

平成 16 年度
建設情報収集等管理調査
報告書
〈インド編〉

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国土交通省

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まえがき

この報告書は、平成 16 年度に国土交通省総合政策局国際建設経済室から、財団法人建設経済研究所が受注して実施した建設情報収集等管理調査の結果を取りまとめたものである。

今回の調査の目的は、経済連携協定等の交渉に備え、建設分野における情報収集の一環として、対象国の建設業及び政府調達制度等に関する法制度について調査するものである。

この報告書が今後の交渉に際し、検討の一助となれば幸いである。

なお、本調査に際しては国土交通省総合政策局国際建設経済室をはじめとして、現地日本大使館、現地で活躍される日系企業の皆様に多大なご支援、ご協力を賜った。報告書を取りまとめるにあたって、心から感謝の意を述べさせて頂きたい。

平成 17 年 3 月

財団法人 建設経済研究所
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平成 16 年度建設情報収集等調査報告書

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I 市場アクセス

1. 進出形態

建設業を含む外国企業のインド市場への進出形態としては、現地法人（100% wholly owned subsidiary, joint venture company）、支店（branch）、駐在員事務所（liaison office）、工事事務所（project office）が可能となっている。インド国内では建設業そのものを規律する法令は特になく、免許制度等の規制も存在しない。インドに進出する外国資本の他産業と同様に、建設産業もIVで後述する外国為替管理法（Foreign Exchange Management (establishment in India of branch or office or other place of business) Regulations, 2000）及び会社法（The Companies Act, 1956）により、規定されている。建設業に関する概要は以下の通り（一般的な制度の詳細はIIを参照）。

(1) 現地法人

建設業については、100%外資による現地法人の設立が可能（Policy on Foreign Direct Investment 1.2 及び ANNEXURE-V）。設立後は原則として、インド国内企業と同様の扱いを受ける。

(2) 支店

支店の業務範囲は、次の分野に限定されている。従って建設工事の請負を機能とする支店は設置できない（Foreign Exchange Management (establishment in India of branch or office or other place of business) Regulations, 2000 Schedule I）。なお、建設関係ではコンサルティングや資材の輸出入を行う支店であれば設置が可能となっている。

- ・ モノの輸出入
- ・ 自由職業・コンサルティング
- ・ パテント関連調査
- ・ 技術・資金協力の促進
- ・ 本社の代理及び販売活動に関しての代行
- ・ IT サービス及びソフトウェア開発
- ・ 本社の提供した製品に対する技術サポート
- ・ 外国の航空、船舶会社

(3) 駐在員事務所

直接的・間接的な商工業の業務はできない。事務所は外国からの送金によって維持されなければならない。

駐在員事務所の業務範囲は、次の分野に限定されている。建設業の駐在員事務所は設

置が可能である。(Foreign Exchange Management (establishment in India of branch or office or other place of business) Regulations, 2000 2. e) 及び Schedule II)

- ・ 本社の代理
- ・ 輸出入の促進
- ・ 本社と印企業との技術・資金協力の促進
- ・ 本社と印企業との連絡

(4) 工事事務所

外国企業がインド側との契約によりプロジェクトの実行を行う場合で、次のいずれかのケースであれば工事事務所の設置が可能となっている。従って援助案件、本邦からの投資に係る工事案件等は工事事務所を設置して、施工が可能である。(Foreign Exchange Management (establishment in India of branch or office or other place of business) Regulations, 2000 5.)

- ・ プロジェクトが直接又は間接に外国からの送金によってなされる場合
- ・ プロジェクトが国際金融機関の出資によりなされる場合
- ・ プロジェクトが適切な機関により許可されている場合
- ・ 契約機関・企業が公的金融機関又はインド銀行によるローンを受けている場合

2. 設置手続き

(1) 現地法人

海外からの活動資金を受領後、下記必要事項を明記の上、30日以内にインド準備銀行(RBI)の支店に書類(FNC-1)を届ける。書類には登録する会社名、住所、入金の額(インドルピー)および入金日、また利用銀行名、住所を記入する。

上記の、インド準備銀行の承認(書類提出)手続き終了後、インド会社法(The Companies Act, 1956¹⁾)の規定(ROC: Register of Company)にしたがって設立手続きを行う。

- 1) 企業登録局への会社名称の登録申請
 - 2) 登記および会社本社の所在地の決定
 - 3) 会社設立までの覚書および基本定款の作成
 - 4) 会社関係登記官に提出する書類作成(会社覚書、定款、会社法に対する宣誓書、所在地届け、取締役任命書、取締役の同意書など)
- インドの会社形態は、無限責任会社(unlimited company)、保証有限会社(company

¹ 外国企業の法人設立に関しては、PART XIのSec591・Sec602に定められている。

limited by guarantee)、株式有限会社 (company limited by sharers) の3つに分類される。また株式の公開如何によって非公開会社 (private company) と公開会社 (public company) に分けられる。会社を非公開会社にする場合は設立許可証の受領後、直ちに事業に入れるが、公開会社の場合は設立許可証の他に、企業登録局の事業開始認可証取得後となる。

(2) 駐在員事務所

設置手続きは、現地法人と同じ。

(3) 工事事務所

設置手続きは、現地法人と同じ。

II 政府調達関連制度

1. 入札概要

インドでは、は基本的に下記の2つの入札方式を採用している。

- (1) 世界銀行、その関連機関、または多国籍機関から融資を得て入札に参加する方式で、このような、国際機関からの資金援助プロジェクトの場合は国際入札ガイドライン (ICB)²に準拠して国際入札が義務付けられる。この際、FIDICの契約条件が適用される。
- (2) 中央・州政府、その関連機関、公共部門の各事業の入札では、中央公共事業省 (CPWD³) のマニュアルに準拠する。一般的な入札は、日本の指名競争入札のように、発注官庁が事前に建設業者のランク付けをしており、それに基づいて発注官庁が選んだいくつかの業者に入札への参加を呼びかけ、競争させる方式である。

² International Competitive Bidding Procedure の略

³ Central Public Works Department の略

近年では、大半のプロジェクトが期限内に完了せず、その結果、コストが超過するケースが増えていた。このため、契約条件を見直す必要性があるとの認識が高まっている。建設産業振興評議会（CIDC¹）は、このような問題を解決するため、包括的な契約文書の採用を提案した¹(2001年)。この文書は、政府および企業の関連するすべての部門による審議を経て承認され、雛型の入札および契約文書として発行されている。現在では、この雛型を普及させて、調和のとれた入札制度を実現しようとする試みがなされている。（CIDCホームページより）

2. 入札資格

公共工事を受注しようとする者は、CPWD に業者登録⁴する必要がある。登録は、業種毎にクラス分けされ、入札金額の上限が決まっている。また過去 5 年間の必要工事実績、必要保有技術者や必要機材など詳細な条件がある。このリスト登録期間は 4 年間である。また各発注者が独自に作成するリストの登録企業数を制限することも出来るとしている。

Civil の例 (Rules of Enlistment of contractors in CPWD,2005 Table I)

分類	クラス	入札上限金額	過去5年の工事実績	保有技術者
Civil	I	1億ルピー	1. 3つの工事(内2つは建築工事であること)が、それぞれ1千500万ルピー以上、または2つの建築工事が3千500万ルピーで残りの1つが8千500万ルピー 2. 道路実績だけの場合、3つの工事(内2つは道路工事であること)が1千500万ルピー以上、または2つの道路工事が3千500万ルピーで残りの1つが8千500万ルピー	a) 土木の計画、設計等10年以上の経験を持っている学卒1人 b) 5年の経験を持つ学卒3人 c) 5年程度の経験を持つ専門卒6人
	II	2千万ルピー	1. 3つの工事(内2つは建築工事であること)が500万ルピー以上、または2つの工事がそれぞれ750万ルピーで少なくとも1つは建築工事。または1つの建築工事が1千500万ルピー 2. 道路実績だけの場合、3つの工事(内2つは道路工事であること)が500万ルピー以上、または2つの工事が750万ルピーで、1つの工事は1千500万ルピーの道路工事が必要	a) 最低5年の経験を持っている学卒1人 c) 専門卒2人で、1人は少なくとも5年の経験を持つ
	III	600万ルピー	3つの工事(内1つは建築工事であること)がそれぞれ1千500万ルピー	学卒1人で最低3年の経験を持つ
	IV	250万ルピー	3つの工事がそれぞれ600万ルピー	専門卒1人で最低3年の経験を持つ
	V	70万ルピー	2つの工事が200万ルピーであること、もしくは1つの工事が400万ルピー	なし

3. 入札手続

大規模工事の場合、一般的な入札手続の手順は、まず 10～12 社に入札参加を呼びかけることから始まり、事前資格審査により募集企業から 5～6 社に絞り込んで、再度入札書類の提出を求める。この際の入札書類は技術的提案 (technical bids) と価格 (financial bids) についての札に区別される (Two envelop 方式)。その後、主として技術提案について、入札企業と個別の交渉を重ね、価格も含めた総合的な判断により落札者を決定する。

4. 事前資格審査制度・格付け制度等

事前資格審査は通常行われている。発注事業の内容に照らして、事業の規模 (size)、実

⁴ Rules For Enlistment of Contractors in CPWD, 2001

績 (track record)、技術力 (special skill) を勘案して入札参加数を絞り込む。

格付けに関しては、国の制度としては存在しないが、事業主体ごとに業者を格付けしたリスト (internal list) を作成している場合が多く、州政府の場合、各州が独自に工事規模のランクに対応させて、建設業者を格付けしている場合が多い。

5. 履行保証制度

履行保証は、落札決定後、その落札者が契約実行を拒否する事態に備える (earnest money : EM)、意図的でない履行不能に備える (security deposit : SD) 及び遅延保証が区別されている。EM は見積価格が 25 クロール (1 千万)・ルピー⁵以上の場合、見積価格の 1%。最大でも 50 クローネルルピーとなっている。見積価格が 25 クロール・ルピー以下の場合も 1%としているものの、発注者の裁量で決定することが規定されている。

一方の SD は契約履行時の履行保証と施工の出来高払いから相殺されるリテンションの 2 つに分かれている。履行保証は契約金額の 5%であり、現金の他、政府保証、銀行ボンドでも可能である。受注日から 28 日以内に提出することになっている。またリテンションは出来高の 5%を出来高金額から相殺することになっており、履行保証とリテンションの合計が契約金額の 10%を超えないものとしている。履行保証は完成引渡し後 14 日以内に払い戻されることとし、リテンションは引渡し後直ちに払い戻されることになっている。

⁵ 1crore=100 lakhs =10,000,000 rupees (1ルピー=2.577円 2004年3月21日現在)

Ⅲ 建設市場

インドはブラジル、ロシア、中国、と並び称され（BRICs）、右上がりの経済成長を続けている巨大な潜在需要を持つ国として、近年、注目度は増すばかりである。2050年にはインドは中国、米国に次いで3番目の経済規模になるという長期展望もある。

2003年6月、インドは「拘束性のある援助」を抑える方向で国の国外援助への依存性を見直しをするという政策決断を下した⁶。ODA供与国を日本、英国、ドイツ、EC、米国、ロシアの6カ国に限定する発表であり（2004年の政権交代後、対象国を8カ国に拡大）、ODA供与の増加に拍車をかけるかもしれない。非公式ではあるが、インド側との政策協議の中で「日本の意向に対応したい」として、日本の直接投資に繋がるようなインフラ案件を重視していく方針としつつも、基本的にタイド案件に関しては、受け入れを拒んでいる模様で、今後の対応が注目される場所である。なお、2004年の我が国の対インド円借款の状況（承諾額）は1位となっている。

