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Business Alert

Changes in FDI Policy as per *Circular 1 of 2012*

The Department of Industrial Policy and Promotion ("**DIPP**") functioning under the Ministry of Commerce and Industry, Government of India has released the new FDI Policy viz., Circular 1 of 2012 which supersedes Circular 2 of 2011 and consolidates into one FDI Policy (New FDI Policy) all press notes, press releases, clarifications, circulars etc. released by the DIPP on or prior to April 9, 2012.

The New FDI Policy indicates that the next consolidated FDI Policy will be released by the DIPP only after one year unlike after six months as was the case earlier. The new policy is however to be read along with other press notes, circulars, notifications etc. issued by the DIPP from time to time.

Below are the highlights of the changes introduced by the New FDI Policy:

Particulars	Erstwhile Position	New FDI Policy
Commodity Exchanges	49% Foreign Investment was allowed under Approval Route, the break-up of which was as follows: ♦ Investment under FDI Scheme upto 26% ♦ Investment by Registered FII under Portfolio Investment Scheme (PIS) upto 23%	The percentage of foreign investment and the break-up remain the same. A Registered FII will now no longer require approval from the Government while Investment in commodity exchanges under the FDI Scheme continues to be subject to Government Approval.
Non Banking Finance Companies (NBFC)		It has been clarified that the 'leasing and finance business' as a permissible activity in non-banking financial services under the Automatic Route covers only <u>finance lease</u> and not an <u>operating lease</u>.
Import of capital goods / machinery / equipment (including second hand machinery) – conversion to equity	Conversion to equity was permitted for import of capital goods / machinery / equipment (<u>including</u> second-hand machinery)	Conversion to equity in case of import of second-hand machinery has now been <u>excluded</u>.

Particulars	Erstwhile Position	New FDI Policy
Clarification on investment by Foreign Institutional Investors (FIIs)	An FII investment could be made in the capital of an Indian Company under PIS which limits the individual holding of an FII to 10% of the capital of the company and the aggregate limit of FII investment to 24% of the capital of the company. This aggregate limit of 24% could be increased up to the applicable sectoral cap / statutory ceiling by the Indian company on meeting the following conditions: ♦ Passing of a Board resolution to this effect ♦ Special Resolution to be passed in a members' meeting Total Investment by FII under both FDI and PIS Schemes has to be within the sectoral cap	The increase of the aggregate FII Investment from 24% to the applicable sectoral cap / statutory ceiling made additionally subject to prior intimation to RBI by the *A*.P. (DIR Series) Circular No. 94 dated March 19, 2012 has now been incorporated in the consolidated policy.
Investment by Foreign Venture Capital Investors (FVCIs)	A.P. (DIR Series) Circular No. 93 dated March 19, 2012 permitted allowed SEBI Registered FVCIs to invest in eligible securities by way of a private arrangement / purchase from a third party. The circular also clarified that such FCVIs would be allowed to invest in listed securities.	The clarifications given by the said circular have now been incorporated in the New FDI Policy.
Investment by Qualified Financial Investors (QFIs)	The concept of investment by QFIs in equity shares was introduced by the RBI vide A. P. (DIR Series) Circular No.66 dated January 13, 2012. ♦ Investment only through SEBI Registered Depository Participants (DPs) ♦ Eligible instruments ♦ Eligible transactions ♦ Mode of Payment / Repatriation ♦ Limits etc. The circular has also modified the Scheme for Investment by QFI in Rupee Denominated Units of Domestic Mutual Funds	The contents of the circular have now been incorporated in the New FDI Policy.
General permission for transfer of shares and convertible debentures	The RBI vide circular bearing reference A.P. (DIR Series) Circular No. 43 dated November 04, 2011 liberalised policy on transfer of shares/convertible debentures of companies engaged in the financial services sector.	This liberalised policy has now been reflected under FDI policy.

Particulars	Erstwhile Position	New FDI Policy
Changes in FDI policy in single-brand retail trading	FDI in single brand product retail trading is permitted upto 100% under the Government Route after coming into effect of Press Note No. 1 (2012 Series), subject of course to conditions stated therein. One additional condition was introduced, which is briefly as folllows: *In respect of proposals involving FDI beyond 51%, mandatory sourcing of at least 30% of the value of products sold would have to be done from Indian small industries/ village and cottage industries, artisans and craftsmen.*	Press Note 1 of 2012 has now been incorporated in the New FDI Policy
Changes in FDI policy in Pharmaceuticals	FDI in pharmaceuticals sector was permitted up to 100% under the Automatic Route. Press Note 3 of 2012 modified the same as below: ♦ FDI upto 100% under the Automatic Route would continue to be permitted for greenfield investments in the pharmaceuticals sector. ♦ FDI upto 100%, would be permitted only under Government (Approval) Route for brownfield investments (i.e. investments in existing companies)of the pharmaceuticals sector.	The contents of Press Note 3 of 2012 have now been made part of the New FDI Policy
Transfer of shares from non-resident Indian (“NRI”) to non-resident (“NR”)		FDI Policy has now expressly specified a broad restriction that any transfer of shares from a NRI to a NR comes under the ambit of the Reserve Bank of India (“**RBI**”) approval route.

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