GIANNI·ORIGONI GRIPPO·CAPPELLI PARTNERS

LEGAL UPDATE

INDIA DESK

Recenti sviluppi della legislazione indiana

Contenuti

Il 14 settembre 2012 il Governo indiano ha approvato un'importante riforma della *c.d.* FDI (Foreign Direct Investment) Policy, ossia la normativa che disciplina gli investimenti stranieri nel capitale delle società indiane.

Le modifiche legislative adottate (entrate in vigore in data 20 settembre 2012) sono tutte improntate ad una logica di liberalizzazione, al fine di agevolare l'ingresso di capitale straniero nell'economia indiana ed investono vari settori (si allegano alla presente le *press information* governative in lingua inglese).

Nel presente *Legal Update* vengono sinteticamente esaminati i principali aspetti di riforma del settore del *retail*, in quanto materia di rilevante interesse per le imprese italiane operanti in India.

1. *Retail* multi-marca

Gli investimenti stranieri nel settore del *retail* multi-marca erano rigorosamente proibiti prima dell'entrata in vigore delle recenti modifiche normative. Gli operatori del settore *retail multi-brand*, pertanto, potevano operare in India solo attraverso *franchisees* e licenziatari, ovvero mediante la vendita all'ingrosso *cash and carry*. Una riforma e liberalizzazione della materia, dunque, era attesa da molto tempo e con grande interesse da parte degli operatori stranieri.

A decorrere dal 20 settembre 2012, gli investimenti stranieri in società indiane operanti nel settore del *retail* multi-marca sono consentiti sino al massimo del 51% del capitale sociale, alle seguenti condizioni:

(i) ottenimento dell'autorizzazione governativa;

(ii) investimento minimo di USD 100 milioni;

(iii) almeno il 50% degli importi investiti deve essere rivolto alle infrastrutture di *backend* entro i primi 3 anni dall'inizio dell'investimento; per infrastrutture di *backend* si intendono le attività e processi produttivi interni, come la produzione, la distribuzione, il miglioramento del *design*, il controllo qualità, la logistica, il *packaging* ecc., restandone espressamente esclusi gli investimenti di natura immobiliare (incluse le locazioni);

(iv) almeno il 30% dei prodotti/lavorazioni deve essere acquisito da parte di fornitori indiani di piccole dimensioni (aziende aventi investimenti in impianti e macchinari in misura complessiva non eccedente USD 1 milione);

(v) i punti vendita potranno essere aperti solamente negli Stati indiani che aderiranno alla riforma (al momento i seguenti: Andhra Pradesh, Assam, Delhi, Haryana, Jammu & Kashmir, Marahashtra, Manipur, Rajasthan, Uttarakhand, Daman & Diu and Dadra and Nagar Haveli) e in città aventi determinati requisiti demografici e di estensione territoriale (oltre 1 milione di abitanti ed oltre 10 km); resta inteso che troveranno applicazione le norme di ciascuno Stato applicabili al settore *retail*;

(vi) con riferimento ai prodotti agricoli, il Governo indiano avrà un diritto ad essere preferito come fornitore.

Si evidenzia, infine, che agli investitori stranieri operanti nel *retail* multi-marca in India continua ad essere inibita la commercializzazione *online* dei prodotti.

2. *Retail* mono-marca

Anteriormente all'entrata in vigore della recente riforma, tra i vari requisiti necessari ai fini di un investimento straniero nel settore del *retail* mono-marca (nel quale non c'è limite alla partecipazione detenibile dall'investitore non-indiano) vi erano i seguenti:

(i) l'investitore straniero doveva essere proprietario del marchio attraverso il quale veniva effettuata la commercializzazione dei prodotti;

(ii) con riferimento agli investimenti in misura superiore al 51% del capitale sociale, almeno il 30% del valore dei prodotti venduti doveva essere generato da lavorazioni/forniture eseguite da operatori indiani di piccole dimensioni (aziende o artigiani).

