



Funding an Indian business



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This document has been developed to simply provide a quick overview in simple terms of the manners or models under which a company could setup an establishment in India; and the tax and regulatory frameworks that could preside over such an entity.

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The materials contained in this publication were assembled in April 2021 and were based on the law enforceable and information available at that time.












Abbreviations

AD Bank-1	Authorized Dealer Bank -1	HO	Head Office
AE	Associated Enterprises	JV	Joint Venture
ALP	Arm's Length Price	LLP	Limited Liability Partnership
AMT	Alternate Minimum tax	LO	Liaison Office
APA	Advance Pricing Agreements	MAT	Minimum Alternate Tax
BEPS	Base Erosion Profit Shifting	MCAA	Multilateral Competent Authority Agreement
BO	Branch Office	MNC	Multi-National Company
BOD	Board of Directors	OECD	Organization for Economic Co-operation and Development
CBDT	Central Board of Direct Taxes	PE	Permanent Establishment
CFS	Consolidated Financial statements	PO	Project Office
DDT	Dividend Distribution Tax	POEM	Place of Effective Management
DTAA	Double Taxation Avoidance Agreement	RBI	Reserve Bank of India
ECB	External Commercial Borrowings	ROC	Registrar of Companies
ED	Executive Director	ROI	Return of Income
FCCB	Foreign Currency Convertible Bond	R&D	Research & Development
FDI	Foreign Direct Investment	SHR	Safe Harbor Rules
FTS	Fee for Technical Services	The Act	Income Tax Act 1961
FY	Financial Year	TP	Transfer Pricing
GAAR	General Anti Avoidance Rules	TRC	Tax Residency Certificate
GDR	Gross Depository Receipt	WOS	Wholly-Owned Subsidiary
GOI	Government of India		





Chapters

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This document covers the six major aspects for doing business in India, which companies need to understand in order to successfully initiate and sustain operations in the Indian market. These aspects have been divided into a multitude of sub-topics which have been carefully evaluated and collated to provide an insight on maintaining a fruitful business presence in India.

The first two chapters cover the initial phase, where we discuss how to setup a business in India and how to structure the funding of that new business. The third chapter focuses on understanding corporate taxes in India which is then followed by the fourth chapter, which emphasizes on transfer pricing methods and regulations in India. The fifth chapter discusses the Goods and Services Tax implications in India, which is proving to be a ground-breaking tax regime and finally, the sixth chapter discusses the concept of expatriate taxation in India.

The inherent demand of quality advisory and financial services in the mentioned topics, coupled with our expertise in these six critical touch-points makes this document an important tool to analyze, evaluate and ease the decision-making process of companies looking to do business in India.

Click to jump to the respective pages



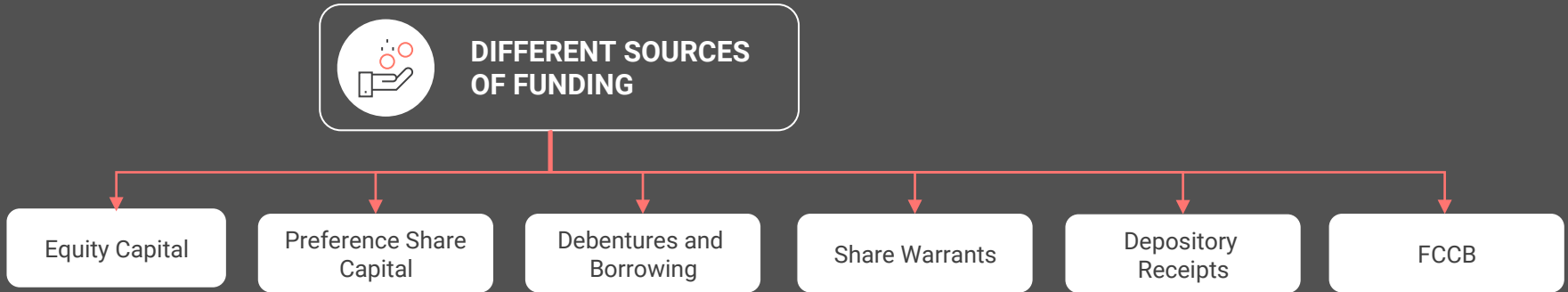


Funding of Indian business



1. Equity capital

This chapter contains an overview of various models in which an Indian business can be funded.



Invested money, which in contrast to debt capital is not repaid to the investor in the normal course of business. On the balance sheet of the company, equity capital is disclosed as stockholders' equity or owners' equity.

1.1 FEATURES

- Carries voting rights in the investee company
- No end-use restriction
- Pay-out via dividend
- Freely transferable, subject to specific lock-in condition



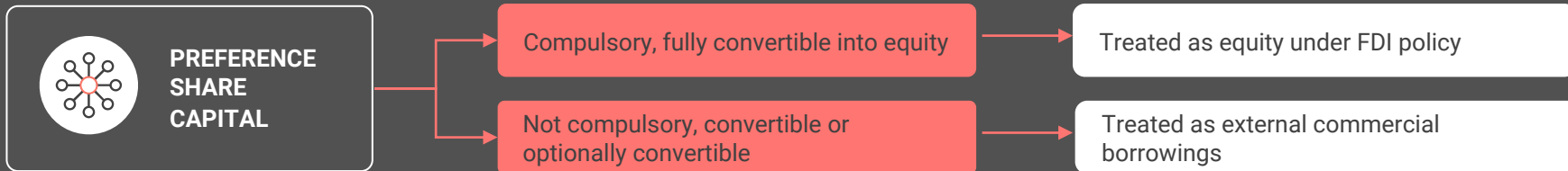
2. Preference share capital

Preference shares are shares of a company's stock with the right of fixed dividend and are paid out to shareholders before common stock dividend ('equity dividend') is issued.

