Foreign Direct Investment

About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with it's headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.

- Rajput jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with it various Chartered Accountancy firms pioneer in diversified fields

- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.


FOREIGN
DIRECT
INVESTMENT

Introduction

- FDI is a major source of non-debt financial resource for the economic development of a country.
- FDI helps in achieving technical know-how and generating employment.
- The Indian government has taken many initiatives in recent years such as relaxing FDI norms across sectors such as defence, telecom etc. which has resulted in very good inflow of FDI.
- Indirect tax reforms, improved sovereign credit rating and better Ease of Doing Business ranking has shall also attract more FDI into India.

FDI – Some Recent FDI Transactions

- DIPP has now approved 17 single-brand retail proposals worth nearly Rs. 4,900 crore for food products and single-brand retail trading, including those of Amazon, Grofers and Urban Ladder, Acer, Fossil India and Bally International, Louis Vuitton, Oppo Mobiles, Chumbak Design and Daniel Wellington.

- Warburg Pincus, a PE Firm based in New York is investing USD100 million in Cleanmax Solar, a rooftop solar development firm.

- The largest defence sector FDI is coming via French aircraft manufacturer Dassault under the Raffale fighter jet deal. The investment, intended for manufacturing of aircraft components for global markets will be part of setoff obligation to the tune of Rs 48,000 Crores.

New FDI Policy

- The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 (Regulation 20 (R)/2017-RB, issued by RBI on 7th November, 2017.

- It supersedes Notification No. FEMA 20/2000-RB and Notification No. FEMA 24/2000-RB (FEM(Investment in Firm or Proprietary Concern in India) Regulations) both dated May 3, 2000.

New Regulations governing FDI by RBI

- DIPP recently released the consolidated foreign direct investment policy circular of 2017 (FDI Policy, 2017) which is effective from 28 August 2017.
- FDI Policy, 2017 supersedes the consolidated FDI policy of 2016 issued on 7 June 2016.
- Various Press Notes issued during the year 2016 (Press Notes 5 and 6 of 2016 series) and 2017 (Press Note 1 of 2017 series) as well as amendments made in FEMA (Transfer or Issue of Security by a Person Resident outside India) Regulation, 2000 (FDI Regulations) through various RBI notifications have been included in FDI Policy, 2017.

‘Foreign Direct Investment’ and ‘Foreign Investment’

- **Foreign Direct Investment** means investment through capital instruments (equity shares, debentures, preference shares and share warrants) by a person resident outside India in an unlisted Indian company or in 10% or more of the post issue paid-up capital on a fully diluted basis of a listed Indian company.

- **Foreign Investment** means any investment made by a person resident outside India on repatriation basis in capital instrument of an Indian company or to the capital of an LLP.

- **Foreign Portfolio Investment** means any investment made by a person resident outside India through capital instrument where such investment is less than 10% of the post issue paid-up capital on a fully diluted basis of a listed Indian company.

Permission for making investment by a person resident outside India- Regulation 5 of notification 20(R)

- Unless otherwise specified in these Regulations or the relevant schedules, any investment made by a person resident outside India shall be subject to the <u>entry route</u>, <u>sectoral caps</u> or the <u>investment limits</u>, as the case may be and the <u>attendant conditionalities</u> for such investment as laid down in these Regulations.

- Entry routes (Regulation 16A)
  - Automatic route
  - Government route
- Sectoral caps (Regulation 16B)

Foreign Investment Facilitation Portal

- It is the new online single point interface of the Government of India for investors to facilitate Foreign Direct Investment.
- The portal is being administered by DIPP.
- This portal will continue to facilitate the single window clearance of applications which are through approval route.
- Upon receipt of the FDI application, it shall be forwarded to the concerned 'Competent Authority' which shall process the application as per the 'Standard Operating Procedure (SOP)'.
- The application shall be forwarded to the Reserve Bank of India (for comments from a foreign exchange law perspective)within 2 (two) days.
- Proposals requiring security clearance (in sectors such as defence and telecommunication) shall also be forwarded to the Ministry of Home Affairs.

Competent Authority and SOPs

- 'Competent Authorities defined as sector-specific administrative ministry / department as 'Competent Authorities' empowered to grant government approval for FDI.

- Competent Authorities listed include the DIPP in respect of applications for FDI in the Single Brand, Multi Brand and Food Product retail trading and the Department of Economic Affairs of India for FDI in the financial services sector.

- The DIPP had also issued the SOP which sets out a detailed procedure and timeline for applications

Limited Liability Partnerships and FDI

- An LLP, operating in sectors/activities where100% FDI is allowed under the automatic route (without FDI-linked performance conditions), is permitted to convert into a company.
- Similarly, conversion of a company into an LLP is also now permitted under the automatic route. Where FDI linked performance conditions are not there.

