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Clarification on FDI Policy for entities engaged in the news digital media sector, involving activities of uploading/streaming of news and current affairs through digital media

Government of India issues clarification on foreign investments in news digital media sector

The Department for Promotion of Industry & Internal Trade (“DPIIT”), Government of India (GOI) has, on 16 October 2020, issued a clarification (“the Clarification”) on the applicability of the permitted Foreign Direct Investment (“FDI”) limit of 26%, through the government approval route, to Indian entities engaged in uploading / streaming of news and current affairs through digital media.

Background:

The GOI through its Press Note 4 of 2019 dated 18 September 2019 issued by DPIIT (“Press Note 4”) had liberalised the FDI regime for entities engaged in the news digital media sector (i.e. Indian entities engaged in uploading / streaming of news and current affairs through digital media), permitting FDI of 26%, through government approval route.

While Press Note 4 provided for the FDI threshold in the said sector, there was lack of clarity with regard to the Indian entities that would be covered under this sector. Representations were made by stakeholders to the GOI seeking clarification. Further, Press Note 4 did not provide for any sector specific conditions in the news digital media sector.

The clarification specifies the Indian entities which would come within the ambit of news digital media sector and also provides sector specific conditions.

Highlights of the Clarification:

Coverage of entities

FDI of up to 26% under government approval route would apply to the following categories of Indian entities, registered or located in India:

- Digital media entity streaming/uploading news and current affairs on websites, apps or other platforms;
- News agency which gathers, writes and distributes/transmits news, directly or indirectly, to digital media entities and/or news aggregators; and
- News aggregator, being an entity which, using software or web application, aggregates news content from various sources, such as news websites, blogs, podcasts, video blogs, user submitted links, etc. in one location.

Such Indian entities will have to align their FDI to the 26% limit with approval of the GOI within one year from the date of the clarification i.e. by 15 October 2021.

Board composition and foreign personnel

Indian entities engaged in news digital media sector will also have to comply with the following sector specific conditions:

- Majority of the Board of directors and the Chief Executive Officer shall be Indian citizens; and
- Obtain security clearance for all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract or consultancy or in any other capacity for functioning of the entity, prior to their deployment. In the event of security clearance of any of the foreign personnel being denied or withdrawn for any reasons, the investee entity will ensure that the concerned person resigns or his/her services are terminated forthwith after receiving such directives from the GOI.

Comments:

Recognising the shift in consumption of media content from print media to digital media over a period of time and more so in view of the pandemic, the Government of India has sought to increase regulatory oversight over entities operating in the news digital media sector. Existing entities in such sector including news aggregators, social media entities would have to evaluate the impact of this clarification on their existing set-up, business model, shareholding structure etc. and have to align with the clarification within one year.

Source: Government of India, DPIIT File No: 5 (4)/2019: FDI Policy dated 16 October 2020



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