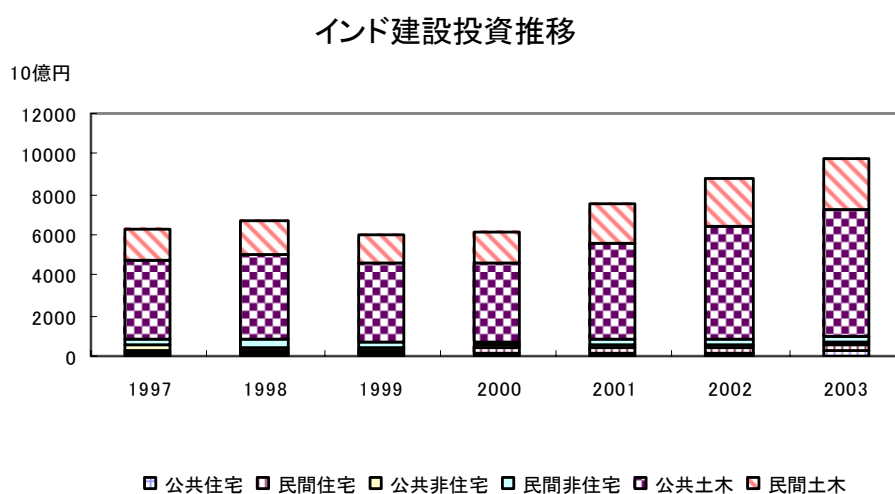
このようにインド経済が拡大する中、日系ゼネコンのインドに対する注目度も上昇してきている。日系ゼネコンへの聞き取り調査では、現地法人の開設を検討する企業は増加している。また、建設関係で支店を開設している会社は1社のみであるが、もとより支店に許容される機能が建設資材の輸入（送金が可能）や、工事の管理（手数料収入が発生）が可能になるという限定的なものであるため、建設のみならず他の業種においても支店開設は多くない。

インドは1991年から外国資本開放政策を進めており、建設関連では、住宅やインフラ基盤はBOTによって整備するという方針があるため、日系建設会社のインド進出も増加するだろう。現地機関へのヒヤリングによると、現在進められているBOTに参入している主な外資企業は、マレーシアや韓国からの企業であるが、バンガロール空港のBOTでは独のシーメンスが投資を行う等、外国投資企業も増加・多様化している模様であり、我が国建設会社の動向も注目される。

⁶ 外務省ホームページより

http://www.mofa.go.jp/mofaj/gaiko/oda/shiryo/jisseki/kuni/04_databook/02_sw_asia/sw_asia_01/sw_asia_01.html

図2 インド建設投資推移



出典：CIDC 資料より RICE 作成

IV インドにおける投資

1. 概要

インドでは従来、外国企業の支店活動及び外資出資比率 40%以上の現地法人を規制してきており (Foreign Exchange Regulations Act (1973))、最初に政府の承認が必要であった。

1990 年代に入ると、新産業政策によりによって 35 種の産業は出資比率が 51%に緩和され、インド準備銀行への登録手続きは必要としながらも、政府への申請は自動承認 (ネガティブ・リスト方式) となった。(Foreign Exchange Management Act(1991))

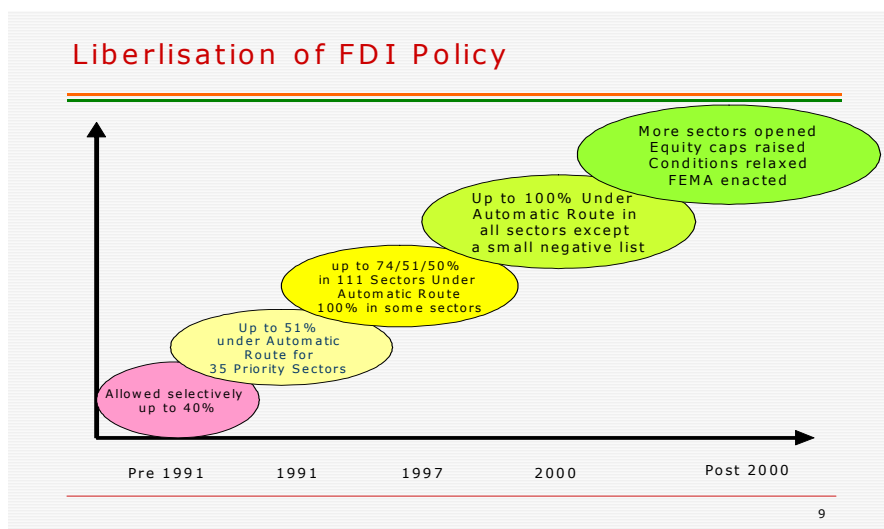
現在では一部の業種 (Foreign Exchange Management Act(2000)-Annexure 'A' FEMA 20/ 2000-RB に記載) を除き、100%外国資本であっても自動承認され、建設業は規制の対象ではない。ネガティブ・リストにある政府⁷の事前認可が必要な業種 (Sector Specific Guidelines for Foreign Direct Investment SIA⁸-Press Note No.2(2000 Series)) は、申請から 4～6 週間の日数を要する。

このように産業政策の改訂は産業政策振興局 (SIA) によって公表され、その後インド準備銀行 (RBI) が海外為替管理法 (FEMA) 等の規定を改正する。

図3 外国投資政策の変遷

⁷ 外国投資促進委員会 (Foreign Investment Promotion Board : FIPB)

⁸ 産業政策振興局 (Secretariat for Industrial Assistance, Ministry of commerce & industry)



出典：インド商工省ホームページより

2. 外資上限規制の緩和状況

2005年2月24日付けで、建設に関わる最新の法改正としてこれまで宅地開発にしか認められていなかった建設・不動産部門への外国投資を条件⁹付ではあるものの、外資100%まで自動承認可する事を閣議決定した。(SIA-PRESS NOTE 2 2005)

これまでの宅地開発のみならず住宅建設、商業施設、ホテル、リゾート、病院、教育施設などの開発プロジェクトを外資に開放することで、インフラ整備を加速させる方針と見える。

3. ネガティブ・リスト

政府承認が必要な業種（個別に出資比率上限規制・ガイドラインがある産業）

(1) 銀行業

自動認可ルートで74%まで出資が可能。既存の民間銀行への出資についても同様。

外国銀行については100%出資の小会社を設立することも可能。外国機関投資家（FII）の場合、個々の投資家が取得できる株式の上限は10%で、FIIの取得株式合計額の上限は24%。

（ただし取締役会および株主総会の決議で承認されれば49%まで引き上げ可能）

(2) ノンバンク

指定された19業種に対して、直接投資が認められる。100%までの出資は可能だが、出資比率に応じて最低資本金額が規定されている。

(3) 保険業

⁹ 100%外資による開発事業参入の最低規模が、従来の100エーカー以上、且つ2000戸以上から25エーカー以上、且つ建築面積5万m²以上に緩和された。投資規模は外資単独の場合が最低1000万ドル、インド企業との合弁の場合は500万ドル以上。また投機防止策として、用地を購入した企業は一定時期までに基礎的インフラ整備を行い、開発を進めることが義務づけられた。

保険規制開発庁（IRDA : Insurance Regulatory & Development Authority）からのライセンス取得を条件に、26%まで出資が可能。なお2004年7月8日発表の2004年度予算案では同出資上限を49%に引き上げることが提案されている。

(4) 民間航空業（国内線）

外資は40%まで出資が可能だが、外国航空会社の出資は認められない。NRI（非居住者インド人、Non Resident Indian）の場合は100%まで出資が認められる。個別認可取得が必要。外資上限の引き上げ（49%まで）案が国会を通過しているが、正式な通達はまだ出ていない。

(5) 空港

74%超の出資は個別認可取得が必要。

(6) 通信サービス業

通信庁(DOT : Department of Telecommunication)からライセンスを取得すれば、49%までの出資が自動認可される。但し、一部の通信業務は政府からの個別認可取得を条件に、74%、100%まで出資が認められる。なお自動認可の出資上限を49%から74%に引き上げることが2005年2月の閣議で承認された。

(7) 石油（精製以外）

石油精製品（ガソリン、ディーゼル、LPG、ケロシンなど）の販売業、小規模・中規模の石油発掘業、石油パイプライン、の分野に対して、自動認可ルートで100%の外資出資が可能。天然ガスおよびLNGパイプライン、については個別認可を条件に100%出資が可能。ただし、いずれの分野でも業種ごとに別途定められている条件、ガイドラインに従う必要がある。

(8) 石油精製

石油精製は国営企業への出資は個別認可取得を条件に26%、民間企業の場合は100%まで自動認可で認められる。

(9) 石炭・褐炭

自社の電力プロジェクト用、洗炭・整粒の場合のみ100%まで出資が可能。

(10) ベンチャー・キャピタル

インド証券取引委員会（SEBI : Security Exchange Board of India）の規定に基づき、投資が認められる。

(11) 商業

主として輸出業務を行う場合には、外資出資比率51%まで自動認可となる。また、主として輸出業務を行う51%超の出資、保税上屋からの輸入販売、最低75%を国内自社グループ企業へ販売する場合などには、個別認可を得れば、100%まで出資が認められる。また、インドで自社が出資する企業の商品の卸売り、ハイテク製品などの卸売り業務なども個別認可取得を条件に認められる。電子商取引分野については、2000年7月、企業間取引(B2B)に限り外資出資比率100%まで自動認可の対象となった。ただし、出資企業が海外で上場し

ている場合には、5年以内に株式の26%を売却しなければならない。小売分野への直接投資は認められていない。

(12) 投資会社

投資会社の設立は可能だが、投資会社が外資出資比率の上限規制があるインフラ・サービス業部門へ出資する場合はFIPBの個別認可を取得する必要がある。

(13) 原子力関連業

一定の業務条件のもと、74%までの出資が可能で、74%超の出資は原子力委員会の認可を取得すれば可能。

(14) 防衛機器産業

政府からのライセンス取得を条件に、26%まで出資が可能。

(15) 農業(プランテーション含む)

直接投資は認められていない。ただし、インド政府は2002年7月、紅茶農園に対する外資規制を緩和し、個別認可取得を条件に、100%まで外資系企業の出資を認める外資規制の緩和を行った。但し、5年以内に出資比率を74%まで引き下げることが求められ、また土地利用の内容を転換する場合には州政府の事前許可を取得することも義務付けられている。

(16) 印刷出版業

ニュース・時事を扱う新聞、定期刊行物の印刷出版業については26%まで、ニュース・時事を扱わない専門雑誌の印刷出版業については76%まで出資可能。科学技術関連誌については100%までの出資が可能。ただし情報放送省の定めるガイドラインに従うことが義務付けられる。全て個別認可取得が必要。

(17) 放送業

TV ソフトウェア・プロダクションは100%まで投資可能。Up linking Hubについては49%まで出資が可能。ケーブル・ネットワークも49%まで出資可能。Direct to Home TVについては20%まで出資が可能。なお、全て個別認可取得が必要。

