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Study of Key Changes In The Consolidated FDI Policy Of 2017 in India

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Introduction : The document released by the Department of Policy and Promotion (DIPP) offers investors clarity on entry routes for investments into India, sectors requiring government approval and procedures for the same. The document serves as a guide on the regulations monitoring and permitting foreign investments across respective economic sectors.

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Key changes introduced through the New FDI Policy

FDI in LLPs: The Erstwhile FDI Policy was silent with respect to conversion of an FDI funded Limited Liability Partnership (LLP) into a company and vice versa. The New FDI Policy allows conversion of an FDI funded LLP operating in sectors/activities where

(i) 100% FDI is allowed through the automatic route; and

(ii) there are no FDI linked performance conditions, into a company, under the automatic route. Similarly, conversion of an FDI funded company operating in sectors/activities where (i) 100% FDI is allowed through the automatic route; and (ii) there are no FDI linked performance conditions, into an LLP, is permitted under the automatic route.

Downstream Investment Intimation: Under the Erstwhile FDI Policy, an entity was required to notify the Secretariat of Industrial Assistance (SIA), DIPP and Foreign Investment Policy Board (FIPB) of its downstream investment. The New FDI Policy requires such intimation to be made to the Reserve Bank of India (RBI) and the Foreign Investment Facilitation Portal. Further, the New FDI Policy is silent on whether the intimation has to be made to regional offices of RBI or the central office of RBI.

Cash & Carry Wholesale Trading: Press Note 12 (2015 series) dated 24 November 2015 (PN 12) allowed a wholesale/ cash & carry trader to undertake single brand retail trading, subject to the conditions related to FDI in single brand retail trading sector. This change was subsequently incorporated in the Erstwhile FDI Policy. The New FDI Policy, by doing away with the reference of 'single brand', allows wholesale/cash & carry traders to undertake retail trading by way of both single brand retail trading as well as multi brand retail trading, through the same entity, subject to prescribed conditions.

FDI in Single Brand Retailing:

Norms have been relaxed for local sourcing norms for a period of 3 years from commencement of business i.e., opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, provisions of paragraph 5.2.15.3 (2) (e) of the New FDI Policy, dealing with local sourcing norms will be applicable.

FDI in E-commerce: The Erstwhile FDI Policy prohibited an e-commerce entity from permitting more than 25% of the sales effected through its market place from one vendor or its group companies. The New FDI Policy clarifies that the 25% of sales value must be computed per financial year.

Fresh Approval for additional FDI: Under the Erstwhile FDI Policy, additional FDI into the same entity within the approved foreign equity percentage/or into a wholly owned subsidiary did not require fresh approval. The New FDI Policy has capped the additional FDI to a cumulative amount of INR 5,000 crore, beyond which, fresh approval will be required to be sought.

FDI linked performance conditions: Presently, FDI is permitted in LLPs operating in sectors/activities where: (i) 100% FDI is allowed through the automatic route; and (ii) there are no FDI linked performance conditions. While the Erstwhile FDI Policy was silent on what constituted FDI linked performance conditions, the New FDI Policy has defined FDI linked performance conditions as sector specific conditions for companies receiving foreign investment.

Inclusion of startups in the government's foreign investment policy: Indian startups can now raise up to 100 percent funding from foreign venture capital investors (FVCIs). The policy simplifies the definition of 'venture capital funds' as funds registered under the Securities and Exchange Board of India or SEBI (Venture Capital Funds) Regulations of 1996.

Relaxation of the local sourcing rule in single-brand retail: Mandatory local sourcing norms for foreign firms will not be applicable for up to three years from the commencement of their business in the country. This refers to such entities that have 'state of art' and 'cutting edge' technology, and where local souring is not possible. However, after the exemption period ends, these companies will need to comply with the domestic sourcing norm (30 percent in a year). A clear definition of what these terms mean is still missing.

Sales by an e-commerce platform: As it stands, an e-commerce entity can source only up to 25 percent of its sales through one of its group companies. The DIPP has now clarified that 'sales' will be calculated based on value (not volume) of items sold on a financial year basis – April to March.

100 percent FDI in food retail: Foreign investment up to 100 percent will be permitted under the government approval route for trading, including through e-commerce in the case of food products manufactured or produced in India.

Extension of FDI in the pharmaceutical sector: Up to 74 percent FDI will allowed in India's pharmaceutical sector through automatic route; beyond that limit, the foreign investment will need to secure government approval.

Investment by non-resident Indians (NRIs): A company, trust, or partnership firm that is incorporated outside India and owned and controlled by NRIs will be permitted to invest in India, subject to certain provisions outlined in the FDI policy.

References :

1. India: Key Changes In The Consolidated FDI Policy Of 2017, Article by Atul Pandey, Hirak Mukhopadhyay and Shreya Gulati
2. http://www.financialexpress.com/opinion/fdi-policy-2017-why-narendra-modi-government-must-unleash-fdi-reforms/884164/
3. http://indianexpress.com/article/business/budget/budget-2017-reforms-fipb-abolished-more-measures-to-attract-fdi-digital-payment-4503293/
4. India's FDI Reforms Under Modi: Once a Fountain, Now a Drip by Richard M. Rossow
5. India's FDI Policy for 2017: Startups and Single Brand Retail among Beneficiaries By Dezan Shira & Associates