INDUSTRIAL POLICY

INDUSTRIAL POLICY	FOREIGN DIRECT INVESTMENT	INVESTMENT BY NON RESIDENT INDIANS OVERSEAS CORPORATE BODIES
FOREIGN TECHNOLOGY AGREEMENTS Automatic/ Govt. Approval	100% EXPORT ORIENTED UNITS/ EXPORT PROCESSING ZONES Automatic/ Govt. Approval	ELECTRONIC HARDWARE TECHNOLOGY PARK AND SOFTWARE TECHNOLOGY PARK SCHEMES Automatic/ Govt. Approval

1. INDUSTRIAL POLICY

Industrial Licensing	IEM	Locational Policy	Policy Relating to Small Scale Undertakings
Environmental Clearances			

The Government's liberalisation and economic reforms programme aims at rapid and substantial economic growth, and integration with the global economy in a harmonised manner. The industrial policy reforms have reduced the industrial licensing requirements, removed restrictions on investment and expansion ,and facilitated easy access to foreign technology and foreign direct investment.

Industrial Licensing

1.1 All industrial undertakings are exempt from obtaining an industrial licence to manufacture, except for (i) industries reserved for the Public Sector (Annex I), (ii) industries retained under compulsory licensing(Annex II), (iii) items of manufacture reserved for the small scale sector and (iv) if the proposal attracts locational restriction.[For procedure to obtain Industrial Licence refer to para 7.2].

IEM

1.2 Industrial undertakings exempt from obtaining an industrial license are required to file an Industrial Entrepreneur Memoranda(IEM) in Part 'A' (as per prescribed format) with the Secretariat of Industrial Assistance(SIA), Department of Industrial Policy and Promotion, Government of India, and obtain an acknowledgement. No further approval is required. Immediately after commencement of commercial production, Part B of the IEM has to be filled in the prescribed format. The facility for amendment of existing IEMs has also been introduced. [For procedure to file IEM refer to para 7.1].

Locational Policy

1.3 Industrial undertakings are free to select the location of a project. In the case of cities with population of more than a million (as per the 1991 census), however, the proposed location should be at least 25 KM away from the Standard Urban Area limits of that city unless, it is to be located in an area designated as an "industrial area" before the 25th July, 1991.(List of cities with population of 1 million and above is given at Annexure-V). Electronics, Computer software and Printing (and any other industry which may be notified in future as "non polluting industry") are exempt from such locational restriction. Relaxation in the aforesaid locational restriction is possible if an industrial license is obtained as per the notified procedure.

1.4 The location of industrial units is further regulated by the local zoning and land use regulations as also the environmental regulations. Hence, even if the requirement of the locational policy stated in paragraph 1.3 is fulfilled, if the local zoning and land use regulations of a State Government, or the regulations of the Ministry of Environment do not permit setting up of an industry at a location, the entrepreneur would be required to abide by that decision.

Policy Relating to Small Scale Undertakings

1.5 An industrial undertaking is defined as a small scale unit if the investment in fixed assets in plant and machinery does not exceed Rs 10 million. The Small Scale units can get registered with the Directorate of Industries/District Industries Centre in the State Government concerned. Such units can manufacture any item including those notified as exclusively reserved for manufacture in the small scale sector. Small scale units are also free from locational restrictions cited in paragraph 1.3 above. However, a small scale unit is not permitted more than 24 per cent equity in its paid up capital from any industrial undertaking either foreign or domestic.

1.6 Manufacture of items reserved for the small scale sector can also be taken up by non-small scale units, if they apply for and obtain an industrial license. In such cases, it is mandatory for the non-small scale unit to undertake an export obligation of 50 per cent . In addition, if the equity holding from another company(including foreign equity) exceeds 24 per cent, even if the investment in plant and machinery in the unit does not exceed Rs 10 million, the unit loses its small scale status. An IEM is required to be filed in such a case for de-licensed industries, and an industrial license is to be obtained in the case of items of manufacture covered under compulsory licensing.

1.7 A small scale unit manufacturing small scale reserved item(s), on exceeding the small scale investment ceiling in plant and machinery by virtue of natural growth, needs to apply for and obtain a Carry-on-Business(COB) License. No export obligation is fixed on the capacity for which the COB license is granted. However, if the unit expands its capacity for the small scale reserved item(s) further, it needs to apply for and obtain a separate industrial license. (For procedure to obtain COB licence, refer to para 7.2(d)).

1.8 It is possible that a chemical or a by-product recoverable through pollution control measures is reserved for the small scale sector. With a view to adopting pollution control

measures, Government have decided that an application needs to be made for grant of an Industrial Licence for such reserved items which would be considered for approval without necessarily imposing the mandatory export obligation.

Environmental Clearances

1.9 Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project. A Notification (SO 60(E) dated 27.1.94) issued under The Environment Protection Act 1986 has listed 29 projects in respect of which environmental clearance needs to be obtained from the Ministry of Environment, Government of India. This list includes industries like petro-chemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilisers, dyes, paper etc. However if investment is less than Rs. 500 million, such clearance is not necessary, unless it is for pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of certain parameters, tarred roads in Himalayan areas, distilleries, dyes, foundries and electroplating industries. Further, any item reserved for the small scale sector with investment of less than Rs 10 million is also exempt from obtaining environmental clearance from the Central Government under the Notification. Powers have been delegated to the State Governments for grant of environmental clearance for certain categories of thermal power plants. Setting up industries in certain locations considered ecologically fragile (eg Aravalli Range, coastal areas, Doon valley, Dahanu, etc.) are guided by separate guidelines issued by the Ministry of Environment of the Government of India.[For procedure to obtain environmental clearance, refer to para 21.1].

2. FOREIGN DIRECT INVESTMENT

Automatic Route New Ventures Existing Companies	Government Approval	Issue and Valuation of Shares in case of existing companies
Foreign Investment in the Small Scale Sector	Foreign Investment Policy for Trading Activities	Other Modes of Foreign Direct Investments
Preference Shares		

Government wishes to facilitate foreign direct investment (FDI) and investment from Non-Resident Indians (NRI)s including Overseas Corporate Bodies (OCBs), that are predominantly owned by them, to complement and supplement domestic investment. Investment and returns are freely repatriable, except where the approval is subject to specific conditions such as lock in period on original investment, dividend cap, foreign exchange neutrality, etc. as per the notified sectoral policy.

2.1 Foreign direct investment is freely allowed in all sectors including the services sector, except where the existing and notified sectoral policy does not permit FDI beyond a ceiling. FDI for virtually all items/activities can be brought in through the automatic route under powers delegated to the Reserve Bank of India (RBI), and for the remaining

items/activities through Government Approval. Government approvals are accorded on the recommendation of the Foreign Investment Promotion Board (FIPB), chaired by the Secretary, Department of Industrial Policy and Promotion (Ministry of Commerce and Industry) with the Union Finance Secretary, Commerce Secretary, and other key Secretaries of the Government as its members.

Automatic Route

(a) New Ventures

2.2 All items/activities except the following fall under the automatic route for FDI/NRI/OCB investment upto 100 percent FDI:

i. All proposals that require an Industrial Licence which includes (i) the item requiring an Industrial Licence under the Industries (Development and Regulation) Act, 1951; (ii) foreign investment being more than 24% in the equity capital of units manufacturing items reserved for small scale industries; and (iii) all items which require an Industrial Licence in terms of the locational policy notified by Government under the New Industrial Policy of 1991.
ii. All proposals in which the foreign collaborator has a previous venture/tieup in India. The modalities prescribed in Press Note No. 18 dated 14.12.98 of 1998 series, shall apply in such cases.
iii. All proposals relating to acquisition of shares in an existing Indian company in favour of a foreign/NRI/OCB investor.
iv. All proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted and/or whenever any investor chooses to make an application to the FIPB and not to avail of the automatic route.

Investment in Public Sector Units as also for EOU/EPZ/EHTP/STP units would also qualify for the Automaic Route. Investment under the Automatic Route shall continue to be governed by the notified sectoral policy and equity caps and RBI will ensure compliance of the same. The National Industrial Classificatrion (NIC) 1987 shall remain applicable for description of activities and classification for all matters relating to FDI/NRI/OCB investment:

Areas/Sectors/Activities hitherto not open to FDI/NRI/OCB investment shall continue to be so unless otherwise decided and notofied by Government. Henceforth any change in sectoral policy/sectoral equity cap shall be notified by the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion.

