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COMPOSITE CAPS FOR FOREIGN INVESTMENT

The Government of India has recently issued a Press note to do away with the distinction between different types of foreign investments, especially between foreign portfolio investments and foreign direct investments, and replace them with composite caps.

Some of the key points of the Press Note are as follows -

1. It is clarified that foreign investment (direct or indirect) shall include all types of foreign investments, irrespective of whether the said investments have been made under Schedule 1 (Foreign Direct Investment), 2 (Foreign Institutional Investor), 2A (Foreign Portfolio Investor), 3 (Non-resident Indian), 6 (Foreign Venture Capital Investor), 8 (Qualified Foreign Investor), 9 (Limited Liability Partnership) and 10 (Depository Receipts) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations ("**Regulations**"). Hence, sectoral caps would include foreign investments via all these routes.

2. A Foreign Institutional Investor ("**FII**"), Foreign Portfolio Investors ("**FPI**") and Qualified Foreign Investor ("**QFI**") may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/ FPI/ QFI below 10% of the capital of the company and the aggregate limit for FII/ FPI/ QFI investment to 24% of the capital of company. This aggregate limit of 24% can be increased to the sectoral cap/ statutory ceiling, as applicable, by the Indian company by passing a Board resolution and then a special resolution by the shareholders, subject to prior intimation to RBI. The aggregate investment by FII/ FPI/ QFI, individually or in conjunction with other kinds of foreign investment can not exceed sectoral/ statutory cap.

3. Foreign Currency Convertible Bonds and Depository Receipts having underlying of instruments which can be issued under Schedule 5 of the Regulations, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be considered as foreign investment under the composite cap.

4. Foreign investment in sectors requiring Government approval route resulting in transfer of ownership and/ or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/ or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.

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5. In case of portfolio investment, upto aggregate foreign investment level of 49% or sectoral/ statutory cap, whichever is lower, will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/ or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the foreign direct investment policy. However, there are no sub-limits of portfolio investment and other kinds of foreign investments in commodity exchanges, credit information companies, infrastructure companies in the securities market and power exchanges.

6. The aggregate foreign investment (direct or indirect) in an entity will not exceed the sectoral/ statutory cap.

7. Any existing foreign investment already made in accordance with the policy in existence would not require any modification to confirm to these amendments.

8. The onus of compliance of above provisions will be on the investee company.

9. The sectors in which 100% foreign investment is permitted under the automatic route without conditionalities, would not be affected.

10. The requirement of Government approval in certain sectors continues to remain along with the conditionalities applicable to such sectors.

11. In the Banking-private sector, where the sectoral cap is 74%, FII/ FPI/ QFI investment limits will continue to be within 49% of the total paid up capital of the company.

12. In the Defence sector, where the sectoral cap is 49%, investment by FPI/ FIIs/ NRIs/ QFIs and investments by FVCIs together shall not exceed 24% of the total equity of the investee/ joint venture company.

ALMT ANALYSIS

The measure is expected to bring uniformity and simplicity in the foreign investment policy thereby attracting foreign investments. This shows the Government's constant endeavour to boost foreign investment in India.

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