

GOVERNMENT LIBERALISES FDI POLICY

The Government on 14 September 2012 approved the proposal of the Department of Industrial Policy & Promotion (DIPP) for amendment of the existing policy on Foreign Direct Investment (FDI) in relation to retail trading, civil aviation, broadcasting and power trading exchanges.

Single-brand Retail Trading

Vide Press Note 1 of 2012 Series dated 10 January 2012, the Government had permitted FDI, up to 100% under the approval route, in single brand product retail trading, subject to specified conditions, including:

1. the foreign investor should be the owner of the brand; and
2. in respect of proposals involving FDI beyond 51%, 30% sourcing was mandatorily required to be done from SMEs / village and cottage industries artisans and craftsmen.

The Cabinet has approved modification of the above mentioned conditions. As per the press release, the amendment in the condition relating to brand-ownership was felt necessary, in view of the fact that, globally, single brand retailers often adopt a variety of business models, wherein the brand owning entity and investor entities are separate entities, even though in some cases, they may be having the same parent. Such business models were not found to be in consonance with the condition that the foreign investor should be the brand owner. ***Accordingly, the Government has revised the policy whereby one non-resident entity, whether owner of the brand or otherwise, will be permitted to undertake single brand product retail trading in the country, for the specific brand, through a legally tenable agreement.***

Further, as regards the mandatory sourcing requirement, such requirement has been relaxed to the effect that single brand retailers ***may source locally and "preferably" from MSMEs, village and cottage industries, craftsmen and artisans "where it is feasible"***. However, 30% of the sourcing must be done locally, from India.

Multi-brand Retail Trading

The Cabinet approved the proposal of the DIPP for permitting FDI in multi brand retail trading. The proposal had earlier been approved by the Cabinet in its meeting on 24 November 2011 but could not be implemented due to lack of consensus amongst coalition parties forming part of the current Government.

Under the new policy framework, the government has allowed FDI up to 51% in multi brand retail trading and has empowered the state governments to define their own set of guidelines. Accordingly, retail outlets may be set up only in those states which have agreed or agree in future to allow FDI in multi brand retail trading.

Other conditions include a requirement that retail outlets may be set up in cities with a population of more than 1 million as per the 2011 census and at least 50% of total FDI brought in should be invested in 'backend infrastructure' within three years of the induction of FDI.

Further, the establishment of multi-brand retail outlets are in any event required to be in compliance with the applicable state laws such as the applicable shops and establishment legislations.

Civil Aviation Sector

Until now, foreign airlines were allowed to participate in the equity of companies operating cargo airlines, helicopter and seaplane services. The Government has now permitted foreign airlines to invest, up to 49% under the approval route, in the capital of Indian companies operating scheduled and non-scheduled air transport services. Other conditions for investment include a requirement for substantial ownership and effective control remaining with Indian nationals and import of technical equipment requiring clearances from the Ministry of Civil Aviation.

Broadcasting Sector

With a view to expand the reach of broadcasting services, improve accessibility and to bring in international best practices, the Government has enhanced and liberalized the policy on foreign investment for companies operating in the broadcasting sector including Teleports, Direct to Home, Mobile TV, Headend - in-the sky broadcasting service. Under the new policy framework, investment up to 74% would be allowed; up to 49% would be permitted under the automatic route and for investment beyond 49% and up to 74%, prior approval of the government would be required.

The proposal will make the foreign investment policy for the broadcasting sector consistent with that of the telecom sector.

Power Trading Exchanges

The Cabinet Committee on Economic Affairs has decided to permit foreign investment, up to 49%, in Power Trading Exchanges.

Formal Press Notes in relation to the above changes are awaited.

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