(18) 薬品・医薬品

遺伝子組み替え技術を使用する場合を除き、100%まで自動認可される。

(19) 鉱業

ダイヤモンド・宝石の探鉱・採鉱は74%まで、ダイヤモンド・宝石以外の鉱石、金、銀の探鉱・採鉱、冶金、加工は100%まで自動認可。

(20) 宅配便

手紙の配達を除き、個別認可取得を条件に100%まで出資が可能。

(21) 衛星ビジネス

個別認可取得を条件に74%まで出資可能。

V 課題（日系企業からのヒヤリングの際に提示された意見等）

1) 税制面

- ・ 制度変更が頻繁に行われる上、州毎に制度が異なるため整理するのが難しい。
- ・ 外資企業の法人所得税率は 41.82%に対して、現地企業は 33.66%と比較すると税率が高く、不平等である。
- ・ 本店経費算入上限が収益の 5%までしか認められない。対照的に現地企業は無制限。
- ・ 間接税は各州で取扱い、税率も異なる。事務処理が煩雑である。
- ・ 日系企業の多くが税に関するトラブル、裁判の経験がある。

2) 出入国管理

- ・ 日本からの技術者受け入れにおいて、VISA の発給が遅れがちな上、期間も限定されていることで、プロジェクト運営上支障がある。

3) その他

- ・ プロジェクトオフィス間での資金の移動は規制されており、余剰資金、利益の送金は許可されるのは、プロジェクト終了後であり、2年～3年は資金が滞留する。
- ・ 政府調達工事ではダンピング受注が多く、品質を守れるのかとの疑問あり。その原因に事前資格審査の不透明であることがあげられる。
- ・ 必要な材料がインド国内で不足しており、輸入すると、外国製品は関税率が高く物品調達の難しさがある。
- ・ 世銀発注の BOT 工事（ノイダ橋：2001 年完成）で完成工事代金未収問題が発生しており、仲裁手続き中。施主である第 3 セクターの通行収入が予想より下回っているため支払いにあてる資金が不足しているのではないかとの見方がある。瑕疵完了証明が 2004 年 8 月によりやく出たが、支払を遅延させるための行為と見ている。未払い分は約 13 億円。
- ・ RBI に申請すれば会社の設立が自動認可であっても、これは中央政府の話で州ごとに制度・規制の運用が異なる場合があるので、注意が必要である。

<参考>

○ 建設業産業振興評議会（Construction Industry Development）

1996年8月に官民合同で、インド建設産業の育成を図るため設立された。関連政府機関や研究機関も参加しており、民間企業は建設業者のみでなく、セメント等の資材メーカーや建設機械メーカーなども参加している。建設業者で参加しているのは、最大手の企業であり、79の機関・企業からなる団体である。

現在のCIDCの活動目的は、以下の通りである。

1. 業務効率の向上やサービスの標準化
2. 建設産業全体の最適化のための架け橋となる
3. 建設産業の社会的地位が向上し、認知されること
4. 地球環境を保護するだけでなく、向上させる
5. 労働者の人材育成および福祉の向上
6. 価格から価値を評価するような産業への変換
7. 組織の責任を十分理解した上で、国と社会に奉仕する

○ 「WTOとインド建設産業」～4つの課題～

BAI機関誌（INDIAN CONSTRUCTION）2005年2月号より要約

K. N. Valid 教授¹⁰

インド政府はWTOに同意する以前から、建設サービス分野においても自由化を推進してきた。世銀等の国際機関からの資金援助プロジェクトの場合は国際入札ガイドライン（ICB）に準拠して国際入札が義務付けられ、インド政府は外国企業に地元企業とのJV結成を必須としている。

しかし現在、インドでは外国資本100%の会社を認めている。住宅開発を行うことも可能であり、こうした自由化は前述した政府の方針とは異なる内容である。インドの建設会社は性急な市場開放を恐れており、外国企業との自由化競争でも利益を創出できる企業改革のための時間が与えられていない。外国企業は大規模であり、潤沢な資金と先端技術、豊富な経験を持ち合わせている。実際これまでもそうであったように、インド企業は同様なパートナーではなく、下請業者にしかなりえない。国内全ての発注が外国の大企業によって落札され、下請業務に制約されてしまうことを、インド企業は恐れているのであり、それは現在の潮流では現実化する事を予測している。

また、WTO（サービス協定）は、サービス貿易の自由化ならびに拡大を目的とする国際的な規律の枠組みであり、建設産業も含まれる。しかし、社会経済の発展度合いが同レベルにない国々との包括貿易協定は、欧米諸国により形成されたものであり、発展途上国側に不満が生じてしまうことを指摘している。

¹⁰ 前 NICMAR(National Institute of Construction Management and Research)事務次官

バリド教授が提唱している点は以下の4点である。

1. インド建設会社が、欧米諸国の大規模な建設会社と対等に渡り合えるようになるまで、如何なる保護政策が必要であろうか。
2. インド建設産業の関連協会は、外国の競合相手を抑制し、インドの建設産業が外国企業と協業や同盟出来るために、または世界的に競合できるようになるよう、どんな手順を踏めばよいのか。
3. インド建設産業は、労働生産性や環境基準の向上のためにどうするか。
4. 建築資材や建設機械市場の透明性を高めるにはどうすべきか、また行き過ぎた自由化を抑制するにはどうすべきか。

法令リスト

① The Companies Act, 1956 (index)

② The Companies Act, 1956 (Sec591-SEC608)

出典：企業省 HP より <http://dca.nic.in/> または

<http://www.vakilno1.com/bareacts/companiesact/companiesacts.htm>

③ Foreign Exchange Management (establishment in India of branch or office or other place of business) Regulations, 2000

出典：インド準備銀行 HP より

<http://www.rbi.org.in/index.dll/25?SendECMFDD?s1secid=1&storyno=13500>

④ Press Note 2 (2005)-SIA (FC Division)

出典：商工省 <http://dipp.nic.in/>

参考資料

1. FNC1 用紙 (RBI 提出用)

2. Foreign Direct Investment-Policy & Procedures (一部抜粋)

3. STANDARD CONTRACT CLAUSES FOR DOMESTIC BIDDING CONTRACTS
2001

関連データ

建設業産業振興評議会 <http://www.cidcindia.net/>

インド建築協会 <http://www.baide.com/>

中央公共事業省 <http://cpwd.nic.in/frame1.aspx>

各種法律集 <http://www.indiainfo.com/lega/>

法令集

① The Companies Act, 1956 (index)

The Companies Act, 1956

PART I PRELIMINARY

- 1 Short title, commencement and extent.
- 2 Definitions.
- 2A Interpretation of certain words and expressions.
- 3 Definitions of "company ", "existing company ", "private company " and "public company".
- 4 Meaning of " holding company " and " subsidiary".
- 4A Public financial institutions.
- 5 Meaning of " officer who is in default".
- 6 Meaning of " relative".
- 7 Interpretation of " person in accordance with whose directions or instructions directors are accustomed to act ".
- 8 Power of Central Government to declare an establishment not to be a branch office.-
- 9 Act to override memorandum, articles, etc.
- 10 Jurisdiction of Courts.
- 10A Omitted
- 10B Omitted
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PART I-A BOARD OF COMPANY LAW ADMINISTRATION

- 10E Constitution of Board of Company Law Administration.
- 0F Appeals against the orders of the Company Law Board.

PART II INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Certain Companies, Associations and Partnerships to be registered as Companies under Act.

- 11 Prohibition of associations and partnerships exceeding certain number.
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- 12 Mode of forming incorporated company.
- 13 Requirements with respect to memorandum.
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- 15 Printing and signature of memorandum.
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- 15B Special provision as to alteration of memorandum consequent on alteration of name of State of Mysore.
- 16 Alteration of memorandum.
- 17 Special resolution and confirmation by (Company Law Board) required for alteration of memorandum.
- 17A Change of registered office within a State
- 18 Alteration to be registered within three months.
- 19 Effect of failure to register.
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- 20 Companies not to be registered with undesirable names.
- 21 Change of name by company.
- 22 Rectification of name of company.
- 23 Registration of change of name and effect thereof.

- 24 Change of name of existing private limited companies.
25 Power to dispense with "Limited" in name of charitable or other company.
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26 Articles prescribing regulations.
27 Regulations required in case of unlimited company, company limited by guarantee or private company limited by shares.
28 Adoption and application of Table A in the case of companies limited by shares.
29 Form of articles in the case of other companies.
30 Form and signature of articles.
31 Alteration of articles by special resolution.
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32 Registration of unlimited company as limited, etc.
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33 Registration of memorandum and articles.
34 Effect of registration.
35 Conclusiveness of certificate of incorporation.
36 Effect of memorandum and articles.
37 Provision as to companies limited by guarantee.
38 Effect of alteration in memorandum or articles.
39 Copies of memorandum and articles, etc., to be given to members.
40 Alteration of memorandum or articles, etc., to be noted in every copy.
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41 Definition of "member".
42 Membership of holding company.
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43 Consequences of default in complying with conditions constituting a company a private company.
43A Private company to become public company in certain cases.
44 Prospectus or statement in lieu of prospectus to be filed by private company on ceasing to be private company.
Reduction of number of members below legal minimum
45 Members severally liable for debts where business carried on with fewer than seven, or in the case of a private company, two members.
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46 Form of contracts.
47 Bills of exchange and promissory notes.
48 Execution of deeds.
49 Investments of company to be held in its own name.
50 Power for company to have official seal for use outside India.
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51 Service of documents on company.
52 Service of documents on Registrar.
53 Service of documents on members by company.
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54 Authentication of documents and proceedings.

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55A Powers of Securities and Exchange Board of India
56 Matters to be stated and reports to be set out in prospectus.

- 57 Expert to be unconnected with formation or management of company.
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- 58A Deposits not to be invited without issuing an advertisement.
- 58AA Small depositors
- 58AAA Default in acceptance or refund of deposits to be cognizable
- 58B Provisions relating to prospectus to apply to advertisement.
- 59 Penalty and interpretation.
- 60 Registration of prospectus.
- 60A Shelf Prospectus
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- 61 Terms of contract mentioned in prospectus or statement in lieu of prospectus, not to be varied.
- 62 Civil liability for mis-statements in prospectus.
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- 65 Interpretation of provisions relating to prospectuses.
- 66 Newspaper advertisements of prospectus.
- 67 Construction of references to offering shares or debentures to the public, etc.
- 68 Penalty for fraudulently inducing persons to invest money.
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 106 Alteration of rights of holders of special classes of shares.
 107 Rights of dissentient shareholders.
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Prevention of management by undesirable persons

202 Undischarged insolvent not to manage companies.

203 Power to restrain fraudulent persons from managing companies.

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- 249 Omitted
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317 Managing director not to be appointed for more than five years at a time.

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318 Compensation for loss of office not permissible except to managing or whole-time directors or to directors who are managers.

319 Payment to director, etc., for loss of office, etc., in connection with transfer of undertaking or property.

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331 [Omitted]

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337 [Omitted]

338 [Omitted]

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342 [Omitted]

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360 [Omitted]
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418 Provisions applicable to provident funds of employees.

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 489 Provisions applicable to a members' voluntary winding up.
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510 Provisions applicable to every voluntary winding up

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② The Companies Act, 1956 (Sec591-SEC608)

The Companies Act, 1956

PART XI COMPANIES INCORPORATED OUTSIDE INDIA

Sec 591 - Application of sections 592 to 602 to foreign companies.

(1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:-

(a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and

(b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent, of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

Sec 592 - Documents, etc., to be delivered to Registrar by foreign companies carrying on business in India.

(1) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within thirty days of the establishment of the place of business, deliver to the Registrar for registration-

(a) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company; and, if the instrument is not in the English language, a certified translation thereof;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (2);

(d) the name and address or the names and addresses of some one or more persons resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(e) the full address of the office of the company in India which is to be deemed its principal place of business in India.

