

PREPARED BY
EQUICORP ASSOCIATES LLP
Advocates & Solicitors

A LEGAL AND REGULATORY GUIDE

Doing Business in India

A Comprehensive Handbook for Foreign Enterprises on Corporate Structuring, Foreign Investment, Taxation, Employment, and Data Protection

2026 Edition



New Delhi • India
C-98, 2nd Floor, East of Kailash, New Delhi – 110065, India
www.equicorplegal.com | admin@equicorplegal.com



Equi Corp Associates
Advocates & Solicitors

TRANSACTION • ADVISORY • LITIGATION



Table of Contents

Table of Contents	1
Important Notice	5
Preface	6
About the Authors.....	7
Executive Summary	8
MODULE 1: CORPORATE STRUCTURES & ENTRY STRATEGIES	10
1.1 Overview and Strategic Significance of Entity Selection	10
1.1.1 Comparative Matrix of Entry Vehicles	10
1.2 Private Limited Company	11
1.2.1 Legal Framework and Characteristics.....	11
1.2.2 Incorporation Process: SPICe+ Form Ecosystem	12
1.2.3 Minimum Capital Requirements	13
1.2.4 Director Residency Requirement	14
1.2.5 Digital Signature Certificates.....	14
1.3 Limited Liability Partnership (LLP)	14
1.3.1 Legal Framework	14
1.3.2 Minimum Partners and Designated Partner Requirements	15
1.3.3 Incorporation and Filings.....	15
1.4 Branch Office, Liaison Office, and Project Office	15
1.4.1 Regulatory Framework	15
1.4.2 Liaison Office	16
1.4.3 Branch Office.....	16
1.4.4 Project Office	17
MODULE 2: FOREIGN DIRECT INVESTMENT, OVERSEAS DIRECT INVESTMENT & PRESS NOTES ANALYSIS	17
2.1 Statutory and Policy Framework.....	17
2.2 Foreign Direct Investment – Definition, Scope, and Permitted Instruments	18
2.2.1 Definition	19
2.2.2 Permissible Equity Instruments	19
2.2.3 Prohibited Structures for FDI.....	20
2.3 Investment Routes: Automatic Route and Government Route	21
2.3.1 Automatic Route	21
2.3.2 Government Route and FIFP Clearance Process	21



2.4 Sectoral Caps and Conditionalities – Comprehensive Sector-by-Sector Analysis	22
2.5 Downstream Investment	33
2.5.1 Framework and Definition of FOCC	33
2.5.2 Conditions Governing Downstream Investment.....	33
2.6 Press Notes: Historical Analysis and Policy Significance	35
2.6.1 Nature and Legal Status of Press Notes	35
2.6.2 Significant Press Notes – Chronological Analysis.....	35
2.6.3 Press Note 3 of 2020 – Detailed Legal Analysis (Land Border Restriction)	39
2.7 Pricing Guidelines for FDI Equity Instruments	40
2.8 Reporting Compliances: FIRMS Portal	41
2.8.1 Form FC-GPR.....	41
2.8.2 Form FC-TRS	42
2.8.3 Annual Return on Foreign Liabilities and Assets (FLA Return)	42
2.8.4 Complete Reporting Forms Matrix	43
2.9 Overseas Direct Investment (ODI) by Indian Entities	44
2.9.1 Statutory Framework: OI Rules, 2022	44
2.9.2 Definitions: ODI vs OPI	45
2.9.3 Eligible Investors for ODI.....	45
2.9.4 General Permission and the Automatic Route for ODI.....	46
2.9.5 Approval Route for ODI	47
2.9.6 Reporting Obligations for ODI	47
2.9.7 Guarantees and Loans to Foreign Investees.....	48
2.10 FEMA Contraventions and Compounding	48
MODULE 3: REGULATORY & CORPORATE GOVERNANCE COMPLIANCES	51
3.1 Post-Incorporation Mandates	51
3.1.1 First Board Meeting	51
3.1.2 Appointment of Statutory Auditors.....	51
3.1.3 Issuance of Share Certificates	52
3.1.4 Declaration of Commencement of Business – Section 10A	52
3.2 Ongoing Regulatory Compliances	53
3.2.1 Annual General Meeting and Financial Statements.....	53
3.2.2 Annual Filing: Form AOC-4 and Form MGT-7	53
3.2.3 Board Meetings Frequency and Secretarial Standards.....	54
3.2.4 Maintenance of Statutory Registers	54



3.3 Significant Beneficial Ownership (SBO) Disclosure.....	55
3.3.1 Statutory Framework.....	55
3.3.2 Definition of Significant Beneficial Owner	55
3.3.3 Disclosure Process	55
3.4 Related Party Transactions (RPT).....	56
3.5 Annual Compliance Calendar at a Glance	56
MODULE 4: TAX FRAMEWORK – DIRECT & INDIRECT TAXATION.....	60
4.1 Corporate Income Tax (CIT)	60
4.1.1 Statutory Basis	60
4.1.2 Tax Rates: Domestic vs Foreign Companies	60
4.1.3 Minimum Alternate Tax (MAT)	62
4.2 Transfer Pricing	62
4.2.1 Arm's Length Principle and Covered Transactions.....	62
4.2.2 Prescribed Methods.....	62
4.2.3 Documentation Requirements.....	63
4.2.4 Safe Harbour Rules	64
4.2.5 Advance Pricing Agreements (APAs)	64
4.3 Goods and Services Tax (GST)	64
4.3.1 Constitutional and Statutory Basis.....	64
4.3.2 Registration Thresholds	65
4.3.3 Input Tax Credit (ITC).....	65
4.3.4 GST Returns and Compliance Calendar	66
4.4 Customs Duty.....	67
4.5 Double Taxation Avoidance Agreements (DTAAs) and GAAR.....	67
4.5.1 DTAA Framework	67
4.5.2 General Anti-Avoidance Rules (GAAR)	68
MODULE 5: EMPLOYMENT, LABOUR & IMMIGRATION LAWS	69
5.1 Transition to the Four Labour Codes	69
5.1.1 Enforcement Status as of 2026.....	69
5.2 Key Mandatory Welfare Contributions.....	70
5.2.1 Employees' Provident Fund (EPF).....	70
5.2.2 Employees' State Insurance (ESI).....	71
5.2.3 Gratuity	71
5.2.4 Bonus	72



5.3 Prevention of Sexual Harassment at Workplace (POSH)	72
5.4 Immigration: Employment of Foreign Nationals	73
5.4.1 Employment Visa (E-Visa / Business Visa)	73
5.4.2 FRRO Registration.....	74
5.4.3 Ratio of Indian to Foreign Employees	74
MODULE 6: DATA PROTECTION, INTELLECTUAL PROPERTY & TECHNOLOGY	
REGULATION	75
6.1 Digital Personal Data Protection Act, 2023 (DPDP Act)	75
6.1.1 Legislative Background and Commencement	75
6.1.2 Scope and Applicability	75
6.1.3 Key Definitions	76
6.1.4 Obligations of Data Fiduciaries	77
6.1.5 Rights of Data Principals	78
6.1.6 Cross-Border Data Transfers	78
6.1.7 Significant Data Fiduciaries (SDFs)	80
6.1.8 Data Protection Board and Penalties.....	81
6.2 Intellectual Property Protection in India	81
6.2.1 Overview	81
6.2.2 Patents	82
6.2.3 Trademarks	82
6.2.4 Copyright	83
6.2.5 IP Enforcement Mechanisms	83
6.3 Technology and Internet Regulation.....	84
6.3.1 Information Technology Act, 2000 and IT Rules, 2021	84
6.3.2 Electronics and Semiconductor Policy.....	84
Conclusion: Strategic Compliance Architecture.....	86
Concluding Remarks.....	90
Annexure A: Key Regulatory Authorities	91
Annexure B: Key Regulatory Forms Reference	93



Important Notice

This work has been prepared by the Corporate and Foreign Exchange practice of Equicorp Associates LLP, Advocates & Solicitors under the guidance of our Managing Partner, Mr. Aashish Srivastava, as a scholarly reference for enterprises, advisers, and in-house counsel contemplating or conducting business operations in India. It states the law as it stands on 1 June 2026 and seeks to render the architecture of the Indian regulatory framework intelligible to the foreign investor. Nothing in this work constitutes legal advice, nor may it be relied upon as a substitute for considered professional counsel directed to the facts of a specific transaction. The application of statute to fact is the proper office of an advocate instructed in the matter¹, and no general treatment, however careful, can discharge that function.

The Indian legal landscape is one of continual movement: statutes are amended, subordinate rules notified, policy circulars issued, and settled positions unsettled by judicial pronouncement, often at short interval. The reader is accordingly cautioned that the currency of any proposition stated herein is necessarily tied to the date of writing and is urged to verify the prevailing position and to obtain qualified advice before acting. Equicorp Associates LLP accepts no liability for any loss occasioned by reliance upon this work.

¹ On the distinction between general legal information and advice tendered in a retainer, see the Bar Council of India Rules, Pt VI, Ch II (Standards of Professional Conduct and Etiquette), framed under the Advocates Act 1961, s 49(1)(c).



Preface

India's emergence as a principal theatre of global commerce has not been matched, in the foreign investor's experience, by a corresponding ease of legal navigation. The regulatory order that governs inbound investment is not a single code but a confluence of statutes, subordinate legislation, executive policy, and judicial gloss—the Companies Act, 2013; the Foreign Exchange Management Act, 1999, and the rules and regulations framed under it; the consolidated Foreign Direct Investment Policy; the Income-tax Act, 1961, and the goods and services tax statutes; the emerging labour codes; and, most recently, the Digital Personal Data Protection Act, 2023. Each operates upon the foreign enterprise simultaneously, and the interaction among them is frequently more consequential than any provision read in isolation.

This work is conceived as a scholarly yet practical guide to that order. It does not aspire to the exhaustiveness of a practitioner's commentary on any single statute; rather, it seeks to map the terrain—to identify, for each domain of legal risk, the governing instrument, the operative obligation, the regulator before whom it is discharged, and the consequence of its breach. The treatment is analytical where analysis aids understanding, and descriptive where the law is settled and the investor's interest lies simply in knowing the rule. Throughout, the aim has been to write for the intelligent reader who is not necessarily an Indian lawyer: the general counsel in London or Singapore, the transaction adviser, the board considering an India entry.

The law is stated as at 1 June 2026. Where a reform has been enacted but not yet operationalised—as with several provisions of the labour codes and the subordinate rules under the Digital Personal Data Protection Act—the text says so, for the gap between enactment and enforcement is itself a feature of the Indian legal method that the foreign investor must understand.



About the Authors

This work is the product of the Corporate and Foreign Exchange Practice of Equicorp Associates LLP, Advocates & Solicitors, under the guidance of our Managing Partner, Mr. Aashish Srivastava. Our firm whose work spans the incorporation and structuring of foreign-owned entities, advice on the Foreign Exchange Management Act and the Consolidated FDI Policy, corporate governance and secretarial compliance, direct and indirect taxation, and the regulation of data, intellectual property, and technology. The practice advises foreign enterprises across the life-cycle of their India presence, from entry strategy and entity selection through ongoing compliance and, where necessary, the compounding of contraventions and engagement with the regulators.

The analysis in these pages reflects that advisory experience, distilled into a reference that the firm's own lawyers use and that it offers to the wider community of foreign investors and their advisers. Correspondence concerning this work, including notice of any development that has overtaken the text, may be addressed to the firm at its office in New Delhi.

Executive Summary

India has, in the two decades since liberalisation, consolidated its position as one of the most significant destinations for cross-border commerce, foreign direct investment, and technology-driven enterprise. The country's legal architecture governing inbound business activity has undergone transformative reform: from the wholesale recodification of corporate law under the **Companies Act, 2013**, the rationalisation of foreign exchange control under the **Foreign Exchange Management Act, 1999 (FEMA)**, and the consolidation of indirect taxation into the **Goods and Services Tax (GST)** regime, to the landmark enactment of the **Digital Personal Data Protection Act, 2023 (DPDP Act)** and the consolidation of labour statutes into four **Labour Codes. As of 2026**, the regulatory ecosystem, while complex and layered, is navigable with careful structuring and proactive compliance.

This guide addresses the principal legal and regulatory considerations that a foreign enterprise must examine at the outset of, and throughout, its India journey. It is organised into six functional modules, each addressing a distinct domain of legal risk and compliance obligation.

Module	Topic	Key Regulatory Authority / Statute
1	Corporate Structures & Entry Strategies	MCA; Companies Act, 2013; LLP Act, 2008; FEMA, 1999
2	FDI & Foreign Exchange Management	DPIIT; RBI; FEMA, 1999; FDI Policy 2020 (Consolidated)
3	Corporate Governance & Compliance	MCA; SEBI; Companies Act, 2013; Secretarial Standards
4	Tax Framework – Direct & Indirect	CBDT; GSTN; Income Tax Act, 1961; CGST Act, 2017

Module	Topic	Key Regulatory Authority / Statute
5	Employment, Labour & Immigration	MoLE; MHA; 4 Labour Codes; POSH Act, 2013
6	Data Protection, IP & Tech Regulation	MeitY; DPDP Act, 2023; Patents Act; Trademarks Act

Across these modules, several overarching themes emerge. First, entity selection is foundational: the choice between a private limited company, an LLP, or an office-based presence (branch, liaison, or project office) has direct and often irreversible consequences for tax characterisation, FDI eligibility, and operational flexibility. Second, FDI and FEMA compliance require meticulous real-time reporting through the RBI's FIRMS portal and adherence to sector-specific conditionalities under the Consolidated FDI Policy, 2020 and its subsequent amendments. Third, the tax framework demands attention to transfer pricing disciplines—particularly for group-entities transacting cross-border—alongside GST registration and input credit optimisation. Fourth, despite the announced notional commencement of the four Labour Codes, their practical enforcement as of 2026 remains incomplete, requiring compliance with both legacy statutes and the new code architecture. Fifth, the DPDP Act, 2023, once fully operationalised through subordinate rules, will impose significant obligations on any entity processing the personal data of Indian residents.

Entities approaching India as a business destination must treat legal and regulatory compliance not as a post-investment obligation but as an integral component of entry strategy. The costs of regulatory non-compliance in India—ranging from compounding under FEMA, disqualification of directors under the Companies Act, prosecution under tax statutes, and penalties under the DPDP Act—substantially outweigh the transaction costs of proactive legal structuring.

MODULE 1: CORPORATE STRUCTURES & ENTRY STRATEGIES

1.1 Overview and Strategic Significance of Entity Selection

The selection of an entry vehicle is the foundational legal decision confronting any foreign enterprise contemplating an India presence, and it is one whose consequences are largely irreversible without cost. The choice settles the legal personality of the Indian operations, the ambit of commercial activity permitted to them, their characterisation for tax residency, the extent to which liability is ring-fenced from the foreign parent, and—most consequentially—their eligibility to receive foreign direct investment under the Consolidated FDI Policy, 2020 issued by the Department for Promotion of Industry and Internal Trade (DPIIT) and the foreign exchange framework administered by the Reserve Bank of India (RBI) under the Foreign Exchange Management Act, 1999 (FEMA). These determinations are interdependent: a vehicle attractive for its operational latitude may be disqualified from the investment route the promoter requires, and the investor who fixes upon a structure before mapping these constraints frequently finds the decision dictating outcomes it did not intend. The principal entry vehicles recognised under Indian law are: (i) a Private Limited Company, (ii) a Limited Liability Partnership (LLP), (iii) a Branch Office (BO), (iv) a Liaison Office (LO), and (v) a Project Office (PO). Each is governed by a distinct statutory framework and carries discrete regulatory implications.

1.1.1 Comparative Matrix of Entry Vehicles

Parameter	Pvt Ltd Company	LLP	Branch Office	Liaison Office	Project Office
Governing Law	Companies Act, 2013	LLP Act, 2008	FEMA (Non-Debt Instruments) Rules, 2019	FEMA (Non-Debt Instruments) Rules, 2019	FEMA (Non-Debt Instruments) Rules, 2019
Legal Personality	Separate legal entity	Separate legal entity	Extension of foreign parent	Extension of foreign parent	Extension of foreign parent

Parameter	Pvt Ltd Company	LLP	Branch Office	Liaison Office	Project Office
FDI Eligible	Yes – automatic / govt route	Yes – limited sectors	No FDI; parent funds	No FDI; parent funds	No FDI; parent funds
Commercial Activity	Full commercial ops permitted	Full commercial ops permitted	Same activity as parent (RBI-approved)	Representation only; no revenue	Only project-related activity
Tax Residency	Indian resident company	Indian resident LLP	Foreign company (higher tax rate)	Foreign company	Foreign company
Minimum Directors/Partners	Min. 2 directors (1 resident)	Min. 2 designated partners (1 resident)	Authorised representative	Chief Representative Officer	Project Representative
Annual Compliance	Extensive – MCA + SEBI/RBI	Moderate – MCA	Annual Activity Certificate (AAC)	Annual Activity Certificate (AAC)	Annual Activity Certificate (AAC)
Remittance of Profits	Dividend – withholding tax applicable	Partners' remuneration / profit share	After tax, subject to RBI conditions	Not applicable (no revenue)	After completion of project
Winding Up	Under Companies Act, 2013	Under LLP Act, 2008	RBI approval required	RBI approval required	On project completion / RBI NOC

1.2 Private Limited Company

1.2.1 Legal Framework and Characteristics

The private limited company is, in practice, the vehicle of choice for the foreign enterprise intent on substantive commercial operations in India, and for good reason: it alone combines eligibility

for foreign investment across the widest range of sectors with the protections of separate corporate personality. It is constituted under Section 2(68) of the Companies Act, 2013, which defines a "private company" by reference to three restrictions in its articles—the provision being definitional rather than merely descriptive, so that a company failing to embody them is not a private company in law. The articles must (i) restrict the right to transfer its shares, (ii) limit the number of members to 200 (excluding employees and former employees who are members), and (iii) prohibit any invitation to the public to subscribe for any securities².

