

Recent Regulatory Updates

January 11, 2018

In brief

The Government of India, in continuity with its motto of attracting foreign investment and Ease of Doing Business in India, has made changes to the Foreign Direct Investment (FDI) Policy across sectors. In addition, the Telecom Regulatory Authority of India (TRAI) has issued a consultation paper on the National Telecom Policy (NTP), 2018 to develop communication infrastructure for inclusive growth, Make in India and regulating new technologies. Further, the Consumer Protection Bill (Bill) was introduced early this month in the Lok Sabha with the objective of protecting consumer interest and faster resolution of disputes.

In detail

I. Liberalisation of FDI policy

The Union Cabinet, chaired by the Prime Minister, approved amendments in the FDI policy, which are intended to further liberalise and simplify the FDI policy to provide ease of doing business in the country.

The liberalisations made in single brand retail trading, civil aviation, power exchanges sector and clarifications in construction development - real estate broking, pharmaceuticals, investing companies, issue of shares against non-cash consideration should result in an increase in foreign investment in the country.

The sector-wise liberalisations are as follows:

Single brand retail trading

The government has now permitted 100% FDI under the automatic route.

For the initial five years, incremental sourcing by

overseas companies, including their group companies for the specific brand will count towards the mandatory 30% local sourcing commitment.

The requirement of license agreement between brand owner and investor has been removed.

Civil aviation

Foreign airlines are now permitted to invest up to 49% in Air India with prior government approval, subject to the condition that substantial ownership and effective control continue to vest with Indian National.

Real estate broking

It is clarified that real estate broking services do not amount to real estate business and 100% foreign investment is permitted under the automatic route.

Investing companies and core investment companies

100% foreign investment into a pure investing company or core investing company under

the automatic route provided such company is regulated by a financial sector regulator. If such entities are either, wholly or partially unregulated or in case of doubt, foreign investment will be subject to government approval.

Pharmaceuticals

The definition of medical devices will be amended in the FDI policy and its reference to Drugs and Cosmetics Act has been removed.

Power exchanges

Foreign institutional investor (FII)/ Foreign portfolio investor (FPI) are now permitted to invest even under the primary route within the overall cap of 49% in power exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.

Other changes

Issue of shares against non-cash considerations, such as against pre-incorporation expenses, import of

machinery is now permitted under automatic route provided the sector is under the automatic route.

In case of investment in the automatic route sector from Countries of Concern, the administrative ministry has been changed from the Ministry of Home Affairs to the Department of Industrial Policy & Promotion.

Whenever the foreign investor wishes to specify a particular auditor/ audit firm with an international network, for the Indian investee company, the audit of such investee companies should be carried out as a joint audit, wherein one of the auditors should not be part of the same network.

II. Telecom Policy 2018 – Consultation paper

The NTP has envisioned dual objectives, i.e., the development of communication infrastructure for inclusive socio-economic growth and propel India as the front-runner in the Fourth Industrial Revolution through Machine-to-Machine (M2M) and Internet of Things (IoT).

With evolving technology, strategy and regulatory framework being envisaged for connecting 10 billion IoT/ M2M sensors/ devices. This would include earmarking of suitable licensed and unlicensed

spectrum, coordinated development of 5G services, IoT/ M2M systems, and their security framework.

Some other missions envisaged under NTP are as follows:

- a) The regulatory framework for cloud service providers is being envisaged, including prescription of data privacy, policy for cross-border data transfer.
- b) Development of homegrown digital platforms and services for meeting the specific needs of the country.
- c) Separating licenses/ permissions for rollout of networks, provisioning of services with the view to be among the top 50 nations in network readiness, communications systems and services.
- d) Increasing tele-density to 100 in rural and remote areas through incentives, promoting network sharing and use of satellites.

III. The Consumer Protection Bill, 2018

The Bill was introduced in the Lok Sabha with the objective of protecting consumer interest. For this purpose, the Bill has introduced establishment of authorities for timely and effective administration and

settlement of consumers' disputes.

With the emergence of global supply chains, international trade and the rapid development of e-commerce, the Bill also covers misleading advertisement through direct selling, e-commerce as well as electronic services.

With respect to defective goods or deficient services, Consumer Disputes Redressal Commission (Commission) has been empowered to address complaints, impose compensation against product liability for any harm caused by such defective goods or deficient services.

Stricter penal provisions have been prescribed for products containing injurious adulterants as well as spurious goods.

The Bill also introduced the concept of product recall in case of dangerous, hazardous or unsafe goods.

The Bill even imposes obligation on the endorser to verify the veracity of the claims regarding the product or service before endorsing the same.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034
Telangana
+91-40 44246000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata – 700 091
West Bengal
+91-033 2357 9101/
4400 1111

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greaves Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road (Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

For more information

Contact us at
pwctrs.knowledgemanagement@in.pwc.com

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