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Foreword

India's strength in the consumer and retail sector continues to show dominance and sustainability. Global investors and multinational companies have improved their outlook towards investments in India.

A young, volatile, vibrant, and large consumer market, coupled with a high level of awareness quotient, are the key components of the Indian market.

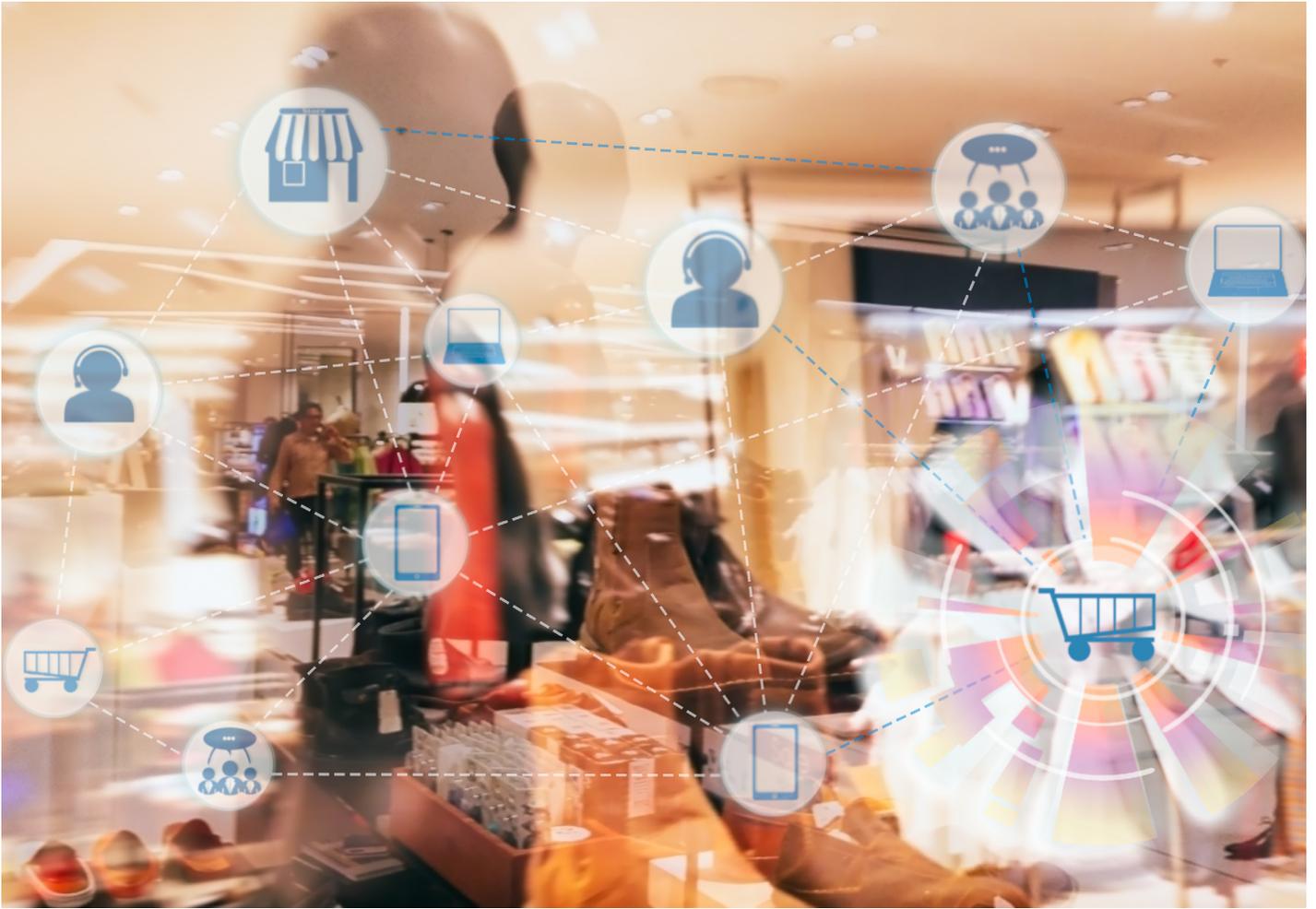
In addition to the market dynamics, the policy framework laid out by the government in the form of foreign direct investment (FDI) in India, has also

provided support in creating a conducive investment environment in the country.

Improvement in India's ranking in terms of "ease of doing business" has laid the foundation for a continuous increase in investments in the retail sector.

This document showcases opportunities in the Indian retail sector in the backdrop of the applicable regulations.

This aim of this document is to give readers guidance on the Indian market and the applicable regulations.

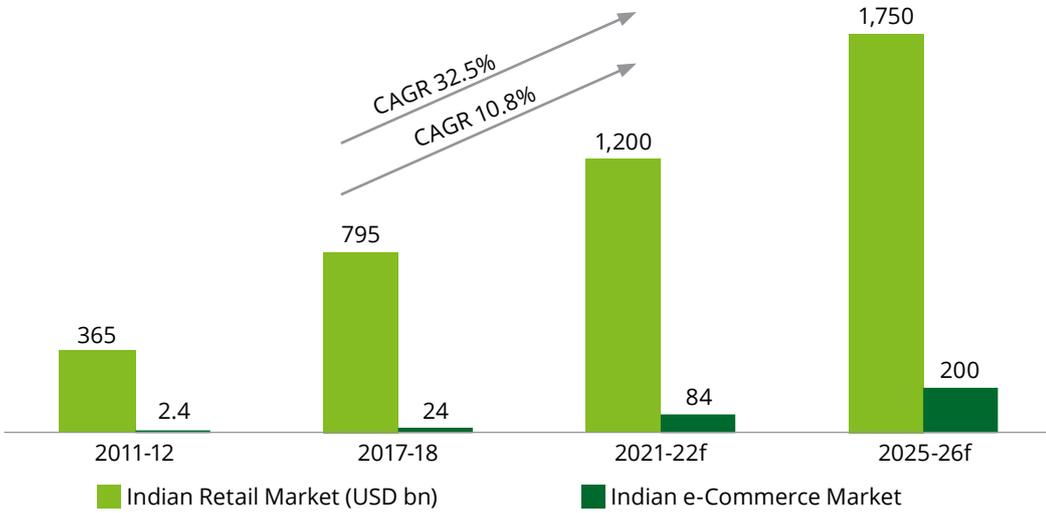


Retail market overview

The rise in internet penetration, smartphone user base, and use of social media has made consumers more connected than ever. In India, favourable demographics, a strong macroeconomic environment, and a stable government have provided the necessary push to the retail sector. The increased proliferation

of technology and organised retail has led to a rise in e-commerce sales more specifically. The total retail and e-commerce sales are expected to increase at a compound annual growth rate (CAGR) of 10.8 percent and 30 percent, respectively, between 2017-18 and 2021-22.

Indian retail and e-commerce market (US\$ bn)



Source(s): Deloitte analysis, IBEF, and media articles

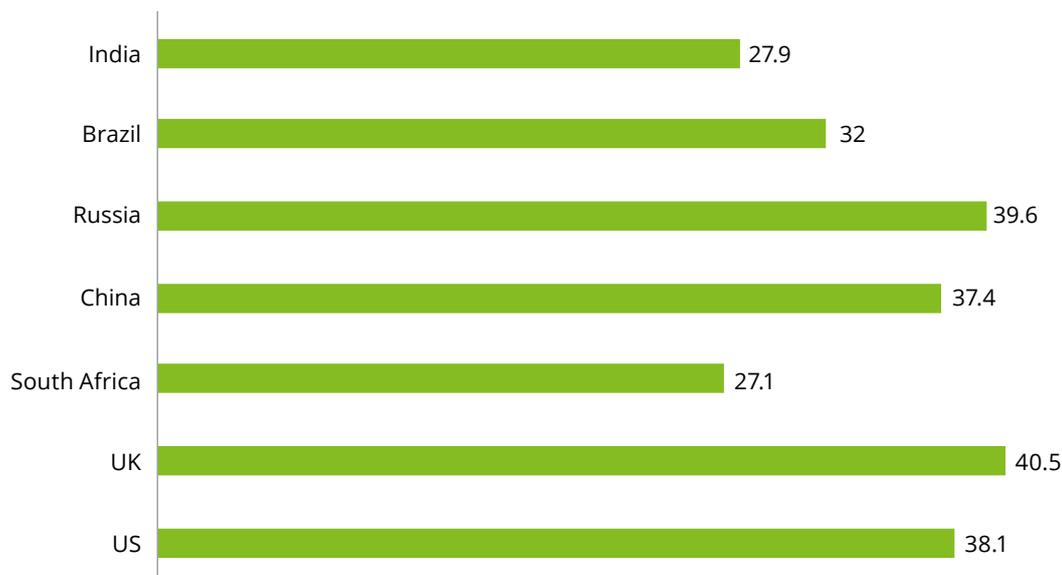
Major factors leading to the growth of retail in India

The median age of the population in India is lower than that in major countries

globally. Further, the proportion of working population is higher in India, leading to an increased consumer demand and spending.

