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The Legal 500 Country Comparative Guides

India

INVESTING IN

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in India.

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INDIA
INVESTING IN

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

The current foreign investment landscape in India offers ease of investment to foreign investors through a multitude of investor-centric regulatory recalibrations aimed at easing out compliances. Services, computer software and hardware, telecommunication, trading, automobiles, construction infrastructure activities, and construction development are some of the major sectors garnering significant foreign investment in India.

While there is no reliable source to confirm the exact deal number, set out below are the statistics related to foreign direct investment inflow in India over the past three financial years (1st April to 31st March) as per the data released by the Department for Promotion of Industry and Internal Trade, Government of India:

Financial Year	Volume of foreign direct investment (in US dollars)
2020-21	81.97 billion
2021-22	83.57 billion
2022-23	70.97 billion

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

While all the afore-mentioned structures are used, setting up wholly owned subsidiaries in greenfield or brownfield projects to build new facilities is the most popular form of FDI investment in the country. Joint ventures are more prevalent in sectors where 100% (hundred percent) FDI is not permitted. Asset or stock acquisition has gained significant traction in recent years. Acquisition of minority interest is popular in the listed space.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Foreign investors are allowed to own 100% (hundred percent) of a domestic company in most of the sectors which are “free”. FDI limits concerning shareholding of non-residents in an Indian company are divided into prohibited and permitted sectors.

Sectors where FDI is prohibited are:

(a) Gambling and betting, including casinos; (b) Lottery business including government, private lottery, and online lotteries; (c) Business of chit funds; (d) Real estate business[1] or construction of farmhouses; (e) Trading in transferable development rights; (f) Manufacturing of cigars, cheroots, cigarillos and cigarettes, tobacco or tobacco substitutes; (g) Activities/ sectors not open to private sector including Atomic Energy and Railway Operations (other than permitted activities); (h) Nidhi company; (i) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, or management contracts is also prohibited for lottery business and gambling and betting activities; (j) Agriculture sector or activity except floriculture, horticulture, and cultivation of vegetables and mushrooms under controlled conditions, development and production of seed and planting material, animal husbandry (including breeding of dogs), pisciculture, aquaculture, apiculture, and services related to agro and allied sectors); and (k) Plantation sector or activity except the tea sector including tea plantations, coffee plantations, rubber plantations, cardamom plantations, palm oil tree plantations, and olive oil tree plantations).

Permitted Sectors:

In: (a) most of the permitted sectors, for FDI into an Indian company prior approval of the Reserve Bank of India ("RBI") or the Government of India is not required ("Automatic Route"); and (b) certain permitted sectors, FDI is permitted up to certain percentage of investment and investment beyond such percentage is either not permitted or requires prior approval of the Government of India ("Approval Route"). In case of proposals involving a total foreign equity inflow of more than INR 5,000,000,000 (Indian Rupees Five Hundred Crore ~ USD 60,002,400), approval from the Cabinet Committee on Economic Affairs is also required.

Set out below are a few examples, which illustrate the sectors with a specific threshold for FDI, sectors which are partially under Automatic Route and partially under Approval Route:

- Banking in private sector – up to 74% (seventy-four per cent) FDI is permitted, in which up to 49% (forty-nine per cent) is under the Automatic Route and FDI beyond 49% (forty-nine per cent) and up to 74% (seventy-four per cent) is under Approval Route.
- Defence – 100% (one hundred per cent) FDI into the defence sector (subject to the industrial license under the Industries (Development and Regulation) Act, 1951) and manufacturing of small arms and ammunition under the Arms Act, 1959 has been permitted where up to 74% (seventy-four per cent) is under the Automatic Route. For investment above 74% (seventy-four per cent), the Approval Route is required.
- Insurance – FDI cap into the insurance sector (insurance companies, third party administrators, etc.) is 49% (forty-nine per cent) under the Automatic Route subject to approval/ license from the Insurance Regulatory and Development Authority of India and compliance of other prescribed conditions, whereas FDI in insurance intermediaries including the likes of insurance brokers, re-insurance brokers, insurance consultants etc. have been allowed up to 100% (one hundred per cent) under the Automatic Route.
- Digital Media – 26% (twenty-six per cent) FDI is permitted under the Approval Route in companies uploading/ streaming of news and current affairs through digital media.
- Print Media – (i) print media, specifically publishing of newspapers and periodicals dealing with news and current affairs is allowed up to 74% (seventy-four per cent) FDI under the Approval Route, and (ii) print media, specifically publishing/ printing of scientific and technical magazines/ specialty journals/ periodicals (subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting) is allowed to have 100% (one hundred per cent) foreign investment under the Approval Route.

