2010 Review

FOREIGN INVESTMENT PROMOTION BOARD





सत्यमेव जयते

Department of Economic Affairs
Ministry of Finance
Government of India

Contents

सत्यमेव जयते

R. Gopalan
Secretary

भारत सरकार
वित्त मंत्रालय
आर्थिक कार्य विभाग
नॉर्थ ब्लाक, नई दिल्ली - 110001
GOVERNMENT OF INDIA
DEPARTMENT OF ECONOMIC AFFAIRS
NORTH BLOCK, NEW DELHI – 110001
Tel. : 23092611 Fax : 23094075
E-mail : secy-dea@nic.in

FOREWORD

Foreign Investment Promotion Board (FIPB) has been set up by the Government of India to ensure expeditious clearance of foreign investments proposals in various sectors. The Board is the apex inter-ministerial body of the Central Government that deals with proposals relating to Foreign Direct Investments (FDI) into India for projects/sectors that do not qualify for automatic approval by the Reserve Bank of India (RBI) or are outside the parameters of the existing FDI policy.

2. The main objective of the FIPB is to encourage FDI in India. Towards this goal, FIPB makes constant endeavor to ensure that Government decisions are taken and communicated within the specified time frame of six weeks, from receipt of the proposal. However, in cases that require security clearance such as proposals relating to defence sector, telecom and investments from Bangladesh, the time taken is generally longer. During the year 2010, the Board met 14 times to consider 502 proposals, including the deferred proposals. While the FIPB maintained its periodicity to consider the application proposals on a regular basis, it conducted one special meeting (157^{th} meeting on August 06, 2010) to accord personal hearings in respect of an application filed by M/s Tinna Finnex Limited and as per the directions of the Delhi High Court.

3. The task of examination of proposals by FIPB has been greatly facilitated since April, 2010 as Department of Industrial Policy and Promotion has brought out a consolidated circular on FDI policy. This investor friendly measure of providing the entire gamut of FDI policy relating to various sectors at one place and its six-monthly periodic updation has simplified the process of obtaining FIPB approval. Accordingly, Circular 1 of 2010 and Circular 2 of 2010 were issued on April 1, 2010 and October 1, 2010 respectively.

4. During 2010, FIPB has launched e-filing facility to eliminate the requirement of industry-FIPB interface. FIPB stands committed to reduction of paperwork and use of IT for transparent and efficient decision making process. However, I understand that the initial response of the industry to e-filing has been lukewarm. I am sure that FIPB would strive to remove the glitches expeditiously so that the trade can reap the full benefit of the online facility.

5. The current review document is the fourth since 2007 and carries forward the tradition of admission of FIPB's strengths and failings in public domain. It is also an acknowledgement that we are open to discussion, debate and dialogue within ourselves and with those outside. In this regard, one of the areas of concern during the year was the repeated deferments in many cases, mainly pertaining to those that require security clearance. I am sure that FIPB and concerned ministries would soon work out a mechanism to ensure prompt decision in such cases without compromising the security concerns.

6. I take this opportunity to compliment the FIPB secretariat for the review document, which nevertheless goes hand-in-hand with the hard-work and efficiency displayed in handling the proposals throughout the year. I look forward to FIPB progressing in its path and achieving its objective of FDI promotion in the country.

September 01, 2011 **(R Gopalan)**

Acknowledgement

1. The FIPB Review Document 2010 is fourth in the series of such annual reviews and seeks to carry forward the initiative of in-house stock taking of administrative and policy issues relating to foreign direct investments in India.

2. During the year, the FIPB Secretariat witnessed the passing of baton from Shri Prabodh Saxena, who relinquished the charge of Director, FIPB on his promotion to Joint Secretary, Department of Economic Affairs. I was entrusted with the challenging assignment in the month of August, 2010 and the initial months were full of learning.

3. The Secretariat has been privileged to be guided by the then Joint Secretary (Infrastructure and Investment) Shri Govind Mohan, Additional Secretary, Smt. L. M. Vas and Additional Secretary and Director General, Directorate of Currency, Shri Bimal Julka. Shri Ashok Chawla, Finance Secretary provided the overall guidance to the Board as Chairman and helped bring out the best in all of us in his own inimitable ways. The Secretariat is greatly indebted to the senior officers for their benevolent guidance in streamlining the working of the Board.

4. The work of the Secretariat demands a mix of technical understanding and ready knowledge of precedence and evolution of policy. The presence of Shri P.K. Bagga, Officer on Special Duty ensures that this twin benefit is available at hand. FIPB is an inter-ministerial body and it benefits from interaction with various officers working on the proposals in the administrative ministries, most notably Department of Industrial Policy and Promotion, Department of Revenue and Ministry of Home Affairs.

5. Shri A. K. Srivastava, Under Secretary and Section Officers, Shri Vijay Kumar, Shri Bhaskar Chakraborty and Shri Santosh Kumar provide the base level solidity to the work being performed by FIPB. I thank them for their sustained effort at improving the performance of FIPB. I particularly commend the work of Shri Vijay Kumar in preparing the minutes of the FIPB within such a tight timeline on regular basis.

6. During the year, FIPB has engaged two young and dynamic financial analysts, Ms. Payal Dey and Ms. Shilpi Bhatia for a period of one year to provide additional technical inputs in the processing of the FIPB proposals. They have been doing a commendable work and brought about a greater enthusiasm in the Unit. They have also played an important role in the preparation of this Review document.

7. The FIPB Unit looks at the year gone by with a sense of satisfaction and awaits the next one with the anticipation of greater achievements. The Unit commits itself to the goals set by Shri R. Gopalan, Secretary (Economic Affairs) and chairman of FIPB.

Vijay Singh Chauhan
Director (FIPB)
Department of Economic Affairs

Abbreviations

ADR	American Depository Receipt
CCEA	Cabinet Committee on Economic Affairs
CCRPS	Commutative Convertible Redeemable Preferential Shares
DIPP	Department of Industrial Policy and Promotion
DoC	Department of Commerce
DoR	Department of Revenue
DoT	Department of Telecommunication
ECB	External Commercial Borrowings
ED	Directorate of Enforcement
FCCB	Foreign Currency Convertible Bond
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FERA	Foreign Exchange Regulation Act, 1973
FII	Foreign Institutional Investor
FIPB	Foreign Investment Promotion Board
FVCI	Foreign Venture Capital Investor
GDR	Global Depositary Receipt
IPO	Initial Public Offer
JV	Joint Venture
KYC	Know Your Customer
MHA	Ministry of Home Affairs
MIB	Ministry of Information & Broadcasting
MoD	Ministry of Defence
MoIA	Ministry of Overseas Indian Affairs
MSME	Ministry of Micro, Small & Medium Enterprises
NBFC	Non-Banking Financial Company
NCRPS	Non-Convertible Redeemable Preferential Shares
NOC	No Objection Certificate
NRI	Non Resident Indian
OCB	Overseas Corporate Bodies
OEM	Original Equipment Manufacturers
PAB	Project Approval Board
PCCPS	Partly Convertible Cumulative Preference Shares
PN	Press Note
PSRA	Private Security Agencies (Regulation), Act 2005.
RBI	Reserve Bank of India
SEBI	Securities Exchange Board of India
SME	Small & Medium Enterprise
SPV	Special Purpose Vehicle
VCF	Venture Capital Fund
WOS	Wholly Owned Subsidiary

Introduction

The Foreign Investment Promotion Board (FIPB), housed in the Department of Economic Affairs, Ministry of Finance, is an inter-ministerial body, responsible for processing of Foreign Direct Investment (FDI) proposals in India. The Board offers a single-window mechanism in respect of FDI proposals, which require government approval and are not permissible under the automatic route as per the extant FDI Policy, as formulated by Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry.

2. More specifically, the role of the FIPB is to examine and make recommendations regarding the proposals for foreign direct investment as per the extant FDI policy, Press Notes and other related notified guidelines, for approval by the Finance Minister or Cabinet Committee on Economic Affairs (CCEA), as applicable. In this processing, FIPB is guided by the principles of accessibility, transparency and expeditious decision. By virtue of its experience in implementation of the FDI policy, it provides useful and significant inputs for FDI policy making.

Genesis of FIPB

3. **Approvals under PMO:** FIPB was initially constituted under the Prime Minister's Office. The recommendations of the FIPB were approved through a 3-tier approval mechanism, viz. FIPB as a committee of senior officials to examine and make recommendations; Empowered Committee on Foreign Investment (ECFI) chaired by the Finance Minister for deciding on the recommendations of the FIPB for projects in which the total investment in the project was up to ₹300 crore; and the Cabinet Committee on Foreign Investment (CCFI) for deciding on the recommendations of the FIPB for projects in which the total investment was more than ₹300 crore.

4. **Transfer to DIPP in 1996:** The Board was reconstituted in 1996 with the transfer of FIPB to DIPP. The constitution of the FIPB laid down the approval levels as under:

(i) Recommendations of FIPB in respect of the project proposals each involving a total investment of ₹600 crore or less would be considered and approved by the Industry Minister.

(ii) The recommendations in respect of the projects each with a total investment of above ₹600 crore would be submitted to the Cabinet Committee on Foreign Investment (CCFI) for decision.

(iii) The CCFI would also consider the proposals which may be referred to it or which had been rejected by the Industry Minister.

5. **Transfer to DEA in 2003:** The FIPB was transferred to the Department of Economic Affairs (DEA), Ministry of Finance in terms of the Presidential Order dated 30.01.2003. The levels of approval, notified vide Order dated 11.07.1996 were essentially retained, except to the extent that recommendations of FIPB for project-proposals involving a total investment of less than ₹600 crore were considered and approved by the Finance Minister and those with a total investment beyond ₹600 crore were submitted to the CCEA for decision.

