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FDI UPDATE

REVIEW OF FOREIGN DIRECT INVESTMENT (FDI) POLICY ON VARIOUS SECTORS

In order to boost the foreign investment environment in India, the Government of India has brought in through a Press Note, FDI related reforms and liberalisation touching upon 15 major sectors of the economy.

The main intention of these reforms is to further ease, rationalise and simplify the process of foreign investments in the country and to put more and more FDI proposals on automatic route and save the time and energy of the investors. Further, the Department of Industrial Policy & Promotion (DIPP) has also been advised to consolidate all FDI related instructions contained in various notifications & press notes and prepare a booklet for ease of reference.

Changes introduced in the policy include increase in sectoral caps, bringing more activities under automatic route and easing of conditionalilities for foreign investment. Further new sectors have also been opened to foreign investments.

A summary of the changes is listed below:

I. CONSTRUCTION DEVELOPMENT

- Removal of the condition of minimum floor area of 20,000 sq. m in construction development projects and minimum capitalization of $5 million to be brought in within the period of 6 months of commencement of business.

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- Foreign investor will be permitted to exit and repatriate foreign investment before the completion of a project, subject to a lock-in period of three years (calculated with reference to each tranche of foreign investment). However, the lock-in period condition will not apply to FDI in hotels & tourist resorts, hospitals, special economic zones, educational institutions, old age homes and investment by NRIs. The said lock-in shall not apply to transfer of stake from one non-resident to another non-resident or if the project/truck infrastructure is completed before lock in period.
- 100% FDI permitted under the automatic route in completed projects for operation and management of townships, malls/ shopping complexes and business centres. However, there would be a lock-in-period of three years and transfer of immovable property or part thereof would not be permitted during this period.
- Each phase of the construction development project would be considered a separate project for the purposes of FDI policy.
- It has been clarified that leasing and rental activities will not come under the definition of 'Real Estate Business'.

II. DEFENCE

- FDI up to 49% allowed under the automatic route.
- Cap on foreign portfolio investment and venture capital investments raised to 49%, from 24%, again under the automatic route.
- Any foreign investment more than 49% or an investment that results in change of ownership will need government approval.

III. BROADCASTING SECTOR - TV NEWS CHANNELS / FM RADIO / CABLE, DTH SERVICES

- FDI limit under approval route in news channels and FM radio raised to 49%, up from the existing cap of 26%. But 100% foreign investment in non-news channels—or entertainment broadcasters—will be allowed through the automatic route.
- Foreign investment limit in DTH, digital cable networks and Headend in the Sky services (HITS) raised to 100% from 74% to allow foreign strategic investors to look at Indian companies favourably. Up to 49% FDI has been allowed in the cable, DTH and HITS services through the automatic route.

IV. FULL FUNGIBILITY OF FOREIGN INVESTMENT PERMITTED IN BANKING- PRIVATE SECTOR

- Full fungibility of foreign investment in private banking sector permitted. Accordingly, FIIs/FPIs/QFIs, can now invest up to sectoral limit of 74%, provided that there is no change of control and management of the investee company.

V. PLANTATION

100% FDI under the automatic route for the plantation sector now permitted for coffee, rubber, cardamom, palm oil and olive oil. Earlier, FDI in only tea plantations were open for foreign investment.

VI. INVESTMENT BY COMPANIES/TRUSTS/ PARTNERSHIPS OWNED & CONTROLLED BY NRIS ON NON-REPATRIATION BASIS TO BE TREATED AS DOMESTIC INVESTMENT

- Non-Resident Indians (NRIs) have special dispensation for investment in certain sectors like construction development and civil aviation sector. Further, investment made by NRIs on non-repatriation basis are deemed to be domestic investment and treated at par with the investment made by residents.
- The special dispensation of NRIs has now been extended to companies, trusts and partnership firms, which are incorporated outside India and are owned and controlled by NRIs. Henceforth, such entities owned and controlled by NRIs will be treated at par with NRIs for investment in India.

VII. MANUFACTURING

A manufacturer will be permitted to sell its product through wholesale and/or retail, including through e-commerce without Government approval.

VIII. SINGLE BRAND RETAIL TRADE (SBRT) AND DUTY FREE SHOPS

- Mandatory 30% domestic sourcing condition will come into force at the time of opening of the first store rather than at the time of receipt of FDI.
- In case of certain high technology segments, these sourcing norms can be relaxed subject to government approval.
- Selling merchandise through e-commerce permitted.
- Indian brands also eligible for SBRT.
- 100% FDI is now permitted under automatic route in Duty Free Shops located and operated in the Customs bonded areas.

IX. SINGLE ENTITY TO CARRY OUT WHOLESALE TRADE AND SBRT

As per current the FDI policy, while 100% FDI is permitted under the automatic route in wholesale cash & carry activities, they are not permitted to open retail shops to sell to the consumer directly. It has now been decided that a single entity will be permitted to undertake both the activities of SBRT and wholesale with the condition that conditions of FDI policy on wholesale cash & carry and SBRT have to be complied by both the business arms separately.

X. LIMITED LIABILITY PARTNERSHIPS (LLPS)

- 100% FDI is now permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.
- Further LLPs having foreign investments are now permitted to undertake downstream investments in other companies/LLPS where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

XI. REGIONAL AIR TRANSPORT SERVICES

- Regional Air Transport Service (RSOP) are now permitted for foreign investment up to 49% under automatic route.

XII. NON-SCHEDULED AIR TRANSPORT, GROUND HANDLING SERVICES, SATELLITES, CREDIT INFORMATION COMPANIES

- Foreign Equity caps of certain sectors viz. Non-Scheduled Air Transport Service, Ground Handling Services, Satellites-establishment and operation and Credit Information Companies have now been increased from 74% to 100%. Further, sectors other than Satellites- establishment and operation have been placed under the automatic route.

XIII. COMPANIES WITHOUT OPERATIONS NOT TO REQUIRE GOVERNMENT APPROVAL FOR FDI FOR UNDERTAKING AUTOMATIC ROUTE SECTOR ACTIVITIES

- Infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government approval would not be required, for undertaking activities which are under automatic route and without FDI-linked performance conditions, regardless of the amount or extent of foreign investment.

XIV. ESTABLISHMENT AND TRANSFER OF OWNERSHIP AND CONTROL OF INDIAN COMPANIES

- Approval of the Government will now be required if there is change in ownership/control of the Indian company which operates in sectors/ activities under approval route. Earlier such government approval was required if the Indian company operated in capped sector.
- No approval of the Government is required for investment in automatic route sectors by way of swap of shares.

XV. SIMPLIFICATION OF CONDITIONALITIES

- Certain conditions of FDI policy on Agriculture and Animal Husbandry, and Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities have been simplified.

XVI. RAISING THE THRESHOLD LIMIT FOR APPROVAL BY FOREIGN INVESTMENT PROMOTION BOARD

- As per current policy, Foreign Investment Promotion Board (FIPB) considers proposals having total foreign equity inflow up to Rs. 3,000 crore (USD 0.45 billion) and proposals above Rs. 3,000 crores (USD 0.45 billion) are placed before Cabinet Committee on Economic Affairs (CCEA). The threshold limit for FIPB approval is increased to Rs. 5,000 crores (USD 0.76 billion).

Above amendments to the FDI Policy are meant to liberalise and simplify the FDI policy so as to provide ease of doing business in the country leading to larger FDI inflows contributing to growth of investment, incomes and employment.

For more details, you may refer the following link of the Press Note released - **http://dipp.nic.in/English/policies/fdi_review_10112015.pdf**

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