Il presente documento viene consegnato esclusivamente per fini divulgativi.

Esso non costituisce riferimento alcuno per contratti e/o impegni di qualsiasi natura.

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L'applicazione dei su menzionati requisiti aveva ingenerato rilevanti problematiche pratiche per gli investitori stranieri; a titolo esemplificativo, si pensi all'impossibilità ad operare da parte dei licenziatari di marchi o *franchisee*, così come la grande difficoltà, se non anche impossibilità, di molte aziende a rispettare la soglia di valore di provenienza locale (soprattutto nei settori tecnologici o ad elevato valore aggiunto).

In considerazione di quanto sopra, sono state approvate le seguenti modifiche:

(i) non è più necessario che l'investitore straniero sia proprietario del marchio, essendo sufficiente, invece, che esso abbia concluso un accordo con il proprietario ai sensi del quale gli sia consentito il valido uso del marchio ai fini della commercializzazione dei prodotti nel mercato indiano; ad ogni modo, l'investimento nel settore *retail* mono-marca è consentito ad un solo investitore straniero, sia esso o meno proprietario del marchio;

(ii) con riferimento agli investimenti in misura superiore al 51% del capitale sociale, si prevede che l'approvvigionamento di prodotti e attività locale, nella misura del 30% del valore dei prodotti, debba essere preferibilmente e solo ove possibile effettuata mediante ricorso a fornitori indiani di piccole dimensioni (aziende o artigiani).

Si evidenzia, infine, che agli investitori stranieri operanti nel *retail* mono-marca in India continua ad essere inibita la commercializzazione *online* dei prodotti.

Allegati

Amendment of conditions in the policy on Foreign Direct Investment in single-brand product retail trading

Permitting FDI in multi-brand product retail trading

Policy on Foreign Investment in Power Trading Exchanges

Review of Policy on Foreign Direct Investment in Civil Aviation Sector

Review of the policy of Foreign Investment in Companies Operating in the Broadcasting Sector

Press Information Bureau
Government of India
Cabinet

14-September-2012 18:40 IST

Amendment of conditions in the policy on Foreign Direct Investment in single-brand product retail trading

The Cabinet has approved the proposal of the Department of Industrial Policy & Promotion for amendment of the existing policy on Foreign Direct Investment in Single-Brand Product Retail Trading.

Vide Press Note 1(2012 Series) dated 10.1. 2012, Government had permitted FDI, up to 100%, in single brand product retail trading, subject to specified conditions, including, interalia, the conditions that:

(i) The foreign investor should be the owner of the brand.

(ii) In respect of proposals involving FDI beyond 51%, 30% sourcing would mandatorily have to be done from SMEs/ village and cottage industries artisans and craftsmen. 'Small industries' would be defined as industries which have a total investment in plant & machinery not exceeding US $ 1.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. Further, if at any point in time, this valuation is exceeded, the industry shall not qualify as a 'small industry' for this purpose. The compliance of this condition will be ensured through self-certification by the company, which could be subsequently checked, by statutory auditors, from the duly certified accounts, which the investors will be required to maintain.

The CCEA has approved modification of the above mentioned conditions, for the activity of single brand product retail trading, as under:

(i) Only one non-resident entity, whether owner of the brand or otherwise, shall be permitted to undertake single brand product retail trading in the country, for the specific brand, through a legally tenable agreement, with the brand owner for undertaking single brand product retail trading in respect of the specific brand for which approval is being sought. The onus for ensuring compliance with this condition shall rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/ franchise/sub-licence agreement, specifically indicating compliance with the above condition.

(ii) In respect of proposals involving FDI beyond 51%, sourcing of 30%, of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors, where it is feasible. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of

FDI for the purpose of carrying out single-brand product retail trading.

