

## **Foreign Direct Investment Policy (Circular 1 of 2012)**

This time FDI policy document for March 2012 got delayed by a week and finally, Department of Industrial Policy and Promotion, Government of India (DIPP) has unveiled much awaited policy on Foreign Direct Investment (FDI) on 10.04.2012. As a matter of procedure and policy, this policy supersedes all earlier policies, circulars, press notes issued on FDI by DIPP. As a major going forward change, from now onwards FDI policy will be issued after every year in place of each six months.

Barring few changes, this policy is more of a compilation of circulars issued by Reserve Bank of India in the last few months. DIPP has not done anything on defining joint venture or liberalizing norms for aviations sector, liberalizing outsourcing requirement in case of single brand retail, clarification on valuation process of small set up private limited Companies, which were the issues widely expected to be clarified in this document.

The key features of new FDI policy are as follows:

### **1. General Changes**

#### **Prior Intimation to RBI for increase in threshold limit by FIIs:**

The Reserve Bank of India brought a change vide A.P. (DIR Series) Circular No. 94 dated 19.03.2012, that a company which seeks to increase the limit of FIIs participation in its equity capital above 24%, has to give prior intimation to RBI before going ahead with such increase. The same change has find its place in new FDI policy.

#### **Investment by Foreign Venture Capital Investors (FVCIs):**

In order to facilitate transactions by Foreign Venture Capital Investors (FVCIs), Government has permitted FVCIs to invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes / funds set up by a VCF) by way of private arrangement / purchase from a third party also, subject to stipulated terms and conditions. Moreover, SEBI registered FVCIs have also been permitted to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000. These provisions have been issued vide A.P. (DIR Series) Circular No.93 dated 19.03.2012 and have now been inserted under the FDI policy as well.

#### **Investment by 'Qualified Financial Investors (QFIs)':**

In the new FDI policy Government has highlighted changes in respect to the QFI investment which came already been notified vide A.P. (DIR Series) circular No. 56 dated 12th January, 2012. As per the change, QFIs are permitted to invest in equity shares of listed Indian companies as well as in equity shares of Indian companies which are offered to public in India in terms of the relevant and applicable SEBI guidelines/regulations. QFIs have also been permitted to acquire equity shares by way of right shares, bonus shares or equity shares, on account of stock split/consolidation or equity shares on account of amalgamation, demerger or such corporate actions, subject to the prescribed investment limits.

In respect to the limits acquired by QFIs, RBI has notified that the individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company. The pricing of all eligible transactions and investment in all eligible instruments by QFIs under this scheme shall be in accordance with the relevant and applicable SEBI guidelines only.

#### **Import of capital goods/ machinery/ equipment (including second-hand machinery)-conversion to equity:**

Issue of shares against import of second hand machinery is no more permitted. Consequently, a company can't issue shares to the exporter in lieu of second hand machinery purchased from him.

Changes has been incorporated in new FDI policy.

## Transfer of shares where valuation norms are not met

Reserve Bank of India Vide A.P. (DIR Series) Circular No. 43 dated 04th November, 2011 stated that the transfer of shares between Resident and Non-resident will not require its prior permission if the conditions as provided which are basically compliance with FDI policy, FIPB approval, Sectoral limits, SEBI regulations compliances, CA certificate for compliances etc.

Summary of detailed conditions to be met:

Criteria	Conditions
<b>Transfer of share from Non-Resident to Resident</b>	
Where the pricing guidelines under FEMA, 1999 are not met.	1. Investment is in line with the extant FDI policy and FEMA regulations in terms of sectoral cap and other conditions.
	2. Pricing for the transaction is compliant with the relevant SEBI regulation/guidelines
	3. Chartered Accountant Certificate indicating compliance, is attached to Form FC-TRS to be filed with the AD Bank.
<b>Transfer of share from Resident to Non-Resident</b>	
Where the transfer require prior approval of FIPB	1. FIPB approval is obtained
	2. Transfer stay with the pricing guidelines and documentation required by RBI.
Where SEBI guidelines are attracted	1. Pricing guidelines and documentation required by RBI should be complied with.
Where the pricing guidelines under FEMA, 1999 are not met	1. Investment is in line with the extant FDI policy and FEMA regulations in terms of sectoral cap and other conditions.
	2. Pricing for the transaction is compliant with the relevant SEBI regulation/guidelines.
	3. Chartered Accountant Certificate indicating compliance is attached to the Form FC-TRS to be filled with the AD Bank
Where the investee company is in financial sector	1. NOCs are obtained from the respective financial sectors, regulators of Investee Company, transferor and transferee and such NOCs are filed along with FC-TRS with AD.
	2. FDI policy and FEMA regulations in terms of sectoral cap and conditionalities alongwith the reporting requirements and documentation are complied with.

**Limit for providing undertaking for transfer of security by PRI to PROI as gift has been raised**

As per the existing norms, an undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 during a financial year. This limit has been raised to USD 50,000.