CHAPTER - THIRD
3.1 INTRODUCTION

Foreign collaboration policy: In step with the necessity of globalisation

Foreign collaboration in India was for long regulated, among other legislations by the Foreign Exchange Regulation Act. 1973. While Sections 8 and 9 of FERA generally regulated various type of receipts and payments in foreign exchange. Sections 28, 29, 30 and 31 of FERA regulated for long, all other types of approval connected with foreign collaborations such as appointment of agents in India, setting up of a place of business in India, acquiring of any undertaking in India, acquisition of immovable property in India, employment of certain foreign nationals in India, etc.
The FERA did contain a lot of restrictions and a string of procedures to be complied with in connection with the submission of collaboration proposals, obtaining of clearances and post approval formalities etc. However, the Government felt the need to rationalise the controls over foreign exchange transactions in general and foreign collaborations in particular in the context of the commitment under the new WTO regime as well as the inevitability to dismantle all controls in an effort towards establishing market-driven economy. Therefore, the Foreign Exchange Regulation Act was superseded by a more liberal and positive piece of legislation viz. the Foreign Exchange Management Act. 1999. The Act came into force from 1.6.2000 by a Notification No. ESR(E) dated 1.5.2000. The FEMA addresses inter alia investments in India by non-residents – be it a company, an individual or any other entity – in a more realistic manner.

The foreign collaboration policy was comparatively liberal till 1973 and becomes more stringent after 1973. A host of controls exist on the extent of foreign equity participation foreign collaborations. However, with the announcement of the new industrial policy, the technology transfer and foreign equity participation in India have been considerably liberalised. In fact, the new industrial policy liberally permits foreign collaboration in India. There is a little bit of a striking resemblance of the situation now obtaining in India with what was obtaining in Japan before and after World War II. Before World War II, Japan had a liberal foreign investment policy and this can be gauged from the fact that many companies had between 30% to 54% foreign equity mostly from the United States. After World War II, Almost all the companies were decimated by the war and Japan brought in very strict control on foreign equity participation which lasted till 1970 when the exchange control regulations were liberalised. During the intervening 30 years, Japanese industry aggressively borrowed foreign technology to such an extent that they were called copiers but the virtue of the Japanese is that they were able to assimilate the
technology and further develop it with their own inventive genius to such an extent that only quality became the watch-word in Japanese manufacturing activity. In hardly about less than three decades, Japan could turn out to be a world leader in technology. In this period Japan turned from a technology importer to a technology exporter. There is, so to say, a reverse flow of technology from Japan to the West particularly to the United State. A once-time exporter of technology to Japan!

India is in the same position as Japan was some years back with more liberal flow into the country of technology under the aegis of the new industrial policy. If Indian industry were to respond in the same manner and spirit as Japanese industry had done some years back, there is every hope of India becoming a technology leader from the Asian segment of the globe. The Government earnestly hopes that the congenial and liberal policy framework towards foreign collaboration would in the long run lead to healthy growth of not only indigenous industry but also the development of a vibrant export sector.

The globalisation of production has at its core the growth of foreign direct investment (FDI), in quantitative terms. So in this age of globalisation no nation could afford to remain an "Island" in itself, closing all its door and windows to venture seeking participation from other countries. India, being a developing country, the importance of FDI and technology needs no emphasis. The domestic saving available for investment being small, foreign capital can augment the productive capacity of the nation.

Foreign Capital played an important role in the early state of industrialisation of the most of the advanced countries of today like the countries of Europe (including the Russia) and North America. Though the problems of development of the developing countries of today are not very much similar to those faced by the advanced
countries in the past, there is a general view that foreign direct investment, if properly directed and utilised, can assist the development of developing countries like ours. Non-Resident Indian investment is also one of the form of foreign direct investment.

3.2 FOREIGN COLLABORATION: NEEDS & OBJECTIVES

As we already stated that foreign direct investment has played a very important role to boost the economy of a developing country like India. We already discussed the approach of New Industrial Policy towards foreign investment and technology tie-ups. It was designed to attract significant capital flows into India. It is well known fact that not only for developing countries but also for developed countries it is difficult to bring all the factors of production viz. capital investment, raw material, advance technology etc. from internal sources. Hence Collaboration ensures optimum utilisation of available resources.

3.3 TYPES OF FOREIGN COLLABORATIONS

Foreign collaborations are generally, of three types which involve direct investment in share of Indian companies:

1. **Financial Collaborations**: which involve financial collaborations (foreign equity participation where foreign equity alone is involved.

2. **Technical Collaborations**: Technical collaborations (technology transfer) which involves licensing of technology by the foreign collaborator with due compensation for the same.

3. **Technical cum Financial collaboration**: Such collaborations are found basically in joint ventures and generally, involve –

   (i) Investment in India by non-residents; and

   (ii) Acquisition of technical knowhow by Indian Company

In collaborations while developed countries offer proposals on account of cheap labour and raw materials available in developing
countries. The developing countries like India seek such collaborations for industrialisation and modernization with the inflow of technology and capital from developed countries so as to compete in the international market.

**Approving authorities**

Whether it is technical collaboration or financial collaboration, there are two approving authorities at present:

(i) The Reserve Bank of India: and

(ii) The Government of India.

### 3.4 FOREIGN INVESTMENT POLICY

**Government Policy Towards Foreign Investment Till 1991.**

At the time of independence, the attitude of the Indian government towards foreign capital was one of fear and suspicion. This was natural on account of the previous exploitative role played by the British in draining away resources from India. This suspicion and hostility found expression in the Industrial Policy of 1948 which, though recognising the role of private foreign investment in the country, emphasised that its regulation was necessary in the national interest.