New definition of 'Start up Company'

- 'Start up Company' a private company incorporated under the Companies Act, 2013 and recognized as such in accordance with notification GSR 180(E) dated 17.2.2016 issued by DIPP and complies the conditions laid down by it.
- Earlier reference to 'entity' included a private limited company, registered partnership firms and LLPs also.

Start up company- Issuance of Convertible Notes

- The FDI Policy 2017 has introduced the issuance of 'Convertible Notes' (instruments representing debt repayable at the option of the holder, or convertible into equity shares within 5 years from issue upon occurrence of specified event as agreed) by Start-up companies to persons resident outside India;
- Issuance of Convertible Notes is, however, subject to the following conditions:
  - (a) Under automatic route, a Non-Resident may purchase Convertible Notes for approximately USD 39,500 or more in a single tranche and the consideration shall be received by inward remittance through normal banking channels
  - (b) Start-ups engaged in sectors requiring government approval for FDI may issue Convertible Notes only with government approval;
  - (c)Non-Residents may acquire or transfer Convertible Notes from or to persons resident India or Non-Residents only in accordance with applicable pricing guidelines under the Indian foreign exchange regulations; and
  - (d) Start-ups issuing Convertible Notes must comply with reporting requirements prescribed by the Reserve Bank of India.

Fresh Approval for Additional FDI

- Under the Erstwhile FDI Policy, additional FDI into the same entity within the approved foreign equity percentage/or into a wholly owned subsidiary did not require fresh approval.
- The New FDI Policy has capped the additional FDI to a cumulative amount of INR 5,000 crore, beyond which, fresh approval will be required to be sought.

FDI in Manufacturing Sector

- The Erstwhile FDI Policy permitted a manufacturer to sell its products manufactured in India through wholesale and/or retail, including through e-commerce, without government approval.
- The Erstwhile FDI Policy, granted similar permission to an Indian manufacture. 'Indian Manufacturer' was the owner of an Indian brand which manufactures in India at least 70% of its products in terms of value in house, and, sources at most 30% of its products from Indian manufacturers.
- The New FDI Policy does away with provisions in respect of an Indian manufacturer.

FDI in Broadcasting

- Under the Erstwhile FDI Policy, FDI up to 49% under the automatic route was permitted in broadcasting carriages services and cable networks, beyond which government approval was required.
- PN 5 seeks to liberalised these sectors by permitting 100% FDI under the automatic route.
- FDI Policy, 2017 incorporates this libralisation.

Cash and Carry Wholesale Trading

- Press Note 12 (2015 series) dated 24 November 2015 (PN 12) allowed a wholesale/ cash & carry trader to undertake single brand retail trading, subject to the conditions related to FDI in single brand retail trading sector. This change was subsequently incorporated in the Erstwhile FDI Policy.
- The FDI Policy, 2017 by doing away with the reference of 'single brand', allows wholesale/cash & carry traders to undertake retail trading by way of both single brand retail trading as well as multi brand retail trading, through the same entity, subject to prescribed conditions.

FDI in Single Brand Retail

- Press Note 5 (2016 Series) dated 24 June 2016 (PN 5) has relaxed the local sourcing norms for a period of 3 years from commencement of 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.
- The New FDI Policy, 2017 incorporates this relaxation .

FDI in financial Services

- Under the Erstwhile FDI Policy, FDI in non-banking financial companies (NBFC) under the automatic route was permitted only in 18 specific activities, subject to minimum capitalization norms prescribed under the Erstwhile FDI Policy.
- Press Note 6 (2016 Series) dated 25 October 2016, allows 100% FDI under the automatic route in any financial services activities, so long as they are regulated by financial sector regulators, viz., RBI, SEBI, PFRDA or any other regulator as may be notified by GOI, subject to minimum capitalization norms prescribed by such regulator. Accordingly, the requirement of complying with the minimum capitalization norms prescribed under the FDI policy has been done away with.
- For financial services activities which are not regulated or where there is doubt regarding regulatory oversight, FDI up to 100% will be allowed with prior government approval, subject to such prescribed conditions including minimum capitalization requirements.

FDI in E-Commerce

- The Erstwhile FDI Policy prohibited an e-commerce entity from permitting more than 25% of the sales effected through its market place from one vendor or its group companies. The New FDI Policy clarifies that the 25% of sales value must be computed per financial year.

FDI in Pension Sector

- RBI has amended FEMA 20 vide FEMA 20 (Sixteenth Amendment) Regulations, 2016 dated 4 November 2016, to restrict the ownership and control of an Indian pension fund at all times to resident Indian entities as determined by the GOI/ Pension Fund Regulatory and Development Authority (PFRDA), as per the rules/regulation issued by them from time to time.

- New FDI Policy has incorporated this.

