INDIA BUSINESS GUIDE 2022

by

Dr Karnika Seth

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ABOUT THE AUTHOR

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Dr. Seth is one of World's leading authorities on Cyberlaw & also known as a prolific Author & Educator to National Judicial Academy, Bhopal,Central Bureau of Investigation and other institutions. She is empanelled as legal expert to advise National Internet Exchange of India and the Office of Comptroller of Certifying Authorities, Ministry of Information Technology.

Dr. Seth's book titled 'Computers, Internet and New Technology Laws' published by Lexis Nexis Butterworths elucidates the key developments in the field of Cyber laws across many important jurisdictions, India, United States and European nations. Dr. Seth was conferred the Law Day Award from the Chief Justice of India for authoring the book, Computers, Internet and New Technology Laws' in 2012. She received the Digital Empowerment Award for the year

2015 and the Law Day Award in 2015 for authoring the book, Protection of Children on Internet. In 2017, Dr. Seth was conferred the National Gaurav Award for exemplary contribution to the field of cyber laws in India. In 2018, she received the Law day award for authoring the Manual for e-filing in High courts & district courts as probono support to national e-courts project. In 2021, she was conferred the Great Indian Women Award –Impact making Indian woman leader and Eminent CIO of India Award. She regularly contributes her views on the subject in conferences, print & electronic media and television.

Dr. Seth graduated in law from Delhi University, attained her Masters in Law from King's college, London. She attained PhD in Cyberlaws from NIU and holds a specialised certification in Computer Science from Harvard University.

Dr. Karnika Seth
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PURPOSE OF THIS BOOK

India is one of the fastest growing economies of the world despite the global economic slowdown. This E-book provides an insight into the legal and regulatory regime for foreign entities keen to invest in India. It elucidates the legal framework and incentives available to an investor planning to set up its business in India. The key features of extant Foreign direct investment policy are discussed for various industry sectors, with particular emphasis on e-commerce and digital print media. The book serves a guidebook to understand the ease of doing business in India, the pre-requisites, regulatory norms for setting up a business across various industry segments, licenses and approvals. With Indian economy growing at a fast pace and liberalization of policies, it is both attractive and a promising destination to do highly profitable business. The e-book is authored by Dr. Karnika Seth, Co-Founder, Seth Associates law firm, an established law firm in India with over two decades of experience in rendering litigation and advisory services to foreign and domestic clients venturing to launch their businesses in India.

CHAPTER 1:

INTRODUCTION

With liberalization of policies of the Indian government, the Indian economy has become an attractive country for foreign investors to incorporate new businesses. As per the recent report of the World Bank, India attained 63rd position among 190 economies of the world in the ease of doing Business.[1] However, it is predicted by Goldman Sachs, the Global Investment Bank that by 2035, India would be the third largest economy in the world (after US and China and will grow up to 60% the size of US economy).[2] India's Gross Domestic Product was estimated to be Rs 145.65 lakh crore for 2019-20, with growth of 4.2 per cent over the previous year.[3] Improvement in the economic conditions led to greater investments across various sectors. Mergers and acquisition activity reached US$ 28 billion in 2019, while the private equity deals reached US$ 48 billion.[4] Furthermore, India's Foreign Direct Investment equity inflow touched US$ 469.99 billion between April 2000 to March 2020, with maximum contribution from services, computer software and hardware, telecommunications, construction, trading, and automobiles.[5] India's gross domestic product is expected to reach US$6 trillion by FY27.

The Central and State governments in India have brought certain significant reforms, interalia, changes in FDI policy, a unified indirect tax system, introduction of insolvency and bankruptcy code in order to improvise the circulation of the money in the economy primarily through banking and financial institutions[6], stabilization of government's outlook towards imposing taxes on foreign investors and streamlining regulatory compliances regime.[7] The Central Government approved a proposal from the Ministry of Corporate Affairs to give relief to companies from insolvency for period of six months from 25 March 2020 by amendments to the insolvency code. Such period could be extended by another six months. The objective of the government is to attract more investment into India, with various ministries such as road transport, MSMEs, LLPs etc. eager to fast track permissions to companies intending to shift their operations from China to India, particularly post pandemic.[8] To increase the ease of doing business in India, the Government of India has also set up a special agency, National Investment Promotion & Facilitation Agency to assist foreign businesses seeking to invest in India.[9] The process of company incorporation has also been simplified and an investor can apply for multiple services through a single application to Ministry of Corporate Affairs, such as labor registrations, tax related registrations, opening a bank account etc. Also, a single window clearance system is being streamlined to obtain all regulatory approvals for convenience of foreign investors. India is expected to attract FDI of US$ 120-160 billion per year by 2025 according to CII and E&Y reports.

On February 1, 2021, the Indian Finance Minister (FM), Nirmala Sitharaman, presented the Union Budget of India for the financial year 2021-22. This was a crucial Budget for the Government,

especially against the backdrop of the contraction of the GDP caused by the COVID-19 pandemic.

The budget of 2021 introduces a new Securities Law Code to consolidate SEBI, 1992, the Depositories Act,1996, Securities Contracts Regulation Act, 1956 and Government Securities Act, 2007. The budget increased the cap on FDI in insurance sector from 49 percent to 74 percent. It removes the turnover and paid up capital thresholds of setting up one person companies and dilutes residence requirement for sole members. NRIs are also permitted to set up such companies. The budget proposes amendments that will allow Real estate Investment Trusts and Infrastructure Investment Trusts to borrow funds. There are various other reforms suggested in the budget 2021 that are likely to propel and accelerate FDI in India.

CHAPTER 2:

LAWS GOVERNING FOREIGN DIRECT INVESTMENT IN INDIA

Foreign investors planning to invest or start operations in India are required to comply with the pre requisites of setting up business in India. Not only do foreign investors need to know the political and economic environment in India but also the legal framework and policies that will govern their business. The important laws are mentioned here in below-

(i) Corporate Laws- The Companies (including a firm, start-up, LLPs, MNCs) established in India are governed by the provisions of the Companies Act, 2013 and a separate legislation Limited Liability Partnership Act, 2008 and certain regulations ordained by the Securities and Exchange Board of India for listed companies in India.[10] A foreign entity may establish its business presence by setting up a liaison office, branch office, project office, setting up a company, limited liability partnership, partnership or joint venture or acquiring an existing business in India. After company incorporation, a business entity is required to apply for Permanent

