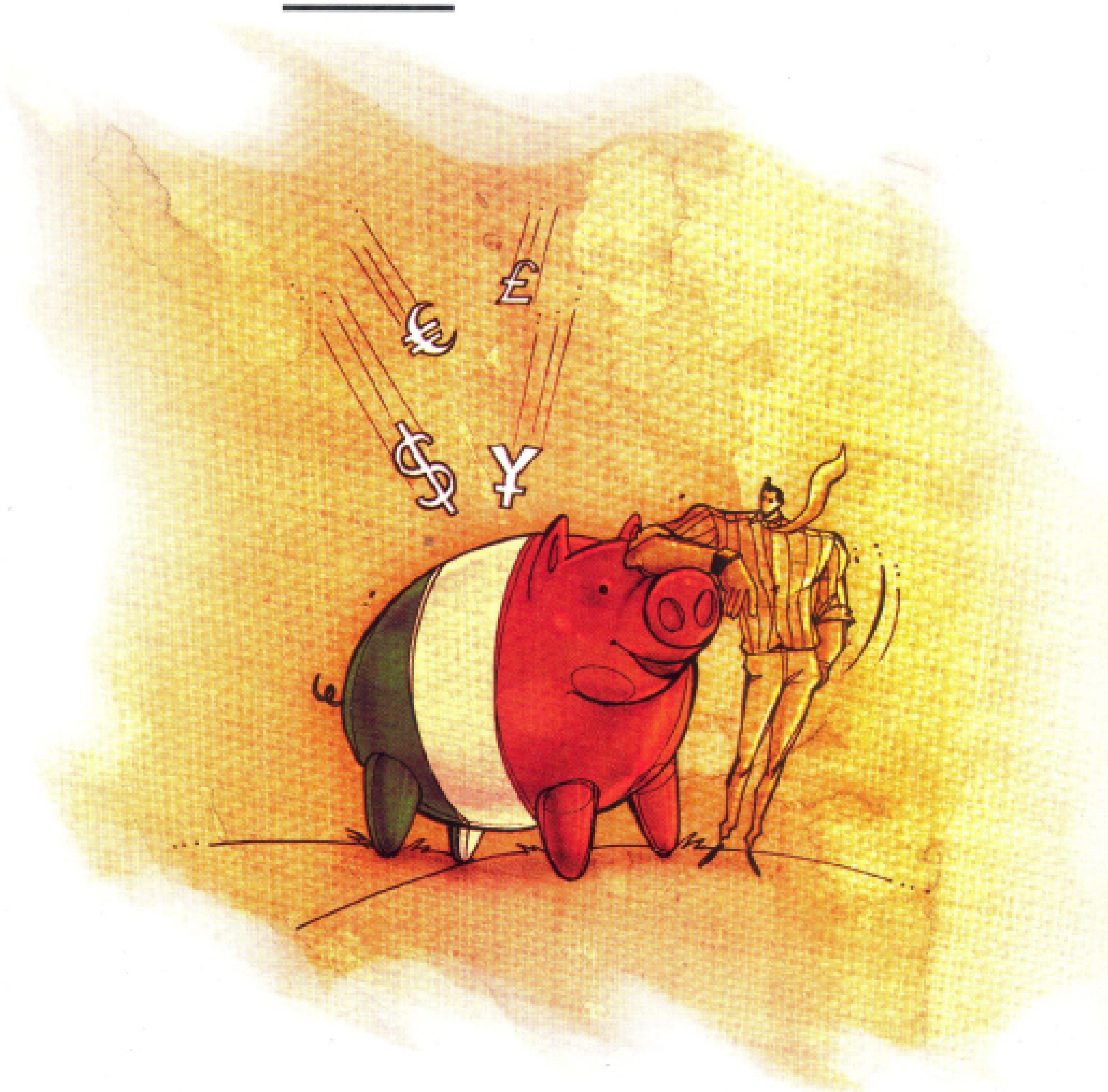
Part 1

Get Foreign Investment

India has become a hub of foreign investment today. Here's how you can obtain it.

By Deepali A. Mendiratta



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AS the world turns into a global village, India has leaped ahead of its peer countries due to its investment opportunities, huge growth potential and favorable business environment. In the process, it has become a hub of Foreign Direct Investment (FDI). The steady growth of foreign investment for the past few years has become one of the pivotal factors in determining the pace of growth of the economy. Foreign investment in India is a vital growth driver for India Inc. The infusion of foreign funds has largely stimulated the growth of the Indian economy and with the government further liberalizing and streamlining foreign investment policies and procedures, it will hopefully play a crucial role even in the times to come.

FDI POLICY

FDI is primarily governed by the Foreign Exchange Management Act, 1999 (FEMA) which lays down the broad framework under which the Government of India, through various regulatory bodies, creates, reviews and regulates the detailed provisions. The Government of India through its Department of Industrial Policy & Promotion (DIPP) releases two comprehensive FDI policies in a year vide its circulars which are effective from April 1 and October 1 of each year. The said FDI policy combines all the prior policies/regulations relating to FDI in India in a single document. Every consolidated FDI policy circular substitutes the last policy circular. The policy can be downloaded from *www.dipp.nic.in*.

MODES OF FOREIGN INVESTMENT IN A COMPANY

Foreign investment refers to an investment in an enterprise by a non-resident, whether it involves new capital or re-investment of earnings. Foreign investment is of two kinds—(i) FDI and (ii) Foreign Portfolio Investment. Any non-resident entity (other than a citizen of Pakistan or an entity incorporated in Pakistan) can invest in India, subject to the FDI policy. The government of India has also specified the class of entities in which the foreign investment can be made and with respect to each set of entities there are separate guidelines and criteria to be followed. Indian company being one of the recognized entities for receiving foreign investment, FDI in such entities flows through two routes—(a) Automatic Route and (b) Approval Route.

AUTOMATIC ROUTE

All FDI proposals which do not require the approval of Foreign Investment Promotion Board (FIPB) are said to be investment under Automatic Route. This route is available to all sectors or activities that do not have a "sector cap" i.e. where 100 percent foreign ownership is permitted or where investment up to sectoral cap is allowed without approval.

APPROVAL ROUTE

All FDI proposals, wherein the proposed investment in an Indian company is above the prescribed sector caps or where the proposed investment is in such sectors where investment is allowed only pursuant to approval, fall in this approval route.

There are some instruments for receiving foreign investment. This may be made in Indian companies in any of the following modes:

- equity shares
- fully, compulsorily and mandatorily convertible debentures and
- fully, compulsorily and mandatorily convertible preference shares

In case any unlisted company issues any of the aforesaid instrument, their pricing shall be determined by Discounted Cash Flow method of valuation and in case of any listed company, according to method provided by SEBI (ICDR) Regulations. In case of convertible instrument, the price/conversion formula should be determined upfront at the time of their issuance. The price at the time of conversion should not be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the valuation method as provided aforesaid.

Inwards remittance by issuance of Depository Receipts and Foreign Currency Convertible Bonds are also counted towards FDI.

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INSTRUMENTS FOR INFUSING FDI

1. Equity shares
2. Compulsorily and mandatorily convertible debentures
3. Fully, compulsorily and mandatorily convertible preference shares
4. Depository receipts
5. Foreign currency convertible bonds