The threshold limit for investment in proposals that require approval of the CCEA has been subsequently raised to ₹1200 crore.

6. **Composition of the Board:**

The members of the Board are:

- Secretary to the Government of India, DEA, Ministry of Finance (Chairman)
- Secretary to the Government of India, Department of Industrial Policy and Promotion (DIPP)
- Secretary to the Government of India, Department of Commerce (DoC)
- Secretary to the Government of India (Economic Relations), Ministry of External Affairs (MEA)
- Secretary to the Government of India, Ministry of Overseas Indian Affairs (MOIA)

The Board has the discretion to co-opt other Secretaries to the Government of India and officers of financial institutions, banks and professional experts in industry and commerce, in case, it feels the need to do so. The Secretary, Ministry of Small, Medium and Micro enterprises and the Secretary, Department of Revenue have already been co-opted on the Board.

7. Previous Reviews:

The convention of undertaking a review/ self-reflection of the proposals considered by the Board in a calendar year started four years back. The first review of FIPB decisions, procedures and processes was done in November 2007, covering the period February 2003 to September 2007.

The subsequent reviews were for the respective calendar years. The performance of FIPB during the calendar year 2010 is being covered in the current review.

8. Plan of the Review 2010:

This Review is organized into three sections.

- Section I presents the factsheet of the proposals considered by the FIPB during the period under review as well as earlier periods.
- Section II provides an account of issues that dominated FIPB discussions during the year. In a limited way, it also tries to reflect on the issues that need to be clarified in the FDI policy so that the process can be more objective and transparent.
- Section III includes a review of the FIPB website and facility for e-filing of applications, initiated in the year.

I. Fact Sheet

1. Fact Sheet: February 2003 – December 2010

1.1. FIPB has held 162 meetings since its transfer to the Department of Economic Affairs in the year 2003 and up to December 2010, of which 14 meetings were held during the year 2010. In all 5,365 proposals have been considered by FIPB (These include the proposals which were deferred and placed before FIPB on more than one occasion). FIPB has approved 3,683 proposals with total FDI involvement of ₹2,22,746.21 crore.

1.2. The Table 1 below provides details of the proposals considered by FIPB and recommended for approval of the competent authority during the period from February 2003 to December 2009.

Period	No. of Meetings held	No. of proposals considered	Proposals approved	Proposed inflow of FDI (₹ *in crore*)
February, 2003 to March, 2003	05	183	110	718.18
April, 2003 to March, 2004	34	1191	875	7,492.00
April, 2004 to March, 2005	23	921	728	13,723.00
April, 2005 to March, 2006	15	616	473	12,315.98
April, 2006 to March, 2007	18	422	336	39,612.00
Total	95	3333	2522	73861.16
April, 2007 to September, 2007 (Period covered in Review I)	11	229	158	9241.00
October, 2007 to December, 2007 (Period not covered in Review I)	05	128	83	3270.78
January 2008 to December 2008 (Period covered in Review II)	19	607	408	67924.40
January 2009 to December 2009 (Period covered in Review III)	18	566	300	40411.59
Total	53	1530	949	120847.77
Grand Total	148	4863	3471	194708.93

Table 1: Proposals considered by FIPB till December 2009

2. Fact Sheet (January 2010 – December 2010)

2.1. The Table 2 below provides the statistical details of the proposals brought before FIPB from January 2010 to December 2010. It may be clarified that the number of proposals considered and deferred includes an element of double counting, as a deferred proposal is included in the number of proposals under consideration and a proposal may be deferred on more than one occasion.

Month	No. of meetings held	No. of Proposal considered	Approved	Auto Route	Deferred	Rejected	With-drawn	Noted	Inflow (₹ in crore)
January	1	31	15	-	10	4	2	-	3232.57
February	1	31	13	-	11	7	-	-	1045.61
March	1	40	23	2	8	6	1	-	2325.21
April	1	40	18	-	17	4	-	1	344.33
May	2	95	41	2	36	15	1	2	1981.60
June	0	-	-	-	-	-	-	-	-
July	2	83	30	4	36	13	-	-	4551.15
August	1	1	-	-	-	1	-	-	-
September	1	60	24	-	22	12	2	-	2727.41
October	1	18	6	-	7	5	-	-	5.46
November	1	34	14	-	16	4	-	-	4100.00
December	2	69	23	-	30	8	3	-	7723.93
Total	**14**	**502**	**212**	**8**	**193**	**77**	**9**	**3**	**28037.28**

Table-2: Proposals considered by FIPB in 2010

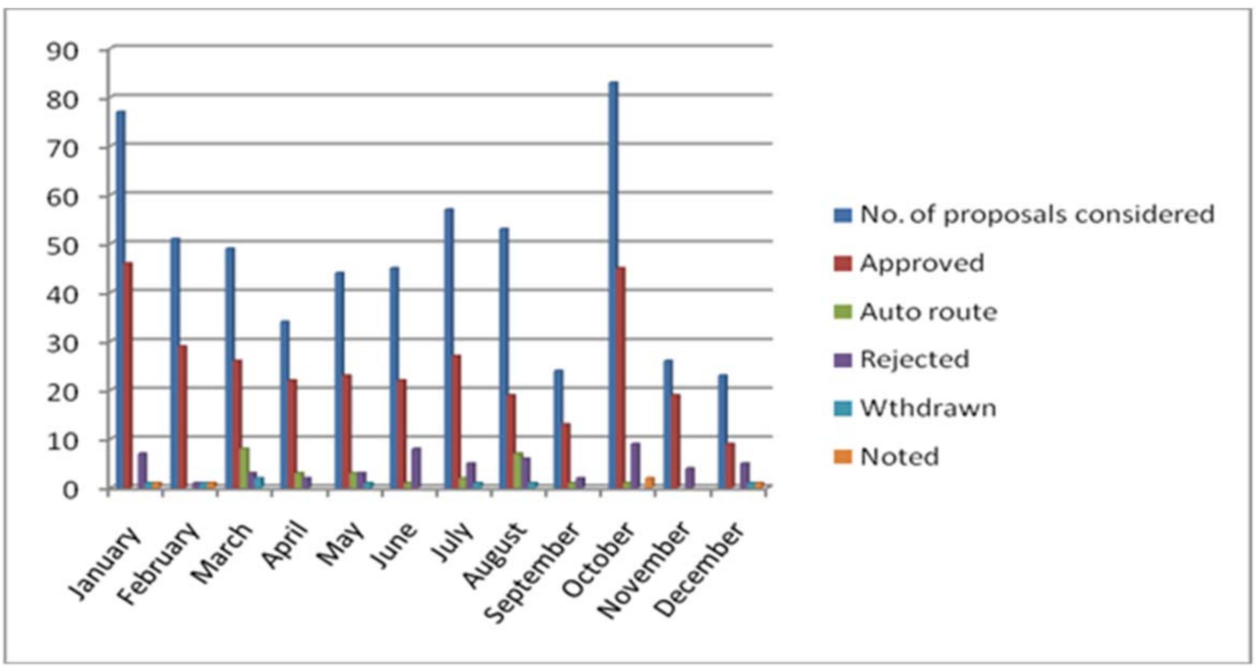

Figure 1: Proposals approved/advised auto route/rejected/withdrawn/noted

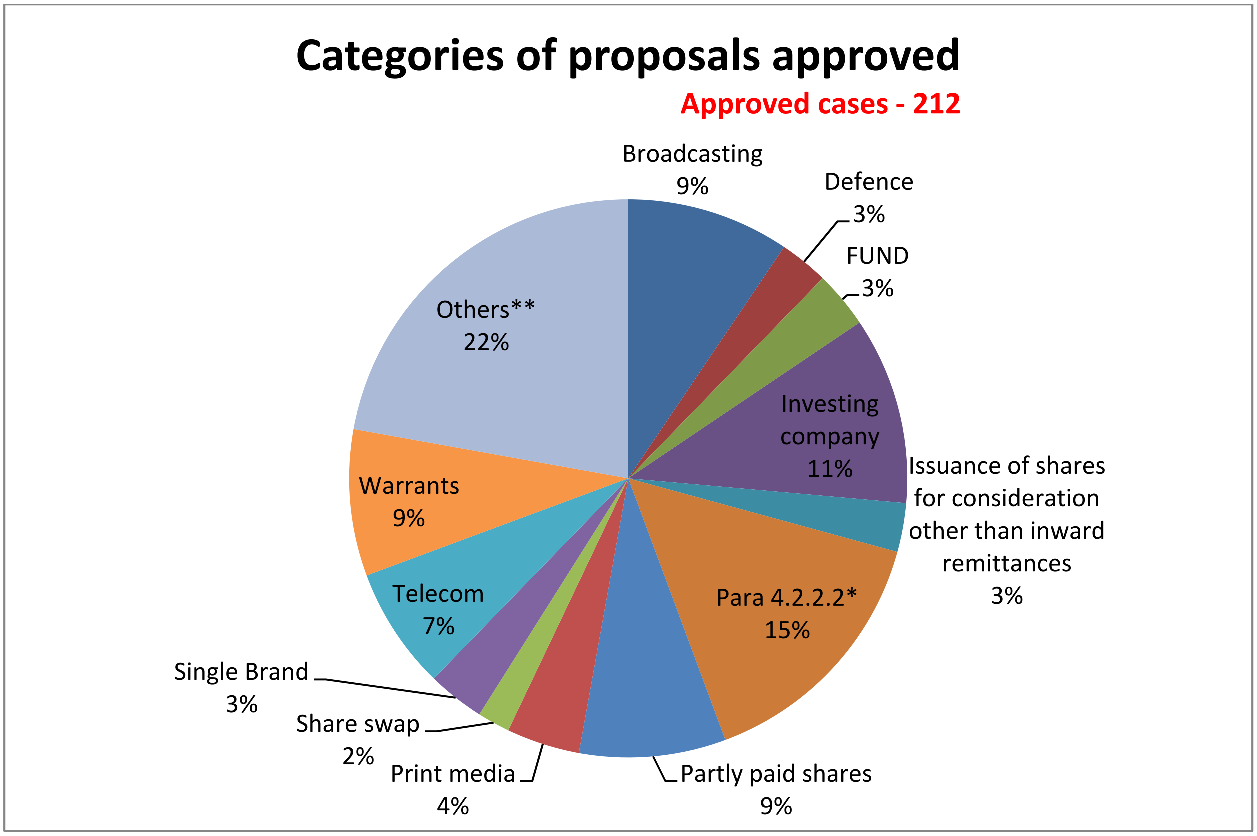

Figure 2: Categories of proposals approved

Explanatory Notes:

