

INDIAN INVESTMENT LAWS

Presented by

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INTRODUCTION

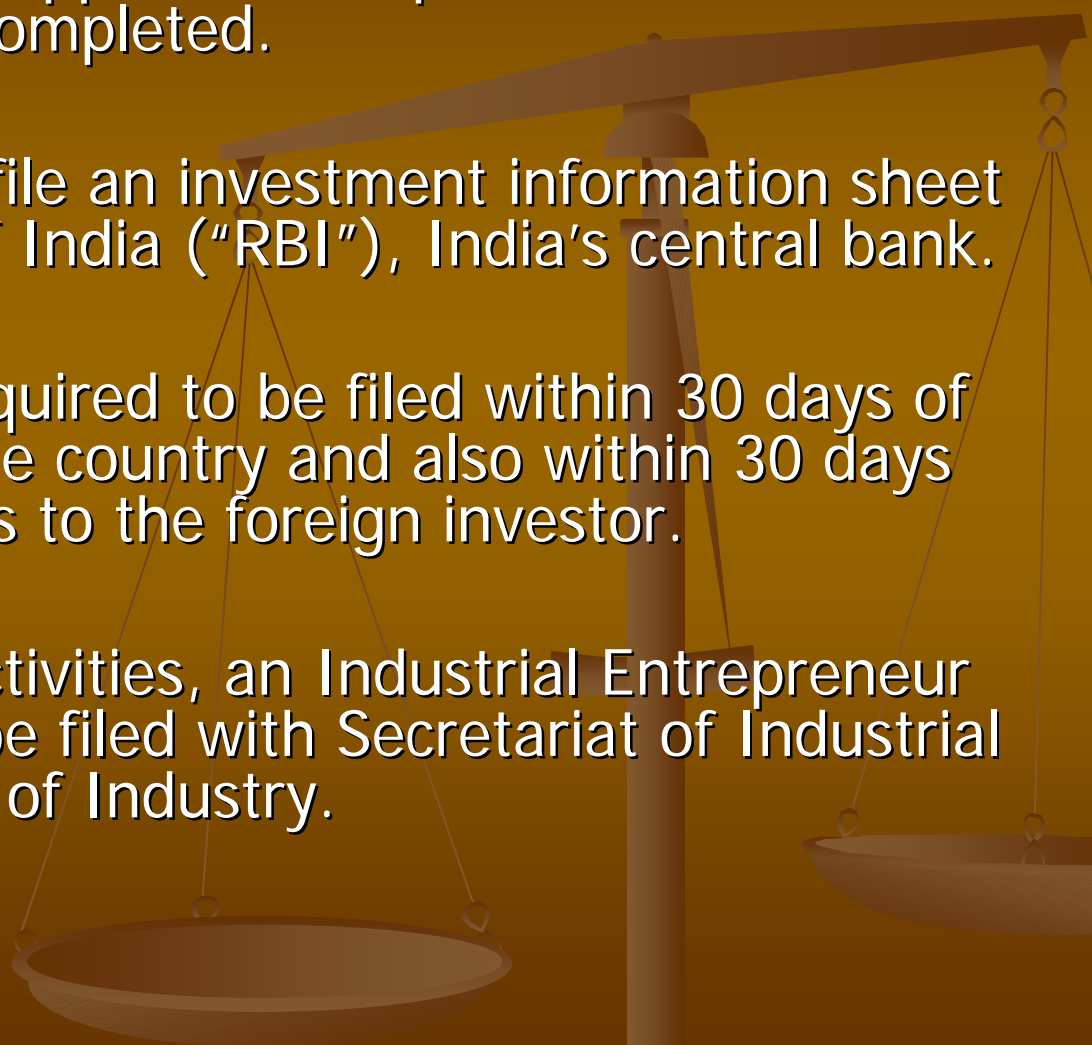
- India's economic reforms began in 1991.
 - Balance of payments problems and stagnant economy triggered external liberalization.
 - FDI in fiscal year 1990-91 was a meager US\$ 150 million.
 - FDI in 2006-07 was nearly US\$ 20 billion.
 - Government target to increase foreign trade to US\$ 500 billion by 2010.
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FOREIGN INVESTMENT STRUCTURE

Automatic and Non-Automatic Approval

- From regulatory standpoint, foreign investment falls into two categories:
 - *automatic* approval investment, and
 - *non-automatic* approval investment.
 - If investment qualifies for *automatic* approval, no prior investment approval from the Indian government is required.
 - If investment is of a *non-automatic* category, prior government approval is required.
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Automatic Approval

- No prior government approval is required but certain formalities must be completed.
 - Investor required to file an investment information sheet with Reserve Bank of India ("RBI"), India's central bank.
 - Information sheet required to be filed within 30 days of entry of funds into the country and also within 30 days of allotment of shares to the foreign investor.
 - For manufacturing activities, an Industrial Entrepreneur Memorandum must be filed with Secretariat of Industrial Approvals in Ministry of Industry.
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Non-Automatic Approval

- Investment is *non-automatic* if any one of the following conditions is attracted:
 - industry is subject to industrial licensing;
 - industry is reserved for government enterprises;
 - industry is reserved for small-scale industries; or
 - if a previous JV or technology transfer/trademarks license agreement exists with an Indian company in the same field.
 - Investment *non-automatic* if one of the above four conditions exist.
 - Application is filed with Foreign Investment Promotion Board (“FIPB”) in Ministry of Commerce.
 - FIPB usually takes 4-6 weeks to process the application and grant approval.
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Industrial Licensing