(2) The list referred to in clause (c) of sub-section (1) shall contain the following

particulars, that is to say:-

(a) with respect to each director, -

(i) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorship; and

(ii) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality and nationality of origin, if different from that nationality of each of its directors;

(b) with respect to the secretary, or where there are joint secretaries, with respect to each of them-

(i) in the case of an individual, his present name and surname, any former name or names and surname or surnames, and his usual residential address; and

(ii) in the case of a body corporate, its corporate name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (b) of this sub-section.

(3) Clauses (2) and (3) of the Explanation to sub-section (1) of section 303 shall apply for the purpose of the construction of references in sub-section (2) to present and former names and surnames as they apply for the purposes of the construction of such references in sub-section (1) of section 303.

(4) Foreign companies, other than those mentioned in sub-section (1), shall, if they have not delivered to the Registrar before the commencement of this Act the documents and particulars specified in sub-section (1) of section 277 of the Indian Companies Act, 1913 (7 of 1913), continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

Sec 593 - Return to be delivered to Registrar by foreign company where documents, etc., altered.

If any alteration is made or occurs in-

(a) the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company; or

(b) the registered or principal office of a foreign company; or

(c) the directors or secretary of a foreign company; or

(d) the name or address of any of the persons authorised to accept service on behalf of a

foreign company; or

(e) the principal place of business of the company in India;

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

Sec 594 - Accounts of foreign company.

(1) Every foreign company shall, in every calendar year,-

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the foreign company) as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting; and

(b) deliver three copies of those documents to the Registrar:

Provided that the Central Government may, by notification in the Official Gazette, direct that, in the case of any foreign company or class of foreign company the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof.

(3) Every foreign company shall send to the Registrar with the documents required to be delivered to him under sub-section (1), three copies of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.

Sec 595 - Obligation to state name of foreign company, whether limited, and country where incorporated.

Every foreign company shall-

(a) in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated;

(b) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

(c) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact-

(i) to be stated in every such prospectus as aforesaid and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the languages or one of the language in general use in the locality in which the office or place is situate.

Sec 596 - Service on foreign company.

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name has been delivered to the Registrar under the foregoing provisions of this Part and left at, or sent by post to, the address which has been so delivered:

Provided that-

(a) where any such company makes default in delivering to the Registrar the name and address of a person resident in India who is authorised to accept on behalf of the company service of process, notices or other documents; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason, cannot be served;

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in India.

Sec 597 - Office where documents to be delivered.

(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in this Part except in sub-section (2) shall be construed accordingly.

(2) Any such document as is referred to in sub-section (1) shall also be delivered to the Registrar of the State in which the principal place of business of the company is situate.

(3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

Sec 598 - Penalties.

If any foreign company fails to comply with any of the foregoing provisions of this Part,

the company, and every officer or agent of the company who is in default, shall be punishable with fine which may extend to ten thousand rupees, and in the case of a continuing offence, with an additional fine which may extend to one thousand rupees for every day during which the default continues.

Sec 599 - Company's failure to comply with Part not to affect its liability under contracts, etc.

Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of this Part.

Sec 600 - Registration of charges, appointment of receiver and books of account.

(1) The provisions of Part V (sections 124 to 145) shall apply mutatis mutandis to

(a) charges on properties in India which are created by a foreign company after the 15th day of January, 1937; and

(b) charges on property in India which is acquired by any foreign company after the day aforesaid:

Provided that where a charge is created, or the completion of the acquisition of the property takes place, outside India, sub-section (5) of section 125 and the proviso to sub-section (1) of section 127 shall have effect as if the property, wherever situated, were situated outside India.

(2) The provisions of section 118 shall apply mutatis mutandis to a foreign company.

(3) (a) The provisions of section 209 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account referred to in that section, with respect to moneys received and expended, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(b) On and from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974)

(i) the provisions of section 159 shall, subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India;

(ii) the provisions of sections 209, 209A, 233A and 233B and sections 234 to 246 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company

having an established place of business in India, as they apply to a company incorporated in India.

(4) In applying the sections referred to in sub-sections (1), (2) and (3) to a foreign company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar having jurisdiction over New Delhi, and references to the registered office of the foreign company shall be deemed to be references to its principal place of business in India.

Sec 601 - Fees for registration of documents under Part.

There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part to be registered by him, such fees as may be prescribed.

Sec 602 - Interpretation of foregoing sections of Part.

For the purposes of the foregoing provisions of this Part

(a) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(b) the expression "director", in relation to a company, includes any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

(c) the expression "place of business" includes a share transfer or share registration office;

(d) the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act; and

(e) the expression "secretary" includes any person occupying the position of secretary, by whatever name called.

Sec 603 - Dating of prospectus and particulars to be contained therein.

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated; and

(a) contains particulars with respect to the following matters:

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments or provisions having the force of enactments, by or under which the incorporation of the company was effected;

(iii) an address in India where the said instrument, enactments, or provision, or copies

thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be inspected;

(iv) the date on which and the country in which the company was incorporated;

(v) whether the company has established a place of business in India, and, if so, the address of its principal office in India; and

(b) subject to the provisions of this section, states the matters specified in Part I of Schedule II and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:

Provided that sub-clauses (i), (ii) and (iii) of clause (a) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business; and in the application of Part I of Schedule II for the purposes of this sub-section, clause (a) thereof shall have effect with the substitution, for references to the articles, of references to the constitution of a company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of clause (a) or (b) of sub-section (1), or purporting to affect him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

(3) No person shall issue to any person in India, a form of application for shares in or debentures of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Part and the issue whereof in India does not contravene the provisions of section 604:

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect of the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by clauses (a) and (b) of sub-section (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in clause 18 of Schedule II, no director or other person shall incur any liability in respect of the failure, unless it be proved that he had knowledge of the matters not disclosed.

(5) This section

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

Sec 604 - Provisions as to expert's consent and allotment.

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 72, 73 and 74, so far as applicable.

(2) In this section, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him; and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Sec 605 - Registration of prospectus.

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on

the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy

(a) any consent to the issue of the prospectus required by section 604;

(b) a copy of any contract required by clause 16 of Schedule II to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(c) where the persons making any report required by Part II of Schedule II have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in clause (b) of sub-section (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts which are not in English, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Sec 605A - Offer of Indian Depository Receipts

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for —

(a) the offer of Indian Depository Receipts;

(b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(c) the manner in which the Indian Depository receipts shall be dealt in a depository mode and by custodian and underwriters;

(d) the manner of sale, transfer or transmission of Indian Depository Receipts.

by a company incorporated, or to be incorporated outside India, whether the company has or has not been established, or will or will not establish any place of business in India.

Sec 606 - Penalty for contravention of sections 603, 604 and 605.

Any person who is knowingly responsible

(a) for the issue, circulation or distribution of a prospectus; or

(b) for the issue of a form of application for shares, debentures or Indian Depository Receipts;

in contravention of any of the provisions of sections 603, 604, 605 and 605A, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

Sec 607 - Civil liability for misstatements in prospectus.

Section 62 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, with the substitution for references in section 62 to section 60 of this Act, of references to section 604 thereof.

Sec 608 - Interpretation of provisions as to prospectuses.

(1) Where any document by which any shares in, or debentures of, a company incorporated outside India are offered for sale to the public, would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 64, to be a prospectus issued by the company, that document shall be deemed, for the purposes of this Part, to be a prospectus issued by the company offering such shares or debentures for subscription.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or as agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

③ Foreign Exchange Management

(establishment in India of branch or office or other place of business) Regulations, 2000

Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000

Notification No.FEMA 22 /2000-RB dated 3rd May 2000

**RESERVE BANK OF INDIA
(EXCHANGE CONTROL DEPARTMENT)
CENTRAL OFFICE
MUMBAI 400 001**

In exercise of the powers conferred by sub-section (6) of Section 6 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations to prohibit, restrict and regulate establishment in India of a branch or office or other place of business by a person resident outside India, namely:

1. Short title and commencement:-

- i) These Regulations may be called the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000.
- ii) They shall come into force on 1st day of June, 2000.

2. Definitions:-

In these regulations, unless the context otherwise requires -

- a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- b) 'foreign company' means a body corporate incorporated outside India, and includes a firm or other association of individuals;
- c) 'Branch' shall have the meaning assigned to it in sub-section (9) of Section 2 of the Companies Act, 1956 (1 of 1956),

- d) 'form' means a form annexed to these Regulations;
- e) 'Liaison Office' means a place of business to act as a channel of communication between the Principal place of business or Head Office by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel;
- f) 'Project Office' means a place of business to represent the interests of the foreign company executing a project in India but excludes a Liaison Office;
- g) 'Site Office' means a sub-office of the Project Office established at the site of a project but does not include a Liaison Office;
- h) the words and expressions used but not defined in these Regulations, shall have the same meanings respectively assigned to them in the Act.

3. Prohibition against establishing branch or office in India:-

No person resident outside India shall, without prior approval of the Reserve Bank, establish in India a branch or a liaison office or a project office or any other place of business by whatever name called:

Provided that no approval shall be necessary for a banking company, if such company has obtained necessary approval under the provisions of the Banking Regulation Act, 1949.

4. Prohibition against establishing a branch or office in India by citizens of certain countries:-

No person, being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, without prior permission of the Reserve Bank, shall establish in India, a branch or a liaison office or a project office or any other place of business by whatever name called.

5. Application to Reserve Bank for opening branch or liaison or project office etc.:-

- (i) A person resident outside India desiring to establish a branch or liaison office in India shall apply to the Reserve Bank, in form FNC 1.

(ii) Where a person resident outside India has secured from an Indian company a contract to execute a project in India, and

(a) the project is funded directly by inward remittance from abroad;

or

(b) the project is funded by a bilateral or multilateral International Financing Agency,

or

(c) the project has been cleared by an appropriate authority;

or

(d) a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the Project,

such person shall apply to the Reserve Bank in form FNC 1 for permission to establish a Project or Site Office in India.

(iii) The Reserve Bank may grant permission subject to such terms and conditions as may be considered necessary.

Explanation:

For the purpose of this Regulation,

(i) 'a bilateral or multilateral International Financing Agency' means the World Bank or the International Monetary Fund or similar other body;

(ii) "Public Financial Institution" is a public financial institution as defined in Section 4A of the Companies Act, 1956.

6. Activities which may be undertaken by the branch or office in India

- (i) A person resident outside India permitted by the Reserve Bank under Regulation 5, to establish a branch or a liaison office in India may undertake or carry on any activity specified in [Schedule I](#) or, as the case may be, in [Schedule II](#), but shall not undertake or carry on other activity unless otherwise specifically permitted by the Reserve Bank.
- (ii) A person resident outside India permitted by the Reserve Bank under Regulation 5, to establish a Project or Site Office in India shall not undertake or carry on any activity other than the activity relating and incidental to execution of the project.

7. Remittance of profit or surplus

A person resident outside India permitted by the Reserve Bank under Regulation 5, to establish a branch or Project Office in India may remit outside India the profit of the branch or surplus of the Project on its completion, net of applicable Indian taxes, on production of the following documents, and establishing the net profit or surplus, as the case may be, to the satisfaction of the authorised dealer through whom the remittance is effected.

I. For remittance of profit of a branch, -

- a) certified copy of the audited balance-sheet and profit and loss account for the relevant year;
- b) a Chartered Accountant's certificate certifying, -
 - i) the manner of arriving at the remittable profit,
 - ii) that the entire remittable profit has been earned by undertaking the permitted activities, and
 - iii) that the profit does not include any profit on revaluation of the assets of the branch.