Account number (PAN), Tax Account Number (TAN), registration under Shops & Establishment Act, Registration for GST, Employees provident fund and carry out other compliances. Effective Maximum tax rate (up to March 2022) is 17.16% for new manufacturing companies, and 25.17% for other companies. For LLPs, it is 34.94%, individuals 42.74% and foreign companies 43.68%. Foreign companies are taxable in India on income which is either received or deemed to be received in India, or accrued or deemed to accrue in India. Income is deemed to accrue in India where it accrues directly or indirectly from any business connection in India, from any property, asset or source of income in India or transfer of capital assets situated in India. In general, India's tax treaties provide foreign companies will be taxable for business profits in India if business profits are attributable to foreign enterprises' permanent establishment (PE) in India.PE can be fixed place based or agency or service based. Withholding rate for Dividend payments to non residents is 20% apart from surcharge and cess subject to lower rate provided under DTAA as applicable. Foreign enterprises are subject to withholding tax of 10% apart from surcharges and cess on royalties and FTS on a gross basis

(ii) Exchange Control Laws- These regulations are governed by FEMA ie., Foreign Exchange Management Act and the rules and regulations mentioned thereunder, precisely, Foreign Exchange Management (Non-Debt Instruments) Rules,2019.[11]

(iii) Labour Laws- There are various central labour laws including the Industrial Dispute Act,1947, Minimum

Wages Act,1948 along with state specific laws in India to be complied with. The applicability of such laws is determined by various parameters such as the nature of work to be performed, type of establishment, number of employees, etc.[12]

(iv) Sector Specific Laws- It includes Financial Services such as banking and non-banking as well as Infrastructure (highways and airports) and other sector specific laws are also applicable such as RBI regulations for banks, SEBI Act for listed companies, the IRDA Act,1999 for insurance sector. Foreign Direct Investment Policy is issued by DPIIT[13] prescribing sector wise licensing requirements and approvals to set up a business in India. Recently, RBI issued Foreign Exchange Management (Mode of payment and reporting of non -debt instruments) Regulations,2019.

(v) Tax Laws- Taxes are classified into two categories a) Direct Tax and b) Indirect Tax. Under the Direct Tax, the taxes that are levied mainly in India are Income Tax (Income Tax Act, 1961) and Indirect Tax, includes Central and State Goods and Service Taxes, custom, stamp duty, VAT (on petroleum/tobacco products outside purview of GST) etc.[14] GST is levied as a value added tax on most goods and services and is remitted to the government by businesses selling those goods and services.

2.1 Foreign Direct Investment

Foreign Exchange Management Act, 1999, regulates Foreign Direct Investment (FDI) in India. Foreign Direct Investment (FDI) is envisaged as a crucial source of non-debt financial resource for

economic development. The role is to facilitate small and medium enterprises to augment their existing business or to start up a new operation through foreign investment or by soft loans.[15] Investments in, and acquisitions (complete and partial) of, Indian companies by non-resident entities and individuals, are governed by the terms of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 issued in supersession of erstwhile Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017[16] and the provisions of the annual Consolidated Foreign Direct Investment Policy Circular issued by the Department for Promotion of Industry and Internal Trade in the Ministry of Commerce and Industry, Government of India.[17] With the passage of the said rules, the power of the Central Bank to govern equity investment in India is transferred to the Ministry of Finance[18] but power of Reserve Bank of India (RBI) to supervise the mode of payments and monitor the reporting for the transactions remained with itself.[19]

As per the extant FDI Policy, there are two ways stipulated for the Foreign Investors to make investments in India (i) Automatic route, in which the investors does not require approval from the government for their investment;[20] or (ii) Government Route in which any investment that is made in an industry will require prior approval from the government, granted by the Department for Industrial Planning and Promotion (DIPP) or the concerned department.[21] In few sectors, additional pre-conditions are required to be complied with such as minimum capital requirements.[22] FDI capitalization of USD 2 million is required for non-fund based activities for example investment advisory services, forex broking and of USD 20 million for fund based activities such as merchant banking. However, the Government of India amended its foreign direct investment policy to clampdown the opportunistic takeovers or acquisition of Indian

Companies due to Covid-19 pandemic.[23] The amended norms of the policies take effect from the date of issue of Press Notes or Press release, unless specified otherwise therein. Basically, these are amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 or the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.[24] Under FEMA,1999 RBI has the power to grant/allow the investment with is not otherwise permitted through circulars.[25]

Dividends on foreign investment (net of applicable taxes) can be remitted freely. Likewise branch office can remit profits from a branch.

Prohibited sectors

There are certain activities categorized in the Prohibited sector by the foreign investments such as defense to safeguard national security of the country. As per the current norms of the policy a company can invest in India with respect to the FDI policy except in those sectors or activities that are prohibited. FDI is prohibited in the following sectors:[26]

(a) Atomic Energy

(b) Railway operations

(c) Gambling and betting including casinos or Lottery business including government or lottery, online lotteries etc.

(d) Chit funds

(e) Real estate business or construction of farm houses

(f) Trading in Transferable Development Rights (TDRs)

(g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

Sector Wise Caps

Foreign Direct Investment up to 100% is permitted in most of the sectors under the automatic route without any requirement of seeking regulatory approval before making such investment.[27] Also, in certain cases where the Aggregate Foreign Portfolio Investment is up to 49% of the paid-up capital on a fully diluted basis or sectoral or statutory cap, whichever is lower, will not require prior government approval. However, this applies if such investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India. Other investments by a person resident outside India will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the regulations the FDI.[28] Likewise, the countries sharing land borders with India such as Bangladesh, Pakistan, China, Nepal, Myanmar, Bhutan and Afghanistan shall require prior government approval, regardless of the sector or activities in which investment is being made.[29]

There are certain sectors partially permitted under automatic route and partially under government approval route in FDI such as:[30]

(i) In the banking sector, 74% of FDI is allowed wherein 49% is under the automatic route and foreign investment beyond 49% and up to 74% requires prior government approval.[31]

(ii) In Print Media, publishing of newspapers and periodicals dealing with news and current affairs and publication of Indian editions of foreign magazines dealing with news and current affairs foreign direct investment upto 26% is

allowed through government approval. Similarly, Print media including publications of scientific and technical magazines, specialty journals or periodicals and publication of facsimile edition of foreign newspapers, 100% FDI is permitted.[32]

(iii) In Digital Media, 26% FDI is permitted under the Government approval route in companies uploading/ streaming of News and Current Affairs through Digital Media.[33]

(iv) In Insurance sector, FDI cap is 49% (for insurance companies, insurance brokers, etc.) under the automatic route subject to approval by Insurance Regulatory and Development Authority of India and compliance of other prescribed conditions.[34] However, FDI in insurance intermediaries including the likes of insurance brokers, re-insurance brokers, insurance consultants etc. have been allowed up to 100% under the automatic route.[35]

As per the Budget, 2021 the FDI limit for insurance companies has been increased to 74%. This permits foreign ownership and control. However, it stipulates that the majority of the board of directors and key managerial personnel shall be Indian residents, with at least half of the directors being independent.[36]