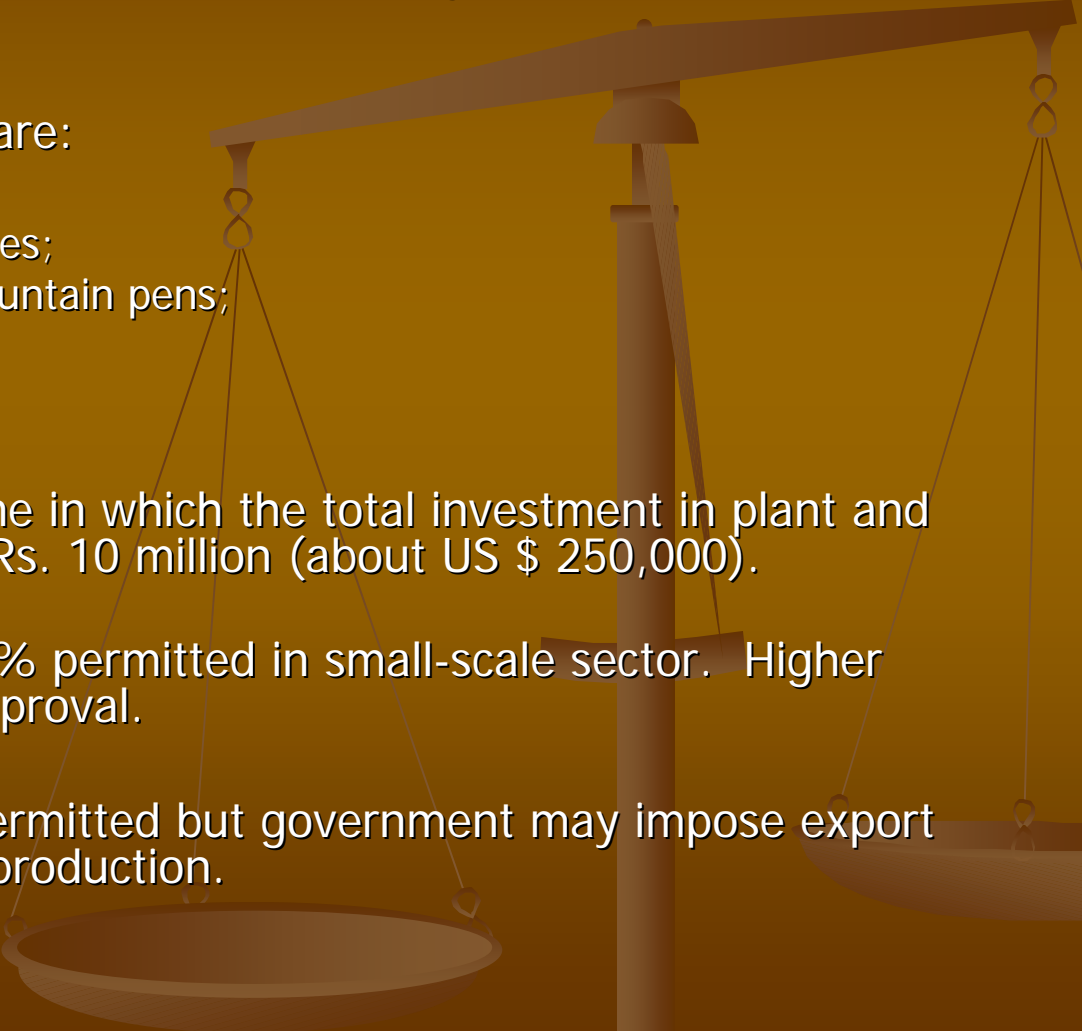
- Industrial license required only for six categories of industries.
 - Both Indian and foreign investors need prior industrial license.
 - Industries subject to compulsory licensing are:
 - distillation and brewing of alcoholic drinks;
 - tobacco products;
 - electronic aerospace & defense equipment;
 - industrial explosives;
 - hazardous chemicals; and
 - narrow category of drugs and pharmaceuticals.
 - Industrial license granted by the Ministry of Industry.
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Industries Reserved for Government Enterprises

- Only two industries reserved for government undertakings:
 - atomic energy, and
 - railway transport.
- Foreign and domestic private investment permitted in rail infrastructure and railway connected services.
- Operation of rail transport services reserved for government.



Small Scale Industries

- 114 items currently reserved exclusively for the small-scale sector.
 - Reservation policy is a legacy of the past when big business was viewed as undesirable.
 - Examples of reserved items are:
 - Wooden furniture and fixtures;
 - Stationery items, such as fountain pens;
 - Various plastic products;
 - Various paper products;
 - A small-scale enterprise is one in which the total investment in plant and machinery does not exceed Rs. 10 million (about US \$ 250,000).
 - Foreign investment up to 24% permitted in small-scale sector. Higher equity requires prior FIPB approval.
 - Higher foreign investment permitted but government may impose export obligations of up to 50% of production.
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WHOLLY OWNED SUBSIDIARIES

- Permitted in both automatic and non-automatic approval investment categories.
- Permitted in all industries unless government has specified a particular cap or ceiling on foreign equity.
- Examples of industries in which 100% foreign equity is allowed:
 - i. most manufacturing industries;
 - ii. infrastructure projects;
 - iii. software development;
 - iv. oil refining;
 - v. exploration and mining of most minerals;
 - vi. management consultancy services;
 - vii. venture capital companies.