Median age

Median age by country



Source: CIA World Factbook, accessed August 2019

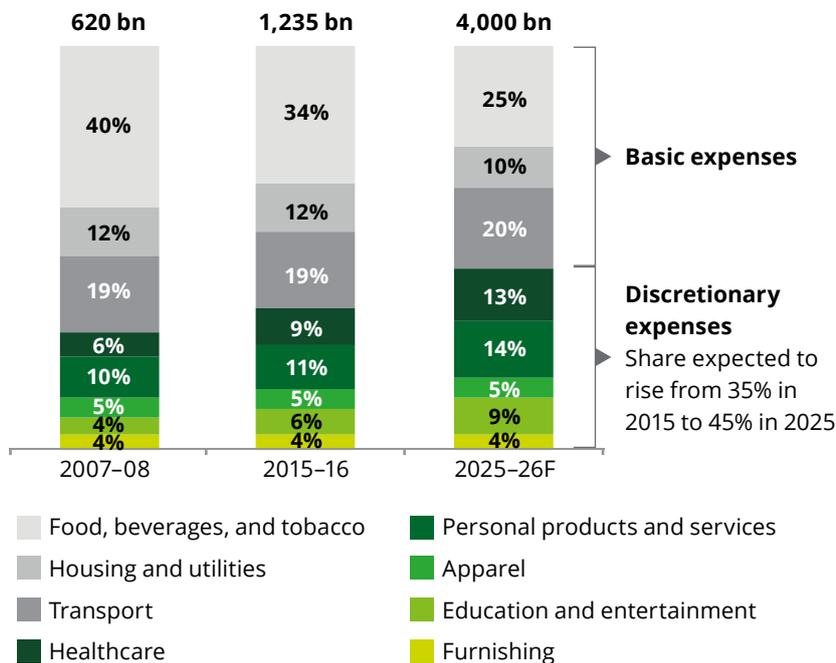
The young population and the lower median age are expected to present strong growth dynamics for the consumer industries as a whole. Millennials across the world are reshaping these industries with their spending habits. One of the popular trends that the consumer market has witnessed is the rental economy.

Although the rental economy is still in nascent stages in India, it is rapidly growing. According to research estimates from the industry, the rental market in India is estimated at US\$ 20 bn compared with the global rental market of US\$ 275 bn.¹ More than half of the contribution to the shared or rental economy comes

from the population aged over 30. Millennials in developed economies are more open towards renting. According to a survey of millennials in the US, the products that consumers rent most include furniture, gaming systems, clothing, tools, technology, jewellery, and home appliances. Nearly two-thirds of the consumers who rent are in the age group of 18–38.²

Steady growth in household earnings is expected to further drive consumption. India's burgeoning middle income households are likely to drive an increase in discretionary spends and create a shift in consumption patterns.

Increase in disposable income is increasing consumption, leading to a rising proportion of discretionary spends.



Source(s): NITI Aayog, MOSPI, and Deloitte analysis

Consumers' discretionary spending is also increasing with the rising disposable income. This indicates consumers are becoming more conscious of their social status and brands. As a result,

they are purchasing more products in categories such as apparel, footwear and accessories, personal care, and home décor and furnishing.

¹ Media articles

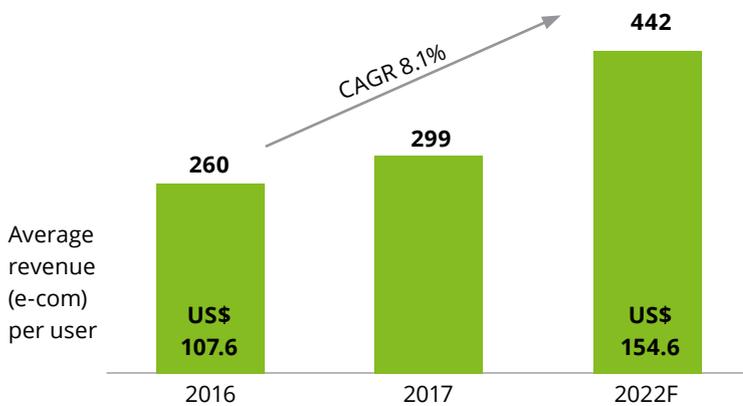
² This is how millennials are fuelling the rental economy, the WEF, 4 November 2019

Growth of internet

India has the second-highest number of internet users and the second-largest smartphone market in the world after China³. Interestingly, most of the web traffic in India originates from its mobile phone users. Both e-commerce and m-commerce are increasing in India, indicating consumers' inclination towards online shopping.

India is the second-largest smartphone market globally and accounts for nearly 10 percent of the global smartphone sales.

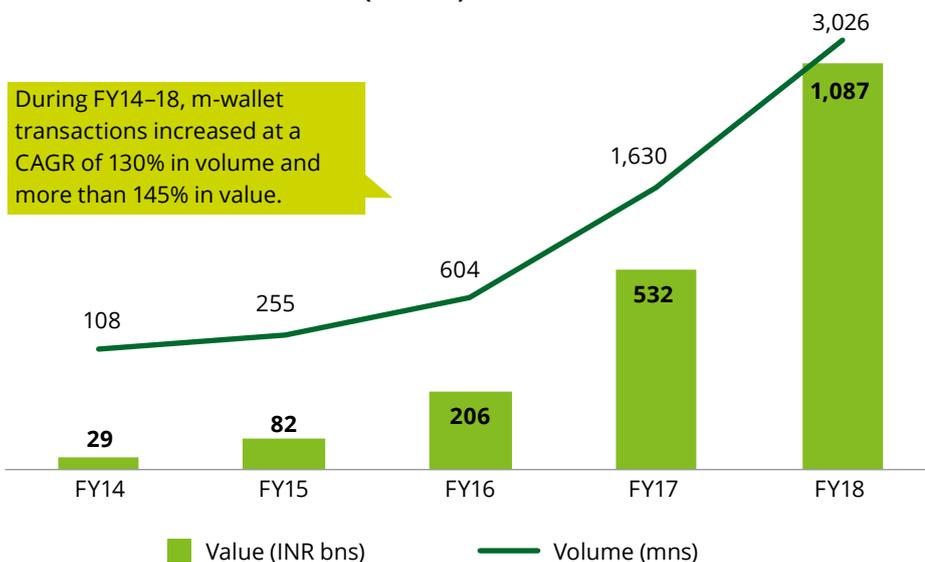
Smartphone users in India (in mns)



Source(s): Payment system indicators, Reserve Bank of India, accessed on 21 June 2018, media articles

While traditionally m-wallets started with services such as recharges, bill payments, and money transfers, their use for shopping purpose is increasing.

M-wallets transactions in India (FY14-18)



Source(s): Payment system indicators, Reserve Bank of India, accessed on 21 June 2018, media articles

³ Payment system indicators, Reserve Bank of India, accessed on 21 June 2018; Media articles

The high growth in the e-commerce market is majorly attributable to factors, including⁴ the following:

• **Growing internet penetration:**

Internet users in India are expected to increase from 432 mn in 2016–17 to 647 mn by 2021–22, taking the internet penetration from 30 percent to 59 percent by 2021-22.

