**GOVERNMENT OF INDIA**
**MINISTRY OF COMMERCE & INDUSTRY**
**DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION**

**RAJYA SABHA**

**UNSTARRED QUESTION NO. 497.**
**TO BE ANSWERED ON WEDNESDAY, THE 7$^{TH}$ FEBRUARY, 2018.**

# CHANGES IN FDI CAPS IN VARIOUS SECTORS

**497. SHRI DEREK O'BRIEN:**

Will the Minister of **COMMERCE AND INDUSTRY** be pleased to state:

(a) the Foreign Direct Investment (FDI) allowed in various sectors;

(b) the changes in FDI caps in various sectors in the previous three years and the reasons therefor; and

(c) whether the Ministry is planning to allow or increase FDI in more sectors?

## ANSWER

**THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE & INDUSTRY (SHRI C.R. CHAUDHARY)**

**(a) & (b):** The Government has put in place an investor-friendly policy, wherein 100% FDI under automatic route is permitted in most of the sectors/ activities. There is only a small list of sectors/ activities where FDI is subject to government approval. Further, Government reviews FDI policy on an ongoing basis. With a view to liberalise and simplify the FDI policy, so as to provide ease of doing business in the country leading to larger FDI inflows, changes are made in the FDI policy regime from time to time. Sector specific conditionalities on various sectors alongwith FDI limits are provided in 'Consolidated FDI Policy Circular' published annually. The amendments made in the FDI Policy are published through Press Notes, which are subsequently incorporated in Consolidated FDI Policy Circular. Both Consolidated FDI Policy Circular and Press Notes indicating changes made in FDI policy, including change in caps/ conditionalities across the sectors, are available at the website of Department of Industrial Policy and Promotion at http://dipp.nic.in/policies-rules-and-acts/press-notes-fdi-circular. A brief on FDI policy reforms undertaken since 2014-15 is at Annexure.

**(c):** No such proposal is under consideration of the Government.

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**ANNEXURE**

**ANNEXURE REFERRED TO IN REPLY TO PARTS (a) & (b) OF THE RAJYA SABHA UNSTARRED QUESTION NO. 497 FOR ANSWER ON 7$^{TH}$ FEBRUARY, 2018.**

## FDI Policy Reforms Since May 2014-15

The Government has taken a number of FDI Policy reforms, which are not only bold but also historic. The measures taken by the Government were directed to open new sectors for foreign direct investment, increase the sectoral limit of existing sectors and simplifying other conditions of the FDI policy. These policy reforms are meant to provide ease of doing business and accelerate the pace of foreign investment in the country. Following are the main FDI policy reforms:

**1. Investment by Non-resident Indians (NRIs) and NRI held entities:** NRIs have special dispensation for investment in Construction development and Civil Aviation sector. Size of Indian diaspora residing overseas is over 25 million. These constitute NRIs, Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCIs). These non-residents of Indian origin have keen desire to participate in Indian growth story. To facilitate investment by these NRIs extant FDI policy has been amended to provide following:

a) Investment made by NRIs, PIOs and OCIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations on non-repatriation basis is deemed to be domestic investment at par with the investment made by residents.

b) The special dispensation of NRIs is also available to companies, trusts and partnership firms, which are incorporated outside India and are owned and controlled by NRIs.

**2. Rail Infrastructure:** The modernization of Railways requires very large amount of capital investment. This makes foreign investment imperative in rail infrastructure especially in highly capital and technology intensive areas like suburban corridors, high speed train systems, train sets, railway rolling stock including locomotives/coaches, railway electrification, signaling systems dedicated freight line projects. Accordingly the Government with view to attract foreign investment in the sector has opened following activities of Rail infrastructure to 100% under automatic route:

Construction, operation and maintenance of (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems.

However, FDI beyond 49% of the equity of the investee company in sensitive areas from security point of view, will be brought before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.

**3. Medical Devices**: India has achieved an eminent global position in pharma sector. However, same has not been replicated in the medical devices industry. The country has huge pool of scientists and engineers who have potential to take medical device industry to a very high level. Domestic capital market is not able to provide much needed investment in the sector. The government has therefore permitted FDI up to 100% under the automatic route for manufacturing of medical devices, without any distinction of greenfield or brownfield and such FDI will not be subjected to other conditions of the FDI policy on the pharmaceutical sector.

**4. Insurance & Pension Sectors:** FDI Policy on Insurance sector was reviewed in view of amendment to the Insurance Laws (Amendment) Act 2015 to increase the sectoral cap of foreign investment from 26% to 49%. Further it has been provided that FDI in the sector would be permitted under automatic route. Similar changes have also been brought in the FDI Policy on Pension Sector.

