

## **FDI IN LLP**

### **Introduction**

With the enactment of the Limited Liability Act, 2008 (the '**LLP Act**'), Limited Liability Partnerships ('**LLPs**') have emerged as another form of corporate business entity in India. This new hybrid entity, possess features of both a body corporate as well as a traditional partnership. The main feature of an LLP is its separate legal existence with limited liability on its partners. Thus an LLP gives businesses the benefits of limited liability while allowing its members the flexibility to organize their internal structure as a partnership.

Provisions and procedures pertaining to incorporation, financial disclosures, conversion to LLP, compromise and arrangement or reconstruction of an LLP are set out in the LLP Rules, 2009.

Pursuant to the enactment of the LLP Act, issues in relation to Foreign Direct Investment ('**FDI**') in LLPs were in debate. The Department of Industrial Promotion and Policy ('**DIPP**'), with the view to formulate the FDI policy in LLPs, issued a discussion paper on FDI in LLP on September 28, 2010 for public comments. Pursuant to this the Cabinet Committee on Economic Affairs of the Government of India ("**GOI**") released Press Note No. 1(2011) on 11 May 2011 ("**Press Note**") allowing FDI in LLPs. The key highlights of the said Press Note are set out below.

### **FDI in LLP**

#### **• Investment route**

The prerequisites for allowing FDI in LLP through FIPB/Government approval route are:

- the sectors/activities must be those in which FDI up to 100% is permitted under the automatic route; and
- there must not be FDI-linked performance related conditions.

The Press Note provides an explanation of the term 'FDI-linked performance' as being conditions linked to investments in the sectors/activities such as 'Non Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.

FDI is prohibited in LLPs engaged in agricultural/plantation activity, print media or real estate business.

#### **• Capital structure**

Foreign capital participation in the LLP is allowed by way of cash consideration and received by inward remittance either through normal banking channels or by debit to NRE/FCNR account of the person concerned maintained with an authorized bank/dealer.

Investment by Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) in LLPs is not permitted. LLPs are not permitted to avail External Commercial Borrowings.

#### **• Downstream Investment**

An Indian company having FDI would be permitted to make downstream investment in an LLP provided both the investing company and the LLP operate in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions.

Further, LLPs that have received FDI are disqualified from making any downstream investments. Hence LLPs cannot be used as a vehicle for multi-structuring.

- **Ownership and Management**

Where a body corporate or an individual nominated by the body corporate is appointed as a 'designated partner' in accordance with Section 7 of the LLP Act, such a body corporate should be registered in India under the Companies Act, 1956 and not as any other body corporate such as a trust or LLP.

Further, the designated partner must satisfy the definition of 'person resident in India' as prescribed under section 2(v)(i) of the FEMA, 1999 in addition to the definition of 'resident in India' under section 7(1) of the LLP Act. Non compliance with the above conditions will result in the designated partners being liable to penal provisions under the Act.

The Press Note also provides that a company with FDI will be allowed to convert into an LLP with prior approval of FIPB/Government. Also, such companies would also be required to comply with the other conditions as prescribed for LLPs.

### **Conclusion**

Allowing FDI in LLPs is a welcome move as along with the benefit of limited liability and flexibility to organize their internal structure as partnerships such entities will now be able to bolster their businesses by attracting foreign investment.