II For remittance of surplus on completion of the Project, -

- a) certified copy of the final audited Project accounts;

- b) a Chartered Accountant's certificate showing the manner of arriving at the remittable surplus;
- c) income tax assessment order or either documentary evidence showing payment of income tax and other applicable taxes, or a Chartered Accountant's certificate stating that sufficient funds have been set aside for meeting all Indian tax liabilities; and
- d) auditor's certificate stating that no statutory liabilities in respect of the Project are outstanding.

(P.R. GOPALA RAO)
Executive Director

Schedule I
[See Regulation 6(i)]

Permitted activities for a branch in India of a person resident outside India

- i) Export/Import of goods
- ii) Rendering professional or consultancy services.
- iii) Carrying out research work, in which the parent company is engaged.
- iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v) Representing the parent company in India and acting as buying/selling agent in India.
- vi) Rendering services in Information Technology and development of software in India.
- vii) Rendering technical support to the products supplied by parent/group companies.
- viii) Foreign airline/shipping company.

Schedule II

[See Regulation 6(i)]

Permitted activities for a Liaison office in India of a person resident outside India

- i) Representing in India the parent company/group companies.
- ii) Promoting export import from/to India.
- iii) Promoting technical/financial collaborations between parent/group companies and companies in India.
- iv) Acting as a communication channel between the parent company and Indian companies.

④ Press Note 2 (2005)-SIA (FC Division)

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

Press Note 2 (2005)

Subject: Foreign Direct Investment (FDI) in townships, housing, built-up infrastructure and construction-development projects

With a view to catalysing investment in townships, housing, built-up infrastructure and construction-development projects as an instrument to generate economic activity, create new employment opportunities and add to the available housing stock and built-up infrastructure, the Government has decided to allow FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure), subject to the following guidelines:

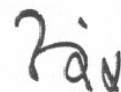
- a. Minimum area to be developed under each project would be as under:
 - i. In case of development of serviced housing plots, a minimum land area of 10 hectares
 - ii. In case of construction-development projects, a minimum built-up area of 50,000 sq.mts
 - iii. In case of a combination project, any one of the above two conditions would suffice
- b. The investment would further be subject to the following conditions:
 - i. Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.
 - ii. Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.
- c. At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell undeveloped plots.

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

For the purpose of these guidelines, "undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.

- d. The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.
- e. The investor shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.
- f. The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer.

2. Para (iv) of Press Note 4 (2001 Series), issued by the Government on 21.5.2001, and Press Note 3 (2002 Series), issued on 4.1.2002, stand superceded.



(Umesh Kumar)
Joint Secretary to the Government of India

No. 5(6)/2000-FC dated 3rd March 2005

Copy forwarded to Press Information Officer, Press Information Bureau, for giving wide publicity to the above Press Note.

參考資料

1. FNC1 用紙 (RBI 提出用)

FNC 1

(Paragraph 11 A.1)

Application for permission under Section 28 of Foreign Exchange Regulation Act 1973 to act or accept appointment as agent in India for any person or company

Instructions:

1. *The application should be completed in triplicate and submitted to the Chief General Manager, Exchange Control Department (Foreign Investment Division), Reserve Bank of India, Central Office, Mumbai 400 001.*
2. *A separate application should be submitted for each agency arrangement.*
3. *It may be noted that for the purpose of Sections 28 & 29 of Foreign Exchange Regulation Act, 1973, the term 'Company' means any body corporate and includes a firm or other association of individuals.*
4. *In the 'Explanation' under Section 28 of Foreign Exchange Regulation Act, 1973, the terms 'agent' and 'processing' have been defined as under:*
 - (a) *'Agent' includes any person or company (including its branch) who or which buys any goods with a view to sell such goods before any processing thereof.*
 - (b) *'Processing' means any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation but does not include any process incidental or ancillary to the completion of a manufactured product such as dividing, pressing, compressing, packing, repacking, labelling, re-labelling, branding or the adoption of any such treatment as is necessary to render such product marketable to the consumer.*

*By virtue of the provisions of the above explanation the agency arrangements (covering trading or commercial transactions) entered into on principal-to-principal basis **also** require the permission of Reserve Bank under Section 28 of the Act.*

Documentation:

Please submit the following documents in triplicate:

5. **Balance sheets and Profit and Loss Account statements of the applicant for the preceding three years, if the applicant is a company functioning in India.**
6. **Balance sheets and Profit and Loss Account statements of the principal company for the preceding three years.**
7. **Certified copies of the agency agreement and/or of the relevant correspondence exchanged with the principal.**

<p>1. (a) Full name and address of the applicant, (i.e., the agent)</p> <p>(b) Nationality (if the applicant is an individual)</p> <p>(c) Place of incorporation (if the applicant is a company)</p> <p>(d) If the applicant is a branch of a company incorporated abroad, date of establishment of the Indian branch and details of Reserve Bank's approval (if any) obtained in that regard</p> <p>(e) Nature of business or manufacturing activity in India of the applicant, stating the products traded in/manufactured, as the case may be</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p>
<p>2. (A) If the applicant is a person resident outside India, please state whether-</p> <p>(a) Citizen of India</p> <p>(b) Not a citizen of India</p> <p>(B) If the applicant is a foreign citizen of India, please state-</p> <p>(a) Country of birth</p> <p>(b) Date of birth</p> <p>(c) Since when staying in India and probable duration of further stay in India</p> <p>(d) Purpose of stay in India</p> <p>(e) Particulars of Reserve Bank's approval obtained (if any) under Section 30 of F.E.R.Act, 1973 for practising any profession or carrying on any occupation, trade or business in India</p> <p>(f) Whether enjoying any recurring remittance facilities; if so, details thereof</p>	<p>(a)</p> <p>(b)</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(f)</p>
<p>3. If the applicant is a company, please furnish the following particulars/documents</p> <p>(A) Authorised capital</p> <p>(a) Equity</p> <p>(b) Preference</p> <p>(B) Paid-up capital</p> <p>(a) Equity</p> <p>(b) Preference</p> <p>(c) Held by</p>	<p>(a) Rs.....divided intoshares of Rs.....each</p> <p>(b) Rs.....divided intoshares of Rs..... each</p> <p>(a) Rs.....divided intoshares of Rs.....each</p> <p>(b) Rs.....divided into.....share of Rs.....each</p>

	Equity			Preference		
	No. of shares	Face value	%	No. of shares	Face value	%
(i) Non-resident						
(a) Corporate Bodies						
(i) Firms, companies and instructions/ bodies other than those included in (ii) below						
(ii) Firms, companies and other bodies directly or indirectly owned to the extent of at least 60% by non-residents of Indian nationality/ origin						
(a) with repatriation benefits						
(b) without repatriation benefits						
(b) Individuals						
(i) Indian nationals and persons of Indian origin						
(a) with repatriation benefits						
(b) without repatriation benefits						
(ii) Others						
(ii) Resident						
(a) Firms, companies and other institutions/bodies						
(b) Individuals						
(i) Indian nationals						
(ii) other than Indian nationals						
Total						

<p>4. (A) (a) Full name and address of the principal (b) Nationality(if the principal is an individual) (c) Place of incorporation(if the principal is a company) (d) Nature of the principal's business in India (e) Is the principal a small-scale manufacturer or co-operative or public sector undertaking ? (B) Particulars of shareholdings, etc., in the principal company, as in column 3 above, if it is a company incorporated in India</p>	<p>(a) (b) (c) (d) (e)</p>
<p>5. Percentage of shareholdings held by the applicant in the principal company or vice versa</p>	
<p>6. Full particulars of the agency arrangement for which approval is sought (a) Nature of agency, such as, selling Agency, buying agency, indenting agency, etc. (b) Date of agreement and its validity (c) Terms of remuneration (d) Territory and products covered (e) Nature of after-sales service to be performed, if any (f) Arrangement for imports, if the agency involves imports into India (g) The amount of expected earnings per annum (h) Whether the commission will be received in rupees or in foreign exchange</p>	<p>(a) (b) (c) (d) (e) (f) (g) (h)</p>
<p>7. If the applicant company has entered into any other agency arrangements, please state-</p> <p>(a) Name and address of the principal (b) Nature of the agency (c) Number and date of Reserve Bank's approval obtained therefor</p>	<p>(a) (b) (c)</p>

<p>8. In the case of existing agencies, please state-</p> <p>(a) The amount of the agency commission earned during each of the last three years-</p> <p>(i) In Rupees</p> <p>(ii) In foreign exchange</p> <p>(b) Has the commission (if any) earned in foreign exchange been repatriated to India? If so, attach bank certificate (where the applicant has agency arrangement with more than one principal, please state the total amount of commission earned from all the existing agency arrangements during each of the last three years.) (Separate figures should be given principal-wise, commodity-wise and agreement-wise, as far as possible)</p> <p>(c) Outstanding quantities and value of order/contracts existing as on the date of this application</p>	<p>(a)</p> <p>(i)</p> <p>(ii)</p> <p>(b)</p> <p>(c)</p>
<p>9. Full justification to enter into or to continue or to modify the agency arrangement (as the case may be)</p>	
<p>10. Whether the application purchases any items from other parties (otherwise than for 'processing' into one of the items being manufactured by the applicant) for resale. If so, please state-</p> <p>(a) Name and address of the local manufacturer</p> <p>(b) Description of the items purchased</p> <p>(c) The outstanding quantities and value of orders/contracts existing as on the date of this application</p> <p>(Please attach four certified copies of the agreements and/or certified copies of the relevant correspondence exchanged with the local manufacturers)</p> <p>11. Particulars of dividend/profit remittances made abroad by the applicant company during the last three years, quoting Reserve Bank's approval numbers and dates</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p>
<p>12. Amount of foreign exchange earned (if any) from exports (giving break-up or item-wise export earnings), and other sources during each of the last three years</p>	

<p>13. Whether the applicant has/proposes to set up Research & Development Cell in its organisation. If so, please state the annual expenditure incurred during the last three years/expected to be incurred annually</p>	
<p>14. (A) Number of the staff and labour employed by the applicant</p> <p>(a) Technical staff</p> <p>(b) Administrative and account staff</p> <p>(c) Labour</p> <p>(i) Skilled</p> <p>(ii) Unskilled</p> <p>(B) Whether any foreign personnel are employed. If so, please attach a list giving the names and nationalities of such employment, emoluments and particulars of Reserve Bank's approvals obtained (if any) for their employment.</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(i)</p> <p>(ii)</p>

I/We hereby declare that the particulars given above are true and correct to the best of my/our knowledge and belief.

.....
(Signature of Applicant/Authorised Official)

place:.....

Stamp

Name:.....

Date :.....

Designation:.....

2. Foreign Direct Investment-Policy & Procedures (抜粹)

INVESTING IN INDIA

Foreign Direct Investment-Policy & Procedures

Department of Industrial Policy & Promotion
Ministry of Commerce & Industry
Government of India
New Delhi
March, 2005

CHAPTER I

Foreign Direct Investment

Introduction

1.1 India, the largest democracy in the world, with its consistent growth/performance and abundant skilled manpower provides enormous opportunities for investment, both domestic and foreign. India is the fourth largest economy in terms of *Purchase Power Parity* and the tenth most industrialized country in the world.. Major initiatives such as industrial decontrol, simplification of investment procedures, enactment of competition law, liberalisation of trade policy, full commitment to safeguarding intellectual property rights, financial sector reforms, liberalisation of exchange regulations etc., have been taken, which provide a liberal, attractive, and investor friendly investment climate. Main features of policy on Foreign Direct Investment are dealt within this chapter.

