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FDI IN PENSION SECTOR

The Department of Industrial Policy and Promotion ("**DIPP**") has vide Press Note No. 4 (2015 Series) ("**Press Note**") dated 24 April, 2015 permitted foreign direct investment ("**FDI**") in the '*Pension*' sector. The Press Note is effective immediately.

In pursuance of the enactment of the Insurance Regulatory and Development Authority Act, 2013, FDI in pension funds will be permitted upto 49%. FDI upto 26% will be permitted through the automatic route. However, in case of FDI beyond 26% and upto 49%, the foreign investor would be required to obtain the prior approval of the Foreign Investment and Promotion Board ("**FIPB**").

The Press Note states that FDI upto 49% in the pension sector includes investments made through foreign direct investment, foreign portfolio investors (foreign institutional investors and qualified foreign investors), non-resident Indians, foreign venture capital investors and depository receipts.

The Press Note provides for certain additional conditions stated as follows:

- FDI in pension funds is allowed as per Pension Fund Regulatory and Development Authority Act, 2013 ("**Act**").

- Foreign investors bringing in the equity have to do so in accordance with Section 24 of Act. This provision caps the equity investment of a foreign investor to the higher of the percentage approved for foreign investment in an Indian insurance company or up to 26% of the paid up capital in the pension fund.

- The Press Note requires foreign investors to register with the Pension Fund Regulatory and Development Authority ("**PFRD Authority**") and comply with other requirements under the Act and rules and regulations framed there under for participating in pension fund management activities in India.

- If the FDI were to result in ownership or control of an existing pension fund in favour of the foreign investor or transfer of ownership or control of such a fund from (a) resident Indian citizens, and/ or (b) resident Indian companies owned and controlled by resident Indian citizens, to the foreign investor as a result of the foreign investment (including through transfer of shares or issues of shares to non-resident entities through acquisition, amalgamation, merger etc.), prior approval of the FIPB in consultation with

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Department of Financial Services, PFRD Authority and other concerned entities will have to be obtained. The onus of obtaining the approval is to be met with by the Indian investee pension fund.

- The terms '*Owned*' and '*Controlled*' have to be considered as per the Foreign Direct Investment Policy issued on 17 April, 2014 ("**FDI Policy**"). The FDI Policy provides that –
  - A company is considered as '*Owned*' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens;
  - The term '*Control*' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

The FDI in the pension sector is expected to boost the expansion of the pension sector, in terms of increasing the scope of the pension fund related activities including marketing, selling and promoting of new products.

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