In addition, the Government of India through Press Note 3 (2020 Series) dated April 17, 2020, and notification dated April 22, 2020 ("PN3"), amended its FDI policy to curb the opportunistic takeovers / acquisitions of Indian companies in the wake of Covid-19 pandemic. Accordingly, any investment made from Bangladesh, China, Pakistan, Nepal, Myanmar, Bhutan, and Afghanistan requires prior approval of the Government of India regardless of the sector/ activities in which investment is being made. Such approval is also required in cases of beneficial owners being situated in any of the afore-mentioned states.

Footnotes:

[1] Except for the development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city regional level infrastructure, townships, investments in Real Estate Investment Trusts regulated by SEBI (REITs) Regulations 2014, and real estate broking services.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Foreign investors are allowed to invest and hold the same class of stock or other equity securities as domestic shareholders. This is applicable to investment in both public and private companies.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

The domestic businesses are organized and managed primarily through domestic companies. There are instances of foreign investors setting up liaison or branch or project offices for limited activities. These forms require approval from the RBI before setting up.

A liaison office acts as a representative of the parent foreign company in India. However, a liaison office cannot undertake any commercial activities and must maintain itself from the remittances received from its parent foreign company. This option is usually preferred by foreign companies that wish to explore business opportunities in India.

A branch office acts as a buying/ selling agent in India and promotes technical or financial collaborations between Indian companies and overseas parent or group company, rendering technical support to the products supplied by parent/group companies. This option is usually preferred by foreign companies that wish to undertake research and development activities in India.

A project office is preferred to execute a project secured in India, particularly, in one-time turnkey or installation projects.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Set out below are the main forms (along with brief differences) of domestic companies:

- Private Company: The number of members in a private limited company is a minimum of 2 (two) and a maximum of 200 (two hundred). A private limited company can in its charter documents/ articles of association, restrict the right to transfer shares and must prohibit any invitation to the public to subscribe to its securities.
- Public Company: A public limited company is a company that is not a private company (but includes a private company that is the subsidiary of a public company). The minimum number of members in a public limited company is 7 (seven). A public limited company may invite public to subscribe to its securities. A public limited company may also list its shares on a recognized stock exchange.
- One Person Company: A one person company is a company in which a single individual (an Indian citizen and resident in India) can incorporate and enjoy the benefits of both sole proprietorship and a company (including perpetual succession, being a separate legal entity, and shielding personal assets from the liabilities of the company).
- Limited Liability Partnership ("LLP"): A limited liability partnership is a hybrid between a partnership firm and a company (private or public). Limited liability partnership has limited liability for its partners (to the agreed contribution) like a company, and it receives tax benefits like a partnership firm.

Which form is preferred by domestic shareholders?

Private limited company is the most preferred form of company by domestic investors.

Which form is preferred by foreign investors/shareholders?

Foreign investors have the option to setup their business operations in India either in the form of incorporated entities or unincorporated entities (liaison office, branch office and project office). The unincorporated forms have certain restrictions on business activities and require prior approval of the RBI.

Foreign investors opting for the incorporation route for setting up their operations in India prefer private limited company form.

What are the reasons for foreign shareholders preferring one form over the other?

Foreign shareholders prefer private limited company form over public companies for the following main reasons: (a) more flexibility than public companies in conducting operations, including the management of the company and the payment of managerial remuneration; (b) faster incorporation process; and (c) restrictions on the invitation to public to subscribe to securities.

Foreign shareholders primarily prefer private limited company form over LLP as there is more transparency and higher corporate governance standards in private limited form.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a

domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

The requirements for forming a company in India are not significantly different from the requirements in other Commonwealth nations. Depending on the form of an Indian company, the requirements will vary. For example, a private company must have a minimum of 2 (two) shareholders and at least 2 (two) directors, and a public company must have a minimum of 7 (seven) shareholders and 3 (three) directors. Both private and public companies need to have a resident director (who has stayed in India for at least 182 (one hundred and eighty-two) days during the financial year). Companies that meet certain thresholds must have independent directors, key managerial personnel and women director on the board and company secretary as well.

Which governmental entities have to give approvals?

Filings concerning charter documents of companies, authorization of share capital, initial share allotment, appointment of directors etc. are all made to the Registrar of Companies, Ministry of Corporate Affairs, Government of India ("RoC"), which is the central regulatory body concerning companies incorporated in India and being operated in India.