Sectoral Cap Chart

S. No	Sector/Activity	% Of Equity/FDI cap	Entry Route

1.	**Broadcasting** • Teleports (setting up of up-linking HUBs/Teleports) • Direct to Home (DTH) • Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability • Mobile TV • Head end-in-the Sky Broadcasting Service (HITS)	100%	Automatic route
2.	**Broadcasting** • Cable Networks (Other MSOs not undertaking up gradation of networks towards digitalization and addressability and	100%	Automatic route

	Local Cable Operators (LCOs)		
3.	**Broadcasting Content Services** • Terrestrial Broadcasting FM (FM Radio) • Up-linking of 'News & Current Affairs' TV Channels **Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels**	49% 100%	Government route Automatic route
4.	**Print Media** • Publishing of newspaper and periodicals dealing with news and current affairs • Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government route
5.	**Print Media**	100%	Government route

	• Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting		
6.	**Print Media** • Publication of facsimile edition of foreign newspapers	100%	Government route
7.	**E-commerce activities** E-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce	100%	Automatic route
8.	**Single Brand retail**	100%	**Automatic up**

	trading Local sourcing norms will be relaxed up to three years and a relaxed sourcing regime for another five years for entities undertaking Single Brand Retail Trading of products having 'state-of-art' and 'cutting edge' technology		**to 49%** **Above 49% under Government route**
9.	**Multi Brand Retail Trading**	51%	**Government route**
10.	**Insurance** **Insurance Company**	74%	**Automatic route**
11.	**Insurance Intermediaries** **Insurance Brokers** **Re-Insurance Brokers** **Insurance Consultants** **Corporate Agents** **Third Party Administrator**	100%	**Automatic route**

	Surveyors and Loss Assessors		
12.	**Banking Private Sector**	74%	**Automatic up to 49% Above 49% & up to 74% under Government route**
13.	**Banking Public Sector**	20%	**Government route**
14.	**Real Estate Sector**	100%	**Automatic Route subject to certain conditions**

2.2 Investments in E-Commerce

I. Single Brand Retail Trading

E-commerce sector has emerged as one of the key sectors attracting FDI in India and is forecasted to be worth about USD 200 billion by 2026.In B2B, foreign investment upto 100 % is allowed and in marketplace model. In 2019, DPIIT released a press note[37] which relaxed the norms of FDI in Single Brand Retail Trading to set up e-commerce activities. Single Brand Retail Trading, is permitted 100% FDI under the automatic route.

Henceforth, there are certain conditions where the government has granted relaxation[38] :

(i) The Product should be sold under the “Single Brand Name.” Even if it is being sold internationally, the same brand name should be used all over the world.

(ii) Specifically, products which are branded during manufacturing would be covered under “Single Brand” product- retail trading;

(iii) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake “single brand” product retail trading in the country for the specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner;

(iv) If FDI is beyond 51% then sourcing of 30% of the value of the purchased goods should be made from India, ideally from Indian micro, small and medium enterprises;

(v) SBRT entity may set off the mandatory sourcing requirement against its incremental sourcing of goods from India for global operations during initial 5 years (starting April 1 of that year) of opening the first store in India. The incremental sourcing for the purpose of set off shall be equal to the annual increase in the value of goods sourced from India for global operations (in INR terms), either directly or through their group companies. After completion of this 5-year period, the SBRT entity is required to meet the 30% sourcing norms directly towards its India’s operation, on an annual basis.[39]

(vi) SBRT entities could start online retail activities before setting up physical store subject to the condition that it is required to set up its physical store within two years of the commencing of the online retail.[40] Easing norms for single brand retail sourcing, the Press Note 4, of 2019 mandates that all procurements made from India by the entity for that single brand shall be counted towards local sourcing of 30%, irrespective of whether the goods procured are sold in India or exported. Moreover, the scope encompasses within itself sourcing done indirectly by the entities through a third party under a legally tenable agreement.[41]

II. Multi Brand Retail Trading

In the Multiple Brand Retail Trading (MBRT), 51% of the FDI is allowed under the Government Approval Route. However, MBRT is permitted in every product subject to certain conditions:[42]

(i) Minimum capitalization as FDI by Foreign Investor is USD 100 million;

(ii) At the minimum of the 50% of the total FDI brought in the first tranche of USD 100 million, shall be invested in the “black-end infrastructure” within 3 years.[43]

(iii) 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding USD 2 million.[44]

III. Business to Business (B2B)

100% FDI is allowed in Business to Business (B2B) under automatic route.[45]

IV. Business to Consumer (B2C)

FDI is not permitted in Business to Consumer but it is allowed under following circumstances and is subject to following conditions:[46]

(i) FDI is permitted 100% under the automatic route in market place model of e-commerce.[47]

(ii) FDI is not permitted in the inventory-based model of e-commerce.[48]

Few key conditions required to be complied by an e-commerce market place entity are[49]:

(i) E-commerce entities providing a marketplace-based model of e-commerce will not exercise ownership or control over the inventory, as ownership or control over the goods will render the business into an inventory-based model (which is not permitted as per extant FDI policy). Inventory of a vendor will be deemed to be controlled by the e-commerce marketplace entity if more than 25% of the purchases of such vendor are from the e-commerce marketplace entity or its group companies;

(ii) An entity having equity participation by e-commerce marketplace entity or its group companies or having control on its inventory by the e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform operated by such marketplace entity;

(iii) Services should be provided by an e-commerce marketplace entity or its group companies (in which the

marketplace entity has a direct or indirect equity stake or common control) to vendors on the platform on an arms' length basis, in a fair and non – discriminatory manner;

(iv) The e-commerce marketplace entity will not directly or indirectly influence the price of the goods;

(v) An e-commerce marketplace entity cannot mandate any seller to sell any of its products exclusively on its platform only; and

(vi) E-commerce marketplace entity will be required to furnish a certificate, together with a report of the statutory auditor, to the Reserve Bank of India, confirming compliance with the PN 2 by 30th of September every year

2.3 Other Emerging Sectors

I. Automobile Sector

The automobile sector is one of the most sought after sectors of investment in India. India is reported to be the fourth largest automobile market in 2018.It is reported to have received USD 2.5 billion from April 2019 to December 2019 and total FDI worth USD 23.89 billion from April 2000 to Dec 2019.The sector is expected to reach USD 251.4 billion by 2026.Many foreign companies are investing in India in this sector to manufacture electric cars and automobiles in India. Government has offered various tax incentives and reductions on manufacture of electric cars, introduction of Scheme for faster adoption and manufacturing of electric vehicles in India wef 1 April 2019 for three years. FAME II has allocation of Rs. 100 billion in next three years. There are plans to set up incubation centers to encourage startups in the

sector and government has shortlisted 11 cities to introduce electric vehicles to their public transport system.