**5. Introduction of composite cap of foreign investment:** In order to provide simplicity to the FDI policy and bring clarity on application of conditionalities and approval requirements across various sectors, different kinds of foreign investments have been made fungible under one composite cap. The amendment aligns with the intent of FDI Policy wherein different categories of investments through FDI, FPI (FII, QFI), NRI, FVCI and DR are regarded as foreign investments. This will provide Indian companies and investors choice of category of investments between FDI, FPI (FII,QFI), NRI, FVCI and DR.

**6. Construction Development sector:** Investment in the construction development sector remains a priority of the Government as it results in infrastructure creation; employment generation from unskilled workers to engineers, architects, designers as well as financial and other supporting services. FDI policy on Construction Development permits 100% foreign investment under automatic route subject to certain conditions. In order to liberalize and bring pragmatism in the policy so as to attract more foreign investment in the country not only in large infrastructure projects but also in held-up and smaller projects following amendments have introduced in the FDI policy on the sector:

a) Removal of conditions of area restriction of floor area of 20,000 sq. mtrs in construction development projects and minimum capitalization of US $ 5 million to be brought in within the period of six months of the commencement of business.

b) Exit and repatriation of foreign investment is now permitted after a lock-in-period of three years. Transfer of stake from one non-resident to another non-resident, without repatriation of investment is also neither to be subjected to any lock-in period nor to any government approval.

c) Exit is permitted at any time if project or trunk infrastructure is completed before the lock-in period.

d) 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.

e) It has been clarified that ‘real-estate broking service’ does not amount to real estate business and is therefore, eligible for 100% FDI under automatic route.

**7. Defence sector:** India incurs huge expenditure on imports of defence equipments as the domestic defence industry has not been able to meet the expectations of the present times. The sector is capital intensive and requires advance technologies. Earlier FDI regime permitted 49% FDI participation in the equity of a company under automatic route. FDI above 49% was permitted through Government approval on case to case basis, wherever it is likely to result in access to modern and ‘state-of-art’ technology in the country. In this regard, the following changes have inter-alia been brought in the FDI policy on this sector:

(i) Foreign investment beyond 49% has now been permitted through government approval route, in cases resulting in access to modern technology in the country or for other reasons to be recorded.

(ii) FDI limit for defence sector has also been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.

**8. Broadcasting sector:** Sectoral cap on Broadcasting sector has been raised across various activities as follows:

- 74% to 100% in Teleports, DTH, Cable Networks (Digital), Mobile TV, HITS
- 26% to 49% for FM Radio, up-linking of news and current affairs
- 49% to 100% for Cable Networks (not undertaking digitisation)

**9. Banking-Private sector:** Government introduced full fungibility of foreign investment in Banking-Private sector. Accordingly, FIIs/FPIs/QFIs, following due procedure, can now invest up to sectoral limit of 74%, provided that there is no change of control and management of the investee company.

**10. Plantation Sector:** The Government has reviewed FDI policy on plantation sector and has opened coffee, rubber, cardamom, palm oil tree and olive oil tree plantations for 100% foreign investment under automatic route along with tea plantation, which was earlier under approval route.

**11. Manufacturing Sector:** In order to provide boost to the manufacturing sector and give impetus to the 'Make in India' initiative, the Government has permitted a manufacturer to sell its product through wholesale and/or retail, including through e-commerce under automatic route.

**12. Trading:** In order to encourage investment in the sector and provide simplification in the policy, following amendments have been brought in the FDI policy on the sector:

**a) Single Brand Retail Trading (SBRT):**

(i) 100% FDI under automatic route has been permitted in SBRT

(ii) A non-resident entity or entities, whether owner of the brand or otherwise, has been permitted to undertake 'single brand' product retail trading in the country for the specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner. Earlier provisions permitted a non-resident entity or entities, whether owner of the brand or otherwise, to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading.

(iii) Sourcing of 30% of the value of goods purchased would now be reckoned from the opening of first store. Further, it is seen that in certain high technology segments, it is not possible for retail entity to comply with the sourcing norms. To provide opportunity to such single brand entities, it has been provided that in case of 'state-of-art' and 'cutting-edge technology' sourcing norms can be relaxed subject to Government approval. Subsequently, local sourcing norms have been relaxed up to three years for entities undertaking Single

Brand Retail Trading of products having 'state of art' and 'cutting edge' technology. For such entities, sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, provisions of Para 5.2.15.3 (2) (e) will be applicable.