Amendment in the condition relating to brand-ownership has been felt necessary, in view of the fact that, globally, single brand retailers often adopt a variety of business models, wherein the brand owning entity and investor entities are kept separate, even though in some cases, they may be having the same parent. Some single brand retailers adopt models where there is no link between the investing arm and the brand owning arm. In such cases, the brand owner entity could issue an exclusive licence/franchise to the investor entity, to use the brand for the purpose of retail trading, either globally or for a specific region, through appropriate agreement/(s). Such business models were not found to be in consonance with the condition that the foreign investor should be the brand owner. In view of the fact that the global business models do not strictly conform to this condition, a number of investors, who would otherwise have looked at investments in India, may not be able to do so. Therefore, keeping in view the constraints being faced by genuine foreign investors with different business models, as mentioned above, it would facilitate investment if this condition is liberalised. However, in order to address the concern that more than one franchisee/licensee may apply for undertaking SBRT for the same brand, which could lead to difficulties in monitoring compliance and fixing responsibility for non-compliance of the specified conditions, it has been mandated that, only one non-resident entity, whether owner of the brand or otherwise, shall be permitted to undertake single brand product retail trading in the country, for the specific brand, through a legally tenable agreement, with the brand owner in respect of the specific brand for which approval is being sought. The onus for ensuring compliance with this condition shall rest with the Indian entity carrying out single-brand retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval from Government, including a copy of the licensing/ franchise/sub-license agreement, specifically indicating compliance with the above condition.

Regarding the condition that 30% sourcing be mandatorily done from Indian small industry, investors have pointed out that it would be difficult to comply with this condition in the case of very specialized/high technology items. Global single brand retailers are often engaged in the business of retailing specialty/high-tech products. Such products are niche products, wherein it may not be viable for the foreign investors to build capacities wherever they engage in retailing, owing to the specialized requirements of quality and precision which the local small industry may not be able to provide. Investors are, therefore, of the view that the condition of 30% mandatory sourcing from Indian small industries/ village and cottage industries, artisans and craftsmen, is acting as a deterrent to the desired foreign investment in this activity.

The other category of products relate to the entire range from household appliances, utensils, furniture, crockery to furnishings, etc. These products are far more amenable to sourcing from MSMEs, village and cottage industries, artisans and craftsmen. Therefore, the proposed modification of the condition is envisaged to take into account the circumstances of both the specialized/high technology niche products, as well as the general category, covering a wide range of items. The fact that 30% domestic sourcing is being mandated would imply that the single brand retailers would have to build production capacities in the country, either in existing units, or set up new ones, catering specifically to their sourcing requirements. Hence, even the 30% domestic sourcing is expected to develop production capacities in the country, with the attendant global best practices, relating to design, production and quality. Since single brand retailers are global players, Indian suppliers and vendors to these retailers would have an opportunity of becoming a part of their global supply chains. Thus, Indian products could find their way in the stores of these single brand retailers located in other countries, thereby augmenting exports from India as well.

Thus, the amended condition relating to sourcing of 30%, of the value of goods purchased, being done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors, where feasible, is expected to benefit Indian producers, including the Indian handicrafts sector, which provides livelihood to millions and is important from the point of low capital investment, high value-addition and high potential for export, as also to meet the critical need to integrate Indian producers with the domestic and global markets. Skill integration with craftsmen abroad is likely to help develop synergies with international brands and generate more employment. The consequential benefits, arising from the integration of global best practices in management, along with global standards in quality, design, packaging and production, would help build capacities of local producers, by making it worthwhile for them to scale-up their production, thereby creating a multiplier effect on employment and income generation. This would also lead to up-gradation of technology, which, in turn, would have a further multiplier effect on the economy.

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Torna su

Press Information Bureau
Government of India
Cabinet

14-September-2012 18:44 IST

Permitting FDI in multi-brand product retail trading

The Cabinet has approved the proposal of the Department of Industrial Policy & Promotion for permitting FDI in multi-brand retail trading, subject to specified conditions.

