



HOW TO PLAN YOUR FDI IN INDIA

Are you a foreign national who intends to set up a business in India, and worried about the approval requirements?? Then this article is for you...

India has been one of the biggest markets in the recent years, attracting investments from corporates and individuals from different geographies of the world. Such a trend has given a tremendous boost to the Foreign Direct Investment (FDI) received by the Country, which stands at US\$ 84.84 Billion in the Financial Year (FY) 2021-22. With such high inflow of FDI into the Indian markets, the Government of India, to ensure proper governance, has tweaked the compliances required by foreign entities and nationals belonging to countries sharing land border with India to the extent of requiring prior permissions and/or security clearances from the relevant Government Departments/ Administrative machineries.

In light of the same, it is now of utmost importance that foreign entities and individuals keep into consideration the registrations/licensing/permission requirements before starting their business in India.

What is FDI and what are the available routes for FDI?

Simply putting, “FDI” refers to investment through capital instruments by a person resident outside India in an Indian Company. The available routes of FDI in India can be categorized into the following categories:

- 01. Automatic Route:** The investment does not require prior approval of the Reserve Bank of India (RBI) or the Government of India.
- 02. Approval Route:** The investment requires approval from the Government of India. The proposals are considered by the respective administrative ministry / department.

Permission requirements for Foreign Entities and Foreign Individuals

I. Entities sharing Land Borders with India:

Vide Press Note 3, the Government of India has amended the FDI policy to the extent that an entity sharing land border with India (i.e., China, Bangladesh, Pakistan, Bhutan, Nepal, Myanmar, and Afghanistan) or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only in non-prohibited sectors/ activities under the Approval route. Further, in case of a transfer of ownership of an existing or future FDI in an entity in India directly or indirectly, which may result into change in ownership in favour of an entity sharing land border with India or person referred to as above, such subsequent change in beneficial ownership will also require prior approval from Department for Promotion of Industry and Internal Trade (DPIIT)



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II. Requirements of Foreign Nationals of certain Countries to seek Security Clearance:

The Ministry of Home Affairs (MHA) has also mandated all individuals, from countries sharing a land border with India, i.e., China, Bangladesh, Pakistan, Bhutan, Nepal, Myanmar, and Afghanistan to obtain security clearance before they are confirmed as directors on the boards of Indian companies. The regulation requires individuals seeking appointment in such entities to attach security clearance received from the MHA, while making an application for obtaining Director Identification Number (DIN), and provide a self-declaration during the filing of Forms DIR-2 and DIR-3 with the MCA.

How can MBG help in obtaining Approval/Security Clearance?

A. Assistance for obtaining Approval from DPIIT:

- i. Drafting of application along with supporting documents to be submitted with the DPIIT seeking its prior approval from bringing Investments from countries sharing land borders with India;
- ii. Finalization and E-filing of application along with supporting documents with DPIIT;
- iii. Physical Submission of original documents with DPIIT;
- iv. Representation before the concerned officers at DPIIT;
- v. Addressing queries of the DPIIT;
- vi. Receiving verdict of the DPIIT on the application.

B. Assistance for obtaining Security Clearance from MHA:

- i. (i) Drafting of application along with supporting documents to be submitted with MHA seeking security clearance for appointment of foreign nationals of countries sharing land borders with India, on the boards of Indian Companies;
- ii. (ii) Finalization and E-filing of application along with supporting documents with MHA;
- iii. (iii) Physical Submission of original documents with MHA;
- iv. (iv) Representation before the concerned officers at MHA;
- v. (v) Addressing queries of MHA;
- vi. (vi) Obtaining clearance from the MHA.



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