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# M&A- Further liberalization of FDI Policy

In furtherance of its objective of attracting more foreign direct investment ("**FDI**") and providing further impetus to employment, infrastructure and job creation in India, the Union Government has, vide a Press Release dated June 20, 2016 ("**Press Release**"), announced the further opening up of and significant relaxation in norms with respect to 9 (nine) sectors (as summarized below) thereby radically liberalizing the FDI regime in India. Pursuant to these changes, most of the sectors would fall under the automatic approval route, except for a small negative list.

Brief details of the significant changes are set out below.

## 1. Trading in food products manufactured/produced in India

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| ***Opening up of FDI in trading in food products manufactured/produced in India*** | No regulation | 100% FDI under approval route for trading, including through e-commerce, in respect of food products manufactured/ produced in India. |

**Our Views:** Till now, 100% FDI has been allowed in B2B online marketplaces only, and e-commerce has been out of the ambit of FDI. However with the changes announced, the Government has provided a major boost to e-commerce players in the niche industry of food products and processing.

## 2. Defense sector

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| ***Conditions relaxed for FDI beyond 49% in the Defence Sector*** | • FDI up-to 49 % allowed under automatic route.<br>• Beyond, 49 % - under approval route in cases where such FDI is likely to result in: a) Access to modern technology; and b) State of the art technology in the country | • FDI beyond 49% under approval route in cases where such FDI is likely to result in access to modern technology or for other reasons to be recorded. **The condition of access to state-of-art technology in the Country has been done away with.**<br>• FDI limit has now been made applicable to manufacturing of small arms and ammunition covered under the Arms Act, 1959. |

**Our Views:** With this change, the Government has done away with the condition of foreign investors/players having to provide Indian investee companies with access to "state of the art" technology for FDI beyond 49% under the approval route. The said requirement has been replaced with such FDI resulting in the investee company being provided access to "modern technology" or "for other reasons recorded", which widens the scope of investment by foreign players in this sector.

Further, foreign OEMs (original equipment manufacturers) can now independently plan and implement operations in India under the FDI route and are not required to form joint ventures with domestic firms if they want to establish a manufacturing base in India. This amendment would be a boost for foreign OEMs as well as local manufacturing of small arms and ammunition in India. Additionally, it will also ensure access to Indian defense forces to cutting edge technology.

## 3. Broadcasting carriage services:

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| *Change in entry route and conditions for:*<br>• *Teleports*<br>• *Direct to Home (DTH)*<br>• *Cable Networks**<br>• *Mobile TV*<br>• *Headend in the Sky Broadcasting Service (HITS)* | • Up to 49% - Automatic route<br>• Beyond 49% - Approval route | • 100% - Automatic Route.<br>• However, infusion of fresh foreign investment, beyond 49% in a company not seeking license/permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require FIPB approval. |

**Includes both (i) Multi System operators (MSOs) operating at National or State or District level and undertaking up gradation of networks towards digitalization and addressability and (ii) Other MSOs not undertaking up gradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)*

**Our Views:** Allowing 100% FDI under the automatic route in this sector is expected to boost foreign investment therein.

## 4. Pharmaceutical

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| *Change in entry route for "Brownfield" projects* | • Greenfield projects - 100% Automatic Route<br>• Brownfield projects - 100% Approval Route | • The position with respect to Greenfield projects remains the same, i.e., 100% FDI allowed under the Automatic Route.<br>• Brownfield projects<br>- 74% - Automatic route<br>- Beyond 74% - Approval route |

**Our Views:** The Pharmaceutical sector has attracted significant foreign investment in the past few years and permitting investments in Brownfield projects under automatic route (up to 74%) is expected to boost further foreign investment and participation in this sector.