II. Renewable energy

Renewable energy is also one of most attractive sectors for foreign direct investment in India. Reliable industry reports indicate the investments worth USD 500 billion will be infused in this sector by 2028.

III. Contract manufacturing

The FDI policy permits 100% foreign investment in manufacturing sector under automatic route. Companies can manufacture on its own or through a contract arrangement.

Other sectors such as telecommunications, construction development, trading, drugs and pharma also received significant foreign investment in India over last few years. Owing to covid 19 pandemic, government of India have introduced measures to mitigate loss caused to the economy. It has declared 6 month moratorium on all term loans outstanding on 1 March 2020 and on working capital facilities and provided time limit extensions for legal and tax compliances under various applicable laws.

India has signed Double Tax Avoidance treaties with around 95 countries. To attract foreign investors, India has entered into bilateral investment protection agreements with many countries GOI recently signed a BIT with Belarus in 2017.In 2017, India also signed OECD Multilateral Convention to implement Tax treaty related measures to prevent base erosion and profit sharing.

2.4 General Conditions in FDI

I. Eligible Investors

The investors who can invest in majority of the sectors of the Indian Economy on automatic basis are termed as the Eligible Investors.

(i) A Non-Resident entity or and individual can invest in India subject to the fulfillment of requirements of FDI Policy except the prohibited sectors described hereinabove. 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 defense, space, atomic energy and sectors/activities prohibited for foreign investment.[50]

(ii) NRI resident in and Citizens of Nepal & Bhutan are permitted to invest in India on repatriation basis. The amount of consideration for such investment shall be paid only by way of inward remittances through normal banking channels.[51]

(iii) Company, trust or partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special incentives available to NRIs under FDI policy.[52]

(iv) Only registered FIIs and FPIs and NRIs as per Schedules 2,2A and 3 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, can invest and trade through a registered broker in the capital of Indian Companies on recognized Indian Stock Exchanges. With maximum total investment of 24% of

the issued and paid up capital of an entity, the FIIs or FPIs are permitted to invest and trade in equity securities. However, by passing a special resolution, the investment limit can be increased to the prescribed sectoral cap of that specific industry.[53]

(v) SEBI registered Foreign Venture Capital Investor (FVCI) – The FVCI that are registered with SEBI under SEBI(Foreign Venture Capital Investors) Regulations 2000 can invest in Indian entities. FVCIs are allowed to invest in various sectors including Core Investment Companies in the infrastructure sector, Asset Finance Companies and Infrastructure Finance Companies. These companies are authorized to invest in sectors such as Biotechnology, Nanotechnology, Information Technology related to hardware and software development, seed research and development, poultry industry, production of bio-fuels, hotel-cum-convention etc.[54] Apart of these benefits SEBI and the RBI have extended certain benefits to FVCIs such as free pricing and lock in.[55]

II. Limited Liability Partnership

FDI is granted under automatic route in LLP subject to certain conditions mentioned as follows:[56]

(i) Limited Liability Partnership operating in sectors where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.

(ii) An Indian company or an LLP, having foreign investment, is also allowed to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.

(iii) A company having foreign investment can be converted into an LLP under the automatic route only if it is engaged in a sector where foreign investment up to 100 % is permitted under automatic route and there are no FDI linked performance conditions

(iv) FDI in LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.

III. START- UP

FDI policy permits start-ups to raise 100% funds from SEBI (Securities and Exchange Board of India) registered Foreign Venture Capital Investors under the automatic route. Start-ups can issue equity or equity linked instruments or debt instruments to FVCI against receipt of foreign remittance, as per the FEMA Regulation. If a start-up is organized as a partnership firm or a Limited Liability Partnership (LLP), the investment can be made in the capital or through any profit-sharing arrangement.[57]

2.5 Other Forms of Investment

I. Real Estate Capital Investments

Real estate sector is one of the most globally recognized sectors attracting investments. It comprises of four sub sectors - housing, retail, hospitality, and commercial.[58] By 2040, real estate market is likely to grow to Rs 65,000 crore (US$ 9.30 billion) from Rs 12,000 crore (US$ 1.72 billion) in 2019. Real estate sector in India is expected to reach a market size of US$ 1 trillion by 2030 from US$ 120 billion in 2017 and contribute 13% to the country's GDP by 2025. Retail, hospitality, and commercial real estate are also growing significantly. Indian real estate sector increased by 19.5% CAGR from 2017 to 2020.[59] Earlier, Foreign direct investment in

the real sector was not allowed in India, except for non- resident Indians and overseas corporate bodies. It was only in 2005 that the Reserve Bank of India opened up the real estate sector for 100% FDI under automatic route, subject to certain conditions being met.[60] FDI upto 100% is allowed under automatic route in relation to construction or development of townships, residential or commercial premises, roads, bridges, hospitals, educational institutions etc. Therefore, after experiencing slow growth in the FDI in real estate sector during the 2009-2013, the Cabinet approved certain liberal measures in 2018 in order to improve the growth of FDI in real estate sector.[61]

FDI in real estate requires compliance of certain conditions:

(i) No minimum area requirements or minimum capitalization requirements. The investor is permitted to exit from the investment: (i) after 3 years from the date of each tranche of foreign investment, or (ii) on the completion of the project; or (iii) on the completion or development of trunk infrastructure.

(ii) Further, transfer of stake from one non-resident to another non-resident, without repatriation of investment will neither be subject to any lock-in period nor to any government approval.

(iii) Each phase of a project to be considered a separate project for the purposes of the FDI Policy. Moreover, real-estate broking service does not constitute a real-estate business and hence, FDI in such services is permitted up to 100% under automatic route.[62]

Due to the unprecedented Covid pandemic, there was a sharp fall in the investment into India's real estate sector in the January–March 2020 period, dropping 58% year on year. Total investments in FY 2019-20 fell to its lowest in four years, declining by 13% to

$4,261 million over previous year levels of $4,780 million.[63] Investors are waiting for Indian economy to improve and are investing with due prudence. The real estate is attractive for those investors who are genuinely willing to invest in the housing property by taking advantage of low demand and high negotiable rates.[64] The housing property sector in real estate has seen an upswing with the introduction of Pradhan Mantri Awas Yojna (PMAY). The initiative includes various benefits such as deducting of the reverse repo rate, increasing the time limit of the RERA deadline and the recapitalization of Non-Banking Financial Companies alongside earmarking INR 10,000 crores for the National Housing Bank (NHB). This will ensure a smoother flow of capital to Housing Finance Companies thereby expanding credit support to developers.[65]