– About three-fourths of new internet users are expected to come from rural regions.

• **Rising number of online shoppers:**

The number of online shoppers would increase from current 15 percent to 50 percent of the online population by 2026.

• **Increasing use of smartphones:**

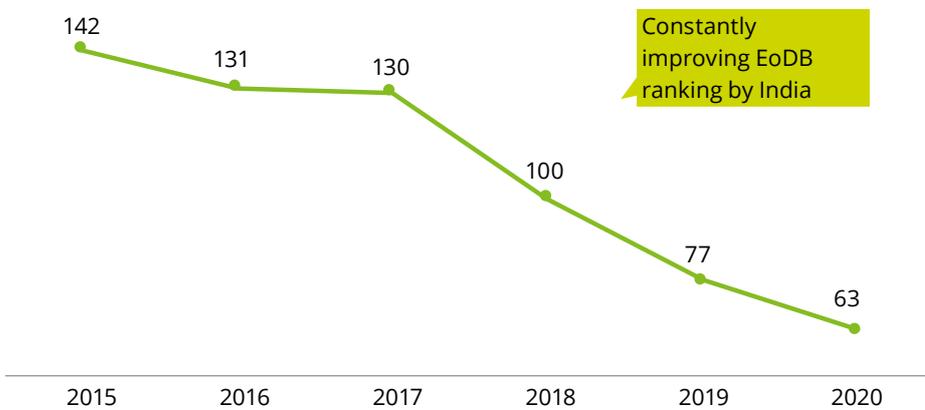
The number of smartphone users in India is expected to rise from 260 mn in 2016–17 to about 450 mn by 2021–22.

This in turn is expected to increase m-commerce sales from US\$ 10.5 bn to US\$ 38 bn by 2020–21.

Ease of Doing Business (EoDB)

India has successively worked towards reforming the business environment in the country. According to World Bank's Doing Business Report (DBR) 2017, India moved up from its earlier rank of 130th position to 63rd position per DBR 2020. It is the only country to have improved its ranking by more than 10 spots consecutively for three years.

India EoDB ranking



Source: World Bank

Greater EoDB directly affects the inflow of foreign direct investments (FDI). Multinational companies and brands prefer investing or setting up their manufacturing/operations in states with a better EoDB index. Further, multinational companies operating in the country have a multiplier impact of development on the consumer industries. Such foreign companies bring

along latest technologies and practices that indigenous and local players can leverage. Further, more companies operating in the region implies greater employment opportunities, increased consumption, and more product choices to consumers. Foreign investments help in the economy's growth and provide a better consumer experience.

⁴ Media articles, Deloitte analysis

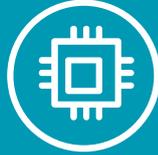
Benefits of foreign investments



Capital

Companies invest in long-term projects and infuse huge capital while taking risks, which benefits the economy as well as provides better experience to consumers.

- Indian retail and wholesale trade received a total FDI worth US\$ 4.48 bn in FY18. The provisional estimates put the FDI inflows for the sector at US\$ 4.3 bn in FY19.



Technology

Foreign companies bring along a host of technologically advanced processes, methods, products and services, which benefit the consumers and domestic players as well.

- Artificial intelligence, predictive analytics, virtual and augmented reality, etc., originated from developed economies and later got infused in the Indian retail sector.



Domestic investments

Foreign investments boost the confidence of domestic investors as well, leading to greater investments and more options for consumers.

- Gauging the huge opportunity in retail sector, various major Indian industrialists started their retail operations in India to compete with foreign retailers.
- Further, various start-ups thrived in this space given the huge consumer base in India.



Market access and exports

Multinational enterprises (MNEs) help in getting easy access to domestic and export markets owing to their better infrastructure and brand name.



Infrastructure

MNE have a well-established supply chain network, comprising of advanced warehousing/ storage capabilities, integrated forward and backward linkages, modern stores, etc.



Social impact

Attracting foreign investments require a stable and conducive policy environment, thus making it more reliable, transparent, and sustainable.

Further, MNEs bring along their best practices in conducting responsible business.

A sustainable model of integration of traditional and modern retail

The increasing FDI and entry of multinational retailers in the country are also increasing the organised retail's share in the retail market in India. These modern companies collaborate with traditional retailers to them overcome their operational challenges, including lack of advanced technology, space, and modern payment tools; working capital issues; an unorganised planogram; and inefficient point of sales (PoS) systems. This collaboration is seen as a win-win situation as it also helps modern retailers increase their consumer reach and penetrate non-urban markets.

Large modern-age brick-and-mortar retailers and e-commerce players are advancing and using the widespread network of Kirana stores to increase their retail presence and win over the Indian consumer. Just 3 percent of Kirana stores are tech-enabled and the remaining are willing to adopt technology (70 percent of Kirana stores in big cities and 37 percent in tier-II cities want to be tech-enabled)⁵. Retail giants are using this opportunity to empower Kirana stores technologically and financially. E-commerce companies are collaborating with these stores to

increase their reach and provide an additional source of earning by acting as their channel partners/distributors.

For tech-enablement, Kirana stores are provided POS billing systems, app payments, and back-end integration with wholesalers. Even easy loans are provided to help Kirana stores cope with working capital shortages. Additionally, to improve profit margins, stores' staff is trained on planograms, assortment selection, and product placement.

"Offline vs. online" is now turning into "offline complements online". The way forward for the Indian retail industry seems to be from "bricks-and-clicks" to an "intermix" of channels and offerings. Collaborations between brick-and-mortar retail (both traditional and modern) and e-commerce companies are testimony to this trend. More companies are finding innovative ways to collaborate with and use the strengths of their counter retail channels. Collaboration between traditional and modern retailers is expected to provide consumers a better shopping experience as well as increases revenue shares of both the retail channels.

⁵ India's mom-and-pop stores are finally ready to embrace technology, Quartz India, 18 April 2018

Phases of consumer shopping journey	Confluence of general trade (GT) and modern trade (MT)	
	Traditional retail	Modern retail (including e-commerce)
Awareness	Word of mouth	<ul style="list-style-type: none"> • Ads via digital medium • Ads via traditional medium: print, TV, radio, banners, hoardings, standees, etc. • Digital hoardings
Consideration	<ul style="list-style-type: none"> • Visit store to check assortments • Local retailers provide discounts • Personal relations and trust on retailers • Proximity of the outlet 	<ul style="list-style-type: none"> • Visit store to check assortments • Check assortments on app/website • Retailers provide discounts/promotions • Peer reviews • Price comparison • Online influencers
Purchase	<ul style="list-style-type: none"> • Purchase in the store • Payment via cash (some outlets also accept mobile wallets and cards) • Avail credit facility • Store pickup/free home delivery 	<ul style="list-style-type: none"> • Purchase in the store • Purchase via app/website • Payment via cash, mobile wallets, cards, other digital means • Store pickup/home delivery
After sales	<ul style="list-style-type: none"> • Visit the store/local service centre for complaints and returns 	<ul style="list-style-type: none"> • Visit store/website/app/local service centre for complaints • Complaints/reviews via social media websites, blogs • Visit store for returns • Returns via home pick up
Loyalty	<ul style="list-style-type: none"> • Personalised offerings/extra discounts/goodies provided for loyalty • Garner trust due to personal connect 	<ul style="list-style-type: none"> • Online loyalty programmes • Enhanced consumer shopping experience • Personalised offerings such as discounts, and promotions

Source: Deloitte analysis

The need of the hour is a confluence of the retail channels, wherein each channel complements the offerings of the other and provides a seamless shopping service for consumers' benefit. Further, with the evolution and rapid growth of contract or third-party manufacturing, a huge opportunity exists for forward and backward integration of value chain. This integration provides a comprehensive, well-crafted, and customised product to consumers. Contract manufacturing helps consumer companies focus on other major issues of supply chain that

include procurement and distribution, pricing, after-sales support, and investing options to engage consumers. It also supports the cause and growth of small and mid-sized enterprises in the consumer industry manufacturing space. Thus, this is seen as a win-win situation for industries and consumers alike. The next decade of growth in consumer markets could witness the evolution of such comprehensive modes of servicing consumers. This will also enable brands to meet consumers' need and retain them.