For foreign investments, filings concerning allotment of securities or transfer of securities are required to be reported to the RBI.

What is the process for forming/ incorporating a domestic company?

Set out below are important steps for forming/ incorporating a domestic company:

- PAN, DIN, and DSC: Permanent Account Number ("PAN"), Digital Signature ("DSC") preferably with PAN encryption and Directors Identification Number ("DIN") are mandatory for initiating the incorporation process. All forms are required to be filed electronically. No person can be appointed as a director without a DIN. DSC should be PAN encrypted as all filings relating to Income Tax have to be done by a director whose DSC is PAN encrypted.
- Name Approval: The RoC must be provided with 2 preferred names which should not be similar to the names of any existing companies. The Ministry of Corporate Affairs has introduced the Central Registration Centre having territorial jurisdiction all over India to process and dispose of name reservation applications and incorporation applications.
- Filing of Charter Documents: The memorandum and articles of the company, prepared in accordance with the business plan, must be filed with the RoC. The resident Individual subscribers file the memorandum and articles of the company in electronic form. However, non-resident individual subscribers and subscribers who are body corporate sign the memorandum and articles in physical and file along with e-form.
- Certificate of incorporation: At the end of the successful incorporation process, the certificate of incorporation is issued by the RoC.

What is a required capitalization for forming/ incorporating a company?

There is no minimum capital requirement for incorporating a company.

How long does it take to form a domestic company?

With recent reforms, the procedure for incorporation of a company in India has become single-form and single window with a potential time frame of less than 96 (ninety-six) hours after submission of the requisite documents. Typically, in practice, the incorporation procedure may take from 2 (two) weeks to 4 (four) months in cases where the KYCs are delayed, or the documents are not appropriately notarized and apostilled.

How many shareholders is the company required to have?

A public company is required to have a minimum of 7 (seven) shareholders whereas a private company is required to have a minimum of 2 (two) shareholders (with the exception of a one-person company having a single member as its shareholder).

Is the list of shareholders publicly available?

Yes, the list of shareholders forms a public document for both public and private companies.

8. What are the requirements and necessary governmental approvals for a

foreign investor acquiring shares in a private company? What about for an acquisition of assets?

Subject to regulations regarding prohibited sectors, sectoral caps and the PN3 restrictions as set out in response to #3 above, no other explicit approvals are required to acquire shares in a private company. Having said that, post-acquisition reporting to the RBI in the form Foreign Currency Transfer of Shares ("FC-TRS") is a mandatory requirement. Form FC-TRS is required to be filed in case of purchase of shares by a person resident outside India from a person resident in India.

Indian merger control regime provides that every merger or acquisition which is not exempted and falls within the thresholds specified by the Competition Commission of India (determined basis asset and turnover value of the parties to the merger/acquisition or the group of the resultant company) is subject to filing of notice to the Competition Commission of India and its subsequent approval.

As regards the acquisition of assets, a branch or office or any other place of business in India, other than a liaison office established by a person resident outside India is permitted to acquire immovable property in India necessary for or incidental to the activity carried on in India by such branch or office. Such a person is required to file a declaration with RBI in the form IPI. FDI in real estate business[2] is prohibited.

Additionally, persons resident outside India are not permitted to invest in any immovable property situated in India. However, such property can be taken on lease by persons resident outside India for a period of five years, for which citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong and Democratic People's Republic of Korea need an approval from the RBI.

Footnotes:

[2] Ibid.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

Subject to Indian merger control regime as set out in response to #8 above, a non-resident investor can acquire shares of a public listed company without approval if it's not in an industry under the prohibited sector or one with sectoral caps.

For the purposes of selling or buying shares of a public listed company, registration as a foreign portfolio investor with the Securities and Exchange Board of India ("SEBI") is necessary to be obtained by non-resident investors, pursuant to which less than 10% (ten percent) of the capital of an Indian listed company can be acquired. The total holding by each foreign portfolio investor or an investor group, shall be less than 10% (ten percent) of the total paid-up equity capital on a fully diluted basis or less than 10% (ten percent) of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company by foreign portfolio investors and the total holdings of all foreign portfolio investors put together, including any other direct and indirect foreign investments in the Indian company, should not exceed 24% (twenty-four percent) of the paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or share warrants.