(iv) With respect of the 30% local sourcing requirement that SBRT entities with FDI beyond 51% are required to meet, they have now been permitted to set off the incremental sourcing of goods from India for their global operations during initial 5 years, beginning 1st April of the year of the opening of first store against the mandatory sourcing requirement of 30% of purchases from India. For this purpose, incremental sourcing will mean the increase in terms of value of such global sourcing from India for that single brand (in INR terms) in a particular financial year over the preceding financial year, by the non-resident entities undertaking single brand retail trading entity, either directly or through their group companies. After completion of this 5-year period, the SBRT entity is required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis.

(v) An entity operating through brick and mortar stores has been permitted to undertake e-commerce activities of single brand product.

(vi) An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms. Further, Indian brands should be owned and controlled by resident Indian citizens and/or companies, which are owned and controlled by resident Indian citizens.

**b) Duty Free Shops:** 100% FDI is now permitted under automatic route in Duty Free Shops located and operated in the Custom bonded areas.

**13. Permitting same entity to carry out both wholesale and single brand retail trading:** As per the FDI policy, in wholesale cash & carry activities, 100% foreign investment is permitted under the automatic route. Earlier FDI policy on this sector provided that a wholesale/cash & carry trader cannot open retail shops to sell to the consumer directly. It has now been provided that a single entity will be permitted to undertake both the activities of single brand retail trading (SBRT) and wholesale with the condition that conditions of FDI policy on wholesale/ cash & carry and SBRT have to be complied by both the business arms separately.

**14. Power Exchanges**

Earlier policy provided for 49% FDI under automatic route in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010. However, FII/FPI purchases were restricted to secondary market only. This provision has been done away with. FIIs/FPIs are now allowed to invest in Power Exchanges through primary market as well.

**15. Limited Liability Partnerships (LLPs)**: FDI policy on LLPs has been amended to provide that investments in LLPs will not require Government approval. 100% FDI is now permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

In line with companies, an LLP having foreign investment has been permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. Further, for the purposes of FDI policy, the term 'internal accruals' has also been defined.

**16. Civil Aviation Sector:** Foreign equity cap of activities of Non-Scheduled Air Transport Service, Ground Handling Services have been increased from 74% to 100% under the automatic route. With a view to aid in modernization of the existing airports to establish a high standard and help ease the pressure on the existing airports, 100% FDI under automatic route has been allowed in Brownfield Airport projects.

FDI limit for Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and regional Air Transport Service raised to 100%, with FDI upto 49% permitted under automatic route and FDI beyond 49% through Government approval. For NRIs, 100% FDI will continue to be allowed under automatic route. However, foreign airlines would continue to be allowed to invest in capital of Indian companies operating scheduled and nonscheduled air transport services up to the limit of 49% of their paid up capital and subject to the laid down conditions in the existing policy.

As per the earlier policy, foreign airlines were allowed to invest under Government approval route in the capital of Indian companies operating scheduled and nonscheduled air transport services, up to the limit of 49% of their paid-up capital. However, this provision was not applicable to M/s Air India Ltd., thereby implying that foreign airlines could not invest in Air India. Now, foreign investment(s) in Air India has been allowed, including that of foreign airline(s), up to 49% either directly or indirectly. Substantial ownership and effective control of Air India shall continue to be vested in Indian Nationals.

**17. Satellites- establishment and operation and Credit Information Companies**: Foreign investment caps on Satellites- establishment and operation and Credit Information Companies have now been raised from 74% to 100%. FDI in Satellites- establishment and operation is now under the government route and in Credit Information Companies, FDI is under the automatic route.

**18. Other Approval Requirements under FDI Policy**

(i) As per the earlier FDI policy provisions, issue of equity shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. was permitted under Government approval route. The policy has been amended and for sectors under automatic route, issue of shares against import of capital goods/ machinery/ equipment (excluding second-hand machinery) and pre-operative/pre-incorporation expenses (including payments of rent etc.) is now permitted under automatic route subject to conditions as per extant FDI Policy, and reporting to RBI in form FC-GPR as per procedure prescribed under the FDI Policy.

(ii) It has been provided that FDI in Investing Companies registered as Non-Banking Financial Companies (NBFC) with the Reserve Bank of India, being overall regulated, would be under 100% automatic route. FDI in Core Investing Companies and other Investing Companies will continue to be under approval route.

**19. Approval requirement for companies without operations:** Approval requirements in respect of companies under operation have also been relaxed. It has now been provided that for infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government approval would not be required, for undertaking activities which are under automatic route and without FDI-linked performance conditions, regardless of the amount or extent of foreign investment.