The Budget of 2021 proposes amendments that permit Real-Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) to borrow funds. It proposes to introduce a Section 30B in the Securities Contracts (Regulation) Act, 1956, which specifically permits pooled investment vehicles, like InvITs and REITs to borrow from third persons. The borrowing is required to be in accordance with the regulatory framework introduced by SEBI for such borrowings. In addition, the proposed amendment also specifically permits the creation of security interest (in accordance with the trust deed) for the amounts borrowed, and provides that the lender can enforce the security created and proceed against the trust assets for recovery. This comforts the lender and reduces the risk and costs of borrowing. Further, the Budget proposes to exempt dividend payments to REITs and InvITs from withholding tax.[66]

II. Foreign Portfolio Investment

Substantive changes were brought in by the NDI rules in the foreign exchange regime relating to FPIs and their investment into Indian companies. It is pertinent to note that under the NDI Rules, the investment limit of a single FPI or an investor group in the equity shares of each company continues to be below 10% of the total paid up equity capital on a fully diluted basis or paid up value of each series of debentures, preference shares or share warrant. Some important changes are described as below:[67]

(i) With effect from 01 April 2020, the aggregate limit for investment by FPIs In Indian Companies, will be the applicable sectoral caps as provided in Schedule I of the NDI Rules. The change ensures that sectoral limitations for aggregate limits shall only apply to the companies receiving foreign investment from FPIs. Earlier, companies were required to pass board and shareholder resolutions to raise the cap for FPI, beyond the aggregate limit of 24%.

(ii) Further, an Indian Company by way of approval of board of directors and the approval of the shareholders of the investee company may decrease or increase such aggregate limit for investments by FPIs to a lower threshold of 24% or 49% or 74%.

(iii) Aggregate investment by FPIs in a sector wherein FDI is restricted, would be 24% of the Indian company's paid-up equity capital on a fully diluted basis, or paid-up value of each series of debentures, preference shares or share warrant.

(iv) In calculating the aggregate limits of FPIs in an Indian company, the investment by all FPIs in such Indian company whether under the FPI route or FDI route (direct or indirect foreign investment) shall be counted.

There is some ambiguity on how this would play out as the aggregate limit refers to a 24% cap (which in subsequent NDI Rules is stated to be the sectoral limits) as well as referring to indirect foreign investment

(v) FPIs that invest in an Indian company fall foul of the prescribed limits shall have 5 business days to divest the investments that caused the breach. If they fail to do so, the entire investment in the Indian company by such FPI and its investor group would be treated as an FDI investment.

Currently, Section 196D of the Income Tax Act,1961 provides that where any sum is payable to an FPI in the nature of income received in respect of securities (other than units referred to in Section 115AB) or capital gains arising from the transfer of such securities, then tax should be withheld at the rate of 20%.[68] As the rate of withholding is specifically set out under section 196D, a more beneficial tax rate provided under the relevant tax treaty cannot be applied. The Budget 2021 proposes to amend this provision to provide that tax treaty rate will be applicable to FPIs, if the FPI furnishes the tax residency certificate required under Section 90 (4) or 90A (4) of the Income Tax Act,1961[69]

CHAPTER 3:

CAPITAL MARKETS IN INDIA

Capital is crucial for companies to conduct its operations. In a competitive business environment, it is critical for the entities to raise capital of the appropriate amount, fulfilling all compliances and at the right price.[70] Therefore, the capital market is the market for securities, and a means for the companies and the government to raise their long-term funds. The supply of funds comes largely from individual and institutional investors, banks and special industrial financial institutions and Government.[71]

Earlier, the capital market was classified only into glitz-edged, that dealt with the securities of government and semi-government where Reserve Bank of India plays a crucial role. The capital market expanded over time in terms of accessibility, regulatory framework, market infrastructure, transparency, liquidity and the types of instruments available. All such factors led to the emergence of Industrial Security market which is further divided into primary or new issue market and secondary or old issue market or stock exchange capital markets in India.[72]

3.1 Working of the Primary Market

It is the financial market where new securities are issued via stock exchange, opening the opportunity for the government and the companies to raise their capital. The securities issued by the Primary Market includes the corporate bonds, government bonds and the stocks of the corporates. There are three main entities involved in the process of transaction, the company, investors and the underwriters. Securities are directly issued by the companies as an Initial Public Offering (IPO). The newly issued securities are brought by the investors in the primary market. The issuer company at least have to offer 10% of each class or kind of securities to the public in the IPO provided the post issue capital of the company calculated at offer price is more than INR 40,000 million and after 3 years from the date of listing of the security, the company shall increase its public shareholding to at least 25% or 400 crore whichever is lower, according to SEBI.[73] The primary market is governed and regulated by Securities and Exchange Board of India (SEBI).[74] The appropriate methods for raising capital are such as public issues, private investment of public equity, rights issues, preferential issues, qualified placements, bonus issues and so on.[75] The active stock exchange in India that have ranked seventh in the world (in terms of IPOs) in the second quarter of the year 2020 are Bombay Stock Exchange (BSE) and National Stock Exchange limited (NSE).[76]

I. Public Issues

The Public issues is classified into two types a) Initial Public Offering (IPO) and b) Follow on Public Offer (FPO). It is the most preferred and convenient way to issue securities by the company to general public at large through IPO for the first time. However, it is achieved either by the primary allotment of fresh securities or an offer for sale of securities (OFS)[77] that are held by existing shareholders or by the combination of both Fresh issues or OFS.

In this way the companies that are categorized as “unlisted” list their shares in the recognized stock exchange in order to raise funds for the business. In case of FPO, Company that have been already listed on a Recognized Stock Exchange makes the securities available to the public or in other words additional primary issuance of its securities of OFS of its existing securities to the public at large or combination of both.[78]

Furthermore, In India along with ICDR regulations IPO and FPO are also governed by Companies Act the Securities Contracts (Regulation) Rules, 1957 and the Listing Regulations. There are regulations that only apply to IPO are FEMA and the various regulations, press releases and circulars issued thereunder from time to time by the RBI and the FDI Regulations.

