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Refresh

Changing Regulatory Landscape

Newsletter

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The FIPB meeting

In its meeting held on 10 May 2013, the FIPB approved the following:

- A proposal to set up white label ATMs
- Transfer of units from one non-resident to the other in a domestic capital venture fund
- Foreign-owned Indian pharma company converting a 50% owned downstream pharma company into a wholly-owned subsidiary by means of internal accruals

Sectoral regulations

FDI in MBRT

The DIPP in September 2012 allowed 51% FDI in MBRT subject to prior government approval and fulfilment of Conditionalities. Ever since, various questions have been raised by prospective investors and stakeholders seeking clarity on certain aspects of the policy. The DIPP issued clarifications on these by way of its paper dated 7 June 2013.

- A multi-brand retail trading entity cannot engage in any other form of distribution business.
- An investment of 50% in back-end infrastructure has to be in green-field assets and should result in the creation of additional infrastructure.
- The investment in developing back-end infrastructure can be undertaken throughout the country.
- It is reiterated that MBRT through e-commerce is not permitted.
- The front-end stores set up by a multi-brand retail trading entity will have to be only company owned and company operated stores.
- The FDI policy in MBRT is subject to applicable state and union territory laws and regulations. The state governments have the prerogative of imposing additional conditions.

However, the following issues are still being considered and discussed internally by the government:

a) "Sourcing restriction amongst 'group companies'.

b) Requirement of 50% investment in 'backend infrastructure' within three years of the first tranche of FDI.

c) Requirement of 30% sourcing from 'small industry'. Whether sourcing from such 'small industry' can be allowed towards fulfillment of this conditionality, if it Out grows, and if so, till what period?"

Special Economic Zone

The HC ruling on exemption of MAT and DDT for SEZs

The HC has in a recent judgement (M/s Mindtree Ltd vs Union of India) held that levying the MAT and DDT on SEZs (both developers and units) is constitutionally valid and in the public interest.

A petition was filed by M/s Mindtree Ltd (*in consortium*) challenging the constitutional validity of withdrawing exemptions on the ground that huge investments (including borrowings) had already been made for setting up SEZs based on promises that the government had made under the SEZ Act and specific provisions in the Income-tax Act, 1961. It was also contended that levying the MAT and DDT will affect cash inflows of SEZ developers and units and this was opposed to the doctrines of promissory estoppel and legitimate expectation.

The HC has dismissed the petition and upheld the government's decision stating the following:

- The FM has complete powers to amend the SEZ Act even though it comes under the MoC.

- The powers are derived from the Rules of the Lok Sabha which specify that the 'minister' includes any minister and as such the FM is competent to move a bill seeking amendment to the SEZ Act.

- Depending on the exigencies of the financial year, the Parliament has the legislative competence to introduce a new charge of tax even by incorporating it in any statute other than the Act.

- The amendment introducing the MAT and the DDT was brought in to set apart the inequality between SEZ and non-SEZ companies.

- The impugned amendment does not transgress any of the fundamental rights of the petitioner bestowed under the Constitution.

- The doctrine of promissory estoppel does not preclude the legislature from exercising its legislative powers.

- Courts need to decline enforcing this doctrine if it results in great hardship to the government and is prejudicial to public interest.

In summary, the HC through this judgement has laid an important principle that a doctrine of promissory estoppel does not apply to legislature and that a minister (including the FM) has powers to seek amendments to an Act, including the SEZ Act.

Time limit for realisation or repatriation for the SEZ curtailed

The RBI has (*vide A.P. (DIR series) Circular No. 108 dated June 11, 2013*) amended the time limit for realisation and repatriation of export proceeds, for the exports made by units in SEZs.

Earlier, no time limits were prescribed for SEZ units to realise and repatriate export proceeds to India.
Henceforth, units located in the SEZ will be required to realise and repatriate, full value of

goods, software and services, as the case may be, within a period of 12 months from the date of export.

Any extension of time beyond the stipulated period will require prior RBI approval. Further, any extension of time will be granted on case-to-case basis.

Permission to export gold items from SEZs

The MoC had halted gold trading within SEZ units (with effect from 1 May 2013) so as to check the misuse of tax benefits.

As an amendment, the government has now permitted units operating in an SEZ to export gold items after fulfilling the minimum value addition requirement of 3% (5% in case of gold and precious stone studded jewellery).

Extension validity of unit approval beyond five years

A LoA granted to a unit is valid for a period of one year within which a unit is required to commence production.