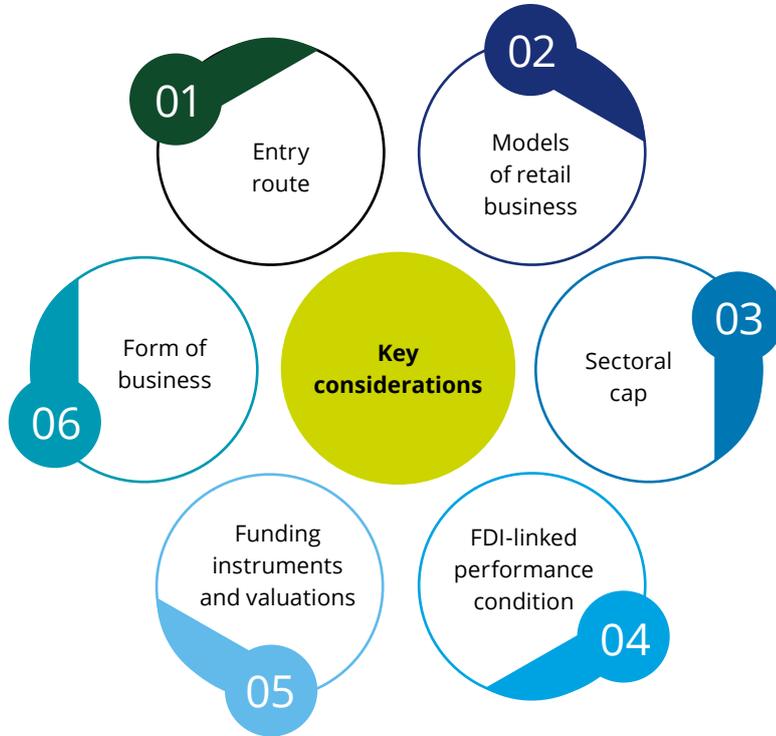
An overview of FDI

The government has put in place a policy framework on FDI in the Foreign Exchange Management (transfer or issue of security by a person resident outside India) Regulations, 2017 (FDI regulations). This is also embodied in the consolidated FDI policy and circulars/

notifications issued from time to time. The government of India has recently notified Foreign Exchange Management (Non-debt Instrument) Rules, 2019 in October 2019*, which superseded the then prevalent FDI Regulations.

* Notification No S.O. 3732(E) dated 17 October 2019

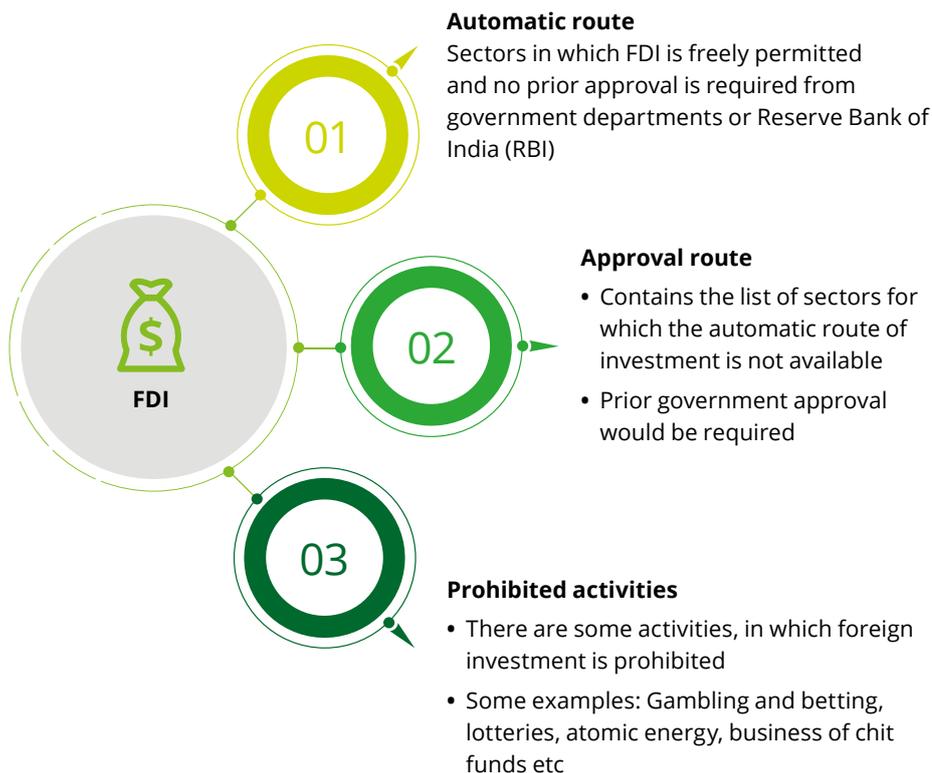
Navigating the maze: Key considerations



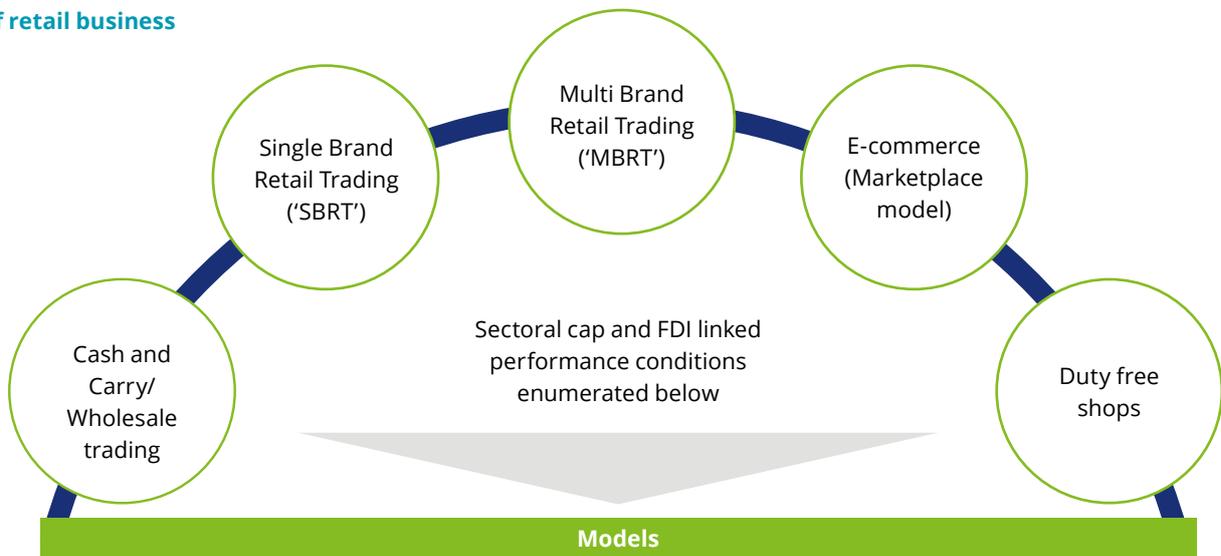
Relevant snippets of Foreign Exchange Management (Non-debt Instrument) Rules, 2019 with respect to the above key considerations are discussed below.

Entry routes

Investment in India is allowed via two routes—Automatic route and Approval route.



