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Review of Existing Foreign Direct Investment Policy on Partly Paid Shares and Warrants

Approval of National Offshore Wind Energy Policy

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It has now been decided to allow partly paid shares and warrants as eligible capital instruments for purposes of FDI. The review of the policy to include warrants and partly-paid shares has been under consideration of the Government for some time now. Prior to this relaxation, warrants and partly paid shares could only be issued to foreign investors only after approval through the Government route, that is, the Foreign Investment Promotion Board ("FIPB"). The definition of "Capital" in the Consolidated FDI Policy Circular of 2015 has accordingly been amended with effect from May 12, 2015 by Press Note NO. 9 (2015) Series. Partly paid shares and warrants may now be issued to foreign investors in terms of the Companies Act, 2013, without the prior approval of the Government, however, subject to terms and conditions as may be stipulated by the Reserve Bank of India from time to time.

In terms of current Reserve Bank of India regulations, prior approval of the FIPB is required where the Indian company's activity/sector falls the approval route. Otherwise for Indian companies whose activities/sectors are under the automatic route, issue of partly paid shares and warrants do not require any prior regulatory approval. However, pricing of the partly paid equity shares/warrants (and the price/conversion formula for the warrants) has to be determined upfront and 25% of the total consideration amount (including share premium, if any), has to be received upfront. The balance consideration towards fully paid equity shares has to be received within a period of 12 months (18 months in the case of warrants) except where the issue size exceeds Rs. 5 billion and complies with certain conditions.

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The Government of India has approved the National Offshore Wind Energy Policy, a draft of which was earlier released in 2013, to enable optimum exploitation of offshore wind energy in the best interest of the country. Taking a cue from the large number of offshore wind farms in Europe, the Government of India has identified the coastlines of Karnataka, Kerala and Goa as having reasonable offshore wind potential. Preliminary wind resource data gathered from the coastlines of Rameshwaram and Kanyakumari in Tamil Nadu and Gujarat coast also show a potential of about 1 GW.

In terms of the said Policy, the maritime zones in which offshore wind farms can be built are (a) Indian territorial waters, which generally extend up to 12 nautical miles (nm) from the coast baseline; and (b) beyond the 12 nm limit and up to 200 nm (exclusive economic zone (EEZ)), where, under international law, India has the right to construct structures such as wind farm installations – though this may be reserved for research and development activities.

The said Policy also provides for certain fiscal incentives such as a tax holiday for first 10 years of offshore wind power generation, concession in customs duty and exemption in excise duty for procurement of technology and equipment. Exemption from service tax may also be available for services such as resource assessment, environmental impact assessment, oceanographic study by third parties and use of survey vessels and installation vessels.

The Ministry of New & Renewable Energy (MNRE) has been authorized as the Nodal Ministry for use of offshore areas within the EEZ of the country and the National Institute of Wind Energy (NIWE) has been authorized as the Nodal Agency for development of offshore wind energy in the country and to carry out allocation of offshore wind energy blocks, coordination and allied functions with related ministries and agencies. It is expected that the offer of wind energy blocks will be made through an open International Competitive Bidding (ICB) process.

India has already achieved significant success in onshore wind power development, with over 23 GW of wind energy capacity already installed and generating power. The Policy will be applicable throughout India depending on offshore wind potential availability.

Feedback

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