FOREIGN INVESTMENT IN INDIA – THE LEGAL PERSPECTIVE AND THE NEED FOR REFORM

by

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ABSTRACT

Foreign investment is an integral part of India's economic development and financial-market structure. It offers capital, helps transfer technology, encourages competition, increases the number of investors and brings Indian enterprises into the global markets. Meanwhile, foreign capital may raise issues that are in line with the national security, beneficial ownership, tax avoidance, market volatility, regulatory arbitrage and the concentration of economic power. Indian law, therefore, adopts a differentiated approach in the regulation of Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI). In the old days, it was called the FII regime and now the securities-market structure is mostly adopted from the FII regime.

The paper focusses on the Foreign Exchange Management Act, 1999 (FEMA), Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, FDI Policy by DPIIT, Companies Act, 2013, Competition Act, 2002, SEBI Act, 1992, SEBI (Foreign Portfolio Investors) Regulations, 2019, Depositories Act, 1996 and Prevention of Money Laundering Act, 2002. It reviews their necessity and key statutory provisions, considers some of the key decisions of the Supreme Court and uncovers the unanswered questions of regulation and implementation. The paper ends by proposing a coordinated, risk-based and technologically integrated foreign-investment scheme.

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Keywords: Foreign Investment, FDI, FPI, FII, FEMA, SEBI, RBI, DPIIT, Securities Market, Foreign Exchange Regulation.

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INTRODUCTION

Since the economic liberalisation in 1991, the policy towards foreign investment has undergone a paradigm shift in India. The previous foreign exchange regime, especially in the context of the Foreign Exchange Regulation Act, 1973 (FERA), was largely founded on principles of conservation and control of foreign exchange. The next Foreign Exchange Management Act, 1999 (FEMA) was much more facilitative. It has a long name that reflects its mandate of 'ease of external trade and payments, and ensuring orderly development and functioning of the foreign exchange market in India'.

There are numerous regulatory frameworks that now govern foreign investment. The FDI policy is set by DPIIT, the rules under FEMA are framed by Central Government, Foreign exchange aspects are handled by RBI, the securities market is regulated by SEBI, Company law requirements are handled by Ministry of Corporate Affairs and qualifying combinations are considered by CCI.

The difference between FDI and FPI is very basic. FDI is normally linked to a long-term interest of an Indian enterprise and, as a function of the investment, significant economic influence. FPI is basically an investment in securities for financial return rather than the nature of direct entrepreneurial involvement.

The challenge for the law is however one of calibrated regulation - to ensure that foreign capital is brought in without compromising monetary stability, market integrity, corporate transparency, competition and national security.

INVESTMENT: CONCEPT AND LEGAL ASPECTS

Investment is the use of money with the aim of generating profit. Foreign Investment means the investment of money by a person who is not a resident of India in securities, enterprise or asset located in India.

For FEMA, the difference between current-account and capital-account transactions is key.

As per Section 2(e) of FEMA, the term capital account transaction' means a transaction that affects the assets or liabilities, contingent liabilities of persons resident in India or the assets or liabilities in India of persons resident outside India.

In section 6, FEMA regulates capital-account transactions. The amendments in the legislation, on account of which, all such transactions involving debt instruments are now largely effected through the statute under section 6 and rules/regulations framed thereunder.

Thus the foreign investment can be linked with two features:

1. foreign exchange legality, which is controlled primarily by FEMA and sub-ordinate legislations; and
2. Market/corporate legality as per SEBI regulations, company law, competition law and sector specific regulations.

FOREIGN DIRECT INVESTMENT (FDI)

Meaning

In the FEMA framework, FDI refers to investment in an unlisted Indian company through capital instruments, or in 10% or more of the post-issue paid up equity capital of a listed Indian company, on the FDI basis (fully diluted basis).

The 10% threshold is a legal one. An investment that is deemed to be FDI remains FDI if it later drops below 10%, subject to the framework.

FDI can come in via:

- the Automatic Route, in the absence of Government approval, on the terms and conditions prescribed; or

Government Route, which must be Government approved.

LAWS GOVERNING FDI

1) Foreign Exchange Management Act, 1999

Need

The parent legislation of the foreign-exchange regime in India is FEMA. It's not in the vein of FERA, which focuses on prohibitions, but rather regulatory management.