Models of retail business



Sectoral caps and FDI-linked performance conditions

Cash and carry wholesale trading

100%
Automatic

Key Conditions

- Sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers
- Wholesale trading implies sales for trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale shall be the type of customers to whom the sale is made and not the size and volume of sales.
- Wholesale trading shall include resale, processing and thereafter sale, bulk imports with export/ ex-bonded warehouse business sales and B2B e-Commerce
- Requisite licenses / permits / registration to be obtained. Sales would be considered with 'valid business customers' only if made to certain entities
- Full records indicating all details to be maintained
- Wholesale trade permitted amongst group companies up to 25% of the total turnover of wholesale venture
- Wholesale trader can undertake single brand retail trading subject to applicable conditions

SBRT

100%
Automatic

Key Conditions

- Products should be of 'Single Brand'
- Non-Resident entity(s), whether owner of the brand or otherwise, shall be permitted to undertake SBRT in the country, for the specific brand, either directly by brand owner, or through a legally tenable agreement with the brand owner
- For FDI beyond 51%, sourcing of at least 30% should preferably be from Micro, Small and Medium Enterprise, village and cottage industries, artisans and craftsmen, in all sectors ('local sourcing'). Not applicable for initial 3 years for SBRT entity having state of the art and cutting edge technology. Procurement requirement is to be met as an average of 5 years total value of goods procured beginning 1st April of year of commencement of SBRT business. Thereafter SBRT entity is required to meet 30% local sourcing norms on an annual basis
- Local sourcing shall be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company is required to maintain.
- SBRT entity is permitted to set off sourcing of goods from India for global operations against mandatory sourcing requirement of 30%
- A SBRT entity operating through brick and mortar stores, can also undertake retail trading through e-commerce. However, retail trading through e-commerce can also be undertaken prior to opening of brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within two years from date of start of online retail.

MBRT

51%
Government**Key Conditions**

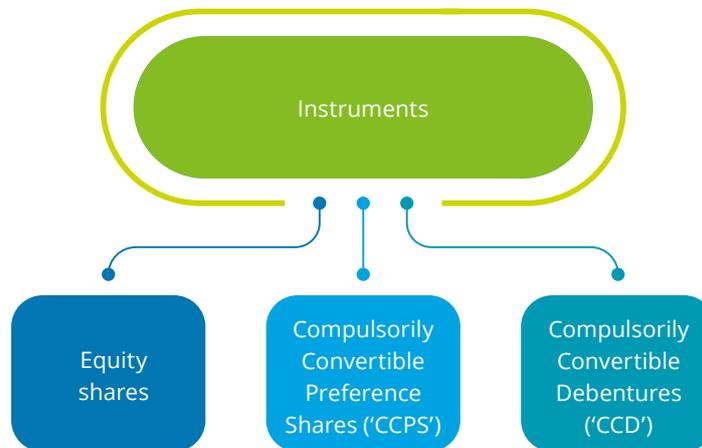
- Fresh agricultural produce maybe unbranded
- Minimum investment by foreign investor of US\$ 100 mn
- Atleast 50% of total FDI to be invested in 'back-end infrastructure' within 3 years
- Atleast 30% of the value of procurement of manufactured / processed products should be from Indian micro, small and medium industries
- Companies with FDI cannot undertake MBRT through e-commerce

E-commerce

100%
Automatic**Key Conditions**

- To engage only in B2B e-commerce
- Marketplace model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital and electronic network to act as a facilitator between buyer and seller
- E-commerce entity providing market place shall not exercise ownership over inventory (Inventory deemed to be controlled by e-commerce market place entity if more than 25% purchases of vendor are made from marketplace entity)
- Entity having equity participation by e-commerce marketplace entity/its group companies/or having control on its inventory by e-commerce marketplace entity or its group companies not permitted to sell its products on the platform run by such marketplace entity
- E-commerce entities providing marketplace to not directly or indirectly influence the sale price of goods or services and to maintain level playing field
- No e-commerce marketplace entity shall mandate any seller to sell any of their product exclusively on its platform
- E-Commerce marketplace entity with FDI shall have to obtain and maintain a report of the statutory auditor by 30th of September every year for the preceding financial year confirming compliance of the e-commerce guidelines
- E-Commerce marketplace entity may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centres payment, collection and other services

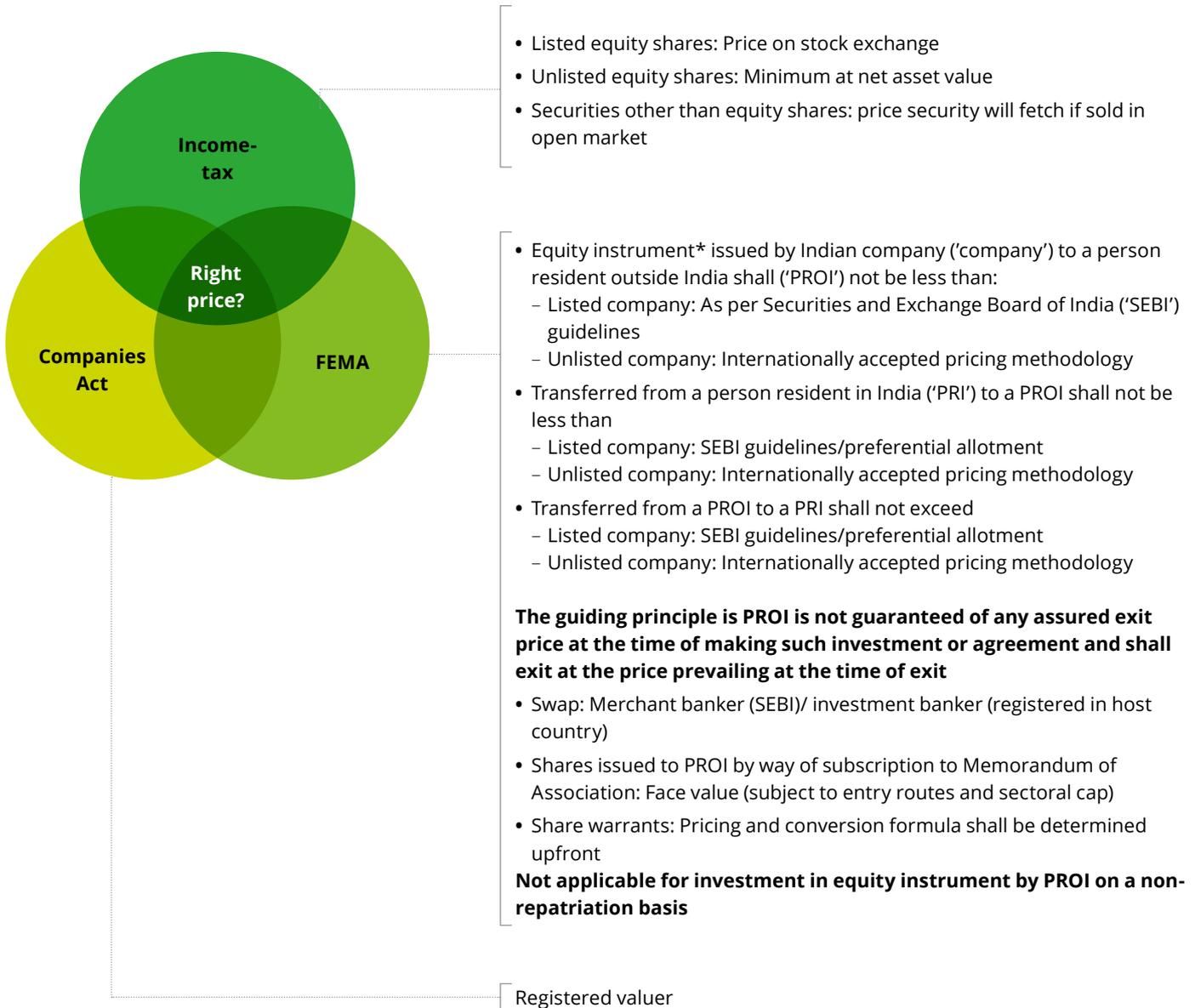
Funding instruments



Comparative analysis

Particulars	Equity share	CCPS	CCD
Nature	Fully paid/partly paid	Fully and mandatorily convertible into equity shares	Fully and mandatorily convertible into equity shares
Income stream	Dividend	Dividend	Interest
Exit options	Transfer	Transfer	Transfer
	Buyback (subject to restrictions)	Conversion to equity and thereafter transfer/buyback/capital reduction (subject to restriction)	Conversion to equity and thereafter transfer/buyback/capital reduction (subject to restriction)
	Capital reduction		

Valuation



*Equity instrument: Equity shares/compulsorily convertible debentures/compulsorily convertible preference shares and share warrants (in accordance with SEBI guidelines) issued by an Indian company

Forms of business

There are various models for foreign players to operate in the Indian retail sector. Each model has its advantages and disadvantages. A prospective entrant needs to choose the one suited to their aspirations, management bandwidth, and business strategy.