The unit may seek extension of such validity from the jurisdictional DC which may be granted but not for a period exceeding two years and a further extension of one year. Further extension will require the approval of the BoA.

In such cases, the BoA has reiterated that the jurisdictional DC will recommend the requests beyond five years only after ensuring that the developer has taken sufficient steps towards operationalisation of the project and on the basis of justifiable reasons.

The extensions may not be granted unless some progress has been made on the ground by the developers.

Transfer or relocation of units from one SEZ to another

Transfer of SEZ units from one SEZ to another requires the approval of the BoA.

The BoA has recently directed that in future all cases involving transfer and relocation of units from one SEZ to another will be processed on file and will not be taken up in the BoA meeting.

Expansion of existing SEZ unit by setting up a new unit

The BoA has recently approved the proposal of a unit for expansion in another SEZ thus facilitating free movement of people and contracts between the two units. This is subject to the new unit being set up under fresh approval and on the commitment that the income tax benefits will be co-terminus with that of its existing SEZ. Hence, these benefits will be available only for the remaining unexpired period.

Exit from the SEZs

Exit from the SEZs is allowed in accordance with the extant SEZ laws and as per the terms and conditions prescribed by the BoA. While in the past, proposal for the exit and de-notification have been considered and approved by the BoA, henceforth, it has been directed that in relation to all such cases wherein de-notification has been approved by the BoA, the relevant information has to be sent to CBDT and CBEC for their necessary action.

National Electronics Policy

Amendment in the definition of capital expenditure - M-SIPS

The M-SIPS guidelines defined capital expenditure to include the total cost of land and building upto 2% for being eligible for incentives.

Henceforth, for the purpose of calculation of financial incentives, the entire capital expenditure that has been incurred on building and cost of land (upto 2%) will be considered for determining the incentives.

Notification of green-field clusters

The government has recently notified 12 probable green-field EMC spanning across states.

State	Location
Andhra Pradesh	E-city Hyderabad
	Maheshwaram
	Puttandoddi village District Mehboob Nagar
	Pydi Bhimavaram District Srikakulam
Tamil Nadu	Hosur
Rajasthan	Bhiwadi
Madhya Pradesh	Bhopal
	Gwalior
	Indore
	Jabalpur
West Bengal	Naihati
	Falta

Aerospace and defence

The MoD on 1 June 2013 released the DPP 2013. These regulations govern the capital procurement of the MoD.

The key changes notified in the new defence procurement procedure are as follows:

1. **RFI format introduced**
   The RFI format has been introduced in Appendix E to Chapter I of the DPP 2013. Vendors are now also required to give a cost estimation and suggest the alternatives for meeting the objectives mentioned in the RFI.

   PwC comments: This will bring in more flexibility at the RFI stage.

2. **Finalisation of SQRs before seeking AoN**
   A stipulation to freeze the SQRs before the AoN stage has been accorded while the validity period has been reduced from two to one year.

   PwC comments: Freezing the SQRs will increase transparency. However, validating the AON every year is bound to delay the acquisition process.

3. **Enhanced delegation of powers**
   Enhanced delegation of powers include the SCACHC approving cases falling within 50 crore INR to 150 crore INR and the DPB approving cases within the range of 150 crore to 300 crore INR.

   PwC comments: The move will expedite financial sanctions for capital acquisitions falling under the aforesaid limit.

4. **Prioritisation of various categories for capital acquisitions under the DPP**
   Preference will be given to indigenous design, development and manufacture of defence equipment. Therefore, whenever the required arms, ammunition and equipment are to be made by an Indian company within the timelines required, the procurement will be made from indigenous sources. While examining procurement cases, the time taken in the procurement and delivery from foreign sources vis-à-vis the time required for making it in the country, along with the urgency and criticality of the requirement will be examined before deciding to proceed on categorisation. Accordingly, the categorisation committees, while considering categorisation of all capital acquisition under the DPP, will follow a preferred order in decreasing order of preference.

   - Buy (Indian)
   - Buy and make (Indian)
   - Make (Indian)

- Buy and make with ToT
- Buy (global)

Any proposal to select a particular category must now state reasons for excluding the higher preferred category or categories.

***PwC comments**:* Preference to buy (Indian) and buy and make (Indian) will open opportunities for the Indian private defence industry while increasing the pace of indigenisation. Indian and foreign companies will be compelled to review their India strategies. This will compel greater engagement of foreign Original Equipment Manufacturers and Tier 1 in India.