(b) Existing Companies

2.3 Besides new companies, automatic route for FDI/NRI/OCB investment is also available to the existiing companies proposing to induct foreign equity. For existing companies <u>with an expansion programme,</u> the additional requirements are that (i) the increase in equity level must result from the expansion of the equity base of the existing

company, (ii) the money to be remitted should be in foreign currency and (iii) the proposed expansion programme should be in the sector(s) under Automatic Route. Otherwise, the proposal would need Government approval through the FIPB. For this the proposal must be supported by a Board Resolution of the existing Indian company as well as a consent letter from the Indian partner and the foreign collaborator.

2.4 For existing companies without an expansion programme, the additional requirements for eligibility for automatic approval are (i) that they are engaged in the industries under Automatic Route, (ii) the increase in equity level must be from expansion of the equity base and (iii) the foreign equity must be in foreign currency.

2.5 The earlier requirement that shares allotted on preferential basis shall not be transferable in any manner for a period of 5 years from the date of their allotment has now been modified to the extent that not more than 20 per cent of the entire contribution brought in by promoter cumulatively in public or preferential issue shall be locked in.

2.6 The automatic route for FDI and/or technology collaboration would not be available to those who have or had any previous joint venture or technology transfer/trade mark agreement in the same or allied field in India.

2.7 In a major drive to simplify procedures for foreign direct investment under the "automatic route", RBI has given permission to Indian Companies to accept investment under this route without obtaining prior approval from RBI. Investors are required to notifiy the Regional Ofice concerned of the RBI of receipt of inward remittances within 30 days of such receipt and file required documentation within 30 days of issue of shares to Foreign Investors. This facility is available to NRI/OCB investment also. [For procedure relating to automatic approval, refer to para 8.1].

Government Approval

2.8 For the following categories, Government approval for FDI through the FIPB shall be necessary:-

i. All proposals that require an Industrial Licence which includes (i) the item requiring an Industrial Licence under the Industries (Development and Regulation) Act, 1951; (ii) foreign investment being more than 24% in the equity capital of units manufacturing items reserved for small scale industries; and (iii) all items which require an Industrial Licence in terms of the locational policy notified by Government under the New Industrial Policy of 1991.
ii. All proposals in which the foreign collaborator has a previous venture/tieup in India. The modalities prescribed in Press Note No. 18 dated 14.12.98 of 1998 series, shall apply in such cases.
iii. All proposals relating to acquisition of shares in an existing Indian company in favour of a foreign/NRI/OCB investor.

iv. All proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted and/or whenever any investor chooses to make an application to the FIPB and not to avail of the automatic route.

Areas/Sectors/Activities hitherto not open to FDI/NRI/OCB investment shall continue to be so unless otherwise decided and notofied by Government. Henceforth any change in sectoral policy/sectoral equity cap shall be notified by the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion.

2.9 RBI has granted general permission under Foreign Exchange Management Act (FEMA) in respect of proposals approved by the Government. Indian companies getting foreign investment approval through FIPB route do not require any further clearance from RBI for the purpose of receiving inward remittance and issue of shares to the foreign investors. Such companies are, however, required to notify the Regional Office concerned of the RBI of receipt of inward remittances within 30 days of such receipt and to file the required document with the concerned Regional Offices of the RBI within 30 days after issue of shares to the foreign investors.

2.10 For greater transparency in the approval process, Government have announced guidelines for consideration of FDI proposals by the FIPB. The guidelines are stated in Annexure-III . The sector specific guidelines for FDI and Foreign Technology Collaborations are stated in Annexure-IV. [For procedure relating to Government approval, refer to para 8.2].

Issue and Valuation of Shares in case of existing companies

2.11 On receipt of the approval (either through the automatic route, or by Government) an existing company needs to propose allotment of preferential allocation of the required amount of equity to the foreign investor by a special resolution. The company can make the issue at market prices of the shares either at (a) the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date, or (b) the average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date. The stock exchange referred to is the one at which the highest trading volume in respect of the share of the company has been recorded during the preceding six months prior to the relevant date. The relevant date is the date thirty days prior to the date on which the meeting of the General Body of the shareholders is convened. Other relevant guidelines of Securities and Exchange Board of India (SEBI)/RBI, including SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 wherever applicable, would need to be followed.

Foreign Investment in the Small Scale Sector

2.12 Under the small scale policy, equity holding by other units including foreign equity in a small scale undertaking is permissible up to 24 per cent. However there is no bar on higher equity holding for foreign investment if the unit is willing to give up its small scale status. In case of foreign investment beyond 24 per cent in a small scale unit which manufactures small scale reserved item(s), an industrial license carrying a mandatory export obligation of 50 per cent would need to be obtained.

Foreign Investment Policy for Trading Activities

2.13 Foreign investment for trading can be approved through the automatic route up to 51% foreign equity, and beyond by the Government through FIPB. For approval through the automatic route, the requirement would be that (i) the undertaking concerned should be an export house, trading house, super trading house or a star trading house registered under the provisions of the Export and Import policy in force. However, under the Government route

i. 100% FDI is permitted in case of trading companies for the following activities:

- exports;
- bulk imports with export/ex-bonded warehouse sales;
- cash and carry wholesale trading;
- other import of goods or services provided at least 75% is for procurement and sale of goods and services among the companies of the same group and for third party use or onward transfer/distribution/sales.

ii The following kinds of trading are also permitted, subject to provisions of EXIM Policy:

a. Companies for providing after sales services (that is not trading per se)
b. Domestic trading of products is permitted at the wholesale level by such trading companies who wish to market manufactured products on behalf of their joint ventures in which they have equity participation in India.
c. Trading of hi-tech items/items requiring specialised after sales service.
d. Trading of items for social sector
e. Trading of hi-tech, medical and diagnostic items.
f. Trading of items sourced from the small scale sector which, based on technology provided and laid down quality specifications, a company can market that item under its brand name.
g. Domestic sourcing of products for export.
h. Test marketing of such items for which a company has approval for manufacture provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facilities commences simultaneously with test marketing.
i. FDI upto 100% permitted for e-commerce activities subject to the condition that such companies would divest 26% of their equity in favour of the Indian public in 5 years, if these companies are listed in other parts of the world. Such companies

would engage only in business to business (B2B) e-commerce and not in retail trading.

2.14 Both in the case of automatic and Government approvals, the valuation and pricing of shares would be governed by the provisions stated in paragraph 2.11 above. Closely held companies would also be governed, mutatis mutandis, by the same guidelines.

Other Modes of Foreign Direct Investments

2.15 Global Depository Receipts(GDR)/American Deposit Receipts (ADR)/Foreign Currency Convertible Bonds (FCCB): Foreign Investment through GDRs/ADRs, Foreign Currency Convertible Bonds (FCCBs) are treated as Foreign Direct Investment. Indian companies are allowed to raise equity capital in the international market through the issue of GDR/ADRs/FCCBs. These are not subject to any ceilings on investment. An applicant company seeking Government's approval in this regard should have a consistent track record for good performance (financial or otherwise) for a minimum period of 3 years. This condition can be relaxed for infrastructure projects such as power generation, telecommunication, petroleum exploration and refining, ports, airports and roads.

2.16 There is no restriction on the number of GDRs/ADRs/FCCBs to be floated by a company or a group of companies in a financial year. A company engaged in the manufacture of items covered under Automatic Route is likely to exceed the precentage limits under the Automatic Route, whose direct foreign investment after a proposed GDR/ADR/FCCBs issue is likely to exceed 50 per cent/51 per cent/74 per cent as the case may be, or which is implementing a project not contained in project falling under Government Approval route, would need to obtain prior Government clearance through FIPB before seeking final approval from the Ministry of Finance.

2.17 There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets. The FCCB issue proceeds need to conform to external commercial borrowing end use requirements; in addition, 25 per cent of the FCCB proceeds can be used for general corporate restructuring.