FDI in Defence Sector

- Under the Erstwhile FDI Policy, FDI was permitted up to 49% under the automatic route and beyond 49% under the government route on a case to case basis where it was likely to result in access to modern and 'state-of-art' technology in India.
- PN 5 allows 100% FDI in the defence sector, where up to 49% is permitted under the automatic route and beyond 49% is permitted under the government route when it results in access to modern technology in India or 'for other reasons'.
- Further, the sectoral caps and conditions have now been extended to manufacturing of small arms and ammunitions under (Indian) Arms Act 1959.

FDI in Pharmaceutical sector

- Under the Erstwhile FDI Policy no FDI was permitted in brownfield pharmaceutical projects without governmental approval. PN 5 permits 100% FDI in brownfield pharmaceutical projects, where up to 74% FDI is permitted under the automatic route and beyond 74% is permitted under the government route, subject to prescribed conditions including non-compete, fixing production of National List of Essential Medicines and maintaining research and development expenses.
- New Policy has incorporated this PN.

Remittance against Pre-incorporation Expenses

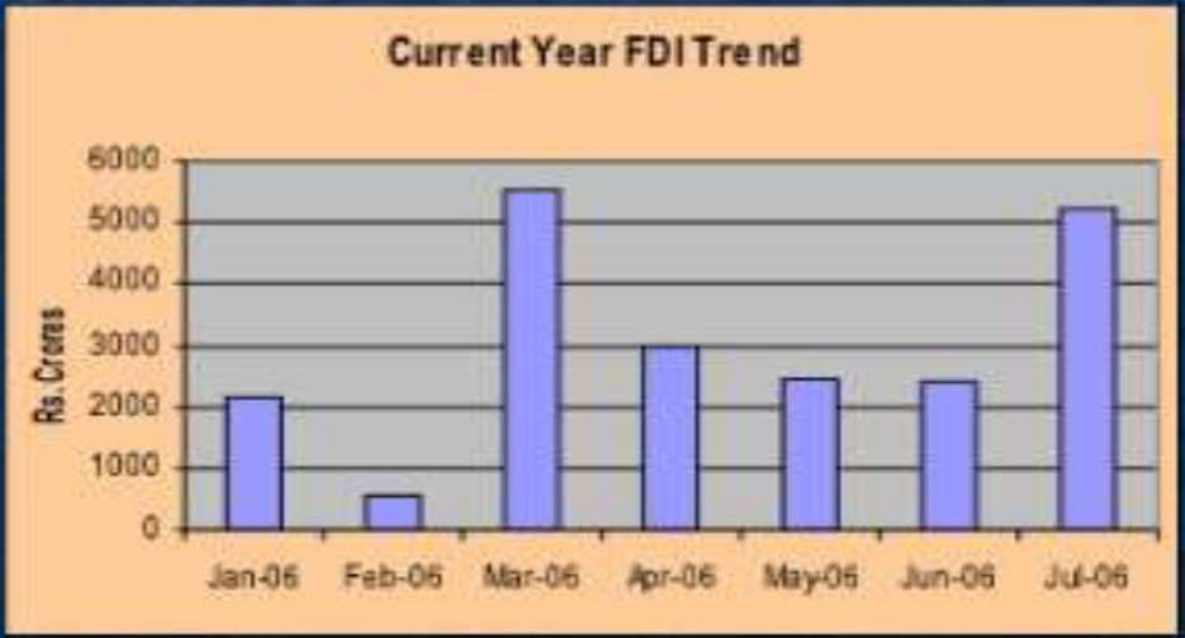
- *A wholly owned subsidiary set up in India, operating in a sector where 100 percent foreign investment is allowed in the automatic route with no FDI linked conditionalities, may issue equity shares or preference shares or convertible debentures or warrants to the said non-resident entity against pre-incorporation/ pre-operative expenses incurred by the said non-resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less, subject to the conditions laid down below.:*
  - *Within thirty days from the date of issue of equity shares or preference shares or convertible debentures or warrants but not later than one year from the date of incorporation or such time as Reserve Bank of India or Government of India permits, the Indian company shall report the transaction in the Form FC-GPR to the Reserve Bank.*
  - *The valuation of the equity shares or preference shares or convertible debentures or warrants shall be as per the Regulations.*
  - *A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/pre-operative expenses against which equity shares or preference shares or convertible debentures or warrants have been issued has been utilized for the purpose for which it was received should be submitted with the FC-GPR form.*
- *Explanation: Pre-incorporation/pre-operative expenses shall include amounts remitted to Investee Company's account, to the investor's account in India if it exists, to any consultant, attorney or to any other material/service provider for expenditure relating to incorporation or necessary for commencement of operations.*

FDI Trend in India

FDI Inflows

- Cumulative amount of FDI inflows (from August 1991 to July2006) Rs. 1,74,466 crores (USD 41.79 billion) *(equity capital components only)*
- Amount of FDI inflows during 2006-07 (from April 2006 to July2006) Rs. 13,055 crore (USD 2.89 billion) *(equity capital components only)*

* 2006-07 amount includes FDI received upto July06



124% growth in FDI over last year comparative period

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