5. **Provision of MToT by an Indian vendor for buy (global) category**
   In the buy (global) cases, it will now be possible to give Maintenance ToT to an Indian vendor of their choice. The entity receiving MToT will be identified at the SCAPCHC stage. The cost of the MToT shall be borne by the private Indian bidder.

   PwC comments: This move will open up opportunities to Indian private players to enter the Maintenance Repair & Overhaul segment.

6. **Time extension for submission of bids**
   Any request for extension of the bid submission date must be made at least two weeks prior to the bid submission date with adequate justification.

   ***PwC comments**:* The move will give time to the concerned technical manager to process the case and discourage last-minute requests for extension of time.

7. **Clear definition of indigenous content**
   a) For the purposes of the DPP, indigenous content for an equipment or an item shall be arrived at by excluding from the total cost of that equipment or item the following elements at all stages (tiers) of manufacturing, production and assembly:
      i) Direct costs (including freight, transportation and insurance) of all materials, components, sub-assemblies, assemblies and products imported into India
      ii) Direct and indirect costs of all services obtained from non-Indian entities and citizens
      ii) All licence fees, royalties, technical fees and other fees or payments of this nature paid out of India, by whatever term or phrase referred to in contracts and agreements made by vendors and sub-vendors
      iv) Taxes, duties, cesses, octroi and any other statutory levies in India of this nature

   b) All stages (tiers) are required to aggregate indigenous content based on certifications and inputs from lower tiers, as well as on the basis of their own procurement actions and manufacturing activities undertaken. The final aggregation of indigenous content shall be undertaken by the prime (main) contractor with whom an acquisition contract is signed by the ministry and Service Head Quarters.

   c) All relevant deliveries made under contract shall be accompanied by a certificate of indigenous content issued by the CFO of the prime contractor. All final deliveries under contract shall be accompanied, in addition to the certificate issued by the CFO of the prime contractor as aforesaid, by the company auditor's certificate. In the buy (Indian) cases, an indigenisation plan will be required to be submitted by the vendor to meet the requirement of indigenous content as specified in chapter I of the DPP. Further, the equipment offered for trial shall be accompanied with a certificate of indigenous content issued by the CFO of the prime bidder.

d) Penalty of an amount of 5% of the cost of the stage delivery shall be withheld from payment in case the mandatory indigenous content is not achieved. However, scope to make up the deficiency at later stages has been provided.

e) MoD can initiate proceedings for banning or suspension of business dealings with the erring Indian vendor or sub-vendor and its allied firms for all future contracts for a period upto five years.

f) Buy (Indian) must have a minimum 30% of indigenous content on cost basis. Apart from the overall indigenous content being at least 30% of the total contract value a minimum 30% indigenous content will also be required in the following:
(i) Basic Cost of Equipment;
(ii) Cost of manufacturers' recommended list of spares
(iii) Cost of special maintenance tools and special test equipment taken together provided a minimum 30% indigenous content is ensured in the basic cost of equipment at all stages of contract, including the FET stage.

g) Acquisitions covered under the buy and make (Indian) decision will mean purchase from an Indian vendor (including an Indian company forming joint ventures and establishing production arrangement with OEM), followed by licensed production and indigenous manufacture in the country. 'Buy and make (Indian)' must have a minimum 50% indigenous content on cost basis. This implies that indigenous content in the total of (i) basic cost of equipment; (ii) cost of manufacturers' recommended list of spares; and (iii) cost of special maintenance tools and special test equipment must be at least 50% of the total contract value. In addition, such cases require minimum 30% indigenous Indian content in the first basic equipment made or assembled in India and in subsequent deliveries thereof. However, such a content shall not be required for the 'buy' portion of the contract, in case a 'buy' portion is approved at the stage of accord of acceptance of necessity.

PwC comments: *The compliances will become onerous and the requirement for certification at lower tier level will be a challenge.*

8. **Calculation of offset obligations for shipbuilding cases on competitive basis**
In shipbuilding cases on competitive basis (Section B, Chapter III), for the purpose of calculating offset obligation, the total cost shall include basic cost of the vessel, cost of base and depot spares and the modification cost.

PwC comments: *This will provide clarification regarding offset requirements in shipbuilding cases.*

9. **Simplification of buy and make (Indian) procedures**
The requirement of the capability definition document, Detailed Project Proposal and appraisal by a PAC has been done away with.