Preference Shares

2.18 Foreign investment through preference shares is treated as foreign direct investment. Proposals are processed either through the automatic route or FIPB as the case may be. The following guidelines apply to issue of such shares:-
(i) Foreign investment in preference share are considered as part of share capital and fall outside the External Commercial Borrowing (ECB) guidelines/cap
(ii) Preference shares to be treated as foreign direct equity for purpose of sectoral caps on foreign equity, where such caps are prescribed, provided they carry a conversion option. If the preference shares are structured without such conversion option, they would fall outside the foreign direct equity cap.
(iii) Duration for conversion shall be as per the maximum limit prescribed under the Companies Act or what has been agreed to in the share holders agreement whichever is

less.
(iv) The dividend rate would not exceed the limit prescribed by the Ministry of Finance.
(v) Issue of Preference Shares should conform to guidelines prescribed by the SEBI and RBI and other statutory requirements.

3. INVESTMENT BY NON RESIDENT INDIANS OVERSEAS CORPORATE BODIES

3.1 Investment by the NRIs and OCBs in which the NRIs hold at least 60 per cent equity is treated as foreign direct investment. For all sectors excluding those falling under Government Approval, NRIs and OCBs are eligible to bring investment through the Automatic Route of RBI. All other proposals which do not fulfil any or all of the criteria for automatic approval are considered by the Government through the FIPB.

3.2 The NRIs and OCBs are allowed to invest in housing and real estate development sector, in which foreign direct investment is not permitted. They are allowed to hold even100 per cent equity in civil aviation sector in which otherwise foreign equity only up to 40 per cent is permitted. Similarly for the banking sector, NRIs/ OCBs can hold 40 per cent equity inclusive of foreign direct investment. Equity participation by foreign banking companies, foreign financial companies, and multilateral institutions as co-promoter and/or technical collaborator is also permitted up to 20 per cent. Multilateral institutions have a special dispensation to invest beyond 20 per cent to the extent of shortfall in NRI contributions, subject to the overall limit of 40 per cent. Investment made by the NRIs and OCBs are fully repatriable except in the case of real estate, which has a 3 year lock-in period on original investment and 16 per cent cap on dividend repatriation.

4. FOREIGN TECHNOLOGY AGREEMENTS

4.1 With a view to injecting the desired level of technological dynamism in Indian industry and for promoting an industrial environment where the acquisition of technological capability receives priority, foreign technology induction is encouraged both through FDI and through foreign technology collaboration agreements. Foreign technology collaborations are permitted either through the automatic route under delegated powers exercised by the RBI, or by the Government. However, cases involving industrial licenses/small scale reserved items do not qualify for automatic approval and would require consideration and approval by the Government. Automatic route for technology colloboration would also not be available to those who have, or had any previous technology transfer/trade-mark agreement in the same or allied field in India. Further, automatic approval for EOU/EHTP/STP units are governed by provisions under Para 5.2 and 6.2.

Automatic Approval

4.2 The Reserve Bank of India, through its regional offices, accords automatic approval to all industries for foreign technology collaboration agreements subject to (i) the lump

sum payments not exceeding US $ 2 Million; (ii) royalty payable being limited to 5 per cent for domestic sales and 8 per cent for exports, subject to a total payment of 8 per cent on sales over a 10 year period; and (iii) the period for payment of royalty not exceeding 7 years from the date of commencement of commercial production, or 10 years from the date of agreement, whichever is earlier (The aforesaid royalty limits are net of taxes and are calculated according to standard conditions). [For procedure for automatic approval, refer to para 9.1].

Government Approval

4.3 For the following categories, Government approval would be necessary:
(a) proposals attracting compulsory licensing
(b) Items of manufacture reserved for the small acale sector
(c) Proposals involving any previous joint venture, or technology transfer/trademark agreement in the same or allied field in India. The definition of "same" and "allied" field would be as per 4 digit NIC 1987 Code and 3 digit NIC 1987 Code.
(d) Extension of foreign technology collaboration agreements (including those cases which may have received automatic approval in the first instace)
(e) Proposals not meeting any or all of the parameters for automatic approval as given in para 4.2.

[For procedure for Government approval refer to Para 9.2]

4.4 The items of foreign technology collaboration which are eligible for approval through the automatic route, and by the Government are technical know how fees, payment for design and drawing, payment for engineering service and royalty. Exclusive payment for use of brand names and trademarks are not allowed, although such payments may be subsumed in the other fee payable.

4.5 Payments for hiring of foreign technicians, deputation of Indian technicians abroad, and testing of indigenous raw material, products, indigenously developed technology in foreign countries are governed by separate RBI procedures and rules and are not covered by the foreign technology collaboration approval. Similarly, payments for imports of plant and machinery and raw material are also not covered by the foreign technology collaboration approval. For any of these items, entrepreneurs may contact the RBI.

5. 100% EXPORT ORIENTED UNITS/ EXPORT PROCESSING ZONES

5.1 100 per cent Export Oriented Units (EOUs) and units in the Export Processing Zones (EPZs), enjoy a package of incentives and facilities, which include duty free imports of all types of capital goods, raw material, and consumables in addition to tax holidays against export.

Automatic Approval

5.2 The Development Commissioners (DCs) of Export Processing Zones (EPZs) /Free Trade Zones (FTZS) accord automatic approval to projects where
(a) items do not attract compulsory licensing;
(b) where the location is in conformity with the prescribed parameters;
(c) the units undertake to achieve exports and value addition norms as prescribed in the Export and Import Policy in force;
(d) the CIF value of imported capital goods is financed through foreign equity,or foreign exchange required for import of plant and equipment (net of taxes) is within Rs. 100 Million, and in the case of import of second-hand capital goods if an Import Licence is not required;
(e) Where the foreign technology agreement if any, envisages a lump sum payment not exceeding US $ 2.00 Million and royalty payment up to 8% on exports and 5% on DTA sales (net of taxes) over a period of 5 years from the date of commencement of commercial production.
(f) where the exports are to general currency/hard currency areas;
(g) where the unit is amenable to bonding by customs authorities; and
(h) the unit has projected the minimum export turnover, as specified in the Handbook of Procedures. All proposals for FDI/NRI/OCB investments in EOU/EPZ units qualify for approval through Automatic Route subject to parameters listed under Paragraph 2.8.

[For procedure for automatic approval, refer to para 10.1 & 10.5].

5.3 Conversion of existing Domestic Tariff Area (DTA) units into EOU is also permitted under automatic route, if the DTA unit satisfies the parameters mentioned above and there is no outstanding export obligation under any other Export Oriented scheme of the Government of India.

Government Approval

5.4 All proposals which do not meet any or all of the parameters for automatic approval need to be considered and approved by the Government. All proposals falling under paragraph 2.8 for FDI in E0Us and units located in EPZ/FTZ need to obtain Government approval. [For procedure to obtain Government approval, refer to para 10.2, 10.3, 10.6, and 10.7].

6. ELECTRONIC HARDWARE TECHNOLOGY PARK AND SOFTWARE TECHNOLOGY PARK SCHEMES

6.1 In order to provide impetus to the electronics industry, to enhance its export potential and to develop an efficient electronic component industry, Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) schemes offer a package of incentives and facilities like duty free imports on the lines of the EOU Scheme, deemed exports benefits and tax holidays.

Automatic Approval

6.2 The Directors of STPs in respect of STP proposals; and the Designated Officers in respect of EHTP proposals accord automatic approval if -
(a) the items do not attract compulsory licensing; (b) the location is in conformity with the prescribed parameters; (c) the export obligation laid down in the respective EHTP scheme or STP scheme is fulfilled; (d) the CIF value of the imported capital goods required for the project does not exceed Rs. 100 million; (e) foreign technology proposals envisaged, if any, do not involve lump sum know how fee exceeding US$ 2 million, 8 per cent royalty on export and 5 per cent royalty on domestic sales (all net of taxes) over a period of 5 years from the date of commencement of commercial production; (f) the exports are to general currency/hard currency area; (g) the unit is amenable to bonding by the Customs, and all the manufacturing operations are carried out in the same premises and the proposal does not envisage sending out of the bonded area any raw material or intermediate products for any other manufacturing or processing activity. All proposals for FDI/NRI/OCB investments in EHTP/STP units are eligible for approval through AUtomatic Route subject to parameters listed under para 2.8[For procedure to obtain Automatic Approval, refe r to para 11.2].