Principal provisions

The foreign exchange is not permitted to be dealt in or transferred otherwise than as provided in the Act, rules or regulations, in this Section.

No person residing in the territory of India shall acquire, hold, possess or transfer any foreign exchange, foreign securities or immovable property outside India other than as provided in this section.

Section 6 deals with capital-account transactions and provides the statutory basis for regulation of foreign investment.

Authorised persons and foreign exchange is covered in Section 10.

Section 11 provides authority to RBI to give directions to authorised persons.

Penalties for contravention are provided for in Section 13. The amount can be three times the amount involved in the case of a quantifiable amount or up to ₹2 lakh in case of non-quantifiable amount with further penalties if the contravention continues.

There is compounding of some contraventions in section 15.

The officers specified in section 37 have investigation powers in that section.

Section 47 gives RBI the power to make Regulations to implement the Act and Rules.

Therefore, FEMA sets forth the legal structure and specific conditions for foreign investment are provided in the regulations.

2) Foreign Exchange Management (Non-Debt Instruments) Rules, 2019

Need

FEMA sets the basis or framework but it is not able to prescribe all the sectoral, pricing and investment conditions. The substantive rules for foreign investment in non-debt instruments are contained in the NDI Rules, 2019.

Principal provisions

The following are key definitions in Rule 2: "foreign investment," "foreign direct investment," "foreign portfolio investment," "sectoral cap," "downstream investment" and "control.

Every foreign investment in India, other than as provided in the Rules, is prohibited by Rule 3, which gives the overall prohibition/rule.

Rule 4 provides for eligibility of persons not residents in India to make investment.

Entry routes and sectoral caps are provided for in Rule 5.

Conditions on investment are prescribed in Rule 6 which deals with investment in Indian company and investment in Instrument.

The Rules also apply to:

- issuing and transferring of equity instruments;
- pricing;
- investment vehicles;
- LLP investment;
- downstream investment;
- indirect foreign investment;

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- sectoral restrictions; and
- investment in the specified sectors.

The NDI Rules are thus the main substantive linkage between FEMA and real FDI transactions.

3) FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

Need

A substantive permission to invest is without prejudice if there is no mechanism to enable importing it through authorised avenues and reporting the transactions.

Principal provisions

Mode of payment and reporting requirements for issue and transfer of non-debt instruments are specified in the Regulations.

They control things such as:

- receipt of consideration;
- permitted banking channels;
- reporting of issue and transfer;
- authorisation of the Indian company and authorised dealer;
- required to create reports and submit them in strict adherence to form and schedule.
- delayed reporting.

They thus offer the compliance and traceability aspect of the FDI regime.

4) Consolidated FDI Policy – DPIIT

Need

The overall economic policy for each sector is not determined in statute. The Consolidated FDI Policy lays down limits, modes and conditions for sectors.

Principal features

The Policy defines investments based on:

- Automatic Route;
- Government Route;
- sectoral caps;

- prohibited sectors;
- sector-specific conditions;
- downstream investment;
- ownership and control; and

Specified jurisdictions: investment.

Press Note 3 (2020 Series) was a noteworthy development for the national security of India which subject investment from an entity/person located in or having beneficial ownership in countries with a land border with India under the Government route.

The FDI Policy, therefore, highlights that foreign-investment regulation is not purely economic – but also strategic and national-security concerns.

5) Companies Act, 2013

Need

Finally, FDI gets into an Indian corporate body. Compliance for FEMA only does not equal compliance for company law.

Principal provisions

Private placement is governed by section 42.

The issue of further shares to persons, other than existing shareholders, is regulated by Section 62(1)(c) which sets out the statutory criteria.

Buy-back of securities is regulated by section 68.

Chapter 89 is about declaration of beneficial interest in shares.

The register of significant beneficial owners is provided for in Section 90.

Annual returns are required by Section 92.

Directors disqualifications (section 164).

The Board's meetings are regulated by Section 173.

The statutory provisions governing compromises, arrangements and mergers, acquisitions and related matters are set out in sections 230-236.

Such provisions are key to foreign investors as ownership, beneficial interest, corporate governance and acquisition structures are inextricably linked to foreign-investment compliance.

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6) Competition Act, 2002

Need

Foreign investment can be in the form of control or large-scale acquisition of assets. These transactions may change the nature of the market and could have a significant negative impact on competition.

Principal provisions

There are anti-competitive agreements prohibited in Section 3.