Policy on Foreign Direct Investment

1.2 FDI up to 100% is allowed under the automatic route in all activities/sectors except the following which require approval of the Government :

- Activities/items that require an Industrial Licence(Refer para 2.1);
- Proposals in which the foreign collaborator has an existing venture/tie up in India in the same field(Refer Press Note no. 1 and 3 (2005 series),
- Proposals for acquisition of shares in an existing Indian company in the :
 - o Financial services sector and
 - o Where SEBI (Substantial Acquisition of Shares and Takeovers)Regulations, 1997 is attracted; and
- All proposals falling outside notified sectoral policy/caps or under sectors in which FDI is not permitted(Refer Annexure II).

Illustrative lists of sectors under Automatic Route for FDI upto 100% may please be seen at annexure - III, IV & V.

1.3 FDI policy is reviewed on an ongoing basis and measures for its further liberalization are taken. Change in sectoral policy/ sectoral equity cap is notified from time to time through Press Notes by the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. Policy announcement by SIA are subsequently notified by Reserve Bank of India(RBI) under Foreign Exchange Management Act (FEMA) . All Press Notes are available at the website of Department (www.dipp.nic.in)

Procedure for FDI under Automatic Route

1.4 FDI up to 100 % is allowed under the automatic route from foreign/NRI investor without prior approval in most of the sectors including the services sector. FDI in sectors/activities under automatic route does not require any prior approval either by the Government or RBI. The investors are required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors. For more details please refer details at RBI website at www.rbi.org.in.

Government Approval Route

1.5 All activities which are not covered under the automatic route according to para 1.2 above, require prior Government approval. Areas/sectors/activities hitherto not open to FDI/NRI investment shall continue to be so unless otherwise notified by Government.

Procedure for Obtaining Government Approval -FIPB

1.6 All proposals for foreign investment requiring Government approval are considered by the Foreign Investment Promotion Board (FIPB). The FIPB also grants composite approvals involving foreign investment/foreign technical collaboration. For seeking the approval for FDI other than NRI Investments and 100% Export Oriented Units(EOUs), applications in form FC-IL should be submitted to the Department of Economic Affairs (DEA), Ministry of Finance.

Plain paper applications carrying all relevant details are also accepted. No fee is payable. The following information should form part of the proposals submitted to FIPB: -

- (a) Whether the applicant has any existing financial/technical collaboration or trade mark agreement in India in the same field for which approval has been sought; and
- (b) If so, details thereof and the justification for proposing the new venture/technical collaboration (including trade marks).
- (c) Applications can also be submitted with Indian Missions abroad who will forward them to the Department of Economic Affairs for further processing.
- (d) Foreign investment proposals received in the DEA are generally placed before the Foreign Investment Promotion Board (FIPB) within 15 days of receipt.

The Decision of the Government in all cases is usually conveyed within 30 days.

1.7 The guidelines for consideration of FDI proposals by the FIPB are at Annexure-I. The sector specific guidelines for FDI and Foreign Technology Collaborations are at Annex II.

FDI from NRI & for 100% EOU.

FDI Prohibited

General Permission of RBI under FEMA

Investment by Existing Companies

- 1.8** FDI applications with NRI Investments and 100% EOU should be submitted to the Public Relation & Complaint Section(PR&C)of Secretariat of Industrial Assistance (SIA), Department of Industrial Policy & Promotion.
- 1.9** The extant policy does not permit FDI in the following cases:
- i. Gambling and Betting, or
 - ii. Lottery Business, or
 - iii. Business of chit fund
 - iv. Nidhi Company
 - v. Housing and Real Estate business except for the development of townships, housing, built-up infrastructure and construction development project notified vide Press note 2(2005 series).
 - vi. Trading in Transferable Development Rights (TDRs)
 - vii. Retail Trading
 - viii. Atomic Energy
 - ix. Agricultural or plantation activities or Agriculture (excluding Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture and Cultivation of Vegetables, Mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than Tea plantations)
- 1.10** RBI has granted general permission under FEMA in respect of proposals approved by the Government. Indian companies getting foreign investment approval through FIPB route do not require any further clearance from RBI for the purpose of receiving inward remittance and issue of shares to the foreign investors. The companies are, however, required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and to file the required documents with the concerned Regional offices of the RBI within 30 days of issue of shares to the foreign investors or NRIs.
- 1.11** Besides new companies, automatic route for FDI/NRI investment is also available to the existing companies proposing to induct foreign equity. For existing companies with an expansion programme, the additional requirements include
- (i) the increase in equity level resulting from the expansion of the equity base of the existing company without the acquisition of existing shares by NRI/foreign investors,
 - (ii) the money to be remitted should be in foreign currency and
 - (iii) proposed expansion programme should be in the sector(s) under automatic route. Otherwise, the proposal would need

Participation by International Financial Institutions

Issue and Valuation of Shares in case of Existing Companies

Government approval through the FIPB. For this the proposal must be supported by a Board Resolution of the existing Indian company.

1.12 For existing companies without an expansion programme, the additional requirements for eligibility for automatic approval are

- (i) that they are engaged in the industries under automatic route,
- (ii) the increase in equity level must be from expansion of the equity base and
- (iii) the foreign equity must be in foreign currency.

1.13 The earlier SEBI requirement, applicable to public limited companies, that shares allotted on preferential basis shall not be transferable in any manner for a period of 5 years from the date of their allotment has now been modified to the extent that not more than 20 per cent of the entire contribution brought in by promoter cumulatively in public or preferential issue shall be locked-in.

1.14 Equity participation by international financial institutions such as ADB, IFC, CDC, DEG, etc. in domestic companies is permitted through automatic route subject to SEBI/RBI regulations and sector specific cap on FDI.

1.15 In case of listed companies, according to RBI/SEBI guidelines, the issue price shall be either at:

- (a) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date, or
- (b) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the two weeks preceding the relevant date.

The stock exchange referred to is the one at which the highest trading volume in respect of the share of the company has been recorded during the preceding six months prior to the relevant date.

The relevant date is the date thirty days prior to the date on which the meeting of the General Body of the shareholder is convened. In all other cases a company may issue shares as per the RBI regulation in accordance with the guidelines issued by the erstwhile Controller of Capital Issues.

Other relevant guidelines of Securities and Exchange Board of India (SEBI)/ and RBI including the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997,

Eligibility

1993] and 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, on the basis of any equity related warrants attached to debt instruments;

1.19 The eligibility for issue of Convertible Bonds or Ordinary Shares of Issuing Company is given as under:

- (i) An issuing company desirous of raising foreign funds by issuing Foreign Currency Convertible Bonds or ordinary shares for equity issues through Global Depository Receipt
- (ii) Can issue FCCBs upto USD 50 Million under the Automatic route,
- (iii) From USD 50 –100 Million, the companies have to take RBI approval,(iv) From USD 100 Million and above, prior permission of the Department of Economic Affairs is required.

Preference Shares

1.20 Foreign investment through preference shares is treated as foreign direct investment. Proposals are processed either through the automatic route or FIPB as the case may be, as per the following guidelines:-

- (i) Foreign investment in preference share are considered as part of share capital and fall outside the External Commercial Borrowing (ECB) guidelines/cap.
- (ii) Preference shares to be treated as foreign direct equity for purpose of sectoral caps on foreign equity, where such caps are prescribed, provided they carry a conversion option. Preference shares structured without such conversion option fall outside the foreign direct equity cap.
- (iii) Duration for conversion shall be as per the maximum limit prescribed under the Companies Act or what has been agreed to in the shareholders agreement whichever is less.
- (iv) The dividend rate would not exceed the limit prescribed by the Ministry of Finance.
- (v) Issue of preference shares should conform to guidelines prescribed by the SEBI and RBI and other statutory requirements.

ADR/GDR

wherever applicable, would need to be followed. Further information could be obtained at Security and Exchange Board of India's (SEBI) website : www.sebi.gov.in

- 1.16** An Indian corporate can raise foreign currency resources abroad through the issue of American Depository Receipts (ADRs) or Global Depository Receipts (GDRs). Regulation 4 of Schedule I of FEMA Notification no. 20 allow an Indian company to issue its Rupee denominated shares to a person resident outside India being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/ or American Depository Receipts (ADRs), subject to the conditions that:
- the ADRs/GDRs are issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government thereunder from time to time
 - The Indian company issuing such shares has an approval from the Ministry of Finance, Government of India to issue such ADRs and/or GDRs or is eligible to issue ADRs/GDRs in terms of the relevant scheme in force or notification issued by the Ministry of Finance, and
 - There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets.
 - The FCCB issue proceeds need to conform to external commercial borrowing end use requirements; in addition, 25 per cent of the FCCB proceeds can be used for general corporate restructuring
 - Is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations.
 - There is no limit upto which an Indian company can raise ADRs/GDRs. However, the Indian company has to be otherwise eligible to raise foreign equity under the extant FDI policy.
- 1.17** A company engaged in the manufacture of items covered under Automatic route, whose direct foreign investment after a proposed GDRs/ADRs/FCCBs issue is likely to exceed the percentage limits under the automatic route, or which is implementing a project falling under Government approval route, would need to obtain prior Government clearance through FIPB before seeking final approval from the Ministry of Finance.
- 1.18** FCCBs are issued in accordance with the scheme [Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme,

Foreign Currency Convertible Bonds

CHAPTER IV

Entry Options for Foreign Investor

Entry Options	4.1 A foreign company planning to set up business operations in India has the following options:
Incorporated Entity	i) By incorporating a company under the Companies Act, 1956 through <ul style="list-style-type: none">• Joint Ventures; or• Wholly Owned Subsidiaries Foreign equity in such Indian companies can be up to 100% depending on the requirements of the investor, subject to equity caps in respect of the area of activities under the Foreign Direct Investment (FDI) policy.
As an Unincorporated Entity	ii) As a foreign Company through <ul style="list-style-type: none">• Liaison Office/Representative Office• Project Office• Branch Office Such offices can undertake activities permitted under the Foreign Exchange Management (Establishment in India of branch or office of other place of business) Regulations, 2000.
Incorporation of Company	4.2 For registration and incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies. For details please visit the website of Ministry of Company Affairs at http://dca.nic.in
Liaison Office/ Representative Office	4.3 The role of the liaison office is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Liaison office can not undertake any commercial activity directly or indirectly and can not, therefore, earn any income in India. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).

Project Office

4.4 Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices can not undertake or carry on any activity other than the activity relating and incidental to execution of the project. Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI.

Branch Office

4.5 Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes:

- (i) Export/Import of goods
- (ii) Rendering professional or consultancy services
- (iii) Carrying out research work, in which the parent company is engaged.
- (iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- (v) Representing the parent company in India and acting as buying/selling agents in India.
- (vi) Rendering services in Information Technology and development of software in India.
- (vii) Rendering technical support to the products supplied by the parent/ group companies.
- (viii) Foreign airline/shipping company.

Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines Permission for setting up branch offices is granted by the Reserve Bank of India (RBI).

Branch Office on "Stand Alone Basis" in SEZ

4.6 Such Branch Offices would be isolated and restricted to the Special Economic Zone (SEZ) alone and no business activity/ transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India.

No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to specified conditions.