Government Approval

6.3 All proposals which do not meet any or all of the parameters for automatic approval need to be considered and approved by the Government. Also, Government approval for FDI/NRI/OCB investments under EHTP/ STP need to be obtained through the FIPB in respect of proposals covered under para 2.8.[For procedure to obtain Government approval, refer to para 11.3 & 11.4].

PROCEDURES

INDUSTRIAL APPROVALS Procedure for IEM / Industrial Licence/ COB Licence	FOREIGN DIRECT INVESTMENT Procedure For Automatic/ Govt.(FIPB) Approval
FOREIGN TECHNOLOGY COLLABORATION Procedure For Automatic/ Govt. Approval	100% EXPORT ORIENTED UNITS Procedure For Automatic/ Govt. Approval/ foreign direct investment/NRI investment
UNITS LOCATED IN EPZ/FTZ Procedure For Automatic/ Govt. Approval/ foreign direct	EHTP/STP UNITS Procedure For Automatic/ Govt. Approval/ foreign direct investment/ NRI investment

investment/ NRI investment	

7.APPROVAL PROCEDURES

The description of activities seeking all industrial approvals including foreign direct investment are required to be given as per the National Industrial Classification of All Economic Activities (NIC), 1987, published by the Central Statistical Organisation, Ministry of Planning, New Delhi. Copies of the publication can be obtained on payment from Controller of publications, 1 Civil Lines, Delhi-1 10054 or from any outlet dealing in Government Publications.

7.1 General Procedures

IEM:

(a) All industrial undertakings exempt from the requirements of industrial licensing, including existing units undertaking substantial expansion, need to file information in the prescribed Industrial Entrepreneurs Memorandum, i.e. Form IEM (Annexure-VII) . The form is available at all outlets dealing in Government Publications, Indian Embassies, the Entrepreneurial Assistance Unit (EAU) of the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Udyog Bhavan, New Delhi-110011, and can also be downloaded from the Web site of the SIA (http://indmin.nic.in).

(b) The Memorandum (IEM) should be submitted to the EAU of the SIA in person or by post. A computer acknowledgement containing the SIA Registration Number (for future reference) will be issued across the counter immediately if delivered in person or sent by post if received through post. No further approval from SIA is required.

(c) The IEM should be submitted along with a crossed demand draft of Rs.1000/- drawn in favour of "The Pay & Accounts Officer, Department of Industrial Development, Ministry of Industry", payable at the State Bank of India, Nirman Bhawan Branch, New Delhi up to 10 items proposed to be manufactured in the same unit. For more than 10 items, an additional fee of Rs 250 up to 10 additional items needs to be paid through crossed demand draft.

(d) All Industrial undertakings also need to file information in Part 'B' of the Memorandum at the time of commencement of commercial production. The prescribed form is appended to Form IEM. This second Memorandum has also to be filed with the EAU in SIA, but no fee is required.

(e) No amendment/modifications are made to any IEM filed before 30th June, 1998 except for clerical errors. Where any amendment/modification is sought to be made in such IEMs, a fresh memorandum in Form IEM, along with the prescribed fee has to be filed for which a fresh acknowledgement will be issued. An IEM would be

cancelled/deleted from the SIA records if, on scrutiny, it is found that the proposal contained in the IEM is licensable.

(f) In respect of IEMs filed in the new form made effective from 1st July, 1998, amendments/modifications will be made on the request of the entrepreneur, as per the notified procedure.

7.2 Procedural Requirements for Licensed Sectors

Industrial Licence:

(a) All industrial undertakings subject to compulsory industrial licensing are required to submit an application in the prescribed format, i.e. Form FC-IL(Annexure-VIII). Licenses are granted under the provisions of the Industries(Development and Regulation) Act, 1951. The form is available in the EAU of the SIA, at all outlets dealing in Government Publications, Indian Embassies, and can also be downloaded from the Web site of the SIA - ***http://indmin.nic.in.***. Applications for the manufacture of chlorine and caustic soda, along with associated products should include information regarding the chlorine utilisation programme.

(b) Application in Form FC-IL should be submitted to the EAU of the SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi - 110011. Approvals will normally be available within 4- 6 weeks of filling the application.

(c) The application, in Form FC-IL, should be submitted along with a crossed demand draft of Rs.2500/- drawn in favour of the Pay & Accounts Officer, Department of Industrial Development, Ministry of Industry, payable at the State Bank of India, Nirman Bhawan, New Delhi.

Carry on Business (COB) Licence

(d) A COB licence is required when a small scale unit exceeds the prescribed small scale limit of investment in plant and machinery by way of natural growth and continues to manufacture small scale reserved item(s). Also, if exemption from Industrial licensing granted for any item is withdrawn, the industrial undertakings who are manufacturing such item(s) require COB licence. The application for COB licence should be submitted in prescribed form "EE" to the SIA, Department of Industrial Policy and Promotion, along with a crossed demand draft of Rs.2500/- drawn in favour of the Pay & Accounts Officer, Department of Industrial Development, Ministry of Industry, payable at the State Bank of India, Nirman Bhawan, New Delhi.

8. FOREIGN DIRECT INVESTMENT

8.1 Procedure For Automatic Route

The proposals for approval under the automatic route are to be made to the Reserve Bank of India in the FC(RBI) form. In a major drive to simplify procedures for foreign direct investment under the "automatic route", RBI has given permission to Indian Companies to accept investment under this route without obtaining prior approval from Reserve Bank of India. However, investors will have to file the required documents with the concerned Regional Office of the RBI within 30 days after issue of shares to foreign investors. This facility is available to NRI/OCB investment also.

8.2 Procedure For Government Approval

FIPB

(a) All other proposals for foreign investment, including NRI/OCB investment and foreign investment in EOU/EPZ/STP/EHTP units, which do not fulfil any or all of the parameters prescribed for automatic approval, as given in paragraph 2.8, 3.1, and 3.2 are considered for approval on merits by the Government. All such proposals are considered for approval by the Foreign Investmetn Promotion Board (FIPB). The FIPB also grants composite approvals involving foreign technical collaborations and setting up of Export Oriented Units involving foreign investment/foreign technical collaboration.

(b) Applications to FIPB for approval of foreign investment should be submitted in Form FC-IL(Annexure-VIII). Plain paper applications carrying all relevant details are also accepted. No fee is payable. The following information should form part of the proposal submited to FIPB:

i. Whether the applicant has had or has any previous financial/technical collaboration or trade mark agreement in India in the same or allied field for which approval has been sought?; and
ii. If so, details thereof and the justification for proposing the new venture/technical collaboration (including trade marks).

(c) The application can be submitted with the EAU of the SIA, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi - 110011. Applications can also be submitted with Indian Missions abroad who will forward them to the SIA for further processing.

(d) Foreign investment proposals received in the SIA are placed before the Foreign Investment Promotion Board (FIPB) within 15 days of its receipt. The Board has the flexibility of purposeful negotiation with the investors and considers project proposals in totality in order to ensure optimum foreign direct investment into the country. The recommendations of FIPB in respect of project proposals involving a total investment of up to Rs. 6 billion are considered and approved by the Industry Minister. Projects with a total investment exceeding Rs. 6 billion are submitted to the Cabinet Committee on Foreign Investment (CCFI) for decision.

(e) The decision of the Government in all cases are conveyed by the SIA normally within 30 days.

(f) RBI has granted general permission under Foreign Exchange Management Act (FEMA)in respect of proposals approved by the Government. Indian companies getting foreign investment approval through FIPB route do not require any further clearance from RBI for the purpose of receiving inward remittance and issue of shares to the foreign investors. Such companies are, however, required to file the required document with the concerned Regional Offices of the RBI within 30 days after issue of shares to the foreign investors.

(g) Similarly, for inward remittance and issue of shares to NRI/OCB up to 100 per cent equity also, prior permission of RBI is not required. These companies have to file the required documents with the concerned Regional Offices of RBI within 30 days after the issue of shares to NRIs/OCBs.

