CONSOLIDATION FOREIGN DIRECT INVESTMENT POLICY, 2017

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INTRODUCTION

Limited Liability Partnership means, "*a partnership formed and registered under Limited Liability Partnership Act, 2008"*[1], which means unlike partnership business the liability of the partners in a Limited Liability Partnership (LLP) will be limited to the extend of investment made by the partners of the LLP. As we know, for the purpose of economy growth, trade, employment and technology transfer etc, India has open doors to Foreign Direct Investment (FDI). In 1991, after the economic crisis FDI was introduced under Foreign Exchange Management Act (FEMA). Hence, FDI means, *"purchase by a person resident outside India of equity/preference/convertible preference shares and convertible debentures issued by an Indian company."*[2]

CONSOLIDATED FOREIGN DIRECT INVESTMENT POLICY

Earlier, Foreign Investment Policy was a part of Industrial Policy. There was never FDI policy as such before. Therefore, the idea of Consolidated FDI policy was introduced. It is not issued under any law, but the only legal framework to it is, the Foreign Exchange Management Act (FEMA) and the Regulations issued there under. Consolidated FDI policy is issued by Department of Industrial Policy and Promotion (DIPP) under the ministry of Commerce and Industry, Government of India (GOI). Basically, the Foreign Direct Investment policy is a consolidation of various decisions taken by Government of India in the past one year, in the

[1] Section 2(1)(n) of Limited Liability Partnership Act, 2008
[2] Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2000.

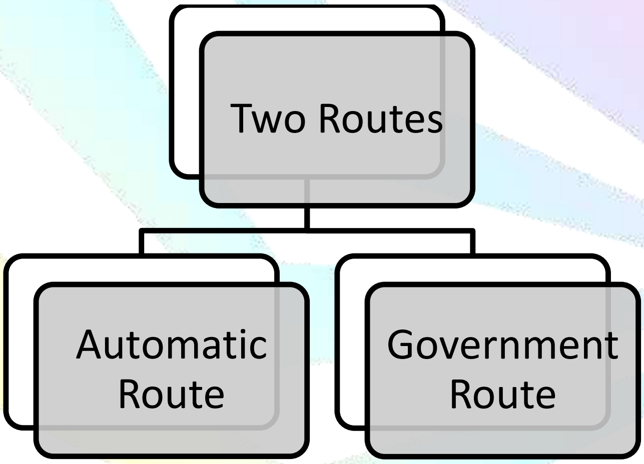
form of Press Notes/Circulars/Press Releases/ Clarifications etc. Usually, the Consolidation policy subsumes and supersedes all the releases by the Government in the past one year.

In the past one year, the Government of India has made its FDI regime liberal by easing norms for the investor country, especially in the field of Defense, Private Security, Pharmaceuticals, Broadcasting, Civil Aviation in order to boost the Economic growth and investment of India. Hence recently on 28th August, 2017 Consolidated Foreign Direct Investment Policy 2017 (FDI Policy 2017) was notified by DIPP, which subsumed and superseded all the Circulars/Press Notes/Clarifications/Press Releases that were in force as on 28th August 2017 and now reflects the Foreign Direct Investment Policy as on 28th August, 2017.

FOREIGN DIRECT INVESTMENT IN LLP BEFORE FDI POLICY 2017

- **Entry Routes:-**

  In India, there are two routes for receiving Foreign Direct Investment.



In Automatic Route, no prior approval from Reserve Bank of India or Government of India is required in order to receive FDI. Whereas, in Government/Approval Route the prior permission of the Government of India and RBI is mandatory. Earlier, under FDI through Government Route, Foreign Investment Promotion Board (FIPB) had the powers to grant permission. Before May 2017, investing in Limited Liability Partnerships where only possible under the Government Route, which is with the prior approval of the FIPB/Government.

- **External Commercial Borrowings (ECB):-**

  "*External Commercial Borrowings is defined by the Reserve bank of India as commercial loans availed from non-resident lenders with a minimum average maturity of three years.*"[3] Before 2017, Schedule 9 of Foreign Exchange Management Act (FEMA) 2000 restricted the LLPS from availing External Commercial Borrowings (ECB) in case of Foreign Direct Investment.