FOREIGN EQUITY CAPS IN CERTAIN SECTORS

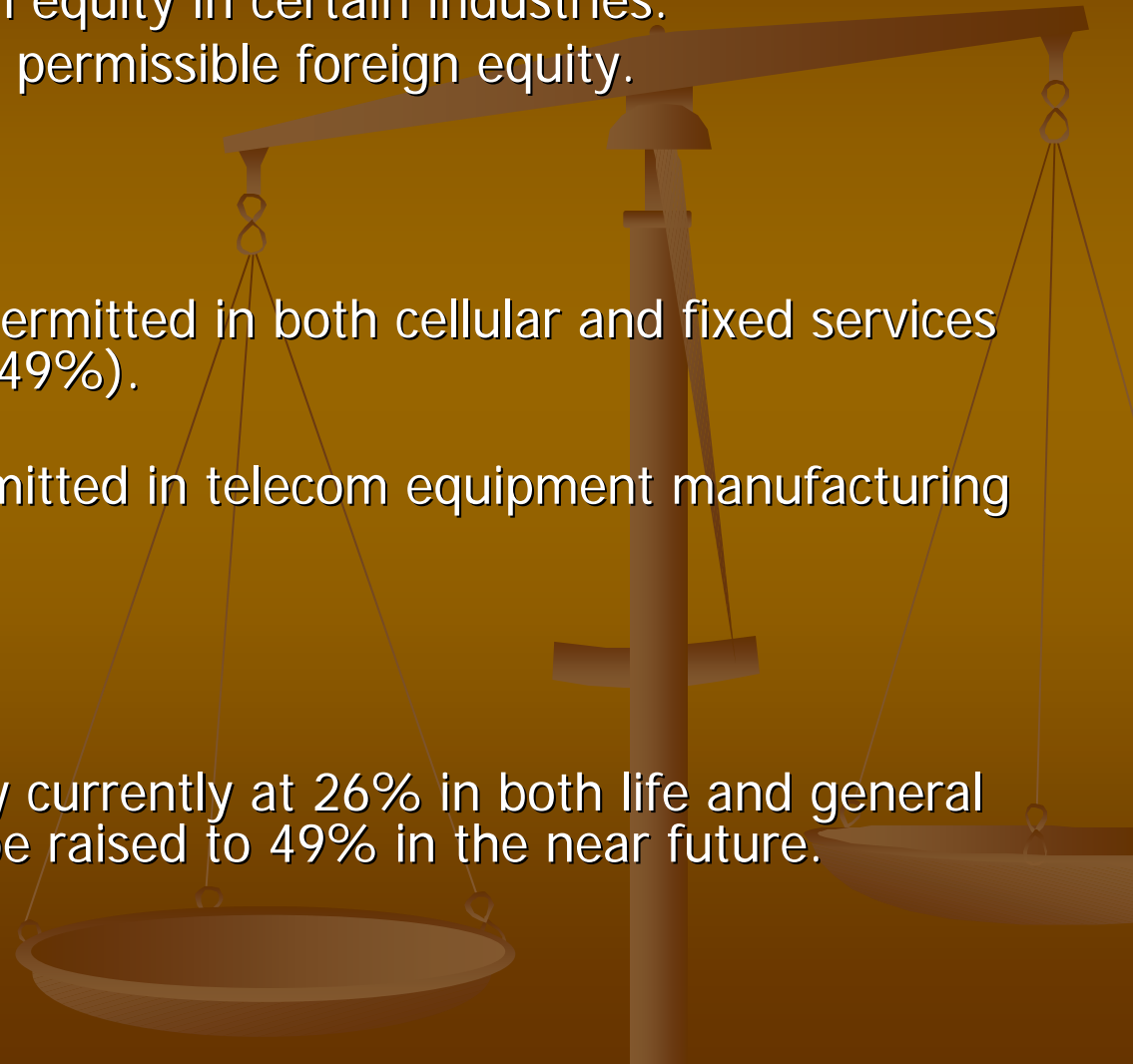
- Government limits foreign equity in certain industries.
- Trend towards increasing permissible foreign equity.