The principal advantages include: (a) eligibility for FDI under the automatic route across most sectors; (b) limited liability of shareholders (protection of personal assets beyond share subscription); (c) distinct legal personality enabling contractual capacity, property ownership, and litigation in its own name; (d) perpetual succession irrespective of change in shareholding; and (e) access to a comprehensive and well-developed body of corporate jurisprudence under the Companies Act, 2013 and subordinate rules.

1.2.2 Incorporation Process: SPICe+ Form Ecosystem

The incorporation of a private limited company is governed by Section 7 of the Companies Act, 2013 read with the Companies (Incorporation) Rules, 2014³. The Ministry of Corporate Affairs (MCA) introduced the Simplified Proforma for Incorporating Company Electronically Plus (SPICe+) web form in February 2020, consolidating previously fragmented applications into a unified online portal at www.mca.gov.in. The SPICe+ form is a two-part integrated form:

- Part A – Name Reservation: Application for name approval through the RUN (Reserve Unique Name) service embedded within SPICe+. A maximum of two proposed names may be submitted, with reasons. The Registrar of Companies (RoC) approves or rejects names basis availability and compliance with the Companies (Incorporation) Rules, 2014 (Rule 8 – restrictions on undesirable names).
- Part B – Composite incorporation application integrating:
 - i. INC-9: Affidavit and declaration by subscribers and first directors.

² Companies Act 2013, s 2(68).

³ Companies Act 2013, s 7, read with the Companies (Incorporation) Rules 2014.

- ii. DIR-3 (where applicable): Application for Director Identification Number (DIN) for proposed directors not already holding a DIN.
- iii. PAN & TAN: Integrated application for Permanent Account Number and Tax Deduction Account Number through the Income Tax portal linkage.
- iv. EPFO/ESIC Registration: Deemed registration with Employees' Provident Fund Organisation and Employees' State Insurance Corporation.
- v. Professional Tax: Deemed enrolment in participating states.
- vi. Bank Account Opening: AGILE-PRO-S (linked form) for GST registration and opening of bank account.

The filing of SPICe+ requires the digitally signed Memorandum of Association (Form INC-33, Table A/customised AOA) and Articles of Association (Form INC-34). Upon successful verification and payment of stamp duty (which is state-specific and applies to the authorised share capital), the Registrar issues the Certificate of Incorporation electronically. Typical incorporation timelines, when all documents are in order, range from 3 to 7 working days. The Certificate of Incorporation is conclusive evidence of the company's existence per Section 9 of the Companies Act, 2013⁴.

1.2.3 Minimum Capital Requirements

With effect from the Companies (Amendment) Act, 2015, the requirement for a minimum paid-up capital of INR 1,00,000 for private limited companies was abolished. There is accordingly no statutory minimum paid-up capital for a private limited company as of 2026. However, sector-specific regulations may impose minimum capitalisation requirements (e.g., NBFC registration under the Reserve Bank of India Act, 1934 requires minimum net owned funds; payment aggregator licence under the RBI Master Directions on Payment Aggregators and Payment Gateways (March 2020, as amended) requires minimum net worth of INR 15 crore at the time of application and INR 25 crore by the end of the third financial year). The company's authorised

⁴ Companies Act 2013, s 9 (certificate of incorporation conclusive evidence of compliance with the requirements of the Act in respect of registration).

capital determines the maximum shares issuable; stamp duty on authorised capital is levied at the time of incorporation and on subsequent increases under state stamp laws.

1.2.4 Director Residency Requirement

Section 149(3) of the Companies Act, 2013 mandates that every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year⁵. For newly incorporated companies during the first financial year, this requirement applies pro rata. This effectively requires the appointment of a resident Indian director in all companies—an obligation that foreign promoters typically satisfy by appointing a nominee director or an independent Indian professional.

1.2.5 Digital Signature Certificates

All filings on the MCA portal require Digital Signature Certificates (DSC) of Class 3 standard, issued by licensed Certifying Authorities (CAs) under the Information Technology Act, 2000 and the Information Technology (Certifying Authorities) Rules, 2000. Foreign nationals seeking DSCs must provide notarised and apostilled identity and address proofs. Each proposed director must hold a valid DSC prior to executing electronically filed documents. The DSC is linked to the director's DIN on the MCA portal.

1.3 Limited Liability Partnership (LLP)

1.3.1 Legal Framework

The Limited Liability Partnership Act, 2008 (LLP Act) provides for the formation and regulation of LLPs in India. An LLP combines the flexibility of a partnership with the advantage of limited liability. Under Section 3 of the LLP Act, an LLP is a body corporate with perpetual succession⁶. Unlike a company, the internal management of an LLP is governed by the LLP Agreement executed between the partners, subject to the provisions of the LLP Act and the Limited Liability Partnership Rules, 2009.

⁵ Companies Act 2013, s 149(3).

⁶ Limited Liability Partnership Act 2008, s 3(1).

FDI into an LLP is permissible only under the Government (FIPB/DPIIT) Route and only in sectors where 100% FDI is permitted under the automatic route without any performance-linked conditions. Specifically, the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 permit FDI in LLPs subject to: (a) the LLP being in a sector with 100% FDI under automatic route without conditionalities; (b) prior Government approval; and (c) prohibition on downstream investment by the LLP in any other entity. Repatriation of profits is permitted subject to applicable tax deductions. Sectors such as financial services (banking, insurance, asset management) are excluded.

1.3.2 Minimum Partners and Designated Partner Requirements

An LLP must have a minimum of two partners (Section 6, LLP Act). Every LLP must have at least two Designated Partners, of whom at least one must be a resident in India (Section 7, LLP Act)⁷. The Designated Partners are responsible for regulatory filings and are liable for compliance obligations. A body corporate may be a partner in an LLP but must act through a natural person (Section 3, LLP Act).

1.3.3 Incorporation and Filings

Incorporation of an LLP is effected through Form FiLLiP (Form for Incorporation of LLP) filed with the Registrar of LLPs (which is the same office as the Registrar of Companies). This form integrates DIN/DPIN application, name reservation, and incorporation filing. Upon filing and fee payment, the Registrar issues the Certificate of Incorporation of LLP (Form 16). The LLP Agreement must be filed within 30 days of incorporation in Form 3 (Section 23, LLP Act). Annual filings include Form 11 (Annual Return) within 60 days of the close of the financial year, and Form 8 (Statement of Accounts and Solvency) within 30 days of the end of six months of the financial year. Failure to file Form 8 and Form 11 attracts additional fees and penalties under the LLP (Amendment) Rules, 2022.

1.4 Branch Office, Liaison Office, and Project Office

1.4.1 Regulatory Framework

⁷ Limited Liability Partnership Act 2008, ss 6-7.

Foreign companies seeking a presence in India without incorporating a separate legal entity may establish a Branch Office (BO), Liaison Office (LO), or Project Office (PO). These are governed by the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 ("BO/LO/PO Regulations") as amended⁸, read with the Master Direction – Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities, issued by the RBI (updated from time to time). Approval is granted by the RBI through the AD Category-I Bank to which the application is submitted in Form FNC-1, or where prior approval of the Government of India is required, through DPIIT.

1.4.2 Liaison Office

A Liaison Office (LO) serves as a representative and communication channel for the foreign parent. It is explicitly prohibited from undertaking any commercial or trading activity and from generating any income in India. Permitted activities are limited to: (i) representing the parent company and promoting its products/services; (ii) promoting export/import between India and the parent's country; (iii) facilitating technical and financial collaboration between the parent and Indian companies. LOs must be renewed every three years and are required to submit an Annual Activity Certificate (AAC) to the AD Bank by 30 September of each year, certified by the statutory auditor, confirming compliance with permitted activities. An LO is taxable in India if it constitutes a Permanent Establishment (PE) under the applicable Double Taxation Avoidance Agreement (DTAA).

1.4.3 Branch Office

A Branch Office (BO) may undertake income-generating activities but is limited to the same activities as carried out by the parent abroad and as approved by the RBI. Permitted activities include: export/import of goods; rendering professional services; research work in connection with the parent; promoting technical/financial collaboration; representing and acting as a buying/selling agent; rendering IT and software development services; rendering technical support for products

⁸ Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any other Place of Business) Regulations 2016, notified vide Notification No FEMA 22(R)/2016-RB.

supplied by parent; conducting foreign airline/shipping company business. A BO is treated as a foreign company for tax purposes under the Income Tax Act, 1961, and is taxed at the rate applicable to foreign companies (base rate of 40% plus surcharge and cess, as compared to 25% for domestic companies). BO profits remittable to the parent are subject to withholding tax as per applicable DTAA.

1.4.4 Project Office

A Project Office (PO) may be established by a foreign entity that has secured a contract from an Indian entity to execute a specific project in India. Unlike a BO, which requires formal RBI approval, a PO may be established under a general permission under the BO/LO/PO Regulations, subject to the conditions that: (a) the project is funded directly by inward remittance; or (b) the project is funded by a bilateral or multilateral international financial agency; or (c) the project has been cleared by the appropriate authority; or (d) a company/entity in India awarding the contract has been granted term loans by a PFI/bank for the project. The PO is required to file a Form 49C annually with the Income Tax authority and submit an AAC to the AD Bank.

MODULE 2: FOREIGN DIRECT INVESTMENT, OVERSEAS DIRECT INVESTMENT & PRESS NOTES ANALYSIS

2.1 Statutory and Policy Framework

The regulation of cross-border capital flows into and out of India is built upon a layered architecture, in which a single enabling statute confers the regulatory power and successive tiers of subordinate legislation and policy give it operational content. At the apex sits the Foreign Exchange Management Act, 1999 (FEMA)⁹, which vests in the Central Government and the Reserve Bank of India (RBI) the power to regulate foreign exchange transactions, capital account transactions, and the flow of foreign investment. Beneath FEMA, two sets of rules govern the two

⁹ FEMA, 1999 (Act 42 of 1999), enacted with effect from 1 June 2000, replaced the Foreign Exchange Regulation Act, 1973 (FERA). Unlike FERA, which was a criminal statute, FEMA treats foreign exchange violations as civil offences, compoundable by the Reserve Bank of India under Section 15.

principal modes of cross-border investment: (i) Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules)¹⁰, governing inbound foreign investment (FDI) in equity instruments of Indian entities; and (ii) Foreign Exchange Management (Debt Instruments) Regulations, 2019 (DI Regulations)¹¹, governing investment in debt instruments. For outbound investment, the applicable instrument is the Foreign Exchange Management (Overseas Investment) Rules, 2022 (OI Rules)¹², which came into force on 22 August 2022 and comprehensively replaced the earlier ODI regulatory framework.

The policy layer governing inbound FDI is established by the Consolidated FDI Policy, 2020¹³, issued by the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry. Importantly, the Consolidated FDI Policy is a policy document and does not have statutory force independently — it derives its enforceability through its incorporation into the NDI Rules. Sectoral amendments to the FDI Policy between consolidations are effected through Press Notes issued by DPIIT (discussed in detail in §2.6 below). The RBI's Master Direction – Foreign Investment in India¹⁴ provides the operational and compliance framework, including reporting requirements, permitted instruments, and conditionalities for specific structures.

2.2 Foreign Direct Investment – Definition, Scope, and Permitted Instruments

¹⁰ The NDI Rules were notified on 17 October 2019 vide G.S.R. 785(E) under Section 47 of FEMA, 1999, replacing the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017. The NDI Rules apply to equity investments (FDI, FPI, and investment by NRIs/OCIs in equity instruments of Indian companies).

¹¹ The Foreign Exchange Management (Debt Instruments) Regulations, 2019 were notified on 17 October 2019 vide G.S.R. 784(E) and govern investment by persons resident outside India in debt instruments (non-convertible debentures, government securities, corporate bonds, etc.).

¹² The Foreign Exchange Management (Overseas Investment) Rules, 2022 were notified on 22 August 2022 vide G.S.R. 633(E), replacing the earlier Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015.

¹³ Department for Promotion of Industry and Internal Trade, Consolidated FDI Policy Circular of 2020, issued effective 15 October 2020 (DPIIT File No. 5(2)/2020-FDI Policy). This is the most recent consolidated edition; sectoral changes since then have been effected through individual Press Notes.

¹⁴ RBI Master Direction No. 11/2017-18 on Foreign Investment in India, dated 4 January 2018, as updated from time to time. The Master Direction consolidates the RBI's regulatory instructions on inbound foreign investment, reporting compliances, and permissible instruments.

2.2.1 Definition

"Foreign Direct Investment" is defined in Rule 2(xiii) of the NDI Rules¹⁵ as investment through equity instruments by a person resident outside India in an unlisted Indian company, or investment in 10% or more of the post-issue paid-up equity capital on a fully diluted basis of a listed Indian company. Investment below the 10% threshold in a listed Indian company constitutes Foreign Portfolio Investment (FPI) and falls under the jurisdiction of the SEBI (Foreign Portfolio Investors) Regulations, 2019¹⁶.

A "person resident outside India" is defined under Section 2(w) of FEMA, 1999¹⁷ — a critical threshold determination since all FDI reporting obligations and pricing conditions attach to transactions between an Indian entity and a "person resident outside India." Where there is uncertainty as to residency status (e.g., newly returned NRIs, dual residents), an Authorised Dealer Category-I Bank (AD Bank) opinion or an RBI clarification may be sought.

2.2.2 Permissible Equity Instruments

Under Rule 2(xix) of the NDI Rules¹⁸, FDI may only be made through the following "equity instruments":

- Equity Shares: Ordinary shares carrying voting rights. Both fully paid-up and partly paid-up equity shares are permitted, subject to the condition that partly paid shares must be fully paid within 12 months of issuance.

¹⁵ Rule 2(xiii), Foreign Exchange Management (Non-Debt Instruments) Rules, 2019: "foreign direct investment means investment through equity instruments by a person resident outside India in an unlisted Indian company or investment in 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company."

¹⁶ SEBI (Foreign Portfolio Investors) Regulations, 2019 notified on 23 September 2019. FPIs invest through a separate registration mechanism from SEBI-designated Designated Depository Participants (DDPs) and are subject to sectoral and individual investment limits on secondary market purchases.

¹⁷ Section 2(w), FEMA, 1999: "person resident outside India means a person who is not resident in India." Section 2(v) defines "person resident in India" to mean a person residing in India for more than 182 days during the course of the preceding financial year, subject to specified exclusions (persons gone abroad for employment, business, or vocation outside India are treated as non-resident from the date of departure).

¹⁸ Rule 2(xix), NDI Rules, 2019 defines "equity instruments" to mean equity shares, compulsorily convertible preference shares (CCPS), compulsorily convertible debentures (CCDs), and share warrants issued by an Indian company.

- Compulsorily Convertible Preference Shares (CCPS): Preference shares that mandatorily convert into equity shares within a specified period. CCPS are treated as equity instruments for FDI purposes. Optionally convertible or non-convertible preference shares are treated as debt instruments and governed by the DI Regulations, not the NDI Rules.¹⁹
- Compulsorily Convertible Debentures (CCDs): Debentures that mandatorily convert into equity shares. Like CCPS, CCDs are classified as equity for FDI purposes.
- Share Warrants: Instruments entitling the holder to subscribe to equity shares at a future date. The NDI Rules permit share warrants issued by Indian companies to persons resident outside India, subject to conditions prescribed by DPIIT/RBI including a warrant exercise period, upfront consideration, and pricing compliance.²⁰

2.2.3 Prohibited Structures for FDI

The following structures do not qualify as FDI and are not permitted under the NDI Rules:

- Investment in optionally convertible preference shares (OCPS), fully and partly convertible debentures (other than CCPS/CCDs as defined), and non-convertible instruments—these are governed as debt and subject to the ECB Framework or DI Regulations.
- Acquisition of shares or interest in a company engaged in activities in the prohibited sectors (atomic energy, lottery, gambling, chit funds, Nidhi companies, agricultural/plantation activity in real estate, tobacco manufacturing of cigars/cigarettes).²¹
- Investment by persons from Pakistan or Bangladesh in sectors other than defence, space, atomic energy and sectors prohibited for FDI — such investments additionally require Government approval.

¹⁹ This distinction is commercially significant: FDI into CCPS qualifies as FDI and is available under automatic/government routes, while investment in optionally convertible preference shares (OCPS) or non-convertible debentures (NCDs) is treated as ECB (External Commercial Borrowing) and subject to the RBI ECB Framework, including all-in cost ceilings and end-use restrictions.

²⁰ DPIIT Press Note 3 of 2019 and the amended NDI Rules permit investment through share warrants in Indian companies by non-residents. The warrant exercise period may not exceed 18 months from the date of issuance, and the price/conversion formula must be determined upfront at the time of issuance.

²¹ Consolidated FDI Policy, 2020, Para 5.1 – Prohibited Sectors. FDI in these sectors is not permitted in any form whatsoever, whether direct or indirect, and regardless of the investment route.

- Investment through participatory notes (P-Notes) or other offshore derivative instruments referenced to Indian equities — these are regulated separately under SEBI's FPI regulations.

