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News Alert – Change in FDI Policy and Simplified NBFC Registration Process

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Following two press releases were issued by Prime Minister's Office and Reserve Bank of India on June 20, 2016 and June 17, 2016 respectively.

A. Radical changes in FDI policy regime; Most sectors on automatic route for FDI
B. RBI decides to simplify and rationalise the process of registration of new NBFCs

A. RADICAL CHANGES IN FOREIGN DIRECT INVESTMENT (FDI) POLICY REGIME; MOST SECTORS ON AUTOMATIC ROUTE FOR FDI

On 20th June, 2016, Prime Minister's Office issued radical changes in FDI policy regime.

Introduction:

The Union Government in high-level meeting chaired by Hon'ble **Prime Minister Narendra Modi** came up with radically liberalized in FDI regime with the objective of providing major impetus to employment and job creation in India. Now most of the sectors would be under automatic approval route, except a small negative list.

In last two years, Government has brought major FDI policy reforms in a number of sectors **viz. Defence, Construction Development, Insurance, Pension Sector, Broadcasting Sector, Tea, Coffee, Rubber, Cardamom, Palm Oil Tree and Olive Oil Tree Plantations, Single Brand Retail Trading etc.** which resulted in increased FDI inflows at US$ 55.46 billion in financial year 2015-16, as against US$ 36.04 billion during the financial year 2013-14.

Accordingly the Government has decided to introduce a number of amendments in the FDI Policy. Details of these changes are given in the following paragraphs:

1. Radical Changes for promoting Food Products manufactured/produced in India:

New regime: It has now been decided to permit **100%** FDI under government approval route for trading, including through e-commerce, in respect of food products manufactured or produced in India.

2. Foreign Investment in Defence Sector up to 100%

Old regime: FDI regime permits **49%** FDI participation in the equity of a company under automatic route. FDI above **49%** is permitted through Government approval on case to case basis, wherever it is likely to result in access to modern and 'state of- art' technology in the country.

New regime: In this regard, the following changes have inter-alia been brought in the FDI policy on this sector:

i. Foreign investment beyond **49%** has now been permitted through government approval route, in cases resulting in access to modern technology in the country or for other reasons to be recorded. The condition of access to 'state of- art' technology in the country has been done away with.
ii. FDI limit for defence sector has also been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.

3. Review of Entry Routes in Broadcasting Carriage Services

New regime: FDI policy on Broadcasting carriage services has also been amended. New sectoral caps and entry routes are as under:

Sector/Activity	New Cap and Route
5.2.7.1.1 (1)**Teleports**(setting up of up-linking HUBs/Teleports); (2)**Direct to Home** (DTH); (3)**Cable Networks** (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4)**Mobile TV**; (5)**Headend-in-the Sky Broadcasting Service**(HITS)	**100%** **Automatic**
5.2.7.1.2 Cable Networks (Other MSOs not undertaking upgradation networks towards digitalization and addressability and Local Cable Operators (LCOs)	
Infusion of fresh foreign investment, beyond **49%** in a company not seeking license/permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require FIPB approval	

4. Pharmaceutical

Old regime: The extant FDI policy on pharmaceutical sector provides for 100% FDI under automatic route in greenfield pharma and FDI up to **100%** under government approval in brownfield pharma.

New regime: With the objective of promoting the development of this sector, it has been decided to permit up to **74%** FDI under automatic route in brownfield pharmaceuticals and government approval route beyond **74%** will continue and FDI policy for Greenfield pharma will be same as continuing before.

5. Civil Aviation Sector

Old regime: The extant FDI policy on Airports permits **100%** FDI under automatic route in Greenfield Projects and **74%** FDI in Brownfield Projects under automatic route. FDI beyond **74%** for Brownfield Projects is under government route.

New Regime: With a view to aid in modernization of the existing airports to establish a high standard and help ease the pressure on the existing airports, it has been decided to permit **100%** FDI under automatic route in Brownfield Airport projects.

Old Regime: foreign investment up to **49%** is allowed under automatic route in Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and regional Air Transport Service.

New regime: It has now been decided to raise this limit to **100%**, with FDI up to **49%** permitted under automatic route and FDI beyond **49%** through Government approval.
For NRIs, **100%** FDI will continue to be allowed under automatic route. However, foreign airlines would continue to be allowed to invest in capital of Indian companies operating scheduled and non-scheduled air-transport services up to the limit of **49%** of their paid up capital and subject to the laid down conditions in the existing policy.

6. Private Security Agencies

Old Regime: The extant policy permits **49%** FDI under government approval route in Private Security Agencies.

New regime: FDI up to **49%** is now permitted under automatic route in this sector and FDI beyond **49%** and up to **74%** would be permitted with government approval route.