Telecommunications

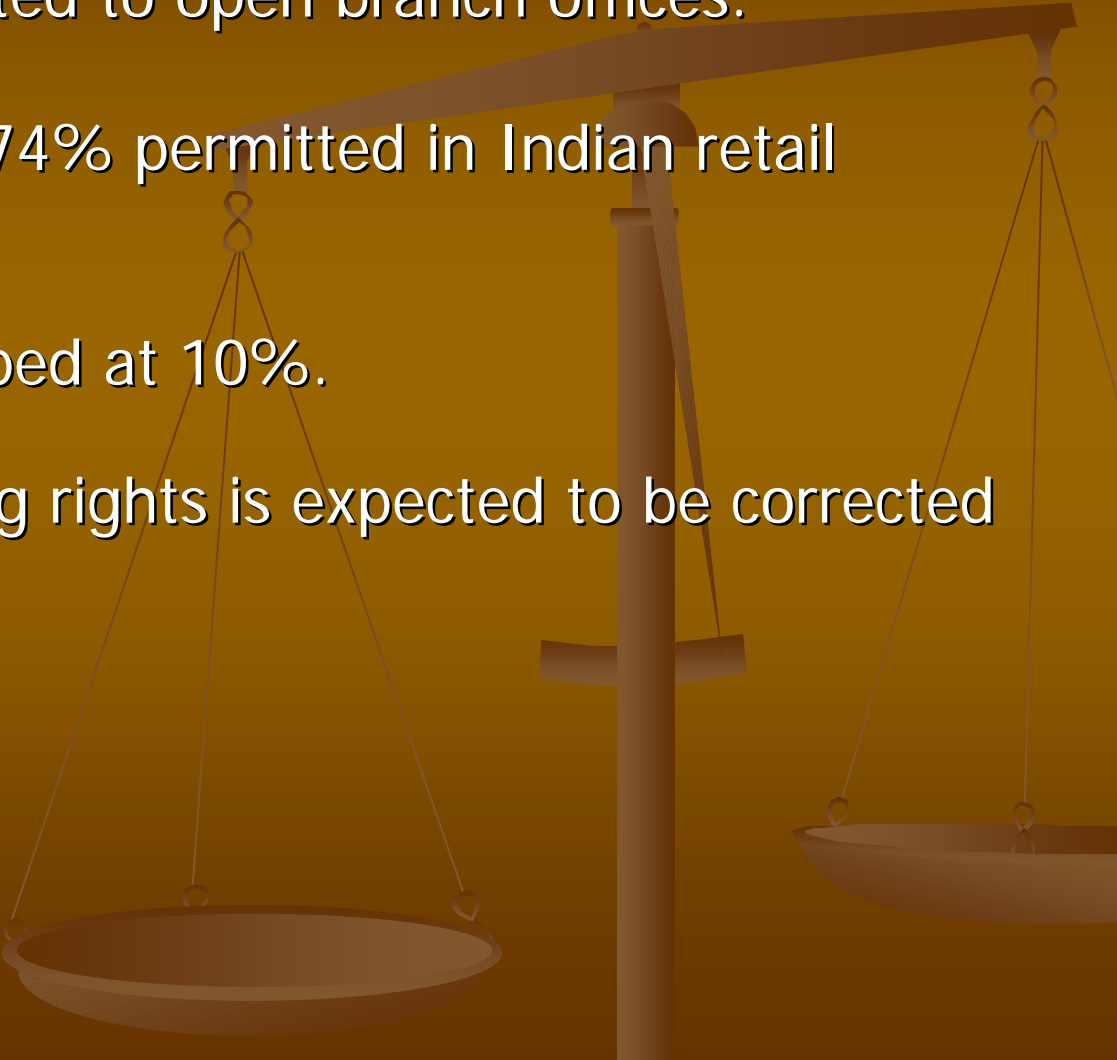
- 74% foreign ownership permitted in both cellular and fixed services (recently increased from 49%).
- 100% foreign equity permitted in telecom equipment manufacturing companies.

Insurance

- Permissible foreign equity currently at 26% in both life and general insurance. Expected to be raised to 49% in the near future.



Banking

- Foreign banks permitted to open branch offices.
 - Foreign equity up to 74% permitted in Indian retail banks.
 - Voting rights are capped at 10%.
 - This anomaly in voting rights is expected to be corrected in the future.
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Real Estate

- 100% foreign equity permitted for development of integrated townships. Minimum area must be 10 hectares.
 - 100% foreign equity allowed in shopping malls – minimum area must be 50,000 sq.m.
 - Wholly owned subsidiary must have minimum capitalization of US\$ 10 million. JV with an Indian company: minimum foreign equity US\$ 5 million.
 - Original investment cannot be repatriated before three years without prior FIPB approval.
 - Hotels and resorts – 100% foreign equity allowed.
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Retail

- Foreign investment is largely not allowed. Certain exceptions exist.
 - Foreign equity up to 51% allowed in 'single brand' stores.
 - Multiple brand stores, such as Walmart, Carrefour, Tesco not allowed to own and operate stores.
 - Wholesale and cash-and carry operations with 100% foreign equity allowed.
 - Franchising of names allowed. Some companies follow this route.
 - Pressure to open up retail sector to foreign investment.
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Trading Companies

- Automatic approval up to 51% foreign equity for primarily export activities.
 - Foreign equity of up to 100% permitted with prior FIPB approval for export activities, cash and carry wholesale trading etc.
 - Automatic approval for wholly owned subsidiaries being considered by the government.
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Media and Broadcasting

- Prior FIPB approval required for all investments in media and broadcasting.
 - Up to 26% foreign equity permitted in newsprint and TV news channels.
 - 100% foreign equity permitted in non-news print media.
 - If TV channel is up linked from India, 49% foreign equity is permitted.
 - Radio FM broadcasts - 20% foreign equity permitted.
 - 100% foreign equity permitted in content and film production facilities.
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Stock Market

- Only registered Foreign Institutional Investors (“FIIs”) can invest.
 - Foreign individuals cannot invest directly.
 - Investments allowed in shares, corporate debt instruments and also government securities.
 - FIIs can collectively hold up to 49% equity in Indian companies, but one FII only up to 10%.
 - Company resolution can enable FIIs to hold up to 74% equity.
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FOREIGN TECHNICAL COLLABORATIONS

- Technology transfer, technical license, foreign technical collaboration are inter-changeable terms and have same meaning.
- *Automatic* approval is available for technical collaboration agreements if the following parameters are followed:
 - initial lumps sum payment does not exceed US\$ 2 million; and
 - royalty rate does not exceed 5% on sales within Indian and 8% on exports (ex factory price).

