

M&A NEWSFLASH dated 13 January 2005

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TOPICS

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» PRESS NOTE 18 SCRAPPED

Previous position:

As per Press Note 18 (1998 series) (□PN 18□) the approval of the Government was required for new proposals of foreign investment / technical collaboration where the foreign investor has or had any previous joint venture (□JV□) / technology transfer/ trademark agreement in the same or allied field in India.

Present scenario:

Vide Press Note No. 1 (2005 series) dated January 12, 2005 (□PN 1□) the Government has now scrapped PN 18. Thus, subject to the sectoral policies, new proposals of foreign investment/ technical collaboration would come under the automatic route.

PN 1 provides that prior Government approval would only be required only in case the foreign investor has an existing JV / technology transfer/ trademark agreement in the □same□ field. The onus of satisfying the Government that the new proposal would not jeopardize the interests of the existing JV / technology transfer/ trademark partner or other stakeholder would be on the foreign investor / technology supplier and the Indian partner. As such, no approval would be required if the proposal is for investment in an □allied□ field.

Further, the Government□s prior approval would not be required, even if the proposal is in relation to the same field:

- in case the existing JV / collaboration is either sick/defunct, or

- in case the investment of either party in the existing venture is less than 3%, or

- in case the investment is made by a Venture Capital Fund, being registered with the Securities and Exchange Board of India (□SEBI□).

However, □conflict of interest□ considerations can be written into the JV agreement so as to safeguard the interests of the JV partners and cover the scenario of one of the partners desiring to set up another JV / wholly owned subsidiary (□WOS□) in the □same□ field of economic activity.

For further details please contact the M&A Team.

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