The prohibition on abuse of dominant position is in Section 4.

The definition of "combination" includes specified combinations, mergers and amalgamations that cross statutory thresholds in Section 5.

Section 6(1) states that every combination which is capable of, or likely to, cause or have an appreciable adverse effect on competition in the relevant market in India is hereby declared to be void.

The notification to the CCI is provided in Section 6(2).

Therefore, a simultaneous compliance with FEMA + FDI Policy + Companies Act + Competition Act is required for an acquisition by a foreign investor.

LANDMARK SUPREME COURT CASES – FDI

1. LIC of India v. Escorts Ltd., (1986) 1 SCC 264

Facts: Foreign companies have purchased shares in Escorts Ltd. in the foreign exchange regime at the time. Questions regarding RBI permission and transactions legality, etc. came up.

Question: What extent of control was permissible over foreign investment by the government/RBI and what kind of situations would meet the requirement for corporate structures to be looked into?

Judgment: The Court accepted the regulatory system and did not deny the legal independence of companies. It noted that the principle of lifting the veil of the corporation is allowed only on "statutory, fraudulent and fraudulent practice, public interest" and other recognized grounds. This determination is still significant to the discussion of foreign investment, corporate personality and regulatory control.

2. Bharat Scouts and Guides v. SBI, (2012) 1 SCC 558

The facts: Vodafone bought all the shares in a Cayman Islands company that itself owned an Indian telecom company. The Indian tax authorities were trying to tax the offshore transaction.

The question before them was whether the offshore sale/purchase of foreign company shares could be considered as sale or purchase of rights over a domestic company, which would be taxable in India.

Decision/Conclusion: The Supreme Court ruled that the transaction as structured was not taxable under the pre-existing law. The Court highlighted the legal implications of separate corporate personality and legitimate corporate structuring and the significance of "certainty and predictability" in taxation. The ruling was a major precedent for structuring cross-border investments.

3. BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 SCC 333

Facts: The Government resolved to disinvest 51% stake in Bharat Aluminium Company's equity and hand over management control in the company to a strategic investor. The employees protested the decision.

Reality: Supreme Court has the discretion whether to review the merits of the economic policy of the Government regarding disinvestment.

Judgment: The Court sided with economic policy which it decided was more of a executive matter. It said a policy cannot be struck down just because another policy can be described as 'fairer' or ‘wiser' or ‘more scientific' or ‘more logical'. Also, the Court said it was not for them to assess the merits of a policy. Illegality, arbitrariness or a breach of the Constitution are still available grounds for judicial review.

FOREIGN PORTFOLIO INVESTMENT (FPI)

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FII and the Present FPI Regime

Foreign Institutional Investor (FII) is a term that had been a part of the old regulatory regime. The modern framework is inspired by the SEBI (FPI) Regulations, 2019, which are known as Foreign Portfolio Investors.

FPI are mainly invested in securities and not in the direct participation of an Indian enterprise. These issues are therefore not only foreign exchange control but also market integrity, investor protection, beneficial ownership, disclosure and systemic risk.

LAWS GOVERNING FPI

1) Securities and Exchange Board of India Act, 1992.

Need

Specialised securities-market regulation is required since most of FPI's operations are in the securities markets of India.

Principal provisions

Section 3 establishes SEBI.

SEBI is given the responsibility to protect the interest of the investors holding securities, to foster and regulate the securities market under Section 11(1).

Section 11(2) provides for the regulatory powers such as regulating the affairs of the stock exchanges and securities markets, registering and regulating the intermediaries, prevention of unfair trade practices and promotion of investor education etc.

In terms of directions, SEBI has granted itself powers under Section 11B for its directions as may be necessary for the orderly development of the securities market or in the interests of investors.

Investigation powers are covered in section 11C.

Section 12 sets out the conditions for registration of specified intermediaries.

SEBI has the powers to make regulations under section 30 which can be done consistent with the Act and rules.

The FPI Regulations are based on the basic provisions of sections 11, 12 and 30 of the SEBI Act along with section 25 of the Depositories Act.

2) SEBI (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2019 (as amended).

Need

The Regulations offer a single registration and compliance regime for foreign investors who wish to make portfolio investments in India.

Principal provisions

Definitions are provided in Regulation 2, such as "foreign portfolio investor" and "appropriately regulated entity".