2.3 Investment Routes: Automatic Route and Government Route

2.3.1 Automatic Route

Under the Automatic Route, FDI does not require the prior approval of the Government of India or the RBI.²² The investor is required only to comply with the prescribed sectoral conditions and report the investment to the RBI through the FIRMS portal within the prescribed timelines post-allotment (Form FC-GPR — see §2.8.1). The automatic route is the default route for the majority of sectors up to the applicable FDI cap. Critically, the automatic route does not mean the investment is unconditioned — sectoral caps, minimum capitalisation requirements, licensing obligations, and conditionalities (discussed in §2.4) remain fully applicable.

2.3.2 Government Route and FIFP Clearance Process

In sectors where FDI is subject to Government approval, prior clearance must be obtained from the Foreign Investment Facilitation Portal (FIFP)²³ administered by DPIIT. The FIFP clearance process operates as follows:

- **Application Filing:** The foreign investor or Indian company files a detailed application on the FIFP portal with prescribed documents: entity incorporation documents, proposed investment structure, shareholding pattern post-investment, sector-specific licences obtained or applied for, and draft shareholder/investment agreements.
- **Inter-Ministerial Circulation:** DPIIT circulates the application to the administrative ministry with jurisdiction over the sector (e.g., Ministry of Finance for banking proposals; Ministry of Defence for defence sector proposals; Ministry of Information & Broadcasting

²² Consolidated FDI Policy, 2020, Para 3.1.1: "Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from the Government of India for the investment."

²³ FIFP (fifp.dpiit.gov.in) is the single-window clearance system for Government route FDI proposals. It was established by DPIIT following the abolition of the Foreign Investment Promotion Board (FIPB) in May 2017 (Ministry of Finance Office Memorandum F. No. 20/39/2015-FDI dated 24 May 2017).

for media proposals). Comments from other relevant ministries (including the Ministry of Home Affairs for security assessments) are obtained.

- **Processing Timeline:** The DPIIT guidelines envisage a 8–10 week processing period for standard proposals. Proposals involving national security, defence, or strategic sectors may take longer and are referred to the Cabinet Committee on Economic Affairs (CCEA).²⁴
- **FIPB Legacy Cases:** Proposals approved by the erstwhile FIPB prior to its abolition in 2017 remain valid and enforceable. Investors relying on pre-FIPB approvals must ensure that the approved activities have not been restructured or expanded beyond the scope of the original approval.

2.4 Sectoral Caps and Conditionalities – Comprehensive Sector-by-Sector Analysis

The Consolidated FDI Policy, 2020, as amended by subsequent Press Notes, establishes sector-specific caps and conditionalities. The table below and the sectoral analyses that follow reflect the position as of 2026. Where a sector has been amended by a Press Note, the relevant Press Note is identified in the footnote.

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
Banking – Private Sector	74%	Auto up to 74%; Govt above 74%	RBI licensing under Section 22, Banking Regulation Act, 1949 mandatory. Aggregate FDI including FPI not to exceed 74%. 26% must remain with Indian residents. Indian management and control. Aggregate limit of 10% for individual FPI. [Ref: Press Note 2 of 2004, Press Note 5 of

²⁴ For proposals involving FDI of INR 5,000 crore or above in sectors with caps, the approval may require CCEA clearance in addition to DPIIT/administrative ministry concurrence, per DPIIT internal guidelines.

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
			2013, RBI Master Direction on Foreign Investment in India]
Banking – Public Sector	20%	Govt	Investment limited to 20% of the paid-up capital under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980. FDI/FPI in aggregate not to exceed 20%. [Ref: Para 6.2.3.1, Consolidated FDI Policy 2020]
Insurance (Life, General, Health, Reinsurance)	74%	Auto	IRDAI registration mandatory. Indian management and control required beyond 49%. FDI beyond 49% must be approved by the insurance regulator. NRIs can invest up to 100%. [Ref: Insurance (Amendment) Act, 2021; Press Note 2 of 2021; IRDAI Regulations 2022]
NBFCs (Non-Banking Finance Companies)	100%	Auto	Minimum capitalisation norms as per RBI Master Directions on NBFCs (varies by category — INR 2 crore for Category A, INR 10 crore for Category B, INR 20 crore for Category C). RBI registration mandatory for deposit-taking and systemically important NBFCs. Payment aggregators: minimum net worth INR 15 Cr (application) / INR 25 Cr (3rd year).

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
			[Ref: Para 6.2.9, FDI Policy 2020; RBI Master Direction – NBFC-ND-SI, 2016 as amended]
Pension Sector	74%	Auto up to 74%; Govt above 74%	PFRDA licence under Pension Fund Regulatory and Development Authority Act, 2013 mandatory. Indian management and control. [Ref: Press Note 2 of 2015; Section 24, PFRDA Act, 2013]
Defence Manufacturing	74% (Auto); 100% (Govt)	Auto up to 74%	DPIIT/MoD industrial licence mandatory. Licence applicant must be an Indian entity. FDI beyond 74% allowed only where modern technology is induction or other specified cases at discretion of Cabinet Committee on Security (CCS). Acquisition of land for defence purposes requires additional MoD clearance. [Ref: Press Note 4 of 2020; Defence Acquisition Procedure 2020]
Atomic Energy	Prohibited	N/A	FDI expressly prohibited under the Atomic Energy Act, 1962 and the Mines and Minerals (Development and Regulation) Act, 1957 for atomic minerals. No exceptions. [Ref: Para 5.1, FDI Policy 2020]

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
Space (Satellites, Launch Vehicles, Spaceports)	100% (tiered)	Auto/Govt (sector-specific)	Tiered structure introduced by Press Note 2 of 2024: Satellites (manufacturing/operation/data) — up to 74% automatic, beyond 74% government; Launch Vehicles/Spaceports/Associated Systems — up to 49% automatic, beyond 49% government; Satellite Data Products — 100% automatic. IN-SPACE clearance required. [Ref: Press Note 2 of 2024]
Print Media (Indian edition of foreign magazines)	26%	Govt	FDI limited to 26% in companies publishing newspapers, periodicals, and Indian editions of foreign magazines dealing with news and current affairs. No FDI permitted in entities controlled by Indian editions of foreign newspapers. [Ref: Para 6.2.7, FDI Policy 2020; Press Note 4 of 2002]
Digital News Media	26%	Govt	FDI limit of 26% applicable to uploading/streaming of news and current affairs through digital media, following Press Note 4 of 2019. Identical to print media cap. [Ref: Press Note 4 of 2019]
FM Radio	49%	Govt	Subject to compliance with the guidelines issued by the Ministry of Information &

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
			Broadcasting for FM radio broadcasting. [Ref: Para 6.2.7(c), FDI Policy 2020]
Broadcasting Content Services (DTH, Cable, IPTV)	49%	Govt	FDI in content services (uplinking/downlinking) limited to 49% under government route. Ministry of I&B permission required. [Ref: Para 6.2.7(d) and (e), FDI Policy 2020]
Broadcasting Infrastructure (Teleports, ISPs with gateways)	100%	Auto up to 49%; Govt above 49%	Automatic up to 49%; Government approval required above 49%. Subject to licensing under Indian Telegraph Act, 1885. [Ref: Para 6.2.7(b), FDI Policy 2020]
Telecom Services	100%	Auto up to 49%; Govt above 49%	Subject to licensing and security conditions under the Telecommunications Act, 2023 (replacing Indian Telegraph Act, 1885) and DoT guidelines. Mandatory security conditions include network security audit, lawful interception compliance, and use of trusted telecom equipment. [Ref: Press Note 5 of 2012; Para 6.2.4, FDI Policy 2020; Telecom Act, 2023]

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
Pharmaceuticals (Greenfield)	100%	Auto	No conditionalities other than DCGI/drug licensing compliance. 100% automatic route applicable to new greenfield pharmaceutical manufacturing. [Ref: Para 6.2.17, FDI Policy 2020]
Pharmaceuticals (Brownfield – Existing Units)	74% (Auto); 100% (Govt)	Auto up to 74%	No non-compete obligation applicable beyond 10 years. DCGI approval/transfer of existing licences required. Government approval required above 74%. [Ref: Press Note 3 of 2016; Para 6.2.17, FDI Policy 2020]
Medical Devices	100%	Auto	100% FDI permitted under automatic route in both greenfield and brownfield medical device manufacturing. Subject to CDSCO (Central Drugs Standard Control Organisation) approvals. [Ref: Press Note 3 of 2016; Para 6.2.17, FDI Policy 2020]
Single-Brand Retail Trading (SBRT)	100%	Auto	Mandatory: (i) FDI up to 49% — automatic, no conditions; (ii) FDI beyond 49% — automatic, subject to 30% local sourcing from India (procured from MSMEs/cottage/artisans). Local sourcing relaxation available for cutting-edge/high-tech products for 3 years. Sourcing from

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
			government entities counts. Only one entity permissible for a single brand. [Ref: Press Note 2 of 2018; Para 6.2.10, FDI Policy 2020]
Multi-Brand Retail Trading (MBRT)	51%	Govt	Conditions: (i) minimum investment of USD 100 million, of which 50% in backend infrastructure within 3 years; (ii) at least 30% of procurement from Indian MSMEs; (iii) retail sales only in States/UTs that have given permission; (iv) government has first right of procurement for agricultural products; (v) non-discriminatory access to franchisees and back-end infrastructure available to Indian retailers. [Ref: Press Note 5 of 2012; Para 6.2.10, FDI Policy 2020]
E-Commerce (Marketplace Model)	100%	Auto	The FDI Policy permits FDI only in the marketplace model: the e-commerce entity provides an IT platform to facilitate transactions between buyers and sellers. Conditions: (i) marketplace entity cannot sell directly (no inventory model); (ii) marketplace entity or its group companies cannot hold equity stake in sellers on the

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
			platform; (iii) no seller on marketplace to account for more than 25% of total sales on the platform; (iv) no cashbacks/discounts by marketplace to preferred sellers; (v) logistics services available on equal terms to all sellers. [Ref: Press Note 2 of 2018; Para 6.2.20, FDI Policy 2020]
Civil Aviation – Greenfield Airports	100%	Auto	DGCA/MoCA clearances. Security clearance from MHA. [Ref: Para 6.2.3, FDI Policy 2020]
Civil Aviation – Brownfield Airports	74% (Auto); 100% (Govt)	Auto up to 74%	AAI approval and MoCA/security clearances required. [Ref: Para 6.2.3, FDI Policy 2020]
Civil Aviation – Scheduled Air Transport Services	100% (NRI); 49% (others)	Auto	FDI by NRIs/OCIs up to 100%; FDI by other non-residents capped at 49%. Foreign airlines may invest up to 49% in Indian scheduled airlines. Government approval required for foreign airline investment beyond 49%. Air India exception: government dispensation applicable post-privatisation. [Ref: Press

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
			Note 6 of 2016; Para 6.2.3, FDI Policy 2020]
Construction Development (Townships, Housing)	100%	Auto	FDI in construction development projects (townships, housing, commercial/hotel/resort construction) is permitted at 100% automatic, subject to conditions: (i) minimum area 20,000 sq.m for construction development projects; (ii) minimum capitalisation of USD 5 million within 6 months of first tranche; (iii) repatriation of original investment only after 3 years lock-in from date of each tranche. Exit permitted earlier with Government approval. [Ref: Press Note 2 of 2005 as amended; Para 6.2.16, FDI Policy 2020]
Real Estate – Completed Projects (Sale)	100%	Auto	FDI in completed projects for operating/managing townships, malls/shopping complexes is permitted. Lock-in of 3 years applies to each tranche. No FDI in agricultural land, plantation activities, farmhouses, or real estate business (i.e., trading in land). Transfer of immovable property is governed by

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
			FEMA (Acquisition and Transfer of Immovable Property in India) Regulations, 2018. [Ref: Para 5.1 and 6.2.16, FDI Policy 2020]
Power (generation, transmission, distribution)	100%	Auto	Subject to Electricity Act, 2003 and regulations of the Central Electricity Authority (CEA)/CERC/SERC. Atomic power generation excluded. [Ref: Para 6.2.14, FDI Policy 2020]
Railway Infrastructure (non-security operations)	100%	Auto	FDI permitted in mass rapid transport systems, dedicated freight corridors, rolling stock manufacturing. Subject to MoR licensing and concession agreements. [Ref: Press Note 7 of 2014; Para 6.2.15, FDI Policy 2020]
Education	100%	Auto	FDI in education sector is permitted at 100% automatic. Trusts/NGO-format institutions do not qualify as eligible Indian investee entities; investment must be in a company incorporated under the Companies Act. Applicable degrees must be recognised by UGC/AICTE/MCI as applicable. [Ref: Para 6.2.12, FDI Policy 2020]

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
Food Processing / Food Retail (trading in food products)	100%	Auto	FDI up to 100% is permitted in trading of food products including through e-commerce, subject to: products being manufactured/produced in India; FSSAI compliance. Separate approval not required where entity also engaged in other retail — but care required to avoid MBRT classification. [Ref: Press Note 6 of 2016; Para 6.2.18, FDI Policy 2020]
White Label ATM Operations	100%	Auto	Subject to RBI guidelines on White Label ATMs. [Ref: Para 6.2.9, FDI Policy 2020]
Lottery / Gambling / Betting (including online)	Prohibited	N/A	FDI entirely prohibited. [Ref: Para 5.1, FDI Policy 2020]
Chit Funds / Nidhi Companies	Prohibited	N/A	FDI entirely prohibited. [Ref: Para 5.1, FDI Policy 2020]
Trading in Transferable Development Rights (TDRs)	Prohibited	N/A	FDI entirely prohibited. [Ref: Para 5.1, FDI Policy 2020]
Manufacturing of cigars, cheroots,	Prohibited	N/A	FDI entirely prohibited. [Ref: Para 5.1, FDI Policy 2020]

Sector	FDI Cap	Route	Key Conditionalities and Applicable Press Note
cigarillos, cigarettes (tobacco)			

Note: The above table is selective. Readers should independently verify the current FDI caps and conditionalities applicable to their specific sector against the most recent version of the Consolidated FDI Policy and any subsequent Press Notes. DPIIT issues Press Notes periodically and the FDI Policy is also subject to amendment by way of Gazette notifications amending the NDI Rules.

2.5 Downstream Investment

2.5.1 Framework and Definition of FOCC

When an Indian company that is "foreign owned or controlled" (FOCC)²⁵ makes a further investment into another Indian entity, such investment is termed "downstream investment" and is regulated by Rule 23 of the NDI Rules²⁶. The significance of the downstream investment framework is that it prevents foreign investors from circumventing sectoral caps or route conditions by routing investment through an intermediate Indian holding company.

2.5.2 Conditions Governing Downstream Investment

Downstream investments must comply with the following conditions:

²⁵ An Indian company is "foreign owned or controlled" if: (a) more than 50% of the beneficial equity (direct or indirect) is held by persons resident outside India; or (b) the right to appoint a majority of the directors, or the right to determine the policy of the company, rests with persons resident outside India. The FOCC determination must account for all layers of indirect ownership.

²⁶ Rule 23, Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 – "Downstream Investment." This provision applies to investment made by an Indian entity that is owned or controlled by persons resident outside India.

- Sector Compliance: The downstream investment must comply with the FDI Policy applicable to the sector of the Indian investee company, including obtaining Government approval where required under the Government route.²⁷
- Funding Restriction – No Borrowed Funds: A FOCC may only make downstream investment using own funds (i.e., internal accruals or fresh equity from its shareholders). Downstream investment funded by loans from the parent company or from any Indian bank (whether secured against shares of the parent/investee or otherwise) is expressly prohibited under Rule 23(5) of the NDI Rules.
- Pricing Compliance: The valuation of the downstream investment must comply with the pricing methodology applicable to FDI under Rule 21 of the NDI Rules (i.e., fair value determined by an internationally accepted pricing methodology on an arm's length basis). Undervaluation of downstream investments to channel value to the FOCC's foreign parent is not permitted.
- Reporting: Downstream investments must be reported by the FOCC to the RBI within 30 days of investment in Form DI on the FIRMS portal.²⁸
- Prohibited Sectors: Indirect FDI into sectors where FDI is prohibited remains prohibited irrespective of the investment being characterised as downstream. A FOCC cannot invest in lottery, gambling, tobacco manufacturing, or other prohibited sectors even though the FOCC itself is an Indian company.²⁹
- Multi-Layer Downstream Structures: Where downstream investment occurs through multiple layers (e.g., Foreign Parent → FOCC-1 → FOCC-2 → Operating Company), each intermediate FOCC is required to comply with Rule 23, and each layer of investment must

²⁷ A critical nuance: even if the FOCC's own FDI came in via the automatic route, if the downstream investee is in a Government route sector, Government approval for the downstream investment is separately required. The route applicable to the FOCC's own FDI does not determine the route applicable to downstream investment.

²⁸ Form DI filing is on the FIRMS Portal (firms.rbi.org.in). The FOCC making the downstream investment files the Form DI as the "investor entity." Required documents include: the investee company's shareholding pattern before and after investment, the FOCC's own shareholding structure, and confirmation that investment is from own funds.

²⁹ Para 5.2, Consolidated FDI Policy 2020: "Downstream investment in a sector where foreign investment is prohibited shall not be permitted."

be reported. The overall FDI cap applicable to the operating company is determined by looking through all layers.

