

**Newsletter for January, 2018**  
**By Amita Desai & Co.**



*We love to serve and add value to business of our clients*



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**Greetings and a warm welcome to our January Month's edition of Newsletter!**

We are pleased to share our Newsletter for the month of January 2018. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Reserve Bank of India (RBI) Securities and Exchange Board of India (SEBI), Department of Industrial Policy and Promotion (DIPP) and Insolvency & Bankruptcy Board of India (IBBI).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner.

We have tried to provide our analysis on Cabinet Approval to FDI Policy Amendments as our Article of the Month.

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,  
**Amita Desai & Team**



**A. COMPANIES (INCORPORATION) AMENDMENT RULES, 2018**

- MCA vide notification dated 20<sup>th</sup> January, 2018 has amended the Companies (Incorporation) Rules, 2014 and notified Companies (Incorporation) Amendment Rules, 2018. These rules are enforced from 26<sup>th</sup> January, 2018.
- With aforesaid notification INC-1 has been discontinued and now application for reservation of name shall be made through new web service/e-form "**RUN**" (**Reserve Unique Name**) for reserving name of proposed Company and for changing name of existing Company.
- INC-7 has been discontinued and INC-32 (SPICe) application for incorporation is available **for all types the Companies**.
- Now in case of incorporation of a Company having more than 7 subscribers or where any of the subscribers to the MOA/AOA is signing at a place outside India, MOA/AOA shall be filed with INC-32 (SPICe) in the respective formats as specified in Table A to J in Schedule I without filing form INC-33(e-MOA) and INC-34(e-AOA).
- **Now no fees will be charged for incorporating Companies having nominal capital of less than or equal to rupees 10 lakhs** or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed 20.
- The link of above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationAmendmentRules2018\\_25012018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationAmendmentRules2018_25012018.pdf)

**B. COMPANIES (REGISTRATION OFFICES AND FEES) AMENDMENT RULES, 2018**

- MCA vide notification G.S.R. 48(E) dated 20<sup>th</sup> January, 2018 has amended the Companies (Registration Offices and Fees) Rules, 2014 and notified the Companies (Registration Offices and Fees) Amendment Rules, 2018, these rules are enforced from 26<sup>th</sup> January, 2018.
- **No Re-submission of the application is allowed for the name reserved through new web service/e-form "RUN" (Reserve Unique Name)** for reserving name of proposed Company and for changing name of existing Company,.
- Table of Fees to be paid to Registrar under section 403 has been substituted as follows:

A. Table of Fees to be paid to the Registrar

| (I) In respect of a company having a share capital :   | Other than OPCs and Small Companies (in rupees)   | OPC and Small Companies (in rupees)          |
|--|---|--|
| <p>1. (a) For registration of OPC and small companies whose nominal share capital is less than or equal to Rs.10,00,000</p> <p>(b) For registration of OPC and small companies whose nominal share capital exceed Rs. 10,00,000, , the fee of Rs. 2000 with the following additional fees regulated according to the amount of nominal capital:<br/>For every Rs.10,000 of nominal share capital or part of Rs.10,000 after the first Rs.10,00,000 and up to Rs. 50,00,000.</p>  | <p>–</p> <p>–</p>                                 | <p>–</p> <p>200</p>                          |
| <p>2. (a) For registration of a company (other than OPC and small companies) whose nominal share capital is less than or equal to Rs. 10,00,000 at the time of incorporation.</p> <p>(b) For registration of a company (other than OPC and small companies) whose nominal share capital exceed Rs. 10,00,000, the fee of Rs.36,000 with the following additional fees regulated according to the amount of nominal capital :</p> <p>i) for every Rs. 10,000 of nominal share capital or part of Rs 10,000 after the first Rs. 10,00,000 upto Rs. 50,00,000</p> <p>ii) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 50,00,000 upto Rs. one crore.</p> <p>iii) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1 crore.</p> <p>Provided further that where the additional fees, regulated according to the amount of the nominal capital of a company, exceed a sum of rupees two crore and fifty lakh, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed rupees two crore and fifty lakhs.</p> | <p>–</p> <p>–</p> <p>300</p> <p>100</p> <p>75</p> | <p>–</p> <p>–</p> <p>–</p> <p>–</p> <p>–</p> |
| <p>3. For filing a notice of any increase in the nominal share capital of a company, the difference between the fees payable on the increased share capital on the date of filing the notice for the registration of a company and the fees payable on existing authorized capital, at therates prevailing on the date of filing the notice</p> <p>(a) For OPC and small companies whose nominal share capital does not exceed Rs. 10,00,000.</p> <p>(b) For OPC and small companies, for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 10,00,000 and upto Rs. 50,00,000.</p>  |   | <p>2000</p> <p>200</p>                       |

|  |  |  |
|--|--|--|
| <p>Other than OPC and small companies</p> <p>(c) For increase in nominal capital of a company whose nominal share capital does not exceed Rs. 1,00,000.</p> <p>(d) For increase in nominal capital of a company whose nominal share capital exceed Rs. 1,00,000, the above fee of Rs. 5,000 with the following additional fees regulated according to the amount of nominal capital :</p> <p>(i) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1,00,000 upto Rs. 5,00,000.</p> <p>(ii) for every Rs. 10,000 of nominal share capital or part of Rs 10,000 after the first Rs. 5,00,000 upto Rs. 50,00,000.</p> <p>(iii) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 50,00,000 upto Rs. one crore.</p> <p>(iv) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1 crore.</p> <p>Provided further that where the additional fees, regulated according to the amount of the nominal capital of a company, exceed a sum of rupees two crore and fifty lakh, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed rupees two crore and fifty lakhs.</p> | <p>5000</p> <p>400</p> <p>300</p> <p>100</p> <p>75</p> |  |
| <p>4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee is charged for registering a new company.</p>   |  |  |
| <p>5. For submitting, filing, registering or recording any document by this Act required or authorised to be submitted, filed, registered or recorded:</p> <p>(a) in respect of a company having a nominal share capital of less than Rs. 1,00,000.</p> <p>(b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000.</p> <p>(c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000.</p> <p>(d) in respect of a company having a nominal share capital of Rs.25,00,000 or more but less than Rs. 1 crore or more.</p> <p>(e) in respect of a company having a nominal share capital of Rs. 1 crore or more.</p> <p>Provided that in case of companies to be incorporated with effect from 26.01.2018 with a nominal capital which does not exceed rupees ten lakhs fee shall not be payable</p>  | <p>200</p> <p>300</p> <p>400</p> <p>500</p> <p>600</p> |  |
| <p>6. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by</p>  |  |  |