9. FOREIGN TECHNOLOGY COLLABORATION

9.1 Procedure for Automatic Approval

Applications for automatic approval for such foreign technology agreements should be submitted in Form FT (RBI) with the concerned Regional Offices of Reserve Bank of India. No fee is payable. Approvals are available within 2 weeks.

9.2 Procedure for Government Approval

(a) All other proposals for foreign technology agreement, not meeting any or all of the parameters for automatic approval, and all cases of extension of existing foreign technical collaboration agreement, are considered for approval, on merits, by the Government. Application in respect of such proposals should be submitted in Form FC-IL to the Secretariat for Industrial Assistance, Department of Industrial Policy & Promotion, Ministry of Industry, Udyog Bhavan, New Delhi. No fee is payable.
The following information should form part of the proposal submited to SIA:

i. Whether the applicant has had or has any previous financial/technical collaboration or trade mark agreement in India in the same or allied field for which approval has been sought?; and
ii. If so, details thereof and the justification for proposing the new venture/technical collaboration (including trade marks).

Approvals are normally available within 4 to 6 weeks of filing the application.

10. 100% EXPORT ORIENTED UNITS AND UNITS SET UP IN EPZ/FTZ

A.PROCEDURE FOR APPROVAL FOR EOUs

10.1 Applications in the prescribed form for 100 per cent E0Us should be submitted to the Development Commissioners (DCs) of the Export Processing Zones (EPZS) concerned for automatic approval and to the SIA for Government approval. The Form is printed in the Handbook of Procedures for Export and Import, 1997-2002 published by the Ministry of Commerce and is also available at all outlets dealing in Government Publications. The application should be submitted along with a crossed demand draft of Rs.2500/- (licensed items) or Rs. 1000 (non-licensed items) drawn in favour of the "Pay & Accounts Officer, Department of Industrial Development, Ministry of Industry", payable at the State Bank of India, Nirman Bhavan Branch, New Delhi.

10.2 Procedure for Automatic Approval for E0Us

Applications in the prescribed form for 100 per cent E0Us should be submitted to the DCs of the EPZs. Wherever, the proposals meet the criteria for automatic approval, as given in paragraph 5.2, the DC of the EPZ would issue approval letters within 2 weeks. All other proposals shall be forwarded by the DC to the Board of Approvals for E0Us for consideration.

10.3 Procedure for Government Approval for E0Us

Applications in the Prescribed Form should be submitted to the EAU of the SIA in the Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi. On consideration of the proposal by the Board of Approvals, a decision would be normally conveyed in 6 weeks.

10.4 Procedure for foreign direct investment/NRI investment

All proposals for FDI/NRI/OCB investment in 100% EOUs are eligible for approvals under Automatic Route subject to parameters listed in para 2.8. All proposals not covered under Automatic Route the applicant should seek seperate approval of the FIPB as per the procedure contained in Para 8.2 above.

B. PROCEDURE FOR APPROVAL FOR UNITS LOCATED IN EPZ/FTZ

10.5 Applications for setting up units in EPZs be submitted to the concerned DC of the EPZ. The Form is printed in the Handbook of Procedures for Export and Import, 1997-2002 published by the Ministry of Commerce and is also available at all outlets dealing in Government Publications. The application should be submitted along with a crossed demand draft of Rs.2500/- (licensed items) or Rs. 1000 (non-licensed items) drawn in favour of the "Pay & Accounts Officer, Department of Industrial Development, Ministry of Industry", payable at the State Bank of India, Nirman Bhavan Branch, New Delhi.

10.6 Procedure for Automatic Approval for units located in EPZ/FTZ

Applications in the prescribed form for 100 per cent E0Us should be submitted to the DCs of the EPZs. Wherever, the proposals meet the criteria for automatic approval, as given in paragraph 5.2 the DC of the EPZ would issue approval letters within 2 weeks. All other proposals shall be forwarded by DC to the Board of Approvals for EPZ for consideration

10.7 Procedure for Government Approval for units located in EPZ/FTZ

Applications in the Prescribed Form should be submitted to the EAU of the Secretariat for Industrial Assistance, in the Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi. On consideration of the proposal by the Board of Approvals, a decision would be conveyed normally within 6 weeks.

10.8 Procedure for Foreign Direct Investment / NRI Investment

All proposals for FDI/NRI/OCB investment in EPZ units are eligible for approvals under Automatic Route subject to parameters listed in para 2.8. All proposals not covered under Automatic Route the applicant should seek seperate approval of the FIPB as per the procedure contained in Para 8.2 above.

11. EHTP/STP UNITS

11.1 Procedure for Approval for EHTP/STP

Application, in the prescribed form, should be submitted to the concerned Directors of STPs or the Designated Officers of EHTPs for automatic approval, and to the SIA for Government approval. The application should be submitted along with a crossed demand draft for Rs. 1000/- drawn in favour of the "Pay & Accounts Offer, Department of Industrial Development, Ministry of Industry", payable at State Bank of India, Nirman Bhawan, New Delhi.The form is available in any outlet dealing with Government Publications.

11.2 Procedure for Automatic Approval for EHTP/STP

Application, in the prescribed form, should be submitted to the concerned Directors of STPs or the Designated Officers of EHTPs for automatic approval Wherever, the proposals meet the criteria for automatic approval, as given in paragraph 6.2, the approval letters are issued within 2 weeks. All other proposals shall be forwarded to the Inter Ministerial Standing Committee for consideration.

Procedure For Government Approval For EHTP/STP

11.3 Application, in the prescribed form, should be submitted to the EAU of the SIA for Government approval. On consideration by the Inter Ministerial Standing Committee, a decision would be normally conveyed within 6 weeks.

PROCEDURE FOR FOREIGN DIRECT INVESTMENT / NRI INVESTMENT

11.4 All proposals for FDI/NRI/OCB investment in EHTP/STP units are eligible for approvals under Automatic Route subject to parameters listed in para 2.8. All proposals not covered under Automatic Route the applicant should seek seperate approval of the FIPB as per the procedure contained in Para 8.2 above.

FACILITATION

INVESTMENT PROMOTION AND FACILITATION Foreign Investment Promotion Board (FIPB)	FOREIGN INVESTMENT PROMOTION COUNCIL (FIPC) Foreign Investment Implementation Authority
SECRETARIAT FOR INDUSTRIAL ASSISTANCE (SIA) SIA's Promotional Activities Entrepreneurial Assistance Unit (EAU) of the SIA Investment Promotion and Infrastructure Development (IP & ID) Cell Project Monitoring Wing/	PUBLICATIONS SIA Newsletter SIA Statistics Other Publications
FOCUS WINDOWS	NODAL OFFICERS
SIA WEBSITE	SUBMISSION OF MONTHLY PRODUCTION RETURNS
PROCEDURE FOR OTHER ENVIRONMENTAL CLEARENCES	INFORMATION ON EXPORTS AND IMPORTS
EXTERNAL COMMERCIAL BORROWINGS	COMPANY REGISTRATION
GRIEVANCES AND COMPLAINTS Business Ombudsperson Grievances Officer & Joint Secretary	CITIZENS CHARTER

12. INVESTMENT PROMOTION AND FACILITATION

12.1 Foreign Investment Promotion Board (FIPB)

The Government has revamped the FIPB and transferred it to the Industry Ministry. The FIPB is the nodal, single window agency for all matters relating to FDI as well as promoting investment into the country. It is chaired by Secretary, Industry (Department of Industrial Policy and Promotion). Its objective is to promote FDI into India:-

[i] by undertaking investment promotion activities in India and abroad,

[ii] facilitating investment in the country by international companies, non-resident Indians and other foreign investors,

[iii] through purposeful negotiation/discussion with potential investors,

[iv] early clearance of proposals submitted to it, and

[v] review policy and put in place appropriate institutional arrangements, transparent rules and procedures and guidelines for investment promotion and approvals.

12.2 After its revamping, the FIPB has played a proactive role in promoting and attracting FDI into the country and further facilitating expeditious clearance to the proposals submitted to it. The FIPB has also decided to monitor implementation of mega projects to further facilitate investment and remove bottlenecks and as part of this exercise, to get studies commissioned through professional bodies and undertake other promotional measures.