* Para 4.2.2.2 refers to proposals wherein the foreign investor had a JV/Technology Transfer Agreement with an Indian partner as on January 12, 2005 and had applied for making investment in another company engaged in the same activity, even in sectors under the automatic route. In terms of para 4.2.2.2 of Circular 1 of 2010 of the Consolidated FDI Policy (erstwhile Press Note 1 of 2005 read with Press Note 3 of 2005), the said investment required FIPB approval.

** Others includes Asset Reconstruction, Aviation, Commodity Broking, Courier Services, Credit Information Company, Primary Dealership, Security Services, Security Market, Tea Sector, Test Marketing, Trading in Commodities, Trading in grains, Voice mail/Audio text services.

** Others also include proposals relating to requirements relating to minimum capitalization, small scale sector, condonation of delay, etc.

3. Profile of Proposals

3.1. The main countries, in terms of the number of investment proposals, are as follows:

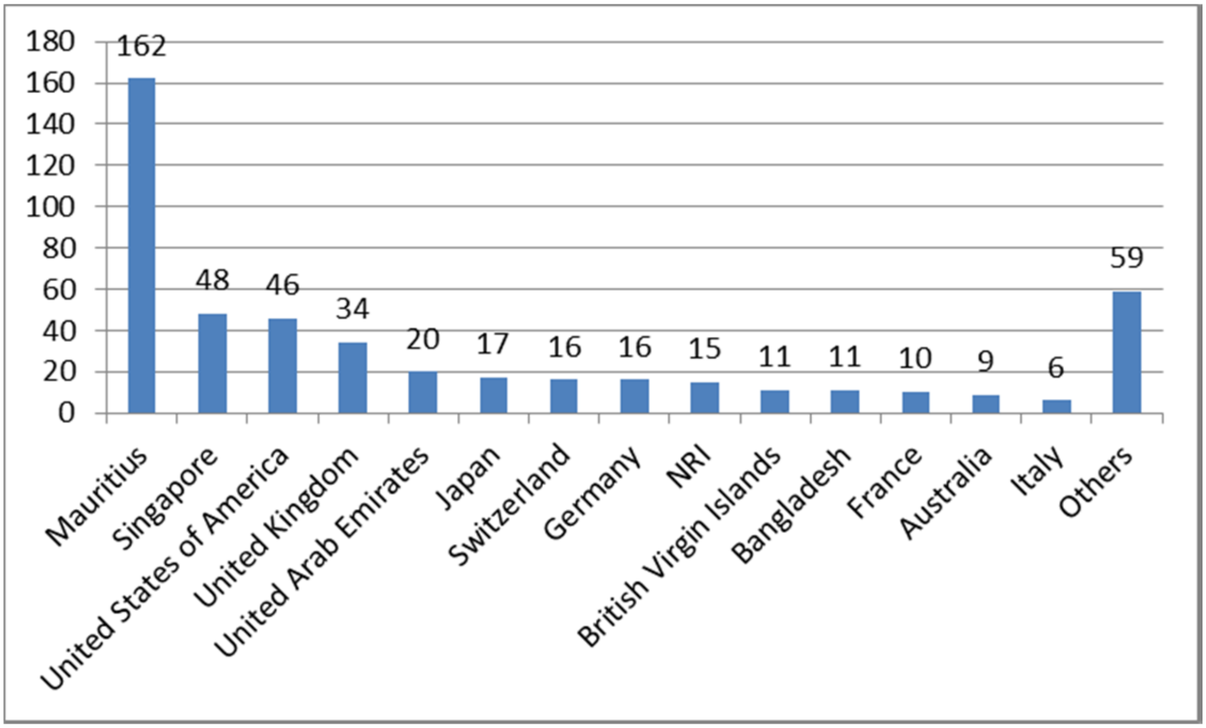

Figure 4: Investment proposals received by FIPB from different countries

3.2. The important sectors covered, in terms of the number of proposals, were as follows:

I. Manufacturing (though on automatic route, such proposals came to the FIPB because of para 4.2.2 of the Circular 1 and 2 of Consolidated FDI Policy, issue of shares for consideration other than inward remittances, warrants, partly paid up shares, defence sector and share swap, etc.)

II. Information and Broadcasting Sector (including publication and print media)

III. Telecom

IV. Infrastructure

V. Information Technology (though on automatic route, such proposals came to the FIPB because of issue of shares for consideration other than inward remittances, partly paid up shares, defence sector and share swap, etc.)

VI. Single Brand Retail Trade

4. Approval of CCEA

During the year 2010, the Cabinet Committee on Economic Affairs decided that only proposals involving total foreign equity inflow of over ₹1,200 crore, as against the earlier limit of project cash of ₹600 crore, need to be placed for its consideration. Consequently in 2010, only 3 proposals were recommended by the FIPB for approval by the CCEA, as against 10 proposals in 2009. The three proposals are briefly discussed below.

4.1. **M/s India Infrastructure Development Fund Limited (Mauritius)** had sought approval to make equity investments in entities engaged in developing, constructing, maintaining or operating infrastructure facilities or services in India for an amount up to ₹2500 crore. The proposal was recommended for approval by the Board in the 149th meeting.

4.2. **M/s AES India Holdings (Mauritius)** had sought approval for an investment of approximating ₹2430 crore for setting up a WoS for establishing a thermal power plant in Bihar. Though the sector is under the automatic route, the proposal required government approval in view of para 4.2.2 of Circular 1 of 2010 of the Consolidated FDI policy relating to existing JV in the same field of activity. The applicant had requested that approval may be accorded without insisting on NOC from Govt. of Orissa on the ground that the Bihar project would not jeopardise the interest of the current JV as the existing JV provides for sale of 100 per cent power production to Government of Orissa entity for a period up to 2026. The Board referred to precedence and observed that no jeopardy may be claimed in view of the geographical location of the new WoS and the existing JVs being clearly demarcated. The said proposal was eventually did not require Government/ CCEA approval in view of the removal of earlier paragraph 4.2.2 vide Circular 1 of 2011.

4.3. The proposal of **M/s Enam India Infrastructure Fund Limited**, Mauritius to invest up to ₹5750 crore had come before FIPB in view of condition prescribed via para 5.2.18.2 (ii) of Circular 2 of 2010 of Consolidated FDI policy that in case the entity undertaking venture capital fund activity is a trust registered under the Indian Trust Act 1882, FDI would be permitted under the Government route. The matter was taken to CCEA as the fund was targeting investment up to USD 750 million to be raised through both Indian and foreign investors with the possibility of target size being increased up to USD 1251 million.

II. Key Issues and Decisions

1. Defence Sector

1.1. The policy for FDI in the Defence Sector was first notified vide Press Note 4 of 2001, wherein the Sector was open up to 100 per cent of Indian private sector participation, with FDI being made permissible up to 26 per cent, subject to licensing under the Industries (Development and Regulation) Act, 1951 and Government approval. Guidelines for production of Defence equipment were notified vide Press Note 2 of 2002. Accordingly, the extant FDI sectoral cap for the sector is 26 per cent. The government at present is focused on the review of the defence procurement procedure and for enabling a greater participation of private sector in defence production for strengthening self-reliance in defence preparedness. This appears to have resulted in relative increase of defence-related proposals coming before the FIPB in the last 2 years. 6 fresh proposals were considered by FIPB in 2010 as against 10 proposals considered in 2009. In the subsequent paragraphs, we discuss some of the proposals that bring out the nuances of the FDI policy relating to defence sector.

1.2. **M/s Safran Aerospace India Private Limited**, a company engaged in software development activities, had approached FIPB for approval for engaging in activity of development and export of software and other allied IT enables services in the defence. The company is a WoS of France-based Safran Group. It was observed that 100 per cent FDI is allowed through automatic route for development of software. However, MoD was of the view that the services/ software sector in defence may also come under the sectoral cap of 26 per cent FDI. The Board accorded due importance to the views of Ministry of Defence and approved the proposal in the 149th meeting held on January 18, 2010 subject to the condition that the CEO of the company must be an Indian citizen and the software designed by the company the India shall not be supplied and/ or shared by the company with anybody outside India. The representation of the company against the said two conditions was rejected by the FIPB in its 155th meeting held on July 12, 2010.

1.3. **M/s Icomm Tele Limited,** with 5.1 per cent foreign equity owned by M/s Tano Mauritius India, FVCI, had been granted industrial license in 2008. The company had approached the FIPB to engage in manufacturing of telecom equipment for defence sector. The Board considered the proposal as a request for post-facto approval for existing investments and approved the same, subject to compounding by RBI.