Note

- No minimum quantum of royalties can be agreed upon, must be chargeable only on the basis of per unit sales.
- For a technology transfer arrangement outside above parameters, prior approval of the FIPB is required.

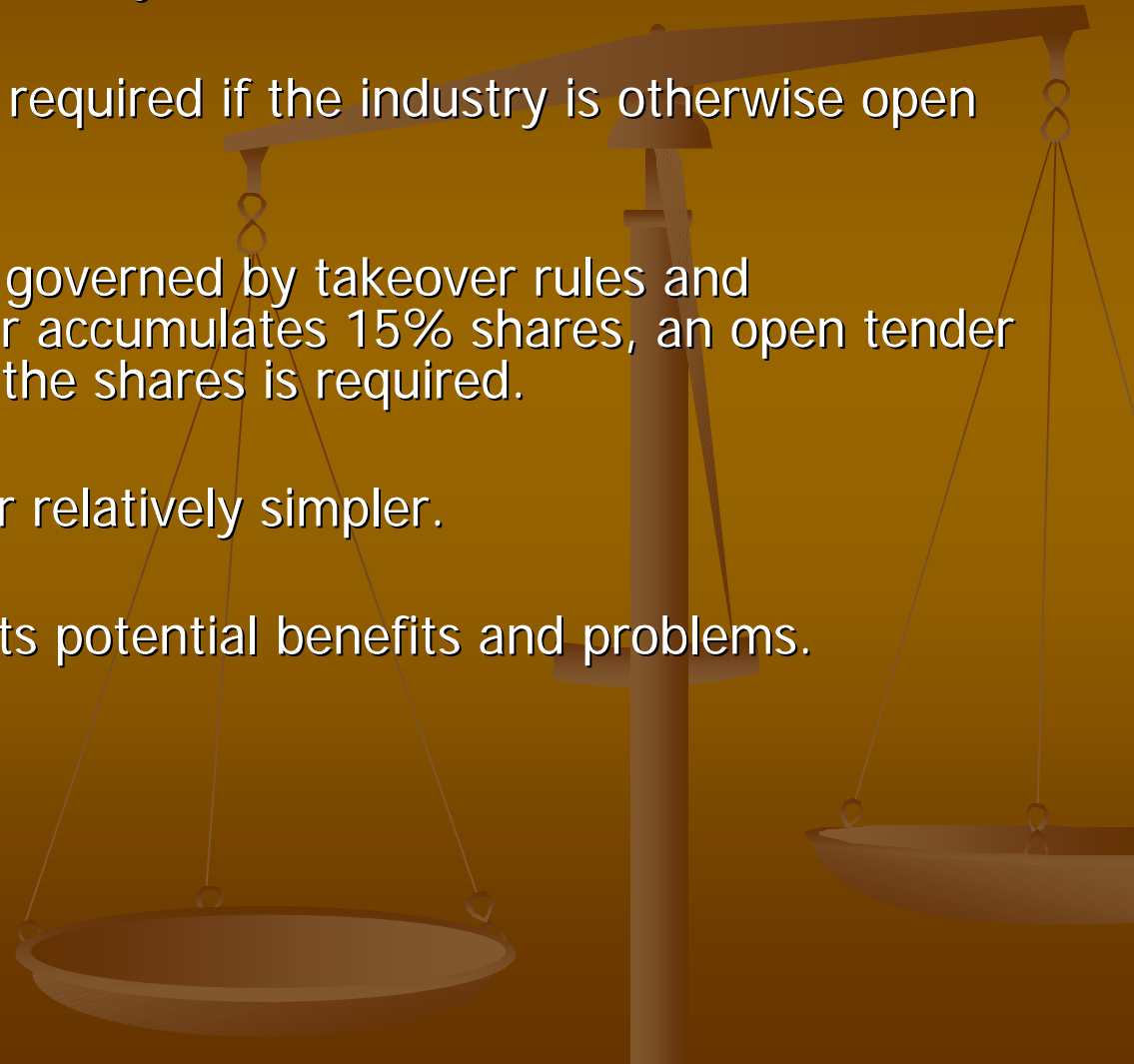
ENTRY STRATEGY

Wholly Owned Subsidiary vs. Joint Venture

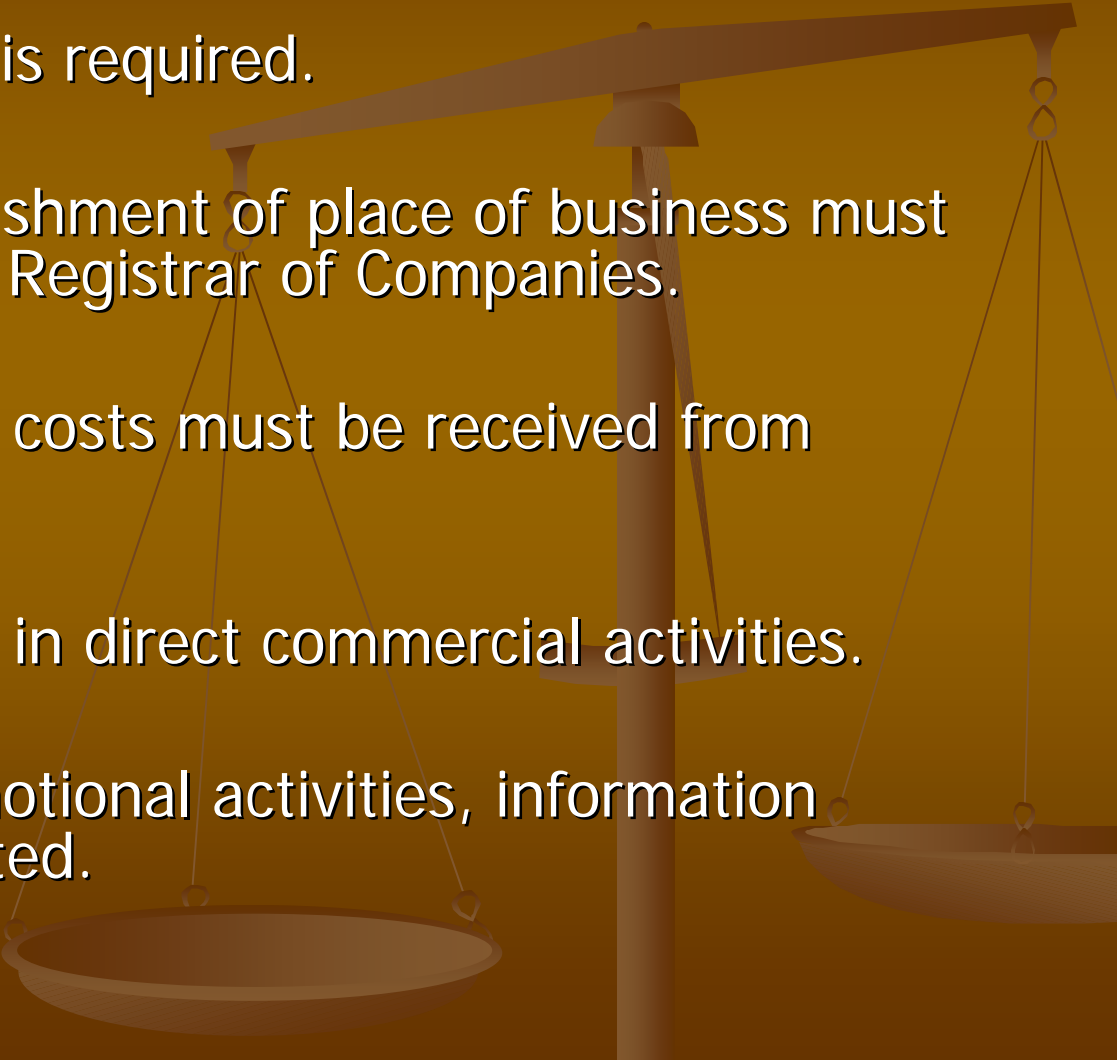
- Wholly owned subsidiary preferable for most foreign investors.
 - clash of corporate cultures.
 - clash of business practices.
 - unequal ability to contribute capital.
 - JV preferable for certain types of projects
 - where foreign equity cap exists.
 - infrastructure projects.
 - exploration and mining projects.
 - industries that are heavily regulated and require considerable government interface.
 - Wholly owned subsidiary and contractual JV
 - can be good strategy for various types of businesses.
 - marketing and distribution partnership.
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Acquisition of an Indian Company