By a declaration issued on June 2, 1950, the government assured foreign capitalists that they could remit the returns from investments made by them in the country after January 1, 1950. In addition they were also allowed to remit whatever reinvestment of profit had taken place.

In the Industrial Policy Resolution of 1956, the fault was redeemed to a certain extent and a more open attitude towards foreign investment was forthcoming. But the response evinced was only moderate because foreign capital was allowed into only those industries where Indian capital was scarce.
In 1968, the government issued an illustrative list whereby only some categories of industries were allowed to have inflows of foreign capital. In 1973, this list was narrowed down to 19 industries. According to a survey in 1974, the total private foreign investment (inclusive of direct plus portfolio investment) was to the tune of Rs. 1,943 crore.

India was facing an acute foreign exchange crisis and FDI had actually declined from 35 per cent in 1960-70 to 16.9 per cent during 1988-89.

The New Industrial Policy declared by the government in July 1991 opened the doors of several industries to foreign investment. Prior to this policy foreign capital was generally permitted only in those industries where Indian capital was scarce; it was normally not permitted in trading activities, plantations, banking and financial institutions. It was not permitted in those industries which had received government protection or which were of basic and/or strategic importance to the country. The declared policy of the government was also to discourage foreign capital in certain 'non-essential' consumer goods and service industries. However, this supervision was frequently violated as a number of foreign collaborations even in respect of cosmetics and toiletries were allowed by the government. It was also stated that foreign capital should help in promoting exports or substituting imports. The foreign capital investments and technological collaborations were required to be so regulated as to fit into the overall framework of the plans. In those industries where foreign technicians and managers were allowed to operate as Indians with requisite skills and experience were not available, vital importance was to be accorded to the training and employment of Indians in the quickest possible manner.
To attract foreign capital and investment from NRIs, the government has in recent years announced a number of tax concessions, lower rates of taxation for certain designated priority industries, tax holiday on profits for a certain period on new industrial undertakings, etc. The NRIs investing in India were allowed higher investment limits, priority allotment of items in short supply, permission to buy shares in Indian companies, etc. However, the real 'opening-up' came with the announcement of the new industrial policy in July 1991. In the subsequent period, several other measures for promoting foreign investment were also announced by the government.

As a first step, the government announced in 1991 a list of industrial in which FDI would be automatically allowed up to 51 per cent (foreign equity). These industries ranged from the capital goods and metallurgical sector to the entertainment, electronic, foods processing and service sectors with significant export potential. Hotels and tourist-related areas were also allowed foreign equity holdings by international trading companies of up to 51 per cent.

In order to accelerate the progress of the power sector, a 100 per cent foreign equity participation was allowed for setting up power plants.

During 1992 – 93, several additional measures were taken to encourage investment flows:

Now, of course, FERA has been replaced by FEMA. Portfolio investments by the FIIs in the primary and secondary markets were subject to an overall ceiling of 24 per cent of the issued share capital in any company and the FIIs were required to allocate their total investment between equities and debentures in the ratio 70:30. FIIs investing under the scheme enjoyed a concessional tax rate of 20 per cent on dividend and interest, and 10 per cent on long term capital gains.
In 1996, guidelines for FII investments were further liberalised. The limit of investment for an individual FII was raised from 5 per cent to 10 per cent, however, to the aggregate limit of 24 per cent for all FIIs. They are also allowed to invest in unlisted companies in the same manner as they are allowed to invest in the gilt-edged government securities within the framework of guidelines, and proprietary funds have been allowed to invest in the country through the FII route.

The Indian corporate sector has also been encouraged to access global capital markets through the GDR mechanism as described below:

(a) Foreign investors can invest in Indian companies through the GDR route without any lock-in period.

(b) These receipts can be listed on any of the overseas stock exchanges and denominated in any convertible foreign currency. However, the underlying shares would be denominated in Indian rupees.

(c) Private placement with US investors is also permissible in accordance with the US investors and US Securities Act.

(d) Short-term capital gains are taxable at the rate of 65 per cent along with business income long-term capital gains (computed on holding for more than 12 months) are taxable at the rate of 10 per cent.

The guidelines for Euro issues were liberalised in June 1996 so as to give the market a freer play in judging the quality of issues and the number of issues that can be floated in a year. The conditions relaxed significantly. Investment in the stock market and real estate is not, however, permitted out of GDR proceeds.

In 1998–99, more measures were announced to encourage foreign investment, the most important of which were:
(i) whereas previously NRIs were allowed to purchase shares in Indian companies in the secondary market subject to a limit of 1 per cent of the company's total equity with a 5 per cent limit for aggregate NRI/OCB investments in the company, these limits were raised to 5 per cent and 10 per cent respectively;

(ii) the State Bank of India launched a Resurgent India Bond (RIB) scheme denominated in foreign currencies. The scheme, which was open to both NRIs/OCBs and the banks acting in fiduciary capacity on their behalf, opened on August 5, 1998 and closed on August 25, 1998. Mobilisation under the scheme amounted to $4.2 billion;

(iii) projects for electricity generation, transmission and distribution as also roads and highways, ports and harbours, and vehicular tunnels were permitted foreign equity participation up to 100 per cent under the automatic participation up to 100 per cent under the automatic route, provide foreign equity does not exceed Rs.1,500 crore.

(iv) regarding equity participation in private sector banks, multilateral financial institutions were allowed to contribute equity to the extent of the shortfall in the NRI holding within the overall permissible limit of 40 per cent.