1.4. **M/s Wipro Limited**, which is a leading Information Technology company, had earlier obtained approval for foreign investment of 9.89 per cent through FIIs, NRIs and ADRs. The company had sought FIPB approval in view of the aforesaid foreign investment for undertaking design, development and manufacture of defence related software items. The Board had observed that it was not yet clear in the 155th meeting on July 12, 2010 whether FDI Policy in Defence was required for companies engaged in software activities in defence sector, but nevertheless approved the same subject to conditions mentioned in para 1.2 above. Therefore, in 156th meeting held on July 30, 2010 the Board approved this specific proposal since classification of softwares pertaining to defence sector had not yet been finalized.

1.5. The proposal of **M/s Tata Advanced Systems Limited** to set up a JV with M/s Lockheed Martin Aeroframe Corporation (LMAC) to engage in the business of defence aircrafts, helicopters, and unmanned airborne vehicles including empennages and centre wing boxes was approved by the Board. The proposal of **M/s EADS Deutschland GmbH & M/s Larsen & Toubro Limited** to form a JV company in India to carry on the business of manufacturing, distributing and marketing of products in the market segments of electronic warfare, military avionics, mobile systems (defence related) and radars was also approved by the Board. It may be mentioned that M/s EADS & M/s L&T Limited had earlier submitted a proposal to FIPB for setting up a JV to engage in the same area of activity, albeit with a different ownership pattern. In the said proposed JV, M/s EADS & M/s L&T Limited, were to hold 24.5 per cent equity each and the balance 51 per cent was to be held by M/s L&T Technologies Limited. L&T Technologies Limited, a WoS of L&T was to be converted into a service JV with L&T & EADS holding 51 per cent and 49 per cent shares respectively. FIPB had rejected the said proposal in the 147th meeting held on 20.11.2009 on the ground that the proposal was not in conformity with the sectoral cap of 26 per cent in the defence sector.

1.6. **M/s Lakshmi Machine Works Limited (LMW)**, a company engaged in the manufacture of textile spinning machinery had sought the approval of FIPB to undertake additional activities of manufacturing parts, components and accessories for aircraft and spacecraft to be supplied to civil and defence sector in view of the existing foreign investment of 13.48 per cent by M/s Rieter Machine Works Limited, Switzerland. The applicant had mentioned that they were unable to provide the required details of the foreign shareholders in view of the dispute they had with the foreign collaborator. The applicant had confirmed that all the directors and key executives of the company are Indian nationals and no foreign national is engaged in the services of the company. Keeping in view the prayer of the party, FIPB had approved the proposal without insisting on providing complete details regarding the foreign investor.

1.7. The issue of appropriate sectoral cap on FDI in the defence sector has been taken up in the Discussion Paper on FDI in defence Sector released by DIPP. The Discussion Paper takes note of the concerns expressed about liberalizing FDI in Defence Sector. It mentions that encouraging FDI in the Private Sector for defence production is a cause of concern for the defence PSUs and the Ordnance Factories and may lead to ownership and control of firms in a critical and highly sensitive industry being passed on to foreign hands. There is also a concern relating to availability or reliability of supplies in times of war and to the passing of critical equipment, design or source code to other players – particularly, countries inimical to Indian interests.

1.8. On the other hand it has been argued that the present FDI cap of 26 per cent discourages Original Equipment Manufacturers (OEMs), which have resulted in India not being able to access the latest high-end technologies internationally available. Raising FDI cap in defence could provide an incentive for transfer of know-how, which, in turn, would assist in achieving the government's objective of 70 per cent indigenization of defence production by the Indian defence industry. It would be difficult for the indigenous defence industry to develop without the supplemental funds made available through FDI. It has been argued that therefore, to achieve the state-of-the-art technology, FDI be permitted to above 50 per cent, if not 100 per cent. The suggested policy in the paper provides that established players in the defence industry be encouraged to set up manufacturing facilities and integration of systems in India with FDI up to 74 per cent under the Government route.

2. Press Note 1 of 2005 Series

2.1. Press Note 1 of 2005 (PN 1) or paragraph 4.2.2 of Circular 1/ 2 of 2010 (Consolidated FDI Policy), states that a foreign investor having an existing joint venture/technology transfer/trademark agreement in the same field, as on January 12, 2005, fresh proposals in the same field, for investment/ technology transfer/ technology collaboration/ trademark agreement (determined by the 4 digit National Industrial Classification, 1987 Code) would have to be routed through the FIPB or the Project Approval Board (PAB), if no foreign investment is involved. The basic objective of the policy provision is to safeguard the interests of the existing Indian joint venture partner. The cut-off date refers to the point of time after which such interests are to be safeguarded through mutually agreed terms of the commercial agreement between the foreign investor and the Indian partner.

2.2. During the year, a number of proposals came before FIPB in view of the aforesaid provisions, including perhaps the most contentious issues. We discuss below the proposals relating to PN 1 of 2005 taken up in each of the FIPB meetings, highlighting the salient aspects of the proposal/decision, wherever appropriate.

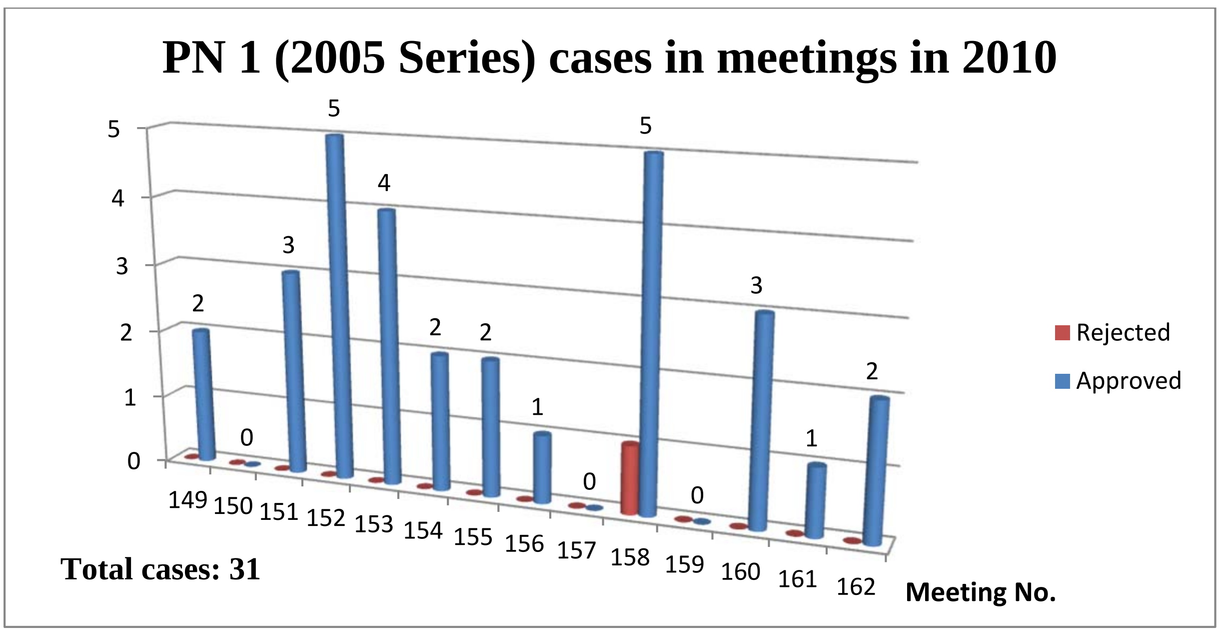

Figure 5: Cases attracting paragraph 4.2.2.2 of Circular 1 and 2 of 2010 or PN 1 (2005 Series)

2.3. Meeting-wise proposals relating to PN 1 (2005 Series)

During 2010, the following 31 cases were submitted for approval out of which the approved cases represented approximately 15 per cent of the total number of cases approved.

(i). 149th Meeting

The proposal of **M/s Celebi Hava Servisi A.S.**, Turkey to acquire equity shares in another company attracted the provisions of PN 1 as the applicant had two existing Joint ventures in India. Keeping in view the NoC provided by the JV companies, the proposal was approved by the Board. The Board also approved the proposal of **M/s Standard Charted Bank (Mauritius) Limited** to acquire additional 25.1 per cent stake in M/s STCI Capital Markets Limited as the applicant was already engaged in the financial sector through its subsidiaries.

(ii). 151st Meeting

The proposal of **M/s Sabre Helmets Private Limited**, engaged in the manufacture, sale, etc. of motor cycle, helmets and its accessories was permitted to obtain foreign investment of 26 per cent in the paid up capital. In the instant case, the foreign investor had a trademark license agreement with another Indian company namely M/s Protech Sports & Safety Products Private Limited (Protech), which was terminated on December 30, 2009. The Board observed that the proposal required FIPB approval since the said agreement was subsisting as on January 12, 2005 and accorded the approval, keeping in view the NOC given by Protech. The proposal of **M/s Sangsin Brake**, Korea for setting a WoS to engage in activity under the automatic route and where the foreign collaborator had an existing Technical Assistance Agreement for a term of ten years with an Indian company was approved by FIPB. The Board also approved the proposal of **M/s Toyota Tsusho Corporation**, Nagoya, Japan to acquire equity shares in the paid up capital of the proposed Indian auto component company from non-resident company upon furnishing of the NOC from the JV Indian company.