|   |       |  |
|---|-------|--|
| the Registrar:<br>(a) in respect of a company having a nominal share capital of less than Rs. 1,00,000.   | 200   |  |
| (b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000.   | 300   |  |
| (c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000.  | 400   |  |
| (d) in respect of a company having a nominal share capital of Rs.25,00,000 or more but less than Rs. 1 crore or more.   | 500   |  |
| (e) in respect of a company having a nominal share capital of Rs. 1crore or more.   | 600   |  |
| (II) In respect of a Company not having a share capital   |       |  |
| 7. For registration of a company whose number of members as stated in the articles of association, does not exceed 20.  | -     |  |
| 8. For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 200.  | 5000  |  |
| 9. for registration of a company whose number of members as stated in the articles of association, exceeds 200 but is not stated to be unlimited, the above fee of Rs.5,000 with an additional Rs. 10 for every member after first 200  |       |  |
| 10. For registration of a company in which the number of members is stated in the articles of association to be unlimited.  | 10000 |  |
| 11. For registration of any increase in the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration :<br>Provided that no company shall be liable to pay on the whole a greater fee than Rs. 10,000 in respect of its number of members, taking into account the fee paid on the first registration of the company. |       |  |
| 12. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.  |       |  |
| 13. For filing or registering any document by this Act required or authorized to be filed or registered with the Registrar.<br>Provided that in case of companies to be incorporated with effect from 26.01.2018 whose number of members as stated in the articles of association, does not exceed 20, fee shall not be payable.  | 200   |  |
| (14) For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar.]  | 200   |  |

- The link of above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/CompaniesRegnofficeandfeesAmendmentRules2018\\_25012018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesRegnofficeandfeesAmendmentRules2018_25012018.pdf)

### **C. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2018**

- MCA vide notification G.S.R. 51(E) dated 22<sup>nd</sup> January, 2018 has amended the Companies(Appointment and Qualification of Directors) Rules, 2014 and notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2018, these rules are enforced from 26<sup>th</sup> January, 2018.
- The marginal heading has been amended for Rule 9 of Companies (Appointment and Qualification of Directors) Rules, 2014, now read as Application for allotment of Director Identification Number **before appointment in an existing company.**
- Now at the time of Incorporation in case of proposed directors not having DIN, then it shall be applied in Form no. INC-32 (SPICe) for maximum 3 Directors.
- Further, if the appointment of Director is proposed in any existing Company then while applying for DIN in e-form DIR-3 Board resolution proposing appointment as director in an existing company shall be attached.
- e-form DIR-3 shall be **signed electronically by the applicant** and shall be verified digitally by **a company secretary in full time employment** of the Company or by the Managing Director or Director or CEO or CFO of the Company in which the applicant is intended to be appointed as director in an existing company. With the aforesaid notification verification by practicing professional is no more required.
- The link of above circular is as under:

[http://www.mca.gov.in/Ministry/pdf/AppointmentQualificationDirectoramendmentrules2018\\_25012018.pdf](http://www.mca.gov.in/Ministry/pdf/AppointmentQualificationDirectoramendmentrules2018_25012018.pdf)

### **D. COMPANIES (AMENDMENT) ACT, 2017**

- MCA vide Notification S.O. 351(E) dated 23<sup>rd</sup> January, 2018, has notified Section 1 and 4 of Companies (Amendment) Act, 2017 and the appointed date from which said Section shall come into force is 26<sup>th</sup> January, 2018
- With aforesaid notification Section 4(5)(i) relating to duration of name reservation has been substituted, now the proposed name will be reserved for a period of only 20 days from the date of approval instead of 60 days from the date of application.
- In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of 60 days from the date of approval.
- The link of above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/NotificationCompaniesAct\\_23012018.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationCompaniesAct_23012018.pdf)

## **A. FOREIGN INVESTMENT IN INDIA**

RBI vide Master Direction dated January 4, 2018 has introduced the Master Directions on Foreign Investment in India to be in line with Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 dated 7<sup>th</sup> November, 2017

- Master Directions also issue directions to Authorised person as how to conduct foreign exchange business with their customers/ constituents for effectively implementing the regulations framed.
- Also it states that Reporting instructions on Reporting is available on [Master Direction No. 18 dated January 1, 2016](#). The person/ entity responsible for filing such reports will be liable for payment of late submission fee for any delays in reporting.
- The link of above notification is as under:  
[https://www.rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=11200](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11200)

## **B. XBRL RETURNS – HARMONIZATION OF BANKING STATISTICS.**

RBI vide Notification dated January 4, 2018 has introduced the Harmonised definitions for 83 data elements in XBRL Returns of banking/ regulatory, received across RBI department.

- Earlier RBI vide its press release dated March 30, 2017 has introduced 106 data elements.
- Now RBI has introduced Harmonised definition for another 83 data elements which are used in multiple banking /regulatory returns for items covered in balance sheet/ profit and loss/ off - balance sheet, for better interpretation of data elements.
- In case of conflict between definitions provided in this circular vis-a-vis the statutory definition provided in relevant circulars, the latter would prevail.
- The link of above notification is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11199&Mode=0>

## **C. REFINANCING OF EXTERNAL COMMERCIAL BORROWINGS.**

RBI vide Circular dated January 4, 2018 has amended provision of paragraphs 2.15 and 2.16 (xiii) of Master Direction No.5/2015-16 on ECB, Trade credit and other monetary policy dated 1st January 2016.

- Now Indian corporates are permitted to refinance their existing External Commercial Borrowing (ECB) at a lower all-in-cost.



