The Union Cabinet chaired by the Prime Minister Narendra Modi, has approved a number of liberalisations to the Foreign Direct Investment (FDI) Policy as laid down in the press release titled ‘FDI policy further liberalised in key sectors Cabinet approves amendments in FDI policy’ dated 10 January 2018. Key amendments given in the press release are summarised below:

- **Single Brand Retail Trading (SBRT)**
  - A 100 per cent FDI permitted under the automatic route
  - Mandatory sourcing requirement to be met as under:
    - **Initial five years**
      
      Effective 1 April of the year of the opening of first store, 30 per cent sourcing norms can be set off against incremental sourcing of goods from India for global operations.
    
      For this purpose, incremental sourcing will mean the increase in terms of value of such global sourcing from India for that single brand (in INR terms) in a particular financial year over the preceding financial year, by the non-resident entities undertaking SBRT, either directly or through their group companies.
    
    - **After completion of the five year period**
      
      30 per cent sourcing norms to be met directly by the SBRT entity towards India’s operation, on an annual basis.

- **Civil aviation**
  - Foreign airlines have been permitted to invest up to 49 per cent in Air India under the approval route subject to the following conditions:
    - Foreign investment(s) in Air India including that of foreign Airline(s) shall not exceed 49 per cent either directly or indirectly
    - Substantial ownership and effective control of Air India shall continue to be vested in Indian National

- **Construction Development - Townships, Housing, Built-up Infrastructure and Real Estate Broking Services.**
  
  It has been clarified that real-estate broking service does not amount to real estate business, and hence, is eligible for 100 per cent FDI under the automatic route.

- The requirement of providing evidence including a copy of licensing/franchise/sub-licence agreement to the competent authority (in case of approval route) at the time of seeking approval or to the RBI (in case of the automatic route) appears to have been done away with. However, the official Press Note to be issued on these proposed amendments may bring in more clarity on this aspect.
• **Power Exchanges**

Foreign Institutional Investors (FIIs)/Foreign Portfolio Investors (FPIs) have now been permitted to invest in Power Exchanges through the primary market in addition to the secondary market.

• **Pharmaceuticals**

It has been clarified that the definition of ‘medical devices’ as contained in the FDI Policy is complete in itself and reference to the Drugs and Cosmetics Act has been dropped. Further, it has been decided to amend the definition of ‘medical devices’ as contained in the FDI Policy.

• **Other Approval Requirements under FDI Policy**

  ➢ In case of sectors under the automatic route, the issue of shares against non-cash considerations like pre-incorporation expenses, import of machinery, etc. has been permitted under the automatic route.

  ➢ An Indian company engaged only in the activity of investing in the capital of other Indian company(ies) LLP and in the Core Investing Companies, if regulated by any financial sector regulator, then foreign investment upto 100 per cent would be allowed under automatic route; 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 per cent will be allowed under Government approval route, subject to conditions including minimum capitalization requirement, as may be decided by the Government.

• **Competent Authority for examining FDI proposals from countries of concern**

  ➢ FDI applications for investments in:

    − Automatic route sectors, requiring approval only on the matter of investment being from Country of Concern shall be processed by Department of Industrial Policy & Promotion (DIPP)

    − Government route sectors, requiring security clearance with respect to Countries of Concern shall be processed by the concerned Administrative Department/Ministry.

Our comments

We understand that final guidelines would be issued shortly in the form of a Press Note. The aforesaid amendments are a welcome move and are likely to broaden the FDI opportunities in India.
The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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