(iii). 152nd Meeting

The Board approved the proposal of **M/s Firmenich Trading Corporation**, Switzerland, where the foreign collaborator had an existing JV with the Indian company in the same line of business. In the proposal of **M/s ABE Abraham**, Chennai, the Board approved the proposal of inviting foreign investment from the foreign collaborator, a foreign national and Indian promoter upon the submission of NOC by the existing JV partner. The foreign collaborator had an existing JV named M/s Astral India Private Limited engaged in similar line of business. In the proposal of **M/s Williamson Maknam Limited**, Jersey, Chanel Islands, transfer of equity from non-resident to non-resident required a NOC as one of the non-resident companies already had an existing line of business with an Indian company. The case was approved subject to furnishing of NOC by the non-resident company, having the existing line of business with the Indian company. In the proposal of **M/s Abbott Capital India Limited**, United Kingdom, the Board approved the acquisition, by way of transfer of the Indian company by the foreign collaborator and its affiliates from the public shareholders of the Indian company under an open offer for an offer price computed in accordance with SEBI Regulations 1997. The foreign collaborator had previously acquired the shares of the ultimate parent company of the Indian company; hence it attracted PN1 of 2005. In the proposal of **M/s South Asian Regional Investments Singapore Pte Ltd**, the Board approved a new WoS to be set up with a foreign equity of 100 per cent for undertaking down linking activities.

(iv). **153rd Meeting**

In the case of **M/s Nifco Inc.** Japan, the Board approved the proposal for setting up of two WoS to undertake the same line of business of the Indian joint venture subject to compliance of para 3.4 and Chapter 6 of Circular 1 of 2010 of the Consolidated FDI Policy, FEMA 20/2000 and Pricing guidelines of RBI/SEBI. Proposal of **M/s Elliot Company**, USA for permission to set up WoS was considered in view of the JV that M/s Ebara Corporation of Japan, the parent company of Elliot Company has with M/s Kirloskar Brothers Limited. FIPB in its 153th meeting held on May 7, 2010 observed that the existing JV company had conditional NOC and that no NOC was furnished from the existing Indian JV partner with a plea that the existing set of activities do not fall in the same field. The Board had, however, approved the proposal subject to compliance with the requirement of furnishing NOC by the Indian JV partner. The company's representation that the approval may be subject to NOC from the JV company and not the Indian JV partner was considered by the FIPB in its 158th meeting held on September 10, 2010 and rejected on the grounds that as per the FDI policy, comments/ views of Indian partner is required. The Board approved the proposal of **M/s Narsinghpur Gold Mining Private Limited**, Delhi for receiving investment of 100 per cent by the foreign collaborators where one of the foreign collaborators had an existing collaboration with two Indian companies. The Board approved the proposal of

M/s Carlson Hotels Asia Pacific Investments Pte Ltd, for increasing investment by 74 per cent in the target company through the foreign collaborator. The applicant had various group companies in India in the same field.

(v). **154th Meeting**

The Board approved the proposal of **M/s Godrej Tyson Foods Limited**, to expand the same line of business from the foreign collaborator, where the foreign collaborator had a joint venture in India through its subsidiary. In the proposal of **M/s Mitsui & Co. Limited**, FIPB had given approval in the 148th meeting for: (a) setting up WoS, and (b) setting up a JV with M/s Sical Logistics Limited (SICAL) with 51 per cent equity share. In the 154th meeting, the Board considered the request of the applicant regarding their inability to sign a JV agreement with SICAL on account of dispute in the land title and therefore, being unable to provide Board resolution from them. The Board modified its earlier approval restricting it to setting up of WoS and advising that FIPB may be approached subsequently when they are in a position to operationalize the JV.

(vi). **155th Meeting**

In the proposal of **M/s Amsted Rail Company Limited Inc**, Chicago, USA, approval was given for subscription for equity shares of the proposed joint venture company, subject to submission of appropriate Board Resolution. The Board also approved the proposal of **M/s Interpublic Mauritius Limited** for the establishment of a WoS company in India to carry on a business in advertising and media communication sector and to subscribe to equity share capital of the company by itself or its affiliates.

(vii). **158th Meeting**

M/s AMCOL International Corp. and **M/s Ashapura Minechem Limited** had a JV namely M/s Ashapura Volcay Limited with 50:50 shareholding. FIPB approved the proposal to set up a new JV between the said two partners with 80:20 shareholding. The proposal of **M/s Denso Corporation** was approved by the Board to invest up to 74 per cent investment in a JV Public Limited company with the Indian company holding the balance 26 per cent equity. The Board also gave approval to **M/s Nuovo Pignone S. p. A.**, an affiliate of M/s General Electric

Company, USA for the activities of manufacturing of steam turbines by acquisition of 50 percent less 1 equity shares of JV Company through GE Subsidiary for the said activities. The Board approved the proposal of **M/s McCormick Ingredients SE Asia Pte Limited** to transfer equity shares by the promoters of the company to the investors for induction of foreign equity to carry out the business of manufacture and export of pickles. The proposal of **M/s Four Seasons Hotels and Resorts Asia Pacific Pte Limited** was approved by the Board to set up a WoS to undertake activities in Hotels and Tourism related industry.

(viii). **160th Meeting**

The Board approved the proposal of **Mr. Alaguraj Rajendramani and M/s Torunskie Zaklady Materialow Opatrunkowych S.A.** to set up JV companies in both Karnataka and Kerala for foreign equity of 75 per cent to be held by the foreign collaborator and the remaining 25 per cent to be held by Mr. Alaguraj Rajendramani. The Board approved the proposal of **M/s Metal One Corporation** to establish a new JV company for processing and supply of steel products to cater to the captive requirements.

(ix). **161st Meeting**

The Board gave approval to the proposal of **M/s Konecranes Finance Corporation** for induction of 100 per cent foreign equity in a company engaged in the financing, investment and consultancy activities in the field of manufacture of cranes.

(x). **162nd Meeting**

The Board also approved the proposal of **M/s Yoruzu Corporation**, to set up a new manufacturing facility in a JV with an Indian company, which is a group company with which the applicant already had two Technical Assistance Agreements. The proposal of **M/s JFE Shoji Trade Corporation**, Japan was approved by the Board to subscribe to and invest up to 10 per cent in an Indian JV company, provided the NOC had been signed by the authorized signatory of the JV company for the said purpose.

2.4. <u>Important Cases</u>

(i). **M/s Putzmeister Concrete Pumps GmbH**, Germany had incorporated an Indian JV, namely M/s Putzmeister India Private Limited with 24 per cent foreign equity along with the balance to be held by Indian partners (Milind Sadashiv Bhadbhade and Ashok Vidyanand Dikshit) to manufacture and undertake marketing of a limited range of concrete pump products of Putzmeister, Germany. The Indian JV partner had objected to Putzmeister, Germany that formed a new WoS illegally, in violation of the JV agreement and Press note 1 and 3 (2005 series) and approached the Delhi High Court on the matter. The High Court had observed that any application made by Putzmeister Germany to FIPB shall be dealt with in accordance with law. During its examination by FIPB, one of the issues that arose was whether FIPB is competent to issue ex-post-facto approval. The Board, taking into account the comments of Department of Legal Affairs, concluded that FIPB can accord due post facto approval subject to compounding of violation by RBI. On the issue of jeopardy, the FIPB was of the view that the onus to provide requisite justification as also proof to the satisfaction of the Government that the new proposal would or would not 'jeopardize' the interest of the existing JV would lie equally on the foreign investor and the Indian Partner. The Board, taking into account the arguments adduced by the contending parties, had accorded post facto approval, subject to compounding by RBI for the violation of the conditions of the Press Note 1 of 2005. The matter is currently sub judice.

(ii). The 157th meeting of the Board was conducted for a personal hearing in respect of **M/s Tinna Finnex Limited**, which had sought cancellation of the FC approval given to M/s ADM Interoceanic Limited (ADM), Mauritius for jeopardizing their business interest. To recapitulate that ADM was issued FC approval dated 15.06.2009 for 100 percent foreign equity participation by WoS of ADM. M/s Tinna Finnex had prayed that the said approval jeopardized its business interests. This investment attracted provisions of PN 1 (2005) on account of existing JVs of ADM with M/s Tinna Oils and Chemicals Limited and M/S Tinna Agro Limited. The FC approval was granted on the basis of NOC by the said JV companies. The Board rejected the representation made by M/s Tinna Finnex Limited. Since this matter is sub judice, further details are not been discussed.

2.5. The discussion paper on Approval of Foreign/ Technical Collaborations in case of Existing Ventures/ Tie-ups in India by DIPP observes that the Press Note had pervasively become a stumbling block for further FDI coming into India. This policy has been in existence, as a formal measure under the FDI policy for nearly 12 years. Keeping with the progressive stance of liberalization, it has been realized that the touchstone of 'jeopardy' in respect of PN 1 and 3 of 2005 has lost relevance in the present day context as the Indian partners could have recovered their investments substantially during the period of last five years. The condition is believed to restrict a number of investors, who may not be able to reach agreement with their Indian partners on their future investment plans, thereby restricting the inflow of foreign capital and technology into the country. Hence, for these reasons, the 'existing venture/ tie-up conditions' last amended in Press Notes 1 and 3 of 2005 and now included as paragraph 4.2.2 of Circular 1 & 2 of 2010 have been proposed to be totally abolished.

3. Mergers & Acquisitions

3.1. Mergers, demergers and amalgamations of companies are governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger/ demerger/ amalgamation as given in para 3.5.4 of Circular 1 & 2 of Consolidated FDI policy. In case of NBFCs, mergers, demergers and acquisitions are regulated by Section 7 of FEMA 20, which permits an Indian company to issue shares to non-resident person(s) as part of a court approved scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company, subject to conditions mentioned therein.