No person shall be allowed to acquire, sell or otherwise engage in securities transactions as an FPI without being in possession of the prescribed certificate, in accordance with the provisions of Regulation 3.

Regulation 4 lays down eligibility criteria.

There are categories of FPIs, as provided under Regulation 5.

The regulation 6 deals with application and grant of certificate.

The framework also contains provisions dealing with:

- registration;
- designated depository participants;
- KYC;
- beneficial ownership;
- investment restrictions;
- disclosure;
- offshore derivative instruments;
- code of conduct;
- suspension and cancellation; and
- inspection and enforcement.

The Regulations are currently in force and have been revised numerous times, the most recent of which is dated 7 July 2026.

3) The rules of the FEMA and NDI

FPI is not just a SEBI issue as the transaction in question relates to the cross-border movement of funds.

Foreign exchange is under the FEMA framework, and foreign investment under the NDI Rules are classified and regulated.

The RBI framework differentiates between FDI and FPI, and classifies a foreign investment as such if it is less than 10%. It also lays down restrictions on the amount of investment and other requirements that apply to the portfolio investment.

4) DEPOSITORIES ACT, 1996

Need

Dematerialised holding and electronic settlement of securities are fundamental to FPI.

Principal provisions

The registrations of depositories are made under section 3.

Section 10 takes up the rights and obligations of depositories.

Section 12 is about pledge or hypothecation of securities in a depository.

The regulations made by SEBI under Section 25 are within regulatory rule making framework.

Therefore, the Depositories Act provides the infrastructure for the recording, transfer and settlement of foreign portfolio holdings.

The FPI Regulations are expressly based on section 25 of the Depositories Act as part of their statutory authority.

5) The Prevention of Money Laundering (Amendment) Act, 2002.

Need

Real beneficial owners are significantly more important with the international mobility of portfolio capital.

Principal provisions

The definition of an offence of money-laundering is given in section 3.

Section 4 prescribes punishment.

Section 12 sets out obligations on reporting entities, such as record keeping and provision of information.

Search and seizure are provided for in Section 17.

Power of arrest is provided by section 19.

For FPIs, the requirements of PMLA are in addition to KYC and beneficial ownership requirements of SEBI. This will ensure that the securities-market channel is not used to launder money.

6) Securities Contracts Regulations Act, 1956

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Need

The main place where FPI transactions take place is in securities markets and there is a need for the statutory regulation of securities markets regarding recognised stock exchanges and securities contracts.

Principal provisions

Section 3 deals with recognition of stock exchanges.

Section 9 provides the authority to the recognised stock exchanges to make bye-laws on condition of statutory requirements.

Section 18A provides for the recognition of contracts in securities listed on recognised stock exchanges and certain kinds of derivative contracts under certain conditions set out in the legislation.

The Act therefore becomes a part of the market infrastructure in which FPIs operate.

LANDMARK SUPREME COURT CASES – FPI/SECURITIES MARKETS

1. Union of India v. Azadi Bachao Andolan, (2003) 6 SCC 1

The Issues: Foreign investment structures set up in Mauritius and their right to benefits of Double Taxation Avoidance Convention between India and Mauritius.

Question: If the investors have incorporated in Mauritius for what they believed to be treaty benefits, could they be denied treaty benefits?

Judgment: The Supreme Court ruled that the treaty framework was valid and that the treaty shopping alone was not enough to make the arrangement invalid. It stressed that the treaty is binding and that there should be fiscal certainty. The case was of great importance for foreign portfolio investment via Mauritius and the distinction between 'legitimate' tax planning and ‘tax evasion'.

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2. Chairman, SEBI v. Shriram Mutual Fund, (2006) 5 SCC 361

The facts: Shriram Mutual Fund violated SEBI's regulatory provisions relating to securities transactions.

Factual Issue: If a civil penalty could be imposed for securities regulations violations, without proof of mens rea.

Judgement: The Supreme Court ruled that where there is a statute/civil obligation, there is no question of mens rea where intention is not an ingredient of the statute/regulatory framework.

After the contravention is determined the regulatory consequence follows, albeit the amount of the penalty could be left to discretion. The ruling underscores the value of enforcement of securities laws.