Application for setting up Liaison Office/ Project Office/ Branch Office may be submitted in form FNC 1 (available at RBI website at www.rbi.org.in)

Investment in a firm or a proprietary concern by NRIs

Investment in a firm or a proprietary concern by other than NRIs

Entry options for NRIs

NRIs have few more entry options

- 4.7** A Non-Resident Indian or a Person of Indian Origin resident outside India may invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis provided ,
- i) Amount is invested by inward remittance or out of NRE/FCNR/NRO account maintained with AD
 - ii) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business i.e. dealing in land and immovable property with a view to earning profit or earning income there from. iii) Amount invested shall not be eligible for repatriation outside India. NRIs/PIO may invest in sole proprietorship concerns/ partnership firms with repatriation benefits with the approval of Government /RBI.
- 4.8** No person resident outside India other than NRIs/PIO shall make any investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The RBI may, on an application made to it, permit a person resident outside India to make such investment subject to such terms and conditions as may be considered necessary.

* * * * *

ANNEXURE-V

Illustrative List of Services Sector with FDI Upto 100% under Automatic Route

- Advertising and Films
- Computer related Services
- Research and Development Services
- Construction and related Engineering Services
- Pollution Control and Management Services
- Urban Planning and Landscape Services
- Architectural Services
- Health related & Social Services
- Travel related services
- Road Transport Services
- Maritime Transport Services
- Internal Waterways Transport Services

Guidelines for FDI In Development of Township, Housing, Building, Infrastructure and Construction Projects

(Press Note No. 2 of 2005 series)

With a view to catalysing investment in townships, housing, built-up infrastructure and construction-development projects as an instrument to generate economic activity, create new employment opportunities and add to the available housing stock and built-up infrastructure, the Government has vide Press Note no 2 (2005 series) decided to allow FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure), subject to the following guidelines:

- a. Minimum area to be developed under each project would be as under:
 - i. In case of development of serviced housing plots, a minimum land area of 10 hectares
 - ii. In case of construction-development projects, a minimum built-up area of 50,000 sq.mts
 - iii. In case of a combination project, any one of the above two conditions would suffice
 - b. The investment would further be subject to the following conditions:
 - i. Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.
 - ii. Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.
 - c. At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell undeveloped plots.

For the purpose of these guidelines, "undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.
 - d. The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.
 - e. The investor shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/ Municipal/Local Body concerned.
 - f. The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer.
2. Para (iv) of Press Note 4 (2001 Series), issued by the Government on 21.5.2001, and Press Note 3 (2002 Series), issued on 4.1.2002, stand superceded.

3. STANDARD CONTRACT CLAUSES FOR
DOMESTIC BIDDING CONTRACTS 2001

STANDARD CONTRACT
CLAUSES FOR DOMESTIC BIDDING
CONTRACTS

Ministry of Statistics and Programme Implementation
Government of India

2001

INDEX

STANDARD CONTRACT CLAUSES

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CLAUSE 1-Eligibility and Pre- qualification (PQ)

A. Eligibility Criteria :

- a. Experience on similar works executed during the last five years; and details like monetary value, clients, proof of satisfactory completion;
- b. Registration, if any, with specified deptts/ organisations, class / type of registration;
- c. Documentary evidence of adequate financial standing.

B. Pre-qualification Information to be called for:

- a. Constitution and legal status. Joint venturing or other tie-ups for technology, equipment, financial backing, and / or project management;
- b. Registration (class and type) with specified agencies and previous pre-qualification(s) for similar projects.
- c. Experience on similar work(s) during last 5 years with details including year wise monetary value, clients, and proof of satisfactory completion of works.
- d. Financial standing as certified by Bankers, Audited Profit & Loss A/c and Balance Sheet, Annual turnover in last 5 years, access to adequate working capital.
- e. Construction Equipment proposed to be deployed for the project and proof of its availability; equipment proposed to be purchased or leased.
- f. Key personnel available and proposed to be engaged for management and supervision of the Project, their qualifications and experience.
- g. Project planning and quality control procedures to be adopted.
- h. Information regarding projects in hand, current litigation, orders regarding exclusion/expulsion or black listing, if any.
- i. The capacity of a construction agency to take up a new project under consideration in addition to his present commitments must be carefully assessed on the basis of the above information. The method of this assessment may be left to the owner or his Consultants.
- j. It may be mentioned, as an example, that some organisations, like, the

World Bank, adopt the following formula:

- k. The cut of grade obtained by Construction Company under the Grading scheme of CIDC should be

Bid Capacity = $A \times N \times 2 - B$, where

‘ N ’ = Number of years prescribed for completion of the subject contract.

‘ A ’ = maximum value of works executed in any one year during last five years (at current price level)

‘ B ’ = Value, at current price level, of existing commitments and on going works to be completed in the next ‘N’

years.

CLAUSE 2 - Earnest Money (EM)

- A. For projects estimated to cost Rs. 25 crores and above, earnest money should be 1% of the estimated cost; and maximum amount of earnest money should be Rs. 50 lakh.
- B. For projects estimated to cost less than Rs. 25 crores also, the earnest money should be 1% of the estimated cost. Maximum amount of earnest money may be stipulated at the discretion of the owner.
- C. Earnest money may be submitted in the form of irrecoverable Bank Guarantee with Banks to be specified by the Owners. Certified cheques and Demand Drafts should also be acceptable; Bank Guarantees submitted as Earnest Money shall be valid for 28 days beyond the validity of the bid.
- D. Earnest money of unsuccessful bidders should be refunded as promptly as possible, but not later than 28 days after the expiry of the bid validity.

CLAUSE 3- Security Deposit (SD)

- A. Security Deposit shall consist of two parts; a) Performance Guarantee to be submitted at award of work, and b) Retention money to be recovered from Running Bills.

- B. Performance Guarantee should be 5% of Contract amount and should be submitted as Bank Guarantee, Government Securities, FDR or any other form of deposit stipulated by the Owner, within 28 days of receipt of letter of acceptance.
- C. Retention Money should be deducted at 5% from Running Bills. Total of Performance Guarantee & Retention Money should not exceed 10% of Contract amount or lesser sum indicated in the bid document.
- D. 5% Performance Guarantee should be refunded within 14 days of the issue of the defect liability Certificate (taking over Certificate with a list of defects). Retention money should be refunded after issue of No. Defects Certificate. This balance amount can be substituted by “on demand” Bank Guarantee.

CLAUSE 4 - Variations, Extra/ Substituted Items

- A. Variation permitted should be $\pm 25\%$ in quantity of each individual item, and $\pm 10\%$ of the total contract price. Within 14 days of the date of instruction for executing varied work, extra work or substitution, and before the commencement of such work, notice shall be given either (a) by the contractor to the owner of his intention to claim extra payment or a varied rate or price, or (b) by the owner to the contractor of his intention to vary a rate or price
- B. For items not existing in the Bill of Quantities or substitutions to items in the Bill of Quantities, rate payable should be determined by methods given below and in the order given below:
 - 1. Rates and prices in Contract, if applicable;
 - 2. Rates and prices in the Schedule of Rates applicable to the Contract \pm tendered percentage, where appropriate;
 - 3. Market rates of materials and labor, plus 10% for overheads and Profits of contractor
 - 4. Escalation to be paid as admissible.
- C. If there is delay in the owner and the contractor coming to an agreement on the rate of an extra item, provisional rates as proposed by the owner should be payable till such time as the rates are finally determined.
- D. For items existing in the Bill of Quantities but where quantities have increased

beyond the variation limits, the rate payable for quantity in excess of the quantity in the Bill of Quantity plus the permissible variation should be:

1. Rates and prices in contract, if reasonable, failing which
2. Market rates of material and labour, plus 20% for overheads and profits of contractor.

CLAUSE 5 - Payment of Running Bills

- A. Bills should be prepared and submitted by the Contractor. Joint measurements should be taken continuously and need not be connected with billing stage. System of 4 copies of measurements, one each for Contractor, Client and Engineer, and signed by both Contractor and Client can be tried.
- B. 75% of bill amount should be paid within 14 days of submission of the bill. Balance amount of the verified bill should be paid within 28 days of the submission of the bill.
- C. For delay in payment beyond these periods specified in B) above, interest at a pre-specified rate (suggested rate 12% p. a.) should be paid.

CLAUSE 6 - Payment of Final Bills

- A. Contractor should submit final Bill within 60 days of issue of defects liability certificate. Client's engineer should check the bill within 60 days after its receipt and return the bill to Contractor for corrections, if any are needed. 50% of undisputed amount should be paid to the Contractor at the stage of returning the bill.
- B. The contractor should re-submit the bill, with corrections within 30 days of its return by the Engineer. The re-submitted bill should be checked and paid within 60 days of its receipt.
- C. Interest at a pre-specified rate (say 12%) should be paid if the bill is not paid within the time limit specified above.

CLAUSE 7 Advance Payment

- A. Mobilization Advance and Construction Equipment Advance should be given at

12% interest or free of interest at the discretion of the owner and against Bank Guarantee for Mobilization Advance and against hypothecation of Construction Equipment to the Owner for Construction Equipment Advance.

- B. Mobilization Advance should be given upto 10% of Contract price, payable in two equal installments. The first installment should be paid after mobilization has started and next installment should be paid after satisfactory utilization of earlier advance (s).
- C. Construction Equipment Advance should be paid upto 5% of Contract price, limited to 90% of assessed cost of machinery. For special cases, a higher advance for construction equipment upto 10% of contract price may be considered.
- D. Construction Equipment advances should be paid in two or more instalments. First installment should be paid after Construction Equipment has arrived at the site and next instalments should be paid after satisfactory utilization of earlier advance (s).
- E. Recovery of Mobilizations and Construction Equipment advance should start when 15% of the work is executed and recovery of total advance should be complete by the time 80% of the original Contract price is executed.

CLAUSE 8 - Secured Advance

- A. 75% of cost of materials brought to site for incorporation into works only should be paid as Secured Advance. Materials that are of perishable nature should be adequately insured. In case, advance is not payable against any particular items, they should be listed in the Contract Document.

CLAUSE 9 -Liquidated Damages and Incentives

- A. In case of delay in completion of the contract, liquidated damages should be levied at the rate of ½% of the Contract price per week of delay, subject to a maximum of 10% of Contract price.
- B. For early completion of the contract before the stipulated date of completion or such later date as authorized by the owner, incentive should be paid to the contractor at ½% of the contract price per week of early completion, subject to a maximum of 10% of contract price.

- C. The incentive of ½% of the contract price per week to the contractor would be applicable in cases where completion of work (contract) before the schedule leads to tangible benefits or benefits envisaged in the project document on its completion as per schedule.

CLAUSE 10- Escalation

- A (I) All short duration contracts up to 24 months should be awarded on fixed price basis and are not subject to any escalation what so ever. However, only statutory variation limited to duties and taxes are considered for adjustment in contract price.
- A (II) For calculating escalation, base prices should be taken as on the date of opening of the Bids.
- B. The Contract document should specify the suitable percentage of input for labor, materials like cement, steel, bitumen, POL and other materials and equipment usage for the purposes of calculating escalation.
- C. Escalation should be calculated, based on
- Notified fair wages and in the absence of which consumer price index for labour would be applicable,
 - Market rate for cement and steel,
 - Average official retail price of bitumen & POL, and
 - Wholesale price index for other materials,
 - Published Government Documents should be used for calculation of escalation amount.
- D. Escalation Reimbursement should be calculated for to the extent of 85% of the escalation so calculated.

CLAUSE 11 -Disputed Items and Arbitration

A. Conciliation

- a) Disputes between the Employer and the Contractor shall first be submitted to Conciliation. The procedure outlined in the Arbitration and Conciliation Act, 1996 shall be followed.

