mob: +919560032037; www.arkjuris.com



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becoming the hub for hi-tech manufacturing as global giants such as Samsung, GE, Siemens, HTC, Toshiba, and Boeing have either set up or are in process of setting up manufacturing plants in India, attracted by India's market of more than a billion consumers and increasing purchasing power. Therefore FDI in the Indian manufacturing sector continue to remain positive. Few laws that govern legal compliance in this sector in India are Factories Act 1948, Labor Welfare Fund Act, Minimum Wages Act 1948, Payment of Gratuity Act 1972, Employee Provident Fund Act 1952, Employee State Insurance Act 1948, Contract Labour (Regulation and Abolition) Act 1970 and so on.

- **Ports and Shipping** – With the increase in manufacturing and exports in India seaborne trade has grown twice the global rate²⁵. India has a geographical advantage as it is located between the busiest shipping routes with the coastline of approximately 7,517 Km. In the year 2017 the Government of India initiated Sagarmala Program vide which they would invest US \$ 123 Billion over 415 projects to modernize existing ports and develop new ports²⁶. Therefore it can be assured that the government will welcome FDI in this sector. Laws that govern compliances in this sector are Indian Ports Act 1908, Major Port Trusts Act 1963, Merchant Shipping Act 1958, Dock Workers (Regulation of Employment) Act 1948 and so on.
- **Banking** – The Indian banking system consists of 18 public sector banks, 22 private sector banks, 46 foreign banks, 53 regional rural banks, 1,542 urban cooperative banks and 94,384 rural cooperative banks as of September 2019²⁷. With the investment news coming from all corners of the globe growth of Indian Banking System is certain. India has the potential to be the center of manufacturing and service industry of the world. For this the Indian Government is investing heavily to update and digitalize the banking ecosystem in the country and as a result more than 80% of the adult Indian own bank accounts²⁸. Hence with the sizable customer base, the investment in this developing sector is inevitable. Reserve Bank of India, the biggest bank in the country, governs the Indian banking sector. It is governed by Reserve Bank of India Act 1934, Banking Regulation Act 1949, Financial Institutions Act 1993, Banking Companies (Acquisition and Transfer of Undertaking Act) 1980, Foreign Exchange Management Act 1999

²⁵ <https://www.investindia.gov.in/sector/ports-shipping>

²⁶ <https://www.investindia.gov.in/sector/ports-shipping>

²⁷ <https://www.ibef.org/industry/banking-india.aspx#:~:text=The%20Indian%20banking%20system%20consists,US%24%201.86%20trillion%20by%20FY19.>

²⁸ https://www.business-standard.com/article/finance/80-of-indians-now-have-a-bank-account-so-why-is-financial-inclusion-low-118051700150_1.html



- **Food processing** – India is the largest producer, consumer and exporter of spices in the world. With the second largest population of the world, India is a potential market for this sector. By 2020 Indian food and retail market is projected to touch US \$828.92 billion and Indian dairy industry is expected to double²⁹. The Government of India through the Ministry of Food Processing Industries is also taking all necessary steps to boost investments in the food processing. The legislature that deals with the food processing sector is Food Safety and Standards Act 2006, Food Safety and Standards (Packaging and Labeling) Regulations 2011, Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011, Food Safety and Standards (Licensing and Registration of Food Business) Regulations 2011, Standard of Weights and Measurements Act 1976 and so on.

CONCLUSION

After globalization in 1991 Foreign Direct Invest in India has increased exponentially. In 2019 the International Monetary Fund stated that India has maintained its fastest growing economy tag surpassing China³⁰. The growth rate of Indian Economy have resulted in making India the fifth biggest economy in the world in terms of nominal GDP and third biggest economy of the world in terms of purchasing power parity GDP. With the second biggest population in the world, India is a potential buyer as well as producer of goods and services.

Author: Arpit Maheshwari

Designation: Partner

Date: 18.06.2020

²⁹

<https://www.indusfoodchem.co.in/home#:~:text=India's%20food%20ecosystem%20offers%20huge,5th%20largest%20consumer%20by%202030.>

³⁰ <https://www.livemint.com/news/india/india-retains-world-s-fastest-growing-rank-tying-with-china-imf-11571150324897.html>