



news flash

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Changes to the Foreign Direct Investment Policy

The Department of Industrial Policy and Promotion (“**DIPP**”) vide its Circular no. 1 of 2013 issued a consolidated policy on foreign direct investment (“**FDI**”) in India (“**FDI Policy**”). This FDI Policy was effective from 5 April, 2013. Pursuant to the FDI Policy, DIPP has now issued two press notes incorporating the following important amendments to the FDI Policy, applicable with immediate effect.

A. Multi Brand Retail Trading (“MBRT”)

DIPP in its consolidated FDI Policy allowed FDI in MBRT upto 51% under the government approval route in branded products, subject to the conditions specified therein. It provided that the policy is an enabling policy and the States and Union Territories are free to take their own decisions with regard to implementation of the policy. Nine States and two Union Territories have conveyed their agreement to allow FDI in MBRT under the FDI Policy. The Government of Himachal Pradesh has on 3 June, 2013 given its consent to implement the FDI Policy on MBRT in the State and Himachal Pradesh has now been added to the list of States/Union Territories which have conveyed their consent to the FDI Policy on MBRT.

B. Introduction of definition of group company

As per the FDI Policy foreign investments upto 100% is allowed in cash and carry wholesale trading (“**CCWT**”) under the automatic route. Further, as per the guidelines issued for CCWT, wholesale trading among group companies was permitted only to the extent of 25% of the total turnover of the wholesale venture entity. However, the term “group company” was not defined in the FDI Policy, leading to interpretation issues.

DIPP with the objective to clarify the FDI Policy relating to CCWT has vide its Press Note 2 of 2013 incorporated the definition of group company. The term group company has been defined to mean two or more enterprises which, directly or indirectly, are in a position to:

- Exercise twenty six per cent, or more of voting rights in other enterprise; or

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- Appoint more than fifty percent, of member of board of directors in the other enterprise.

Conclusion

The inclusion of the State of Himachal Pradesh for implementing the FDI Policy on MBRT shall help in attracting FDI in the State. Further, the definition of the term group company provides much needed clarity on the issue.

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