3.2. The Board approved the proposal of **M/s D B Corp Limited** to demerge the FM radio business of the downstream subsidiary of the company so as to be engaged in activities under the 100 percent automatic route. The proposal of **M/s Dhanseri Tea & Industries Limited** was approved by the Board in order to issue and allot equity shares, each fully paid up in the share capital of the company to non-resident shareholders of another company, consequent upon amalgamation of both the companies in terms of a Scheme of Arrangement approved by the Calcutta High Court. The Board rejected the proposal of **M/s Associated Broadcasting Company Private Limited** to issue and allot Compulsory Convertible Preference Shares (CCPS) as in the absence of the court orders and lack of clarity on pre and post-merger, it may not be possible to scrutinize the proposal.

4. Security Consideration

4.1. During the year, the Board considered a number of proposals relating to Telecommunication, Defence sector and Private Security Services which included clearance from the security point of view. Circular 1 and 2 of Consolidated FDI policy of 2010 provide for security clearance by the MHA in case of foreign investments from Bangladesh, China, Hong Kong and Taiwan.

4.2. The Board gave approval to **M/s Kirkstone India Private Limited**, a WoS of M/s Kirkstone Company Limited, Hong Kong for conversion of direct payment made in connection with security deposits, advance rent and payment to consultant into equity shares. The proposal of **M/s Telstra Telecommunications Private Limited**, engaged in telecom services sought approval of the FIPB to issue fresh equity shares to its foreign holding company, increasing the share capital from 49 percent to 74 per cent. It was rejected by the Board. The Board approved the proposal of **M/s Transcend Infrastructure Limited**, engaged in the business of building and acquiring towers for leasing/ licensing shared use for communication and broadcasting. The proposal has sought approval of the FIPB for acquisition of equity share capital of M/s Essar Telecom Infrastructure Private Limited (ETIPL) by acquisition of equity shares from ETIPL's existing shareholders. The Board rejected the proposal of **M/s S Tel Private Limited**, engaged in providing telecom services in India on grounds of serious reservations on the foreign investor during the course of investigations conducted by MHA. The Board also rejected the proposal of **M/s Etisalat DB Telecom Private Limited** in the 158th meeting to increase foreign equity from 49 per cent to 54.27 per cent for reasons of security consideration. The matter is currently sub judice.

4.3. Private Security (PSAR, 2005):

FIPB considered a proposal to set up **M/s NSA Security (India) Private Limited** as a JV with 51 per cent equity share held by NRI and balance 49 per cent held by a South Africa-based company, engaged in providing private security agency services. It observed that the said NRI (whose investment would be treated as foreign investment) was also associated with the foreign company and rejected the proposal on grounds of violation of provisions of PSAR, 2005.

5. Issue of Shares for Considerations Other than Cash

5.1. In the recent past, FIPB has been receiving a number of cases related to issue of shares against non-cash consideration. As per the extant FDI policy, shares issued to non-residents against receipt of funds not received through normal banking channels would require prior approval of the FIPB. External Commercial Borrowings (ECB) and/ or royalty payments (including lump-sum technical know-how fees) are the exceptions to the above condition where shares can be issued under the automatic route. Proposals that come to FIPB are also for issues other than these three categories. During the calendar year 2010, the cases that came for approval can be broadly summarized along with the benchmark decisions on them as follows:

5.2. Categories of Cases Arising for Issue of Shares on Non-cash Considerations

(i) **Import of capital goods/ machinery/ equipment (including second hand machinery)**
The proposal of **M/s Rubcon Mining Accessories Private Limited** was granted ex-post-facto approval for shares issued against machinery imported, subject to compounding, since the shares had already been issued. In the proposal of **M/s Cotswold Architectural Products Limited**, the Board recommended rejection of the proposal as issue of shares against second-hand machinery to the same company was not encouraged. The Board also rejected the proposal of **M/s Omega Icehill Private Limited** as conversion of value of machines into equity is not permitted. In the case of **M/s Seonghwa Construction India Private Limited**, the Board did not approve of the issue of shares against import of machinery.

(ii) **Issue of shares against import of raw material/ trade payables**
In the case of **M/s TCL India Holding Private Limited**, the Board rejected the proposal as issue of shares against outstanding amount of import of stock in trade is not permitted. The proposal of **M/s Simplast India Private Limited** was also rejected on the grounds that issue of shares where payment has been made directly abroad against import of raw material is not permitted.

(iii) **Pre-operative/ pre-incorporation expenses (including payments of rent, etc.)**
In the proposal of **M/s Kirkstone India Private Limited**, the Board approved conversion of pre-incorporation expenses incurred by the foreign company for security deposit, rent payment and

payment to architect into equity shares of Indian company. However, the proposal of **M/s Independent Technology Systems (India) Private Limited** was rejected by the Board on the grounds that the funds were remitted in the bank account of another India company and the approval was sought for issue of shares against pre-incorporation expenses. The proposal of **M/s DVA India Chemicals Private Limited** was also rejected as issuance of equity share against advances received, prior to incorporation, is not permitted. The Board also held in the case of **M/s Telelogic ICT Services Private Limited** that issue of shares towards rent and other pre-incorporation expenses is not permitted. In case of **M/s Cancer Treatment Services Hyderabad Private Limited**, the Board held that issue for shares for pre-incorporation expenditure is not permitted.

(iv) **Capitalization of post-incorporation expenses**

In the proposal of **M/s American Standard Bath & Kitchen (India) Private Limited**, the Board held that capitalization of post-incorporation expenses is not permitted. The Board also rejected the proposal of **M/s ISNI Electric Power Company Private Limited**, on the grounds that issue of shares against pre and post-incorporation expenses is not allowed under the extant policy. The Board rejected the proposal of **M/s DVA India Chemicals Private Limited** as FEMA provisions do not allow capitalization of pre incorporation expenses by issuance of equity shares. The proposal of **M/s Telelogic ICT Services Private Limited** seeking ex-post facto approval for money already received was also rejected as issue of shares against rent and other pre-incorporation expenses is not permitted.

(v) **Share swaps**

The Board approved the proposal of **M/s Magna Quest Technologies Private Limited**, engaged as an EOU in the development of software for 100 per cent acquisition of a software product company in USA. However, the Board rejected the proposal of **M/s Orbis Capital Limited** as it was a case of share swap and acquisition of a company acting as a custodian of securities. FIPB approval was given to **M/s Primacy Industries Limited** (Primacy) for acquiring the residual 49 per cent equity in M/s MVP Group International Inc. (MVP), a US-based company from a sole remaining shareholder by way of share swap of 23 fully paid equity shares of Primacy for each share held by the shareholder in MVP. The Board approved the proposal of **M/s Zee**

Entertainment Enterprises Limited for post share swap agreement and transfer of shares from non-resident to non-resident, subject to the compliance of Press Note 7 of 2008.

(vi). **Issue of shares against one-time extraordinary payments (including arbitration awards)**

In the proposal of **M/s Air India SATS Services**, the Board approved issue of shares in the JV Company in consideration of the business in the form of assets, liabilities and accumulated profits.

(vii). **Optionally Convertible Notes (OCN)**

The proposal of **M/s Zylog Systems Limited** was also rejected as issue of Optionally Convertible Notes (OCN) to the non-resident investors is not in conformity with the extant FDI Policy.

(vii). **Advance received for export**

The proposal of **M/s Crest Geartech Private Limited** and **M/s Shri Dudeshwar Nath Steel Private Limited** was rejected by the Board on the grounds that issue of shares against advance received for exports is not permitted.

(ix). **Guidelines of FEMA/ SEBI**

The Board allowed issuance of preference shares in the proposal of **M/s Praxair India Private Limited** subject to the pricing guidelines of RBI/SEBI, FEMA 20/2000 also putting the condition that the shares must be compulsorily convertible as mandated in the FDI policy. The proposal of **M/s Fischer Measurement Technologies (India) Private Limited** and **M/s Duke Corporate Education India Private Limited** was rejected on the grounds that issue of shares for consideration other than inward remittance is permitted only for items expressly allowed under FEMA, 2000. The Board rejected the proposal of **M/s Pharmarc Analytic Solutions Private Limited** on the grounds that the shares allotted by the applicant were not in line with the pricing guidelines of SEBI and not listed in any recognized stock exchange in India. The Board also rejected the proposal of **M/s Danobat Grupo Machine Tools India Private Limited** as cash was already brought against items not allowed under FEMA, 2000.

(x). **Sweat equity shares**

The proposal of **M/s Stylus Systems Private Limited** was considered by the Board keeping in view Section 79A of Companies Act, notification dated December 4, 2003 issued by Department of Company Affairs (now Ministry of Corporate Affairs) for unlisted companies (issue of Sweat Equity Shares) Rules 2003 and Regulation 8 of FEMA 20. However, the Board considered the proposal as one relating to issue of shares for other than cash consideration and approved the same.

(xi). **Issue of shares against outstanding loan**

The Board held in the proposal of **M/s Global Vectra Helicorp Limited** that issue of preference shares on the outstanding amount of loan is not permitted and also issue of non-convertible cumulative preference share is non-permissible.

(xii). **Unclear source of money for issue of shares**

The Board rejected the proposal of **M/s Everstyle Hotel Supplies India Private Limited** as the consideration for issue of equity shares was made through International demand draft. The Board also rejected the proposal of **M/s Issar Pharmaceuticals Private Limited** as shares were issued against expenses incurred on purchase of land and wiping of overdraft by NRI.

5.3. <u>Policy observations on the issue in the previous review</u>

The FIPB Review 2009 review had observed that proposals for issues of shares, for other than cash considerations, have been on a rise every year and there was a need to formulate objective norms to handle such cases. It had further stated that, though the Board has been, by and large, liberal in facilitating the industry, the FDI route cannot be allowed to become a norm, since the purpose of FDI gets defeated through this mode. However, as mentioned above, during the year 2010, Board had adopted a consistently conservative stand on the issues relating to other than cash consideration, even as it impressed upon DIPP to expedite formulation of clear policy in this regard.