- However, overseas branches/subsidiaries of Indian banks are not permitted to extend refinancing of ECB, but they are permitted to refinance ECB of highly rated AAA corporate, Navratna and Maharatna PSUs, provided:
  - a. the outstanding maturity of the original borrowing is not reduced, and
  - b. all-in-cost of fresh ECB is lower than the existing ECB
- The link of above notification is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11198&Mode=0>

#### **D. SUBMISSION OF FINANCIAL INFORMATION TO INFORMATION UTILITIES**

RBI vide Circular dated January 4, 2018 issued a circular with regards to Submission of Financial Information to Information Utilities by Financial Creditors

- Instructions contained in RBI notification dated December 19, 2017 on Submission of Financial Information to Information Utilities by Financial Creditors, are now also Applicable to all registered Asset Reconstruction Companies.
- The link of above notification is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11197&Mode=0>

#### **DIPP UPDATES:**

#### **A. REVIEW OF FOREIGN DIRECTOR INVESTMENT (FDI) POLICY ON VARIOUS SECTOR**

Department of Industrial Policy and Promotion (“DIPP”) has issued a press note no. 1 dated 23<sup>rd</sup> January, 2018 making amendments in the Consolidated FDI Policy Circular of 2017 (**FDI Policy**) which was effective from 28<sup>th</sup> August, 2017.

The amendments are as follows:

##### **1. Prohibition of restrictive conditions regarding audit firms**

Para 5.2 (h) of the FDI policy is replaced as below:

Wherever the foreign investor wishes to specify auditor/audit firm having international network then audit of investee companies shall be carried out as joint audit provided one of the auditors should not be part of the same network.

Further, old para 5.2(h) is renumbered as 5.2 (i) which read as - onus of compliance of the above provisions will be on the investee company.

Hence, as per 5.2 (i) onus of compliance of provisions of para 5.2(a) to (h) will be on the investee company.

**2. Foreign investment into an Indian company engaged only in the activity of investing in the capital of other Indian company/ies.**

**A.** Para 3.8.3.1 of the FDI policy states that foreign investment in an Indian company engaged in the activity of investing in the capital of other Indian Company/ies/LLP will require prior Government approval ,regardless of any amount of foreign investment.

Now,it has been amended stating that the foreign investment in NBFC registered with RBI as investing company shall be under 100% automatic route.

**B.** Para 3.8.3.2 of the FDI policy states that the companies which are Core Investment Companies (CICs) have to follow additional RBI's Regulatory Framework for CICs.

Now under this amendment, it states that foreign investment in CICs and other investing company engaged in the activity of investing in capital of other Indian company/ies/LLP, foreign investment is permitted under Government approval route.

However, CICs shall follow additional RBI's regulatory framework for CICs

**3. Competent Authority for FDI proposals examining countries of concern.**

There has been amendment in certain Competent Authorities for grant of approval for foreign investment for sectors/activities requiring Government approval:

Para 4.1.1 states that:

| <b>Sl. No</b> | <b>Activity/Sector</b>   | <b>Administrative Ministry/Department</b> |
|---------------|--|---|
| (ix)          | Applications inviting investment from the Countries of Concern which presently include Pakistan and Bangladesh, requiring security clearance as per extant FEMA 20, FDI Policy and security guidelines, amended from time to time. | Ministry of Home Affairs                  |

Now, it has been amended as follows:

| <b>S.I. No</b> | <b>Activity/Sector</b>  | <b>Administrative Ministry/Department</b>      |
|----------------|---|--|
| (ix)<br>(a)    | Applications inviting investment from the Countries of Concern falling under automatic route sectors/activities, requiring security clearance as per extant FEMA 20, FDI Policy and security guidelines, amended from time to time. | Department of Industrial Policy and promotion. |
| (ix)<br>(b)    | Cases pertaining to Government approval route sectors/activities requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, as amended from time to time.  | Nodal administrative Ministries/Department     |

#### **4. Civil Aviation**

A. Note (iii) at para 5.2.9 of FDI Policy which states that para [c] of other condition is not applicable to M/s Air India Limited has been deleted.

B. New clause (d) has been added in other condition at Para 5.2.9 of FDI policy. It is as follows:

(d) In addition to other condition mentioned, M/s. Air India Ltd. inviting foreign investment shall be subject to the following condition:

(i) Foreign investment in M/s. Air India Ltd. shall not exceed 49% including that of foreign airline(s) either directly or indirectly.

(ii) Substantial ownership and effective control of M/s Air India Ltd. shall be continue to be vested in Indian Nationals.

#### **5. Construction Development: Townships, Housing, Built-up Infrastructure and Real Estate Broking.**

New clause (vi) have been added after note (v) at Para 5.2.10.2 of FDI policy.

It states that notwithstanding anything contained in Para 5.2.10 it is clarified that real estate broking service does not amounts to real estate broking business and 100% foreign investment is allowed in the activity under automatic route.

#### **6. Single Brand Product Retail Trading.**

Certain amendment has been made under para 5.2.15.3 of FDI policy which states as under:

i) 100% of Equity / FDI cap is allowed in the Single Brand Product Retail Trading under Automatic route (earlier it was automatic route upto 49% and Government route beyond 49%).

ii) Para 5.2.15.3(2)(d) states that non-resident entity/ies shall be permitted to undertake 'single brand' product retail trading in the country whether being owner of the brand or otherwise, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner.

iii) Para 5.2.15.3(2)(g) has been newly inserted which states that single brand retail trading entity would be permitted to set off its incremental sourcing of goods from India for global operations during initial 5 years, beginning 1<sup>st</sup> April of the year of the opening of first store, against the mandatory sourcing requirement of 30% of purchases from India. For this purpose, incremental sourcing will mean the increase in terms of value of such global sourcing from India for that single brand in INR terms) in a particular financial year from India over the preceding financial year, by the non-resident entities undertaking single brand retail trading, either directly or through their group companies. After completion of this 5 years period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis.

iv) Para 5.2.15.3(3) has been deleted/omitted since 100% of Equity / FDI cap is allowed

## **7. Power Exchanges**

5.2.24.2(i) relating to other conditions "FII/FPI purchases shall be restricted to secondary market only", has been deleted.

