



news flash

January 2012



FDI – INDIA BECKONS RETAIL GIANTS

After much debate and many heated discussions, the Government of India has finally notified its decision on Foreign Direct Investment (“**FDI**”) in Single Brand Retail Trading.

Until now, the FDI policy permitted FDI in Single Brand Retail Trading only up to 51% subject to the prior approval of the Government and compliance with certain other conditions.

On 10 January 2012, the Government of India issued Press Note 1 of 2012 (“**Press Note**”) whereby FDI is now permitted up to 100% in Single Brand Retail Trading under the government approval route, subject to specified conditions. An additional condition generally referred to as the ‘*local procurement clause*’ has been included in respect of proposals involving FDI beyond 51%.

FDI in Single Brand Retail Trading is therefore now subject *to* the following conditions:

- i. Products to be sold should be of a ‘*Single Brand*’ only.
- ii. Products should be sold under the same brand internationally (i.e. products should be sold under the same brand in one or more countries other than India).
- iii. Single Brand product-retail trading would cover only products which are branded during manufacturing.
- iv. The foreign investor should be the owner of the brand.
- v. In respect of proposals involving FDI beyond 51%, mandatory sourcing of at least 30% of the value of products sold would have to be done from Indian ‘*small industries/ village and cottage industries, artisans and craftsmen*’.

The above Press Note ushers in momentum in Government action on the policy front and also spells significant advantages as under:

- a) Foreign investors are freed of the requirement to enter into joint venture arrangements with Indian parties and can now establish an Indian subsidiary with 100% ownership.
- b) Foreign investors in existing joint venture companies can now consider increasing their shareholding in such companies beyond 51%.

- c) Small industries in India would benefit from the local procurement clause. “Small industry” has been defined to mean industries which have a total investment in plant & machinery not exceeding US \$ 1 million.

The following concerns arise from the Press Note:

- a) Only small industries whose value of the plant & machinery at the time of installation, (without providing for depreciation), does not exceed US \$ 1 million will benefit from the local procurement clause. It is observed that the Press Note does not link ‘small industry’ to the similar terms ‘micro enterprise’ and ‘small enterprise’ in the Micro, Small and Medium Enterprises Development Act, 2006.
- b) Since the compliance of the local procurement clause is to be self-certified by the Indian company with the FDI, the Indian company must continuously ensure that its suppliers satisfy the threshold of a ‘*small industry*’.
- c) The Indian company with FDI must enter into sourcing arrangements with small industries/ village and cottage industries, artisans and craftsmen keeping in mind its sales projections for a financial year so that the actual local procurements made by it does not fall short of 30% of the value of the products sold in that financial year.

While critics point out that the threshold for ‘*small industry*’ may stymie the growth of the small scale industries, the intent of the Press Note appears to be to constantly promote new players in this field and provide opportunities to meet the growing demands of the retail market. Certain concerns have been voiced by the retail industry on potential compromises to the sanctity of their intellectual property as well as on the capabilities of the Indian ‘*small industries*’ to meet the quality standards required by them. While the Press Note is largely seen as a welcome relief from the policy logjam, it remains to be seen whether the opening up of the retail sector in India will be embraced by the international retail giants.

Meanwhile, the Government’s decision in respect of multi-brand retail trade is still awaited.

Disclaimer

This news flash has been written for the general interest of our clients and professional colleagues and is subject to change. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news flash.

For further clarification and details on the above, you may write to the Exchange Control team comprising of (amongst others) Aliff Fazelbhoj (Senior Partner) at afazelbhoj@almtlegal.com, Kruti Desai (Partner) at kdesai@almtlegal.com, Subashini Radhakrishnan (Senior Associate) at sradhakrishnan@almtlegal.com and Siddhi Ghatlia (Associate) at sghatlia@almtlegal.com.

ALMT Offices

Mumbai:

4th Floor, Express Towers,
Nariman Point,
Mumbai 400-021
India
Tel: +91 22 4001 0000
Email: mumbai@almtlegal.com

Bangalore:

2 Lavelle Road,
Bangalore 560 001
India
Tel: +91 80 4016 0000
Email: bangalore@almtlegal.com

New Delhi:

506 DLF Courtyard,
Saket,
New Delhi 110 017
India
Tel: +91 11 4944 5566
Email: delhi@almtlegal.com

London

DowGate Hill House,
14-16 DowGate Hill,
London EC4R 2SU
United Kingdom
Tel: +44 020 7332 2367
Email: london@almtlegal.com