www.pwc.in

Sharing insights

News Alert
8 July 2013

Operationalisation of the guidelines for foreign investment in India

The Department of Industrial Policy & Promotion (DIPP) in 2009 issued detailed guidelines[1] for the–calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies.

The Reserve Bank of India (RBI) has now operationalised these guidelines by issuing a Circular[2, 3]

1 Press Note 2, 3 and 4 of 2009
2 A.P. (DIR Series) Circular No.01 dated July 4, 2013
3 Notification No.FEMA.278/2013-RB dated June 07, 2013 and notified vide G.S.R.393(E) dated June 21, 2013

Highlights of the RBI Circular

- The Circular is issued to operationalise the policy promulgated by the DIPP by issuing Press Notes 2, 3 and 4 of 2009 and the changes made thereafter. The guidelines issued by the RBI are in line with the current FDI Policy[4,5]

4 Consolidated FDI Policy Circular 1 of 2013 dated April 5, 2013
5 Incidentally, the DIPP has clarified that downstream investment can be made out of internal accruals irrespective of whether the Indian company is an operating-cum-holding company or investing company. The Circular seems to clarify this aspect in the context of downstream investment by investing company. Further, clarity will be awaited as to the DIPP clarification being applicable to operating-cum-holding companies.

- Investments made prior to February 13, 2009 (the date of issue of Press Notes in 2009), in accordance with guidelines existing at that time, will not require any modification.

- Investments made between February 13, 2009 and June 21, 2013 (the date of publication of the FEMA notification):

  – Indian companies are required to inform the Regional Office of the RBI (through an AD Category I bank) the detailed position where the issue/ transfer of shares or downstream investment is not in conformity with the prescribed regulatory framework i.e. that under Press Notes 2, 3 and 4 of 2009 (now notified by the RBI).

  – The RBI shall consider treating such cases as compliant with these guidelines within a period of six months or such extended time as considered appropriate by the RBI in consultation with the Government of India.

- First level Indian company receiving FDI needs to ensure compliance with the FDI conditionalities, namely, no indirect foreign investment in a prohibited sector, entry route, sectoral cap/conditionalities, etc. for downstream investment made by in subsidiary companies at the second level and so on.

- Compliance Certificate from the statutory auditor:

  – First level Indian company needs to obtain an annual certificate from its statutory auditor with regards to the status of compliance with the instructions on downstream investment and compliance with FEMA provisions.

  – In case statutory auditor has given a clean report, the Director's report needs to mention this.

  – In case statutory auditor has given a qualified report, this would need to be immediately reported to the Regional Office of the RBI.

Thus, all Indian Companies having foreign investment need to assess their compliance with the operationalised foreign investment policy, namely, issue/ transfer of shares or downstream investment, and report non-conformity to the Regional Office of the RBI by October 1, 2013.

About PwC

PwC* helps organisations and individuals create the value they're looking for. We are a network of firms in 158 countries with more than 180,000 people who are committed to delivering quality in assurance, tax and advisory services.

PwC India refers to the network of PwC firms in India, having offices in: Ahmedabad, Bangalore, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, please visit www.pwc.in.

*PwC refers to PwC India and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.
Tell us what matters to you and find out more by visiting us at www.pwc.in.

Our offices

Ahmedabad President Plaza, 1st Floor Plot No 36 Opp Muktidham Derasar Thaltej Cross Road, SG Highway Ahmedabad, Gujarat 380054 Phone +91-79 3091 7000	**Bangalore** 6th Floor, Millenia Tower 'D' 1 & 2, Murphy Road, Ulsoor, Bangalore 560 008 Phone +91-80 4079 7000	**Chennai** 8th Floor, Prestige Palladium Bayan 129-140 Greams Road, Chennai 600 006, India Phone +91 44 4228 5000	**Hyderabad** #8-2-293/82/A/113A Road no. 36, Jubilee Hills, Hyderabad 500 034, Andhra Pradesh Phone +91-40 6624 6600	**Kolkata** 56 & 57, Block DN. Ground Floor, A- Wing Sector - V, Salt Lake. Kolkata - 700 091, West Bengal, India Telephone: +91-033 - 2357 9101/4400 1111 Fax: (91) 033 - 2357 2754
Mumbai PwC House, Plot No. 18A, Guru Nanak Road - (Station Road), Bandra (West), Mumbai - 400 050 Phone +91-22 6689 1000	**Gurgaon** Building No. 10, Tower - C 17th & 18th Floor, DLF Cyber City, Gurgaon Haryana -122002 Phone : +91-124 330 6000	**Pune** GF-02, Tower C, Panchshil Tech Park, Don Bosco School Road, Yerwada, Pune - 411 006 Phone +91-20 4100 4444	For more information contact us at, pwctrs.knowledgemanagement@in.pwc.com	