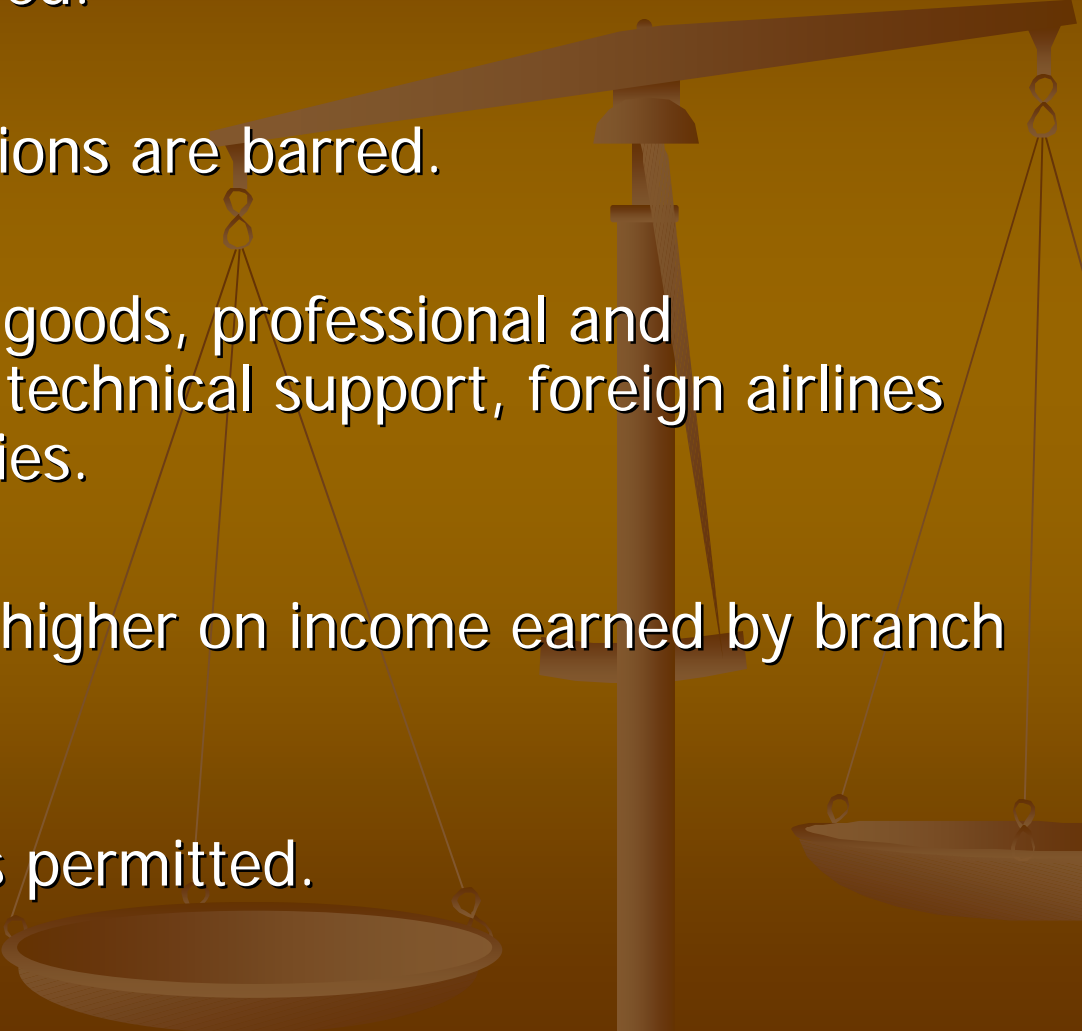
- Both public and private companies can be acquired subject to investment limits in the industry.
- No prior FIPB approval is required if the industry is otherwise open to foreign investment.
- Publicly listed companies governed by takeover rules and regulations e.g. if investor accumulates 15% shares, an open tender offer for another 20% of the shares is required.
- Private company takeover relatively simpler.
- Entry by takeover presents potential benefits and problems.



Representation/Liaison Office

- Prior approval of RBI is required.
 - A certificate of establishment of place of business must be obtained from the Registrar of Companies.
 - Funds for operational costs must be received from overseas.
 - Office cannot engage in direct commercial activities.
 - Public relations, promotional activities, information gathering etc. permitted.
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Branch Office

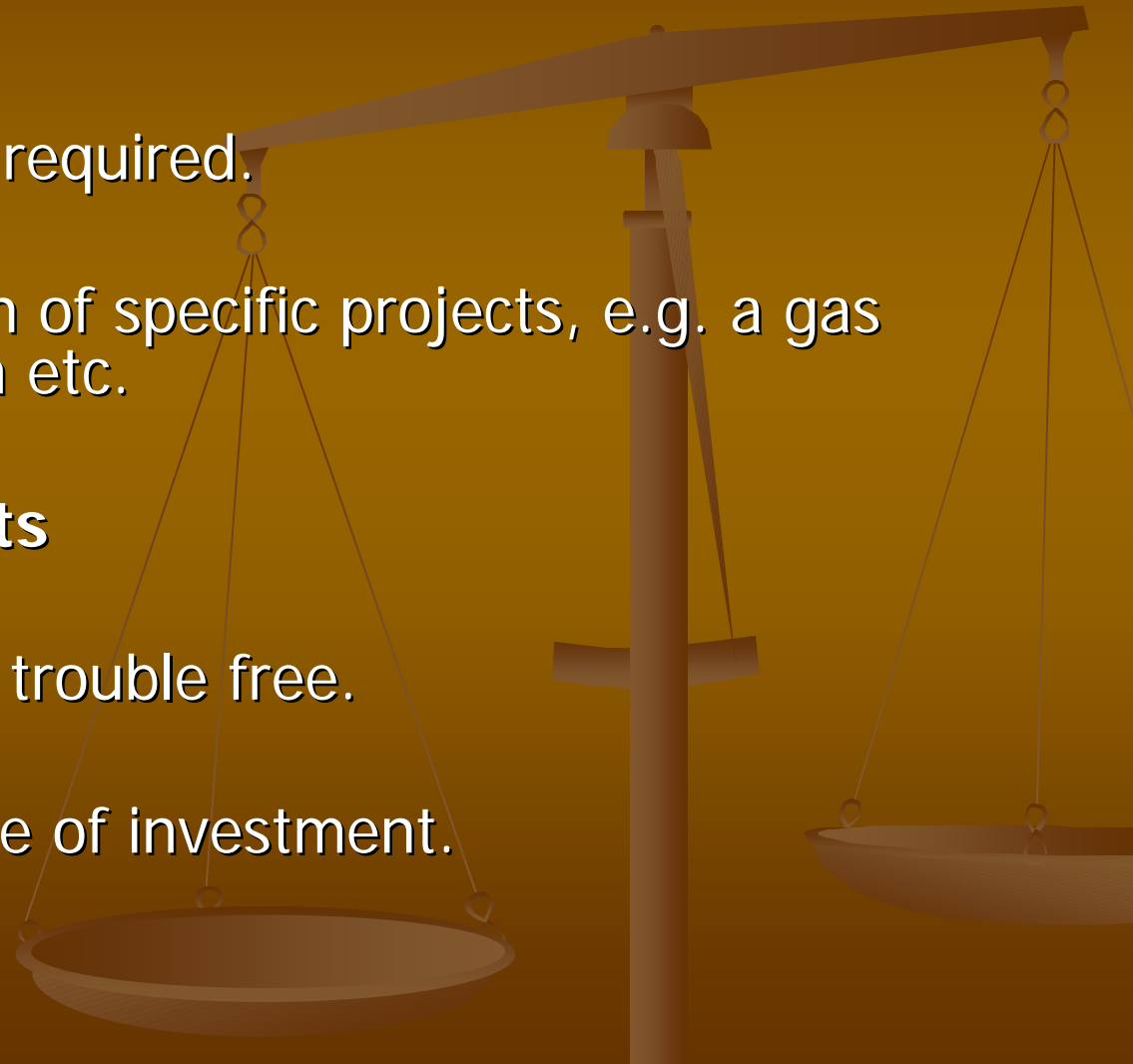
- RBI approval is required.
 - Manufacturing operations are barred.
 - Import and export of goods, professional and consultancy services, technical support, foreign airlines and shipping companies.
 - Income tax rates are higher on income earned by branch offices.
 - Repatriation of profits permitted.
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Project Office