12.3 Mailbox facility for filing of proposals for FIPB

A mailbox facility is available on the SIA website in the name of siaapplication@ub.nic.in for filing applications for FIPB.

13 FOREIGN INVESTMENT IMPLEMENTATION AUTHORITY (FIIA)

Government has set up the Foreign Investment Implementation Authority (FIIA) in the Ministry of Commerce & Industry. The FIIA will facilitate quick translation of Foreign Director Investment (FDI) approvals and implementations, provide a pro-active one stop after care service to foreign investors by helping them obtain necessary approvals, sort out operational problems and meet with various Government Agencies to find solutions to problems and maximising opportunities through a partnership approach.

13.2 Role

The FIIA shall take steps to:

- Understand and address concerns of investors;
- Understand and address concerns of approving authorities;
- Initiate multi agency consultations; and
- Refer matters not resolved at the FIIA level to high levels on a quarterly basis, including cases of projects slippage on account of implementation bottlenecks.

13.3Functions

The functions of the FIIA shall be as under:

- Expediting various approvals/permissions;
- Fostering partnership between investors and government agencies concerned;
- Resolve difference in perceptions;
- Enhance overall credibility;
- Review policy framework; and
- Liaise with the Ministry of External Affairs for keeping India's diplomatic missions abroad informed about translation of FDI approvals into actual investment and implementation.

13.4 The modalities of functioning of FIIA shall be as under:

i. The FIIA shall set up a Fast Track Committee (FTC) to review and monitor mega projects. It will nominate members of the FTC from representatives of various Ministries/agencies/State Government at the working level. The representative of the AM concerned shall act as the project coordinator and shall head the FTC. The FTC shall prescribe the time frame within which various approvals/permissions are to be given on a project to project basis. FTC shall also flag issues that need to be resolved by FIIA. Based on the inputs provided by FTC, the FIIA will give its recommendations on each project on the basis of which Administrative Ministries/State Government shall take action under their own laws and regulations.

ii. The FIIA will initiate inter Ministerial consultations and make appropriate recommendations to the competent authority, i.e. Ministry/Department concerned at the Central Government level and the State Government, as the case may be, on issues requiring policy intervention.

iii. The FIIA will act as a single point interface between the investor and Government agencies including Administrative Ministries/State Governments/Pollution Control Board/DGFT/Regulatory Authorities/Tax Authorities/Company Law Board, etc.

iv. The FIIA shall meet once every month to review cases involving investment of Rs. 100 crore or more, consider references received from the FTC, and monitor the functioning of various FTCs. It would also entertain any complaint regarding implementation bottlenecks from FDI approval holders regardless of the quantum of investment.

v. The FIIA shall also make recommendations from time to time on any issue relating to the speedy implementation of FDI projects and also to provide transparency in government functioning with respect to FDI projects.

- 13.5 The Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion shall function as the Secretariat of the FIIA.

  13.6 Approval holders are requested to send their suggestions and problems, if any to any of the following officers in SIA or at FIIA's e-mail address at fiia@ub.nic.in :

  a. Joint Secretary, SIA
  b. Director (Foreign Collaboration/Foreign Direct Investment/FIPB)
  c. Deputy Secretary (IP&ID Cell)

  The issues raised will be taken up with the concerned Department/authorities and will be discussed in the meeting of FIIA.

14. FOREIGN INVESTMENT PROMOTION COUNCIL (FIPC)

Apart from making the policy framework investor-friendly and transparent, promotional measures are also taken to attract Foreign Direct Investment into the country. The Government has constituted a Foreign Investment Promotion Council (FIPC) in the Ministry of Industry. This comprises professionals from Industry and Commerce. It has been set up to have a more target oriented approach toward Foreign Direct Investment promotion. The basic function of the Council is to identify specific sectors/projects within the country that require Foreign Direct Investment and target specific regions/countries of the world for its mobilisation.

15. SECRETARIAT FOR INDUSTRIAL ASSISTANCE (SIA)

15.1 SIA has been set up by the Government of India in the Department of Industrial Policy and Promotion in the Ministry of Commerce & Industry to provide a single window for entrepreneurial assistance, investor facilitation, receiving and processing all applications which require Government approval, conveying Government decisions on applications filed, assisting entrepreneurs and investors in setting up projects, (including liaison with other organisations and State Governments) and in monitoring implementation of projects. It also notifies all Government Policy relating to investment and technology, and collects and publishes monthly production data for 213 select industry groups.

15.2 SIA's Promotional Activities

As an investor friendly agency, it provides information and assistance to Indian and foreign companies in setting up industry and making investments. It guides

prospective entrepreneurs and disseminates information and data on a regular basis through its two monthly newsletters the "SIA Newsletter" and the "SIA Statistics" as also through its Website address, i.e. http://indmin.nic.in/ . It also assists potential investors in finding joint venture partners and provides complete information on relevant policies and procedures, including those, which are specific to sectors and the State Governments.

15.3 Entrepreneurial Assistance Unit (EAU) of the SIA

The Entrepreneurial Assistance Unit functioning under the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion provides assistance to entrepreneurs on various subjects concerning investment decisions. The unit receives all papers/applications related to industrial approvals and immediately issues a computerised acknowledgement which also has an identity/reference number. All correspondence with the SIA should quote this number. In case of papers filed by post, the acknowledgement will be sent by post. The Unit extends this facility to all papers/applications relating to IEMs, Industrial Licences, Foreign Investment, Foreign Technology Agreements, 100 per cent EOUs, EHTP, STP Schemes, etc.

15.4 The Unit also attends to enquiries from entrepreneurs relating to a wide range of subjects concerning investment decisions. It furnishes clarifications and arranges meetings with nodal officers in concerned Ministries/Organisations. The Unit also provides information regarding the current status of applications filled for various industrial approvals.

15.5 Investment Promotion and Infrastructure Development (IP & ID) Cell

In order to give further impetus to facilitation and monitoring of investment, as well as for better coordination of infrastructural requirements for industry, a new cell called the "Investment Promotion and Infrastructure Development Cell" has been created. The functions of the Cell include:-

[a] Dissemination of information about investment climate in India;

[b] Investment facilitation;

[c] Developing and distributing multimedia presentation material and other publications;

[d] Organising Symposiums, Seminars, etc. on investment promotion;

[e] Liaison with State Governments regarding investment promotion;

[f] Documentation of single window systems followed by various States;

[g] Match-making service for investment promotion;

[h] Coordination of progress of infrastructure sectors approved for investment/technology transfer, power, telecom, ports, roads, etc.;

[i] Facilitating Industrial Model Town Projects, and Industrial Parks, etc.;

[j] Promotion of Private Investment including Foreign Investment in the infrastructure sector;

[k] Compilation of sectoral policies, strategies and guidelines of infrastructure sectors, both in India and abroad; and

[l] Facilitating preparation of a perspective plan on infrastructure requirements for industry.

15.6 Project Monitoring Wing

With a view to monitoring the implementation of projects approved, and for facilitating solution to investor problems, a Project Monitoring Wing has been created within the IP&ID Cell. The functions of the Project Monitoring Wing are as follows:

(i) Coordination with Central and State level Ministries/Departments concerned and related agencies for tracking and monitoring approved projects, and compilation and analyses such information;

(ii) Direct contact, wherever necessary, with entrepreneurs and updation of the information on projects, and provision of necessary assistance.

16. NODAL OFFICERS

16.1 The Department of Industrial Policy and Promotion has identified officers at the Deputy Secretary/Director level as Nodal officers for facilitation of all matters relating to the industrial projects pertaining to a State. For large projects involving sizeable amount of FDI, officers have been identified in the Department of Industrial Policy and Promotion and other departments concerned (e.g. the Ministry to which the investment proposal pertains) and the State Government to act as contact officers so that these projects can be implemented within the time schedule. The officers of the Project Monitoring Wing are in touch with the contact officers.

17. FOCUS WINDOWS

17.1 The Department of Industrial Policy and Promotion also has opened Country Focus Windows for countries with sizeable investment interest in India. At present, the Focus Window cover countries such as USA, Germany, France, Switzerland, UK, Australia, Japan and Korea. For each focus window a senior officer in the Department provides facilitation and assistance.