## **8. Pharmaceuticals**

**A.** Definition of "Medical Device" at para 5.2.27.3 Note (ii) of FDI policy is amended as under:

Medical device means-

a) any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of-

(i) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;

(ii) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or handicap;

(iii) investigation, replacement or modification or support of the anatomy or of a physiological process;

- (iv) supporting or sustaining life;
- (v) disinfection of medical devices;
- (vi) control of conception,

and which does not achieve its primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means;

- b) an accessory to such an instrument, apparatus, appliance, material or other article;
- c) in-vitro diagnostic device which is reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of examination of specimens derived from the human body or animals.

**B.** Para 5.2.27.3 Note (iii) of FDI policy which presently read as “the definition of medical device at Note (ii) above would be subject to the amendment in Drugs and Cosmetics Act” has been deleted.

### **9. Para 6of Annexure-3**

New clause (iii) has been inserted in General Condition of Para 6of Annexure-3 after point (ii).

(iii) For sectors under automatic route, issue of equity shares against import of capital goods/machinery/equipment (excluding second hand machinery) and pre-operative/pre-incorporation (including payments of rent etc.) is permitted for sectors under automatic route subject to compliance with respective conditions mentioned above, and reporting to RBI in form FC-GPR as per procedure prescribed under the FDI policy.

- The link of above Press Note is as under:

For detail analysis please refer to our Article of the Month:

[http://dipp.nic.in/sites/default/files/pn1\\_2018.pdf](http://dipp.nic.in/sites/default/files/pn1_2018.pdf)

**A. SCHEMES OF ARRANGEMENT BY LISTED ENTITIES AND (II) RELAXATION UNDER SUB-RULE (7) OF RULE 19 OF THE SECURITIES CONTRACTS (REGULATION) RULES, 1957:**

SEBI vide its Circular No. CFD/DIL3/CIR/2018/2 dated January 03, 2018 has issued circular amending certain provisions of the SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 which laid down detailed guidelines and procedures for listed entities undertaking schemes of arrangements.

SEBI has received representations on above mentioned Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017. Considering the suggestions and in order to expedite the processing of draft schemes and to prevent misuse of Schemes to bypass regulatory requirements, SEBI has made certain amendments to the said Circular. Material changes to the Circular are detailed below:

| Sr. No | Clause No.       | Old Provision  | New Provision  |
|--------|------------------|--|--|
| 1      | Para No. 7       | The Provisions of this circular shall not apply to schemes which solely provides for merger of a wholly owned subsidiary with the parent company.  | The Provisions of this circular shall not apply to schemes which solely provides for merger of a wholly owned subsidiary <b>or its division</b> with the parent company.   |
| 2      | Para (I)(A)(2)   | <b>New Para</b> has been inserted after Para (I)(A)(2) of Annexure I to the circular No. CFD/DIL3/CIR/2017/21 as:<br>“The valuation report referred to in Para 2(b) above and the Fairness opinion referred to in Para 2(d) above shall be provided by <b>Independent Chartered Accountant and Independent SEBI Registered Merchant Banker</b> respectively. The chartered accountant and the merchant banker referred herein shall <b>not be treated as independent in case of existence of any material conflict of interest among themselves or with the company, including that of common directorships or partnerships</b> ”. |  |
| 3      | Para(I)(A)(3)(b) | The percentage of shareholding of pre- scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the “merged” company shall not be less than 25%  | The percentage of shareholding of pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the “merged” company <b>on a fully diluted basis</b> shall not be less than 25%.” |
| 4      | Para (II)        | Amendment circular <b>omitted</b> the requirement of listed Company to seek prior consent of SEBI through Stock Exchange(s) for any modification to the draft scheme as approved by the SEBI which, inter alia, provided the listed company to file certain documents along with copy of the High Court/ NCLT approved Scheme.   |  |

|   |                    |  |  |
|---|--------------------|--|--|
| 5 | Para (III) (A)(3)  | <p>In case of a scheme involving hiving-off of a division from a listed entity into an unlisted entity the entire pre-scheme share capital of the unlisted issuer seeking listing shall be locked in as follows:</p> <p>(a) Shares held by <b>Promoters up to the extent of twenty percent of the post-merger paid-up capital</b> of the unlisted issuer, shall be locked-in for a period of <b>three years</b> from the date of listing of the shares of the unlisted issuer;</p> <p>(b) The <b>remaining shares</b> shall be locked-in for a period of <b>one year</b> from the date of listing of the shares of the unlisted issuer;</p> <p>(c) No additional lock-in shall be applicable if the post scheme shareholding pattern of the unlisted entity is exactly similar to the shareholding pattern of the listed entity.</p> | <p>In case of a scheme involving <b>merger of a listed company or its division into an unlisted entity</b>, the entire pre-scheme share capital of the unlisted issuer seeking listing shall be locked in. and provisions for Lock in period of shares would be same as old provision.</p> <p><b>It also provides that,</b></p> <p>--- Locked-in shares can be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution, provided that pledge of shares is one of the terms of sanction of the loan;</p> <p>--- Locked-in shares may be transferred 'inter-se' among promoters in accordance with the conditions specified under Regulation 40 of SEBI ICDR Regulations i.e, lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period has expired; and</p> <p>--- This clause is retrospectively applicable to any shares presently under lock-in as per the provisions of earlier circulars.</p> |
| 6 | Para (III) (A) (4) | <p>Amendment circular <b>omitted</b> the requirement for the listed entity and/or transferee entity (unlisted entity), as applicable, to ensure that it has completed steps for listing of its specified securities, within thirty days of the receipt of the order of the Hon'ble High Court/ NCLT sanctioning the Scheme, simultaneously on all the Stock Exchanges where the equity shares of the listed entity (or transferor entity) are/were listed.</p>   |  |
| 7 | Para (III) (A)(5)  | <p>Amendment Circular now stipulates an overall timeline of <b>60 days from 45 days</b>, from the receipt of the order of the Hon'ble High Court/ NCLT, for completion of listing and commencement of trading in securities by the issuing entity.</p>   |  |

The link of this circular is as under:

<https://www.sebi.gov.in/legal/circulars/jan-2018/circular-on-schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957-37265.html>

## **B. BENCHMARKING OF SCHEME'S PERFORMANCE TO TOTAL RETURN INDEX:**

SEBI vide its Circular No. SEBI/HO/IMD/DF3/CIR/P/2018/04 dated January 04, 2018 has issued circular on Benchmarking of Scheme's performance to Total Return Index.