(v) the government decided to permit foreign direct investment up to 49 per cent of the total equity, subject to licences, in companies, providing Global Mobile Personal Communication by Satellite (GMPCS) services;
(vi) NRIs/PIOs (Persons of Indian Origin institutional investors were allowed to purchase and sell government securities and treasury bills within overall approved debt ceilings.

(vii) 100 per cent foreign institutional investors' debt funds have been permitted to invest in unlisted debt securities of Indian companies, etc.

In March 1999, the Reserve Bank issued notification granting general permission to mutual funds for issuing units to NRIs/PIOs/OCBs subject to certain specified norms, thereby dispensing with the procedure of obtaining prior permission. In addition approval procedures were simplified by the Reserve Bank in respect of NRIs/PIOs/OCBs by granting them general permission in lieu of a case by case approval procedure in a large number of areas. These included acceptance of deposits by Indian companies, investment in Air Taxi operations, sale of shares in stock exchanges, transfer of shares/bonds/debentures and immovable property to charitable trust/organizations in India as gift, raising of loans by resident individual/proprietorship concerns on non-repatriable basis, issue of commercial paper by Indian companies to NRIs etc.

Foreign owned Indian holding companies were hitherto required to obtain prior approval of the FIPB (Foreign Investment Promotion Board) for downstream investment. They have now been permitted to make such investments. They have now been permitted to make such investments within permissible equity limits through the automatic route, provided such holding companies bring in the requisite funds from abroad. Also, the need to obtain prior approval of the FIPB for increasing foreign equity within already approved limits has been dispensed with in all cases where the original project cost was up to Rs. 600 crore.
With a view to expanding the FIIs category, the government has permitted foreign corporates and high net-worth individuals to invest through SEBI – registered FIIs. The government has also permitted SEBI registered domestic fund managers to manage foreign funds for investment in the Indian capital market through the portfolio investment route, provided the funds are channeled through internationally recognised financial institutions and subject to the reporting requirements as applicable to FIIs.

In August 1999, a Foreign Investment Implementation Authority (FIIA) was established within in Ministry of Industry in order to ensure that approvals for foreign investment (including NRI investments) are quickly translated into actual investment inflows and that proposals fructify into projects.

In December 1990, a notification was issued by the Ministry of Finance permitting Indian software companies, which are listed in foreign exchanges and have already floated ADR/GDR issues, to acquire foreign software companies and issue ADRs/GDRs without reference to the Government of Indian or the Reserve Bank of India up to the value limit of $ 100 million. For acquisitions beyond $ 100 million, proposals would require examination by a special composite committee in the RBI.

The Insurance Regulatory and Development Authority (IRDA) Act was passed by Parliament in December 1999. The Act, which seeks to promote private sector participation in the insurance sector, permits foreign equity stake in domestic private insurance companies up to a maximum of 26 per cent of the total paid-up capital.

In February 2000, the government took a major decision to place all items under the automatic route for FDI/NRI/OCB investment except a small negative list. To give effect to this decision, the RBI issued a notification on April 5, 2000¹ which says that all

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¹ Website of Reserve Bank of India (www.rbi.org.in)
items excluding specific sectors will be eligible for foreign investment under the automatic route up to even 100 per cent.

LIBERALISATION OF FOREIGN INVESTMENT POLICY

The Government has introduced a number of policy measures to achieve an annual target of foreign investment worth $10 billion. These are as follows –

1. 48 high priority industries of the country have been given the self-approval facility for foreign equity investment up to 51%. Three industries related to mining and 9 other capital intensive infrastructural industries have been permitted to have foreign equities of 50% and 74% respectively.

2. NRIs have been granted investment permission, with cent per cent (100%) equity for repartriability in high priority industries.

3. The condition of installing new machinery has also been removed for foreign capital investment.

4. RBI has granted permission to foreign nationals of Indian origin for acquiring housing assets without seeking prior permission of RBI.

5. FERA conditions were liberalised with effect from January 8, 1993 and later on FERA was replaced with FEMA.

6. Foreign companies have been granted permission to use their trademarks for selling their commodities in India since May 14, 1992.

7. The Government has allowed foreign institutional investors to invest in Indian capital market. This permission will be applicable only if they are registered with SEBI and get approval under FERA from RBI. The portfolio in investment by Foreign Institutional Investors (FII) in primary and secondary markets has been increased from 24% to 40% of
issued share capital of any company, subject to the approval of
the Board of Directors of the concerned company. This limit
is further raised to 49% in 2001-2002 budget. FIIIs have been
directed to allocate their total investments between equity and
debentures in the ratio of 70:30.

8. The Government has signed the 13th April, 1992 MIGA
(Multilateral Investment Guarantee Agency) convention to
assure protection to foreign investors.

9. The Government has allowed all the industries except a few
(only 6 industries that is electronics, aerospace & defence,
industrial explosive and hazardous chemical, medicines,
Alcoholic drinks, Ciggerattters & Sigars) Where foreign direct
investment can be made without approval from Foreign
Investment Promotion Board.

3.5 FOREIGN TECHNOLOGY POLICY

Foreign technology collaborations are permitted either though
the automatic route under delegated powers exercised by the RBI, or
by the Government. However, cases involving industrial license/small
scale reserved items do not qualify for automatic approval and would
require consideration and approval by the Government. Automatic
route for technology collaboration would also not be available to those
who have, or had any previous technology transfer/trade-mark
agreement in the same or allied field in India. Further, automatic
approvals for EOU/EHTP/STP units are governed by the provision
under their respective schemes.

Royalties and Technical know Fees under Automatic Approval
Route.

