

A VERY HAPPY NEW YEAR FOR SINGLE BRAND RETAIL AND AIR INDIA : UNION CABINET GIFTS RELAXATION IN FDI NORMS

100% FDI UNDER THE AUTOMATIC ROUTE FOR FDI IN SINGLE BRAND RETAIL

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, provided its approval to a number of amendments to be made to the FDI Policy. From a Press Release issued on January 10, 2018, ('**Press Release**') we understand that Government approval will no longer be required for 100% FDI in Single Brand Retail Trading ('**SBRT**'). The extant FDI Policy 2017 mandates that Government approval will be required for exceeding 49% FDI in SBRT, as per the Press Release, this will no longer be required.

Along with the permission for 100% FDI in SBRT, the Cabinet has also relaxed sourcing norms for SBRT entities:

- The extant FDI Policy mandated that proposals involving FDI beyond 51%, would require sourcing of 30% of the value of goods purchased, to be done from India, preferably from Micro Small and Medium Enterprises, village and cottage industries, artisans and craftsmen, in all sectors. With this new mandate, SBRT entities will be permitted to set off its 'incremental sourcing' of goods from India, for global operations during its initial 5 years, beginning 1st April of the year of the opening of first store, against the mandatory sourcing requirement of 30% of purchases from India. For this purpose, incremental sourcing will mean the increase in terms of value of such global sourcing from India, for that single brand (in INR terms) in a particular financial year over the preceding financial year, by the non-resident entities undertaking single brand retail trading entity, either directly or through their group companies.

ARA LAW View: *We understand that the increase in the sourcing percentage from a preceding year, will now be permitted to be set off against the 30% sourcing requirements for each financial year, however, this set off option will only be available for sourcing done in its initial 5 years of operation. After completion of this 5 year period, the SBRT entity will be mandatorily required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis.*

FDI in Air India now permitted

- Sub-point (iii) of the Note to Paragraph 5.2.9.3 in the current FDI Policy, 2017 prohibits FDI in Air India. The Cabinet has permitted foreign airlines to invest up to 49% under approval route in Air India subject to the conditions that:
 - Foreign investment(s) in Air India including that of foreign Airline(s) **shall not exceed 49% either** directly or indirectly;
 - Substantial ownership and effective control of Air India **shall continue to be vested in Indian National.**

Real Estate Broking Services not "Real Estate Business"

- The Cabinet, through the Press Release has clarified that "real-estate broking service" does not amount to real estate business for the purposes of the FDI Policy, 2017 and is therefore, eligible for 100% FDI under automatic route.

FII/FPI PERMITTED TO INVEST IN POWER EXCHANGES THROUGH PRIMARY ROUTE

- As per the extant FDI Policy, 2017, Foreign Institutional Investors ('FII')/ Foreign Portfolio Investors ('FPI') were only permitted to invest in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010, through the secondary market only. FIIs/FPIs are now permitted to invest in Power Exchanges through primary market as well.

NON- CASH CONSIDERATION PERMITTED - FOR SECTORS UNDER AUTOMATIC ROUTE

- o Issue of shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. will now be permitted under automatic route in case of sectors under automatic route.

100% FDI PERMITTED FOR FDI IN INVESTING COMPANIES UNDER AUTOMATIC ROUTE

- o Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies/ LLP and in the Core Investing Companies, that are regulated by any financial sector regulator, will no longer require Government approval for 100% FDI and, if they are not regulated by any financial sector regulator or where they are party regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route, subject to conditions including minimum capitalization requirement, as may be decided by the Government.

PROHIBITION OF RESTRICTIVE CONDITIONS REGARDING AUDIT FIRMS

- o The extant FDI Policy, 2017 does not provide for any specification of auditors that can be appointed by the Indian investee companies receiving foreign investments. The FDI Policy will now mandate that wherever the foreign investor wishes to specify a particular auditor/audit firm having international network for the Indian investee company, then audit of such investee companies should be carried out as joint audit wherein one of the auditors should not be part of the same network.

RBI CONSOLIDATES REGULATIONS FOR FOREIGN INVESTMENT IN INDIA BY ISSUING FRESH MASTER DIRECTIONS

- o The Reserve Bank of India ('RBI') by a notification consolidated the provisions relating to foreign investment by issuing a Master Direction on January 4, 2018 ('Master Direction'). The Master Direction comes on hot on the heels of the recently issued Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017 that also revised and consolidated provisions relating to transfer and issue of securities of Indian companies to and by non-residents ('NR'), respectively. Some of the key takeaways of the changes made by the Master Direction include inter alia (i) Form FC-GPR will have to be filed with complete details of both "remitter" and the "beneficial owner" of a share issue along with a no-objection certification by the remitter of the relationship between itself and the "beneficial owner", (ii) an investee company will be required to submit the agreement along with the board resolution in the Form FC-GPR stating its reasons for issuing capital instruments to a person that is not the remitter, (iii) filing of Form FC - TRS will not be required for transfer between NR and a resident or NR and NR, wherein the instruments are held on a non-repatriation basis, (iv) consideration for transfer of instruments paid in tranches on a deferred payment basis will have to be reported after each tranche's payment, (v) Form FC -TRS is to be filed within 60 days of the transfer of the instruments or the receipt or remittance of funds, whichever is earlier, (vi) Foreign Venture Capital Investors ('FVCI') will now be required to report all their investments in Form FC-GPR, FC - TRS & ARF, (vii) introduction of payment of late submission fees for delay in reporting foreign investments as against the erstwhile concept of compounding.

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