17.2 SIA's publication 'India Investment Guide' is now available in the Japanese,French and German languages.

18. PUBLICATIONS

18.1 SIA Newsletter

This is a monthly publication and covers information on data relating to Foreign Direct Investment, NRI investment, sectoral break-ups, countrywise break-up, all approvals accorded for Foreign Direct Investment, and NRI investment during the month, FDI inflows, and policy notifications issued during the month. Annual issue of SIA Newsletter has been officially released and is now available.

18.2 SIA Statistics

This is also a monthly publication which contains data relating to Industrial Licences, approvals granted for setting up 100 per cent Export Oriented Units, details of approvals for Industrial Licences, EOUs, Foreign Technical Collaboration etc., monthly data on industrial production of 213 select industry groups, as well as policy announcements by Government during the month. Annual issue of SIA Statistics has been officially released and is now available.

18.3 Other Publications

These publications include this Manual as well as sector specific publications, such as on the Indian Automobile industry, Cement industry, Engineering industries, Leather industries, etc. A set of publications relating to the Infrastructure sector with specific volumes on Ports, Roads, Power, Telecom, and Railways is also published. Other publications include information on Current taxation and duty structure, Entry options for business in India, and the like. A comprehensive publication 'India Investment Guide' has recently been published.

All or any of these publications are available through the EAU of the SIA, the Investment Promotion and Infrastructure Development Cell, as also Indian Missions abroad. These can also be down loaded from the SIA Website.

19. SIA WEBSITE *(http://indmin.nic.in)*

19.1 The Home page of the SIA has been created with the intention to convey information relating to the investment climate in India and contains the aforesaid publications, State Industrial Policies, website directory of organisations, forthcoming promotional events, projects as are on offer, details regarding availability of land/industrial sheds through State Government agencies, etc.

19.2 On line advisory services through chat room,/ bullitin board are available during prescribed hours on Internet through SIA website. Assistance for drafting and filing of all applications with SIA is also provided.

19.3 SIA website is hyperlinked to the website of all ministries/departments of the Central Government as well as State Governments, Banks, Financial Institutions and Industry Associations

20. SUBMISSION OF MONTHLY PRODUCTION RETURNS

20.1 All industrial undertakings, whether exempt or not from compulsory industrial licensing, are statutorily required to submit a monthly production return in the proforma to the concerned technical authorities viz. Deputy Director (Statistics), Secretariat for Industrial Assistance (SIA), Department. of Industrial Policy and Promotion, Iron and Steel Controller; Coal Controller, Directorate of Sugar; Directorate of Vanaspati, Vegetable Oils and Fats and Textile Commissioner, as the case may be. A copy of the monthly production return should also be submitted to the concerned Administrative Ministry/Department.

20.2 In the case of small scale industrial undertakings, the monthly production return should be submitted to the appropriate State Government or Commissioner of Industries and to the Department of Small Scale and Agro & Rural Industries, Government of India along with a copy to the Small Industries Service Institute.

21. PROCEDURE FOR OTHER ENVIRONMENTAL CLEARENCES

21.1 Entrepreneurs are advised to approach Ministry of Environment and Forests, Paryavaran Bhavan, Phase II, CGO Complex, Lodhi Road, New Delhi- 110003.

22. INFORMATION ON EXPORTS AND IMPORTS

22.1 Exports and imports of plant machinery would be as per the existing Export-Import Policy in force. For any information or facilitation, entrepreneurs can

contact the Directorate General of Foreign Trade (DGFT), Ministry of Commerce & Industry, Udyog Bhavan, New Delhi-110011.

23. EXTERNAL COMMERCIAL BORROWINGS

23.1 Applications may be submitted by the borrowers in the prescribed format to the Joint Secretary(ECB), Department of Economic Affairs, Ministry of Finance, North Block, New Delhi-110001. The policy and procedures are contained in the guidelines issued by that Ministry and are available on the SIA website.

24. COMPANY REGISTRATION

24.1 Information and details may be obtained from the Department of Company Affairs, Shastri Bhavan, New Delhi-110011 or the Registrar of Companies located in all State capitals.

25. GRIEVANCES AND COMPLAINTS

25.1 Business Ombudsperson

To facilitate expeditious redressal of grievances and attend to complaints relating to delays in grant and implementation of industrial approvals and facilitate their disposal, the Government has appointed a BUSINESS OMBUDSPERSON in the Ministry of Commerce and Industry. , Additional Secretary & Financial Adviser, Ministry of Commerce and Industry, Udyog Bhavan, New Delhi-110011 has been nominated to act as Business Ombudsperson.

25.2 Grievances Officer & Joint Secretary

Grievances and complaints are also received by the Grievances Office-cum-Joint Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Udyog Bhavan, New Delhi-110011, either through post or through the mail box in the EAU of the SIA and at Reception of the Ministry of Commerce & Industry at Gate No.13 of Udyog Bhavan, New Delhi-110011. Any such communication is handled expeditiously and steps are taken to redress the grievance.

26. CITIZENS CHARTER

26.1 The Department of Industrial Policy and Promotion has also got its own Citizens Charter which outlines general procedures and standards of performance expected from the Department.

ANNEXURES

ANNEXURE-I

LIST OF INDUSTRIES RESERVED FOR THE PUBLIC SECTOR

1. **Arms and ammunition and allied items of defence equipment, defence aircraft and warships.**
2. **Atomic Energy**
3. **Railway transport.**

ANNEXURE-II

LIST OF INDUSTRIES FOR WHICH INDUSTRIAL LICENSING IS COMPULSORY

1. Distillation and brewing of alcoholic drinks.

2. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.

3. Electronic Aerospace and defence equipment: all types.

4. Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches.

5. Hazardous chemicals.

6. Drugs and Pharmaceuticals (according to modified Drug Policy issued in September, 1994).

Note: **The compulsory licensing provisions would not apply in respect of the small scale units taking up the manufacture of any of the above items reserved for exclusive manufacture in small-scale sector.**

ANNEXURE-III

GUIDELINES FOR THE CONSIDERATION OF FOREIGN DIRECT INVESTMENT(FDI) PROPOSAL BY THE FOREIGN INVESTMENT PROMOTION BOARD (FIPB)

(To be read with paragraph 2.10 of the Manual)

The following Guidelines are laid-down to enable the Foreign Investment Promotion Board (FIPB) to consider the proposals for Foreign Direct Investment (FDI) and formulate its recommendations.

1. All applications should be put up before the FIPB by the SIA (Secretariat of Industrial Assistance) within 15 days and it should be ensured that comments of the administrative ministries are placed before the Board either prior to/or in the meeting of the Board.

2. Proposals should be considered by the Board keeping in view the time-frame of 30 days for communicating Government decision (i.e. approval of IM/CCFI or rejection as the case may be).

3. In cases in which either the proposal is not cleared or further information is required, in order to obviate delays presentation by applicant in the meeting of the FIPB should be resorted to.

4. While considering cases and making recommendations, FIPB should keep in mind the sectoral requirements and the sectoral policies vis-a-vis the proposal(s).

5. FIPB would consider each proposal in totality (i.e. if it includes apart from foreign investment, technical collaboration/industrial licence) for composite approval or otherwise. However, the FIPB's recommendation would relate only to the approval for foreign financial and technical collaboration and the foreign investor will need to take other prescribed clearances separately.

6. The Board should examine the following while considering proposals submitted to it for consideration:

(i) Whether the items of activity involve industrial licence or not and if so the considerations for grant of industrial licence must be gone into;

(ii) Whether the proposal involves technical collaboration and if so:- (a) the source and nature of technology sought to be transferred, (b) the terms of payment (payment of royalty by 100% subsidiaries is not permitted):

(iii) Whether the proposal involves any mandatory requirement for exports and if so whether the applicant is prepared to undertake such obligation (this is for items reserved for small scale sector as also for dividend balancing, and for 100% EOUs/EPZ units);

(iv) Whether the proposal involves any export projection and if so the items of export and the projected destinations;

(v) Whether the proposal has concurrent commitment under other schemes such as EPCG Scheme etc.

