FOREIGN INVESTMENT UPDATES

The Department for Promotion of Industry and Internal Trade ("**DPIIT**"), Ministry of Commerce and Industry, Government of India ("**GOI**") has revised the terms governing foreign direct investment ("**FDI**") policy ("**FDI Policy**") in various sectors in India, vide Press Note no. 4 (2019 Series) dated 18 September 2019 ("**Press Note**").

AMENDMENTS

A summary and background of the amendments made vide this Press Note are as follows:

(i) Mining Sector (Coal & Lignite)

- Earlier, the Coal Mines (Nationalization) Act, 1973 governed coal mining activities. However, in March 2015, the GOI vide Coal Mines (Special Provisions) Act, 2015 permitted private companies to mine coal for use in their own cement, steel, power or aluminium plants and accordingly the Coal Mines (Nationalization) Act, 1973 was repealed. The Press Note now amends the FDI Policy to include references to Coal Mines (Special Provisions) Act, 2015 and Mines and Minerals (Development and Regulation) Act, 1957, which are the present legislature governing coal mining activities.

- The GOI has, vide the Press Note also increased scope of this sector by introduction of a new sub-sector under Mining being sale of coal and coal mining activities which includes '*associated processing infrastructure*' under 100% automatic route. In this regard, the GOI has defined 'Associated Processing Infrastructure' to include coal washery, crushing, coal handling and separation (magnetic and non-magnetic).

(ii) Manufacturing

While FDI in manufacturing sector is under the automatic route as per the FDI Policy, this Press Note now clarifies to include self manufacturing by the investee entity and also contract manufacturing (through a legally tenable contract) on a principal to principal or principal to agent basis. This is a welcome change in the light of the Make in India initiative of the GOI and would now provide a boost to foreign companies investing in India in the manufacturing sector through the alternative way of contract manufacturing.

(iii) Single Brand Retail Trading ("SBRT")

- Press Note 1 of 2018 amended the FDI Policy to permit 100% FDI under the automatic route. The conditions were also amended to permit foreign companies to undertake SBRT either directly by the foreign brand owner or through an agreement between an Indian entity and the foreign brand owner.

- Press Note has now made certain amendments to the condition of domestic sourcing of 30% which will be based on value of goods *procured* (*earlier purchased*). Therefore, the scope of sourcing/ procurement requirements has now been extended to all goods procured by any other means including purchases.

- The Press Note further amends the FDI Policy whereby the start date of the SBRT business would not necessarily be the date of opening the first store; the date of start of online retail sale may be considered for the same. The Press Note also permits a company to undertake SBRT through e-commerce prior to opening of a brick and mortar store. However, the entity should open the brick and mortar store within 2 years from the date of start of online retail business.

- Further, all procurements made from India for the single brand under the company shall be counted towards local sourcing requirement, irrespective of whether the goods are procured or exported.

- Prior to the Press Note, set off of increase in the value of global souring from India in a financial year, from the preceding financial year by non-residents was permitted during the first 5 years beginning from 1st April of the year from opening of the first store. However, vide the Press Note amendment, set off is now permitted generally for all sourcing of goods from India for global operations and not only for the first 5 years. This set off shall now be against value of goods sourced from India for global operations in a financial year (April-March) through (a) direct trading by the company or its group companies (Indian or foreign); or (b) a third party under a legally tenable agreement, as against the sourcing norm requirement of 30%.

(iv) Broadcasting Content Services

Under the Broadcasting Content Services sector, a new sub-sector has been added, i.e. Digital Media. This sector includes, uploading/streaming of news & current affairs through Digital Media. FDI in this sub-sector is now permitted upto 26%, with the prior approval of the GOI.

It is to be noted that these changes shall be affected only on amendment of the relevant regulations issued under Foreign Exchange Management Act.

CONCLUSION

The GOI has been making various amendments to promote foreign investment in the SBRT sector. From April 2006 (from the time this sector under FDI policy has been operative) to April 2019, the SBRT sector has received total FDI equity of USD 1,636.24 million. This encourages the government to make amendments to clarify issues and promote further investment.

Also, the relaxation norms in coal mining, contract manufacturing, SBRT will result in making India a more attractive destination for foreign investment, leading to benefits of increased investments, employment and growth. Despite the changes to SBRT trade sector and other sectors, this move of the GOI while aiming to widen the scope for FDI, lacks certain required clarity on what would be included under the ambit of digital media sector or the restrictions the existing news media websites with more than 26% FDI may face.

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For further clarification and details on the above, you may write to the Exchange Control team comprising of among others Mr. Vaishakh Kapadia (Partner) at vkapadia@almtlegal.com and Ms. Jenika Solanki (Associate) at jsolanki@almtlegal.com.