- b) The party initiating conciliation shall send to the other party a written invitation to conciliate. Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate. If the other party rejects the invitation, or does not reply within thirty days from the date of invitation, there will be no Conciliation Proceedings.
 - c) There shall be one Conciliator, unless the parties agree that there shall be two or three Conciliators; where there is more than one Conciliator, they ought, as a general rule, to act jointly.
 - d) When it appears to the Conciliator that there exists elements of a settlement which may be acceptable to the parties, he shall submit them to parties for their observation. He may reformulate the terms of a possible settlement in the light of their observations.
 - e) If the parties reach agreement of the dispute, they may draw up and sign a written settlement agreement. They may request the Conciliator to draw up or assist them in drawing up the settlement agreement.
 - f) If settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30 of the Act.
 - g) If a settlement does not appear possible, the Conciliator, after consultation with the parties, will give a written declaration that further efforts at Conciliation are no longer justified and the Conciliation Proceedings are terminated.
- B. When Conciliation Proceedings have become infructuous or have been terminated, the party, which initiated the Conciliation, shall refer the disputes for Arbitration. The reference to Arbitration should be made preferably within 28 days of the termination of Conciliation Proceedings.
- C. The Arbitration shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996. For Contracts costing upto Rs. 10 Crores, a Sole Arbitrator should be appointed. For Contracts costing over Rs. 10 Crores, a Committee of Arbitrators should be appointed composed of one Arbitrator to be nominated by the Contractor, one to be nominated by the Owner and the third Arbitrator, who will act as a Chairman but not as umpire, to be chosen jointly by the two nominees. The decision of majority of Arbitrators shall be final and binding on both parties.

CLAUSE 11A -Dispute Resolution Board

If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after the repudiation or other termination of the Contract, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred to the Dispute Review Board.

The Board shall be established by signature of the Dispute Review Board Agreement (“the Board Agreement”), which shall occur at the same time as the signature of the Contract Agreement.

Membership of the Board in all contracts of value upto Rs. 3.00 crores will consist of one Member, experienced in the type of construction involved in the Works and in the interpretation of document, to be appointed by the President, Institution of Engineers (India) at the request of the employer. In all other cases, membership of the Board shall comprise three Members similarly experienced. One Member shall be selected by each of the Employer and the Contractor and approved by the other. If either of these Members is not so selected and approved within 14 days of the date of the Contract Agreement, then upon the request of either or both parties such Member shall be selected within 14 days of such request by the President, Institution of Engineers (India).

The third Member shall be selected by the other two and approved by the parties. If the two Members selected by or on behalf the parties fail to select the third Member within 14 days after the later of their selections, then upon the request of either or both parties such third Member shall be selected within 14 days by the same international / national appointment authority as above who shall seek the approval of the proposed third Member by the parties before selection, but failing such approval nevertheless shall select the third Member. The third Member shall serve as Chairman of the Board.

In the event of death, disability, or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member shall fail or be unable to serve, the Chairman (or failing the action of the Chairman then either of other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be

completed within 30 days, failing which the replacement shall be made by the same international / national appointing authority as above in the same manner as described above. Replacement shall be considered complete when the new Member signs the Board Agreement. Throughout any replacement process the Members not being replaced shall continue to serve and the Board shall continue to function and its activities shall have the same force and effects as if the vacancy had not occurred.

Either the Employer or the Contractor may refer a dispute to the Board and the Board's recommendations shall be binding on the Employer and the Contractor in respect of disputes involving individual claims upto one percent of the contract value subject to a ceiling of Rs. 1 (one) million for contracts valued upto three hundred million or and (ii) ceiling of Rs. 10 (Ten) million for contracts valued above Rs. 300 (Three hundred) million. In all other cases, upon receipt of Board's Recommendation (s), these shall be deemed accepted. Accepted and deemed accepted Recommendations shall be final and binding on the parties.

Any dispute on which the Board has not issued a Recommendation within 42 days of its final hearing on the dispute, or regarding which the Recommendation (s) are not accepted, may be referred in writing by either party to arbitration in accordance with this Clause, by written notice to the other party with copies to the Engineer and the Board. Such notice shall state that it is being made pursuant to this Clause and shall establish the entitlement of the party giving it to commence arbitration provided that no such arbitration may be commenced until such notice is given. Such reference shall be made within 14 days of receipt of the Board's recommendation (s), or within 14 days of the day on which said period of 42 days expired, as the case may be, failing which reference any recommendation (s) previously rejected or not accepted shall be deemed accepted despite such previous rejection or non-acceptance and shall be final and binding upon the parties.

All Recommendations, which have become final and binding, shall be implemented by the parties forthwith; such implementation shall include any relevant action of the Engineer.

Whether or not accepted or deemed accepted, all of the Recommendations shall be admissible in any subsequent dispute resolution procedure, including any arbitration or any litigation having any relation to the dispute or disputes to which the Recommendation (s) relate.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the

Contractor and the Employer shall give effect forthwith to every decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an arbitral award.

CLAUSE 12 -Owner's Risk and Compensation Events

- A. Owners Risks: The owner is responsible for the excepted risks, which are :-
- (a) War, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection of military or usurped power, or civil war;
 - (b) Riot, commotion, disorder, unless solely restricted to employees of the Contractor or his sub-contractors and arising from the conduct of the works;
 - (c) Contamination by radio activity from any nuclear fuel, or from any nuclear waste radioactive toxic explosive;
 - (d) A cause due solely to the design of the Works, other than the Contractors design;
 - (e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (f) Flood, tornadoes, earthquakes and landslides ;
 - (g) Loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works except as may be provided for in the Contract ;
 - (h) Any operation of the forces of nature (in so far as it occurs on the site) which an experienced contractors could :
 - * not have reasonably foreseen or could
 - * reasonably have foreseen, but against which he could not reasonably havetaken at least one of the following measures :
 - (i) Prevent loss or damage to physical property from occurring by taking appropriate measures; and
 - (ii) Insure against .
- B. Compensation Events : The compensation events mutually agreed should be provided in the contract document.
- C. In the event of any such loss or damage happening from any of the owners risks defined in (A) above, as in combination with other risks, the contractor shall, if so

required by the owner, rectify the loss or damage. An addition to the contract price shall be determined treating the work done as variation /extra / substituted item, as given in the relevant clauses.

- D. Whenever any compensation event occurs, the contractor will notify the owner, within 14 days and provide a forecast cost of the compensation event. As soon as information demonstrating the effect of such event is available, the owner shall assess the compensation to be paid. In case contractors' forecast is deemed unreasonable, the owner shall adjust the contract price and / or extend the completion date based on his assessment.

ANNEXURE - I

**THE REVIEW COMMITTEE FOR CONTRACT MANAGEMENT
SYSTEM**

Shri Sarveshwar Jha	Addl. Secretary, MOSPI	Chairman
Shri J.L. Narayan	Joint Advisor, MOSPI	Member
Director General, CPWD		Member
Engineer -in - Chief, Ministry of Defence		Member
Member - Technical, Railway Board		Member
Director - Engineers India Ltd.		Member
Shri Harish Chandra		Member
Dr. U. Kohli		Member
Dr. R. Kapur		Member
Shri Chander Verma		Member
Shri P.R. Swarup, Director General, CIDC Secretary		Member

ANNEXURE - II

THE COMMITTEE

Considering the long felt need for a review of Contract Clauses incorporated by Government Agencies in their prescribed Standard Bidding Documents for construction works, the Chairman, Construction Industry Development Council (CIDC) set up a Committee in July, 1996 for Standardization and Rationalization of Contract Documents for Domestic Bidding Contracts.

2. The Terms of Reference given to the Committee :

- To study current documents of various departments of Government as well as International Organisations and also the work of previous Committees / Working Groups on this subject;
- To identify clauses which require discussion, to discuss alterations considered desirable and to suggest suitable modifications.

3. Composition of Committee :

CHAIRMAN : **Shri. Harish Chandra**
(Former DG, CPWD, Former Member
UPSC and Chairman, Planning
Commission's Working Group on
Construction : 1989-90)

MEMBERS

ORGANISATION	REPRESENTED BY
i) Ministry of Finance	Shri V.K. Dhall, Addl. Secretary (Expenditure) Dr. S.K. Sarkar, Director
ii) Railway Board (Projects)	Shri U.R. Chopra, Addl. Member (Works) Shri M.M. Goyal, Addl. Member Shri L.C. Jain, Addl. Member (Works))
iii) Central Public Works Department	Shri P.B. Vijay, Director General Shri S.C. Gupta, Chief Engineer (SPG)

(SPG)

Shri Shyam Kishore, Chief Engineer (CSG)
Shri C.S. Prasad, Suptg. Engineer

ORGANISATION

REPRESENTED BY

iv) **Engineers-in-Chief**
General
(Ministry of Defence)
Works

Shri K. Prabhakar Rao, Addl. Director

Shri. R.D. Mirza, Chief Surveyor of

Shri S.K. Rao, Chief Surveyor of Works

v) **Ministry of Surface Transport**
Development)

Shri A.D. Narain, DG (Roads

Shri N.K. Sinha, Chief Engineer

vi) **EXIM Bank***

Shri S.Sridhar, Regional Resident
Representative

vii) **Engineers India Ltd**

Shri K. Satyanarayanan, Director
(Commercial)
Shri M.M. Lal, Executive Director
Shri M. Bindumadhav, DGM (Contracts)
Shri P.K. Roy, General Manager

viii) **NTPC***

xi) **Hindustan Construction**
Company Ltd

Shri Ajit Gulabchand, Chairman
Shri D.M. Savur, Executive Director
Smt. Niyati Sareen, Manager (Mktg.)

x) **Continental Construction Ltd**

Shri Chander Verma, Managing Director
Shri N.K. Bahri, Vice-President

- | | |
|--|---|
| xi) Larsen & Toubro Ltd. | Shri A.R. Sule, GM (Intl Business Unit)
Shri D.B. Mody, Regional Manager |
| xii) Jaiprakash Associates | Shri H.V. Mirchandani, Advisor |
| xii) Tata Electrical Company, Mumbai* | |

CO-OPTED MEMBERS

- | | |
|---|--------------------------------------|
| xiv) Builder's Association of India (Delhi Centre) | Shri Rajpal Arora, General Secretary |
|---|--------------------------------------|

ORGANISATION

REPRESENTED BY

- | | |
|---|---|
| xv) Unitech Ltd | Dr. R. Kapur, Director
Col. M.K. Soota, Consultant |
| xvi) Gas Authority of India Ltd. | Shri P.C. Gupta, Executive Director |
| xvii) Ministry of Law, Justice and Company Affairs | Shri V.V. Singh, Legal Advisor |
| xviii) Ministry of Urban Affairs
Accounts
and Employment | Shri V.N. Kaila, Chief Controller of |
| xix) Punj Lloyd Ltd. | Shri Atul Punj, Managing Director
Maj. Gen. H.S. Sodhi (Retd.), Executive Director |
| xx) Som Datt Builders Ltd. | Dr. Som Datt, Chairman
Shri K.S. Kharb, Executive Director |
| xxi) Trett Consulting
Director | Shri Anthony W. Fletcher, Managing |

MEMBER SECRETARY

Shri P.R. Swarup, Director CIDC

Shri L.R. Gupta, Former Director General (Works), CPWD gave useful suggestions on his behalf and on behalf of the Builder's Association of India.

*** These Members could not participate in the deliberations of the Committee.**

4. During 1996-97, the Committee held several meetings. Chairman also appointed five sub-committees, which held their discussions and submitted their reports which were considered by the Main Committee. Draft Recommendations of the Committee were also discussed on July 31, 1997 in a Workshop in which a larger number of medium and small construction organisations participated. Incorporating various suggestions that emerged from this Workshop, the draft was finalized and put up to the Governing body of CIDC.