- The Securities and Exchange Board of India (SEBI) has asked all mutual funds to adopt Total Return variant of an Index (TRI) to benchmark schemes, which is a more appropriate way to measure the performance of such financial products as compared to the Price Return variant of an Index (PRI).

- TRI takes into account all dividends and interest payments that are generated from the basket of constituents that make up the index in addition to capital gains and as against that, PRI only captures the capital gains of the index constituents.
- Thus, PRI provides an incomplete picture of the index return. Hence, TRI is more appropriate as a benchmark to compare the performance of mutual fund schemes.
- Further, the regulator said mutual funds needs to use a composite CAGR (Compound Annual Growth Rate) figure of the performance of the PRI benchmark (till the date from which TRI is available) and the TRI subsequently to compare the performance of their scheme in case TRI is not available for that particular period.

The link of the above circular is as under:

[https://www.sebi.gov.in/legal/circulars/jan-2018/benchmarking-of-scheme-s-performance-to-total-return-index\\_37273.html](https://www.sebi.gov.in/legal/circulars/jan-2018/benchmarking-of-scheme-s-performance-to-total-return-index_37273.html)

### **C. ELECTRONIC BOOK MECHANISM FOR ISSUANCE OF SECURITIES ON PRIVATE PLACEMENT BASIS:**

SEBI vide its Circular No. SEBI/HO/DDHS/CIR/P/2018/05 dated January 05, 2018 has issued circular revising the guidelines for the Electronic Book Mechanism for issuance of securities on private placement basis which would be effective from 1 April, 2018.

- In light of the above circular, SEBI had previously vide circular No. CIR/IMD/DF1/48/2016, dated April 21, 2016, mandated usage of electronic book mechanism for issuance of debt securities on private placement basis.
- The revisions made to the existing framework are aimed at further streamlining the procedure for private placement of debt securities, allowing private placement of other classes of securities which are in the nature of debt securities and enhancing transparency in the issuance, resulting in better discovery of price.
- The revised guidelines for the same are placed at Schedule-A annexed to this circular which gives provisions for:
  - Definition
  - Securities eligible for issuance on Electronic Book Provider (EBP) Platform
  - Obligations of Issuer
  - Withdrawal of offer by an Issuer
  - Participants
  - Bidding Process
  - Electronic Book Provider and its Obligations

The link of this circular is as under:

[https://www.sebi.gov.in/legal/circulars/jan-2018/electronic-book-mechanism-for-issuance-of-securities-on-private-placement-basis\\_37295.html](https://www.sebi.gov.in/legal/circulars/jan-2018/electronic-book-mechanism-for-issuance-of-securities-on-private-placement-basis_37295.html)



#### **D. PREVENTION OF UNAUTHORISED TRADING BY STOCK BROKERS:**

SEBI vide its Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018 has issued circular with regards to Prevention of Unauthorised Trading by Stock Brokers.

- Earlier in the year 2017, SEBI had come out with various norms to be implemented from January 1, 2018 for prevention of unauthorised trading activities by the stock brokers vide circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

The link of the above circular is as under:

[https://www.sebi.gov.in/legal/circulars/sep-2017/prevention-of-unauthorised-trading-by-stock-brokers\\_36079.html](https://www.sebi.gov.in/legal/circulars/sep-2017/prevention-of-unauthorised-trading-by-stock-brokers_36079.html)

- Now, SEBI has extended the time limit for implementation of the guidelines it had prescribed in above mentioned circular to April 1, 2018.
- The decision to extend the time limit has been taken after the representations received from BSE Brokers Forum and Association of National Exchanges Members of India, expressing difficulties faced by stock brokers in the implementation of the aforesaid circular.
- Further, it has been added that other provisions shall "remain unchanged and no further extension" shall be granted for the implementation of last year's circular.

The link of the above circular is as under:

[https://www.sebi.gov.in/legal/circulars/jan-2018/prevention-of-unauthorized-trading-by-stock-brokers\\_37363.html](https://www.sebi.gov.in/legal/circulars/jan-2018/prevention-of-unauthorized-trading-by-stock-brokers_37363.html)

#### **E. ONLINE REGISTRATION MECHANISM AND FILING SYSTEM FOR DEPOSITORIES:**

SEBI vide its Circular No. SEBI/HO/MRD/DSA/CIR/P/2018/13 dated January 29, 2018 has issued circular with respect to Online Registration Mechanism and Filing System for Depositories.

- SEBI has introduced online mechanisms for depositories to make it convenient for them to do business.
- The new system would help these entities to complete registration and other regulatory filings with SEBI in a much faster and cost-effective manner.
- SEBI said that all applicants desirous of seeking registration as a depository in terms of Regulation 3 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 as well as for renewing of licence will have to submit their application online.
- Further, all other filings including annual financial statements and returns, monthly development report and rules would also be submitted online.

The link of this circular is as under:

[https://www.sebi.gov.in/legal/circulars/jan-2018/online-registration-mechanism-and-filing-system-for-depositories\\_37583.html](https://www.sebi.gov.in/legal/circulars/jan-2018/online-registration-mechanism-and-filing-system-for-depositories_37583.html)

## **F. ONLINE REGISTRATION MECHANISM AND FILING SYSTEM FOR STOCK EXCHANGES:**

SEBI vide its Circular No. SEBI/HO/MRD/DSA/CIR/P/2018/14 dated January 29, 2018 has issued circular with respect to Online Registration Mechanism and Filing System for Stock Exchanges.

- SEBI has introduced online mechanisms for Stock Exchanges to make it convenient for them to do business.
- The new system would help these entities to complete registration and other regulatory filings with SEBI in a much faster and cost-effective manner.
- SEBI said that all applicants desirous of seeking registration as Stock Exchange in terms of Regulation 4 and 12 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 as well as for renewing of licence will have to submit their application online.
- Further, all other filings including annual financial statements and returns, monthly development report and rules would also be submitted online.