PwC comments: *This will reduce the transaction cost, make the procedure simpler and therefore, catalyse indigenisation.*

10. **Amendment in the make procedure**
SHQs will initiate collegiate discussions with stakeholders, including Defence Research and Development Organisation, DDP and the Industry representatives, well in advance of seeking an AoN.

PwC comments: *This move is a more realistic assessment of domestic capabilities and will facilitate advance planning.*

11. **Guidelines for empanelment of the Indian private industry for make cases**
Indian entities satisfying all of the following criteria can be considered as an eligible Indian private industry for issue of Expression of Interest by IPMTs and further participation in the make cases:

(i) Indian companies that are Public Sector Undertakings registered under the Companies Act, and are manufacturing concerns.
(ii) Companies registered for a minimum of 10 years with foreign holding not exceeding 26%.
(iii) Companies with capital assets in India not less than 100 crore INR and a turnover not less than 1000 crore INR for each of the past three years. (For this purpose, the group of companies engaged in manufacture will be treated as one company).
(iv) Companies with a minimum credit rating equivalent to CRISIL or ICRA – A.
(v) Companies with consistent profitable financial record showing profits in at least three years of the last five years and with no accumulated losses.
(vi) Companies with established track record in engineering and manufacturing for real value addition – Not a trading company or agency.
(vii) Companies with an established R&D base.
(viii) Companies with units and divisions with established quality control system meeting various quality certifications and standards as laid down from time to timeCurrent standards should include ISO 9001 and ISO 1400.
(ix) Companies with security infrastructure meeting relevant requirements authorised by the government agencies.
(x) Companies that possess a licence Letter Of Intent for production of defence items in accordance with the amendment to the Industries (Development and Regulation) Act 1951 (Notification No.S.O.477 (E) dated 2).

PwC comments: *This will bring in clarity in empanelling the Indian private industry for make cases and encourage established Indian companies with strong capabilities to participate.*

Other significant changes include incorporation of the new offset policy guidelines which were promulgated in August 2012 and revision of the chapter on ship-building which had been introduced in the DPP 2011.

Telecommunication

Reduction in roaming charges, abolishment not possible

TRAI, in an effort to keep up with the National Telecom Policy 2012 objective of 'one nation-free roaming' has decided to reduce the roaming charges effective July 2013 onwards. In addition to reduction in tariff, authority has allowed issuance of STVs and combo vouchers whereby the subscriber is provided with an option to select their tariff system.

As per the new rules, the maximum per minute charge for outgoing local and STD calls (roaming) will be 1 INR and 1.5 INR, respectively. Similarly, the cap on incoming calls on national roaming has been set at maximum 0.75 INR per minute, against the 1.75 INR at present.

The regime providing reduced tariff and vouchers with free roaming facilities have been allowed considering that the non- roaming subscribers are not affected.

TRAI prescribes SMS termination charges and transactional SMS charges

TRAI has issued regulations prescribing charges at 0.02 INR and 0.05 INR per SMS on SMS termination and transactional SMS respectively. SMS termination charges are the charges payable by originating access service provider to the access provider where the SMS terminates as the network of terminating access service provider is used. However, transactional SMS charges are paid by registered telemarketers for all promotional messages sent. Introduction of these charges also comes as a measure to curb unsolicited customer communication.

Broadcasting

The MI&B has approved vide there notification dated 28 May 2013 the extension of the deadline for signing of migration grant of permission agreement by FM Phase-II operators upto 31 December 2013.

Food and agro

Inviting suggestions on the food business operator's licensing and registration requirement

Under the extant food regulations, a license and registration for operating a food business is granted either by the central or the state licensing authority, depending on the nature of activity and scale of operations.

Based on suggestions received from stakeholders and discussions held at the FSSAI meeting, certain modifications have been made in respect of the eligibility criteria requiring central and state licensing and registration. For instance in case of food processing units engaged in storage (including cold, refrigerated, controlled atmosphere and cold), it has been proposed that the existing capacity based criteria for obtaining the central licensing be replaced with turnover based criteria. Such units will be required to obtain central licensing if the turnover exceeds 30 crore INR per annum and the state licensing if the turnover exceeds 12 lakh INR and is upto 30 crore INR per annum.