The acquisition of shares of a public company in a direct (private) transaction from another shareholder is permissible subject to compliance of Indian foreign exchange control laws including pricing, sectoral caps, if any.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

SEBI regulations require for a mandatory open tender offer to be made: (a) if an acquirer proposes to acquire shares or voting rights of a public listed company, which takes the shareholding of an acquirer (and persons acting in concert with him) to 25% (twenty-five percent) or more of the target company's share capital, (b) with respect to an acquirer already holding 25% (twenty-five percent) or more of the target company (by itself and with persons acting in concert), any acquisition of shares or voting rights within a financial year which entitles them to exercise more than 5% (five percent) of the voting rights of the target company, and (c) in case of any acquisition of control over the target company.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

As set out in response to #3 above, for building a new facility in the country (in a greenfield or brownfield project) under the permitted sectors, approval from the RBI or the Government of India is not required except in certain sectors where FDI is permitted up to certain percentage. Other than this, there are certain critical sectors where specific approval/ license from sector specific authority/ regulator is required. For instance: (a) 100% FDI (74% under Automatic Route and Approval Route for beyond 74%) into the defence sector is allowed subject to the industrial license under Industries (Development and Regulation) Act, 1951; and (b) 49% FDI into insurance sector (insurance companies) is allowed subject to approval/ license from Insurance Regulatory and Development Authority of India.

Other than the above, there are several operational licenses which may be required for building a new facility in the country. For example, to set up a factory, typically, the approval process involves obtaining: (a) the land use approval from the local town and country development authority; (b) operational/ building licenses; (c) environmental related approvals; and (d) occupation certificate.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- **in an acquisition, or**
- **to pay to contractors, or**
- **to pay salaries of employees?**

Generally, an investor can use any convertible currency to do a transaction. There are certain purposes for which the use of foreign exchange is barred (such as remittance out of lottery winnings), and other purposes for which the use of foreign currency requires a prior approval of the Government of India (such as advertisement in foreign print media) or the RBI (such as certain consultancy related expenses exceeding prescribed thresholds).

The use of foreign currency for acquisitions is neither expressly barred nor requires prior approval of the RBI. The permissibility of drawing foreign exchange to pay contractors depends on the nature of the contract (that is, contractors should not be engaged for purposes that are barred or require prior approval). To pay salaries to Indian employees, the transaction can only be done in domestic currency unless such employees are working on contract for service with the foreign entity/ investor.

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

Subject to regulations regarding prohibited sectors, sectoral caps and the PN3 restrictions as set out in response to #3 above and certain current account transactions, there are, generally, no limits on the amount of foreign currency in any transaction or series of related transactions.

Certain current account transactions which have limits and would require approval of the RBI include: (a) remittances exceeding USD 10,000,000 (US Dollars Ten Million only) per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 (US Dollars One Million only) per project, for other consultancy services procured from outside India; (b) remittances exceeding 5% (five per cent) of investment brought into India or USD 100,000 (US Dollars One Hundred Thousand only) whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

Subject to regulations regarding prohibited sectors, sectoral caps and the PN3 restrictions as set out in response to #3 above, investment by way of shares is permitted in India without any limit.

External commercial borrowings are also permitted up to USD 750,000,000 (US Dollars Seven Hundred and Fifty

Million) or equivalent per financial year under the Automatic Route. There are certain restrictions and requirements on the use of external commercial borrowings.

Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

There is no prescribed statutory limit on the amount of domestic currency a foreign investor can buy in India. It is worthwhile to note that domestic currency can be transferred in/ out of the country only through the authorized dealer banks. For processing such transactions, the authorized dealer banks have more than 250 (two hundred fifty) purpose codes ("Purpose Codes") such as P0501 (inward remittance – Receipts on account of services relating to cost of construction of projects in India) and S0501 (outward remittance – construction of projects abroad by Indian companies including import of goods at project site abroad). Each inward and outward transaction must match one of the Purpose Codes – generally, most of the regular business transactions form part of the Purpose Codes and specific approval is not required by a foreign investor for transferring domestic currency in/ out of the country.

Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

There is no restriction on an investor to buy domestic currency outside India and transfer it to India to pay for an acquisition or to third parties for goods or services or to pay salaries of employees. Foreign investors don't prefer this to avoid foreign exchange fluctuation risk.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

Domestic or foreign currency can be transferred out of India only through the authorized dealer banks. As set out above in response to #12, for processing, each transaction must match one of the Purpose Codes. Generally, most of the regular business transactions form part of the Purpose Codes and specific approval is not required by a foreign investor for transferring domestic currency or foreign currency out of the country.

Whose approval is required?

The transactions related to foreign exchange having approval requirements would require approval from the RBI.