2.6 Press Notes: Historical Analysis and Policy Significance

2.6.1 Nature and Legal Status of Press Notes

Press Notes occupy a curious position in the hierarchy of Indian legal instruments, and their status repays careful attention. They are, in form, policy circulars issued by DPIIT (formerly the Department of Industrial Policy and Promotion, DIPP) to amend, supplement, or clarify the Consolidated FDI Policy; they are not, in themselves, statutory instruments enacted under FEMA. Yet they are far from mere administrative exhortation. A Press Note acquires legal force at the moment its substance is carried into the NDI Rules by amendment, so that the operative norm is ultimately the Rule, with the Press Note serving as the policy announcement that precedes and explains it. Pending that incorporation, a Press Note binds as a matter of policy upon which the regulated public is entitled to rely. The courts have given effect to this dual character: in *Vodafone International Holdings BV v. Union of India*, (2012) 6 SCC 613,³⁰ the Supreme Court recognised the binding policy character of DPIIT's communications. Press Notes thus operate as amendments to the policy between the issuance of successive Consolidated FDI Policy editions.

2.6.2 Significant Press Notes – Chronological Analysis

Press Note	Year	Significance and Legal Impact
Press Note 2 of 2000	2000	Established the foundational sectoral FDI limits framework. Introduced the distinction between the automatic route and the Government (then FIPB) route. Laid the basis for sector-specific FDI caps that continue to govern the framework.

³⁰ *Vodafone International Holdings BV v. Union of India*, (2012) 6 SCC 613, per Kapadia CJ: The Supreme Court, while examining the FIPB approval structure, recognised that the DIPP's policy documents (including Press Notes) constitute authoritative enunciations of the FDI policy framework that bind the Government. The decision also settled that offshore transfers of shares in holding companies with Indian underlying assets do not attract Indian capital gains tax under the IT Act as it then stood (subsequently overridden by the Finance Act, 2012 by retrospective amendment).

Press Note	Year	Significance and Legal Impact
Press Note 4 of 2006	2006	Introduced the concept of downstream investment guidelines for investing companies/operating companies with foreign investment. Precursor to the current Rule 23 framework under the NDI Rules. Required that downstream investment comply with the FDI Policy applicable to the investee's sector.
Press Note 2 of 2009	2009	Revised guidelines on calculation of indirect foreign investment. Established the principle that indirect foreign investment is calculated by multiplying the foreign ownership of the intermediate entity by the intermediate entity's investment in the downstream entity. Formed the basis for the "look-through" approach in FOCC determinations.
Press Note 2 of 2010	2010	Introduced foreign investment in LLPs. Permitted FDI in LLPs in sectors where 100% FDI is permitted under the automatic route without conditionalities, subject to Government approval for each specific LLP investment — marking the first time LLPs became eligible FDI vehicles.
Press Note 7 of 2014	2014	Opened the Railway Infrastructure sector to 100% FDI under automatic route for the first time. Permitted FDI in mass rapid transport systems, suburban corridors, dedicated freight corridors, and rolling stock manufacturing, excluding the operation and maintenance of railway tracks/signalling (security-sensitive).
Press Note 3 of 2016	2016	Revised FDI policy for pharmaceutical sector (brownfield). Introduced Government route for FDI beyond 74% in

Press Note	Year	Significance and Legal Impact
		brownfield pharma, distinguishing it from greenfield. Also removed the non-compete restriction for pharmaceutical acquisitions (replaced with a 10-year obligation instead).
Press Note 6 of 2016	2016	Liberalised FDI in civil aviation. Permitted foreign airlines to invest up to 49% in scheduled Indian carriers under automatic route (previously Government route). Also opened food retail (trading in Indian food products manufactured or produced in India) to 100% FDI under automatic route.
Press Note 2 of 2018	2018	Comprehensively revised FDI policy for e-commerce and single brand retail trading. For e-commerce: strengthened conditions restricting inventory-model operations; capped any single vendor's GMV contribution at 25%. For SBRT: removed prior requirement of Government approval for FDI beyond 49%, making SBRT fully automatic subject to 30% sourcing from India above 51%.
Press Note 4 of 2019	2019	Extended the 26% FDI cap (under Government route) previously applicable to print news media to "uploading/streaming of news and current affairs through digital media." Significant for digital publishers and news aggregators with foreign investment or foreign ownership — requires restructuring to avoid breach.
Press Note 3 of 2019	2019	Permitted FDI through share warrants in Indian companies. Established conditions for warrant issuance to non-residents: maximum 18-month exercise period, pricing to be determined

Press Note	Year	Significance and Legal Impact
		upfront, pricing to comply with applicable rules at the time of exercise.
Press Note 3 of 2020 (Land Border Press Note)	2020	Most consequential Press Note of the 2020s. Amended the FDI Policy to require Government approval for all FDI by an entity of a country sharing a land border with India, or where the beneficial owner of such investment is situated in or is a citizen of such a country. Applies to: Bangladesh, Pakistan, China, Nepal, Myanmar, Bhutan, and Afghanistan. The trigger is: (i) direct investment from such country; or (ii) indirect investment where the beneficial owner is from such country — making it applicable to investments through third-country holding structures where the ultimate beneficial owner is Chinese/Pakistani/Bangladeshi etc. [Note: The Land Border restriction applies regardless of the sector, including sectors where 100% FDI is permitted under automatic route for other investors.]
Press Note 4 of 2020	2020	Revised the FDI policy for defence manufacturing. Increased FDI cap from 49% (automatic) / 74% (government) to 74% (automatic) / 100% (government). Introduced modern technology threshold — cases where induction of modern technology or other specified cases may be permitted 100% FDI.
Press Note 2 of 2021	2021	Increased FDI cap in insurance sector from 49% to 74% under automatic route (all categories: life, general, health, reinsurance). Condition introduced: companies with more than

Press Note	Year	Significance and Legal Impact
		49% FDI must have Indian management and control, majority Indian directors, at least one Indian CEO/MD/Principal Officer/CRO.
Press Note 2 of 2024	2024	Opened the space sector to foreign investment for the first time with a differentiated tiered structure: (i) Satellites (manufacturing, operation, data products) — up to 74% automatic, above 74% Government; (ii) Launch Vehicle manufacturing and associated systems/subsystems — up to 49% automatic, above Government route; (iii) Spaceport establishment and operations — up to 49% automatic, above Government route. IN-SPACe (Indian National Space Promotion and Authorisation Centre) clearance mandatory for all sub-sectors. FDI in satellite data products separately permitted up to 100% automatic.

2.6.3 Press Note 3 of 2020 – Detailed Legal Analysis (Land Border Restriction)

Press Note 3 of 2020³¹ amended Para 3.1.1 of the Consolidated FDI Policy to add the following proviso to the automatic route: "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 land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route."

The legal consequences of this restriction are as follows:

- Countries Covered: Bangladesh, China, Pakistan, Nepal, Myanmar, Bhutan, and Afghanistan (all countries sharing a land border with India). The practical focus of

³¹ Press Note 3 of 2020, F. No. 7(5)/2017-FDI Policy, issued by DPIIT on 17 April 2020. The Press Note was issued pursuant to the decision of the Ministry of Finance to amend the FDI Policy to curb opportunistic takeovers/acquisitions of Indian companies in the context of economic distress occasioned by the COVID-19 pandemic. Incorporated into the NDI Rules vide G.S.R. 260(E) dated 22 April 2020.

enforcement is on Chinese-origin investment, given the volume of China-to-India FDI proposals and the geopolitical context of the Press Note.

- **Beneficial Owner Test:** The restriction is triggered not merely by the direct investor's nationality but by the nationality or country of incorporation of the beneficial owner. Accordingly, even a Singapore-incorporated or Mauritius-incorporated entity is caught by Press Note 3 if its beneficial owner is a Chinese citizen or entity. The Companies (Significant Beneficial Owners) Rules, 2018 definition of significant beneficial ownership (10% threshold) is the relevant benchmark for this determination.³²
- **Application to Existing Investments:** Press Note 3 of 2020 applies prospectively to investments made after 22 April 2020. Investments made prior to this date through structures involving entities from land-border countries were not required to be restructured. However, any fresh infusion of capital into an Indian entity—even from an existing land-border country investor—after the date of the Press Note requires Government approval.
- **Structural Implications:** The Press Note has significantly impacted: (i) Indian startups with Chinese venture capital investors (including those invested through Cayman/BVI structures); (ii) joint ventures between Indian and Chinese entities; (iii) acquisition transactions where the acquirer's ultimate parent is Chinese; (iv) ESOP exercises by Chinese-national employees of Indian companies. Parties must conduct a full UBO (Ultimate Beneficial Owner) analysis of any prospective investor to identify any land-border-country nexus before proceeding under the automatic route.
- **Transfer Restrictions:** Press Note 3 of 2020 also applies to secondary transfers of shares in Indian companies. An acquisition of shares by a Chinese investor from an existing shareholder (even under FC-TRS) requires Government approval.

Compliance Alert – Press Note 3 of 2020: All transactions involving Chinese-origin capital (direct or indirect through intermediary holding companies) require mandatory Government approval via FIFP, irrespective of the sector or FDI cap. Counsel must trace the full beneficial ownership chain of every investor before advising on the applicable route. Failure to obtain Government approval constitutes a contravention of FEMA compoundable under Section 15 of FEMA, 1999.

2.7 Pricing Guidelines for FDI Equity Instruments

³² DPIIT Clarification No. DIPP/FDI Clarification dated 21 May 2020: Beneficial ownership for the purposes of Press Note 3 of 2020 is to be determined based on the persons/entities who ultimately own or control the investing entity. The standard applied is consistent with the SBO framework under Section 90 of the Companies Act, 2013, read with the Companies (SBO) Rules, 2018.

Rule 21 of the NDI Rules³³ mandates that:

- Primary Issuance – Unlisted Companies: FDI equity instruments must be issued at a price not less than the fair value determined by an internationally accepted pricing methodology on an arm's length basis, certified by a SEBI-registered Category-I Merchant Banker or a Chartered Accountant (CA) or a practising Cost Accountant (CWA). Accepted methodologies include: Discounted Cash Flow (DCF), Net Asset Value (NAV), Earnings Capitalisation, and Enterprise Value / EBITDA multiples. The valuation must be as of a date not earlier than 6 months prior to the transaction.³⁴
- Primary Issuance – Listed Companies: For listed companies, the issue price to non-residents must comply with SEBI (ICDR) Regulations, 2018³⁵ or the SEBI (SAST) Regulations, 2011, as applicable.
- Secondary Transfer – Resident to Non-Resident: The price must not exceed the fair value (ceiling price) determined on the above basis.³⁶
- Secondary Transfer – Non-Resident to Resident: The price must not be less than the fair value (floor price). This prevents over-pricing of shares transferred by foreign investors to Indian residents, which could constitute disguised profit repatriation.

2.8 Reporting Compliances: FIRMS Portal

2.8.1 Form FC-GPR

³³ Rule 21, Foreign Exchange Management (Non-Debt Instruments) Rules, 2019: "The price of equity instruments shall be determined as per any internationally accepted pricing methodology for valuation on an arm's length basis, certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practising Cost Accountant."

³⁴ RBI Master Direction – Foreign Investment in India, updated para 5(3): Valuation for unlisted companies must be on the basis of internationally accepted pricing methodology. No specific methodology is mandated, providing flexibility. However, DCF is most commonly used for going-concern companies. NAV is preferred for asset-holding companies. The methodology chosen must be documented and justified by the certifying professional.

³⁵ SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (notified on 11 September 2018, replacing the SEBI ICDR Regulations, 2009). For preferential allotments to non-promoters, the price must be the higher of: (i) the average of the weekly high and low of the volume-weighted average price (VWAP) of the shares during the 26 weeks or 2 weeks preceding the relevant date, whichever is higher.

³⁶ The pricing ceiling on resident-to-non-resident transfers ensures that shares in Indian companies are not transferred to foreign acquirers at artificially depressed prices, thereby preventing round-tripping or under-valuation. Violations of the pricing ceiling are treated as contraventions of Rule 21 of the NDI Rules and attract compounding under FEMA.

Upon allotment of equity instruments to a foreign investor (primary issuance), the Indian company must file Form FC-GPR³⁷ on the FIRMS portal (firms.rbi.org.in) within 30 days of the date of allotment. Documents required: (i) Memorandum of Association/LLP Agreement; (ii) FIRC (Foreign Inward Remittance Certificate) and KYC of foreign investor from AD Bank; (iii) CS/CA certificate confirming terms of allotment; (iv) valuation certificate; (v) resolution of Board of Directors authorising allotment.

Late filing beyond the 30-day window attracts a Late Submission Fee (LSF)³⁸ as per the Master Direction. LSF is an administrative charge—payment of LSF does not immunise the entity from scrutiny for substantive violations (e.g., pricing non-compliance, issue to prohibited investors).

2.8.2 Form FC-TRS

Form FC-TRS³⁹ is filed for secondary transfer of equity instruments between a resident and a non-resident within 60 days of the date of receipt/payment of sale consideration. The 60-day period runs from the date of the actual FIRC receipt (for NR-to-R transfers) or the outward remittance date (for R-to-NR transfers). Critical supporting documents: share transfer form (SH-4); valuation certificate from SEBI Merchant Banker/CA; original share certificates; board resolution authorising transfer; and (where the transfer is under Government route) copy of DPIIT approval.

2.8.3 Annual Return on Foreign Liabilities and Assets (FLA Return)

³⁷ Form FC-GPR – Foreign Currency Gross Provisional Return. Filing is mandatory under Regulation 4 of the FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 and the RBI Master Direction – Foreign Investment in India. The filing is made by the Indian company (not the foreign investor) through its registered AD Category-I Bank on the FIRMS portal.

³⁸ Late Submission Fee schedule as per RBI Master Direction – Foreign Investment in India (updated para on LSF): LSF is computed as a percentage of the transaction amount. For FC-GPR: 0.05% per year of the amount involved (minimum INR 5,000; maximum INR 5,00,000) for the first year of default, escalating for subsequent periods. The LSF scheme was introduced as an alternative to compounding for procedural delays, allowing self-remediation without formal compounding proceedings.

³⁹ Form FC-TRS – Foreign Currency Transfer of Shares. Applicable under Regulation 4(5) of the FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 and the RBI Master Direction – Foreign Investment in India. The filing obligation in case of transfer from resident to non-resident is on the resident transferor; in case of transfer from non-resident to resident, the filing obligation is on the resident transferee.

Every Indian company (and LLP) that has received FDI or made ODI in any previous year must file the FLA Return⁴⁰ with the RBI's FIRMS portal by 15 July each year. The FLA Return captures the stock position as of 31 March of the relevant year — both liabilities (inbound FDI received) and assets (outbound ODI made). Amounts must be reported in both INR and USD. Revisions to previously filed FLA Returns are permitted up to the end of September of the same year.

2.8.4 Complete Reporting Forms Matrix

Form	Event Trigger	Key Content	Deadline
FC-GPR	Primary allotment of equity to non-resident	Allotment details, FIRC, KYC, valuation certificate, Board resolution	30 days of allotment
FC-TRS	Secondary transfer: resident ↔ non-resident	Transfer deed (SH-4), valuation cert, FIRC/outward remittance proof	60 days of consideration receipt/payment
Form DI	Downstream investment by FOCC into Indian entity	Investee company details, FOCC shareholding structure, own-funds confirmation	30 days of investment
Form InVi	Investment by non-resident in Investment Vehicles (AIF/REIT/InvIT)	Vehicle registration details, unit allotment details, investor KYC	30 days of allotment

⁴⁰ The FLA Return is mandated by Section 6(5) of FEMA, 1999 read with the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. The RBI issues an Annual Circular for FLA Return filing. Non-filing by the due date constitutes a contravention of FEMA, which is compoundable.

Form	Event Trigger	Key Content	Deadline
FLA Return	Annual – all entities that received FDI or made ODI	Stock of FDI liabilities and ODI assets as of 31 March; category-wise breakup	15 July annually
FC-GPR (B)	ESOP/sweat equity allotment to non-resident employees	ESOP scheme details, grant price, allotment details	30 days of allotment
Form CN	Restructuring of share capital (bonus, rights, conversion)	Nature of corporate action, pre/post shareholding, valuation (for conversions)	30 days of corporate action
Form ODI	Overseas Direct Investment by resident entity	Investee foreign entity details, nature of investment, total commitment	30 days of transaction
Form APR	Annual Performance Report for ODI investees	Audited accounts of foreign investee, UIN-wise breakup	31 December annually

2.9 Overseas Direct Investment (ODI) by Indian Entities

2.9.1 Statutory Framework: OI Rules, 2022

The outbound investment regime underwent a comprehensive overhaul effective 22 August 2022, when the Foreign Exchange Management (Overseas Investment) Rules, 2022 (OI Rules)⁴¹ replaced the earlier regime under the erstwhile FEMA (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the ODI Master Direction of 2016. The new regime rationalised and substantially liberalised outbound investment.

2.9.2 Definitions: ODI vs OPI

The OI Rules introduced a clear definitional bifurcation between:

- Overseas Direct Investment (ODI): Investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription to 10% or more of the paid-up equity of a listed foreign entity, or investment that results in the Indian entity having "control" over the foreign entity.⁴²
- Overseas Portfolio Investment (OPI): Investment in listed equity securities of a foreign entity below the 10% threshold (and without control), or investment in debt securities/mutual fund units of foreign entities. OPI is governed under the OI Regulations, 2022 separately from ODI.