Similarly, wholesalers or retailers will require state licensing if the turnover of the unit exceeds 12 lakh INR and upto 30 crore INR per annum (*limit of 20 crore INR per annum is applicable for retailers*) and central licensing will be applicable if the turnover exceeds 30 crore INR (*20 crore INR in case of retailers*) per annum.

It has been reinstated that food business operators operating in two or more states shall require a central license for the head office or a registered office and a separate license or registration for each location as per the eligibility criteria for that particular location. Each location will be issued a separate license or registration (except the transporter where one license and registration will be issued for all vehicles of the single transporter). One central license will be issued to the importer at his IEC premises.

The revised eligibility criteria will be finalised after receiving additional comments and suggestions sought from stakeholders.

Import of dairy products

The ban on import of milk and milk products including chocolates and chocolate products and candies, confectionaries, food preparations with milk and milk-solids as an ingredient from China has been further extended for a period of one year from 23rd June 2013 unless there are dependable reports available about a significant improvement in the situation.

Corporate regulations

Foreign Borrowing - ECB

ECB allowed for funding Import of Services, Technical know-how and License Fees though Foreign Debt – For manufacturing and infrastructure sectors

Under the present Indian Exchange Control Regulations (Foreign Exchange Management Act, 1999), eligible Indian borrowers can raise foreign debt for permitted end use.

The RBI has now permitted eligible Indian borrowers in the manufacturing and infrastructure sectors to use ECB proceeds for payment towards import of services, technical know-how and payment of license fees in the nature of capital expenditure under the existing policy framework, subject to compliance with the following key conditions:

- The Service provider and the Indian borrower company have signed an agreement
- The Indian borrower company provides a declaration that the entire expenditure on newly permitted end use will be capitalized and its forms part of the project cost
- The Indian borrower company certifies the original invoice raised by the service provider based on the payment schedule in the agreement

A.P. (DIR Series) Circular No. 119 dated June 26, 2013

Relaxation in the policy for availing ECB for low cost affordable housing projects

The RBI has notified the following key amendments to the existing ECB guidelines for low cost affordable housing projects under the Approval route:

1. *Change in Eligibility Criteria*
   - Developers/builders – Minimum three years of experience (previosulasy 5 years) in undertaking residential projects.
   - HFCs – Requirement of having minimum paid-up capital of not less than INR 50 crore as per latest audited balance sheet has been withdrawn.

2. *Hedging of ECB*
   Developers, builders and HFCs (pervioslky only HFCs) shall swap the availed ECB into Rupees for the entire maturity on fully hedged basis.

3. *Procedural formalities*
   HFCs while making the applications are required to submit a certificate from a NHB, certifying prescribed criteria.

4. *Extension of time limit*
   This scheme is extended for the financial years 2013-14 and 2014-15 with a ceiling of USD 1 billion in each of the two years, subject to review thereafter.

A.P. (DIR Series) Circular No. 113 dated June 24, 2013

Credit Enhancement of domestic debt

The RBI has now permitted prescribed non-resident entities to provide credit enhancement to domestic debt raised through issue of INR bonds/ debentures by all borrowers eligible (currently only Infrastructure Development and Infrastructure Finance Companies are permitted) to raise ECB under the automatic route.

Also, the minimum average maturity of the underlying debt instruments has been reduced from 7 to 3 years.

A.P. (DIR Series) Circular No. 120 dated June 26, 2013

Extension/withdrawal of various ECB schemes

- **Telecom Sector - ECB for refinancing 3G spectrum rupee loans**

  This scheme has been extended upto March 31, 2014 to re-finance rupee loan taken for payment for 3G spectrum which is outstanding in telecom operator's books of accounts.

- **Civil Aviation Sector - ECB for working capital**

  Window extended till December 31, 2013.

- **Buyback/prepayment of Foreign Currency Convertible Bonds**

  Window extended till December 31, 2013.

- **ECB in Renminbi**

  Given that facility of ECB in Renminbi had remained unutilised so far, this facility has been discontinued.

A.P. (DIR Series) Circular No. 114, 116, 115 and 117 dated June 25, 2013

Export of Goods and Services

Processing and Settlement of Export related receipts facilitated by Online Payment Gateways

The RBI has increased the value per transaction for export related remittances received through Online Payment Gateway Service Providers from USD 3000 to USD 10,000.

A.P. (DIR Series) Circular No. 109 dated June 11, 2013

FDI - Reporting of issue/transfer of Shares to/by a FVCI

The RBI has clarified that wherever a SEBI registered FVCI makes investment in an Indian company, under FDI Scheme in terms of Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 ('**Inbound Regulations**'), such investments have to be reported in form FC-GPR/FC-TRS.

