Fourth Edition of the Consolidated FDI Policy Released by DIPP

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The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India ("DIPP") on September 30, 2011 released the fourth edition of the consolidated FDI Policy of India vide Circular 2 of 2011.

As per the DIPP, some of the major revisions to the FDI Policy:

1. Exemption to Educational Institutions and Old Age Homes – FDI in construction development activities with respect to educational institutions and old-age homes has been exempted from the conditions imposed on FDI in Construction Development Sector, viz. the minimum area and built-up area requirement; minimum capitalization requirement; and lock-in period.

   The exemption has been granted with an intent to augment the physical infrastructure (with respect to educational institutions as well as old-age homes) and bring it up to global standards.

2. Inclusion of 'Apiculture' under the Permitted Agricultural Activities – Up to 100% FDI under automatic route has been permitted in 'apiculture' under controlled conditions. 'Apiculture' is an important agro-based industry and is believed to have the potential of bringing in high economic returns with comparatively low levels of investment.

   Permission of FDI in 'apiculture' is aimed at bringing in best international practices to upgrade the product and methods of production.

3. Enhancement of the Ambit of "Industrial Activity" – Up to 100% FDI under automatic route is permitted in existing and new industrial parks. Industrial parks are developed and made available for an industrial activity. The definition of the term "industrial activity" has been amended to widen the scope to include research and development in bio-technology, pharmaceutical and life sciences.

4. Revision of FDI Limit in Terrestrial Broadcasting/FM Radio – FDI limit in terrestrial broadcasting/FM radio has been increased from 20% to 26% under the approval route.

5. Modification in Conditions for Issue of Equity Shares Against Import of Capital Goods/Machinery/Equipment and Pre-Operative/Pre-Incorporation Expenses – Vide the third edition of the Consolidated FDI Policy released on March 30, 2011, Indian companies had been permitted to issue equity shares against (i) import of capital goods/machinery/equipment; and (ii) pre-operative/pre-incorporation expenses, subject to certain specific conditions. One of such conditions stipulated that such conversions must be made within 180 days of the date of shipment of goods or retention of advance against equity, as the case may be. This condition has been modified and now states that the application for capitalization must be made within 180 days from the date of shipment of goods or incorporation of the company, as the case may be.

6. Investments with "In-Built Options" not to qualify as FDI – Section 3.3.2.1

of the fourth edition of the FDI Policy states that only equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares, with no in-built options of any type will qualify as eligible instruments for FDI. Equity instruments issued/transferred to non-residents having in-built options or supported by options sold by third parties would lose their equity character and would have to comply with ECB guidelines.

7. Provisions on 'Pledging of Shares' – DIPP in the fourth edition of the FDI Policy has introduced certain provisions permitting the pledge of shares of an Indian company in the following cases:

   a. A promoter of an Indian company (which has raised ECBs) may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the ECB raised by the borrowing company, subject to certain conditions;

   b. A non-resident holding shares of an Indian company is allowed to pledge the shares in favour of the authorized dealer bank in India to secure credit facilities being extended to the resident investee company for bona fide business purpose, subject to certain conditions; and

   c. A non-resident holding shares of an Indian company is allowed to pledge the shares in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor/non-resident promoter of the Indian company or its overseas group company, subject to certain conditions.

8. Permission for Opening Non-Interest Bearing Escrow Accounts – The AD Category – I Banks have also been permitted to open and maintain, without the prior approval of the Reserve Bank of India, non-interest bearing escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and/or provide escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions, as may be specified by RBI.

In addition, DIPP has also included provisions with respect to FDI in Limited Liability Partnerships in the revised edition of the consolidated FDI Policy. The consolidated FDI Policy also serves as a ready reckoner of laws and regulations applicable to foreign investments in India across the sectors. The fourth edition of the consolidated FDI Policy will be valid till March 31, 2012.