2.9.3 Eligible Investors for ODI

The following persons are eligible to make ODI under the OI Rules:

- Indian companies incorporated under the Companies Act, 2013, including those that are subsidiaries of foreign companies (i.e., FOCCs) — provided the ODI is not in a sector prohibited for ODI.
- LLPs registered under the LLP Act, 2008.

⁴¹ OI Rules notified vide G.S.R. 633(E) dated 22 August 2022 under Section 47 of FEMA, 1999. Simultaneously, the RBI issued the Foreign Exchange Management (Overseas Investment) Regulations, 2022 (vide FEMA Notification No. 400/2022-RB) and the RBI Master Direction – Overseas Investment, 2022 (RBI/2022-23/90, A.P. (DIR Series) Circular No. 16 dated 22 August 2022).

⁴² Rule 2(k), OI Rules, 2022: "Overseas Direct Investment means investment by way of acquisition of equity capital or subscription to Memorandum of Association of a foreign entity or investment in a Joint Venture or Wholly Owned Subsidiary abroad." Control is defined as the right to appoint majority of directors or to control the management or policy decisions of the entity.

- Resident individuals — under the Liberalised Remittance Scheme (LRS), up to USD 250,000 per financial year per individual, which may be used for ODI (subject to conditions under the OI Rules applicable to individual investors).⁴³
- Registered Trusts and Societies (with permission from RBI in certain cases).

2.9.4 General Permission and the Automatic Route for ODI

Under the OI Rules, Indian entities may make ODI under general permission (automatic route) subject to:

- Financial Capacity Limit: The total financial commitment (sum of all ODI tranches plus guarantees/loans extended to the foreign entity) must not exceed 400% of the Indian entity's net worth as per the last audited balance sheet.⁴⁴
- Eligible Jurisdictions: ODI may be made in any jurisdiction that is not in the FATF Black List or Grey List (i.e., countries under FATF's "Increased Monitoring" or "Call for Action" categories). Investment in entities based in FATF-blacklisted jurisdictions requires prior RBI approval.⁴⁵
- Core Business Connectivity: Under the OI Rules, 2022, the earlier requirement of "real and substantial business activities" in the foreign entity has been replaced by a requirement that the foreign entity be engaged in bona fide business activity. The foreign entity need not be in the same business as the Indian investor entity (unlike under the pre-2022 regime), substantially liberalising the scope of permissible ODI.

⁴³ The LRS limit of USD 250,000 per financial year was last revised on 26 May 2015 (A.P. (DIR Series) Circular No. 106 dated 26 May 2015). Under the OI Rules, 2022, resident individuals making ODI must satisfy conditions including: (i) the investment must be in a foreign entity engaged in a bona fide business activity; (ii) no round-tripping; (iii) prior personal tax compliance (no outstanding tax demands etc.).

⁴⁴ Rule 19(1), OI Rules, 2022: The 400% of net worth ceiling applies to the aggregate financial commitment (equity + loan + guarantee) by the resident entity in all foreign entities taken together. Net worth for this purpose means paid-up capital plus free reserves as per the last audited balance sheet.

⁴⁵ Rule 19(4), OI Rules, 2022, and the Master Direction on Overseas Investment (para 7): ODI is prohibited in entities based in jurisdictions that do not comply with FATF Standards (as identified from time to time). Countries currently under FATF increased monitoring or subject to a call for action cannot be the location of ODI under the general permission route.

- Prohibited Structures: ODI into foreign entities engaged in activities prohibited for FDI in India (e.g., real estate [subject to exceptions], gambling, etc.) is not permitted. ODI into "step-down subsidiaries" of the foreign investee company is permissible without separate RBI approval (unlike the pre-2022 regime which required case-by-case approval for each step-down subsidiary).

2.9.5 Approval Route for ODI

Prior RBI approval is required for:

- ODI exceeding 400% of net worth.
- ODI in entities in FATF-blacklisted or grey-listed jurisdictions.
- ODI by Indian entities that are under investigation by the RBI, ED, or tax authorities.
- Certain restructuring transactions (merger, demerger, buyback) involving the foreign investee entity, where the Indian entity's position is materially altered.
- ODI in entities with Pakistani or certain other restricted-jurisdiction beneficial owners, which require both DPIIT and RBI scrutiny.

2.9.6 Reporting Obligations for ODI

ODI reporting obligations under the OI Rules:

Form / Return	Event	Deadline
Form ODI Part I	Initial ODI (each tranche of investment / loan / guarantee)	Within 30 days of investment/remittance/issue of guarantee through AD Bank on FIRMS portal
Form ODI Part II	Subsequent remittances / changes in ODI structure	30 days of event

Form / Return	Event	Deadline
Annual Performance Report (APR)	Annual reporting of performance of foreign investee entity (audited accounts, dividend received, step-down subsidiaries)	31 December of each year (or 6 months from the close of the investee's financial year, whichever is earlier)
FLA Return	Annual stock of assets (ODI) and liabilities (FDI received)	15 July annually
Form ODI Disinvestment	On exit from ODI (sale, liquidation, buyback)	Within 30 days of receipt of disinvestment proceeds through AD Bank on FIRMS portal

2.9.7 Guarantees and Loans to Foreign Investees

Under the OI Rules, Indian entities may extend loans and guarantees to foreign entities in which they hold ODI. These are counted as part of the "financial commitment" for the 400% net worth ceiling. Key points:

- Loans to WOS/JV: permitted under general permission provided the Indian entity holds ODI in the foreign entity and the loan is interest-bearing (minimum interest: prevailing Libor/SOFR + applicable credit spread or as agreed on arm's length basis).
- Guarantees: corporate guarantees, letters of comfort, or performance guarantees given by Indian parents to foreign lenders/counterparties of the ODI entity are counted as financial commitment and reported in Form ODI.
- Guarantee Invocation: If a guarantee is invoked, the Indian entity must remit the guaranteed amount and the invoked guarantee is treated as an additional financial commitment (and reclassified as a loan/equity contribution, as appropriate).

2.10 FEMA Contraventions and Compounding

Contraventions of the NDI Rules, OI Rules, and associated FEMA regulations are governed by Section 13 of FEMA, 1999⁴⁶ (civil penalty) and are compoundable under Section 15 of FEMA, 1999 read with the Foreign Exchange Management (Compounding Proceedings) Rules, 2000. The compounding authority is the Reserve Bank of India (RBI) for contraventions under FEMA; and the Enforcement Directorate (ED) exercises prosecution powers under Section 13 and also has jurisdiction to adjudicate where the contravention has PMLA overlay (proceeds of crime). Critically, willful contraventions and those involving deliberate circumvention of exchange control laws are non-compoundable.

Common FEMA contraventions in FDI/ODI transactions include:

Contravention Type	Section / Rule	Typical Compounding Outcome
Failure to file FC-GPR within 30 days of allotment	Rule 4, NDI Reporting Regulations	LSF applicable; compounding if wilful or repeated
Issue of equity instruments at price lower than fair value to non-resident	Rule 21, NDI Rules	Penalty up to 3x the amount undervalued; compounding application required
Receipt of FDI from a land-border country entity without Government approval (Press Note 3 of 2020)	Para 3.1.1, FDI Policy; NDI Rules	Material contravention; compounding with significant penalty; potential ED scrutiny
FDI in prohibited sector	Para 5.1, FDI Policy; NDI Rules	Non-compoundable if wilful; repatriation of investment

⁴⁶ Section 13, FEMA, 1999: "If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act... he shall... be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable."



Contravention Type	Section / Rule	Typical Compounding Outcome
		required; criminal prosecution possible
Failure to file FLA Return by 15 July	Section 6(5), FEMA	Show cause notice; penalty on compounding
Downstream investment using borrowed funds	Rule 23(5), NDI Rules	Penalty; restructuring required; compounding application
ODI exceeding 400% of net worth without RBI approval	Rule 19, OI Rules	Compounding with penalty; regularisation of excess through RBI approval
Failure to file APR within deadline (ODI)	Master Direction – OI, 2022	Penalty on compounding; Late Submission Fee applicable

MODULE 3: REGULATORY & CORPORATE GOVERNANCE COMPLIANCES

3.1 Post-Incorporation Mandates

Incorporation is the beginning of a company's compliance life, not its conclusion. The Companies Act, 2013, together with the Companies (Incorporation) Rules, 2014 and the subordinate rules framed thereunder, imposes upon the newly registered company a sequence of mandatory obligations, each tied to a prescribed period running from incorporation, allotment, or the close of the financial year. The foreign promoter unaccustomed to the Indian regime should appreciate at the outset that these are not formalities to be attended to at leisure: default carries graduated consequences, from monetary penalty to the disqualification of directors under Section 164 and, in the extreme, the striking of the company's name from the register. The obligations treated in this Module fall into two broad classes—those arising once, in the period immediately following incorporation, and those recurring for the life of the company.

3.1.1 First Board Meeting

Section 173(1) of the Companies Act, 2013 mandates that the first board meeting of a newly incorporated company must be held within 30 days of the date of its incorporation⁴⁷. The agenda for the first board meeting typically covers: (i) noting the Certificate of Incorporation; (ii) adoption of the common seal (where maintained); (iii) noting the Memorandum and Articles of Association; (iv) appointment of the first auditors under Section 139(6); (v) appointment of the Company Secretary (if applicable under Section 203); (vi) opening of bank accounts; (vii) noting the registered office address; (viii) allotment of subscriber shares; and (ix) authorisation of signatories for various purposes. Board meetings are conducted in accordance with Secretarial Standard-1 (SS-1) issued by the Institute of Company Secretaries of India (ICSI), which has been mandated under Section 118(10) of the Companies Act, 2013⁴⁸.

3.1.2 Appointment of Statutory Auditors

⁴⁷ Companies Act 2013, s 173(1).

⁴⁸ Companies Act 2013, s 118(10); Secretarial Standard on Meetings of the Board of Directors (SS-1), Institute of Company Secretaries of India.

Section 139(6) of the Companies Act, 2013 requires the first auditor of a company to be appointed by the Board of Directors within 30 days of the date of registration⁴⁹ of the company. If the Board fails to do so, the members must appoint the first auditor within 90 days at an extraordinary general meeting. The first auditor holds office until the conclusion of the first annual general meeting. From the first AGM onwards, the company must appoint an auditor by means of an ordinary resolution. Auditors are subject to the mandatory rotation requirements under Section 139(2) (applicable to public companies and certain private companies), which prohibit the appointment of the same auditor or audit firm for more than two consecutive terms of five years each. The appointment must be filed with the RoC in Form ADT-1 within 15 days of the conclusion of the AGM.

3.1.3 Issuance of Share Certificates

Section 56 of the Companies Act, 2013 read with Rule 5 of the Companies (Share Capital and Debentures) Rules, 2014 requires every company to deliver share certificates to subscribers within 60 days of incorporation⁵⁰ and to allottees within 60 days of allotment. The share certificate must bear the company's common seal (where maintained), be signed by two directors and the Company Secretary (where applicable), and carry the prescribed particulars including the certificate number, distinctive share numbers, name of the allottee, and the consideration paid.

3.1.4 Declaration of Commencement of Business – Section 10A

Section 10A of the Companies Act, 2013 (inserted by the Companies (Amendment) Ordinance, 2018, subsequently enacted by the Companies (Amendment) Act, 2019) prohibits a company incorporated on or after 2 November 2018 from commencing business⁵¹ or exercising any borrowing powers unless: (i) a declaration is filed by a director in Form INC-20A with the Registrar within 180 days of the date of incorporation, confirming that every subscriber to the Memorandum has paid the value of the shares agreed to be taken by them; and (ii) the company has filed with the Registrar a verification of its registered office address in Form INC-22. Failure

⁴⁹ Companies Act 2013, s 139(6).

⁵⁰ Companies Act 2013, s 56, read with the Companies (Share Capital and Debentures) Rules 2014, r 5.

⁵¹ Companies Act 2013, s 10A, inserted by the Companies (Amendment) Ordinance 2018 and re-enacted by the Companies (Amendment) Act 2019.

to file Form INC-20A within 180 days renders the company liable to be struck off the register under Section 248 of the Companies Act, 2013. This compliance is among the most commonly overlooked post-incorporation obligations.

Compliance Alert: Form INC-20A (Commencement of Business) must be filed within 180 days of incorporation. Failure exposes the company to strike-off proceedings under Section 248. This filing requires confirmation from all subscribers that their subscription monies have been received in the company's bank account.

3.2 Ongoing Regulatory Compliances

3.2.1 Annual General Meeting and Financial Statements

Every company (other than a one-person company) must hold an Annual General Meeting (AGM) within six months from the close of each financial year, and not more than fifteen months after the last AGM (Section 96, Companies Act, 2013)⁵². The AGM must be held at the registered office of the company or within the city/town where the registered office is located, subject to certain exceptions. AGMs are conducted in accordance with Secretarial Standard-2 (SS-2) (governing general meetings) issued by the ICSI. The financial statements, board's report, and auditor's report are laid before members at the AGM.

3.2.2 Annual Filing: Form AOC-4 and Form MGT-7

The following annual returns must be filed with the Registrar of Companies:

- Form AOC-4 (Financial Statements): Filed pursuant to Section 137 of the Companies Act, 2013 read with Companies (Accounts) Rules, 2014⁵³. Financial statements (Balance Sheet, Statement of Profit & Loss, Cash Flow Statement, and Notes) along with the Board's Report and Auditor's Report must be filed within 30 days of the conclusion of the AGM (or 30 days of the date of adoption in the case of subsidiary companies incorporated outside India—Section 137(2)). One-Person Companies and Small Companies file in Form AOC-

⁵² Companies Act 2013, s 96.

⁵³ Companies Act 2013, s 137, read with the Companies (Accounts) Rules 2014.

4 (XBRL/non-XBRL) depending on their category. Listed companies and companies above prescribed thresholds must file XBRL-tagged financial statements.

- Form MGT-7 / MGT-7A (Annual Return): Filed pursuant to Section 92 of the Companies Act, 2013⁵⁴. The Annual Return contains information as of the close of the financial year on: share capital and debentures; shareholders and debenture holders; promoters, directors, and key managerial personnel; penalties and proceedings; meetings; changes in directorship. Small companies and OPCs file Form MGT-7A (abridged form). The Annual Return must be filed within 60 days of the conclusion of the AGM. The Annual Return of public companies is required to be certified by a Company Secretary in Practice in Form MGT-8.

3.2.3 Board Meetings Frequency and Secretarial Standards

Section 173(1) of the Companies Act, 2013 requires every company to hold a minimum of four board meetings in every calendar year with a gap of not more than 120 days between two consecutive meetings. The conduct of board meetings must comply with Secretarial Standard-1 (SS-1), which prescribes requirements as to notice (not less than seven days in writing, with agenda and accompanying documents), quorum (one-third of total strength or two directors, whichever is higher), recording of minutes (within 30 days, signed within 30 days of the next meeting), and maintenance of attendance register.

3.2.4 Maintenance of Statutory Registers

Every company must maintain a comprehensive set of statutory registers at its registered office or such other place as approved by the Board, including: Register of Members (MGT-1), Register of Directors and KMP (MBP-1, DIR-12 changes), Register of Charges (CHG-7), Register of Loans/Investments/Guarantees (MBP-2), Register of Contracts with Related Parties (MBP-4), Register of Share Transfers, Register of Debenture Holders, Register of Fixed Assets, Minutes Books of Board and General Meetings. Improper maintenance of registers constitutes an offence under the Companies Act, 2013.

⁵⁴ Companies Act 2013, s 92.

3.3 Significant Beneficial Ownership (SBO) Disclosure

3.3.1 Statutory Framework

Section 90 of the Companies Act, 2013, read with the Companies (Significant Beneficial Owners) Rules, 2018 (as amended in 2019), establishes a comprehensive framework for identification and disclosure of significant beneficial owners⁵⁵. The SBO framework is derived from India's obligations under the Financial Action Task Force (FATF) Recommendations on transparency and beneficial ownership of legal persons.

3.3.2 Definition of Significant Beneficial Owner

An individual is a "Significant Beneficial Owner (SBO)" if they hold, directly or indirectly (alone or together with other persons), significant beneficial interest in a reporting company. "Significant beneficial interest" means holding, directly or indirectly, not less than 10% of the shares or voting rights or right to receive or participate in the dividend or any other distribution in a reporting company. The SBO threshold was reduced from 25% to 10% by the 2019 Amendment Rules.

3.3.3 Disclosure Process

The SBO disclosure process operates as follows:

- **Form BEN-4:** The reporting company sends a notice in Form BEN-4 to any member (whether a natural person, body corporate, or otherwise) who holds not less than 10% of the shares/voting rights/distribution rights, requesting disclosure of the identity of the SBO within 30 days.
- **Form BEN-1:** Every individual who is an SBO must file a declaration in Form BEN-1 with the reporting company within 30 days of acquiring SBO status (or within 30 days of becoming aware of such status), and must also file within 30 days of any change in SBO status. Form BEN-1 requires details of: identity of the SBO; nature of the interest held (direct/indirect); the chain of ownership through which beneficial interest is held; and

⁵⁵ Companies Act 2013, s 90, read with the Companies (Significant Beneficial Owners) Rules 2018 (as amended 2019).

whether the individual holds directly or acts through a trust/partnership/body corporate/pool of persons.

- **Form BEN-2:** The reporting company is required to file a return with the Registrar of Companies in Form BEN-2 within 30 days of receiving Form BEN-1 from the SBO. The BEN-2 return must be updated upon every change in SBO particulars.
- **Register of Significant Beneficial Owners:** The company must maintain a Register of SBOs in Form BEN-3 at its registered office.

