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Regulatory Alert
Tracking change

Composite caps on foreign investment

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Background

Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India (GOI) had issued Consolidated FDI Policy Circular of 2015 (FDI Policy) effective form 12 May 2015.

GOI has taken a number of reform measures ranging from policy corrections to economic reforms. FDI policy in various sectors viz. defence, railways, construction development etc. have been amended. To give impetus to medical devices sector, a carve out was created in pharmaceutical sector and 100% FDI under automatic route is permitted in it. FDI in Pension and insurance sector in enhanced to 49%. NRI investment on non-repatriation basis are treated on par with domestic investments.

With a move to further simplify the FDI Policy and in line with earlier announcement, Union Cabinet has, on 16 July 2015, approved the implementation of "composite caps" for FDI, essentially doing away with the distinction between various foreign investment by FIIs, NRIs and other FDIs.

Highlights of the Amendment

Composite caps for foreign investment

- Foreign investment in an Indian company is permitted based on its business activities and is subject to sectoral cap as prescribed by GOI under FDI Policy. Sectoral cap means a maximum amount which can be invested by foreign investor in a company.
- The GOI believes that Indian companies should have choice between different categories of foreign investments i.e. FDI / FPI / FII / QFI / NRI etc. To further simplify the procedures for Indian Companies to attract foreign investments, the distinction between different types of foreign investments, especially between foreign portfolio investments and foreign direct investments, have been done away with and replaced with composite caps.
- An Indian company can now have (a) Indian capital and / or (b) foreign capital – without any further distinction between foreign capital which includes portfolio investment (FII / QFI / FPI), GDR, FCCB and FDI.

- An example of the change is as under:

FDI with sectoral caps

Sector / Activity	% of Equity / FDI Cap	Revised position	Entry route
6.2.18.4.2 Commodity Exchange	49% (FDI + FII/FPI) [Investment by Registered FII/FPI under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	**49% (Composite cap)**	Automatic
6.2.18.6.1 Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI + FII/FPI) [FDI limit of 26 per cent and FII/FPI limit of 23 per cent of the paid-up capital]	**49% (Composite cap)**	Automatic

Portfolio investment

- Earlier foreign portfolio investment was allowed under automatic route upto an aggregate limit of 24% which can be increased to sectoral cap / statutory ceiling permissible under FDI Policy through resolution by Board of directors followed by special resolution in general meeting and subject to prior intimation to RBI.
- Now, portfolio investment, upto aggregate foreign investment level of 49%, will be permitted without government approval or compliance of sectoral conditions, if such investment does not result in transfer of ownership and / or control of Indian entities from resident Indian citizens to non-resident entities.

Investment by foreign investor

- It is clarified that FDI shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under various schedules of Foreign Exchange Management Regulations for foreign investment in India.
- FCCBs and DRs having underlying of instruments, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.
- Total foreign investment, direct and indirect, in an entity shall not exceed the sectoral / statutory cap.
- Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to these amendments.

Conclusion

The move of having composite foreign investment cap is expected to boost foreign investment and ease of doing business in India.

The foreign portfolio investment upto 49% will be permitted on automatic basis even in sectors requiring government approval. Such investments will not require compliance with specified sectoral conditions. This relaxation is available if such investment does not result in transfer of ownership and / or control of Indian entities from resident Indian citizens to non-resident entities.

The formal press note of DIPP and notifications under FEMA by RBI are awaited to see how the above decisions are implemented

Source: PIB press release dated 16 July 2015 issued by Union Cabinet, Government of India.

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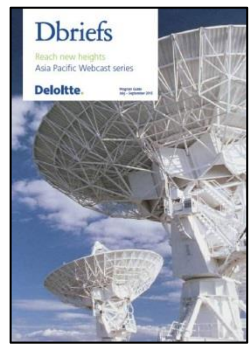

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