

Recent amendments to the FDI Policy



CS Sneha Patwardhan

FEMA(Transfer or issue of security by a Person Resident Outside India)Regulations, 2017

Highlights

Definition

- **Capital instruments**
 - Definition of capital, preference shares, debentures, warrants clubbed;
- **Share warrants defined**
 - Issued by Indian company in accordance with SEBI regulations;
- **Foreign Portfolio Investment**
 - An investment made by a person resident outside India through capital instrument, where the investment is less than 10% of the post issue paid up share capital on a fully diluted basis of an listed Indian Company or less than 10% of the paid up value of each series of instrument;
 - FPI license from SEBI(FPI) Regulations, 2014;
 - In case FPI holding increases to 10% or more the total investment made by FPI in such company shall be re-classified as FDI;
 - FPI needs to comply with the prescribed reporting requirements;
- **FDI**
 - Investment through capital instruments by a person resident outside India in an unlisted Indian company; or
 - 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed entity;

Highlights

Issue and transfer of capital instruments

- **NRI/OCI holding capital instrument:**
 - NRI/OCI holding capital instrument of an Indian company on repatriation basis under automatic route may transfer by way of sale or gift to any person resident outside India subject to conditions prescribed
- **Issue of shares on Merger/Demerger;**
 - Earlier general permission was available for issue of shares to person resident outside India upon merger/demerger
 - Now Indian companies can issue any capital instrument pursuant to merger/demerger
- **Swap**
 - Indian company can now issue any capital instrument under automatic route to a person resident outside India against swap of capital instruments
 - Earlier only equity and fully convertible preference shares were allowed

Downstream Investment

- Definition of downstream Investment now includes investment by LLP/Investment vehicle in downstream Indian company or LLP

Highlights

Changes impacting M&A transactions

- Issuance of instruments as a part of a scheme
- Non-residents now permitted to pledge unlisted shares

FVCI

- Expressly permitted to invest in non-convertible instruments;
- Permitted to invest in securities issued by Indian company engaged in specified sectors/start-ups. Earlier they could invest only in equity or equity linked instruments
- Reporting requirement done away with

Others

- Capital instrument to be issued to the person resident outside India within 60 days of receipt of consideration
- In case of partly paid up shares, the period of 60 days is reckoned from the date of receipt of payment for each call
- RBI approval required to make interest payment required under Companies Act 2013 if subscription money is refunded beyond prescribed time
- In case of delay in reporting, RBI to prescribe for late fees

Liberalization in FDI Policy (FDI)

Liberalization of FDI Policy

- 100% FDI permitted under automatic route for Single Brand Retail Trading;
- FDI under automatic route permitted in real estate broking service
- Foreign airlines allowed to invest up to 49% under approval route in GOI-owned airlines- AIR India subject to conditions
- FII/FPIs allowed to invest in the "Power Exchanges" through primary market
- Issue of shares against non-cash considerations like pre-incorporation expenses, etc
- Foreign investment into an Indian company, engaged only in the activity of investing
- Definition of medical device amended





Sneha Patwardhan

Mobile: +91 9920869177