Non-compliance by the SBO with the declaration obligation attracts imprisonment of up to one year or fine up to INR 2 lakh or both (Section 90(10)). Non-compliance by the company attracts fine up to INR 10 lakh plus INR 1,000 per day of continuing offence (Section 90(11)). The RoC may also apply to the NCLT to restrict the shares of a non-compliant member (Section 90(9)).

3.4 Related Party Transactions (RPT)

Section 188 of the Companies Act, 2013 read with the Companies (Meetings of Board and its Powers) Rules, 2014 regulates transactions between a company and its related parties⁵⁶. A "related party" is defined broadly under Section 2(76) of the Companies Act, 2013 to include directors, their relatives, KMPs, entities in which directors have significant influence or control, and holding/subsidiary/associate companies. All RPTs must be: (i) at arm's length; (ii) in the ordinary course of business; and (iii) approved by the Audit Committee under Section 177 (for companies that must constitute an Audit Committee). Transactions exceeding prescribed thresholds require prior approval by an ordinary resolution of shareholders, with related parties abstaining from voting. The disclosure and approval requirements are more stringent for listed companies under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations), which require shareholder approval by way of resolution with majority of the minority (MoM) shareholders for material RPTs.

3.5 Annual Compliance Calendar at a Glance

⁵⁶ Companies Act 2013, s 188, read with the Companies (Meetings of Board and its Powers) Rules 2014; 'related party' defined in s 2(76).

The recurring obligations treated in this Module are consolidated below into a single annual cycle. The dates assume a financial year ending 31 March, the statutory norm in India; an enterprise adopting a different accounting reference date should adjust the deadlines that run from the close of the financial year accordingly. Dates expressed as a period (for example, "within 30 days") run from the triggering event rather than from a fixed calendar date.

Period / Due Date	Compliance Obligation	Form	Legal Basis
Within 30 days of incorporation	First Board meeting; appointment of first statutory auditor	ADT-1	Companies Act 2013, ss 173, 139(6)
Within 60 days of incorporation	Issuance of share certificates to subscribers	—	Companies Act 2013, s 56
Within 180 days of incorporation	Declaration of commencement of business	INC-20A	Companies Act 2013, s 10A
By 15 July (annually)	Annual Return on Foreign Liabilities and Assets	FLA Return	FEMA; FIRMS portal
By 30 September (annually)	Annual General Meeting (first AGM within 9 months of first FY-end;	—	Companies Act 2013, s 96



Period / Due Date	Compliance Obligation	Form	Legal Basis
	thereafter within 6 months of FY-end)		
By 30 September (annually)	Annual Activity Certificate (BO/LO/PO, where applicable)	AAC	FEMA BO/LO/PO Regulations 2016
Within 30 days of AGM	Filing of audited financial statements	AOC-4	Companies Act 2013, s 137
Within 60 days of AGM	Filing of annual return	MGT-7	Companies Act 2013, s 92
By 31 October (annually)	Transfer pricing accountant's report (international transactions)	Form 3CEB	Income Tax Act 1961, s 92E
By 31 October / 30 November	Corporate income-tax return	ITR-6	Income Tax Act 1961, s 139
Monthly / Quarterly / Annually	GST returns (outward supplies, summary, annual)	GSTR-1 / 3B / 9	CGST Act 2017



Period / Due Date	Compliance Obligation	Form	Legal Basis
Monthly (by the 15th)	Provident fund and ESI contributions	ECR	EPF Act 1952; ESI Act 1948
Annually	POSH annual report to the District Officer	—	POSH Act 2013, s 21

MODULE 4: TAX FRAMEWORK – DIRECT & INDIRECT TAXATION

4.1 Corporate Income Tax (CIT)

4.1.1 Statutory Basis

Corporate income tax in India is levied under the Income Tax Act, 1961 ("the IT Act"), the charging provisions of which are given annual effect by the Finance Act, whose First Schedule fixes the rates for the relevant assessment year (the Finance Act for FY 2025-26 / AY 2026-27 being the most recently applicable as of 2026). This bifurcation—a permanent charging statute animated by an annual rate-fixing enactment—means that the rate of tax is, in principle, a matter revisited by Parliament each year, and the foreign investor modelling after-tax returns must take care to apply the rate for the correct assessment year rather than assuming continuity. Tax is levied on the "total income" of a company, computed under the five heads of income specified in Section 14 of the IT Act⁵⁷: (a) Salaries; (b) Income from House Property; (c) Profits and Gains of Business or Profession; (d) Capital Gains; and (e) Income from Other Sources. Corporate entities are taxed on their global income if resident in India, and on India-sourced income if non-resident.

4.1.2 Tax Rates: Domestic vs Foreign Companies

Category	Base Tax Rate	Surcharge	Effective Rate (approx.)
Domestic company (general)	30%	7% (income > INR 1Cr); 12% (income > INR 10Cr)	~34.94% (12% surcharge)
Domestic company – Section 115BAA (new regime, no exemptions)	22%	10%	~25.17%

⁵⁷ Income Tax Act 1961, s 14.

Category	Base Tax Rate	Surcharge	Effective Rate (approx.)
Domestic company – Section 115BAB (new manufacturing, set up after 1 Oct 2019)	15%	10%	~17.01%
Foreign company (general)	40%	2% (income > INR 1Cr); 5% (income > INR 10Cr)	~43.68% (5% surcharge)
Foreign company – Royalties/FTS (as per treaty)	Per DTAA rate or 10%/15% (domestic law)	As above	Treaty rate or domestic rate, whichever is beneficial
Minimum Alternate Tax (MAT) – domestic companies under general rate	15% of book profits	As per surcharge slab	~17.47%

All tax rates are subject to a Health and Education Cess of 4% on the aggregate of income tax and surcharge. A domestic company may opt for the concessional tax rate under Section 115BAA (22% + surcharge + cess) subject to foregoing specified deductions and exemptions (including under Sections 10A, 10AA, 80G, 80IA, 80IB, etc.). This election, once made, is irrevocable. The Section 115BAB rate of 15% (for new manufacturing companies) is available subject to: incorporation on or after 1 October 2019; commencement of manufacture on or before 31 March 2024 (extended); no prior usage of imported or second-hand plant & machinery beyond prescribed limits; and non-use of any other deduction/exemption.

4.1.3 Minimum Alternate Tax (MAT)

Section 115JB of the IT Act provides for the Minimum Alternate Tax⁵⁸, which operates as a floor tax on book profits. Where the normal income tax payable by a company on its total income is less than 15% of its book profits, the company must pay MAT at 15% (plus applicable surcharge and cess) on such book profits. "Book profits" are computed by adjusting the net profit as per the P&L account prepared under Schedule III of the Companies Act, 2013 for the prescribed additions and deductions specified in Section 115JB(2). Companies opting for the Section 115BAA / 115BAB regime are exempt from MAT under Section 115JB(5A). MAT credit (the excess of MAT paid over normal tax) can be carried forward and set off against normal tax in subsequent years (within fifteen years) under Section 115JAA. Foreign companies are subject to MAT only if they have a Permanent Establishment or source of income in India.

4.2 Transfer Pricing

4.2.1 Arm's Length Principle and Covered Transactions

Sections 92 to 92F of the IT Act, read with the Income Tax Rules, 1962 (Rules 10A to 10THD), govern transfer pricing in India⁵⁹. Section 92 mandates that any income arising from an "international transaction" between "associated enterprises" (AEs) shall be computed having regard to the "arm's length price (ALP)". "Associated enterprise" is defined in Section 92A⁶⁰ to include any two enterprises where one participates, directly or indirectly, in the management, control, or capital of the other (with a 26% shareholding threshold as the most commonly triggered criterion). "International transaction" is defined broadly in Section 92B⁶¹ to include purchase/sale of goods, services, IP, lending/borrowing, cost contribution, business restructuring, and any transaction that has a bearing on profits, income, losses, or assets of the enterprise.

4.2.2 Prescribed Methods

⁵⁸ Income Tax Act 1961, s 115JB; companies opting into the s 115BAA/115BAB regimes are excluded by s 115JB(5A).

⁵⁹ Income Tax Act 1961, ss 92-92F, read with the Income Tax Rules 1962, rr 10A-10THD.

⁶⁰ Income Tax Act 1961, s 92A.

⁶¹ Income Tax Act 1961, s 92B.

Rule 10B of the Income Tax Rules, 1962 prescribes the following methods⁶² for determining the ALP:

Method	Description
Comparable Uncontrolled Price (CUP)	Price charged in comparable uncontrolled transaction
Resale Price Method (RPM)	Resale price less gross margin earned by comparable distributor
Cost Plus Method (CPM)	Costs plus mark-up earned in comparable transactions
Profit Split Method (PSM)	Combined profits split between AEs on basis of contribution
Transactional Net Margin Method (TNMM)	Net profit margin relative to appropriate base (sales/costs/assets)
Other method (Rule 10AB)	Any other method that takes into account the price charged / paid in an unrelated transaction; used where prescribed methods cannot be reasonably applied

4.2.3 Documentation Requirements

Section 92D of the IT Act read with Rule 10D mandates that every person entering into an international transaction (where the aggregate value exceeds INR 1 crore) must maintain comprehensive contemporaneous documentation⁶³. The required documentation includes: (i) description of the entity and its group structure; (ii) description of the international transactions; (iii) description of the functions performed, assets employed, and risks assumed (FAR analysis); (iv) record of the economic and market analysis; (v) description of the method selected and reasons

⁶² Income Tax Rules 1962, r 10B.

⁶³ Income Tax Act 1961, s 92D, read with the Income Tax Rules 1962, r 10D; the accountant's report is furnished in Form 3CEB under s 92E.

for selection; (vi) comparable data used; (vii) adjustments made. The documentation must be maintained by the due date of filing the income tax return and furnished to the tax authority within 30 days of a request. A Chartered Accountant's report in Form 3CEB must be filed along with the income tax return for any assessee with international transactions.

4.2.4 Safe Harbour Rules

Rules 10TA to 10THD of the Income Tax Rules, 1962 provide Safe Harbour (SH) provisions allowing eligible taxpayers to declare their international transactions at prices that will not be subject to scrutiny by the tax authorities, provided the operating margin falls within the prescribed SH ranges. Key SH categories include: software development services (operating profit/operating cost of 17–18.75% depending on transaction value); IT-enabled services (17–18%); contract R&D services (24–25%); knowledge process outsourcing services (18–24%); manufacture and export of core auto components (12%); intra-group loans in INR (base rate + 150 bps). The SH Rules provide valuable certainty for routine, low-complexity transactions.

4.2.5 Advance Pricing Agreements (APAs)

Section 92CC and 92CD of the IT Act provide for Advance Pricing Agreements (APAs)⁶⁴, which are agreements between a taxpayer and the Central Board of Direct Taxes (CBDT) determining the ALP (or the manner of its determination) for international transactions proposed to be undertaken by the taxpayer. APAs are available for a prospective period of up to five future years (Section 92CC(3)) and may also provide a rollback covering the four immediately preceding financial years (Section 92CD). APAs may be unilateral (between taxpayer and CBDT), bilateral (involving competent authority of the other country under the DTAA), or multilateral. The CBDT APA Programme, administered by the Office of the Competent Authority and International Taxation (CAICT) in the CBDT, has significantly grown since its launch in 2012 and provides meaningful transfer pricing certainty for MNC groups.

4.3 Goods and Services Tax (GST)

4.3.1 Constitutional and Statutory Basis

⁶⁴ Income Tax Act 1961, ss 92CC-92CD.

The Goods and Services Tax was introduced in India with effect from 1 July 2017 pursuant to the Constitution (One Hundred and First Amendment) Act, 2016, which inserted Articles 246A, 269A, and 279A into the Constitution of India⁶⁵. The GST structure in India is dual — comprising:

- Central GST (CGST): Levied by the Central Government under the Central Goods and Services Tax Act, 2017 (CGST Act) on intra-state supply of goods and services.
- State GST (SGST): Levied by each State Government under the respective State GST Act on intra-state supply (mirroring the CGST Act in structure).
- Integrated GST (IGST): Levied by the Central Government under the Integrated Goods and Services Tax Act, 2017 (IGST Act) on inter-state supply of goods and services (including imports).
- Union Territory GST (UTGST): Levied in Union Territories without a legislature.

4.3.2 Registration Thresholds

A person is required to obtain GST registration if their aggregate turnover in a financial year exceeds: (i) INR 40 lakh (for suppliers of goods in most States); (ii) INR 20 lakh (for suppliers of services and certain special category states). However, irrespective of turnover, mandatory registration is required in cases including: inter-state taxable supply; persons required to deduct tax at source (TDS) under Section 51 of the CGST Act; e-commerce operators; non-resident taxable persons; suppliers making supplies through an e-commerce operator; and input service distributors (Section 24 of the CGST Act)⁶⁶. Foreign entities supplying goods or services to India (including digital services to unregistered persons) must register as Non-Resident Taxable Persons or comply through the Online Information and Database Access or Retrieval (OIDAR) mechanism under Section 14 of the IGST Act, 2017.

4.3.3 Input Tax Credit (ITC)

Section 16 of the CGST Act entitles a registered person to claim ITC⁶⁷ on GST paid on inward supplies used or intended to be used in the course or furtherance of business. ITC is available

⁶⁵ Constitution (One Hundred and First Amendment) Act 2016, inserting arts 246A, 269A and 279A.

⁶⁶ Central Goods and Services Tax Act 2017, s 24.

⁶⁷ Central Goods and Services Tax Act 2017, s 16; restrictions on ITC in s 17(5).

subject to conditions including: the supplier having filed their GSTR-1 (which auto-populates GSTR-2B); the goods/services having been received; the tax having been actually paid to the Government; and the invoice / debit note having been retained. ITC is not available on: motor vehicles (subject to exceptions); food and beverages; club memberships; travel benefits extended to employees (except for services falling under Schedule III to the CGST Act); and works contract services for immovable property (Section 17(5), CGST Act). The Finance Act (No. 2), 2024 and subsequent amendments have introduced further conditions and restrictions on ITC availability, including a requirement to pay the supplier within 180 days failing which ITC must be reversed.

4.3.4 GST Returns and Compliance Calendar

Key GST returns under the CGST Act include:

Return	Content	Who Files	Due Date
GSTR-1	Outward supplies (sales)	Regular taxpayers	11th of following month (quarterly if opted QRMP)
GSTR-3B	Summary of outward/inward supplies; tax payment	Regular taxpayers	20th of following month (22nd/24th for smaller states)
GSTR-9	Annual return (reconciliation)	Regular taxpayers	31 December of the following FY
GSTR-9C	Reconciliation statement (self-certified for turnover > INR 5Cr)	Taxpayers with turnover > INR 5 crore	31 December of the following FY
GSTR-5	Non-resident taxable persons	NRTP	20th of following month / within 7

Return	Content	Who Files	Due Date
			days of expiry of registration
GSTR-5A	OIDAR service providers	OIDAR suppliers	20th of following month

4.4 Customs Duty

Import and export of goods in India is regulated under the Customs Act, 1962 and the Customs Tariff Act, 1975⁶⁸. Customs duty on imports consists of: (i) Basic Customs Duty (BCD) – tariff rate under the Customs Tariff Act; (ii) Social Welfare Surcharge (SWS) – 10% on BCD; (iii) Integrated GST (IGST) on imports (treated as inter-state supply under IGST Act, Section 5(1)); and (iv) Compensation Cess (on specified goods). IGST paid on imports is available as ITC to the importing registered taxpayer. India has entered into several Free Trade Agreements (FTAs) that provide concessional duty rates, including: India-UAE CEPA (effective 1 May 2022), India-Australia ECTA (effective 29 December 2022), India-Singapore CECA, India-ASEAN CECA, and the India-UK FTA (negotiations substantively concluded as of 2026, implementation pending). Importers must comply with origin certification requirements and Rules of Origin (RoO) to avail FTA benefits.

4.5 Double Taxation Avoidance Agreements (DTAAs) and GAAR

4.5.1 DTAA Framework

India has entered into DTAAs with over 90 countries under Section 90/90A of the IT Act⁶⁹. DTAAs override domestic law provisions to the extent they are more beneficial to the taxpayer (Section 90(2) of the IT Act). Key provisions of DTAAs include allocation of taxing rights over business profits (dependent on Permanent Establishment (PE) status), dividends, interest, royalties

⁶⁸ Customs Act 1962; Customs Tariff Act 1975.

⁶⁹ Income Tax Act 1961, ss 90 and 90A; treaty benefit prevails to the extent more beneficial under s 90(2).

and fees for technical services (FTS), capital gains, and salaries. Pursuant to the OECD Base Erosion and Profit Shifting (BEPS) Action Plans, India has ratified the Multilateral Instrument (MLI) (OECD Convention, 2016) which has modified covered tax agreements (CTAs) to include the Principal Purpose Test (PPT) and anti-PE abuse provisions. India has opted for the PPT as the minimum standard, meaning that where the principal purpose of any arrangement or transaction is to obtain a tax benefit under a DTAA, that benefit may be denied. To access treaty benefits, non-residents must furnish a Tax Residency Certificate (TRC) and a self-declaration in Form 10F as mandated by Section 90(4) and (5) of the IT Act.