6. Share Swaps

6.1. The Board approved the proposal of **M/s Tejas Networks Limited** for transfer of shares by way of share swap. The Board approved the proposal of **M/s Zee Entertainment**

Enterprises Limited, allowing transfer of shares from non-resident to non-resident. The Board also approved the proposal of **M/s MY-Tec Software Private Limited** for allotting equity shares towards consideration for acquisition of shares of the foreign collaborator.

6.2. The Board rejected the proposal of **M/s Visa Infrastructure Limited** as the proposal was not supported by RBI with regards to share swap. The Board held in the proposal of **M/s Coreobjects Software Inc** that the share swap arrangement proposed was not in accordance with the regulations of FEMA. The Board approved the proposal of **M/s Zee Entertainment Enterprises Limited** to issue equity shares to a foreign share holder in a certain ratio.

7. Compounding directed by FIPB

7.1. Nature of Violation

(i). **Issuance of Warrants/ Convertible Warrants**

The Board rejected the proposal of **M/s Karuturi Global Limited** in the 158th meeting seeking ex-post-facto approval for issuance and allotment of warrants. However, the Board approved the proposal of **M/s Shriram City Union Finance Limited** for ex-post-facto approval for the Overseas Investments made through Convertible Warrants as under Circular 1 & 2 of Consolidated FDI policy, issue of convertible warrants by an Indian company are to be allowed only with prior FIPB approval. Similarly the proposal of **M/s GPT Infraproject Limited** was approved by the Board for issuance of warrants to a foreign company. The Board also recommended approval to **M/s Hindustan Tin Works Limited** for post facto approval for issuance of warrants. The Board on the other hand rejected the proposal of **M/s Gremach Infrastructure Equipment & Project Limited** and **M/s Flagship Infrastructure Private Limited** in the 153rd and 161st meeting respectively upon the non-submission of details sought by the administrative ministries. The Board also approved the proposal of **M/s Network 18 Media & Investment Limited** for issue and allotment of partly paid PCCPS and detachable warrants already issued, subject to compounding. However, the proposal of **M/s QAI India Limited** was advised by the Board to access automatic route as FVCIs are allowed to invest in "equity linked" instruments without approval and without attracting compounding.

(ii). **FDI brought on approval route without FIPB**

The Board approved the proposal of **M/s Carlson Hotels Asia Pacific Investments Pte Limited** for increasing investment by 74 per cent in the target company through the foreign collaborator. As investment was brought without prior approval of FIPB, the case was approved subject to compounding by RBI.

(iii). **Violation of Press Note 1 of 2005**

The Board approved the proposal of **M/s Putzmeister Concrete Pumps GmbH**, subject to compounding by RBI for the violation of the conditions of the PN 1 of 2005.

(iv). **Partly paid shares**

Ex-post facto approval subject to compounding by RBI

The Board provided ex-post facto approval to the following cases for allotment of party paid equity shares subject to compounding by RBI**:**

- **M/s Valuable Destinations Private Limited** (also compounding for PN 1 of 2005)
- **M/s Valuable Media Limited**
- **M/s Jalan Intercontinental Hotels Private Limited**
- **M/s Forbes Bumi Armada Limited**
- **M/s East Coast Energy Private Limited**
- **M/s Nisarg Building Art & Technology Private Limited**
- **M/s MPM Hotels Limited**
- **M/s VA Tech Wabag Limited**

The Board however rejected the proposal of **M/s Ascendas IT Park Private Limited** seeking ex-post-facto approval for issue of partly paid equity shares as the applicant changed the foreign collaborator after a year and failed to submit time schedules for full realization of the shares value even after the lapse of 18 months. The proposal of **M/s Hindalco Industries Limited** was also approved by the Board in the 162nd meeting subject to providing details of the large investors (NRIs) and compounding by RBI.

(v). **Issuance of shares for consideration other than cash**

The Board approved the proposal of **M/s Eagle Mining Products Private Limited** and **M/s Rubcon Mining Accessories Private Limited** as the shares had already been issued subject to compounding. In the latter case, shares were issued against import of second hand machinery. However, the proposal of **M/s Simplast India Private Limited** was rejected on the grounds that issue of shares for payment made directly abroad against import of raw material is not permitted. The Board also rejected the proposal of **M/s Danobat Grupo Machine Tools India Private Limited** on the grounds that issuance of shares against inward remittance through the account of a Branch office is not allowed. The proposal of **M/s Pharmarc Analytic Solutions Private Limited** was rejected as shares were issued for other than inward remittances without prior approval, attracting compounding by RBI.

(vi). **Compliance with the up-linking policy notified by the MI&B from time to time/ post-facto approval to ratify the NRI investment**

M/s Bharat Broadcasting Network Limited, engaged in uplinking of news and current affairs TV channels had issued equity shares to NRIs on non-repatriable basis without approval of FIPB. When the company had filed FC-TRS, RBI had advised the company to seek post-facto approval of FIPB. The Board had approved the same subject to compounding.

(vii). **Ex-post-facto approval for existing and proposed investments**

The Board approved the proposal of **M/s Icomm Tele Limited**, subject to compounding by RBI and the equity by the largest Indian shareholder to be at least 51 per cent of the total equity of the company.

(viii). **Downstream investment through internal accruals without prior FIPB approval**

M/s Siemens Limited with 55.18 per cent foreign equity participation had made downstream investment without FIPB approval. FIPB had approved regularization of the downstream investment through internal accruals, subject to compounding by RBI. The representation of M/s Siemens Limited that the downstream investment was made from internal accruals and not funds leveraged from the domestic market, therefore, did not merit compounding by RBI and was rejected by FIPB.

(ix). **Deletion of condition of compounding**

FIPB had earlier accorded post facto approval subject to compounding to **M/s Sahara One Media and Entertainment Limited** for foreign equity participation of 0.017 per cent by NRI/ FIIs as the company was engaged in the business of entertainment, media and motion pictures. However, FIPB agreed to delete the conditions of compounding on representation by the company that foreign equity of 0.017 per cent was a result of purchases by foreign investors through secondary market transactions on stock exchanges and the company had decided to undertake the business of broadcasting of entertainment channels for the first time. **M/s Morgan**

Stanley Mauritius Company Limited was granted ex-post facto approval to hold 25 per cent equity of M/s Morgan Stanley India Financial Services Private Limited (MSIFL) through M/s Morgan Stanley India Company Private Limited (MSICPL). M/s Morgan Stanley Mauritius Company Limited held the balance 75 per cent equity in MSIFL. The said approval was subject to minimum capitalization norms and compounding by RBI. On representation, FIPB felt that downstream investment by M/s Morgan Stanley Mauritius Company Limited and its step-down subsidiary i.e. MSICPL in MSIFL was in order and therefore the compounding condition may not be insisted on.

(x). **Miscellaneous**

The proposal of **M/s Turmeric Vision Private Limited** was granted ex-post facto approval subject to compounding for investment already made by foreign collaborator in order to subscribe to equity shares and convertible preference shares and convertible debentures. The Board also approved the proposal of **M/s Scottish & Newcastle India Private Limited** by providing extension of 3 months for converting Preference Shares into equity shares, subject to compounding by RBI. The Board rejected the proposal of **M/s Jeevan Telecasting Corporation Limited** in the 158th meeting on the recommendation of MI&B as the permission given to the company was cancelled.

8. FDI in book publishing/ printing

8.1. FIPB in the 159th meeting held on October 1, 2010 approved the proposal of **M/s Hayhouse Publishers Limited** engaged in inter alia in printing and distribution of foreign books, to increase the foreign equity from 80 per cent to 100 per cent. In the instant case, Department of Higher Education, Ministry of HRD, was of the view that since FDI guidelines in book publishing have not been finalized the said approval should be withdrawn and the proposal for an increase in FDI may be kept in abeyance till the FDI guidelines relating to book publishing are finalized. It was however decided that consistent with earlier decision, book publishing is covered under ‘publishing/ printing of scientific and technical magazines/ specialty journals/ periodicals, subject to compliance of legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting’, wherein 100 per cent FDI is permitted under the approval route.

III. In Focus

E-filing

1. FIPB is committed to adoption of efficient and transparent processes in its working. Towards this goal, it had provided the facility of electronic filing of applications in 2009. FIPB website http://www.fipbindia.com is intended to provide a platform to applicants and investors to file their applications and requests for clarifications electronically over the Internet and aims to reduce the transaction time and costs involved in manual filing and requirement for physical interface. The benefits of such a facility need no reiteration. However, it has been observed that during 2010, i.e. the first year of e-filing, only about 22 per cent of the fresh applications were filed on-line.

