news flash

July 2016

AMENDMENT TO THE FDI POLICY

The Department of Industrial Policy and Promotion **("DIPP")** issued Press Note No. 5 (2016 Series) dated 24 June 2016 **("Press Note")**, introducing substantial changes to the Foreign Direct Investment Policy issued on 7 June 2016 **("FDI Policy")**. This newsflash sets out significant changes made vide the Press Note.

A. Branch, Liaison, Project Office

The Press Note dispenses with the requirement of procuring the approval of the Reserve bank of India for the establishment of branch office, liaison office, project office or any other place of business in India, where Foreign Investment Promotion Board ("**FIPB**") approval or permission of the concerned Ministry has already been obtained, where the principal business of the applicant is defence, telecom, private security or information and broadcasting.

B. Agriculture Sector

The FDI policy stated that foreign direct investment ("**FDI**") was permitted in Animal Husbandry, Pisciculture, Aquaculture and Apiculture under controlled conditions. The term '*controlled conditions*' inter alia covered (a) Intensive farming system which would require climate systems (ventilation, temperature/humidity management), and (b) Poultry breeding farms and hatcheries should be micro-climate controlled etc.

However, the Press Note has removed the requirement for FDI in Animal Husbandry, Pisciculture, Aquaculture and Apiculture to be under controlled conditions.

C. Manufacturing Sector

The FDI Policy permitted FDI in the manufacturing sector. The Press Note now specifically allows 100% FDI (under the government approval route), for trading including trading through e-commerce, for food products manufactured and/or produced in India. In case of FDI in the food products retail trading sector, the application will first be processed through the DIPP before being considered by the Government of India.

D. Defence Sector

The FDI Policy permitted 49% FDI under the automatic route and above 49% subject to government approval wherever it is likely to result in access to modern and 'state-of-art' technology in the country.

The Press Note has now modified this clause to state that FDI is permitted upto 100%; where 49% FDI is permitted under the automatic route and beyond 49% FDI is permitted subject to Government route wherever it is likely to result in access to modern technology or for other reasons to be recorded. Further

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the scope of the sector is widened to include manufacturing of small arms and ammunitions under the Arms Act, 1959.

E. Service Sector (Broadcasting)

The FDI Policy permitted 49% FDI in the Broadcasting sector (teleports, DTH, Cable networks, Mobile TV, Headed-in-the sky broadcasting service and local cable operators) under the automatic route and under the government sector beyond 49%.

The Press Note now permits 100% FDI under the automatic route in the Broadcasting sector. The Press Note further provides that in case of FDI beyond 49% in a company not seeking license/ permission from the sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor will require government approval.

F. Civil Aviation Sector

The FDI Policy permitted 100% FDI in the airports sector, wherein for existing projects 74% FDI was permitted under the automatic route and beyond 74% government approval was required. The Press Note now permits 100% FDI in the existing projects in the airport sector under the automatic route.

The FDI Policy provided that 49% FDI is permitted under the automatic route for (a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline, and (b) Regional Air Transport Service. 100% FDI was permitted under the automatic route in case of Non-resident Indians ("**NRIs**"). The Press Note continues to permit 100% investment by NRIs under the automatic. However, now the Press Note provides that 100% FDI is permitted for all foreign investors, wherein 49% FDI is permitted under the automatic route and FDI beyond 49% will require government approval.

G. Private Security Sector

Earlier 49% FDI was permitted under the government approval route. This Press Note now permits FDI upto 74%, wherein FDI upto 49% would be under the automatic route and beyond 49% and upto 74% would require government approval.

H. Retail Sector

The FDI policy states that in case of the single brand retail trading sector, the government may relax sourcing norms for entities undertaking single brand retail trading of products giving 'state of the art' and 'cutting edge' technology where local sourcing is not possible. Therefore now the Press Note dispenses with the requirement to adhere to such sourcing norms in their entirety for 3 years from commencement of business i.e. opening of the first store for such entities. After three years the local sourcing conditions would be applicable.

I. Pharmaceuticals

The FDI policy provided that 100% FDI is permitted subject to government approval for Brownfield investments.

However, the Press Note has liberalised this sector allowing 74% FDI under the automatic route and only investment exceeding 74% will require government approval. The Press note further attaches three conditions for investments in Brownfield pharmaceutical projects being:

- The production level of National List of Essential Medicines (**"NLEM"**) drugs and/or consumables and their supply to the domestic market during induction of FDI being maintained at an absolute quantative level for the next five years. The benchmark for this is to be the highest level of production of these drugs or consumables in the three financial years immediately preceding the year of induction of FDI. Of these years, the highest level of production in any of these three years would be taken as the level.

- The R&D expenses being maintained in value terms for five years at an absolute quantitative level at the time of FDI induction. The benchmark for this level would be decided with reference to the highest level of R&D expenses which has been incurred in any of the three financial years which immediately precede the year of FDI induction.
- In the event of any transfer of technology, the administrative Ministry will provide complete information of the same along with induction of FDI in the investee company.

ALMT analysis

The changes brought by the Press Note show the Governments progressive steps to increase FDI inflows and a constant effort to attract more foreign investments.

Although the Press Note relaxes the sourcing norms for entities undertaking single brand retail trading of products giving 'state of art' and 'cutting edge' technology, these two terms have not been defined, resulting in continued ambiguity and uncertainty as to what products would fall under this category to claim this exemption. In addition to the above, for an entity undertaking manufacturing of both food as well as non food household product, it is still unclear whether even their application will have to be processed with the DIPP before government approval or whether such entities should separate their food and non-food product business distinctively.
Further, although investment Brownfield pharmaceuticals has been liberalised, conditions have been attached for R&D maintenance and production level of NLEM drugs and consumables.

Despite the above, in all the increase in the FDI caps and liberalisation of approvals in certain specific sectors gives a positive outlook to investors abroad.

DISCLAIMER

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