4.5.2 General Anti-Avoidance Rules (GAAR)

Sections 95 to 102 of the IT Act (Chapter X-A) contain the General Anti-Avoidance Rules (GAAR)⁷⁰, which became effective from 1 April 2017 (AY 2018-19). GAAR empowers the tax authorities to declare an arrangement as an "impermissible avoidance arrangement" if its main purpose is to obtain a tax benefit and it: (a) creates rights and obligations not normally created between persons dealing at arm's length; (b) results in abuse of the provisions of the IT Act; (c) lacks commercial substance; or (d) is carried out by means or in a manner not normally employed for bona fide purposes. GAAR is subject to a monetary threshold of INR 3 crore tax benefit per year (CBDT Circular No. 7/2017). Investments made prior to 1 April 2017 are grandfathered. GAAR and DTAAs interact such that GAAR may override treaty benefits where the arrangement lacks commercial substance—a significant risk for holding company or treaty-shopping structures.

⁷⁰ Income Tax Act 1961, Ch X-A (ss 95-102), effective 1 April 2017.

MODULE 5: EMPLOYMENT, LABOUR & IMMIGRATION LAWS

5.1 Transition to the Four Labour Codes

Indian labour law has long been a byword for complexity—a dense accretion of more than two-score central enactments and a still larger body of State legislation, layered over decades and seldom repealed. The four Labour Codes represent Parliament's most ambitious attempt to bring order to that thicket, consolidating the principal central statutes into four thematic codes addressed, respectively, to wages, industrial relations, social security, and occupational safety. The reform is, however, only as effective as its commencement, and the foreign employer must attend as much to what has been brought into force as to what has been enacted (a distinction developed in §5.1.1 below). The four Codes are:

- Code on Wages, 2019 (Wages Code) – Consolidates the Minimum Wages Act, 1948; Payment of Wages Act, 1936; Equal Remuneration Act, 1976; and Payment of Bonus Act, 1965.
- Industrial Relations Code, 2020 (IR Code) – Consolidates the Trade Unions Act, 1926; Industrial Employment (Standing Orders) Act, 1946; and Industrial Disputes Act, 1947.
- Code on Social Security, 2020 (SS Code) – Consolidates the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; Employees' State Insurance Act, 1948; Employees' Compensation Act, 1923; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972; Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; Apprentices Act, 1961; and the Building and Other Construction Workers' Welfare Cess Act, 1996.
- Occupational Safety, Health and Working Conditions Code, 2020 (OSHC Code) – Consolidates the Factories Act, 1948; Contract Labour (Regulation and Abolition) Act, 1970; and various other sector-specific statutes.

5.1.1 Enforcement Status as of 2026

While the four Labour Codes received Presidential assent (the Wages Code in 2019 and the remaining three in 2020), their nationwide enforcement depends on both Central and State Governments framing and notifying the respective rules (as labour is a Concurrent List subject under the Seventh Schedule to the Constitution of India⁷¹). As of 2026:

- The Central Government has framed draft rules under all four codes.
- A majority of States have framed their respective state rules under the Wages Code, but the position on the IR Code, SS Code, and OSHWC Code remains incomplete in several States.
- The legacy statutes (Minimum Wages Act, Payment of Wages Act, EPF Act, ESI Act, etc.) continue to remain in force in States that have not yet notified the operationalisation of the corresponding Code.

Practical implication: Employers must maintain compliance with both the legacy statutory framework and the emerging Code-based regime simultaneously, and should monitor state-specific notifications for the transition trigger dates in each State in which they operate.

5.2 Key Mandatory Welfare Contributions

5.2.1 Employees' Provident Fund (EPF)

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) (as continued under the SS Code regime where applicable) applies to establishments with 20 or more employees. The EPF scheme mandates⁷²:

- Employee Contribution: 12% of basic wages, dearness allowance, and retaining allowance (collectively, "emoluments" as defined in the EPF Scheme).
- Employer Contribution: 12% of emoluments, of which 8.33% is directed to the Employees' Pension Scheme (EPS, 1995) and 3.67% to the EPF Scheme (subject to the EPS wage ceiling of INR 15,000 per month).

⁷¹ Constitution of India, Sch VII, List III (Concurrent List), Entries 22-24; labour legislation accordingly requires both Central and State rule-making for operationalisation.

⁷² Employees' Provident Funds and Miscellaneous Provisions Act 1952, s 1(3); now read with the Code on Social Security 2020, Ch III, where notified.

- Universal Account Number (UAN): Each employee is assigned a UAN by the EPFO, which is portable across employers and must be activated and linked to the employee's Aadhaar and bank account.
- Contributions are remitted by the 15th of the following month. Delayed remittance attracts damages under Section 14B of the EPF Act⁷³ at prescribed rates (up to 25% p.a.) and penal interest under Section 7Q.

5.2.2 Employees' State Insurance (ESI)

The Employees' State Insurance Act, 1948 (ESI Act) applies to factories and specified establishments employing 10 or more persons⁷⁴ (in hazardous industries, 10; in other factories, 10). Employees earning up to INR 21,000 per month (INR 25,000 for persons with disabilities) are covered. Contributions:

- Employee: 0.75% of gross wages.
- Employer: 3.25% of gross wages.

ESI provides covered employees with medical, maternity, disability, dependent, and funeral benefits administered by the Employees' State Insurance Corporation (ESIC). Newly registered establishments are given a grace period of 15 days from the date on which the obligation to register arises.

5.2.3 Gratuity

The Payment of Gratuity Act, 1972 (continued under the SS Code) applies to factories, mines, oilfields, plantations, ports, railway companies, shops and establishments employing 10 or more employees. Gratuity is payable to employees upon: superannuation; retirement; resignation (after completing 5 continuous years of service); or death/disablement due to accident or disease. The gratuity amount is 15 days' wages for each completed year of service (or part thereof exceeding six months), based on the last drawn basic wage. The maximum gratuity payable is INR 20 lakh⁷⁵

⁷³ Employees' Provident Funds and Miscellaneous Provisions Act 1952, ss 14B and 7Q.

⁷⁴ Employees' State Insurance Act 1948, s 1(4)-(5).

⁷⁵ Payment of Gratuity Act 1972, s 4(3), as amended by the Payment of Gratuity (Amendment) Act 2018.

(revised by the Payment of Gratuity (Amendment) Act, 2018). Interest at the prescribed rate is payable on delayed gratuity payments.

5.2.4 Bonus

The Payment of Bonus Act, 1965 (now absorbed into the Wages Code) applies to employees drawing salary up to INR 21,000 per month in establishments employing 20 or more persons. The minimum bonus payable is 8.33% of annual salary⁷⁶/wages (or INR 100, whichever is higher), and the maximum is 20% of annual salary/wages. Bonus is calculated on the basis of "allocable surplus" of the employer. For calculation purposes, salary is limited to INR 7,000 per month or the minimum wage, whichever is higher.

5.3 Prevention of Sexual Harassment at Workplace (POSH)

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 impose mandatory obligations on every "employer" (defined broadly to include private sector organisations, government bodies, NGOs, educational institutions, and homes for domestic workers):

- Internal Complaints Committee (ICC): Every employer with 10 or more employees must constitute an Internal Complaints Committee (ICC) at each office or branch⁷⁷. The ICC must be headed by a woman senior employee; at least half its members must be women; and it must include an external member from an NGO or association committed to women's causes (Section 4, POSH Act).
- Policy: The employer must formulate an internal sexual harassment policy and display it prominently at the workplace.
- Annual Report: The ICC must prepare an annual report to be submitted to the employer and the District Officer, setting forth the number of complaints received, disposed of, pending, and actions taken.

⁷⁶ Payment of Bonus Act 1965, s 10; maximum bonus under s 11.

⁷⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 4.

- Training and Sensitisation: The employer must organise workshops and awareness programmes on sexual harassment at regular intervals (Rule 13).
- Annual MCA Disclosure: For companies under the Companies Act, 2013, the Board's Report must include a statement confirming compliance with POSH provisions (Rule 8(5)(x) of Companies (Accounts) Rules, 2014).

Non-constitution of an ICC attracts a fine of up to INR 50,000⁷⁸ (Section 26, POSH Act), and repeated violations can result in cancellation of business licences. Under the SEBI LODR Regulations, 2015, listed entities must disclose POSH compliance in the corporate governance report.

5.4 Immigration: Employment of Foreign Nationals

5.4.1 Employment Visa (E-Visa / Business Visa)

Foreign nationals seeking to work in India must obtain an Employment Visa (E-Visa) under the Foreigners Act, 1946⁷⁹ and the rules thereunder, administered by the Ministry of Home Affairs (MHA). An Employment Visa is issued subject to:

- The foreign national being employed in a position that requires highly skilled and/or qualified professionals (engineers, doctors, senior management) — unskilled and semi-skilled workers are not eligible for an Employment Visa.
- The salary payable to the foreign national being a minimum of USD 25,000 per annum (INR equivalent), except for ethnic cooks, language teachers, and other specified exempted categories.
- The Indian sponsoring entity (employer) must be registered and engaged in a legitimate business activity.
- The foreign national must not be a national of Pakistan or Bangladesh (for whom separate / restricted visa processing rules apply).

⁷⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 26.

⁷⁹ Foreigners Act 1946; visa categories prescribed by the Ministry of Home Affairs, Bureau of Immigration.

Employment Visas are typically granted for a period of one year or the duration of the work contract, whichever is less, and may be extended by the Foreigners Regional Registration Officer (FRRO) in India. The E-Visa may be endorsed to permit the holder to change employer in certain circumstances, with FRRO approval.

5.4.2 FRRO Registration

A foreign national who has been granted a Visa (Employment or otherwise) for a period exceeding 180 days must register with the Foreigners Regional Registration Officer (FRRO)⁸⁰ (or the Foreign Registration Office (FRO) in areas without an FRRO) within 14 days of first arrival in India. Registration is done through the online e-FRRO portal (indianfro.gov.in). The FRRO registration certificate must be updated upon any change in address, employer, or Visa conditions. The sponsoring employer is required to assist the foreign national with FRRO registration and must report any termination of employment or departure of the foreign national to the FRRO within 14 days.

5.4.3 Ratio of Indian to Foreign Employees

There is no universal statutory ratio of Indian to foreign employees applicable across all industries. However, certain sector-specific regulations impose localisation requirements. For example: (i) the Insurance Regulatory and Development Authority of India (IRDAI) mandates that the Board of an insurance company has a majority of Indian residents; (ii) the RBI Master Directions on Primary (Urban) Co-operative Banks impose specific requirements on citizenship of office bearers; (iii) the Single Brand Retail Trading FDI policy requires sourcing from India, which indirectly incentivises local employment. Foreign nationals working in India on Employment Visas are subject to Indian tax on India-sourced income from the first day of employment.

⁸⁰ Registration of Foreigners Act 1939, read with the Registration of Foreigners Rules 1992.

MODULE 6: DATA PROTECTION, INTELLECTUAL PROPERTY & TECHNOLOGY REGULATION

6.1 Digital Personal Data Protection Act, 2023 (DPDP Act)

6.1.1 Legislative Background and Commencement

The Digital Personal Data Protection Act, 2023 (DPDP Act) is the culmination of a legislative journey of more than a decade, prompted by the Supreme Court's recognition of informational privacy as a facet of the fundamental right to life and personal liberty in Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1⁸¹, and shaped through successive draft Bills before its eventual enactment. It received Presidential assent on 11 August 2023 and was published in the Official Gazette the same day; its administration falls to the Ministry of Electronics and Information Technology (MeitY). The foreign enterprise must, however, distinguish enactment from operation. As of 2026 the Act is being brought into force in a phased manner, provision by provision upon notification, while the subordinate rules on which much of its practical operation depends—the Digital Personal Data Protection Rules, 2025—have been circulated in draft for public consultation but are not yet final. The final Rules are awaited as of the date of this guide. The IT Act, 2000 (particularly Sections 43A and 72A) and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (SPDI Rules) continue to have residual applicability pending full operationalisation of the DPDP framework.

6.1.2 Scope and Applicability

The DPDP Act applies to the processing of digital personal data within the territory of India (whether such data is collected online or offline and subsequently digitised), and to the processing of digital personal data outside India if such processing is in connection with any activity related to the offering of goods or services to data principals within India (Section 3(b), DPDP Act)⁸² —

⁸¹ Justice K.S. Puttaswamy (Retd.) v Union of India (2017) 10 SCC 1 (nine-judge bench holding the right to privacy a fundamental right under art 21 of the Constitution).

⁸² Digital Personal Data Protection Act 2023, s 3(b) (extra-territorial application where processing is connected with offering goods or services to data principals in India).

a formulation analogous to the GDPR's "targeting" criterion. The Act does not apply to: processing for purely personal or domestic purposes; personal data made publicly available by the data principal or obligated to be made publicly available under applicable law; and processing by government agencies for certain specified purposes (national security, public order, etc.).

6.1.3 Key Definitions

Term	Definition (DPDP Act, 2023)
Personal Data	Any data about an individual who is identifiable by or in relation to such data (Section 2(t))
Data Fiduciary	Any person who, alone or in conjunction with other persons, determines the purpose and means of processing of personal data (Section 2(i))
Data Principal	The individual to whom the personal data relates; in the case of a child, includes parent/guardian (Section 2(j))
Data Processor	Any person who processes personal data on behalf of a Data Fiduciary (Section 2(k))
Consent Manager	A person registered with the Data Protection Board (DPB) who acts as a single point of contact to enable a Data Principal to give, manage, review, and withdraw consent through an accessible, transparent, and interoperable platform (Section 2(g))
Significant Data Fiduciary (SDF)	A Data Fiduciary designated by the Central Government on the basis of volume/sensitivity of personal data processed, risk to national security, sovereignty, public order, or electoral democracy, etc. (Section 10)

6.1.4 Obligations of Data Fiduciaries

Every Data Fiduciary is subject to the following principal obligations under the DPDP Act:

- **Lawful Basis for Processing (Section 4):** Personal data may be processed only for a lawful purpose for which the Data Principal has given consent⁸³, or for certain specified "Legitimate Uses" (Section 7) including: employment obligations; compliance with legal obligations; public interest functions; emergencies; and processing by the State for subsidies and licences. Consent must be free, specific, informed, unconditional, and unambiguous (Section 6(1))⁸⁴, expressed through a clear affirmative action. Bundled consent is not permitted for services that are not reasonably expected to be associated with each other.
- **Notice Requirement (Section 5):** Before processing personal data based on consent, the Data Fiduciary must provide the Data Principal with a notice in clear and plain language⁸⁵ (including in English and/or any language specified in the Eighth Schedule to the Constitution), disclosing: the personal data to be processed; the purpose of processing; the manner in which consent may be withdrawn; and the procedure for grievance redressal.
- **Purpose Limitation and Storage Limitation (Section 8(3) and 8(7)):** Personal data must be processed only for the specified purpose and erased upon fulfilment of the purpose or upon withdrawal of consent, whichever is earlier, unless retention is required under applicable law.
- **Data Quality (Section 8(4)):** Data Fiduciaries must make reasonable efforts to ensure accuracy and completeness of personal data if processing for a decision affecting the Data Principal or for disclosure to another Fiduciary.
- **Security Safeguards (Section 8(5)):** Reasonable security safeguards must be implemented to prevent personal data breaches. The Draft DPDP Rules specify ISO/IEC 27001 or equivalent as the expected standard.

⁸³ Digital Personal Data Protection Act 2023, s 4; legitimate uses enumerated in s 7.

⁸⁴ Digital Personal Data Protection Act 2023, s 6(1).

⁸⁵ Digital Personal Data Protection Act 2023, s 5.

- Personal Data Breach Notification (Section 8(6)): Upon becoming aware of a personal data breach, the Data Fiduciary must notify the Data Protection Board (DPB) and each affected Data Principal in the prescribed manner and within the prescribed timeline (the Draft Rules suggest 72 hours to the DPB, consistent with global standards).

6.1.5 Rights of Data Principals

Chapter III of the DPDP Act confers the following rights on Data Principals:

Right	Section	Substance
Right of Access / Information	Section 11	Data Principal may request summary of personal data being processed and identities of other Data Fiduciaries with whom data is shared
Right to Correction and Erasure	Section 12	Data Principal may request correction, completion, updating, or erasure of personal data (subject to legal retention obligations)
Right of Grievance Redressal	Section 13	Data Principal may raise a grievance with the Data Fiduciary; response required within prescribed period; unresolved grievances may be escalated to DPB
Right to Nominate	Section 14	Data Principal may nominate another individual to exercise rights in the event of death or incapacity
Right to Withdraw Consent	Section 6(3)	Withdrawal of consent is as easy as giving it; withdrawal does not affect legality of processing prior to withdrawal

6.1.6 Cross-Border Data Transfers

Section 16 of the DPDP Act provides that the Central Government may, by notification, restrict the transfer of personal data⁸⁶ to certain countries or territories. Absent such restriction, personal data may be transferred outside India. This represents a significant departure from the Data Protection Bill, 2021, which proposed mandatory data localisation. The Draft DPDP Rules propose a "whitelist" approach: the Government will notify a list of countries to which transfer is permitted, and transfers to countries not on the whitelist will require compliance with prescribed additional safeguards (expected to include: Standard Contractual Clauses, binding corporate rules, or adequacy of data protection in the receiving country). Until the whitelist/Rules are finalised, the position on cross-border transfers remains in a transitional state. Data Fiduciaries that are also Significant Data Fiduciaries (SDFs) may face stricter requirements, including mandatory data localisation for certain categories of sensitive personal data, pending Rules notification.

⁸⁶ Digital Personal Data Protection Act 2023, s 16.

The decision logic a Data Fiduciary should apply to a proposed transfer of personal data outside India may be represented as follows:

STEP 1 — Proposed transfer of personal data outside India



STEP 2 — Has the Central Government, under s 16 DPDP Act, notified the destination country or territory as restricted?