The proposal had earlier been approved by the Cabinet in its meeting on 24.11.2011. However, implementation of the proposal had been deferred, for evolving a broader consensus on the subject.

In pursuance of the aforestated decision of the Cabinet on 7.12.2011, discussions have been held with State Governments, representatives of consumer associations/organizations, micro & small industry associations, farmers' associations and representatives of food processing industry and industry associations. The Chief Ministers of Delhi, Assam, Maharashtra, Andhra Pradesh, Rajasthan, Uttarakhand, Haryana and Governments of the State of Manipur and the Union Territory of Daman & Diu and Dadra and Nagar Haveli, have expressed support for the policy in writing. The Chief Minister of Jammu & Kashmir, through his press statements, has publicly endorsed the policy and asked for its implementation. The State Governments of Bihar, Karnataka, Kerala, Madhya Pradesh, Tripura and Odisha have expressed reservations.

During the consultations with the stakeholders, views for and against FDI in multi-brand retail trading were expressed. On balance, however, the discussions generally indicated support for the policy, subject to the introduction of adequate safeguards.

Accordingly, the following proposals have been approved:

(i) Retail sales outlets may be set up in those States which have agreed or agree in future to allow FDI in MBRT under this policy. The establishment of the retail sales outlets will be in compliance of applicable State laws/ regulations, such as the Shops and Establishments Act etc.

(ii) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking; In States/ Union Territories not having cities with population of more than 10 lakh as per 2011 Census, retail sales outlets may be set up in the cities of their choice, preferably the largest city and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities. The locations of such outlets will be restricted to conforming areas, as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

(iii) At least 50% of total FDI brought in shall be invested in 'backend infrastructure' within three years of the induction of FDI, where ‘back-end infrastructure’ will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure.

(iv) A high-level group under the Minister of Consumer Affairs may be constituted to examine various issues concerning internal trade and make recommendations for internal trade reforms.

Other conditions/safeguards, approved by the Cabinet on 24.11.2012, would remain unchanged. The suspension of Government’s decision taken in the Cabinet meeting on 24.11.2011 to permit FDI up to 51% in MBRT, therefore, stands removed.

The respective State Governments administer the Shops & Establishment Act within their territorial jurisdiction. “Trade & Commerce within the State” is a subject allocated to the State Governments, under the Constitution of India. State Governments are also responsible for aspects ancillary to MBRT, such as zoning regulations, warehousing requirements, access, traffic, parking and other logistics. As such, the policy provides that it would be the prerogative of the State Governments to decide whether and where a multi-brand retailer, with FDI, is permitted to establish its sales outlets within the State. Therefore, implementation of the policy is not a mandatory requirement for all States.

Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census (including an area of 10 kms around the municipal/urban agglomeration limits of such cities). On the other hand, States/ Union Terrritories, which do not have any city with a population exceeding 10 lakhs, but are desirous of implementing the policy, would have the flexibility to do so.

Thus, the revised condition gives primacy to the decision of the States in this regard, recognizing that the FDI policy constitutes, at best, an enabling framework for the purpose.

Adequate safeguards have been built into the policy, some of which have been further strengthened.

A three year timeframe has been fixed for setting up the back-end infrastructure, which includes capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. This condition will bind the foreign investors to invest in critical back-end infrastructure, which is a felt need across the country. It would also make the foreign investors accountable for proper implementation of the condition.

The decision would benefit stakeholders across the entire span of the supply chain. Farmers stand to benefit from the significant reduction in post-harvest losses, expected to result from the strengthening of the backend infrastructure and enable the farmers to obtain a remunerative price for their produce. Small manufacturers will benefit from the conditionality requiring at least 30% procurement from Indian small industries, as this would enable them to get integrated with global retail chains. This, in turn, will enhance their capacity to export products from India. As far as small retailers are concerned, it is evident that organized retail already co-exists with small traders and the unorganized retail sector. Studies indicate that there has been a strong competitive response from the traditional retailers to these organized retailers, through improved business practices and technological upgradation. Global experience also indicates that organized and unorganized retail co-exist and grow. The young people joining the workforce will benefit from the creation of employment opportunities. Consumers stand to gain the most, firstly, from the lowering of prices that would result from supply chain efficiencies and secondly, through improvement in product quality, which would come about as a combined result of technological upgradation; efficient grading, sorting and packaging; testing and quality control and product standardization.