How long does it take to get the approval?

On a broad range, approval from the RBI typically takes around 15 (fifteen) to 45 (forty-five) days.

Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

There is no such limit on body corporates on the amount of foreign or domestic currency that can be transferred out of the country. As set out above in response to #12, for processing, each transaction must match one of the Purpose Codes. Generally, most of the regular business transactions form part of the Purpose Codes.

Is the approval required for each transfer or can it be granted for all future transfers?

The approval, if required, is generally given for each transfer with specified limits.

14. Is there a tax or duty on foreign currency conversion?

Foreign currency conversion transactions are subject to goods and services tax at the rate of 18%. However, such transactions amongst banks or authorised dealers or between banks and such dealers are exempt and are not liable for tax.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

Subject to direct tax laws, mere import of currency in India does not attract tax. The conversion of foreign currency will attract a goods and service tax.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

Under the Indian legal regime, acquisition of assets and business transfer (as a going concern) are distinct concepts and accordingly, attract different tax treatment.

Tax:

On acquisitions of assets, goods and services tax could be applicable depending on the nature of assets sold and could be as high as 28% (twenty-eight per cent). Further, tax withholding at the rate of 0.1% (zero decimal one per cent) of the consideration paid in excess of INR 5,000,000 (Indian Rupees Fifty Lakhs only ~ USD 60,000) may also apply subject to the satisfaction of certain conditions. Also, if specified property is acquired below the fair market value determined as per the prescribed methodology, then the difference between the fair market value and the consideration paid may be taxed in the hands of the recipient.

On transfer of unlisted shares, capital gains realized are taxed as: (a) long-term capital gains (if held for more than 24 (twenty-four) months) at the rate of 20% (twenty per cent) with indexation benefit for resident sellers and at the rate of 10% (ten per cent) for non-resident sellers (with no indexation benefit); (b) short term capital gains (if held for less than 24 months) at the tax rates applicable to the respective resident or non-resident seller. The applicable tax rate is generally 30% (thirty per cent) for resident seller and at the rate of 40% (forty per cent) for non-resident shareholder.

On business transfer, the entire profits or gains (sale consideration less the net worth) arising from the business transfer are subject to long-term capital gains tax at the rate of 20% (twenty per cent) if the undertaking has been held by the seller for more than 36 (thirty-six) months. Where the business undertaking is held for less than 36 (thirty-six) months, then the capital gains arising from the transfer of such business undertaking would be taxable at the tax rate applicable for the seller.

Stamp Duty:

Acquisition of assets attracts stamp duty based on the instrument of acquisition and is state-specific.

Business transfers, generally attract a higher stamp duty. Stamp duty is payable on the business transfer agreement, conveyance documents for transfer of real estate, and other ancillary agreements in accordance with stamp duty regime applicable in the particular state.

Transfer of shares attracts relatively nominal stamp duty. A nominal stamp duty is payable on share purchase agreement and share transfer attracts 0.015% (zero decimal zero one-five per cent) of stamp duty separately. No stamp duty is attracted on transfer of individual assets like land (unlike in the case of acquisition of assets).

17. When is a stamp duty required to be paid?

Stamp duty is required to be paid on or before the execution of the document.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

The shares of private domestic companies are easily transferable. For shares held in physical form, the parties need to execute a share transfer form (form SH-4) and present it to the company to record the transfer. For shares held in demat form, the transfer is done with the help of depository participant.

Through a recent change, every private company which is not a small company[3] as of March 31, 2023, is required to ensure that all its shares are in dematerialized form by September 30, 2024.

Can the shares be held outside of the home jurisdiction?

The shares can be held outside of the home jurisdiction.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

Subject to PN3 restrictions under the (Indian) foreign exchange control laws, there is no explicit approval required if a foreign investor needs to transfer shares to another foreign or domestic shareholder. If the transferee is resident in India, then there will be share valuation related compliances and reporting requirement to the RBI in form FC-TRS.

Are changes in shareholding publicly reported or publicly available?

While changes in shareholding are not immediately publicly reported, these changes are updated in the annual filings of the company which are publicly available documents.

Footnotes:

[3] Small companies are companies other than public companies having — (a) paid-up share capital of which does not exceed INR 40,000,000 (Indian Rupees Four Crore only ~ USD 480,019) or such higher amount as may be prescribed and (b) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed INR 400,000,000 (Indian Rupees Forty Crore only ~ USD 4,800,192) or such higher amount as may be prescribed.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

There is a mandatory filing with the RBI for reporting FDI.