IF RESTRICTED → Transfer prohibited to that country/territory.

IF NOT RESTRICTED → Transfer permitted, subject to the conditions below.



STEP 3 — Is the Data Fiduciary a Significant Data Fiduciary (SDF), or does the data fall within a category subject to localisation under the Rules?



IF YES → Apply any sectoral localisation / additional safeguards prescribed for SDFs (pending Rules).

IF NO → Standard transfer permitted.



STEP 4 — Maintain records; observe contractual safeguards (e.g. SCCs) and any whitelist conditions once the DPDP Rules, 2025 are finalised.

6.1.7 Significant Data Fiduciaries (SDFs)

Under Section 10 of the DPDP Act, the Central Government may designate any Data Fiduciary or class of Data Fiduciaries as a Significant Data Fiduciary⁸⁷ (SDF), having regard to: the volume and sensitivity of personal data processed; risk to rights of Data Principals; potential impact on sovereignty, integrity, and national security; risk to electoral democracy; security of the State; and public order. SDFs are subject to additional obligations including:

- Appointment of a Data Protection Officer (DPO) based in India (Section 10(2)(a)).
- Appointment of an Independent Data Auditor to conduct data audits (Section 10(2)(b)).

⁸⁷ Digital Personal Data Protection Act 2023, s 10.

- Undertaking Data Protection Impact Assessments (DPIAs) (Section 10(2)(c)).
- Compliance with such other measures as may be prescribed.

6.1.8 Data Protection Board and Penalties

The Data Protection Board of India (DPB) is constituted under Chapter VI of the DPDP Act as a statutory body with adjudicatory functions. The DPB has the powers of a civil court for purposes of inquiry and may impose financial penalties. Key penalties (Second Schedule to the DPDP Act)⁸⁸:

Violation	Maximum Penalty	Note
Failure to take security safeguards (Section 8(5)) resulting in data breach	INR 250 crore	Per breach incident
Failure to notify DPB/Data Principal of breach (Section 8(6))	INR 200 crore	
Violation of obligations regarding children's data (Section 9)	INR 200 crore	
Violation of SDF obligations (Section 10)	INR 150 crore	
Violation of any other provision of the Act or Rules	INR 50 crore	General catch-all penalty

6.2 Intellectual Property Protection in India

6.2.1 Overview

⁸⁸ Digital Personal Data Protection Act 2023, Sch II; penalties adjudicated by the Data Protection Board under ss 27 and 33.

India is a signatory to the key international IP conventions: the Paris Convention for the Protection of Industrial Property (1883), the Patent Cooperation Treaty (PCT), the TRIPS Agreement (1995), the Berne Convention, and the Madrid Protocol for Trademarks. The principal domestic statutes are: the Patents Act, 1970 (as amended by the Patents (Amendment) Act, 2005); the Trade Marks Act, 1999; the Copyright Act, 1957; the Designs Act, 2000; and the Geographical Indications of Goods (Registration and Protection) Act, 1999. The Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM) administers patent and trademark registrations.

6.2.2 Patents

An invention is patentable in India if it is novel, involves an inventive step, and is capable of industrial application (Section 2(1)(j) of the Patents Act). Section 3 of the Patents Act contains significant exclusions from patentability, including: discoveries of scientific principles; mathematical methods; mental acts; methods of agriculture or horticulture; medical treatment methods; Section 3(d) (new forms of known substances unless they display significantly enhanced efficacy—a provision uniquely relevant to the pharmaceutical industry that has been sustained by the Supreme Court in *Novartis AG v. Union of India*, (2013) 6 SCC 1)⁸⁹; and computer programs per se. The term of a patent is 20 years from the filing date (Section 53)⁹⁰. A patent application may be filed as a national application directly with the Indian Patent Office or as a PCT national phase application. The Indian Patent Office (IPO) currently targets completion of the examination process within 12–18 months of request for examination, aided by a mandatory Early Publication Request (EPR) option and the Patent Prosecution Highway (PPH) arrangement with the USPTO and other offices.

6.2.3 Trademarks

Trademarks are registered under the Trade Marks Act, 1999 and the Trade Marks Rules, 2017 before the Trade Marks Registry (offices at Mumbai, Delhi, Chennai, Kolkata, and Ahmedabad). A registered trademark confers a 10-year protection period, renewable indefinitely⁹¹ in successive 10-year periods. India follows the Nice Classification System (45 classes). Applications may be

⁸⁹ Patents Act 1970, s 3(d); upheld in *Novartis AG v Union of India* (2013) 6 SCC 1.

⁹⁰ Patents Act 1970, s 53.

⁹¹ Trade Marks Act 1999, ss 23 and 25; well-known marks protected under s 11(2).

filed as single-class or multi-class (multi-class applications are accepted in India since 2016). India is a signatory to the Madrid Protocol, enabling international trademark registration through the WIPO Madrid System designating India. The Trademarks Registry has an online e-filing system and a trademark search tool. Unregistered marks may be protected under the common law doctrine of passing off, and well-known trademarks receive enhanced protection under Section 11(2) of the Trade Marks Act irrespective of registration.

6.2.4 Copyright

Copyright protection in India is automatic upon creation of an original literary, dramatic, musical, or artistic work under the Copyright Act, 1957. Registration (through the Copyright Office under Section 45) is optional but constitutes prima facie evidence of ownership and is strongly recommended for evidentiary purposes. The term of copyright is the lifetime of the author plus 60 years (Section 22)⁹². Software is protected as a "literary work" under Section 2(o) of the Copyright Act. In employment relationships, the copyright in a work created by an employee in the course of employment vests in the employer under Section 17 of the Copyright Act, unless there is a contrary agreement.

6.2.5 IP Enforcement Mechanisms

IP rights in India may be enforced through:

- Civil courts: District courts (and High Courts in their ordinary original civil jurisdiction, e.g., Delhi HC, Bombay HC) have jurisdiction to grant injunctions, damages, and accounts of profits. The Commercial Courts Act, 2015 has significantly accelerated IP litigation through specialised Commercial Courts.
- Intellectual Property Appellate Board (IPAB): IPAB has been reconstituted (following its abolition by the Tribunals Reforms Act, 2021) with jurisdiction over trademark and patent revocation appeals being transferred to the High Courts.

⁹² Copyright Act 1957, s 22; employer ownership of works made in the course of employment under s 17.

- Customs (Intellectual Property Rights) (Imported Goods) Enforcement Rules, 2007: IP rights holders may record their IP with the Customs Department (CBIC) to intercept infringing imported goods at ports of entry under the Customs IPR Rules, 2007.
- Criminal proceedings: The Copyright Act and Trade Marks Act provide criminal sanctions (imprisonment and fines) for counterfeiting, which may be pursued before a Judicial Magistrate.

6.3 Technology and Internet Regulation

6.3.1 Information Technology Act, 2000 and IT Rules, 2021

The Information Technology Act, 2000 (IT Act) and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021) impose obligations on intermediaries (defined in Section 2(1)(w) of the IT Act to include social media platforms, search engines, online marketplaces, and cloud service providers). Significant intermediaries ("Significant Social Media Intermediaries" or SSMLs – those with more than 50 lakh registered users in India) must comply with additional obligations including: appointment of a Chief Compliance Officer⁹³ (CCO), a Nodal Contact Person, and a Resident Grievance Officer (RGO) who must be an Indian resident; publishing monthly compliance reports; enabling identification of the first originator of messages (messaging platforms); and maintaining a physical contact address in India.

6.3.2 Electronics and Semiconductor Policy

India's National Policy on Electronics, 2019 and the Semicon India Programme (2021, revised 2023) offer substantial incentives (Production Linked Incentive or PLI schemes under the Ministry of Electronics and Information Technology) for semiconductor fabrication, display manufacturing, and electronics component manufacturing. Foreign entities considering manufacturing operations in this space should also consider the Scheme for Promotion of Manufacturing of Electronic

⁹³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4, made under the Information Technology Act 2000, s 87.



Components and Semiconductors (SPECS) and the Modified Electronics Manufacturing Clusters (EMC 2.0) Scheme.

Conclusion: Strategic Compliance Architecture

India's legal and regulatory environment is at once among the most sophisticated and the most exacting in the Asia-Pacific region—a characteristic that the foregoing Modules will have made plain. The density of the statutory framework, spanning the corporate, foreign-exchange, fiscal, labour, data-protection, and intellectual-property domains, is not an accident of over-regulation but a reflection of a mature legal order progressively aligning itself with international norms while retaining features distinctly its own. For the foreign enterprise, the practical lesson of this guide is that these domains cannot be approached in isolation: the entity chosen in Module 1 determines the investment route in Module 2, which conditions the tax position in Module 4, and so on through the whole. For a foreign enterprise approaching India as a business destination, the foregoing guide establishes the cardinal compliance obligations and structural considerations that must be addressed at the outset and maintained on an ongoing basis.

In practice, we recommend that foreign enterprises adopt a "compliance architecture" approach: a structured, proactive, and cross-functional compliance programme that integrates corporate secretarial, tax, FEMA, employment, and data protection workstreams into a unified compliance calendar with board-level oversight. The following summary captures the top-priority action items for a newly establishing foreign enterprise:

#	Action Item	Legal Basis	Timeline
1	Select entity structure and incorporate / register	Companies Act, 2013 / LLP Act, 2008 / FEMA BO/LO/PO Regulations	Pre-commencement
2	Obtain FDI approvals (where required) and remit initial capital	NDI Rules; FIRMS portal (FC-GPR)	At incorporation / within 30 days of allotment

#	Action Item	Legal Basis	Timeline
3	File Form INC-20A (Commencement of Business Declaration)	Section 10A, Companies Act	Within 180 days of incorporation
4	Appoint first statutory auditor	Section 139(6), Companies Act	Within 30 days of incorporation
5	Hold first Board Meeting	Section 173, Companies Act; SS-1	Within 30 days of incorporation
6	Register for GST	CGST Act, 2017, Section 24/25	Within 30 days of commencement of taxable supply
7	Register with EPFO/ESIC on reaching thresholds	EPF Act / ESI Act	Within 30 days of threshold being reached
8	Constitute Internal Complaints Committee (ICC)	POSH Act, 2013, Section 4	On reaching 10 employees
9	Identify and disclose Significant Beneficial Owners (SBOs)	Section 90, Companies Act; BEN- 1/BEN-2	Within 30 days of SBO status arising

#	Action Item	Legal Basis	Timeline
10	Implement data protection compliance programme under DPDP Act	DPDP Act, 2023	Upon Rules notification and commencement
11	File FLA Return annually	FEMA; FIRMS Portal	By 15 July each year
12	File Annual Return (MGT-7) and Financial Statements (AOC-4)	Sections 92 and 137, Companies Act	Within 60/30 days of AGM respectively
13	Comply with transfer pricing documentation and Form 3CEB	Sections 92D, 92E, IT Act	By tax return filing date (31 October for companies with international transactions)
14	Register/record IP rights in India	Patents Act / Trade Marks Act / Copyright Act	As early as possible; before commercial launch

The regulatory landscape in India continues to evolve rapidly. Equicorp Associates LLP recommends that clients engage the firm's regulatory update service and consult counsel at the outset of any proposed India entry or material business change, so that the compliance architecture is calibrated to the specific facts and risk profile of the enterprise.



Equi Corp Associates
Advocates & Solicitors

TRANSACTION • ADVISORY • LITIGATION

www.equicorplegal.com

Concluding Remarks

India in 2026 presents the foreign investor with a paradox that this guide has sought to make navigable. It is, by most measures, among the most attractive destinations for capital in the world—a large and deepening market, a maturing financial system, a deep pool of talent, and a government that has, across successive reforms, signalled a settled intention to welcome foreign enterprise. Yet that same enterprise must operate within a regulatory order of considerable density, one in which the corporate, exchange-control, fiscal, employment, and data-protection regimes each make their own demands and frequently intersect. The investor who treats compliance as an afterthought, to be retrofitted once operations are under way, will find the cost of that approach measured not only in penalty but in delay, in foregone opportunity, and occasionally in the loss of the very advantage the India entry was meant to secure.

The central argument of this work is therefore a simple one: that legal and regulatory compliance in India is best understood not as a burden to be minimised but as an architecture to be designed. The enterprise that builds that architecture deliberately—choosing its entry vehicle with its eventual tax and investment position in view, establishing its governance and reporting disciplines from the first board meeting, and treating the protection of data and intellectual property as integral rather than incidental—will find that the regulatory framework, far from impeding its ambitions, lends them durability. Compliance, properly conceived, is not the price of doing business in India; it is part of the foundation on which a successful India business is built.

It has been the endeavour of Equicorp Associates LLP, in preparing this guide, to place that architecture within the reach of the foreign investor and the adviser alike. We are conscious, however, that no general treatment can anticipate the facts of a particular transaction, and that the law stated here will continue to move beneath the reader's feet. It remains for us only to commend the guide to its readers, to wish them well in their Indian ventures, and to record our willingness to assist those who would translate the principles set out in these pages into the specifics of their own enterprise.

With our compliments,

Equicorp Associates LLP



Advocates & Solicitors

New Delhi • 2026

Annexure A: Key Regulatory Authorities

Regulator	Primary Jurisdiction	Key Statute(s)
Ministry of Corporate Affairs (MCA)	Company law; LLP law; insolvency	Companies Act, 2013; LLP Act, 2008; IBC, 2016
Reserve Bank of India (RBI)	Banking; foreign exchange; payment systems; NBFC	FEMA, 1999; RBI Act, 1934; PSS Act, 2007; SARFAESI Act, 2002
DPIIT (Department for Promotion of Industry and Internal Trade)	FDI policy; startups; IP policy	DPIIT Consolidated FDI Policy, 2020; NDI Rules, 2019
SEBI (Securities and Exchange Board of India)	Securities markets; listed companies; collective investment; FPI	SEBI Act, 1992; SCRA, 1956; various SEBI Regulations
IRDAI (Insurance Regulatory & Development Authority of India)	Insurance and reinsurance	Insurance Act, 1938; IRDAI Act, 1999
TRAI (Telecom Regulatory Authority of India)	Telecom and broadcasting services	TRAI Act, 1997; Telecom Act, 2023

Regulator	Primary Jurisdiction	Key Statute(s)
Competition Commission of India (CCI)	Anti-trust; combinations; anti-competitive agreements; abuse of dominance	Competition Act, 2002 (as amended by Competition (Amendment) Act, 2023)
Central Board of Direct Taxes (CBDT)	Direct taxation; transfer pricing; APAs; GAAR	Income Tax Act, 1961; Finance Acts
Central Board of Indirect Taxes and Customs (CBIC)	GST; Customs duty; service tax legacy	CGST Act, 2017; Customs Act, 1962
Enforcement Directorate (ED)	FEMA enforcement; PMLA enforcement	FEMA, 1999; PMLA, 2002
Ministry of Electronics and Information Technology (MeitY)	Data protection; IT regulation; electronics policy	DPDP Act, 2023; IT Act, 2000
CGPDTM (Office of Controller General of Patents, Designs and Trade Marks)	Patent, trademark, and design registration and administration	Patents Act, 1970; Trade Marks Act, 1999; Designs Act, 2000
National Company Law Tribunal (NCLT)	Corporate disputes; mergers; insolvency; winding up	Companies Act, 2013; IBC, 2016



Regulator	Primary Jurisdiction	Key Statute(s)
Insolvency and Bankruptcy Board of India (IBBI)	Insolvency framework; IPs and IPAs	Insolvency and Bankruptcy Code, 2016

Annexure B: Key Regulatory Forms Reference

Form	Statute / Portal	Purpose
SPICe+	Companies Act, 2013 / MCA Portal	Integrated company incorporation form
Form INC-20A	Section 10A, Companies Act / MCA Portal	Declaration of commencement of business
Form MGT-7 / 7A	Section 92, Companies Act / MCA Portal	Annual Return filing
Form AOC-4	Section 137, Companies Act / MCA Portal	Filing of Financial Statements
Form BEN-1	Section 90, Companies Act / MCA Portal	Declaration by Significant Beneficial Owner to Company



Form	Statute / Portal	Purpose
Form BEN-2	Section 90, Companies Act / MCA Portal	Return of SBO by Company to RoC
Form BEN-3	Section 90, Companies Act	Register of Significant Beneficial Owners (maintained at registered office)
Form FNC-1	FEMA BO/LO/PO Regulations / AD Bank	Application for establishing Branch/Liaison/Project Office
Form FC-GPR	NDI Rules / FIRMS Portal (RBI)	Reporting of FDI – primary issuance of equity instruments
Form FC-TRS	NDI Rules / FIRMS Portal (RBI)	Reporting of transfer of equity instruments between resident and non-resident
FLA Return	FEMA / FIRMS Portal (RBI)	Annual Return on Foreign Liabilities and Assets
Form DI	NDI Rules / FIRMS Portal (RBI)	Reporting of downstream investment



Form	Statute / Portal	Purpose
Form 3CEB	Section 92E, IT Act / Income Tax Portal	Accountant's Report on international transactions (Transfer Pricing)
GSTR-1 / 3B / 9 / 9C	CGST Act, 2017 / GST Portal (gstn.gov.in)	GST outward supply, summary returns, and annual returns
Form ADT-1	Section 139, Companies Act / MCA Portal	Intimation of appointment of auditor to RoC
Form 10F	Section 90(5), IT Act / Income Tax Portal	Self-declaration by non-resident for DTAA benefit