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Consolidated Foreign Direct Investment (FDI) Policy 2020

Government of India issues the Consolidated FDI Policy 2020

Background:

Department for Promotion of Industry and Internal Trade (DPIIT), Government of India, has issued the Consolidated Foreign Direct Investment (FDI) Policy of 2020 (FDI Policy 2020) which is effective from 15 October 2020. DPIIT had earlier issued Consolidated FDI policy in August 2017 and thereafter various press notes and clarifications were issued from time to time to ease / relax and clarify norms for foreign investment in India.

Highlights of FDI Policy 2020:

FDI Policy 2020 essentially consolidates various press notes, circular, press releases, notifications and clarifications issued by DPIIT / Reserve Bank of India (RBI) from time to time; DPIIT last came out with the Consolidated FDI policy in August 2017. While most of the past press notes / notifications etc. have been incorporated in the FDI Policy 2020, there are certain differences / inconsistencies between FDI Policy 2020 and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 (NDI Rules). Some of the key differences between NDI Rules and FDI Policy 2020 are summarised below:

Sr. No.	Particulars	NDI Rules	FDI Policy 2020
1.	NRIs investment in sole proprietorship concerns / partnership firms	NRIs are permitted to invest in sole proprietorship concerns / partnership firms on non-repatriation basis_only	NRIs are permitted to invest in sole proprietorship concerns / partnership firms on repatriation basis, subject to seeking prior permission from RBI, which shall be decided in consultation with the GOI
2.	FDI in Defence Sector	FDI up to 49% under automatic route FDI beyond 49% will require government approval where FDI proposal is likely to result in access to modern technology or for other reasons to be recorded	FDI up to 74% under automatic route for companies seeking new industrial licenses FDI up to 49% under automatic route for companies not seeking new industrial licenses. FDI beyond 49% for such companies will require government approval

			Further, FDI beyond 74% will require government approval where FDI proposal is likely to result in access to modern technology or for other reasons to be recorded.
3.	FDI in White Label ATMs	Does not contain any specific entry for sector limit for FDI in White Label ATMs	FDI up to 100% under automatic route
4.	FDI in Private Security Agencies	FDI up to 49% under approval route	<p>FDI increased to 74%</p> <ul style="list-style-type: none"> • up to 49% under automatic route • beyond 49% and up to 74% under approval route) <p>Additional conditions have been prescribed</p>
5.	FDI in Commodities Spot Exchange	FDI up to 49% under automatic route	Does not contain entry for FDI in Commodities Spot Exchange
6.	Definition of “Real Estate Business”	Excludes investment in units of Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014	Does not mention exclusion of investment in units of REITs registered and regulated under the SEBI (REITs) Regulations 2014
7.	Definition of “E-commerce entity”	Does not include a “Foreign Company” covered under section 2(42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2(v)(iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business	Includes a “Foreign Company” covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v)(iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business

Conclusion:

FDI Policy 2020 is aimed at consolidating various announcements issued by DPIIT / RBI in relation to FDI and provides a transparent and investor-friendly environment to foreign investors. There are differences between FDI Policy 2020 and NDI Rules. As stated in the FDI Policy 2020, in case of a conflict,

the NDI Rules will prevail. In view of the FDI Policy 2020 announcement, NDI Rules may be aligned to FDI Policy 2020.

Source: Consolidated FDI Policy Circular of 2020 issued by DPIIT dated 15 October 2020 (https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf).



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