The link of this circular is as under:

[https://www.sebi.gov.in/legal/circulars/jan-2018/online-registration-mechanism-and-filing-system-for-stock-exchanges\\_37584.html](https://www.sebi.gov.in/legal/circulars/jan-2018/online-registration-mechanism-and-filing-system-for-stock-exchanges_37584.html)

### **IBBI UPDATES:**

#### **A. IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS REGULATION, 2016 & IBBI (FAST TRACK INSOLVENCY PROCESS FOR CORPORATE PERSONS) REGULATION, 2017**

- IBC vide Press Release dated 1<sup>st</sup> January, 2018, had amended the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and Insolvency & Bankruptcy Board of India (Fast Track Insolvency Process for Corporate Persons), Regulations, 2017.
- According to the regulations, **a resolution plan needs to identify specific sources of funds to be used for paying the liquidation value due to dissenting creditors.** (For this purpose, the 'dissenting financial creditor', means a financial creditor who voted against the resolution plan or abstained from voting.)
- As per the amendments, it is not necessary to disclose 'liquidation value' in the information memorandum. After the receipt of resolution plan(s) in accordance with the Insolvency and Bankruptcy Code, 2016 (Code) and the regulations, the resolution professional shall provide the liquidation value to every member of the committee of creditors after obtaining an undertaking from the member to the effect that such member shall maintain confidentiality of the liquidation value and shall not use such value to cause an undue gain or undue loss to itself or any other person. Also, the interim resolution professional or the resolution professional, as the case may be, shall maintain confidentiality of the liquidation value.

- According to the amendments, a resolution applicant shall submit the resolution plan(s) to the resolution professional within the time given in the invitation for the resolution plans in accordance with the provisions of the Code. This will enable the committee of creditors to close a resolution process as early as possible subject to provisions in the Code and the regulations.
- The link of above notification is as under:  
[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/press%20release%2001012018\\_2018-01-01%2022:19:50.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/press%20release%2001012018_2018-01-01%2022:19:50.pdf)

#### **B. INSOLVENCY PROFESSIONAL TO USE REGISTRATION NUMBER AND REGISTERED ADDRESS IN ALL HIS COMMUNICATIONS**

- IBC vide its Circular dated 3<sup>rd</sup> January, 2018, has directed that in all communications by Insolvency professional, whether made by way of public announcement or otherwise to a stakeholder or to an authority, he shall prominently state: (i) his name, address and email, as registered with the IBBI, (ii) his Registration Number as an insolvency professional granted by the IBBI, and (iii) the capacity in which he is communicating.
- Additionally, he may use a process (Example: CIRP, Liquidation, etc.) specific address and email in its communications, if he considers it necessary subject to the conditions that: (i) the process specific address and email are in addition to the details required in Para 2 above, and (ii) the insolvency professional continues to service the process specific address and email for at least six months from conclusion of his role in the process.
- The link of above notification is as under:  
[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%201\\_2018-01-03%2018:41:16.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%201_2018-01-03%2018:41:16.pdf)

#### **C. INSOLVENCY PROFESSIONAL TO ENSURE COMPLIANCE WITH PROVISIONS OF THE APPLICABLE LAWS**

- IBC vide Circular No. IP/003/2018 dated 3<sup>rd</sup> January, 2018, has directed that while acting as an Interim Resolution Professional, a Resolution Professional, or a Liquidator for a corporate person under the Code, an insolvency professional shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under the Code complies with the applicable laws.
- It is clarified that if a corporate person during any of the aforesaid processes under the Code suffers any loss, including penalty, if any, on account of non-compliance of any provision of the applicable laws, such loss shall not form part of insolvency resolution process cost or liquidation process cost under the Code. It is also clarified that the insolvency professional will be responsible for the non-compliance of the provisions of the applicable laws if it is on account of his conduct.
- The link of above notification is as under:  
[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%202\\_2018-01-03%2018:41:44.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%202_2018-01-03%2018:41:44.pdf)

#### **D. INSOLVENCY PROFESSIONAL NOT TO OUTSOURCE HIS RESPONSIBILITIES**

- IBC vide Circular No. IP/003/2018 dated 3<sup>rd</sup> January, 2018, has casted specific duties and responsibilities on an insolvency professional. An insolvency professional is required to perform certain tasks under the Code while acting as an Interim Resolution Professional, a Resolution Professional, a Liquidator or a Bankruptcy Trustee for various processes.
- The insolvency professionals shouldn't ask the applicants to submit a certificate from another person to the effect that they are eligible to be resolution applicants as this amounts to Outsourcing. This adds to the costs of the applicant and also the code doesn't envisage such a certification from a third person.
- The link of above notification is as under:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%203\\_2018-01-03%2018:42:53.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CIRP%203_2018-01-03%2018:42:53.pdf)

#### **E. THE CENTRAL GOVERNMENT NOTIFIES THE COMPANIES (AMENDMENT) ACT, 2017:**

Insolvency and Bankruptcy Board of India (“IBBI”) vide Press Release dated 5<sup>th</sup> January, 2018 stated that the Central Government notified the Companies (Amendment) Act, 2017 (Amendment Act) on 3<sup>rd</sup> January, 2018 and following few provisions in the Amendment Act have important bearing on the working of the Insolvency and Bankruptcy Code, 2016 (Code) as well:

- The Amendment Act allows Companies to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan such as resolution plan under the Code or debt restructuring scheme which was prohibited under the provision of **Section 53** of the Companies Act, 2013 prior to Amendment Act.
- The Amendment Act now requires that where a company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the concerned authority, as applicable, for payment of managerial remuneration in excess of 11 percent of the net profits, shall also be obtained by the company **before** obtaining the approval in the general meeting instead of conducting GM without getting approval of above mentioned authorities as provided under the provision of **Section 197** of the Companies Act, 2013 prior to Amendment Act.
- The Amendment Act now stipulates the time limit under provisions of **Section 247** of the Companies Act, 2013 to prohibits a registered valuer from undertaking valuation of any asset in which he has direct or indirect interest or becomes so interested at any time **during three years prior to his appointment as valuer or three years after valuation of assets was conducted by him.**

The link of this Press Release is as under:

<http://www.ibbi.gov.in/webfront/press.php>

**F. RELAXATION IN THE PROVISION RELATING TO LEVY OF MINIMUM ALTERNATE TAX (MAT) IN CASE OF COMPANIES AGAINST WHOM AN APPLICATION FOR CORPORATE INSOLVENCY RESOLUTION PROCESS HAS BEEN ADMITTED UNDER IBC, 2016**

- IBC vide its press information dated on 6<sup>th</sup> January has stated that with effect from Assessment year 2018-19 (Financial Year 2017-18) , the companies against whom an application for corporate insolvency resolution process has been admitted by Adjudicating Authority under IBC,2016 which are facing hardship due to restriction in allowance of bought forward loss for computation of book profit under section 115JB of the Act are allowed to reduce the total amount of bought forward loss including unabsorbed depreciation from the book profit for the purposes of levy of MAT under section 115JB of the Act.

