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Policy for Foreign Direct Investment (FDI) in Limited Liability Partnership (LLP)

The Government of India *vide* its Press Note 1/2011 dated 20 May, 2011 had permitted FDI in LLPs under the approval route. The Reserve Bank of India (RBI) has now issued the operational guidelines in relation to FDI in LLPs with retrospective effect. Key provisions of the notification have been summarised below:

Applicability

The guidelines shall come into force with effect from 20 May, 2011 (i.e. issue date of Press Note 1/2011).

Category of Investor

In addition to Foreign Institutional Investors/ Foreign Venture Capital Investors, following category of foreign investors would not be permitted to invest in an LLP:

- A citizen/entity of Pakistan and Bangladesh; or
- Securities Exchange Board of India (SEBI) registered Qualified Foreign Investors; and
- Foreign Portfolio Investor registered in accordance with Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.

Investment route

Direct or indirect foreign investment (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government/ Foreign Investor Promotion Board (FIPB) approval.

Pricing Guidelines

- **Capital contribution or acquisition/transfer of profit shares:**
More than or equal to the fair price as worked out with any valuation norm which is internationally accepted/adopted as per market practice (Fair Price)
- **Transfer of capital contribution or profit share:**
 - Transfer from Resident to Non-Resident – At consideration more than or equal to the Fair Price of capital contribution/ profit share of LLP
 - Transfer from Non-Resident to Resident – At consideration less than or equal to the Fair Price of capital contribution/ profit share of LLP

Valuation certificate shall be issued by a Chartered Accountant, or by a practising Cost Accountant, or by an approved valuer from a panel maintained by the Central Government.

Downstream Investment in LLP

An LLP receiving downstream investment from an Indian company, having foreign investment (direct or indirect, irrespective of percentage of such foreign investment) needs to ensure compliance with applicable conditions.

Reporting Requirements - to Regional office of the RBI through Authorised Dealer banks

Transaction to reported	Due date for reporting	Supporting documents to be submitted
Capital contribution by way of acquisition/ transfer of profit shares	within 30 days of receipt of funds (RBI shall allot Unique Identification Number in this regard)	<ul style="list-style-type: none"> • Know Your Customer, • Foreign Inward Remittance Certificate, • Copy of FIPB Approval, • Valuation Certificate, and • Certificate from Designated Partner¹
Transfer of capital contribution/ profit share	within 60 days from the date of receipt of funds	<ul style="list-style-type: none"> • Consent Letter from buyer and seller • Post transfer, capital contribution/ profit share holding pattern • Valuation Certificate • Declaration from the buyer • No Objection/ Tax Clearance Certificate from Income Tax Authority/ Chartered Accountant/ Cost Accountant/ Company Secretary in practice (only in case of transfer from Non-Resident to Resident)

¹ Partner designated under section 7 of Limited Liability Partnership Act, 2008

Further, the RBI has advised existing LLPs which have already received foreign investment to comply with the applicable reporting requirement from the date of issuance of these instructions. While the Foreign Exchange Management Act Notification is dated March 13, 2014, it has been published in the Official Gazette on 19 March, 2014. Furthermore, the A.P. (D.I.R. Series) Circular notifying these guidelines is yet to be issued.

In view of the above, it remains to be seen what would be considered as the date of issuance of these instructions. However, the LLP should endeavor to comply with this reporting requirement at their earliest.

Source: FEMA Notification no 289/2014 dated 13 March, 2014 published in vide Official Gazette No 190(E) dated 19 March, 2014.

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