- **Conversion Of Companies Into LLP:-**

  Conversion of a company with FDI was allowed only under the Government Route. That is to say a company with FDI can be converted to a Limited Liability Partnership firm only with the approval of Government/FIPB and not under Automatic Route.

- **Resident Designated Partner**:-

  Under Limited Liability Partnership Act 2008, a designated partner is mandatory. In addition to this, as per Foreign Exchange and Management Act 2000, a designated partner so appointed, must be a resident in India.

- **Downstream Investment:-**

  Downstream Investment means a company investing into another company by way of acquisition of control or subscription or acquisition of shares. As per FDI policy 2016, an entity should notify its downstream investment in DIPP, FIPB and the Secretariat of Industrial Assistance (SIA). Intimation should also be made to the Foreign Investment Facilitation Portal (FIFP) and the RBI, without which downstream investment is not possible.

FOREIGN DIRECT INVESTMENT IN LLP AS PER NEW CONSOLIDATED FDI POLICY 2017

- **Entry Routes:-**

  As per the new policy 2017, Foreign Investment Promotion Board (FIPB) is abolished by the government and a new Administrative Ministry/Competent Authorities will grant government approval for foreign investment in India. "FDI is permitted under the

[3] RBI/2013-14/12, Master Circular no. 12/2013-14

automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions"[4].

- **External Commercial Borrowings (ECB):-**

The Reserve Bank of India amendment has removed the restriction on LLPs to avail ECB. But, the External Commercial Borrowings framework (ECB) or guidelines are yet to be amended to remove such restrictions in order to provide ECB facility.

- **Conversion Of Companies Into LLP:-**

Now, the requirement of prior government approval for the conversion of a Company with FDI into LLP has been deleted. Therefore, Companies with FDI (sector where FDI is up to 100%) can now convert themselves into LLP through an automatic route i.e. without the prior approval of the government.

- **Resident Designated Partner:-**

The mandate of the designate partner in an LLP being a resident of India has been relaxed by the new FDI policy 2017, which means if a person is appointed as designated partner there is no need for him to satisfy the residency test under Foreign Exchange Management Act (FEMA). They just need to comply with the conditions under LLP act 2008.

- **Downstream Investment:-**

"An LLP with FDI will be eligible to make downstream investment in an existing Indian company. For the purpose of downstream investment, the eligible Indian entities making the Downstream Investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies/LLPs, with operations, from raising debt in the domestic market"[5]. As opposed to FDI policy 2016, the new Consolidated Foreign Direct Investment (FDI) policy 2017 talks about intimating only to RBI, but does not

[4] Available at http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17_0.pdf
[5] Available at http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17_0.pdf

clearly state as to whether the intimation has to be made to the central office of RBI or the regional offices of RBI.

COMMENTS & CONCLUSION

The Foreign Investment Promotion Board (FIPB) has rightly been abolished for the simplification of the procedures for clearing the Foreign Direct Investment proposals under the government rule. This will help the foreign company to do business in India more easily. Another great move by the government is lying down of standard operating procedures for processing the proposals by the competent authority. If I talk about Downstream Investment, intimating to RBI would mean greater scrutiny, as opposed to intimating SIA/FIPB/DIPP under the old policy. No doubt such greater scrutiny is important, but on the other hand such scrutiny indirectly means that the Government is contradicting its own idea of 'liberalization of FDI'.

In the past one year, the FDI policy of India has been liberalized by government in many sectors such as construction and development, defense, civil aviation, broadcasting, private security agency etc. The whole idea is to create an investor friendly environment to induce more FDI. This liberalization will help foreign capital investment in India and boost up the economy growth, which will help India to make the value of its Rupees stronger against the Dollar and other currencies. Not only this, Foreign Direct Investment will help in creating jobs for the Indian Residents as it will increase the employment opportunities in India. This will also bring technological advancement in India.

In a nutshell, it can be clearly seen that the Government of India is no doubt making effort to get rid of so many layers of bureaucracy. The government is also streamlining the processing of FDI proposals in an expeditious and positive manner. Hence, I believe that the government will keep on bringing more and more liberalization in the field of Foreign Direct Investment in India, thereby orienting India to the world's best destination for FDI.