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Regulatory Alert

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Liberalization in Foreign Direct Investment (FDI) Policy

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Background

- The Government of India (GOI) on 10 January 2018 announced major relaxations in Foreign Direct Investment Policy (FDI Policy) aimed at simplifying processes and attracting foreign investments into India.
- Highlights of these amendments are summarized in this alert.

Highlights of Amendments

1. 100% FDI permitted under automatic route for Single Brand Retail Trading (SBRT). Government approval no longer required for FDI in SBRT. Earlier, FDI policy on SBRT allowed 49% FDI under automatic route, and FDI beyond 49% and up to 100% through Government approval route.
    - A non-resident entity or entities, whether owner of the brand or otherwise, is permitted to undertake 'single brand' product retail trading in India for the specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking SBRT and the brand owner.
    - SBRT entity may set off its incremental sourcing of goods from India for global operations during initial 5 years (subject to conditions), beginning 1st April of the year of the opening of first store against the mandatory sourcing requirement of 30% of purchases from India.
2. It has been clarified that 100% FDI under automatic route permitted in real-estate broking service on the basis that it does not amount to real estate business;
3. Foreign airlines allowed to invest up to 49% under approval route in the GOI-owned airline - Air India subject to conditions;
4. FIIs/FPIs allowed to invest in the "Power Exchanges" through primary market in addition to the existing permission available to invest through secondary market mechanism;
5. Issue of shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. shall be permitted under automatic route in case of sectors under automatic route;
6. FDI policy on foreign investment in Indian company, engaged only in the activity of investing in the capital of other Indian company/ies/ LLP and in the Core Investing Companies aligned with FDI policy provisions on Other Financial Services. Thus, if the above activities are regulated by any financial sector regulator, then foreign investment up to 100% under automatic route shall be allowed; and, if they are not regulated by any Financial Sector Regulator or where only part is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route, subject to conditions including minimum capitalization requirement, as may be decided by the Government;

7. FDI policy on pharmaceuticals sector inter-alia provides that definition of medical device as contained in the FDI Policy would be subject to amendment in the Drugs and Cosmetics Act. As the definition as contained in the FDI Policy is complete in itself, it has been decided to drop the reference to Drugs and Cosmetics Act from the FDI policy. Further, it has also been decided to amend the definition of 'medical devices' as contained in the FDI Policy. Details are awaited.

Conclusion

The amended FDI Policy will liberalise and simplify the foreign investment process and may attract FDI in India. Detailed amendments in the FDI Policy and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2017 are awaited.

Source: Press Information Bureau release dated 10 January 2018 (www.pib.nic.in)

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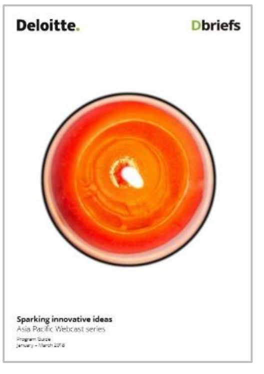

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Contacts

Ahmedabad
19th Floor, Shapath - V
SG Highway,
Ahmedabad – 380 015.
Tel: + 91 (079) 6682 7300
Fax: + 91 (079) 6682 7400

Bangalore
Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Chennai
No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Coimbatore
Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Delhi/Gurgaon
Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Hyderabad
1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax:+91 (040) 6603 2714

Kolkata
Bengal Intelligent Park Building
Alpha, 1st floor, Block EP and GP
Sector V, Salt Lake Electronics
Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Mumbai
Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone
(W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Pune
706, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605

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