The Reserve Bank of India, through its regional offices, accords
automatic approval to all industries for foreign technology
collaboration agreements subject to:

2- Union Budget 2002 (http://India Budget nic in)
(i) The lump sum payments not exceeding US $ 2 Million;
(ii) Royalty payable being limited to 5 per cent for domestic sales and 8 per cent on sales over a 10 year period; and
(III) The period for payment of royalty not exceeding 7 years from the date of commencement of commercial production, or 10 years from the date of agreement, whichever is earlier. (The aforesaid royalty limits are net of taxes and are calculated according to standard conditions).

3.6 JOINT VENTURES

Joint ventures is one of the important ways of entering the international market. However, the term joint venture is commonly used to refer to the sharing between foreign firm (s) and Indian firm (s) of the ownership and control in an economic/industrial enterprise.

Francis Cherumilam³ viewed that broadly, joint venturing encompasses many diverse type of overseas operation such as :

i. Sharing of ownership and control in economic enterprise;
ii. Licensing agreement;
iii. Contract manufacturing;
iv. Management contracts

Licensing is a method of overseas operation whereby a company in one country (the licensor) enters into an agreement with a company (the licensee) in another country to use the manufacturing, processing, trade mark or name patents, technical assistance, marketing knowledge, trade secrets or some other skills provided by the licensor.

Under the contract Manufacturing, the company engaged in international marketing contracts with firms in foreign countries to

³- NRIs Investments, Taxation and FEMA Page No. 542
Noshir M. Lam, Mayoor Nayak
manufacture or assemble its products while retaining the responsibility for marketing these products.

Under management contracting, the international marketer supplies management know-how for a company in foreign country, for which the capital is provide by investor of the country in which the Company is located.

Joint Venture have certain advantages. They facilitate inflow of foreign direct investment and transfer of technology. They held accelerate industrialisation and economic development of the host country. The participation of Indian Company reduces the extent of foreign control and the associate adverse effect.

As we know that Government of India initiated a service of economic reforms in order to attract foreign investment and removed bureaucratic controls. As a result of liberal policies of Indian Government, more and more joint ventures are being set up in India. In this back ground the rules and regulations for setting up joint ventures in India have assumed greater significance.

A country wise break-up of foreign investment approved from the years 1990-92 is presented below to provide a comparative picture:

**TABLE – FOREIGN INVESTMENT APPROVALS**

<table>
<thead>
<tr>
<th>Country</th>
<th>Rs. In Million</th>
<th>Percentage Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>344.8</td>
<td>1858.5</td>
</tr>
<tr>
<td>Switzerland</td>
<td>135.0</td>
<td>355.0</td>
</tr>
<tr>
<td>Japan</td>
<td>50.0</td>
<td>527.1</td>
</tr>
<tr>
<td>The U.K.</td>
<td>90.6</td>
<td>321.0</td>
</tr>
<tr>
<td>NRIs</td>
<td>52.4</td>
<td>197.0</td>
</tr>
<tr>
<td>Others</td>
<td>610.4</td>
<td>2082.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1283.2</strong></td>
<td><strong>5341.1</strong></td>
</tr>
</tbody>
</table>

4- Economic Survey, 1992-93
3.7 JOINT VENTURE POLICY

In 1985 when Shri Rajeev Gandhi became the Prime Minister of India, he wanted to see India more advanced in technical field. Govt. of India announced the Technology Policy and the basic objectives of the policy are the developments of indigenous technology, efficient absorption and adaptation of imported technology appropriate to national priorities and resources.

The aim of the policy, inter-alia, include attaining technological competence and self–reliance, identifying obsolescence of technology in use and arrange for modernization of both equipment and technology and develop technologies which are internationally competitive particularly those with export potential.

Therefore with a view to injecting the desired level of technological dynamism in Indian industry and for promoting an industrial environment where the acquisition of technological capability receives priority, foreign technology induction is encouraged both through FDI and through foreign technology collaboration agreements. Foreign technology collaborations are permitted either through the automatic route under delegated power exercised by the RBI, or by the Government.

3.8 PROTFOLIO INVESTMENT POLICY

In 1980 the Govt. of India realised that the policy of attracting foreign investment in India as a vehicle of transfer of sophisticated technology was not successful in attracting sufficient foreign investment badly needed by India. Therefore, vide press Note dated October 28, 1980 the Govt. of India declared the special facilities for OED countries.

The oil exporting developing countries (OEDC) are Algeria, Taharain, Equador, Egypt, Gabon, Indonesia, Iran, Iraq, Kuwait,
Libya, Malaysia, Mexico, Nigeria, Oman, Qatar, Saudi Arabia, United Arab Emirates and Venezuela.

Under this scheme, individual companies and bodies corporate, semi-government bodies and affiliated autonomous agencies, banks and financial institutions, non-banking financial institutions, trusts etc., from the OED Group of Countries are eligible to make investment in the equity of the new ventures without being linked with technology transfer in the following sectors.

1. New manufacturing companies in priority industries
2. New Companies in any field manufacturing predominantly for exports.
3. New Hotel and new hospital projects.

Apart from such an investment being in the form of equity contribution it can also be in the form of loans such as direct loan, debentures and bonds etc.

The remittances of interest/dividend etc., are fully permitted subject to the payment of Indian taxes. Similarly, repatriation of capital along with appreciation in capital stock if any, also freely permitted subject to Indian taxes. The transfer of shares by the OEDS investor is also permitted. It may also be mentioned that participation by overseas investors in management is also permissible. Participation by overseas investors in management is and would be governed by the provisions of the companies Act.