(vi) In the case of Export Oriented Units (EOUs) whether the prescribed minimum value addition norms and the minimum turn over of exports are met or not;

(vii) Whether the proposal involves relaxation of locational restrictions stipulated in the industrial licensing policy; and

(viii) Whether the proposal has any strategic or defence related considerations.

(ix) Whether the proposal has any previous joint venture or technology transfer/trademark agreement in the same or allied field in India, the detailed circumstance in which it is considered necessary to set-up a new joint venture/enter into new technology transfer (including trade mark), and proof that the new proposal would not in any way jeopardize the interest of the existing joint venture or technology/trade mark partner or other stake holders.

7. While considering proposals the following may be prioritised.

(a) Items/Activities covered under Automatic Route (i.e. those which do not qualify for automatic approval).

(b) Items falling in infrastructure sector.

(c) Items which have an export potential

(d) Items which have large scale employment potential and especially for rural people.

(e) Items which have a direct or backward linkage with agro business/farm sector.

(f) Item which have greater social relevance such as hospitals, human resource development, life saving drugs and equipment.

(g) Proposals which result in induction of technology or infusion of capital.

8. The following should be especially considered during the scrutiny and consideration of proposals:

(a) The extent of foreign equity proposed to be held (keeping in view sectoral caps if any - e.g. 24% for SSI units, 40% for air taxi/airlines operators, 49% in basic/cellular/paging, etc. in Telecom sector).

(b) Extent of equity with composition of foreign/NRI (which may include OCB)/resident Indians.

(c) Extent of equity from the point of view whether the proposed project would amount to a holding company/wholly owned subsidiary/a company with dominant foreign investment (i.e. 75% or more) joint venture.

(d) Whether the proposed foreign equity is for setting up a new project (joint venture or otherwise) or whether it is for enlargement of foreign/NRI equity or whether it is for fresh induction of foreign equity/NRI equity in an existing Indian company.

(e) In the case of fresh induction of foreign/NRI equity and/or cases of enlargement of foreign/ NRI equity in existing Indian companies whether there is a resolution of the Board of Directors supporting the said induction/enlargement of foreign/NRI equity and whether there is a shareholders agreement or not.

(f) In the case of induction of fresh equity in the existing Indian companies and/or enlargement of foreign equity in existing Indian companies, the reason why the proposal has been made and the modality for induction/enhancement [i.e. whether by increase of paid up capital/authorised capital, transfer of shares (hostile or otherwise) whether by rights issue, or by what modality].

Cases pertaining to FIPB approvals, which involve increase in the non-resident equity within the approved percentage of non-resident equity in a joint venture company and enhancement of paid-up capital in a wholly owned subsidiary do not require FIPB approval provided the intent for increase in the amount of foreign equity is duly notified to SIA and formal documentation by way of intimation is made to SIA within 30 days of receipt of funds and allotment of shares (to non-resident shareholders).

(g) Issue/transfer/pricing of shares will be as per SEBI/RBI guidelines.

(h) Whether the activity is an industrial or a service activity or a combination of both.

(i) Whether the item of activity involves any restriction by way of reservation for the small scale sector.

(j) Whether there are any sectoral restrictions on the activity (e.g. there is ban on foreign investment in real estate while it is not so for NRI/OCB investment).

(k) Whether the item involves only trading activity and if so whether if involves export or both export and import, or also includes domestic trading and if domestic trading whether it also includes retail trading.

(l) Whether the proposal involves import of items which are either hazardous, banned or detrimental to environment (e.g. import of plastic scrap or recycled plastics).

9. In respect of actvities to which equity caps apply, FIPB may consider recommending higher levels of foreign equity as compared to the prescribed caps, keeping in view the special requirements and merits of each case.

10. In respect of other industries/activities the Board may consider recommending 51 per cent foreign equity on examination of each individual proposal. For higher levels of equity up to 74 per cent the Board may consider such proposals keeping in view considerations such as the extent of capital needed for the project, the nature and quality of technology, the requirements of marketing and management skills and the commitment for exports.

11. FIPB may consider and recommend proposals for 100 percent foreign owned holding/subsidiary companies based on the following criteria :

(a) where only "holding" operation is involved and all subsequent/downstream investments to be carried out would require prior approval of the Government.

(b) where proprietary technology is sought to be protected or sophisticated technology is proposed to be brought in;

(c) where at least 50% of production is to be exported;

(d) Proposals for consultancy; and

(e) proposals for industrial model towns/industrial parks or estates.

12 In special cases, where the foreign investor is unable initially to identify an Indian joint venture partner, the Board may consider and recommend proposals permitting 100 per cent foreign equity on a temporary basis on the condition that the foreign investor would divest to the Indian parties (either individual, joint venture partners or general public or both) at least 26 per cent of its equity within a period of 3-5 years.

13. Similarly in the case of a joint venture, where the Indian partner is unable to raise resources for expansion/technological upgradation of the existing industrial activity the Board may consider and recommend increase in the proportion/percentage (up to 100 per cent) of the foreign equity in the enterprise.

14. In respect of trading companies, 100 per cent foreign equity may be permitted in the case of the activities involving the following :

(i) exports;

(ii) bulk imports with export/ex-bonded warehouse sales;

(iii) cash and carry wholesale trading;

(iv) other import of goods or services provided at least 75% is for procurement and sale of goods and services among the companies of the same group.

15. In respect of the companies in the infrastructure/services sector where there is a prescribed cap for foreign investment, only the direct investment should be considered for the prescribed cap and foreign investment in an investing company should not be set off against this cap provided the foreign direct investment in such investing company does not exceed 49 per cent and the management of the investing company is with the Indian owners.

16. No condition specific to the letter of approval issued to a foreign investor would be changed or additional condition imposed subsequent to the issue of a letter of approval. This would not prohibit changes in general policies and regulations applicable to the industrial sector.

17. Where in case of a proposal (not being 100% subsidiary) foreign direct investment has been approved up to a designated percentage of foreign equity in the joint venture company the percentage would not be reduced while permitting induction of additional capital subsequently. Also in the case of approved activities, if the foreign investor(s) concerned wished to bring in additional capital on later dates keeping the investment to such approved activities, FIPB would recommend such cases for approval on an automatic basis.

18. As regards proposal for private sector banks, the application would be considered only after "in principle" permission is obtained from the Reserve Bank of India (RBI).

19. The restrictions prescribed for proposals in various sectors as obtained, at present, are given in the annexure-IV and these should be kept in view while considering the proposals.

The Guidelines are meant to assist the FIPB to consider proposals in an objective and transparent manner. These would not in any way restrict the flexibility or bind the FIPB

from considering the proposals in their totality or making recommendation based on other criteria or special circumstances or features it considers relevant. Besides these are in the nature of administrative Guidelines and would not in any way be legally binding in respect of any recommendation to be made by the FIPB of decisions to be taken by the Government in cases involving Foreign Direct Investment (FDI).

These guidelines are issued without prejudice to the Government's right to issue fresh guidelines or change the legal provisions and policies whenever considered necessary.

ANNEXURE-IV

SECTOR SPECIFIC GUIDELINES FOR FOREIGN DIRECT INVESTMENT

Please see separate document on the Home Page under the above subject

ANNEXURE-V

LIST OF CITIES WITH POPULATION OF 10 LAKHS (1 MILLION) AND ABOVE ACCORDING TO THE PROVISIONAL RESULTS OF 1991 CENSUS

Name of the Cities

1. Greater Bombay U.A.

2. Calcutta U.A.

3. Delhi U.A.

4. Madras U.A.

5. Hyderabad U.A.

6. Bangalore U.A.

7. Ahmedabad U.A.

8. Pune U.A.

9. Kanpur U.A.

10. Nagpur U.A.

11. Lucknow U.A.

12. Surat U.A.

13. Jaipur U.A.

14. Kochi U.A.

15. Coimbatore U.A.

16. Vadodara U.A.

17. Indore U.A.

18. Patna U.A.

19. Madurai U.A.

20. Bhopal M.C.

21. Visakhapatnam U.A.

22. Varanasi U.A.

23. Ludhiana M.C.

Note : **U.A. = Urban Area**

M.C.= Municipal Corporation