## New Consolidated FDI Policy Released By DIPP

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In keeping with its commitment, the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India ("DIPP") has earlier today released the third edition of the consolidated FDI Policy of India vide Circular 1 of 2011. The third consolidated FDI Policy comes into effect on April 1, 2011 and shall be valid till September 30, 2011.

The first such consolidated FDI Policy was released on March 31, 2010 and it was decided that the consolidated FDI Policy will have a sunset clause and will thus be renotified every six months. The second edition was released on September 30, 2010.

As per DIPP, the major revisions to the FDI Policy in its recent edition are:

1. Pricing of Convertible Instruments – The companies have been given an option of prescribing a conversion formula instead of price at the time of issue of convertible instruments. The price at the time of conversion should, however, not be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations (the DCF method of valuation for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies).

   The provision is oriented to enable the companies in obtaining a better valuation for their instruments, based on their performance.

2. Issue of Shares for Consideration other than Cash – The existing FDI Policy provides for conversion of only External Commercial Borrowings or lump-sum fee or royalty into equity shares of a company. DIPP has now permitted Indian companies to issue equity shares in the following cases, subject to Government approval and specific conditions:

   a. import of capital goods/machinery/equipment (including second hand machinery); and

   b. pre-operative/pre-incorporation expenses (including payment of rent etc.)

   The decision of liberalizing the conditions for issue of shares in lieu of consideration other than cash is oriented to practically ease the establishment of new businesses by foreign entities in India.

3. Removal of the Condition of Prior Approval in case of Existing Joint Ventures/Technical Collaborations in the 'Same Field' – Pursuant to extensive discussions and feedback received from the stakeholders, DIPP has abolished the condition requiring the foreign investors/technology collaborators, who have or had any previous joint venture or technology transfer/trade mark agreement prior to January 12, 2005, to obtain specific approval of the Government to establish any new venture in the same field in India.

   This decision of DIPP is expected to result in higher FDI and technology inflow into India.

4. Guidelines relating to Downstream Investments – The new FDI Policy has attempted to simplify and rationalize the provisions relating to the down-

stream investment. The companies have now been classified into only two categories (i) 'companies owned or controlled by foreign investors'; and (ii) 'companies owned and controlled by Indian residents'. The earlier categorization of the companies into 'investing companies', 'operating companies' and 'investing-cum-operating companies' has been deleted.

5. Development of Seeds – In the agriculture sector, 100% FDI under automatic route has now been permitted in the development and production of seeds and planting material

The efforts of the DIPP in time bound review and revision to the FDI Policy are widely appreciated across all sectors and stakeholders. Consultation with the industry and experts is made an integral part of the review process, and provides the stakeholders an opportunity to put forward their viewpoint for consideration by the Government. The consolidated FDI Policy also serves as a ready reckoner of laws and regulations applicable to foreign investments in India across the sectors

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