

**Comparison**  
**FDI in LLP and Company**

<b>Particulars</b>	<b>FDI in Company</b>	<b>FDI in LLP</b>
<b>Who can invest?</b>	Non-resident entity (which includes any individual resident outside India, any person or body corporate registered or incorporated outside India), NRIs, FII, Foreign Venture Capital Investor (FVCI)	From the circular it appears that any individual resident outside India and a company incorporated outside India can invest in LLPs.
<b>Who cannot invest?</b>	Citizen of Pakistan or entity registered in Pakistan	FII and FCVIs, a LLP incorporated outside India, a trust registered outside India
<b>Entry Routes for Investment</b>	NRIs/Non-resident entities can make investment in Companies through automatic route and government route subject to sectoral caps and limits	FDI in LLPs will be allowed only through the government route, in those sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions
<b>Sectors/activities where FDI is prohibited</b>	Retail Trading, Lottery business, gambling and betting, Business of chit fund, Nidhi company, Trading in	<ul style="list-style-type: none"> <li>• Agricultural/plantation activity, print media or real estate business</li> <li>• Activities allowed through</li> </ul>

	<p>Transferable Development Rights, Real Estate Business or Construction of Farm Houses, Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, Activities / sectors not opened to private sector investment including Atomic Energy and Railway Transport</p>	<p>approval route</p> <ul style="list-style-type: none"> <li>• All the activities where 100% FDI is not allowed through the automatic route and activities where there are FDI-linked performance related conditions.</li> <li>• Therefore the activities mentioned under the FDI in Company Column would also be not allowed.</li> </ul>
<p><b>Mode of Consideration by foreign partners</b></p>	<p>Cash and non-cash considerations which are limited to Conversion of ECB/lump-sum fee/royalty into equity. Issue of equity shares is allowed under Government route for import of capital goods/machinery/equipment (including second –hand machinery) and pre-operative/pre-incorporation expenses</p>	<p>Only cash considerations are allowed at present for FDI in LLPs</p>
<p><b>What are the types of instruments which an entity can issue against the foreign</b></p>	<p>Equity shares, fully, compulsorily and mandatorily convertible debentures and</p>	<p>LLPs at present cannot raise money through public or issue FCCBs, ADRs or GDRs. One</p>

<p><b>investment?</b></p>	<p>fully, compulsorily and mandatorily convertible preference shares, FCCB, ADRs, GDRs</p>	<p>way can be that based on the cash consideration received, the partners may decide the profit &amp; loss sharing ratio of the foreign partners and the extent of ownership</p>
<p><b>Pricing of shares</b></p>	<p>For listed companies – Price under FDI policy to be greater than the price worked out under SEBI guidelines For unlisted companies – the fair valuation of shares as per the DCF method</p>	<p>Since at present, only cash considerations are allowed for LLPs, the question of valuation does not arise.</p>
<p><b>Downstream investment</b></p>	<p>Downstream investments in companies is allowed subject to specified conditions Only an Indian company having FDI can make downstream investments in LLP where both of them operate in sectors where 100% FDI is allowed through the automatic route</p>	<p>An LLP cannot make downstream investment in another LLP.</p>
<p><b>ECBs</b></p>	<p>Companies can avail ECBs. Further non-convertible, optionally convertible or partially convertible Preference shares or Debentures for issue of which</p>	<p>LLPs are not permitted to avail ECBs</p>

	funds have been received will be considered as ECBs.	
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