3. Sahara India Real Estate Corp. Ltd. v. SEBI, (2013) 1 SCC 1

Facts: Sahara entities had issued Optionally Fully Convertible Debentures (OFCDs) and raised big money from investors. The Securities Exchange Board of India (SEBI) ruled that the securities were a public issue and that they must be in accordance with the securities laws.

The issues raised were whether the OFCD issue was a public issue and whether SEBI had jurisdiction over the transaction.

Judgment: The Supreme Court upheld SEBI's jurisdiction and considered the fundraising to be under the public-offer framework. It looked at section 67 of Companies Act, 1956 and concluded that an offer extended to a subsample of the public may be an offer extended to the public. The Court ordered the refund of the amounts raised. The ruling vigorously condemns the tactic of structuring around the regulations.

4. N. Narayanan v. Adjudicating Officer, SEBI, (2013) 12 SCC 152

The case involved disclosure and securities-market obligations failures.

Question: Can disclosure obligations be considered merely "technical" or is it possible to have the regulatory action follow if the disclosure is not made?

Judgment: The Supreme Court stressed that transparency and disclosure are essential to securities markets. Investors should receive material information to enable them to make informed decisions. The Court acknowledged the function of Securities and Exchange Board of India in ensuring market integrity and investors' trust. The ruling has implications for FPIs as foreign portfolio investment relies on proper disclosure, ownership of securities and a coherent market.

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FDI AND FPI: COMPARATIVE LEGAL POSITION

Basis	**FDI**	**FPI**
Principal character	Direct/strategic investment	Portfolio investment
Principal regulator	DPIIT/Central Government/RBI	SEBI/RBI
Principal legislation	FEMA	SEBI Act + FEMA

Basis	FDI	FPI
Principal subordinate framework	NDI Rules, FDI Policy	FPI Regulations, 2019
Typical objective	Long-term economic interest	Financial return
Management participation	Greater possibility	Generally limited
Registration	FEMA/sectoral framework	SEBI FPI registration
Major regulatory concern	Control, sectoral caps, national security	Market integrity, volatility, beneficial ownership
Exit	Relatively less liquid	Generally more liquid
Additional scrutiny	CCI, sectoral regulators	SEBI, stock exchanges, depositories, PMLA

UNSOLVED PROBLEMS IN THE PRESENT STRUCTURE

1. Beneficial Ownership

The modern investment structure can consist of various tiers of corporations, trusts, funds and jurisdictions. Formal ownership may not, therefore, be the same as effective economic control.

2. FDI–FPI Boundary

The 10 per cent threshold offers a level of certainty, but is not necessarily reflective of actual economic influence. An investor below the threshold may hold contractual and/or board or voting rights that he could use to affect management.

3. Regulatory Fragmentation

The same transaction could be examined simultaneously under FEMA, SEBI regulations, company law, competition law, PMLA and tax law along with sectoral regulations.

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4. Regulatory Arbitrage

Exposure to similar economic returns can be achieved through various types of investment products, in different regulatory classifications.

5. Market Volatility

FPI is very responsive to the movement and entry into markets. Liquidity, exchange and asset prices may be impacted by sudden reversals.

6. Offshore Derivative Instruments

Regulation may make it more difficult to identify the ultimate investor and economic exposure in the case of indirect exposure from offshore structures.

7. National Security

As seen in Press Note 3, beneficial ownership and geopolitical factors are becoming more relevant and important, while the question of appropriate investment screening and too much regulatory discretion is still crucial.

8: Digital and Algorithmic Investment.

Traditional regulatory and market mechanisms may not be able to deliver timely market effects when trading happens at high frequencies or by algorithms.

CHALLENGES IN IMPLEMENTATION

1. Multiplicity of Regulators

Different dimensions of a transaction can be governed by a number of regulators including DPIIT, RBI, SEBI, MCA, CCI, CBDT, FIU-IND, as well as regulators in the specific sector.

2. Information Deficit

Indian regulators may not get timely information about foreign incorporated companies or persons with ultimate control.

3. Cross-Border Enforcement

Foreign cooperation with regulators and authorities could be required for investigation and enforcement of foreign entities.

4. Compliance Costs

KYC, beneficial ownership, reporting and regulatory documentation can come with high compliance costs.

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5. Approval Delays

Where transaction is routed through the government, it may take a lot of time if there are concerns regarding security or sectoral examination.

6. Regulatory Uncertainty

Repeated changes in the regulations may lead to confusion over the exact requirements that will apply to long-term investors.