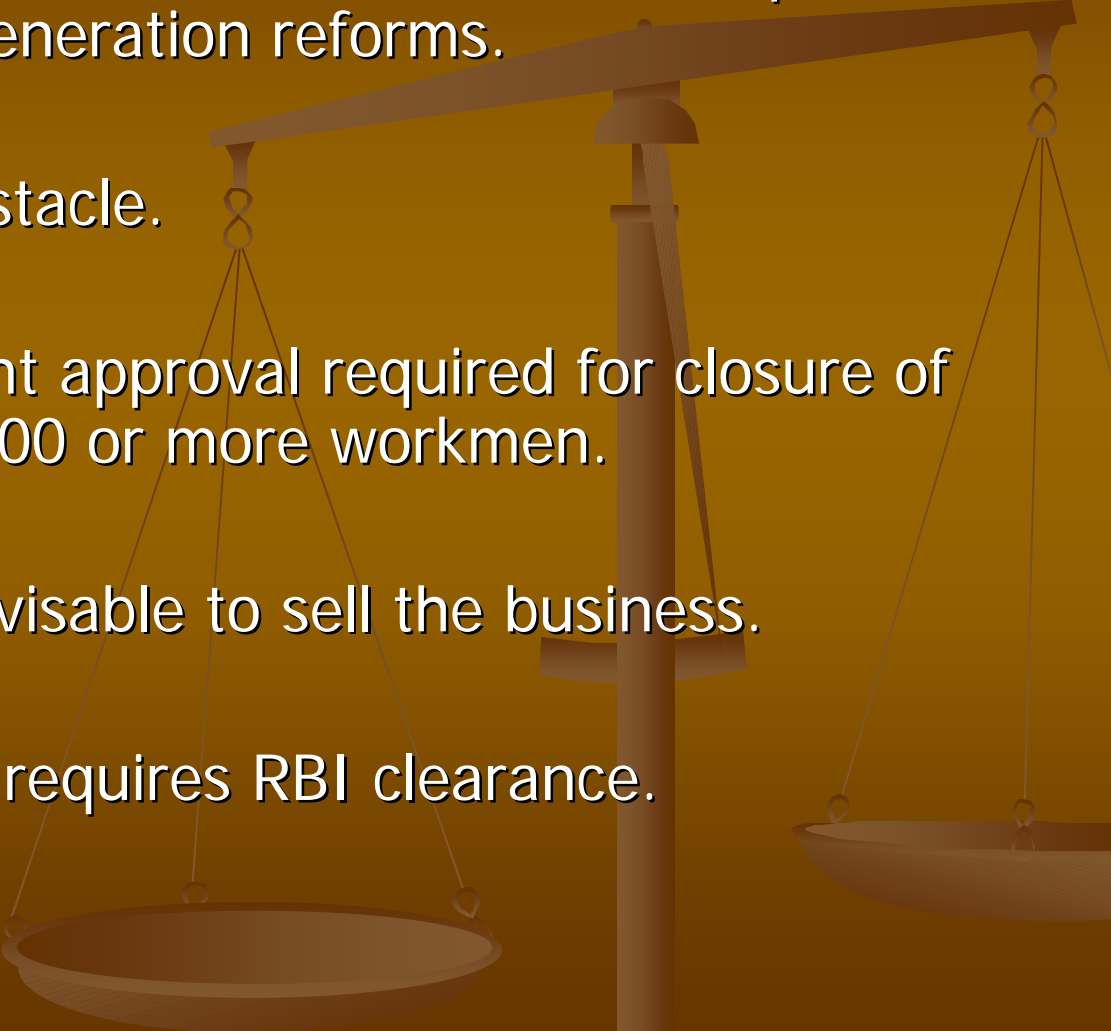
- Prior RBI approval is required.
- Suitable for execution of specific projects, e.g. a gas pipeline, construction etc.

Repatriation of Profits

- Liberal and relatively trouble free.
- Paperwork at the time of investment.



Exit Policy

- Closure of businesses and labor law reforms are part of the needed second-generation reforms.
 - Labor laws are an obstacle.
 - Prior state government approval required for closure of business employing 100 or more workmen.
 - Recommendation: advisable to sell the business.
 - Repatriation of funds requires RBI clearance.
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THANK YOU