INVESTMENT BY NRI ON REPATRIATION BASIS IN SHARES/convertible debentures UNDER PORTFOLIO INVESTMENT SCHEME

Non-resident Indians (NRIs) have been permitted to make investments in the shares/convertible debentures of an Indian company under the portfolio investment under the scheme would have to be made in the form of purchase from the open market, that
is, through recognized stock Exchange and not in the initial issues by
and Indian company. The rules governing such investments are
specified in the schedule-3 to the foreign exchange management
(Transfer or Issue of Security by a Person Resident Outside India)
Regulations. 2000. OCBs are not allowed to make fresh investment in
India under the portfolio investment scheme by vide Notification No.

PORTFOLIO INVESTMENT SCHEME FOR FIIS

Schedule 2 of the Regulation 5(2) of Notification No. 20/RB-
2000 dated 3rd May 2003 deals with the provisions relating to
Portfolio investment by FIIs. FIIs such as pension Funds, Investment
Trusts, Asset Management Companies, etc., who have obtained
registration from SEBI, are permitted to invest on full repatriation
basis in the Indian Primary and Secondary Stock Markets (including
OTCEI) as well as in unlisted, dated Government securities, Treasury
Bills and Units of Domestic Mutual Funds without any lock-in period.

Actual delivery of securities essential

The investment must involve taking deliveries of the shares
purchased and giving deliveries of shares sold.

In other words, there must be actual purchase and actual sale
under the scheme. The idea is to curb speculative purchase and sales
not involving actual delivery of securities.

Payment for purchases of securities

The OCB shall make the payment for purchase of
shares/convertible debentures by inward remittance in Foreign
Exchange through Normal Banking Channels or out of funds held in
NRE/FCNR account maintained in India if the shares are purchased
on Repatriation basis: if the purchase is on non-repatriation basis,
there must be actual inward remittance of funds or the payment must

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5- "NRIs Investment, Taxation & FEMA" Noshir M. Lam, Mayur Nayak Page 529
be made out of the funds held in NRE/FCNR/NRO/NRNR/NRSR account of the NRI concerned maintained in India.

**Report to be submitted to Reserve Bank by authorised dealer**

The link office of the designated branch through whom purchases/sale is taking place is under obligation to furnish to the Chief General Manager of the Reserve Bank of India (ECD), Central Office Mumbai, a report on daily basis on portfolio Investment Scheme (PIS) transactions undertaken by it: such report should be furnished on line, or on floppy or in hard copy in a format supplied by the Reserve Bank.

**PROCEDURE FOR PORTFOLIO INVESTMENT**

One the basic terms of investment are agreed upon between Indian entrepreneur and the OED countries investor, the Indian entrepreneur will be responsible for securing necessary approvals. A single agency has been designated to deal with all such cases. Application for such projects should be made to the Secretariat for Industrial Approvals, Ministry of Industry, Udyog Bhawan, New Delhi. They are considered by the Project Approval Board (PAB). Under the present regulations, all such projects must be cleared within 120 days of the receipt of the application.

The scheme has largely failed to evoke any response from OED countries of one looks at the number of investors.

**3.9 (A) FREE TRADE ZONE/EXPORT PROCESSING ZONE**

**Concept of FTZ/EPZ**

The expression "Free Export Processing Zone" (FEPZ) can possibly be defined as "an administratively and sometimes geographically defined area, enjoying special status allowing for the
free import of equipment and other materials to be used in the manufacture of goods earmarked for export. The special status generally involves favourable legal provisions and regulations pertaining mainly to taxation. Both the above constitute for foreign investments"

International Scene of FTZ

So the establishment of Free Trade Zone in recognised all over the world as one of the technique of boosting exports. They have contributed substantially in the phenomenal success derived by the countries in the export field. At present there are about 400 free trade zones, free ports and transit zones in the world. USA alone has 69 free trade zones and 12 special purpose sub-zones. On the other hand even a Communist country like China has three free trade zones at Tianjin, Shenzhen and Zhuhai in which foreigners can have 100% owned companies and are free to dismiss inefficient workers. Considering all these aspects Govt. of India also has established 7 FEPZ.

Free Trade Zones in India

Free Trade Zones in India provide vast opportunities for investment by non-resident of India origin/nationality. At the moment India has seven Free Trade Zone/export processing zone. They are:

1. Kandla Free Trade Zone (KAFTZ) (Gujrat)
2. Santacruz Electronic Export Processing Zone (SEEPZ) (Mumbai)
3. Chennai Export Processing Zone (MEPZ) (Tamilnadu)
4. Noida Export Processing Zone (NEPZ) (Uttar - Pradesh)
5. Cochin Free Trade Zone (CETZ) (Kerala)
6. Falta Export Processing Zone (FEPZ) (West Bengal)
7. Vishakapatnam Export Processing Zone (VEPZ) (Andhra Pradesh)
Except the above, India has one transit zone namely Calcutta Transit Zone for Nepal. The details of the above FTZs are given hereunder:

1. **KANDLA ZONE (KAFTS)**: KAFTS is situated at a distance of six miles from the port of Kandla in the Gulf of Kutch, leading into the Arabian Sea is the State of Gujarat. The distance between Bombay and KAFTZ is approximately 450 km.

2. **SANTACRUZ ELECTRONIC ZONE (SEEPZ)**: Santacruz Airport in the city of Bombay. Bombay is one of the best ports in India. In SEEPZ only Electronic Industries are allowed to be set up.

3. **CHENNAI ZONE (MEPZ)** - MEPZ is located in the south of Chennai City near Tambaram at a distance of 8 kms from Chennai Meenambakkam airport and 24 kms from Chennai Harbour. Madras is known for its network of road transport system. Any type of industry can be set up in the zone. Chennai has been a leading exporter of garments, auto industry, products, light engineering products, marine products, coffee, handloom and handicrafts.