Where the investment is under Schedule 6 of the Inbound Regulations, no FC-GPR/FC-TRS reporting is required. Such transactions would be reported by the custodian bank in the monthly reporting format as prescribed by RBI.

Accordingly, in order to avoid double transaction recording, Forms FC-GPR and FC-TRS has been revised.

A.P. (DIR Series) Circular No. 110 dated June 12, 2013

Company law

Power of registrar of companies to obtain a declaration or an affidavit

In light of the recent instances of raising money by companies from investors, which are opaque, convoluted, non-accountable, the MCA has introduced a few stringent measures to protect the investors' interests. Accordingly, the RoC has been instructed that they may obtain the declaration or affidavit from the subscribers or first directors at the time of incorporation of the company and also from the directors whenever company changes its objects, to the effect that the company or directors *shall not accept deposits* unless the Company or directors are in compliance with the applicable provisions of the Companies Act, 1956, Reserve Bank of India Act, 1934, Securities Exchange Board of India Act, 1992 and rules, directions, regulations made there under.

General Circular No.11 /2013 dated 29th May 2013

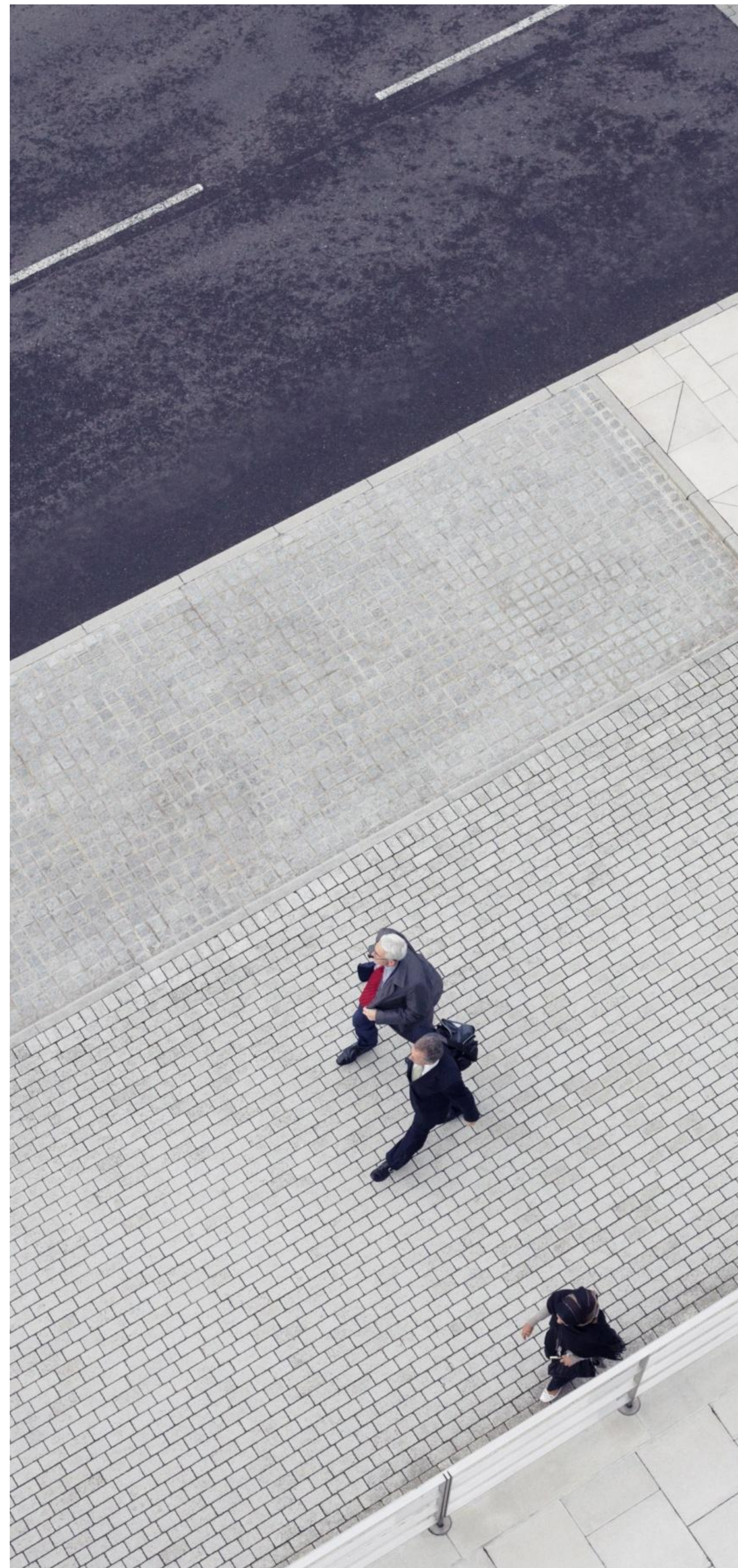
Perspective

DPP: The way ahead[1]