II. Preferential Allotment

The Procedure of allotment of the fresh shares to specific group of individuals who are willing to take strategic stake in the company such as the venture capitalists, companies or any other person through any particular company or any other individual by any specific company. This process is known as Preferential Allotment of shares.[79] This method is slightly different from other fundraising methods as the entire allotment is made to preidentified persons at a predetermined price. The option of the use of this allotment of share is mainly used by the companies in order to furnish the route to those shareholders, who are not able to acquire bulk of company shares at affordable prices during IPOs.[80] Such shareholders, however, get paid according to the profits made by the company. They do not hold any voting position in the company. Section 62 and Section 42 of the Companies Act 2013 that focuses on allotment of shares and allotment of securities

respectively provides for the procedure and provisions of the preferential allotment of shares.

i. Unlisted Public Companies (preferential Allotment) Rules, 2003: During the COVID-19 pandemic post slowdown of the Indian economy, SEBI has relaxed preferential allotment norms for the promoters of the companies till March 2021. SEBI has allowed company promoters to acquire up to 10 per cent stake in the company through preferential allotment. The promoters could earlier acquire only up to 5 per cent of the preferential issue. With SEBI changing the norms, companies can now raise funds faster from promoters.[81] As per the recent report, the Aditya Birla fashion and retail would raise Rs. 1500 crores from Flipkart. The amount would be raised through preferential allotment of shares to Flipkart, who will own 7.8 per cent stake in ABFR.[82]

SEBI under ICRD has also introduced the concept of Qualified Institutional Placement i.e kind of shares such as the Equity shares, fully convertible debentures (FCDs), partly convertible debentures (PCDs) or any securities other than warrants, which are convertible into or exchangeable with equity shares, and can only be issued to Qualified Institutional Buyers.[83]

3.2 Working of the Secondary Market

The Secondary market deals in existing securities. This market provides both liquidity and marketability to such securities. It is a market where a security can be bought or sold at small transaction cost. Although the Secondary Market deals with the purchase and sale of old securities, the firms issuing new securities get themselves registered on a Stock Exchange by applying for listing

of shares. Listing offers the investor a ‘market’ for the sale of his stock.[84]

The Secondary Market of Securities in India functions through its two segments mentioned below:

(i) Stock Exchange- It is an organised market for the purchase and sale of second-hand listed industrial and financial shares and debentures of corporate companies. Listed securities are those securities which appear on the approved list of a Stock Exchange. Only listed securities are traded on the floor of the Stock Exchange. It is pertinent to note that an organised Stock Exchange is an ‘auction’ type of market, where the prices of traded securities are settled by open bids and offers on the floor of the exchange.[85]

(ii) Over the Counter Exchange Market- is an Indian electronic stock exchange composed of small- and mid-cap companies. The purpose of the Over the Counter Exchange of India is for smaller companies to raise capital, which they cannot do at the national exchanges due to their inability to meet the exchange requirements. The OTCEI implements specific capitalization rules that make it suited for small- to medium-sized companies while preventing larger companies from being listed. The key players in the OTCEI include brokers, market makers, custodians, and transfer agents.[86]

CHAPTER 4:

GDPR AND ITS IMPACT ON INDIAN BUSINESS

The European Union adopted the General Data Protection Regulation on 27 April 2016 and it came into effect on 25 May 2018,[87] in order to protect the right to privacy of a person with regard to processing of personal data and free movement of the same. In United States, a bill has been proposed to extend criminal liability for the executives of companies that suffer data breaches by Elizabeth Warren.[88] India being an emerging economy is also in midst of enacting Personal Data Protection Bill with similarities with GDPR. In 2018, the Supreme Court of India in Justice K.S Puttaswamy v UOI case[89], a nine-judge bench declared the right to privacy as a fundamental right guaranteed under the Constitution of India. Thereafter, in December 2019, the Indian Government introduced the Personal Data Protection Bill, 2019.[90] The PDP Bill is currently under consideration of the Parliament.[91] Data protection in India is currently governed by the S.43,43A,66 of Information Technology Act, 2000 and the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.[92] The body corporates which collect personal data of

persons to provide services, need to adopt certain reasonable security practices to safeguard data collected such as ISO 27001 certification and comply with mandatory laws. Failure to do so attracts liability to pay compensation to person whose data is compromised causing such person wrongful loss.

GDPR applies to companies in India processing personal data of EU Residents. Since GDPR has extra-territorial application and applies to processing of personal data of EU residents even by entities situated outside EU, Indian entities who are acting as either a ‘controller’ (i.e. the person who determines the purposes and means of the processing of data) or a ‘processor’ (i.e. the person who processes the personal data on behalf of the controller), of personal data of persons of EU, in relation to offering of goods or services to such persons or monitoring their behavior in so far as it takes place within EU, become subject to General Data Protection Regulation.[93] Penalties for violation of GDPR are quite stringent with liability to pay fine upto 4% of the global turnover or EU 20 million for non-compliance.

Apart from North America, Europe is considered as a substantial market for Indian IT companies. As per the Deloitte report, “Europe is estimated to be a $45-billion potential outsourcing opportunity for Indian technology vendors.” All the IT companies, as well as Europe-headquartered MNCs such as Nestlé, Unilever, Nokia, Heineken and others are required to adhere to the data protection regulations. Many of these companies have backend operations or development centers in India, which access data of global customers. Likewise, Indian BPOs that render services to European clients are required to comply with the applicable data protection regulations.[94]

The European Convention on Human Rights under Article 8, provides that everyone has a right to protection of personal data

concerning him or her. Section 4(1) of GDPR defines personal data.[95] 'Personal data' means "any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person" [96].Only if a processing of data concerns personal data, the General Data Protection Regulation applies.[97] The Information Technology Act, 2000 predominantly governs issues such as cybercrime and the liability of internet intermediaries, such as social media platforms, though it does possess some requirements regarding the protection of personal data[98] such as, section 43A of the Act provides compensation for damages caused by a failure to maintain reasonable security practices to protect sensitive personal data. Data protection and confidentiality requirements, therefore, are regulated only under common law and IT Act,2000 and no specific statute exists for protection of personal data in India.[99]

However, for Indian companies dealing with such 'personal data' of EU residents, it is imperative to implement the data protection requirements stipulated in GDPR within their systems. This requires a significant overhaul and re-writing of their privacy policies and contractual arrangements with EU counterparts or Data Subjects and their internal data protection protocols and systems to make them GDPR compliant.[100]

4.1 Responsibilities of the Controller and Processor

Obligations are imposed by GDPR on the Controller[101] for personal data[102] as well as the Processor of personal data.[103] There are certain GDPR provisions that require compliance when Indian companies act as a "Controller and Processor." These are discussed below:

(i) **Processing of Personal Data-** The Processing of the data should be in a conspicuous manner, in compliance of mandatory requirements such as prior express consent of the Data Subject; or processing is necessary for the performance of a contract to which the Data Subject is a party. Personal Data should be retained which allows identification of data subjects for no longer than is necessary.[104]

(ii) **Consent under GDPR-** Prior explicit consent is pre requisite to collection and processing of personal data. While, this could include ticking a box when visiting an internet website, but silence, pre-ticked boxes or inactivity would not constitute consent. If the consent is given in the context of a written declaration concerning other matters, the consent request should be clearly distinguishable from the other matters, in an intellectual and conveniently accessible form, using simple and clear language.[105]

(iii) **Special Category of Personal Data-** Article 9 of GDPR provides that additional requirements are to be adhered to while processing of special categories of personal data; processing of personal data relating to criminal convictions and offences; and processing which does not require identification.[106]

(iv) **Information to be provided to Data Subject-** Under Article 14 of the GDPR , the controller at the time of

obtaining the personal data, is to provide the Data Subject with all the prescribed information such as identity and contact details of the controller (or it's representative); contact details of the data protection officer (if applicable); purposes and legal basis of processing; recipients or categories of recipients of the personal data; period of storage of personal data; existence of the data subject's rights such as right to access, rectification or erasure of personal data; right to data portability; right to withdraw consent; the right to lodge a complaint with a supervisory authority; etc.[107]

(v) **Responsibility of the Controller and Processor:**[108]

(a) Where processing is to be carried out on behalf of a controller, the controller can use only processors providing sufficient guarantees to implement appropriate technical and organizational measures such that processing is GDPR compliant. The GDPR further goes on to set out in detail various requirements to be met by such processor.