4. **NOIDA ZONE (NEPZ)** - NEPZ is situated at Noida in the State of Uttar Pradesh. Nodia is extremely close to New Delhi which is the Capital of India. Any type of industry can be set up in NEPZ.

5. **COCHIN FREE TRADE ZONE (CEPZ)** - Cochin in the industrial capital of Kerala. It is a plot of about 100 acres near civil lines at Thekkakar, Ernakulam. Any type of industry can be set up in this zone.
6. **FALTA ZONE (FEPZ)** – FEPZ is situated in the State of West Bengal near Calcutta – Haldia Port. All type of industry can be set up in this zone.

7. **VISHAKAPATNAM ZONE (VEPZ)** – VEPZ is one of the most advanced and big port in India situated in the State of Andhra Pradesh. It is near the border of State of Orissa as well as Madhya Pradesh. All type of industry can be set up in this zone.

**Incentive and Concession**

The important incentives and concession offered the FTZ/EPZ are detailed below:

A. **Foreign Equity** – The statement on Industrial Policy authorises the Govt. to consider fully owned foreign companies in FEPZs.

B. **Repatriation of Capital** – Foreign Capital invested in FEPZ may at any time be repatriated with any capital appreciation in the value of investment.

C. **Remittance of Profit** – Remittance of profit and dividends earned by foreign investors/NRIs in the zone is allowed freely subject to prevailing income-tax laws.

D. **Domestic Sale** – Upto 25% of production is permitted to be sold in the domestic market tariff area, against valid import licence on payment of appropriate duties.

E. **Tax Holidays** – FEPZ units are completely exempt from tax on their profits for an initial period of five years.

F. **Waiver of licensing for import** – Total waiver of licensing for import of capital goods and other production materials is available in FEPZs. There is an Open General Licence System (OGL) which means that all goods can be imported to the zone without any licence.
G. Duty Free Import of Capital Goods – Duty Free import of capital goods and equipment is allowed subject to ceiling of investment.

H. Exemption from Central Excise – Exemption is granted from central excise duties and other levies on products manufactured within the zone.

I. Exemption from Customs Duty – Exemption is granted from Customs duty on imported raw materials, components, consumables, spares, tooling and packing materials.

J. Domestic procurement – Capital goods and all other inputs supplied to the zone from the rest of the country are treated as deemed exports and are eligible for all export benefits. This means easy availability of high quality materials at international prices and at zero inventory.

K. Foreign Exchange – Foreign Exchange including blanket permission for business fields abroad is granted.

L. Concessional rate of interest – Export Finance from Commercial banks on concessional rates of interest is available.

M. Assistance from export credits – Assistance is given from export credits and guarantee corporation (ECGC) by way of credit risk insurance against loss in export of goods and services and guarantee of banks and financial institutions to enable exporters to obtain better facilities.

N. Railway Priority – Railway priority for export tariff and export consideration is respect of raw materials intended for export production as well as in respect of end-products is given.
O. Low Cost man - power – The skilled manpower is available at extremely low wages companies to many of the western countries.

P. Packing Credit facility – Packing Credit Facility for a period of 180 days on production of firm export orders or letters of credit is available.

Q. Exemption from stamp duty – Generally State Government in which free trade zones are located grant exemption from stamp duty.

R. Subsidies – Subsidy on feasibility study as well as subsidy on capital investments, railways etc. are available.

S. Financial assistance – The financial assistance in the form of medium or long-term loans, both in rupees and in foreign currency, underwriting of equity, preference or debenture capital guaranteeing of deferred payments in respect of machinery imported from abroad or purchased in India and guaranteeing of loans raised in foreign currency from foreign financial institutions are available to the FEPZ units.

3. 9 (B) HUNDRED PERCENT EXPORT ORIENTED UNIT (EOU)

In order to bridge the increasing deficit in the balance of trade and running down of exchange resources, the Government of India in December, 1980, decided to set up a scheme for 100 percent export oriented units.

With a view to enabling such units to meet the falling demand in international market in terms of price, quality, precision etc. demand in international market in terms of price, quality, precision etc., certain important concessions were also announced. Simultaneously 100% export oriented unit implies and industrial unit offering for export its entire production excluding the permitted level
of rejects. A 100 percent export oriented unit can be set up anywhere in India. The industries in which the 100% export units are allowed to be set up would be such in respect of which the relevant Export Promotion Council has already considered the export potential and has stipulated export targets.

However, the industries should not be such as are subjected to export control quota ceilings which can be reached by existing units in the country. The minimum value added should be 20 percent. The raw materials procured from domestic markets is also considered as imports for computation of value added.

Basic difference between the export processing zone unit and 100 percent export oriented unit is that the former can be set up only in specified areas notified as free trade zone (FTZ) whereas later can be set up anywhere in India.

Foreign investors and non-resident Indians can set up such type of units to avail the incentives and facilities given to these units.

**Incentives, concessions and facilities**

The incentives, concessions and facilities for 100% Export Oriented Units are as under –

**a. Import facilities** – The 100% export oriented units will be allowed duty free import of all capital goods, components and raw materials, etc. required for the manufacture of the product. In addition these units are also allowed to import capital goods against free foreign exchange or bilateral credits in such a way that there is no undue rise in the cost of the unit.