Form Foreign Currency- Gross Provisional Return ("FC-GPR") is required to be filed in case of purchase of capital instruments directly from an issuer company in India.

Form FC-TRS is required to be filed in case of: (a) purchase of shares by a person resident outside India from a person resident in India; and (b) sale of shares by a person resident outside India to a person resident in India.

While these filings above form the standard reporting concerning FDI, the procedural aspects of these filings to the RBI might vary depending on the nature of securities.

With which agency is it required to be made?

RBI.

How long does it take to obtain an FDI approval?

An FDI approval typically takes 3 (three) to 4 (four) months post submission of the proposal along with relevant documents.

Under what circumstances is the mandatory FDI filing required to be made?

Both primary and secondary investments by foreign investors require mandatory FDI filing. FC- GPR is required to be filed in case of purchase of capital instruments directly from an issuer company in India. FC-TRS is required to be filed in case of sale and purchase of shares by a person resident outside India from/ to a person resident in India.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

Not applicable.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

Typically, such a transaction will not trigger mandatory FDI filing in India. However, if such a transaction: (a) directly or indirectly, results in the beneficial ownership of the Indian entity falling within the restriction/ purview of the PN3, such subsequent change in beneficial ownership; or (b) breaches sectoral caps, if any, will require the approval of Government of India. Further, under the (Indian) Companies Act, 2013, any change in significant beneficial owner is required to be reported to the ROC.

Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Subject to regulations regarding prohibited sectors, sectoral caps and the PN3 restrictions as set out in response to #3 above, the governmental authority in such a transaction will not prohibit the indirect transfer of control of the subsidiary.

20. What are typical exit transactions for foreign companies?

The typical exit transactions for foreign companies are share /asset sale to other investors/ shareholders. In certain cases where operations are to be stopped, winding up of the company is a preferred option.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

In the past few years, India has witnessed a rising trend of private companies, particularly startups, opting for initial public offering (IPO). While domestic stock markets are the principal mode of listing, a handful of Indian companies have chosen to list their shares in overseas stock markets (NASDAQ) such as Renew Power, Yatra.com.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

International arbitration is the preferred mode of dispute resolution in M&A /investment/ JV agreements.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

Typically, the original jurisdiction courts may take up to 3 (three) to 5 (five) years to decide contract disputes. If the aggrieved party decides to approach the appellate authorities, the final resolution at the Supreme Court level may take up to 12 (twelve) years or more for a final resolution.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

The domestic courts in India are reliable in enforcing foreign investors rights under agreements and under the law. The domestic courts in India do not differentiate between foreign investors and domestic investors while enforcing contractual and legal rights.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

Indian corporate-legal regime, without differentiating between foreign investors and domestic investors, has sufficient investor protections, granting representative rights to shareholders in cases of oppression, mismanagement, or conduction of affairs of a company in a manner prejudicial to shareholders. Further, shareholders are entitled to represent themselves to the National Company Law Tribunal through class-action suits in cases of abrogation of shareholders' rights.

Considering the above, there is a very rare possibility of abuse of foreign investors.

26. Are international arbitral awards recognized and enforced in your country?

India is a signatory to the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("New York Convention") as well the Convention on the Execution of Foreign Awards, 1923 ("Geneva Convention"). If a party receives a binding award from another country which is a signatory to the New York Convention or the Geneva Convention and the award is made in a territory that has been notified as a convention country by India, the award would then be enforceable in India.

The Arbitration and Conciliation Act, 1996, recognizes the enforceability of foreign arbitral awards in India, pursuant to which an application for enforcement must be moved by the award-holder, followed by submission of defense by the other party. Post receipt of application for enforcement and defense, courts are mandated to enforce foreign awards unless such awards are unenforceable per conditions such as incapacity of parties, subject matter of dispute not being arbitrable in India, agreement in question not being in accordance with the law to which the parties have subjected themselves to, or under the law of the country where the award is made, awards being *ultra vires* in India etc.

27. Are there foreign investment protection treaties in place between your country and major other countries?

As per the United Nations Conference on Trade and Development data concerning treaties, India has signed 86 (eighty-six) bilateral investment treaties with a majority of jurisdictions. While some of these have been terminated, currently, 12 (twelve) treaties with investment provisions between India and a majority of significant jurisdictions including the European Union, Australia, Japan, United Arab Emirates etc. are in force as of date. India has also signed major conventional investment related instruments including the New York Convention, 1958 and Trade Related Investment Measures, 1994.

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