The link of this circular is as under:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CBDT\\_MAT\\_2018-01-06%2023:31:15.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/CBDT_MAT_2018-01-06%2023:31:15.pdf)

**G. DISCLOSURES BY INSOLVENCY PROFESSIONALS AND OTHER PROFESSIONALS APPOINTED BY INSOLVENCY PROFESSIONALS CONDUCTING RESOLUTION PROCESSES:**

Insolvency and Bankruptcy Board of India (“IBBI”) vide Circular No. IP/005/2018 dated 16<sup>th</sup> January, 2018 has specified the details to be disclosed by Insolvency Professional and other Professionals appointed by Insolvency Professionals conducting Resolution Processes.

- Insolvency Professionals will now have to disclose their relationship with all associated parties including the corporate Debtor(s) within three days of appointment, according to the disclosure norms mandated by the IBBI.
- An Insolvency Professional shall also ensure disclosure of relationship, if any, of the other professional(s) engaged by him with all associated parties within the time specified by IBBI.
- IBBI has explained the definition of 'Relationship' as it shall mean any one or more of the four kinds of relationships at any time or during the three years preceding the appointment below:

| <b>Kind of Relationship</b> | <b>Nature of Relationship</b>   |
|-----------------------------|---|
| A                           | Where the Insolvency Professional or the Other Professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party. |
| B                           | Where the Insolvency Professional or the Other Professional, as the case may be, is a Shareholder, Director, Key Managerial Personnel or Partner of the related party                         |

|   |  |
|---|--|
| C | Where a relative (Spouse, Parents, Parents of Spouse, Sibling of Self and Spouse, and Children) of the Insolvency Professional or the Other Professional, as the case may be, has a relationship of kind A or B with the related party.  |
| D | Where the Insolvency Professional or the Other Professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an Insolvency Professional Entity or Registered Valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party. |

- IBBI also said that the disclosures due on date in respect of the ongoing processes should be made to the respective Insolvency Professional Agency by January 31, 2018

The link of this circular is as under:

[http://www.ibbi.gov.in/webfront/legal\\_framework.php](http://www.ibbi.gov.in/webfront/legal_framework.php)

#### **H. FEES PAYABLE TO AN INSOLVENCY PROFESSIONAL AND TO OTHER PROFESSIONALS APPOINTED BY AN INSOLVENCY PROFESSIONAL:**

The Insolvency and Bankruptcy Board of India (IBBI) vide Circular No. IP/004/2018 dated 16<sup>th</sup> January, 2018 has issued a circular clarifying the norms for payment of fees to insolvency professionals as well as other professionals who are appointed by such insolvency professionals.

- The Code of Conduct for Insolvency Professionals under the IBBI (Insolvency Professionals) Regulations, 2016 require that an insolvency professional must provide services for remuneration which is charged in a transparent manner and he shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration.
- The circular now clarifies that, an insolvency professional and any other professional appointed by an insolvency professional shall render services for a fee which is a reasonable reflection of his work and shall raise bill in his name towards such fees, and such fees shall be paid to his bank account.
- Further, the circular also clarifies that any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost.

The link of this circular is as under:

[http://www.ibbi.gov.in/webfront/legal\\_framework.php](http://www.ibbi.gov.in/webfront/legal_framework.php)

## **I. IBC AMENDMENT ACT, 2017**

- The Insolvency and Bankruptcy Code (Amendment) Act, 2017 received the assent of the President of India on 18th January, 2017.
- The Amendment Act prohibits certain persons from submitting a resolution plan in case of defaults. These include: (i) willful defaulters, (ii) promoters or management of the company if it has an outstanding non-performing debt for over a year, and (iii) disqualified directors, among others. Further, it bars the sale of property of a defaulter to such persons during liquidation.
- The link of the above is as under:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/182066\\_2018-01-20%2023:35:02.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jan/182066_2018-01-20%2023:35:02.pdf)

Amita Desai & Co.

## Cabinet Approval to FDI Policy Amendments- January 10, 2018



### Background

Foreign Direct Investment (FDI) is vital catalyst for economic growth and one of the sources of non-debt finance for the economic development of the country. Considering the importance of FDI, and positive impact of liberalization on inflow of FDI, Union Cabinet chaired by Shri Prime Minister Narendra Modi, has granted approval to a number of amendments in the FDI Policy on January 10, 2018, further liberalizing and simplifying the FDI regime.

The Government has already brought reforms in FDI policy by liberalizing number of sectors such as Defence, Construction Development, Insurance, Pension, Other Financial Services, Asset reconstruction Companies, Broadcasting, Civil Aviation, Pharmaceuticals, Trading etc.

Detailed below are the key decisions taken by Government amending the FDI Policy

#### **A. Single Brand Retail Trading (SBRT) - 100% FDI Automatic Route**

- i. Current FDI policy on SBRT allows 49% FDI under automatic route, and FDI beyond 49% through Government approval route. **It has now been decided by Government to permit 100% FDI under automatic route for SBRT.**
- ii. It has been decided to permit single brand retail trading entity to **set off its incremental sourcing of goods from India for global operations during initial 5 years**, beginning 1 April of the year of the opening of first store against the mandatory sourcing requirement of 30% of purchases from India. After completion of this 5 year period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis.
- iii. A non-resident entity or entities, whether owner of the brand or otherwise, is permitted to undertake 'single brand' product retail trading in the country for this specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner.



