Regulatory Framework

Consolidated FDI Policy 2013

The Department of Industrial Policy and Promotion, Government of India ("DIPP"), in pursuance of its policy of consolidating all the press releases/press notes, has released its 6th issue of Consolidated FDI Policy effective from 5th April 2013 ("FDI Policy 2013"). The FDI Policy 2013 supersedes, inter alia, the erstwhile version of the Consolidated FDI Policy (Circular 1 of 2012) dated 9th April 2012 ("Erstwhile FDI Policy") and other press notes issued since then.

The key new changes are introduced are as follows:

a) FDI in Limited Liability Partnerships (LLPs) – The FDI Policy 2013 has dispensed with the condition of receiving the foreign investments in LLPs only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank in case of conversion of LLPs into company.

b) Conversion of ECB/Lump sum Fee/Royalty etc. into Equity – The FDI Policy 2013 has dispensed with the requirement of obtaining independent valuation of the capital goods/machinery/equipments (including second-hand machinery) by a third party entity in case of issue of shares against import of capital goods/ machinery/ equipment (excluding second-hand machinery).

c) Definition of Person Resident outside India - The foreign national, NRI, FII have now been included in the definition of the 'Person Resident outside India' for the purposes of transfer of shares/convertible debentures from resident to the non-residents.

d) Foreign Investment in Asset Reconstruction Companies (ARCs) - The overall sectoral caps for investment in ARCs has been increased from 49% to 74% under the Government Route. The increased limit is overall limit for both investment by way of FDI & FII. Earlier Person residents outside India were not allowed to invest in ARCs through FII mode. Moreover, the conditions for investment in the ARCs have been changed as follows: (i) No sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing it through an FII controlled by the single sponsor; (ii) the total shareholding of an individual FII shall not exceed 10% of the total paid-up capital.

(**Source**: Consolidated FDI Policy dated 5th April, 2013)

Competition Act, 2002 – Exempted Transactions

The Competition Commission of India ("CCI") has amended the Schedule 1 to the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 to exempt certain transactions from the requirement of obtaining prior approval of CCI. The amendment has come into force on April 04, 2013. The key new exempted transactions are as follows:

a) Creeping Acquisition – acquisition of additional shares or voting rights, where the acquirer already holds 25% or more but less than 50% of the shares or voting rights in the target enterprise; and acquires not more than 5% of the target enterprise in one financial year on a gross basis, provided that, such acquisition does not lead to the acquisition of sole or joint control.

b) Intra group mergers and amalgamations - Mergers or amalgamations involving enterprises, where one enterprise holds more than 50% of the shares or voting rights of the other enterprise; or enterprise(s) within the same group hold more than 50% of the shares or voting rights of each enterprise, provided that, such transactions do not lead to the transfer of joint to sole control.

c) Acquisition in ordinary course of business – acquisition of stock in trade, raw materials, stores and spares, trade receivables and other similar current assets in ordinary course of business.

(**Source**: Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Amendment Regulations, 2013)

SEBI'S DISCUSSION PAPER ON RISK MANAGEMENT

With the objective of providing a safer market for the investors, SEBI has issued a discussion paper on risk management in the cash and derivatives market. The paper specifically covers the following:

a) Incentivising Internet Based Trading models posing minimal risk;
b) Mitigation of risk to client collateral;
c) T+1 settlement as a measure to reduce overall risk in the system.

The comments on the discussion paper can be forwarded to Deputy General Manager, Market Regulation Department – Division of Risk Management and New Products on or before May 20, 2013

(**Source**: SEBI Press Release No. 42/2013 dated April 18, 2013)

AMENDMENTS TO FOREIGN TRADE POLICY 2009-14

The Ministry of Commerce & Industry has issued the Annual Supplement (2013-14) providing for the amendments to the Foreign Trade Policy 2009-14 (FTP). The key amendments are as follows:

a) minimum land area requirement for setting up of SEZ has been reduced to half;
b) New concept of Graded Scale for Minimum Land Criteria has been introduced under SEZ Policy;
c) SEZ Policy will be amended to permit transfer of ownership of SEZ units including sale
d) Introduction of Zero Duty Export Promotion Capital Goods (EPCG)
e) Utilisation of Duty credit scrips allowed for payment of service tax;
f) Rationalization of procedural and documentation requirements

(**Source**: Press Release issued by Ministry of Commerce & Industry dated April 18, 2013)

OVERSEAS DIRECT INVESTMENTS – CLARIFICATION

Reserve Bank of India has clarified that any overseas entity having equity participation through eligible Indian entities, directly or indirectly, shall not offer any financial product which is linked to Indian rupee (for example, non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific prior approval of Reserve Bank of India. Any incidence of such product facilitation would be treated as a contravention of FEMA provisions.

(**Source**: RBI Circular no. RBI/2012-13/481 dated April 25, 2013)

REDRESS OF INVESTOR GRIEVANCES THROUGH SEBI COMPLAINTS REDRESS SYSTEM (SCORES)

Listed Companies which have not obtained their SCORES user ID and password yet, have been mandated to obtain the same on or before May 17, 2013. Any failure to obtain same would not only be deemed as a non redressal of investor grievances but also be considered as a willful avoidance of the same.

Further, all the Listed Entities have been mandated to upload Action Taken Reports (ATRs) on the electronic portal of SEBI i.e. SCORES within 30 days from the date of receipt of any Investor Grievance. Any default in complying with the same may attract the penal provisions of Section 15A(a) of the SEBI Act, 1992.

SEBI had introduced this electronic portal with the intent to ensure speedy redressal of Investors Complaints thereby casting a responsibility on the Listed Companies to file ATRs under SCORES.

(**Source**: SEBI Circular no. CIR/OIAE/1/2013 dated April 17, 2013)