# Liberalisation of FDI Policy

*November 26, 2015*

## In brief

The Department of Industrial Policy and Promotion (DIPP) has released Press Note No 12 dated 24 November 2015 liberalising the FDI Policy in 15 major sectors of the economy. Changes introduced in the policy include increase in sectoral caps, bringing activities under automatic route, and easing of conditions for foreign investment.

## In detail

### Key sectoral amendments

*Construction Development Sector*

- Minimum area and capitalisation requirements have been removed.
- Each phase of the project would be considered as a separate project.
- Foreign investor is now permitted to exit and repatriate foreign investment on completion of project/ trunk infrastructure or completion of a lock-in-period of three years, whichever is earlier. Lock-in period shall be calculated with respect to each tranche of foreign investment.
- Transfer of stake from one non-resident to another non-resident can be undertaken without any lock in condition.
- Lock-in condition is not applicable to Hotels & Tourist Resorts, Hospitals, Special Economic Zones, Educational Institutions, Old Age Homes and investment by Non Resident Indians (NRIs).
- 100% FDI under automatic route allowed in completed projects for operation and management of townships, malls/ shopping complexes and business centres, subject to lock-in-period of three years.
- Real estate business is defined as dealing in land and immovable property with a view to earning profit.
- Earning of rent/ income on lease of the property not amounting to transfer will not amount to real estate business. The term, ‘transfer’ has been defined. Among other things, it also includes any arrangement having the effect of transferring or enabling enjoyment of immovable property.

*Manufacturing and Trading*

- Foreign investment is freely permitted in manufacturing[1]
- Manufacturers can freely sell their products, whether on wholesale or retail basis, including through e-commerce platform.
- One entity can now undertake both, wholesale trading and single brand retail trading business. Separate books of accounts and compliances will be needed for each business.
- In case of companies operating in high technology segments, having 'state-of-the-art' and 'cutting-edge’ technology, Government may relax 30% local sourcing norms.
- Companies operating brick-and-mortar single brand stores permitted to retail through e-commerce.
- 30% local sourcing condition will be reckoned from the date of opening of the first store. Further, the sourcing commitment will apply annually.
- Indian brands can access FDI, and will be exempted from conditions, i.e. products should be sold under same brand internationally, and investment by non-resident

[1] Manufacture, with its grammatical variations, means a change in a non-living physical object or article or thing (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use, or bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

brand owner, as set out in the FDI policy for single brand retail trading.

- An Indian manufacturer would be the company which is the owner of the Indian brand, and which manufactures in India in terms of value at least 70% of its products in-house and the balance 30% can be sourced from Indian manufacturers.
- Indian brands would need to be Indian owned and controlled.
- 100% FDI in duty-free shops located and operated in custom bonded areas has been brought under automatic route.

*Defence*

- Up to 49% foreign investment, including portfolio investment, will be under automatic route.
- Foreign investment beyond 49% will require Government approval, and will need to demonstrate access to modern and state-of-the-art technology.
- In case of infusion of fresh foreign investment within the permitted automatic route level, resulting in change in the ownership pattern, or transfer of stake by existing investor to new foreign investor, Government approval will be required.
- Indian investee-company to be self-sufficient in product design and development. Furthermore, the company needs to have manufacturing facility and maintenance and life-cycle support facility for products manufactured in India.

*Civil Aviation*

- 49% foreign investment under automatic route has been permitted in Regional Air Transport Service.
- FDI cap in non-scheduled air transport service and ground handling services has been increased from 74% to 100% under the automatic route.

*Broadcasting*

- Foreign investment limit in the broadcasting carriage sector has been increased from 74% to 100% as set out below. Foreign investment beyond 49% will require Government approval.
  - Setting up of up-linking hubs and teleports
  - Direct-to-Home
  - Cable networks – both multi-system and local cable operators
  - Mobile TV
  - Head-end-in-the-Sky Broadcasting service
- Foreign investment limit in terrestrial Broadcasting FM Radio and up-linking of news and current affairs channels has been increased to 49% with prior Government approval.
- 100% foreign investment under automatic route has been permitted in up-linking of non-news and current affairs TV channels and downlinking of TV channels.

*Plantation*

- Foreign investment in tea plantation has been brought under automatic route.
- Up to 100% FDI under automatic route has been permitted in coffee, rubber, cardamom, palm oil tree and olive oil tree plantations.

*Establishment and operation of satellite*

- Foreign investment limit has been increased from 74% to 100% in establishment and operation of satellites. Government approval is required for foreign investment.

*Credit Information Companies*

- Foreign investment limit in Credit Information Companies has been increased from 74% to 100% under automatic route.

*Private Banking*

- FII/ FPI investment limit in private banking has been increased from 49% up to the sectoral cap of 74%

***Other amendments***

*Non Resident Indians*

- NRIs are now permitted to make investment through an overseas trust, company or partnership firms owned and controlled by the NRI, and can avail benefits that are available for NRIs making investment in their individual capacity, in sectors like construction development and civil aviation.
- NRI investments, both in individual capacity and through an overseas trust, company or partnership firms owned and controlled by NRIs, made under Schedule 4 of FEMA (Transfer or Issue of Security by Persons resident outside India) Regulations will be considered as domestic investment.

*Limited Liability Partnership*

- 100% foreign investment has been allowed under automatic route in Limited Liability Partnership (LLP) operating in sectors under automatic route and without FDI-linked performance conditions.
- LLP are allowed to make downstream investment in an Indian company or LLP engaged in sectors under automatic route, and without FDI-linked performance conditions.

- Ownership[2] and control[3] in LLP have been defined.
- Downstream investment by LLPs would need to be reported to SIA/ DIPP.

*Companies neither having operations nor investment*

- Foreign investment in an Indian company neither having operations, nor any downstream investments, has been brought under automatic route till the time the foreign investment is for undertaking an activity which otherwise does not require Government approval, or is not subject to caps and conditions.

*Swap of shares*

- Foreign investment by way of swap of shares of an Indian company has been brought under automatic route for companies which are engaged in sectors covered under automatic route.

*Establishment of companies with foreign ownership and control, and Transfer of Indian ownership and control*

- Establishment of companies with foreign ownership and control, and transfer of ownership and control from resident to non-resident in Indian companies, will require Government approval in sectors which are under Government approval route.

*Enhancement of limit of foreign investment under FIPB route*

- The limit of foreign equity inflow has been increased to INR 50 billion for approval by FIPB. Beyond foreign equity inflow of INR 50 billion, approval of Cabinet Committee on Economic Affairs will be required.

## The takeaways

These amendments will further ease, rationalise and simplify the process of foreign investments, thereby encouraging *"minimum government; maximum governance"*. With these amendments, the Government has attempted to accept some of the long standing demands of industry, and to make India a more attractive destination for foreign investors

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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[2] An LLP is considered as 'owned' by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/ or entities that are ultimately owned and controlled by resident Indian citizens; and such resident Indian citizens and entities have majority of the profit share.

[3] Right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.

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