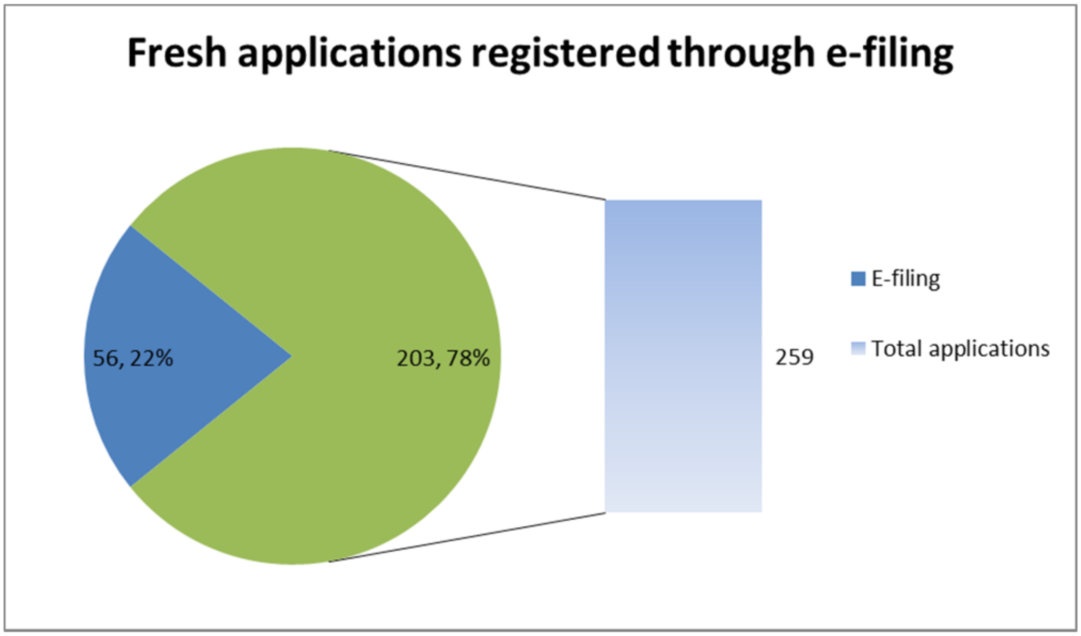

Figure 7: Application registered in 2010 by way of e-filing

2. It is understood that the web site and e-filing procedure have faced some teething trouble which may have resulted in low level of utilization of the facility. FIPB has been making concerted efforts at improving the quality of online services provided.

3. In the coming years, FIPB aims to make the e-filing procedure simpler and more users-friendly. It also aims to provide for online responses to query pertaining to non-policy issues relating to FDI and towards this goal aims to host "FAQs" for the benefit the investors. In due course, it also intends to provide for online 'status check facility' relating to applications filed before FIPB.

4. The extant guidelines for e-filing of application are at Annex 1. It may be mentioned that in order to facilitate easy monitoring and prompt response, it has been prescribed that with effect from July 01, 2011, it would be mandatory for all applicants to file a '**Mandatory Preliminary Application**' online, even in case they wish to apply with hard copies.

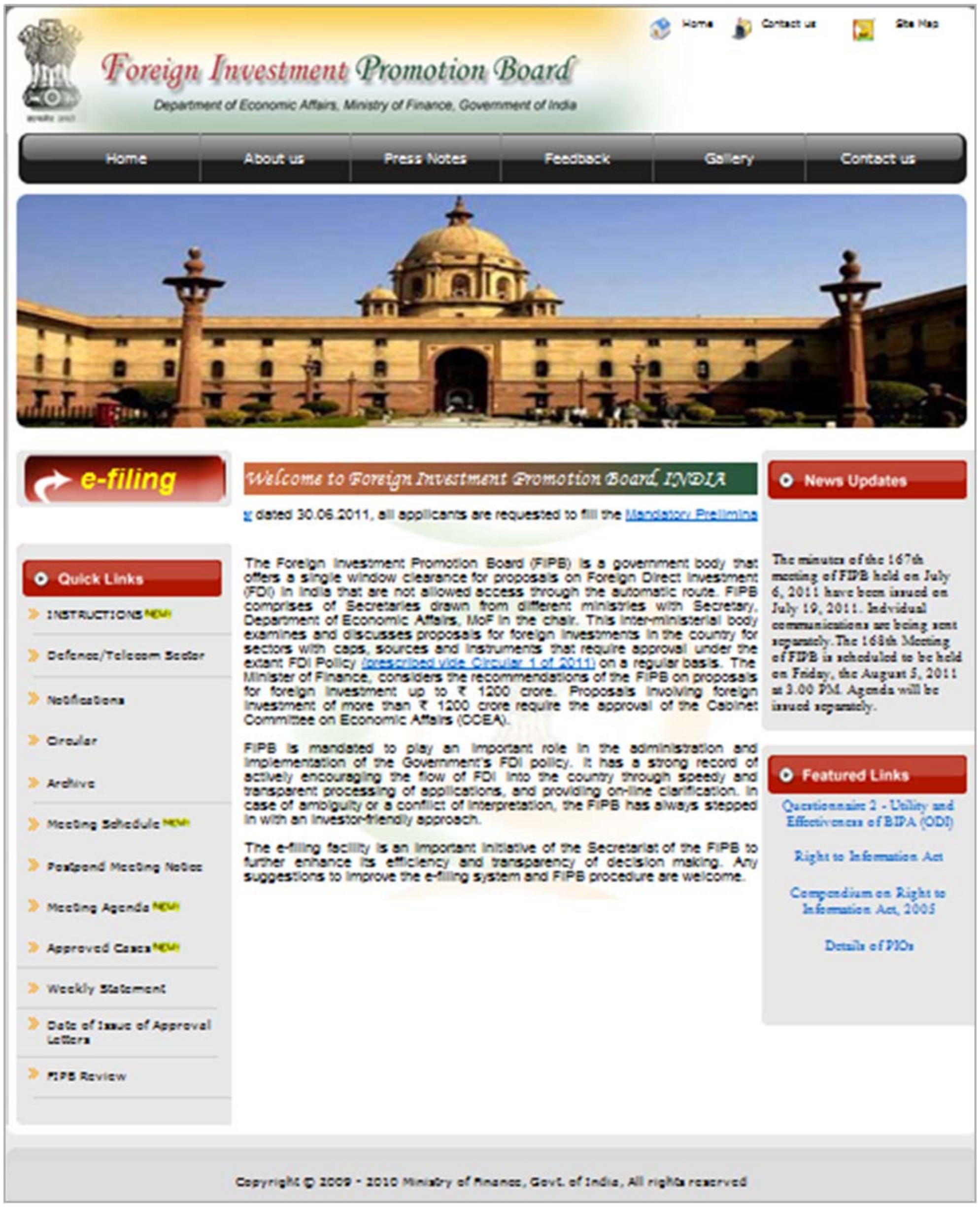

Figure 8: FIPB Homepage showing the option for e-filing

5. It is expected that the applicants will provide all necessary information in their application to facilitate expeditious examination of the proposal, without the requirement to seek further information from the applicant, which result in avoidable delays.

Conclusion

1. The Secretariat looks ahead at the next year with a clear roadmap for further improvements. It recognizes that the task of promoting FDI inflows into India is to be undertaken within the framework of FDI policy. Based on the nature of cases handled by FIPB, it is expected that further policy changes/ clarifications would go a long way in promoting FDI and improving the quality of services provided to the foreign investors.

2. FIPB would work towards improving the quality of the website to provide more and updated information. It would develop a compilation of 'FAQs' to provide ready answers to most commonly asked questions.

3. The meetings of the FIPB would be organized regularly and all efforts would be made to reduce the time taken in listing of the cases. FIPB would seek cooperation of the administrative ministries in reducing the instances of deferments.

4. It would pay special attention to proposals entailing substantial foreign investments, especially those with foreign equity inflow above ₹1200 crore for expeditious decision of the government.

5. It would also seek to disseminate information regarding the benefits of Bilateral Investment Promotion and Protection Agreement (BIPA) among the foreign investor.

Annex 1

Instructions for E-filing of applications

1. Applications seeking FIPB approval as an investee or investor company for the first time are called '**Fresh Applications**'. Applicants may, therefore, click on the **"Fresh Application"** link in case they are approaching FIPB for the first time.

2. **"Amendment Applications"** are those which seek an amendment to the FIPB approval already granted.

3. On submission of the "**Mandatory Preliminary Application**", whether for Fresh or Amendment cases, a computer generated unique (FC Registration No.) number shall be allotted. Thereafter, the applicant may either use the FC Registration No. to proceed for filing the on-line application or mention this number on the hardcopy of the application to be submitted at the **FIPB Facilitation Center, Near Gate No. 9, North Block, New Delhi - 110001 (Tel: 011 23095123/ 4031; Intercom: 5123)**. The applicant must also quote this number in all future correspondences with the FIPB.

4. For Amendment Applications, which are procedural in nature, users may click **"Amendment Application which is procedural in nature"** and submit in the prescribed proforma.

5. For submission of information for intimation/ record of FIPB, user may click **"Submission of information for intimation/ record of FIPB"** and submit in the respective format.

6. Any query pertaining to application filed or in the process of being filed, may be asked through the link – **"Clarification/Query"**.

7. In case an applicant wishes to make a change in the recently submitted application, that has not been processed, he/she may click on the link **"Updation/ Additional Information Form"**. Additional details sought by the FIPB may also be submitted through the same link.

8. It is mandatory to file complete details of the Directors in applications seeking FIPB approval in **Telecom, Defense** and **Private Security Services** sectors to enable capturing the inputs in the first instance for expeditious processing from the security angle. This requirement is also mandatory in case the foreign collaborator has Bangladesh, China/ Hong Kong registration/links.

9. After e-filing the application, one hard copy bearing the Unique FC Registration No. generated after submitting the Mandatory Preliminary Application, in original, with all annexures should immediately be sent by post at FIPB Facilitation Center, North Block, New Delhi-110001.

10. Only the applications that are complete in all respect, filed three weeks prior to the scheduled date of the FIPB meeting, only, shall be taken up for consideration in that meeting.

Address

FIPB Unit

Ministry of Finance

Room No: B-14

North Block

New Delhi – 110001

Website

http://www.fipbindia.com

Email

us.fipb-mof@nic.in

Printed by the Budget Press, Ministry of Finance, 9205092011