## **B. Civil Aviation - Foreign airlines allowed to invest up to 49% under approval route in Air India**

As per the present FDI policy, foreign airlines are allowed to invest under Government approval route in the capital of Indian companies operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital.

However, this provision was presently not applicable to Air India, thereby implying that foreign airlines could not invest in Air India.

**It has now been decided to do away with this restriction and allow foreign airlines to invest up to 49% under approval route in Air India** subject to following the conditions:

- i. Foreign investment(s) in Air India including that of foreign Airline(s) **shall not exceed 49% either directly or indirectly;**
- ii. Substantial ownership and effective control of Air India shall continue to be vested in Indian National.

## **C. Construction Development: 100% FDI Automatic Route**

It has been decided to clarify that real-estate broking service does not amount to real estate business and is therefore, eligible for 100% FDI under automatic route.

## **D. Power Exchange: Investment through Primary Market For FIIs / FPIs**

Current FDI policy provides for 49% FDI under automatic route in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.

However, FII/FPI purchases were restricted to secondary market only. It has now been decided to do away with this provision, thereby **allowing FIIs/FPIs to invest in Power Exchanges through primary market as well.**

## **E. Other Approval Requirements under FDI Policy**

- i. **Non Cash Consideration for Issue of Shares: Permitted under Automatic Route:**

It has now been decided that issue of shares against non-cash considerations like pre-incorporation expenses, import of machinery etc. will be permitted under automatic route in case of sectors under automatic route.

- ii. **FDI in Indian company, engaged only in the activity of investing:**

Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies/ LLP and in the Core Investing Companies is presently allowed upto 100% with prior Government approval.

It has now been decided to align FDI policy on these sectors with FDI policy provisions on Other Financial Services. Thus, if the above activities are regulated by any financial sector regulator, then foreign investment upto 100% under automatic route shall be allowed; and, if they are not regulated by any Financial Sector Regulator or where only part is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route, subject to conditions including minimum capitalization requirement, as may be decided by the Government.

#### **F. Competent authority for examining FDI proposals from countries of concern**

It has now been decided that for investments in automatic route sectors, requiring approval only on the matter of investment being from country of concern, FDI applications would be processed by Department of Industrial Policy & Promotion (DIPP) for Government approval.

#### **G. Pharmaceuticals- Definition of Medical Devices**

FDI policy on Pharmaceuticals sector inter-alia provides that definition of medical device as contained in the FDI Policy would be subject to amendment in the Drugs and Cosmetics Act. As the definition as contained in the policy is complete in itself, it has been decided to drop the reference to Drugs and Cosmetics Act from FDI policy. Further, it has also been decided **to amend the definition of 'medical devices' as contained in the FDI Policy.**

#### **H. Prohibition of restrictive conditions regarding audit firms:**

The present FDI policy does not have any provisions in respect of specification of auditors that can be appointed by the Indian investee companies receiving foreign investments. It has been decided to provide in the FDI policy that wherever the foreign investor wishes to specify a particular auditor/audit firm having international network for the Indian investee company, then audit of such investee companies should be carried out as joint audit wherein one of the auditors should not be part of the same network.

#### **Our views**

FDI Policy amendment is one more step forward by Government towards making investment climate more conducive for foreign investors. Further first time Government has incorporated provision for "Desi Audit firms" at policy level. At present audit sector is dominated by big foreign firms. This policy change will certainly boost growth of Indian Audit firms.

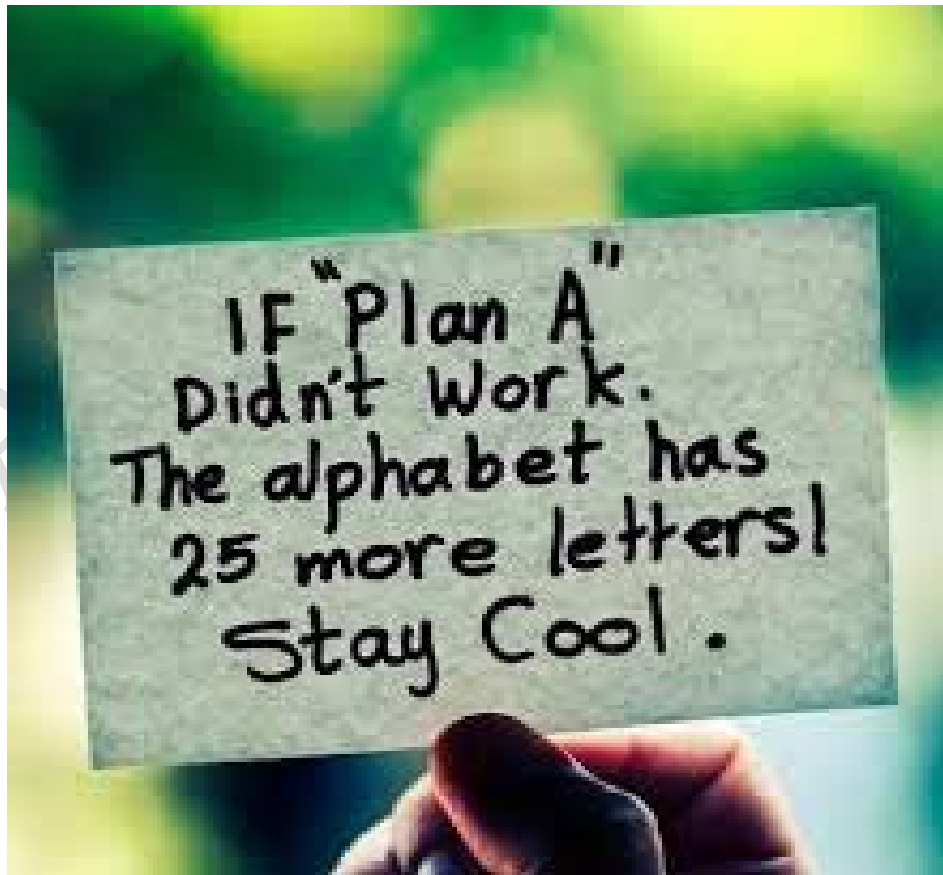
- The link of above notification is as under:  
<http://www.pib.nic.in/PressReleaseDetail.aspx?PRID=1516115>

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