(b) The responsibility of the Controller is to maintain a record of processing activities of the data with details of required information. Likewise, every processor on the behalf of the controller, needs to maintain a record of the all the categories of processing activities, containing prescribed information.

(c) Appropriate technical and organizational measures should be implemented by the Controller to ensure and to be able to demonstrate that processing is carried out in accordance with GDPR. Adherence to approved codes of conduct or approved certification

mechanisms as specified in GDPR may be used as an element to demonstrate such compliance.

4.2 Impact of GDPR on Indian Business

According to an EY survey, 70% of the Indian companies consider GDPR compliance as an important concern, while 46% of the companies are concerned about cyber breach and insider threats. Through the government initiatives like JAM (Jan Dhan Aadhar Mobile), Digi-lockers, De-monetization, GST, the Data Privacy Bill and the Supreme Court verdict[109] declaring Data Privacy as Fundamental Right, India is gearing up for a robust data protection compliance[110].The companies showing negligence in adhering with the mandatory provisions of data protection will attract high administrative fines or damages.[111]

(i) Non-Personal Data Governance

In parallel with the PDP Bill, the Ministry of Electronics and Information Technology, Government of India constituted a committee to deliberate on the governance of non-personal data (NPD). The terms of reference of the NPD Committee were to: (a) study various issues relating to non-personal data; and (b) to make specific suggestions for consideration of the Central Government on the regulation of non-personal data. Currently, processing of NPD is not regulated under any specific statute or law. Further, “anonymized data” is specifically excluded from the applicability of the current draft of the PDP Bill. On July 12, 2020, the NPD Committee released their report[112] on the Non-Personal Data Governance Framework for public comments. The report called for a separate NPD governance framework to be put into place. However, the report was not a well-articulated document in

terms of definitions, proposed provisions and the purpose sought to be achieved by the framework.

Subsequently, on January 4, 2020, the NPD Committee released a revised version of their report clarifying certain aspects. The revised report explains how the PDP Bill and the recommended NPD framework would function in tandem, clarifying that it is only anonymized data that will fall under the NPD framework. The revised report, amongst other things, details the types of NPD that may be collected, delves into public and private rights that may subsist in such data, as well as provides for a detailed data sharing mechanism that exempts transfers between private entities.

The report provides separate guidelines for 'Data Businesses',[113] or data collecting entities that meet certain thresholds, calls for the separate treatment of certain 'High Value Datasets'[114]and also calls for the creation of a separate regulator that would function independently. However, as mentioned above, certain reports indicate that the Joint parliamentary committee may broaden the scope of the PDP Bill to include NPD as well.[115]

CHAPTER 5:

INDIA AS A SUBSTITUTE FOR CHINA

With the onset of Covid pandemic, China's economy suffered a blow. Although Indian economy also suffered the Pandemic crisis, India began receiving considerable attention from foreign investors expanding business or relocating their business from China to India. China has been a preferred country for manufacturing sector due to cheap availability of labor, access to raw materials, technological innovation, business friendly laws and availability of skilled labor. India also attracts investments due to cheap labour, skilled manpower, government incentives, availability of land and raw materials. The relation between USA and China intensified in the year 2019 due to the high cost labour, tension grew more leading to the US-China trade war.[116] Representatives of several US based companies have proposed to the Indian government to offer incentives that would facilitate proliferation of US businesses in India.[117]

The trade war between US and China benefited India as "Make in India" became one of the attractive propositions for institutional investors.[118] Government's efforts transformed India into a

manufacturing hub designed to encourage innovation, facilitate investment, and strengthen economic infrastructure and generate more jobs. Amidst COVID-19 around fifty multinational companies took an exit from China. To make the campaign “Make in India” a success, India is lurking for new ways to attract these foreign companies to invest in India and generate employment for its masses. Changes were brought by the Department for Promotion of Industry and Trade through Press Note 3 of 2020 in the Foreign Direct Investment Policy that were crucial to “curb opportunistic takeovers or acquisitions of Indian companies due to the current COVID-19 pandemic”.[119] On this announcement China claimed that the additional barriers in the Press Note were against the WTO principle of non-discrimination. In response to thereto the Indian Government Official explained that the step was not aimed at barring funds from across the border, but instead merely subject to a condition that any investment from across the border will have to undergo government investigation.[120]

As per the latest report by JLL, India is expected to attract an investment of over $1.4 trillion in the infrastructure and construction sector over the next five years. The Indian Government is also encouraging companies in the steel industry to increase production capacity and seize a larger market share. Since, the Chinese supply lines have been largely restricted, the industry is looking at the opportunity to explore other markets to procure raw material andthus decrease dependence on Chinese imports.[121]

Many international investors with a manufacturing presence in China are pivoting on reducing their supply chain with China. It is strongly believed that India can be opted as a preferable jurisdiction for more of the industrial activities that are currently taking place in China.[122] With regards to this various news reports were flashed[123]

highlighting that countries hitherto heavily dependent on China may now be looking for other destinations for manufacturing. In fact, Japan has taken a step further by announcing a USD 2 billion stimulus package to support Japanese investments moving out of China. However, there are around 1,000 foreign firms that are presently engaged in conversation with Indian authorities, and at least 300 have actively started taking up production plans in India in sectors such as smartphones, electronics, medical devices etc.[124] Computerization of ministries have facilitated online grant of licenses, approvals, registrations, reporting etc. and single window clearance. India has introduced various schemes, including three schemes for electronic manufacturing worth US$6 billion, to boost its domestic manufacturing, attract foreign investment, and to become a leading manufacturing and production hub.

