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Press note No. 3 (2020 Series) dated 17 April 2020 - The Department for Promotion of Industry and Internal Trade (DPIIT)

The Government of India has reviewed the Foreign Direct Investment (FDI) policy for decreasing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic and amended existing FDI policy as contained in Consolidated FDI Policy, 2017.

Present Position

A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

A citizen/entity of Bangladesh can invest only under the Government route.

A citizen/entity of Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

Revised Position

A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.

Further, a citizen/entity of Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the above, such subsequent change in beneficial ownership will also require Government approval.

The above decision will take effect from the date of FEMA notification.

Foreign Exchange Management (Non-Debt Instruments (NDI)) (Second Amendment) Rules, 2020

The Ministry of Finance, Government of India has notified Foreign Exchange Management (Non-Debt Instruments (NDI)) (Second Amendment) Rules, 2020 to amend Foreign Exchange Management (Non-debt Instruments) Rules, 2019. Summarized updates are given below:

Acquisition after renunciation of rights

A person resident outside India who has acquired a right from a person resident in India, who has renounced it, may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines specified under rule 21 of these Rules.

Amendments for Insurance Company

Intermediaries or insurance intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrators, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India (IRDAI) from time to time, will now be eligible to receive 100 percent FDI under the automatic route.

The requirement of being Indian owned and controlled shall not be applicable to intermediaries and insurance intermediaries.

FDI will be allowed under automatic route, subject to verification by IRDAI and will be governed by the Indian Insurance Companies (Foreign Investment) Rules 2015.

Insurance intermediaries that have majority shareholding of foreign investors shall comply with the following:

1. Incorporated as a limited company under the Companies Act, 2013;
2. At least one from amongst the Chairperson of the Board of Directors or Chief Executive Officer or Principal Officer or Managing Director of the said intermediary shall be a resident Indian citizen;
3. Permission of the IRDAI to be obtained for repatriation of dividend;
4. Bring in latest technological, managerial and other skills;
5. Shall not make payments to the foreign group or promoters or subsidiary or interconnected or associate entities beyond what is necessary or permitted by IRDAI;
6. Timely disclosure in the formats as specified by the IRDAI for all the payments made to the foreign group or promoters or subsidiary or interconnected or associate entities;
7. Compliance for the composition of the Board of Directors and key management persons as specified by the concerned regulators.

It has been clarified that in addition to the condition prevalent in these Rules, the divestment of holding by Foreign Portfolio Investors (FPI) and the re-classification of FPI investment as FDI shall be subject to further conditions, if any, specified by Securities and Exchange Board of India and the Reserve Bank of India in this regard.

The above changes are provided for further clarifications on NDI Rules and to align the same with erstwhile FDI Regulations.

Amendments to Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules)

Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020 issued vide Notification No. S.O. 1374(E) dated April 27, 2020 issued by the Ministry of Finance, Government of India

1. It has been now provided that a person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights subject to compliance of pricing guidelines specified under NDI Rules as amended.
2. The Government of India had amended the Consolidated Foreign Direct Investment Policy of 2017 vide Press Note No. 1 (2020 Series) to increase the limit in FDI in insurance intermediaries from 49% to 100% and align the same with the Indian Insurance Companies (Foreign Investment) Rules 2015. Consequently, NDI Rules have now been amended to give effect of the said amendment to bring it in line with amended FDI Policy.

For detailed amendments, please refer aforesaid notification amending NDI Rules as available at http://egazette.nic.in/WriteReadData/2020/219200.pdf