Implementation of the policy will facilitate greater FDI inflows, additional and quality employment, global best practices and benefit consumers and farmers in the long run, in terms of quality, price, greater supply chain efficiencies in the agricultural sector and development of critical backend infrastructure.

The high-level group, to be constituted under the Minister of Consumer Affairs, is expected to look into various aspects relating to internal trade, to make recommendations on internal trade reforms to the Government, whenever required. This is in response to a demand articulated by traders' associations during the course of consultations. Reforms in internal trade will ensure distributional efficiencies and also that the benefits from trade are available to all sections of society.

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Torna su

Press Information Bureau
Government of India
Cabinet Committee on Economic Affairs (CCEA)

14-September-2012 19:27 IST

Policy on Foreign Investment in Power Trading Exchanges

The Cabinet Committee on Economic Affairs has approved the proposal of the Department of Industrial Policy & Promotion for permitting foreign investment up to 49 percent, in Power Trading Exchanges.

The CCEA has decided to permit foreign investment, up to 49 percent (FDI & FII) [FDI limit of 26 per cent and FII limit of 23 per cent of the paid-up capital], in Power Trading Exchanges, in compliance with SEBI Regulations; Central Electricity Regulatory Commission (Power Market) Regulations, 2010; and other applicable laws/ regulations; security and other conditionalities. FII investments would be permitted under the automatic route and FDI would be permitted under the government approval route. This is subject to the conditions that FII purchases shall be restricted to secondary market only, and no non-resident investor/ entity, including persons acting in concert, holding more than 5 percent of the equity in these companies.

The approval is expected to strengthen the power trading exchanges and to enhance the availability of power, as well as improve its distribution for inclusive development. Introduction of global best practices, concomitant with the induction of FDI, is expected to lead to higher service standards in power trading exchanges.

As per extant policy, FDI, up to 100 percent, under the automatic route, is permitted in the power sector (except atomic energy). This includes generation, transmission and distribution of electricity as well as power trading, subject to the provisions of the Electricity Act, 2003. There is, however, no specific dispensation, under FDI policy, for power trading exchanges. The extant FDI policy permits foreign investment, up to 49 percent (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital], in infrastructure companies in securities markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations. While FII investment is on the automatic route, FDI is allowed under the government approval route. Foreign investment in commodity exchanges is also allowed on the same lines.

Power trading is the purchase of electricity for resale thereof, while a power trading exchange provides an organized platform for fair, neutral, efficient and robust price discovery; extensive and quick price dissemination; and price risk management for the generators, distributors, traders, consumers and other stakeholders in the power sector. Power trading exchanges are transparent electronic platforms which help promote competition in power markets. They are in a nascent stage of development in India. In view of the functions they perform, as also their utility in the transfer of power from surplus to deficit areas, these exchanges need to be promoted, through greater investment and induction of global best practices, modern management skills and latest technology. Hence, there was a felt need to allow foreign investment into these exchanges.

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Press Information Bureau
Government of India
Cabinet Committee on Economic Affairs (CCEA)

14-September-2012 19:22 IST

Review of Policy on Foreign Direct Investment in Civil Aviation Sector

The Cabinet Committee on Economic Affairs has approved the proposal of the Department of Industrial Policy and Promotion for permitting foreign airlines to make foreign investment, up to 49 percent in scheduled and non-scheduled air transport services.

