

Regulatory alert: Union Cabinet approves review of FDI policy for key sectors

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Summary

The Union Cabinet has, amongst other things, eased local sourcing norms for foreign owned companies undertaking Single Brand Retail Trading (SBRT). The Cabinet, in addition to easing the requirement of online retailing without the need for opening brick and mortar stores by SBRT entities, has allowed for the purchase of goods by such companies for global operations to be counted towards meeting their sourcing obligations. This is a big relief for the SBRT sector. Additionally, the government has clarified its position in following categories/activities:

- 100% FDI (automatic route) for sale of coal, for coal mining activities including associated processing infrastructure
- 100% FDI (automatic route) in contract manufacturing
- 26% FDI (government route) for uploading/streaming of news and current affairs through digital media, on the lines of print media

Key highlights

Coal mining activities

Under the extant FDI policy, 100% FDI under the automatic route was allowed only for coal and lignite mining for captive consumption by power projects, iron and steel and cement units, and other eligible activities, subject to applicable regulations. Further, 100% FDI under the automatic route was permitted for coal processing subject to certain conditions.

It has now been decided to permit 100% FDI under the automatic route for sale of coal, for coal mining activities including associated processing infrastructure.

“Associated processing infrastructure” would include coal washery, crushing, coal handling, and separation.

Contract manufacturing

While the extant FDI policy allowed 100% FDI in the manufacturing sector, it did not provide clarity on the position of contract manufacturing.

Much needed clarity has been brought in by permitting 100% FDI under the automatic route in contract manufacturing as well.

What it means is that manufacturing activities may be conducted either by the investee entity or through contract manufacturer in India under a legally tenable contract, whether on principal to principal or principal to agent basis, and such activities would be treated at par with manufacturing.

SBRT

- **Local sourcing norms:** Under the extant FDI policy, 30% of value of goods is required to be procured from India in case an SBRT entity has more than 51% FDI. Further, the local sourcing requirement was to be met as an average during the first 5 years, and thereafter annually towards its India operations.

It has been decided that all procurements made by the SBRT entity from India for the single brand are to be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported.

Further, currently, exports are counted for local sourcing norms for the initial 5 years only. This cap is proposed to be removed.

- **Sourcing of goods from India for global operation:** Earlier, only incremental sourcing for global operations by the non-resident entities undertaking single brand retail trading, **either directly or through their group companies**, was considered for testing the local sourcing requirement.

The policy is proposed to be amended such that indirect sourcing for global operations by the SBRT entity or its group companies or **through a third party** under a legally tenable agreement would also be eligible for meeting the local sourcing requirement.

- **Online retail trading:** The erstwhile policy required SBRT entities to operate through

brick and mortar stores before starting retail trading of that brand through e-commerce.

It has been decided to permit retail trading through online trade prior to opening of brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within 2 years from date of start of online retail.

Digital media

The extant FDI policy permitted 49% FDI under the approval route for up-linking of 'news and current affairs' TV channels.

It has now been decided to permit 26% FDI under the government route for uploading/streaming of news and current affairs through digital media.

Our comments

The changes in the FDI policy take into consideration the current global pressures and align with the government's intention to make India a more attractive FDI destination particularly for promoting its make in India initiative. Providing clarity on contract manufacturing is seen as a significant push in this direction and can help large brand owners to invest in India while boosting the make in India initiative as well.

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