However, India still has a long way to go, it is and will continue to be an attractive destination for investment and trade due to the painstaking efforts of the government, to bring about various reforms relating to investing in India. With economies such as the US and Europe taking a significant hit, foreign investors will look for destinations with lower operation and production costs and a local supply chain in place. This requirement can be met by India as incentives allow fast tracking of manufacturing, especially in special economic zones (SEZs) and free trade zones.[125] Business enterprises set up in SEZ are eligible for income tax holiday for ten years ,100% exemption for first five years and then 50% exemption for next five years. Also, the expanding levels of intellectual capital is likely to make it a global hub for services, high level of domestic consumption coupled with significant cost competitiveness will also make it an attractive destination for investments in services and manufacturing sector.

CHAPTER 6:

CONCLUSION

There are various factors that makes India a preferred destination for foreign Direct Investment, interalia, market size, market growth, government incentives, highly skilled and affordable labour, low raw material costs, trade policy, liberalized FDI policy, technological innovation among other advantages. India has further liberalized its norms for foreign businesses seeking to invest in India. Significant legal and regulatory reforms were undertaken by the government, interalia, amendments to the Companies Act, 2013, implementation of GST and Foreign Direct Investments in India policy to make India one of most attractive and lucrative destination to establish a business. Introduction of single window clearance system, and digitization of approval process from Ministry of Corporate affairs further contributed to ease of doing business in India. With covid pandemic, Indian economy suffered across various sectors. However, Indian economy was resilient and bounced back with government offering various relaxations and tax exemptions. The 'Make in India' initiative of the government and various tax incentives offered to foreign investors make India a promising substitute to China. With PDP bill,2019 on verge of being enacted, Indian businesses will offer strong protection to data and IP and provide a robust data

protection regime. This is likely to propel more investments into E-commerce, and other IT sectors. To sum it all, India is making rapid reforms in its legal and regulatory norms to attract more FDI in India. Together with advancements in technology, infrastructure facilities and economic incentives, India is in a strong position and is likely to emerge as the fastest growing economies of the world!

Endnotes

[1] Word Bank report states that India ranked 77 in the year 2018 but since it has put in place four new business reforms during the past year and has earned a place in among the world's top ten improvers for the third consecutive year. Available at: https://www.worldbank.org/en/news/press-release/2019/10/24/doing-business-india-top-10-improver-business-climate-ranking (accessed in November 2020)

[2] Available at : https://www.goldmansachs.com/insights/archive/archive-pdfs/brics-dream.pdf (accessed in November 2020)

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[4] Available at: https://www.ibef.org/economy/domestic-investments (accessed in November 2020)

[5] Ibid

[6] Available at: https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jun/190609_UnderstandingtheIBC_Final_2019-06-09%2018:20:22.pdf (accessed in November 2020)

[7] Available at: https://www.oecd.org/gov/regulatory-policy/44925979.pdf (accessed in November 2020)

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[13] Ibid

[14] Tax Structure and Taxation System in India. Available at: https://www.hdfclife.com/insurance-knowledge-centre/tax-saving-insurance/Tax-Structure-in-India (accessed in November 2020)

[15] Available at: https://www.investopedia.com/terms/f/fdi.asp (accessed in November 2020)

[16] Foreign Exchange Management (Non-Debt Instruments) Rules,2019. Available at: https://www.khaitanco.com/thought-leaderships/Foreign-Exchange-Management-(Non-debt-Instruments)-Rules-2019 (accessed in November 2020)

[17] Available at: https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf (accessed in November 2020)

[18] Under section 46 of FEMA the Central Government, has been empowered to frame rules in relation to non-debt instruments, which includes laying down limits, and other restrictions. Available at: https://www.indiacode.nic.in/ (accessed in November 2020)

[19] By virtue of Section 6(a) of FEMA, RBI has been empowered to classify permissible capital account transactions that involve debt instruments in consultation with the Central Government. Further, in terms of the amended section 47 of FEMA, RBI is authorized to frame regulations in relation to debt instruments which includes setting limits and other restrictions. Available at: https://www.indiacode.nic.in/ (accessed in November 2020)

[20] Refer to Regulation 16 of FEMA 20(R). Available at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11161&Mode=0 (accessed in November 2020)

[21] A guide to Foreign Direct Investment in India. Available at: https://www.mondaq.com/india/inward-foreign-investment/892052 (accessed in November 2020)

[22] Contained in Consolidated FDI Policy Circular 2015 as amended from time to time. The Amendment was done in the year 2018 that scrapped the requirement for government approval for investment. Available at:

https://www.mondaq.com/india/inward-foreign-investment (accessed in November 2020).

[23] The Government of India through Press Note 3 (2020 Series) dated April 17, 2020 and notification dated April 22, 2020. Available at: https://pib.gov.in/PressReleasePage.aspx?PRID=1615711 (accessed in November 2020)

[24] FDI policies and the changes brought in amid COVID-19 pandemic are available at: https://www.scconline.com/blog/post/2020/05/13/fdi-policy-introduction-and-changes/ (accessed in November 2020)

[25] Available at: https://www.mondaq.com/india/inward-foreign-investment/891196/ (accessed in November 2020)

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[27] Refer to regulation 16 of FEMA 20 R available at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11161&Mode=0 (accessed in November 2020)

[28] Ibid

[29] Available at: https://indiacorplaw.in/2020/04/revised-fdi-policy-for-neighbouring-countries.html (accessed in September 2020)

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[31] Supra Note 23

[32] Supra Note 29

[33] Rule 6(iv) of Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2019

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[36] Budget 2021-2022. Available at: https://www.indiabudget.gov.in/doc/budget_speech.pdf (accessed in August 2021)

[37] Press notes 4 of the series 2019

[38] Available at: https://dipp.gov.in/sites/default/files/pn4_2019.pdf (accessed in November 2020)

[39] Ibid

[40] Development of FDI Policy for E-commerce Sector. Available at: https://www.ikigailaw.com/development-of-the-fdi-policy-for-the-e-commerce-sector/#acceptLicense (accessed in November 2020)

[41] Supra Note 34

[42] FDI in Multi Brand Retail Trading. Available at: https://pib.gov.in/PressReleasePage.aspx?PRID=1578132 (accessed in November 2020)

[43] Black end Infrastructure includes capital expenditure on all activities, excluding that on front-end units. For example, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house and agriculture market produce infrastructure. Available at:

https://pib.gov.in/PressReleasePage.aspx?PRID=1578132 (accessed in November 2020)

44 For additional conditions refer to https://dipp.gov.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17_0.pdf (accessed in November 2020)

45 Press Note 2 (2018 series) was published in December 2018 with no notice/consultation and has come into effect as February 1,2019. Available at: https://dipp.gov.in/sites/default/files/pn2_2018.pdf (accessed in November 2020)

46 For additional information refer to: https://dipp.gov.in/sites/default/files/pn3_2016_0.pdf (Accessed in November 2020)

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