



# news flash

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## INDIA EXTENDS FOREIGN DIRECT INVESTMENT TO LIMITED LIABILITY PARTNERSHIPS

The Government of India has reviewed the extant policy on Foreign Direct Investment (FDI) and decided to permit FDI in Indian Limited Liability Partnerships (LLPs). However, such investment can only be made with specific prior approval of the Foreign Investment Promotion Board/ Government of India (FIPB) and subject to conditions specified in Press Note No. 1 (2011 Series).

### THE BACKGROUND

LLP is a body corporate formed under the Limited Liability Partnership Act, 2008 (LLP Act). It is a legal entity separate from that of its partners. LLPs shall have perpetual succession and any change in the partners of a LLP shall not affect the existence, rights or liabilities of the limited liability partnership.

FDI in LLP has been allowed in order to benefit the Indian economy by attracting greater overseas funds.

### IMPLEMENTATION

#### ➤ FDI in LLPs will be allowed subject to the following conditions:

- FDI in LLPs will be allowed generally, through the Government approval route. Only for LLPs operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance related conditions;
- Foreign capital participation in the capital structure of the LLPs will be allowed only by way of cash considerations, received by inward remittance, through normal banking channels, or by debit to the Non-Resident External/ Foreign Currency (Non Resident) account of the person concerned maintained with an authorized dealer/ bank;
- LLPs with FDI will not be allowed to operate in agricultural/ plantation activity, print media or real estate business; and
- LLPs with FDI will not be eligible to make downstream investments.

#### ➤ Downstream Investment by Companies

An Indian company having FDI, will be permitted to make downstream investment in LLPs only if both the company, as well as the LLP are operating in sectors where:

- (a) 100% FDI is allowed through the automatic route; and
- (b) there are no FDI linked performance related conditions.

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## ➤ **Foreign Institutional Investors/ Foreign Venture Capital**

Foreign Institutional Investors and Foreign Venture Capital Investors will not be permitted to invest in LLPs. LLPs will also not be permitted to avail of External Commercial Borrowings (ECBs).

## ➤ **Designated partners**

- The LLP Act requires at least one designated partner to be a resident in India as defined under the LLP Act. Now, such a designated partner also needs to satisfy the definition “*person resident in India*” under the Foreign Exchange Management Act, 1999.
- Where a designated partner of a LLP with FDI, is a body corporate or its nominee, such body corporate must be an Indian company registered under the Companies Act, 1956, and not any other kind of entity (i.e. LLP or trust).
- The designated partners will be responsible for compliance with all of the above conditions and for the penalties imposed on the LLP in case of any contravention.

## ➤ **Conversion of a company with FDI into an LLP will be allowed only if the above stipulations are met, with the prior approval of the FIPB.**

### **THE IMPACT**

- **Likely users** - Small entrepreneurs and businessmen who would be interested in exploring business ventures with foreign collaborators would be able to take advantage of the LLP structure.
- **Restrictions** – Despite the present change, LLPs cannot raise ECB or make downstream investments subject to the conditions mentioned above. These conditions limit the utility of the LLP structure, particularly in the infrastructure sector. Further, it may be noted that LLPs are not eligible for listing on a stock exchange or public offer.
- **Conclusion** – Government’s move in allowing FDI in LLP is expected to increase the number of joint ventures in the country. Further, this change will benefit the Indian economy by attracting greater FDI and create employment.



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