7. Enforcement Consistency

Shriram Mutual Fund provides a good illustration that compliance is given significant importance in securities regulation. Enforcement has to be proportional and fair to the process as well.

8. Tax–Investment Interface

The history of the ‘Vodafone' and ‘Azadi Bachao Andolan' shows how tax law could have significant impact on the attractiveness and the structure of the foreign investments.

SOLUTIONS AND RECOMMENDATIONS

1. Single Investment Promotion and Protection Mechanism

India needs to establish a truly-integrated digital process linking DPIIT, RBI, SEBI, MCA, CCI and security agencies. One shot ought to result in coordinated regulatory attention.

2. Central Beneficial-Ownership Database

Information under the Companies Act, PMLA and the beneficial ownership regime of SEBI needs to be interoperable with due privacy and security measures.

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3. Substance-Based FDI/FPI Classification

The law should add to the quantitative 10% test indicators including:

- voting rights;
- board representation;
- veto rights;
- contractual control;
- economic dependence; and

- concert-party arrangements.

4. Risk-Based Compliance

Low-risk institutional investors should have lighter regulation, opaque structures and high-risk jurisdictions and unusual investment patterns should have more scrutiny.

5. Time-Bound Government Approvals

The decisions and timelines for government-route applications should be transparent and based on reasons.

6. Improved Regulatory Cooperation and Cooperation in Emergency Response.

SEBI and RBI need to improve the information sharing with foreign securities regulators, financial-intelligence authorities and beneficial-ownership registries.

7. Technology-Based Market Surveillance

In order to identify, SEBI should use advanced analytics such as:

- coordinated FPI activity;
- unusual trading patterns;
- common beneficial ownership;
- market manipulation;
- short-term holding of assets; and
- suspicious capital flows.

8. Regulatory Sandboxes

New sectors like fintech, tokenised securities and new investment products should be regulated in a controlled sandbox first, before blanket regulations.

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9. Greater Tax Certainty

The principle of certainty which has been demanded in Vodafone should be the basis of drafting legislation in the future. Any transaction should be taxed sensically according to the tax implications to the foreign investor before investment capital is pledged.

Conduct a periodic Regulatory Impact Assessment.Complete a Regulatory Impact Assessment periodically.

Before major changes in foreign-investment regulations are implemented, it is important to consult and assess the impact on investment, compliance costs, financial stability and national security.

CONCLUSION

The evolution of legal regime for foreign investment in India has undergone a shift from the philosophy of FERA of restrictive foreign exchange control measures to the concept of managed liberalisation under FEMA. The key laws and policies governing FDI are mainly FEMA, NDI Rules, DPIIT FDI Policy and Corporate, Competition and Sectoral laws. The governing bodies of FPI are SEBI Act, FPI Regulations and FEMA, along with the general securities-market framework.

The Supreme Court's decisions reflect a number of enduring principles. Foreign investment regulation and the situations for which corporate structures can be subject to regulatory scrutiny are recognised by the legitimacy of the regulator, as is the case with the regulation of prostitution and regulated sex services, according to the position of the Global Network to Stop Trafficking in Persons (GNTTP). Vodafone makes the point that the corporate personality, structuring and legal certainty are important. BALCO sets a precedent for judicial restraint in economic policy. Azadi Bachao Andolan brings the point home as to the legal validity of the international tax regime. Shriram Mutual Fund, Sahara and N. Narayanan emphasize on securing strict norms in securities regulation and disclosure and integrity of the markets.

Under-regulation is not the problem of the present system, however, but rather the central difficulty. It's the multiple regulators, overlapping laws and ever-changing investment structures. There needs to be a balance between regulatory risk and compliance burdens within a sophisticated foreign-investment regime.

India's future regulatory policy should consequently be based upon four principles: certainty, transparency, proportionality and coordination. There should be clarity about beneficial ownership, clarity on regulatory decisions, greater regulation of high-risk transactions, and a streamlined compliance process for legitimate investment.

Foreign investment cannot be considered just as a flow of money. It is a matter of corporate control and securities-market integrity, of foreign exchange, of tax, of competition and of national security and economic sovereignty. The right legal goal is not liberalisation - but not too much - or control - but not too much. It is a balance of regulation and permitting foreign

money to play its role in the development of India, while also safeguarding the integrity and autonomy of India's financial markets.

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