## 5. Civil Aviation Sector

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| *Change in entry route for Airports* | • Greenfield projects - 100% Automatic Route<br>• Brownfield projects<br>- Up to 74% - Automatic Route<br>- Beyond 74% - Approval route | • 100% Automatic Route for both Greenfield and Brownfield projects |
| *Increase in sectoral cap for*<br>• *Scheduled Air Transport Service*<br>• *Domestic Scheduled Passenger Airline*<br>• *Regional Air Transport Service* | • 49% - Automatic Route (100% for NRIs) | • Up to 49% - Automatic Route (100% for NRIs)<br>• Beyond 49% - Approval Route<br>• However foreign airlines are allowed to invest only up to 49% in capital of Indian companies operating scheduled and non-scheduled air-transport services, subject to the laid down conditions in the existing policy. |

**Our Views:** This change will allow airports in India to receive 100% FDI thereby boosting infrastructure and passenger services. This change is also expected to transform air-transportation services in India by making the same quicker and more effective.

These changes match the recent Civil Aviation Policy 2016 which set guidelines for price and number of flights within India.

## 6. Private Security Agencies

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| ***Increase in sectoral cap*** | 49% - Approval Route | • Up to 49% - Automatic Route<br>• Between 49% and 74% - Approval Route |

**Our Views:** The increase in sectoral cap from 49% to 74% will facilitate greater FDI inflow in this sector. However, the increased limit will be applicable subject to FIPB approval.

## 7. Establishment of branch office (BO), liaison office (LO) or project office (PO)

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| ***Removal of separate approval requirement for following businesses:***<br>• ***Defence,***<br>• ***Telecom,***<br>• ***Private Security,***<br>• ***Information and Broadcasting sectors*** | Separate clearance from Reserve Bank of India/ security clearance was required for establishment of BO/LO/ PO or any other place of business in India. | • No such approval is required is cases where approval is granted by Foreign Investment Promotion Board (FIPB) or concerned ministry/ regulator. |

**Our Views:** This change simplifies the process of establishment by foreign entities of branch, liaison or project offices in India. This also makes the same less time consuming and hassle free by removing the requirement of multiple approvals from different authorities.

## 8. Animal Husbandry

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| ***Relaxation in FDI conditions for:***<br>• ***Animal Husbandry (including breeding of dogs),***<br>• ***Pisciculture,***<br>• ***Aquaculture,***<br>• ***Apiculture*** | 100 % under automatic route subject to compliance with controlled conditions. | The condition of meeting with the controlled conditions has been done away with. |

**Our Views:** Removal of requirement of meeting "controlled conditions" significantly widens the scope of undertaking activities under this sector and will encourage more companies to take up these businesses and also enhance FDI inflow in this sector.

## 9. Single Brand Retail Trading

| Particulars | Position prior to Press Release | Revised Position under 2016 Notification |
|---|---|---|
| ***Relaxation in sourcing requirements*** | • In cases involving FDI beyond 51%, 30% of value of goods purchased was to be sourced from India (preferably from Medium, Small & Micro Enterprises, village and cottage industries, artisans and craftsmen, in all sectors)<br>• The aforesaid requirement is to be completed, as an average of five years' total value of the goods purchased, beginning 1st April of the year of the commencement of the business. Thereafter, it would have to be met on an annual basis. | • The sourcing requirements have been relaxed up to 3 years<br>• For entities having 'state-of-art and cutting edge' technology the sourcing norms have been relaxed for another 5 years |

**Our Views:** Relaxation in the norms for local souring requirements in establishing single brand retail by foreign brands is definitely going to be welcomed by major giants like Apple, Xiaomi and other leading brands that can now set up their own single brand retail stores in India. FIPB had earlier allowed Apple to set up single brand stores in India but subject to a 30% local sourcing norm.

The aforesaid relaxation is available only to the companies using "**cutting-edge technology**". The term "cutting-edge technology" has not been defined yet and will be decided on case to case basis. This however leaves a room open for the FIPB to reject any application if it does not satisfy the condition of use of "cutting-edge technology".

## Conclusion:

The changes introduced by the Press Release are in line with the recent policies and schemes launched by Government of India to promote "ease of doing business in India" and also the "Make in India" scheme. These changes are certainly expected to further simplify and liberalize the FDI norms and augment more foreign investment in India. These changes will be notified through the formal press note by Department of Industrial Policy and Promotion (DIPP) in due course.

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