**b. Exemption from excise duty** – Exemption from excise duty and other central levies is granted to the products of 100% export units. In addition, no excise duty is levied also
on the indigenously procured capital goods, components and raw materials used by these units.

c. **Sale of Rejects** – Rejects upto 5 percent or such percentage as may be fixed by the board are allowed to be sold in the domestic market.

d. **Indigenous Sale** – A 100% percent export unit would be allowed to sell 25% of its production in the home market. However, all indigenous sales will have to be consistent with the import policy. These sales would be against the import licences held by the buyers of general currency areas. The purchasers of such goods shall be liable to pay import duty, sales tax and other taxes and duties leviable.

e. **Tax Holiday** – Complete tax exemption can be claimed in respect of any five consecutive assessment year (Tax Holiday period) falling within a period of 8 years beginning with the initial accounting year in which manufacturing has begun.

f. **Concessional Finance** – Pioneer financial institutions, IDBI, ICICI and IFCI are providing a rebate of 1.5% on the applicable rate of interest depending on their export obligations.

**Procedure for setting up an 100% EOU**

A Board under the Chairmanship of Commerce Secretary has been set up to give all such units a single point clearance with regard to industrial licensing, foreign collaboration and import of raw materials etc. In the event of 100% E.O.U. desirous of foreign collaboration should submit an application in form FC. If its from non-resident of Indian Origins/Nationality, NRI should be written in Bold Letters on the right top of the application. For the import of capital goods no separate application is required.
Completed applications in 10 copies in the prescribed form, entitles "Application form for 100% EOUs/EPZ Units" are to be submitted to the SIA for 100% EOUs or to the DCs of the concerned EPZs. The application will be accompanied by the crossed demand draft for Rs. 1,000/- in favour of the pay and Accounts Officer, Department of Industrial Development, Ministry of Industry, payable at State Bank of India, Nirman Bhawan Branch, New Delhi. All imports should be mentioned in foreign exchange and rupee terms and the list of imported capital goods should be enclosed. If the application is found to satisfy the conditions mentioned in the proceeding para, a Letter of Approval shall be issued within two weeks by the SIA or the DC, as the case may be to the entrepreneur enlisting the parameters of the approved project and setting out the obligations and conditions. Copies of this letter of approval shall be endorsed by the SIA and the DCs, to each other, to the Ministry of Commerce, the Central Board of Excise and Customs, the Collector of customs (within whose jurisdiction the unit is located) the Reserve Bank of India and the "Administrative Ministry". If the application does not satisfy the conditions of automatic approval it will be remitted to Board of approvals.

**Green Cards Scheme**

100% EO Units are given priority treatment in disposal of their problems. Entrepreneurs holding these cards get a preferential treatment from State Government and other authorities in respect of land, power, finance, telex and other facilities. Green Cards are issued to these units for identification. The Development Commissioner issues Green Cards containing particulars of the unit, its name, address, location and details of products manufactured. Now the green cards are issued immediately after the units execute legal undertaking with the Regional Licensing Authorities. The Green Cards are valid for two years from the date of their issue. Their extension beyond this period is decided by the Development Commissioner only
if the unit shows technical progress. Application for issue of Green Card should be made in the prescribed form.

3.10 STATUS OF FOREIGN COLLABORATION IN INDIA

The inflow of foreign investment or NRIs investment and the transfer of technology into the country as mentioned earlier, takes place mainly through foreign collaboration. The approval of a designated authority has always been necessary in all cases of foreign collaboration. Therefore, trends in the approvals of foreign collaboration. The total of all foreign collaborations – financial as well as technical approved annually is when to reflect trends in technology – transfer from abroad. The approval reflects expected inflows and should not be confused with actual inflows.

The number of foreign collaboration approved before the Economic reform by Govt. of India as follows:

**TABLE : 3.10.1 FOREIGN COLLABORATIONS IN INDIA**

1956 – 1987

<table>
<thead>
<tr>
<th>Period</th>
<th>Approvals of foreign collaboration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1956 – 1960</td>
<td>796</td>
</tr>
<tr>
<td>1961 – 1965</td>
<td>1643</td>
</tr>
<tr>
<td>1966 – 1970</td>
<td>832</td>
</tr>
<tr>
<td>1971 – 1975</td>
<td>1397</td>
</tr>
<tr>
<td>1976 – 1980</td>
<td>1644</td>
</tr>
<tr>
<td>1981 – 1985</td>
<td>3428</td>
</tr>
<tr>
<td>1986</td>
<td>957</td>
</tr>
<tr>
<td>1987</td>
<td>853</td>
</tr>
</tbody>
</table>

From the above data we can say that after 1980 the number of foreign collaborations has increased considerably because of Govt. of India's policy to attract foreign investment. However, the above data could not draw a clear cut trend in foreign collaboration. For knowing
exactly the impact of New Industrial Policy 1991, we may utilize our data on annual approval of foreign collaboration in four distinct growth phases.

The first phase until the mid sixties is marked by sluggish growth. This followed by the second phase of stagnation in growth until the end of seventies the third phase during the eighties has witnessed gradual recovery in growth. Finally there is the ongoing fourth phase of rapid growth beginning from 1991. The annual approval of foreign collaborations averaged 244, 239, 724 and 1627 cases respectively during the four growth phases. As it is shown by table given below :

**TABLE 3.10.2 GROWTH PHASES IN FOREIGN COLLABORATION APPROVALS**

<table>
<thead>
<tr>
<th>Phases</th>
<th>Average number of approvals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All collaborations</td>
</tr>
<tr>
<td>19586-65</td>
<td>244</td>
</tr>
<tr>
<td>1966-77</td>
<td>239</td>
</tr>
<tr>
<td>1980-90</td>
<td>724</td>
</tr>
<tr>
<td>1991-95</td>
<td>1627</td>
</tr>
</tbody>
</table>

From the scrutiny of the above mentioned table it is evident that the proportion of cases involving financial collaboration in the total approvals has increased from an annual average of 17 percent in the phase to 24 percent in the third phase and further to 51 percent in the fourth phase.

