

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
FDI Policy Section

Press Note No. 1 (2018 Series)

Subject: Review of Foreign Direct Investment (FDI) policy on various sectors

The Government of India has reviewed the extant FDI policy on various sectors and made following amendments in the Consolidated FDI Policy Circular of 2017 (**FDI Policy**), effective from August 28, 2017, and as amended from time to time.

2. Prohibition of restrictive conditions regarding audit firms

Para 5.2 (h) of FDI Policy is replaced with the following:

Wherever the foreign investor wishes to specify a particular auditor/audit firm having international network for the Indian investee company, then audit of such investee companies should be carried out as joint audit wherein one of the auditors should not be part of the same network.

Existing Para 5.2 (h) shall be renumbered as 5.2 (i)

3. Foreign investment into an Indian company engaged only in the activity of investing in the capital of other Indian company/ies

(A) Para 3.8.3.1 of FDI Policy is amended to read as under:

Foreign Investment in Investing Companies registered as Non-Banking Financial Companies (NBFC) with the Reserve Bank of India, being overall regulated, would be under 100% automatic route.

(B) Para 3.8.3.2 of FDI Policy is amended to read as under:

Foreign Investment in Core Investment Companies (CICs) and other investing companies, engaged in the activity of investing in the capital of other Indian company/ies/LLP, is permitted under Government approval route. CICs will have to additionally follow RBI's regulatory framework for CICs.

4. Competent Authority for FDI proposals examining countries of concern

Para 4.1.1 (ix) of FDI Policy is amended to read as under:

S.No.	Activity/sector	Administrative Ministry/Department
(ix) (a)	Applications involving investments from Countries of Concern falling under automatic route sectors/activities, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, as amended from time to time	Department of Industrial Policy and Promotion
(ix) (b)	Cases pertaining to Government approval route sectors/activities requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, as amended from time to time	Nodal Administrative Ministries/Departments

5. Civil Aviation

A. Note (iii) at Para 5.2.9 of FDI Policy which presently reads that "the policy mentioned at para (c) above is not applicable to M/s Air India Ltd.", stands deleted.

B. Following new clause (d) is added to Other Conditions laid down at Para 5.2.9 of FDI Policy:

(d) In addition to the above conditions, foreign investment in M/s Air India Pvt. Ltd shall be subject to the following conditions:

(i) Foreign investment(s) in M/s Air India Pvt. Ltd., including that of foreign airline(s), shall not exceed 49% either directly or indirectly.

(ii) Substantial ownership and effective control of M/s Air India Pvt. Ltd. shall continue to be vested in Indian Nationals.

6. Construction Development: Townships, Housing, Built-up Infrastructure and Real Estate Broking:

Following new clause (vi) is added after Note (v) at Para 5.2.10.2 of FDI Policy:

Para 5.2.10.2 Note (vi):

Notwithstanding anything contained in Para 5.2.10 above, it is clarified that real-estate broking service does not amount to real estate business and 100% foreign investment is allowed in the activity under automatic route.

7. Single Brand Product Retail Trading

Para 5.2.15.3 of FDI Policy is amended to read as under:

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Single Brand product retail trading	100%	Automatic
<p>(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.</p> <p>(2) FDI in Single Brand product retail trading would be subject to the following conditions:</p> <p>(a) Products to be sold should be of a 'Single Brand' only.</p> <p>(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries</p>		

other than India.

- (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.
- (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner.
- (e) In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year of the commencement of the business i.e. opening of the first store. Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of foreign investment for the purpose of carrying out single-brand product retail trading.
- (f) Subject to the conditions mentioned in this Para, a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.
- (g) Single brand retail trading entity would be permitted to set off its incremental sourcing of goods from India for global operations during initial 5 years, beginning 1st April of the year of the opening of first store, against the mandatory sourcing requirement of 30% of purchases from India. 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 from India over the preceding financial year, by the non-resident entities undertaking single brand retail trading, either directly or through their group companies. After completion of this 5 years period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis.

Note:

(i) Conditions mentioned at Para 5.2.15.3 (2) (b) & 5.2.15.3 (2) (d) will not be applicable for undertaking SBRT of Indian brands.

(ii) Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens.

(iii) Sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, provisions of Para 5.2.15.3 (2) (e) will be applicable. A Committee under the Chairmanship of Secretary, DIPP, with representatives from NITI Aayog, concerned Administrative Ministry and independent technical expert(s) on the subject will examine the claim of applicants on the issue of the products being in the nature of 'state-of-art' and 'cutting-edge' technology where local sourcing is not possible and give recommendations for such relaxation.

8. Power Exchanges

Para 5.2.24.2 regarding "Other Conditions" for foreign investment Power Exchange sector/activity the present clause (i) "FII/FPI purchases shall be restricted to secondary market only;" stands **deleted**.

9. Pharmaceuticals

(A) Definition of "Medical Device" as contained at Para 5.2.27.3 Note (ii) of FDI Policy is amended to read as under:

Medical device means -

- (a) any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of -
 - (i) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;
 - (ii) diagnosis, monitoring, treatment, alleviation or assistance for, any injury or disability;
 - (iii) investigation, replacement or modification or support of the anatomy or of a physiological process;
 - (iv) supporting or sustaining life;
 - (v) disinfection of medical devices;
 - (vi) control of conception,

and which does not achieve primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means;

- (b) an accessory to such an instrument, apparatus, appliance, material or other article;
- (c) in-vitro diagnostic device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system, whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of examination of specimens derived from the human bodies or animals.

(B) Para 5.2.27.3 Note (iii) of FDI Policy which presently reads that “the definition of medical device at Note (ii) above would be subject to the amendment in Drugs and Cosmetics Act”, is deleted.

10. Para 6(iv) of Annexure-3 of FDI Policy is amended to read as under:

Issue of equity shares for sectors requiring Government approval under the FDI policy is allowed under the Government route for the following:

- (I) import of capital goods/ machinery/ equipment (excluding second-hand machinery), subject to compliance with the following conditions:
 - (a) Any import of capital goods/machinery etc., made by a resident in India, has to be in accordance with the Export/Import Policy issued by Government of India/as defined by DGFT/FEMA provisions relating to imports.
 - (b) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.
 - (c) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.
- (II) pre-operative/pre-incorporation expenses (including payments of rent etc.), subject to compliance with the following conditions:
 - (a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.
 - (b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.
 - (c) Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.
 - (d) The applications, complete in all respects, for capitalization being made within the period of 180 days from the date of incorporation of the company.

General conditions:

- (i) All requests for conversion should be accompanied by a special resolution of the company.
- (ii) Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.
- (iii) For sectors under automatic route, issue of equity shares against import of capital goods/ machinery/ equipment (excluding second-hand machinery) and pre-operative/pre-incorporation expenses (including payments of rent etc.) is permitted under automatic route subject to compliance with respective conditions mentioned above, and reporting to RBI in form FC-GPR as per procedure prescribed under the FDI policy.

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



(Rajiv Aggarwal)

Joint Secretary to the Government of India

D/o IPP File No.: 5/2/2018-FDI Policy, dated 23rd January, 2018

Copy forwarded to:

1. **Press Information Officer, Press Information Bureau-** for giving wide publicity to the above Press Note.
2. **Joint Secretary(I&C), Department of Economic Affairs, North Block, New Delhi**
3. **Reserve Bank of India, Foreign Exchange Department, Mumbai**
4. **NIC Section in the Department of Industrial Policy and Promotion-** for uploading the Press Note on DIPP's website.
5. **Hindi Section, DIPP-** for providing Hindi version.

For suitably incorporating the policy changes in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 and the relevant schedules thereof.