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DPIIT RELEASES CONSOLIDATED FDI POLICY 2020

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Introduction

The Department for Promotion of Industry and Internal Trade (DPIIT) on 28 October 2020, has issued the consolidated Foreign Direct Investment (FDI) policy circular of 2020 (Revised Policy). The DPIIT has released an updated consolidated FDI policy after a long gap of 3 years since the last one was which was issued on 28 August 2017.

Key changes

The Revised Policy is aligned with the Implementation of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules) and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 by incorporating all necessary changes, including procedural instructions on payment of inward remittance and reporting requirements. This Revised Policy supersedes all the press notes, press releases, clarifications and/or circulars issued by the DPIIT, which were in force as on 15 October 2020. This makes the Revised Policy a 'ready reckoner' to understand the Indian foreign investment framework.

For ease of reference, we have provided a brief overview of the key changes in the FDI regime since 2017 (i.e., between the previous FDI policy of 2017 and Revised Policy):

- Implementation of the NDI Rules - Last year in October, the Central Government introduced NDI Rules in supersession of the Foreign Exchange Management (Transfer and Issue of Security by a Person Resident outside India) Regulations, 2017 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018. This change led to a shift in rule making power (so far as foreign investment in India is concerned) to the Central Government. Subsequently, in July 2020, the NDI Rules were amended, and the Reserve Bank of India was entrusted with the sole power to consider applications for investments in India which were not specifically permitted under the Foreign Exchange Management Act, 1999 or rules and regulations made thereunder.

- Inclusion of PN 3 of 2020: The Revised Policy incorporates the key restrictions imposed by the Press Note No. 3 - 2020 series (PN3 of 2020) earlier this year relating to FDI from entities or citizen of neighboring countries sharing land borders (including China) with India. As per PN3 of 2020, any FDI from such countries will require prior government approval. The Revised Policy also included the scenario with respect to transfer of ownership of an Indian entity, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview stated above. Therefore, any transfer of ownership resulting into transfer of beneficial ownership to entities or citizens of neighboring countries sharing land borders will require government approval. The term "beneficial ownership" remains undefined and creates ambiguity for foreign investors who may not be owned/controlled by any Chinese entities or citizens but have minority shareholding from China or other countries sharing land borders with India.

- Revisions of sectoral caps: Various press notes/circulars were issued by DPIIT to bring in changes in FDI limits and sector specific conditionalities. We have set out below a summary of key changes brought into effect in various sectors:

Sector	Summary of changes introduced
Defence	FDI limit in defence manufacturing, under the automatic route was increased from 49% to 74% and certain sector specific conditionalities were revised.
Contract Manufacturing	Necessary clarification was issued to include contract manufacturing under 'manufacturing' sector under automatic route.
Single Brand Retail Trading	100% FDI under automatic route was permitted in the sector. Further, certain sector specific conditionalities including local sourcing norms were also relaxed.
E-commerce	Certain restrictions were imposed on e-commerce marketplace entities or group companies from selling their products on the platform run by the said marketplace entity.
Digital Media	DPIIT had introduced a FDI regime for entities engaged in the news digital media sector and allowed FDI up to 26% under the government approval route for entities engaged in uploading / streaming of news and current affairs through digital media platforms.

- Separately, the Revised Policy also retains a prerequisite of FC-TRS acknowledgement before transfer of shares is recorded in a target company's books. Therefore, the buyers of the shares of Indian companies need to ensure that the FCTRS filings are completed and accepted in an expedited manner so the name of the buyer can be recorded in the books of the company immediately upon closing.

While the government could have used this opportunity to clear some interpretation issues which still exist, we do hope that the DPIIT will now resume its erstwhile practice of regularly updating the policy to capture and keep pace with regulatory changes, effected in the interregnum.

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