**20. Establishment and transfer of ownership and control of Indian companies:** As per the earlier FDI policy establishment and ownership or control of the Indian company in sectors/activities with caps required Government approval. This provision has now been amended to provide that approval of the Government will be required if the company concerned is operating in sectors/ activities which are under Government approval route rather than capped sectors. Further no approval of the Government is required for investment in automatic route sectors by way of swap of shares.

**21. Raising the threshold limit for approval by Foreign Investment Promotion Board:** As per the earlier FDI policy Foreign Investment Promotion Board (FIPB) considers proposals having total foreign equity inflow up to Rs. 3000 crore and proposals above Rs. 3000 crore were placed for consideration of Cabinet Committee on Economic Affairs (CCEA). In order to achieve faster approvals of proposals, the threshold limit for FIPB approval has been increased to Rs. 5000 crore.

**22. White Label ATM Operations:** The Government, with an objective of enhancing ATM networks in semi-urban and rural areas (mainly in Tier III to VI areas), has allowed 100% FDI in white label ATM operations under the automatic route.

**23. E-commerce:** The Government has issued Guidelines for FDI on E-commerce sector. 100% FDI under automatic route is now permitted in marketplace model of e-commerce. Various terms like e-commerce, e-commerce entity, marketplace, inventory based model have also been defined to bring clarity.

**24. Food Product Retail Trading:** 100% FDI under government approval route has been permitted for trading, including through e-commerce, in respect **food products** manufactured and/or produced in India. This will benefit farmers, give impetus to food processing industry and create vast employment opportunities.

**25. Asset Reconstruction Companies:** The Government, with an objective of increase investment in the country, has allowed 100% FDI in Asset Reconstruction Companies under the automatic route.

**26. Pharmaceutical:** With the objective of making the sector more attractive to foreign investors, 74% FDI under automatic route has been permitted in brownfield pharmaceuticals. FDI beyond 74% is allowed through government approval route. 'Non-compete' clause would not be allowed in automatic or government approval route except in special circumstances with the approval of the Foreign Investment Promotion Board.

FDI in brownfield pharmaceuticals, under both automatic and government approval routes, is subject to compliance of following conditions:

a) The production level of National List of Essential Medicines (NLEM) drugs and/or consumables and their supply to the domestic market at the time of induction of FDI, being maintained over the next five years at an absolute quantitative level. The benchmark for this level would be decided with reference to the level of production of NLEM drugs and/or consumables in the three financial years, immediately preceding the year of induction of FDI. Of these, the highest level of production in any of these three years would be taken as the level.

b) R&D expenses being maintained in value terms for 5 years at an absolute quantitative level at the time of induction of FDI. The benchmark for this level would be decided with reference to the highest level of R&D expenses which has been incurred in any of the three financial years immediately preceding the year of induction of FDI

c) The administrative Ministry will be provided complete information pertaining to the transfer of technology, if any, along with induction of foreign investment into the investee company.

**27. Private Security Agencies:** FDI limit for Private Security Agencies raised to 74%. FDI up to 49% is permitted under automatic route in this sector and FDI beyond 49% and up to 74% is permitted with government approval.

**28. Establishment of branch office, liaison office or project office:** For establishment of branch office, liaison office or project office or any other place of business in India if the principal business of the applicant is Defence, Telecom, Private Security or Information and Broadcasting, approval of Reserve Bank of India is no more required in cases where FIPB approval or license/permission by the concerned Ministry/Regulator has already been granted.

**29. Prohibition of restrictive conditions regarding audit firms**

FDI policy did not have any provisions in respect of specification of auditors that can be appointed by the Indian investee companies receiving foreign investments. FDI policy has now been amended to provide that wherever the foreign investor wishes to specify a particular auditor/audit firm having international network for the Indian investee company, then audit of such investee companies should be carried out as joint audit wherein one of the auditors should not be part of the same network.

**30. Animal Husbandry:** As per FDI Policy 2016, FDI in Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture is allowed 100% under Automatic Route under controlled conditions. This requirement of ‘controlled conditions’ for FDI in these activities has been done away with.

**31. Other Financial Services:** Government has reviewed FDI policy on Other Financial Services and NBFCs to provide that foreign investment in financial services activities regulated by financial sector regulators such as RBI, SEBI, IRDA etc. will be 100% under the automatic route. In financial services, which are not regulated by any financial sector regulator or where only part of the financial service activity is regulated or where there is doubt regarding regulatory oversight, foreign investment upto 100% will be allowed under the government approval route.

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