2.1 FEATURES

- Fixed rate of dividend, irrespective of amount of profit
- Dividend paid on it is not tax-deductible expenditure
- Preference shareholders have voting rights under certain conditions
- Preferential right to receive dividend and repayment of share capital, in the event of winding up

2.2 TYPES OF PREFERENCE SHARE CAPITAL





3. Debentures



Companies can raise funds by issuing debentures, bonds and other debt securities or by accepting deposits from the public. Debentures can be redeemable, perpetual, bearer or registered, and convertible or non-convertible.

Compulsory, fully convertible debentures are treated as equity under the FDI policy. Non-convertible/optionally convertible debentures are treated as ECB and should conform to ECB guidelines.

Conversion ratio on compulsory, convertible debentures should be determined upfront. The rate of interest is subject to Indian TP regulations and corporate laws.

3.1 EXTERNAL COMMERCIAL BORROWINGS (ECB)

Commercial loans availed in foreign currency are termed as ECB. The RBI, with a view to further improve the ease of doing business in India has rationalized the extant framework for ECB and Rupee Dominated Bonds. Under the revised framework, the loans can be raised under the following 2 options:

- **Foreign Currency ('FCY') denominated ECB;** - **INR denominated ECB**

ECB under the above mentioned 2 options have certain conditions with respect to eligible borrowers, lenders, all-in-cost ceiling, end use restriction, exchange rate, etc. which has been duly explained in the ECB Master Directions as issued by RBI..





3. Debentures



Further, the list of eligible borrowers has now been extended to include “all entities eligible to raise Foreign Direct Investment (‘FDI’). As a result of the same, LLPs and trading entities are now eligible to raise ECB.

Indian entities who have borrowed monies from outside lender by way of issuance of Rupee Denominated Bonds are allowed concessional tax rates on the interest income earned, subject to satisfaction of certain conditions.

3.2 LISTED DEBENTURES/BONDS

SEBI-registered FIIs/FPIs/FPIs are allowed to invest in listed debt securities, subject to regulatory conditions.

3.3 BANK LOANS

A bank loan is the most common form of loan capital for a business. A bank loan provides medium or long-term finance.

3.4 CONVERTIBLE NOTES

Convertible Note is an instrument issued by an Indian startup company for an amount of INR 2.5 million or more initially as debt, which is repayable at the option of the holder, or convertible into equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note.





4. Share warrants



Share Warrants can be issued by an Indian Company in accordance with the provisions of the Companies Act, 2013 and Regulations issued by the Securities and Exchange Board of India (in case of listed companies).

Further, as per the FEMA guidelines, at least 25% of the consideration shall be received upfront and the balance amount within 18 months of issuance of share warrants. In case of non-payment of balance consideration, the forfeiture of the amount paid upfront will be in accordance with the provisions of the Companies Act, 2013 and the Income Tax provisions, as applicable.



5. Depository receipts



Depository Receipt means a foreign currency denominated instrument whether listed on an international exchange or not, issued by a foreign depository in a permissible jurisdiction on the back of eligible securities issued or transferred to that foreign depository and deposited with a domestic custodian and includes 'global depository receipt' as defined in the Companies Act, 2013.

A company can issue depository receipts after complying with the provisions as prescribed under the Companies Act, Depository Receipts Scheme, 2014, FEMA guidelines and other prescribed regulations issued by RBI. The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.





6. Foreign currency convertible bond (“FCCB”)



FCCB is a bond issued in accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and as amended from time to time. It is subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole or in part. FCCBs having underlying of instruments in the nature of debt will not be reckoned for total foreign investment.





Annexures for compliance matters





Company law

Secretarial Compliance(s) With Respect To Meetings, Minutes And Other Related Registers And Records For Companies

- Board Meeting – Quarterly or event-based
 - Annual General Meeting – Annual
 - Extra-Ordinary General Meetings – Event-based
 - Registers (Register of Members, Register of Director & Key Managerial Personnel & their Shareholding, Register of Contracts with Related Parties & Contracts in which Directors are interested) – Permanent
-

Annual Secretarial Compliance for Companies

- Disclosure of interest by directors – Annual or event-based
 - Disclosure of non-qualification – Annual or event-based
 - Filing of financials with the Registrar of Companies (“ROC”) – Annual
 - Filing of Annual Return with ROC – Annual
 - Appointment of Auditor – Annual
 - DPT – 3 – Annual
 - MSME Returns – Half yearly
 - DIR-3 KYC – Annual
-





Company law

Annual Compliance For LLPs

- Filing of Annual Return
 - Filing of statement of annual accounts
-

Annual FEMA Compliance for Companies and LLPs

- Filing of Foreign Assets and Liabilities ('FLA') Return
-

Annual Compliance for BO/LO/PO

- Filing of Annual Return
 - Filing of statement of annual accounts
 - Filing of annual activity certificate
-



Direct tax, Indirect tax and Transfer pricing



Direct Tax

- Withholding Tax Computation & Deposit of tax withheld on Salaries and other payments – Monthly
- Withholding Tax Returns – Quarterly
- Advance Tax Payment – Quarterly
- Return Of Income Tax – Annual
- Tax Audit Report – Annual



Transfer Pricing

- Transfer Pricing Report & Accountant's Report – Annual
- Accountant's Report - Annual
- TP Report – Annual
- Master File – Annual
- CbCR – Annual



Indirect Tax

- GST Returns – Monthly
- GST Payment – Monthly
- GST Audit – Annual





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