VERITAS LEGAL
ADVOCATES & SOLICITORS

NEWS FLASH | FOREIGN DIRECT INVESTMENT POLICY

The Union Cabinet has approved certain amendments to the FDI Policy, which have been published by the Press Information Bureau through a Note released on January 10, 2018. The key changes proposed are summarized below.

Sector-specific Changes

- FDI in Single Brand Retail Trading: FDI up to 100% will now be permitted under the automatic route, instead of FDI beyond 49% requiring Government approval. Further, for proposals involving foreign investment beyond 51%, the FDI Policy requires that sourcing of 30% of the value of goods purchased would have to be done from India. Going forward, any 'incremental sourcing of goods' (i.e. an increase in value of global sourcing from India for that single brand in a particular financial year over the preceding financial year) from India for global operations by the non-resident entities/group undertaking, can be set off against the aforesaid mandatory sourcing requirement of 30% of purchases from India, for the first 5 financial years.

- Pharmaceuticals: FDI in the manufacture of medical devices is permitted upto 100% under the automatic route (greenfield or brownfield). The FDI Policy defines the term "medical devices" in detail, with a proviso to the effect that this definition would be subject to amendments under the Drugs and Cosmetics Act. To avoid ambiguity, the reference to Drugs and Cosmetics Act will be deleted from the FDI Policy and it has been indicated that certain amendments would be made to the definition of "medical devices".

- FDI in Civil Aviation: As per the existing policy, foreign airlines other than Air India are allowed to invest in Indian Companies operating scheduled and non-scheduled air transport services upto the limit of 49% (subject to Government approval and certain other conditions). The specific restriction pertaining to Air India has been done away with, with a requirement that substantial ownership and effective control of Air India shall continue to vest in Indian nationals.

- Construction Development - Real Estate Broking Services: An express clarification has been issued to the effect that Real Estate Broking Services are eligible for 100% FDI under the automatic route.

- Power Exchanges: The policy allowing 49% FDI in power exchanges under the automatic route has been amended to allow FII/FPI acquisitions through primary markets (in addition to purchases through the secondary market).

Sector-specific Changes

- Auditors of Indian Investee Companies Receiving Foreign Investment: Going forward, where a foreign investor '*wishes to specify a particular auditor / audit firm*' having an 'international network' as being the auditor of its Indian investee company, the audit of such investee company would need be carried out as a joint audit, wherein one of the auditors should not be part of the 'same network'. The exact scope of the proposed restriction would need to be analyzed further, to consider whether the restriction would apply for situations such as where the shareholders collectively, through a Shareholders Agreement or otherwise, require one amongst various international firms to be the auditor (i.e. rather than the foreign investor specifies 'a particular audit firm').

- Issue of Equity Shares Against Non-Cash Consideration: It is proposed that issue of shares against non-cash consideration such as pre-incorporation expenses, import of machinery etc. would now be permitted under automatic route instead of Government approval route.

- Foreign investment in an Investing Company: Foreign investment in an Indian Company only engaged in investment (including Core Investment Companies) is allowed upto 100% with prior Government approval. Going forward, if the activities of such a company are expressly regulated by any financial sector regulator, foreign investment upto 100% would be allowed under the automatic route.

- The aforesaid changes are summarized as indicated in the Note issued by the Press Information Bureau and one would need to await the exact language of the changes to the FDI Policy / FEMA Notification to further assess some of the changes and issues discussed above.

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