ALMT Legal
ADVOCATES AND SOLICITORS

news flash

May 2016

FOREIGN INVESTMENT-ASSET RECONSTRUCTION COMPANIES

The Department of Policy and Promotion (“**DIPP**”), Ministry of Commerce and Industry, Government of India (“**GOI**”) has liberalised the terms governing foreign direct investment (“**FDI**”) in asset reconstruction companies (“**ARCs**”) in India, vide Press Note 4 (2016 Series) dated 6 May 2016 (“**Press Note**”).

BACKGROUND

By virtue of the FDI policy dated 12 May 2015, 100% FDI was permitted in ARCs wherein FDI upto 49% was under automatic route and above 49% government approval was required. A person resident outside India was permitted to invest in the same manner as stated above in ARCs registered with the Reserve Bank of India (“**RBI**”). Also, sponsors were not allowed to hold more than 50% of shareholding in ARCs either through FDI route or through a foreign institutional investor (“**FII**”)/foreign promotional investor (“**FPI**”) controlled by a single sponsor. FIIs/ FPIs could invest only upto 74% of each tranche of scheme of Security Receipts (“**SRs**”) subject to limits applicable by corporate bond and the sectoral caps under the FDI policy.

REVISED POSITION

The Press Note has now liberalised FDI is ARCs. The revised conditions for FDI in ARCs are:

- 100% FDI is permitted under automatic route.
- Person resident outside India can invest upto 100% in the capital of ARCs registered with RBI under automatic route.
- The limits for investment by a sponsor and institutional/ non-institutional investors will be as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“**SARFAESI Act**”).
- Further, the condition that the total shareholding of an individual FII/ FPI shall be below 10% of the total paid up capital is retained.
- The investment limit of FIIs/ FPIs is increased to 100% of each tranche of scheme of SRs issued by ARCs, subject to guidelines/ directions issued by RBI from time to time.
- All investments under this sector will be subject to provisions of the SARFAESI Act.

contd...

CONCLUSION

This move of the GOI to liberalise FDI in ARCs is in accordance with the Union Budget which provided that the SARFEASI Act should be amended to allow sponsors to have controlling interest in the reconstruction company. Hence, the SARFEASI Act will have to be amended to allow 100% investment by sponsors. Further, no local business partner will be required since 100% investment by sponsors will be permitted in ARCs.

This liberalisation will address the issue of stressed assets in the banking sector since ARCs are required to make an upfront cash payment of 15% of the cost of assets. Therefore, relaxation of the FDI norms to allow 100% FDI under the automatic route will help ARCs to meet this requirement with ease.

This move of GOI will most likely provide more inflow of foreign investments and benefit ARCs since no government approval will be required for FDI exceeding 49% and now 100% FDI is permitted under the automatic route.

DISCLAIMER

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.