With the MoD as its sole buyer, the defence market is a monopsony. Since the MoD is strictly guided by the DPP for all capital acquisitions, both from indigenous sources as well as ex-import, the DPP plays a significant role in stimulating economic activity in the defence sector. A set of defence procurement structures and procedures was first introduced in 2001 and then revised through periodical reviews. Progressive revisions in the DPP clearly highlight the gradual shift in focus towards indigenisation as the government attempts to utilise the Indian industry's cost advantages, availability of talent, manufacturing capabilities and IT competitiveness.

As Indian industry lacks the required capabilities to meet the country's defence needs, the DPP casts an obligation on the foreign supplier to re-invest 30% of the contract in the importing country to generate industrial activity. These obligations are referred to as offset obligations which must be discharged with reference to eligible products and eligible services listed in the DPP. This is essentially done to build indigenous defence manufacturing capabilities and reduce the dependence on external parties for meeting the country's defence needs.

The government has initiated the process of transformation and there are encouraging signs of the industry developing the capability and capacity to provide world-class equipment, not only for the domestic market but also for exports.



[1] This article has been summarized from the recently released PwC India's report – "The holy grail of indigenization: Achieving self-reliance in defence equipment" at the 6th ASSOCHAM Conference on Aerospace and Defence.

The MoD promulgated the Defence Procurement Procedure 2013 on 1 June 2013 in line with the amendments suggested by Defence Acquisition Council. The new procedure aims to balance the competing requirements of expediting capital procurement, developing a robust indigenous defence sector and conforming to the highest standards of transparency, probity and public accountability, while laying strong emphasis on promoting indigenisation and creating a level playing field for Indian industry.

Changes notified in DPP 2013

The revised DPP has provisions to promote transparency, accountability and accelerating the procurement processes. The key relevant highlights of the revised DPP are as follows:

- Prioritisation of 'buy (Indian)' and 'buy and make (Indian)' for capital acquisitions under DPP
- Maintenance ToT (MToT) through bidding, not nomination
- Advance consultations for 'make' procedure
- Simplification of 'buy and make (Indian)' procedure
- Clear definition of indigenous content
- Ensuring faster progress in 'make' and 'buy and make (Indian)' cases
- Enhanced delegation of financial powers for capital acquisitions
- Powers to DAC to approve all deviations from DPP

The key change in DPP 2013 has been the stipulation of a hierarchy of categorisation of any new defence procurement under 'buy (Indian)' and 'buy and make (Indian)' categories. 'Buy (Indian)' requires a minimum 30% of indigenous content on cost-basis. However, 'buy and make (Indian)' must have a minimum 50% indigenous content on cost-basis. It further provides that apart from the overall indigenous content being at least 30 to 50% of the total contract value, a minimum 30 to 50% indigenous content will also be required in (i) basic cost of equipment; (ii) cost of manufacturers' recommended list of spares; and (iii) cost of special maintenance tools and special test equipment taken together.

DPP 2013 also lays down the method for calculating indigenous content. It broadly prescribes the cost of the equipment to be reduced by the cost of imported materials and cost of services received from non-Indian entities at all tiers. The definition of indigenous content in spirit is commendable and seeks to scan through the indigenous content in the entire supply chain. However, ensuring compliance with the requirement at all tiers is going to be extremely cumbersome for the entire industry. The indigenous content as it is currently worded may also be open to varied interpretation and is practically cumbersome. Therefore, it may get disqualified on a strict application of the definition of indigenous content. This may lead to re-categorisation of the procurements under 'buy and make with ToT' or 'buy global' programmes and eventually defeat the objectives of the changes.

The affirmation of indigenous content at the trial stage is impractical and requires re-consideration. It is clear that India has neither the current know-how nor the infrastructure to manufacture high-end defence equipment. Therefore, expecting the requirement to be fulfilled at the time of trials is unreasonable and impractical.