Operating Model	Potential Advantages	Potential Disadvantages
Licensee/Distribution	<ul style="list-style-type: none"> • Lower investments • Higher reach through multi-brand outlets 	<ul style="list-style-type: none"> • Lower control on business • Partner may be a licensee to multiple brands and pay limited attention
Micro Franchisee	<ul style="list-style-type: none"> • Possibility of faster roll out • Micro franchisees have better understanding of local market 	<ul style="list-style-type: none"> • Multiple partners, hence difficult to manage
Master Franchisee	<ul style="list-style-type: none"> • Lower investments • Benefits from partner's existing infrastructure • Easier to manage 	<ul style="list-style-type: none"> • Lower control on business • Difficult to locate a partner with deep investment capability
JV with Indian Company	<ul style="list-style-type: none"> • Leverage partner's strength • Better management • High level of control on business • Undertake e-commerce model 	<ul style="list-style-type: none"> • High dependence on partner • Partner interest may vary in long term
100% Owned subsidiary	<ul style="list-style-type: none"> • Operational flexibility • High level of control on business • Undertake e-commerce model 	<ul style="list-style-type: none"> • Need to build various operational, regulatory and tax complexities • Initial roll out may be slower due to longer learning curve
Limited Liability Partnership*	<ul style="list-style-type: none"> • Lesser tax outflow as compared to subsidiary/ company model • Lesser compliance/ reporting requirements • Undertake e-commerce model 	<ul style="list-style-type: none"> • Downstream investment by LLP with FDI is subject to fulfilment of conditions • Relatively newer model of operation and accordingly may not be preferred from credit perspective • Not permissible to list the business in future

* Foreign investment in Limited Liability Partnership (LLP) is permitted only if the LLP is operating in sectors/activities where foreign investment up to 100 percent is permitted under automatic route and there are no FDI-linked performance conditions - Feasibility to be evaluated on a case-to-case basis.

External Commercial Borrowing is not permitted in LLP

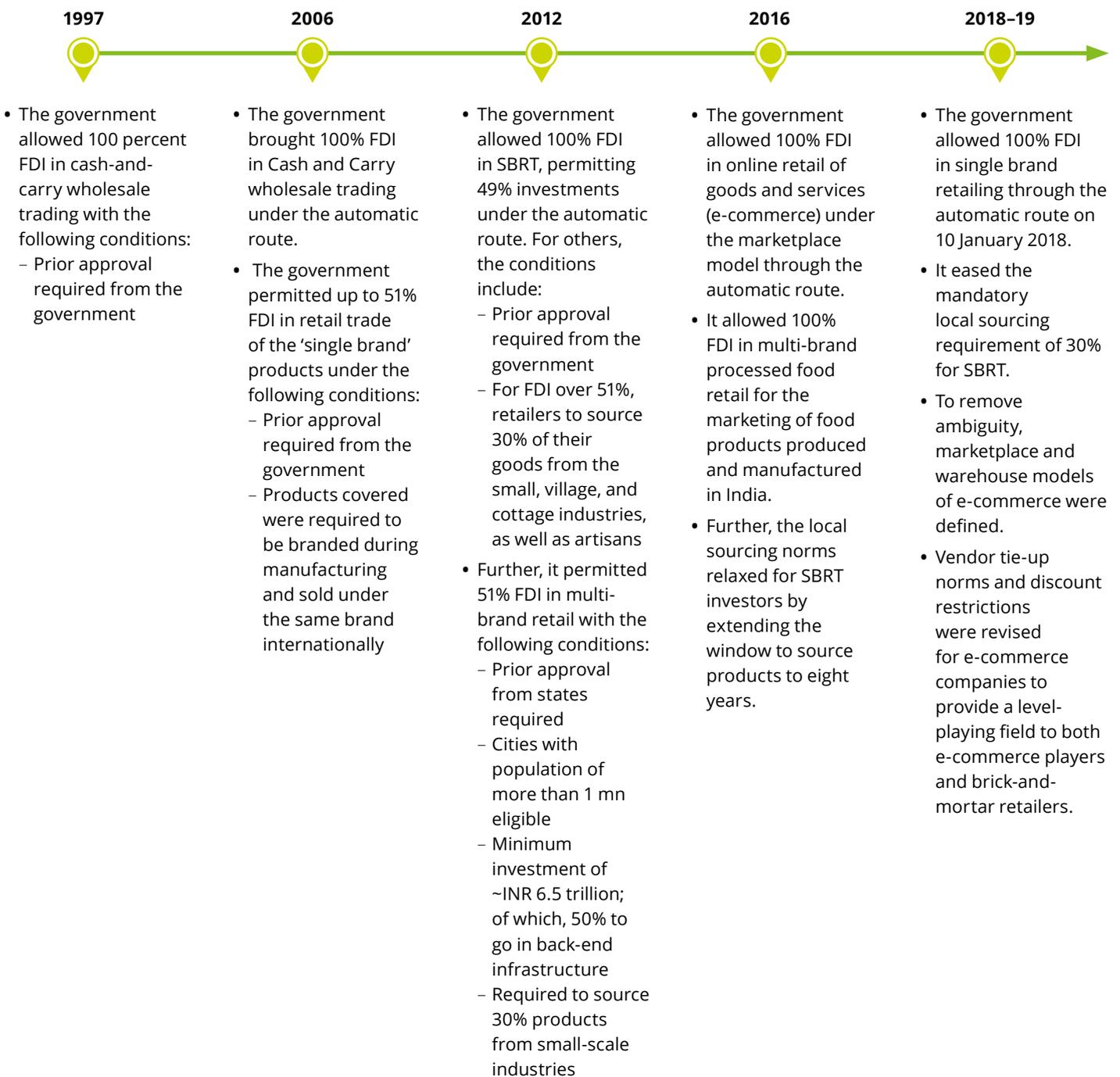


Policy changes for conducive business environment

Retail has been one of the sectors where FDI was restricted historically due to apprehension among local retailers and industry bodies, as well as political resistance. However, following the government's decision to open up the sector for FDI in Single Brand Retail Trade (SBRT) in 2006, the country has witnessed significant advancements in the sector

throughout its value chain. International retailers have helped in stimulating the Indian retail growth with regard to technology, supply chain, storage and warehousing, distribution, retail formats, aftersales services, etc. Further, they have helped in modernising the retail industry and pushing it towards an organised market.

A gradual opening of the retail sector for FDI led to the onset of increasing foreign investments and modern modes of retailing, benefitting consumers and the industry alike.^{6,7,8,9}



⁶ FDI in multi-brand retail: The gateway finally opens

⁷ The big ticket FDI reform

⁸ FDI in multi-brand retail with riders

⁹ Consolidated FDI policy

Following the abolishment of the Foreign Investment Promotion Board in 2017, the FDI clearance process has become convenient for investors. The move removes an extra layer of procedures, making the overall process more efficient. FDI proposals are now transferred to concerned individual ministries, which decide on their clearance

Investments driving customer experience

According to the World Investment Report 2017-18 by the United Nations Conference on Trade and Development

(UNCTAD), 20% of the global executives favoured India as the host destination for investments during 2017–19, ranking the nation third after the US and China.¹⁰ Given the favourable macroeconomic environment in India and the government's consistent focus on making the business environment more conducive, the nation has witnessed a steady growth in FDI and PE/VC investments in the consumer industry.