7. Establishment of branch office, liaison office or project office

New regime: It has been decided that approval of Reserve Bank of India or separate security clearance would not be required in cases where FIPB approval or license/permission by the concerned Ministry/Regulator has already been granted for establishment of branch office, liaison office or project office or any other place of business in India in those businesses whose principal business is Defence, Telecom, Private Security or Information and Broadcasting,

8. Animal Husbandry

Old regime: As per FDI Policy 2016, FDI in Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture is allowed **100%** under Automatic Route under controlled conditions.

New regime: It has been decided to do away with this requirement of ‘controlled conditions’ for FDI in these activities.

9. Single Brand Retail Trading

New regimes: It has now been decided to relax local sourcing norms up to three years and a relaxed sourcing regime for another five years for entities undertaking Single Brand Retail Trading of products having ‘state-of-art’ and ‘cutting edge’ technology.

- The link for the aforesaid FDI Policies is as under:
  http://pib.nic.in/newsite/PrintRelease.aspx?relid=146338

B. RBI DECIDES TO SIMPLIFY AND RATIONALIZE THE PROCESS OF REGISTRATION OF NEW NBFCS

➢ Introduction to NBFCs:

Non-banking financial companies (NBFCs) are fast emerging as an important segment of Indian financial system. It is an heterogeneous group of institutions (other than commercial and co-operative banks) performing financial intermediation in a variety of ways, like accepting deposits, making loans and advances, leasing, hire purchase, etc.

They raise funds from the public, directly or indirectly, and lend them to ultimate spenders. They advance loans to the various wholesale and retail traders, small-scale industries and self-employed persons. Thus, they have broadened and diversified the range of products and services offered by a financial sector. Gradually, they are being recognised as complementary to the banking sector due to their customer-oriented services; simplified procedures; attractive rates of return on deposits; flexibility and timeliness in meeting the credit needs of specified sectors; etc.

➢ Regulator and Governing Body for NBFC:

The working and operations of NBFCs are regulated by the **Reserve Bank of India (RBI)** within the framework of the **Reserve Bank of India Act, 1934** (Chapter III B) and the **directions** issued by it under the Act.

➢ Definitions:

- **“Public funds**" shall include funds raised either directly or indirectly through public deposits, commercial paper, debentures, inter-corporate deposits and bank finance but excludes funds raised by issue of instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue as defined in Regulatory Framework for Core Investment Companies.

- **“Customer interface”** means interaction between the NBFC and its customers while carrying on its NBFI business as defined in Non-Systemically Important Non-Banking financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 issued vide Notification No. DNBR. 008/CGM (CDS) -2015 dated March 27, 2015.

➢ New regulations:

On 17th June, 2016 RBI issued press release to simplify and rationalize the process of registration of new NBFCs.

In order to make the process of registration of new NBFCs smoother and hassle free, the application form for registration of new NBFCs and the checklist of documents to be submitted have been revised. The number of documents to be submitted by the NBFC applicants has been reduced from existing set of 45 documents to 7-8 in the revised process.

- From now onwards, there would be two different types of applications for non-deposit taking NBFCs (NBFC-ND) based on Sources of Funds & Customer Interface as follows:

(i) **Type I - NBFC-ND not accepting public funds** / not intending to accept public funds in the future and not having **customer interface**/ not intending to have customer interface in the future

- The processing of cases for Type I - NBFC-ND applicants would be on fast track mode. As these companies will not have access to public fund and will not have customer interface, they will be subjected to less intensive scrutiny / due diligence.
- However, Certificate of registration issued to Type I - NBFC-ND companies will be conditional. These companies will be prohibited from accessing public funds and having customer interface.
- In case these companies intend to avail public fund or intend to have customer interface in the future, they are required to take approval from Reserve Bank of India, Department of Non-Banking Regulation.

(ii) **Type II - NBFC-ND accepting public funds**/ intending to accept public funds in the future and/or having **customer interface**/intending to have customer interface in the future

- **Following forms have been revised and uploaded on the RBI website-**

(a)Application form
(b) Documents required for registration as Type I - NBFC-ND
(c) Documents required for registration as Type II - NBFC-ND (including new applications of NBFC-MFI, NBFC-factor, NBFC-IDF)

- Application form has been changed in the **online COSMOS Application** of the Reserve Bank of India, except in the case of CIC-ND-SIs where a separate application form has been prescribed.

- Furthermore, with the aim to centralise the process, the application for new NBFCs may be submitted to Central Office, Department of Non-Banking Regulation directly at the following address: Chief General Manager Department of Non-Banking Regulation Reserve Bank of India Centre I, World Trade Centre Mumbai-400 005

- The documents and checklist required for registration as Type I - NBFC-ND and Type II - NBFC-ND (including new applications of NBFC-MFI, NBFC-Factor, NBFC-IDF) will be available in the following link provided by RBI as follows: https://rbidocs.rbi.org.in/rdocs/Forms/PDFs/CHECK17062016.pdf

For detailed notification please refer below mentioned link:
https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR2935252A21CA6FE344D8AB9EB67A23348C98.PDF

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