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TOPICS

» INCREASE IN THE FOREIGN DIRECT INVESTMENT CEILING FOR THE TELECOM SECTOR TO 74%

The Union Cabinet of the Government of India has today approved the increase of the Foreign Direct Investment ("FDI") limit in the Indian Telecom sector from 49% to 74%. Existing telecom companies have been given four months to comply with the 74% cap from the date of the issue of notification by the Government. The approval will give way to a large number of investments in the telecom sector.

The 74% FDI cap would include investments by Foreign Institutional Investors (FII), Non Resident Indians (NRI), Overseas Commercial Borrowing, Foreign Currency Convertible Bonds (FCCB), American Depository Receipts (ADR), Global Depository Receipts (GDR), convertible preference shares, proportionate foreign investment in Indian promoters and investment companies including their holding companies.

The following conditions have been stipulated for the purpose of computing the foreign shareholding of the telecom company:

1. Foreign holding in public sector banks and financial institutions have been excluded from the 74% FDI ceiling and are to be treated as 'Indian' holding. Therefore, foreign shareholding in such public sectors banks and financial institutions will not be included in the computation of the foreign holding.
2. Foreign shareholding in private sector banks to be included within the 74% foreign shareholding cap.
3. The telecom licenses are required to report the foreign shareholding on a half yearly basis.
4. The 74% foreign investment may be made directly or through an operating or holding company.
5. At least, 26% of the shareholding of the telecom company is required to be held by an Indian company or resident Indian citizens. However, any foreign shareholding in the Indian company will be taken into account for calculating the 74% FDI cap.
6. Majority directors on the Board of Directors, including Managing Director, Chief Executive Officer, Chief Technical Officer and Chief Financial Officer of the telecom company to be resident Indians. This condition must be incorporated in the shareholders agreement. In addition, the Department of Telecommunications (DoT) may also notify certain other key

positions to be held by resident Indians.

Some of the other conditions prescribed include no Remote Access (RA) to any equipment manufacturer or any other agency located outside India save and except in the case of "*catastrophic software failure*" that would lead to a major part of the network becoming non-functional. However, the term 'catastrophic software failure' is yet to be defined.

For any further information on the above, please contact our Telecom Media Technology (TMT) Team.

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» Editorial Board

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A.R.A. LAW - Advocates & Solicitors

Mumbai Office:
Agra Building, 1st Floor,
121, M. G. Road, Fort,
Mumbai - 400 023.
Tel: (+91 22) 2263 1700
Fax : (+91 22) 2263 1800
E-mail: bom@aralaw.com

Bangalore Office:
237, "Sumitra", 2' C Cross,
1st Main, II Stage, Domlur,
Bangalore - 560 071.
Tel: (+91 80) 535 1619/535 3599
Telefax: (+91 80) 535 2708
Email: blr@aralaw.com

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