So we may draw two conclusion from the number of approvals that first, foreign investment inflows and technology transfer increased considerably after the announcement of New Industrial Policy.
policy 1991. Second economic liberalization tends to improve the inter-
relationship between technology transfer and foreign investment.

Since 1991 after the liberalization and reforms process was
initiated the trends in foreign direct investments may be given as
under:

**TABLE : 3.10.3 TOTAL FOREIGN DIRECT INVESTMENT IN INDIA?**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Direct Investment</td>
<td>129</td>
<td>2696</td>
<td>2462</td>
<td>2155</td>
<td>2339</td>
<td>3904</td>
</tr>
<tr>
<td>(a) RBI route</td>
<td>-</td>
<td>136</td>
<td>179</td>
<td>171</td>
<td>454</td>
<td>767</td>
</tr>
<tr>
<td>(b) SIA/FIPB route</td>
<td>66</td>
<td>1922</td>
<td>1821</td>
<td>1410</td>
<td>1456</td>
<td>2221</td>
</tr>
<tr>
<td>(c) NRI (40% &amp; 100%)</td>
<td>63</td>
<td>639</td>
<td>62</td>
<td>84</td>
<td>67</td>
<td>35</td>
</tr>
<tr>
<td>(d) Acquisition of shares</td>
<td>-</td>
<td>125</td>
<td>400</td>
<td>490</td>
<td>362</td>
<td>881</td>
</tr>
<tr>
<td>(B) Portfolio investment</td>
<td>4</td>
<td>3312</td>
<td>-61</td>
<td>3026</td>
<td>2760</td>
<td>2021</td>
</tr>
<tr>
<td>(a) FII</td>
<td>-</td>
<td>1926</td>
<td>-390</td>
<td>3135</td>
<td>1847</td>
<td>1505</td>
</tr>
<tr>
<td>(b) Euro Equities</td>
<td>-</td>
<td>1366</td>
<td>270</td>
<td>768</td>
<td>831</td>
<td>477</td>
</tr>
<tr>
<td>(c) Other</td>
<td>4</td>
<td>20</td>
<td>59</td>
<td>123</td>
<td>82</td>
<td>39</td>
</tr>
<tr>
<td>**Total (A +B)</td>
<td>133</td>
<td>6133</td>
<td>2401</td>
<td>5181</td>
<td>5099</td>
<td>5925</td>
</tr>
</tbody>
</table>

TABLE 3.10.4 FDI INFLOWS IN SELECT ASIAN ECONOMIES

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>World</td>
<td>386140</td>
<td>478082</td>
<td>694457</td>
<td>1088263</td>
<td>1491934</td>
<td>735146</td>
</tr>
<tr>
<td>Developed</td>
<td>219908</td>
<td>267947</td>
<td>484239</td>
<td>837761</td>
<td>1227476</td>
<td>503144</td>
</tr>
<tr>
<td>economies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Developed</td>
<td>152685</td>
<td>191022</td>
<td>187611</td>
<td>225140</td>
<td>237894</td>
<td>204801</td>
</tr>
<tr>
<td>economies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asia</td>
<td>93331</td>
<td>105828</td>
<td>96109</td>
<td>102779</td>
<td>133707</td>
<td>102066</td>
</tr>
<tr>
<td>South, East</td>
<td>87843</td>
<td>96338</td>
<td>86252</td>
<td>99990</td>
<td>131123</td>
<td>94365</td>
</tr>
<tr>
<td>and South-East</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. China</td>
<td>40180</td>
<td>442370</td>
<td>43751</td>
<td>40319</td>
<td>40772</td>
<td>46846</td>
</tr>
<tr>
<td>b. India</td>
<td>2525</td>
<td>3619</td>
<td>2633</td>
<td>2168</td>
<td>2319</td>
<td>3403</td>
</tr>
<tr>
<td>c. Indonesia</td>
<td>6194</td>
<td>4677</td>
<td>-356</td>
<td>-2745</td>
<td>-4550</td>
<td>-3277</td>
</tr>
<tr>
<td>d. Korea</td>
<td>2325</td>
<td>2844</td>
<td>5412</td>
<td>9333</td>
<td>9283</td>
<td>3198</td>
</tr>
<tr>
<td>e. Malaysia</td>
<td>7296</td>
<td>6324</td>
<td>2714</td>
<td>3895</td>
<td>3788</td>
<td>554</td>
</tr>
<tr>
<td>f. Philippines</td>
<td>1520</td>
<td>1249</td>
<td>1752</td>
<td>578</td>
<td>1241</td>
<td>1792</td>
</tr>
<tr>
<td>g. Singapore</td>
<td>8608</td>
<td>10746</td>
<td>6389</td>
<td>11803</td>
<td>5407</td>
<td>8609</td>
</tr>
<tr>
<td>h. Thailand</td>
<td>2271</td>
<td>3626</td>
<td>5143</td>
<td>3561</td>
<td>2813</td>
<td>3759</td>
</tr>
</tbody>
</table>

From the table given above, In 2001, developing economies of Asia accounted for around 14 percent of total global FDI inflows China has been the largest recipient of FDI inflows among developing economies of Asia with its share in total FDI of these economies increasing from 43 percent in 1996 to almost 46 percent in 2001. India, though way behind China attracting FDI inflows, has marginally improved its share in total FDI inflows of developing economies of Asia from 2.7 percent in 1996 to 3.3 percent in 2001. There was a sharp rise in volume of FDI inflows in the Indian economy in 2001 – 02 (Table 3.10.3) thus its growing attractiveness as an investment destination.