FDI equity inflow in select sectors related to consumer business

(amount in US\$ mn)

Sector	April 2000 to March 2019	April 2000 to March 2018	April 2000 to March 2017	FDI in FY19	FDI in FY18
Trading	23,021	18,558.99	14,210.86	4,462	4,348
Hotel and tourism	12,351.18	11,275.43	10,143.46	1,076	1,132
Food processing industries	9,076	8,447.81	7,542.91	628	905
Retail trading	1,655.17	1,212.34	988.56	443	224

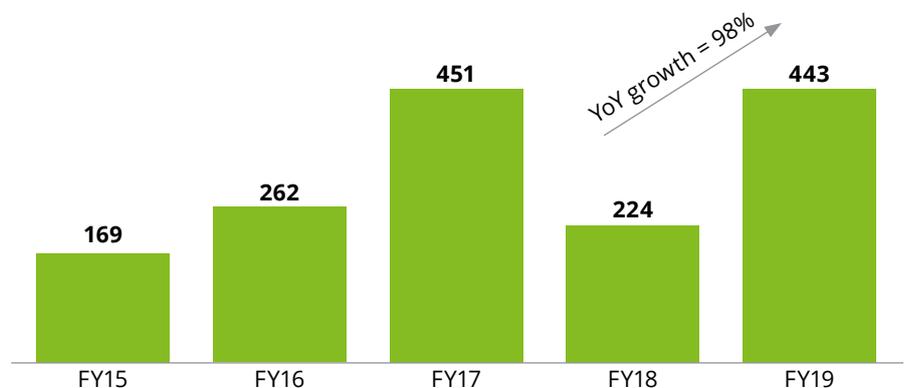
Source: DIPP; Deloitte analysis

Annual retail FDI in India

Retail trading witnessed a year-on-year increase of 98% in FDI inflows in FY19. Foreign investments increased from US\$ 224 mn in FY18 to US\$ 443 mn in FY19.

Annual FDI in India (Retail Trading)

Figures in USD mns



Source: DIPP

¹⁰ UNCTAD

Evolving Tax and Regulatory Landscape – recent developments





Opportunities

New Direct Tax scheme

The government has recently announced amendments to direct tax laws by way of The Taxation Laws (Amendment) Ordinance, 2019 and The Taxation Laws (Amendment) Act, 2019. The most significant amendment was the reduction in corporate tax rate for existing domestic companies (subject to certain conditions). Following the tax cut, India may be viewed as an attractive destination for investment. The tax regime has been discussed below.

- **Domestic companies**
The company may opt for a concessional tax rate of 22% (plus applicable surcharge and cess). However, specified incentives/tax holidays would not be available.
- **Relief in rate of Minimum Alternate Tax (MAT) provisions**
MAT is reduced from 18.5% (plus applicable surcharge and cess) to 15% (plus applicable surcharge and cess), where domestic companies continue in the old tax regime. This tax is not applicable to companies opting for the new tax regime.

Local sourcing

The government has provided relaxation in terms of sourcing norms, whereby the condition of sourcing 30% of the goods purchased will not be applicable up to three years beginning from the opening of the first store of entities undertaking SBRT of products with 'state-of-the-art' and 'cutting edge' technology, and where local sourcing is not possible.

Further, entities engaged in SBRT may be allowed to set off their sourcing of goods from India for global operations during the initial five years beginning from 1 April of the year of the opening of first store against the mandatory sourcing requirement of 30% of the purchases from India.

Timely and effective implementation of GST

The implementation of GST is leading to market integration, streamlining barriers for inter-state movements by removing octroi and sales tax checkpoints. As a next step, proposed introduction of

e-invoicing for B2C transactions from April 2020 will have an impact on the way invoicing is undertaken. The move is likely to bring in transparency. Further, allowing GST input tax credit only on the invoices reported by the vendor effective April 2020 will have a significant impact on working capital. This is likely to result in the streamlining of procurement function to ensure minimum loss of input tax credit.

Single brand retailers allowed to undertake e-commerce activities

Foreign single brand stores with approval to undertake single brand retail (i.e., sell through brick-and-mortar stores) in India are permitted to engage in e-commerce activities and sell products through online channels.

Same entity can carry out both wholesale and single brand retail.

A significant opportunity exists for wholesalers interested in operating a mix of wholesale and retail activities in India.

Way forward

The advantage of technology, coupled with the young Indian consumer, latest methods adopted to increase shopping experience, digitisation, and activism by the Indian consumer are early growth signs in the sector in India.

Interactions with some of the global industry companies indicate that taking the first-mover advantage to tap the consumption potential of India is imperative.

The government continues to provide support by putting in place regulations that act as a platform for companies to tap this potential.

Recent changes made by the government in respect of the FDI policy in retail, e-commerce, and contract manufacturing provides stimuli to the economy and attract further investments in India. Announcements such as hosting mega shopping festivals in India (akin to international models) reflect the proactive and interactive approach that the government follows to tap opportunities in the Indian retail market.

It is essential for any large consumer player to understand the regulations, besides forming a strategy to invest in the retail market in India.

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Appendix

Sector/Activity

Conditions are given in the Appendix

Cash and Carry wholesale trading/ wholesale trading (including sourcing from MSEs)

Sectoral cap: 100%

Entry route: Automatic

• Definition

- Cash and Carry wholesale trading/ wholesale trading shall mean sale of goods or merchandise to retailers; industrial, commercial, institutional, or other professional business users; or other wholesalers and related subordinated service providers.
- Wholesale trading shall imply sale for the purpose of trade, business, and profession, as opposed to sale for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not shall be the type of customers to whom the sale is made (not the size and volume). Wholesale trading shall include resale, processing, and thereafter sale, bulk imports with export/ex-bonded warehouse business sales, and business-to-business (B2B) e-commerce.

• Other conditions

- For wholesale trade, requisite licences/registration/permits, as specified under the relevant acts or regulations or rules or orders of the state government or government body or government authority or local self-government body under that state government, shall be obtained.
- Except selling to the government, sale made by the wholesaler shall be considered 'Cash and Carry wholesale trading/wholesale trading' with valid business customers, only when

wholesale trading is done with to the following:

- Entities holding sales tax or VAT registration or service tax or excise duty or goods and services tax (GST) registration; or
- Entities holding trade licences (a licence or registration certificate or membership certificate or registration under the Shops and Establishment Act) issued by a government authority or government body or local self-government authority, reflecting that the entity or person holding the licence or registration certificate or membership certificate, as the case may be, is itself or himself or herself engaged in a business involving commercial activity; or
- Entities holding permits, licence, etc., for undertaking retail trade (such as tehbazari and similar license for hawkers) from government authorities or local self-government bodies; or
- Institutions holding a certificate of incorporation or registration as a society or registration as public trust for their self-consumption

Note: An entity with whom wholesale trade is done may fulfil any one of the four conditions at (b) (i) to (iv) above.

- Full records of sales details, including entity name and type, registration/ licence/permit, number, and amount of sale, shall be maintained daily.
- Wholesale trade of goods shall be permitted among companies of a same group. However, such wholesale trade to group companies taken together shall not exceed 25 percent of the total turnover of the wholesale venture.

- Wholesale trade can be undertaken according to usual business practice, including extending credit facilities (subject to applicable regulations).
- A wholesale or Cash and Carry trader can undertake SBRT, subject to the applicable conditions. An entity undertaking wholesale/Cash and Carry, and the retail business shall be mandated to maintain separate books of accounts for these two business arms and have them audited by statutory auditors. The respective business arms should separately comply with conditions under these rules for wholesale or the Cash and Carry business and the retail business.

Single Brand Product Retail Trading

Sectoral cap: 100%

Entry route: Automatic

- Foreign investment in SBRT is aimed at attracting investments in production and marketing, improving the availability of such goods for consumers, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies, and management practices.
- **Other conditions**

FDI in SBRT would be subject to the following conditions:

 - Products to be sold should be of a 'single brand' only.
 - Products should be sold under the same brand internationally, i.e., products shall be sold under the same brand in one or more countries other than India.
 - 'Single brand' product retail trading shall cover only products that are branded during manufacturing.
 - A person resident outside India, whether brand owner or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific

brand, either directly through the brand owner or a legally tenable agreement between the Indian entity undertaking SBRT and the brand owner.