A point of concern is a recent office memorandum issued by the Department of Defence Production to keep in abeyance certain 'service' related paragraphs in offset guidelines. This raises significant concern on the fate of the eligibility of services as an offset avenue. India is a pioneer in engineering, design, testing and software development services and the government is seeking representations from all

stakeholders before taking a final decision on the eligibility of services as a positive offset avenue.

Unfinished agenda

DPP 2013 creates an enabling framework for increased indigenisation. The government aims to increase participation from private players in the domestic defence production through these changes. However, there are areas which require further deliberations in order to ensure that the intended objectives are met.

However, the success of the revised DPP largely depends on the extent to which the policy can be put in practice and support extended by other policy frameworks affecting the A&D ecosystem such as the FDI policy and indirect taxes. The following are some of the immediate steps that the government needs to take into account in order to accelerate the pace of indigenisation.

- Increasing the FDI limit in defence to encourage high-end technology transfers from foreign OEMs
- Security guidelines to allay security concerns while allowing higher FDI participation by foreign OEMs
- Ensuring adherence to 30 or 50% indigenisation requirements at trial stage to be re-considered as the requirement seems impractical
- Reconsidering the procedure proposed in DPP 2013 for calculating value of indigenous content as the process is complex and may discourage Indian vendors from participating in procurement programmes
- Further alignment of the DPP to even out anomalies to provide level playing field to domestic private sector by addressing issues like benefit of ERVs
- Accelerating efforts to work with the MoF to address indirect tax issues to boost indigenous defence manufacturing as currently Indian manufacturers are un-competitive as far as the incidence of tax is concerned vis-à-vis foreign vendors
- Sponsoring R&D projects at private industry level to encourage R&D to develop critically advanced technologies and providing special tax incentives to R&D in defence
- Extending the benefits of additional avenues for fulfilling offset obligations to the programmes falling under the previous DPP

In summary, while the recent initiatives taken by the DAC in revamping the DPP are welcome, there will be challenges in complying with some of these new provisions requiring further deliberation. Further, though the DPP seeks to provide a level playing field to Indian private players, there are areas that are heavily lopsided in favour of DPSUs. A case in point being the ERV benefit being extended only to DPSUs in ab-initio single vendor cases or when nominated as a production agency.

- *Nidhi Kansal and Tejasvi Gupta (Regulatory Services)*

Glossary

AoN	Acceptance of necessity
CFO	Chief financial officer
CPE	Customer premises equipment
CSR	Corporate social responsibility
DC	Development commissioner
DDT	Dividend distribution tax
DGCA	Directorate General of Civil Aviation
DIPP	Department of Industrial Policy and Promotion
DoC	Department of Commerce
DPB	Defence Procurement Board
DPP 2013	Defence Procurement Procedure 2013
DPP	Defence Procurement Procedure
DTH	Direct to home
EMC	Electronic manufacturing clusters
FDI	Foreign direct investment
FEMA	Foreign Exchange Management Act
FIPB	Foreign Investment Promotion Board
FM	Finance Minister
FSS Act	Food Safety and Standards Act, 2006
FSSAI	Food Safety and Standards Authority of India
FVCI	Foreign venture capital investor
FY	Financial year
HC	Karnataka High Court
HFCs	Housing Finance Companies
INR	Indian rupee
IT	Information technology
LoA	Letter of approval
MAT	Minimum alternate tax
MBRT	Multi brand retail trading
MCA	Ministry of Corporate Affairs
MI&B	Ministry of Information and Broadcasting
MoC	Ministry of Commerce
MoD	Ministry of Defence
MToT	Maintenance ToT
NHB	National Housing Bank
PAC	Project appraisal committee
PIB	Press Information Bureau
R&D	Research and development
RBI	Reserve Bank of India
RFI	Request for Information
RFI	Request for information

RoC	Registrar of Companies
SCACHC	Services Capital Acquisition Categorisation Higher Committee
SDTV	Standard definition TV signals
SEZ Act	SEZ Act, 2005
SEZ	Special economic zone
SMEs	Small and medium enterprises
SQR	Service qualitative requirements
SQRs	Service Qualitative Requirements
STVs	Special tariff vouchers
TRAI	Telecom Regulatory Authority of India
USD	United States dollar
WHO	World Health Organisation
WOS	Wholly owned subsidiary

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