- In respect of proposals involving foreign investment beyond 51 percent, 30 percent of the value of goods procured shall be sourced from India, preferably from MSMEs, the village and cottage industries, artisans and craftsmen. The quantum of domestic sourcing shall be self-certified by the company; this will be subsequently checked by statutory auditors, from the duly certified accounts that the company shall be required to maintain. The procurement requirement shall be met in the first instance as a five-year average of the total value of goods procured beginning 1 April of the year of the commencement of SBRT business (i.e., opening of first store or start of online retail, whichever is earlier). Thereafter, the SBRT entity shall be required to meet the 30 percent local sourcing norms annually. To ascertain the sourcing requirement, the relevant entity would be the company that is incorporated in India and receiving foreign investment to carry out single brand product retail trading.
- To meet local sourcing requirement laid down at entry (e), the procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing, whether the goods procured are sold in India or exported. The SBRT entity is also permitted to set off sourcing goods from India for global operations against the mandatory sourcing requirement of 30 percent. For this purpose, 'sourcing of goods from India for global operations' shall mean value of goods sourced from India for global operations for that single brand (in INR terms) in a

particular financial year directly by the entity undertaking SBRT or its group companies (resident or non-resident), or indirectly by them through a third party under a legally tenable agreement.

- An SBRT entity operating through brick and mortar stores can also undertake retail trading through e-commerce. However, retail trading through e-commerce can also be undertaken before opening brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within two years from the date of start of online retail.

• **Note**

- Conditions mentioned at 2(b) and 2(d) above shall not be applicable for undertaking SBRT of Indian brands.
- Indian brands should be owned and controlled by resident Indian citizens and/or companies owned and controlled by resident Indian citizens.
- (c) Sourcing norms shall not be applicable up to three years from commencement of the business, i.e., opening of the first store for entities undertaking single brand retail trading of products using 'state-of-art' and 'cutting-edge technology and where local sourcing is not possible. Thereafter, provisions of local sourcing shall be applicable. DPIIT (a committee under the chairmanship of secretary with representatives from NITI Aayog, the concerned Administrative Ministry, and independent technical experts on the subject) shall examine applicants' claim on the issue of the products in the nature of 'state-of-art' and 'cutting-edge' technology where local sourcing is not possible, and give recommendations for such relaxation.

Multi-Brand Product Retail Trading (MBRT)

Sectoral cap: 51%

Entry route: Government

• **Other conditions**

- Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery, and meat products, can be unbranded.
- Minimum amount to be brought in as foreign investment would be US\$ 100 mn.
- At least 50 percent of the total foreign investment brought in the first tranche of US\$ 100 mn shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' shall include capital expenditure on activities, excluding that on front-end units. For instance, back-end infrastructure shall include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce, infrastructure, etc. Expenditure on land cost and rentals, if any, shall not be counted for the purpose of back-end infrastructure. Subsequent investment in the back-end infrastructure would be made by the MBRT retailer as needed depending on its business requirements.
- At least 30 percent of the value of procurement of manufactured or processed products purchased shall be sourced from the Indian micro, small, and medium-sized industries, which have a total investment in plant and machinery not exceeding US\$ 2 mn. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status shall be reckoned only at the time of first engagement

with the retailer. Such an industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US\$ 2 mn during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmer co-operatives shall also be considered in this category. In the first instance, the procurement requirement shall have to be met as a five-year average of the total value of the manufactured/ processed products purchased, beginning 1 April of the year during which the first tranche of foreign investment is received. Thereafter, it shall have to be met annually.

- The company requires self-certification to ensure compliance of the conditions at serial nos. (b), (c), and (d) above, which could be cross-checked if required. Investors shall maintain accounts that are certified by statutory auditors.
- Retail sales outlets may be set up only in cities with a population of more than 10 lakh according to the 2011 Census or any other cities per the decision of the respective state governments, and may also cover an area of 10 km. Around the municipal or urban agglomeration limits of such cities, retail locations shall be restricted to conforming areas according to the master or zonal plans of the concerned cities and provisions shall be made for requisite facilities, such as transport connectivity and parking.
- The government shall have the first right to procure agricultural products.
- The above policy is only an enabling policy. State governments or union territories shall be free to take their

own decisions in regard to policy implementation. Therefore, retail sales outlets may be set up in those states or union territories that have agreed or agree in future, to allow foreign investment in MBRT under this policy. States or union territories that have conveyed their agreement are mentioned in point 2 (see below). In the future, such an agreement to permit the establishment of retail outlets under this policy would be conveyed to the government of India through the Department of Industrial Policy and Promotion and additions shall be made to the said list. The establishment of the retail sales outlets shall be in compliance with applicable state/union territory laws or regulations, such as the Shops and Establishments Act.

- Retail trading in any form by means of e-commerce shall not be permissible for companies with foreign investment engaged in multi-brand retail trading.
- Applications shall be processed in the Department of Industrial Policy and Promotion to determine whether the proposed investment satisfies the notified guidelines, before being considered for the government approval.

• **List of states or union territories mentioned in 1(h) above are as follows:**

States or union territories are Andhra Pradesh, Assam, Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman and Diu, and Dadra and Nagar Haveli (union territories)

E-commerce activities

B2B e-commerce activities

Sectoral cap: 100%

Automatic

- Such companies would engage only in B2B e-commerce and not in retail trading. This implies that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.

Market place model of e-commerce

Sectoral cap: 100%

Automatic

• Other conditions

- E-commerce: Means buying and selling goods and services, including digital products over a digital and electronic network.
 - E-commerce entity: Means a company incorporated under Companies Act 1956 or the Companies Act, 2013.
 - Inventory-based model of e-commerce: Means an e-commerce activity in which the e-commerce entity owns an inventory of goods and services and sells directly to consumers.
 - Marketplace mode of e-commerce: Means an information technology platform by an e-commerce entity on a digital and electronic network that acts as a facilitator between a buyer and a seller.
 - Digital and electronic network shall include a network of computers, television channels, and other internet applications (such as web pages, extranets, and mobiles), used in an automated manner.
 - Marketplace e-commerce entity shall be permitted to enter into transactions with sellers registered on its platform on a B2B basis.
 - E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfilment, call centre, payment collection, and other services.
 - E-commerce entity providing a marketplace shall not exercise ownership over the inventory, i.e., goods purported to be sold.
- Explanation: A vendor's inventory shall be deemed to be controlled by an e-commerce marketplace entity if more than 25% of the purchases of such a vendor are from the marketplace entity or its group companies, which shall render the business into an inventory-based model.
- An entity that has equity participation by e-commerce marketplace entity/ group companies, or has control on its inventory by e-commerce marketplace entity or its group companies, shall not be permitted to sell its products on the platform run by such marketplace entity.
 - Goods/services made available for sale electronically on a website shall provide name, address, and other contact details of the seller. After the sale, delivery of goods to customers and customer satisfaction shall be the seller's responsibility.
 - Payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines issued by the Reserve Bank of India in this regard.
 - Any warranty or guarantee of goods and services sold shall be the seller's responsibility.
 - E-commerce entities providing a marketplace shall not influence directly or indirectly the sale price of goods or services, and maintain a level-playing field. Services should be provided by an e-commerce marketplace entity or other entities in which the e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on a platform at an arm's length, and in a fair and non-discriminatory manner.

- Explanation: Such services shall include but not limited to fulfilment, logistics, warehousing, advertisement or marketing, payments, and financing. Cash back provided by the group companies of the marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms that are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.
- Guidelines on Cash and Carry wholesale trading shall apply to B2B e-commerce activities.
- No e-commerce marketplace entity shall mandate sellers to sell their products exclusively on its platform.
- An e-commerce marketplace entity with FDI shall have to obtain and maintain a report of statutory auditor by 30 September every year for the preceding financial year, confirming the compliance of e-commerce guidelines.

Note: Foreign investment is not permitted in an inventory-based model of e-commerce.

- Sale of services through e-commerce shall be under an automatic route, subject to the sector-specific conditions, applicable laws/regulations, security, and other conditions.

Duty-free shops

- Duty-free shops are set up in a custom-bonded area at international airports or international seaports and land custom stations where there is transit of international passengers.
- Foreign investment in duty-free shops is subject to compliance with conditions stipulated under the Customs Act, 1962, and other laws, rules, and regulations.
- Duty-free shop entities shall not engage into any retail trading activity in the country's domestic tariff area.



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