Removing the existing restriction on investment by foreign airlines would assist in bringing in strategic investors into the civil aviation sector. Higher foreign investment inflows are necessary at the present juncture, in order to strengthen the sector. Introduction of global best practices, concomitant with the induction of FDI from foreign airlines, is expected to lead to higher service standards, international best practices and induction of state-of-the-art technologies, in the air transport sector.

Until now, foreign airlines were allowed to participate in the equity of companies operating cargo airlines, helicopter and seaplane services, but not in the equity of an air transport undertaking operating scheduled and non-scheduled air transport services. The Government has now permitted foreign airlines to invest, under the Government approval route, in the capital of Indian companies operating scheduled and non-scheduled air transport services, up to the limit of 49 percent of their paid up capital. The 49 percent limit will subsume FDI and FII investment. The investments so made, would need to comply with the relevant regulations of SEBI, such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations / Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations. Such investment would further be subject to the conditions that:

(i) A Scheduled Operator’s Permit can be granted only to a company:

a. That is registered and has its principal place of business within India,

b. The Chairman and at least two-thirds of the Directors of which are citizens of India, and

c. The substantial ownership and effective control of which is vested in Indian nationals.

(ii) All foreign nationals likely to be associated with Indian Scheduled and Non-Scheduled air transport services, as a result of such investment, shall be cleared from security view point before deployment, and

(iii) All technical equipment that might be imported into India, as a result of such investment, shall require clearance from the relevant authority in the Ministry of Civil Aviation.

The issue of permitting FDI by foreign airlines in the equity of an air transport undertaking operating Scheduled and Non-Scheduled air transport services has been under consideration of Government for some time. There has been a need to consider financing options available for private airlines in the country, for their operations and service upgradation, and to enable them to compete with other global carriers. Denial of access to foreign capital could result in the collapse of many of our domestic airlines, creating a systemic risk for financial institutions, and a vital gap in the country's infrastructure.

The total FDI inflows into the air transport sector, during January, 2000 – April, 2012, were US $ 434.75 million, constituting only 0.25 percent of the total FDI inflows into the country.

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Torna su

Press Information Bureau
Government of India
Cabinet Committee on Economic Affairs (CCEA)

14-September-2012 19:24 IST

Review of the policy of Foreign Investment in Companies Operating in the Broadcasting Sector

The Cabinet Committee on Economic Affairs has approved the proposal of the Department of Industrial Policy & Promotion for Review of the policy on Foreign Investment (FI) in companies operating in the Broadcasting Sector.

Enhanced access to foreign investment is expected to expand the reach of broadcasting services, thereby improving accessibility of these services, and bring in international best practices. The proposal will make the foreign investment policy for the broadcasting sector consistent with that of the telecom sector, because of the convergence of technologies involved in these two sectors, and thereby bring in greater investments into quality infrastructure for the broadcasting carriage services.

The CCEA, after review, has liberalised the policy on foreign investment, for companies operating in the broadcasting sector, as below:

(i) Teleports (setting up up-linking HUBs/Teleports): Direct to Home (DTH); Cable Networks (Multi-System-Operators operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability):

Currently, foreign investment, up to 49 percent, is permitted in these activities. It has been decided to now increase the foreign investment limit from 49 percent to 74 percent, with the proviso that:

(a) Up to 49 percent be permitted under the automatic route and
(b) Beyond 49 percent and up to 74 percent be permitted under the Government route

(ii) Mobile TV:

There is no specific dispensation under FDI policy for mobile TV. It has now been decided to permit Foreign Investment (FI) up to 74 percent, with the proviso that:

(a) Up to 49 percent be permitted under the automatic route and
(b) Beyond 49 percent and up to 74 percent be permitted under the Government route

(iii) Headend-in-the Sky Broadcasting Service:

The existing limit of 74 percent foreign investment - automatic route up to 49 percent and Government route beyond 49 percent and up to 74 percent - would continue

(i) In respect of Cable Networks (Other Multi-System-Operators not undertaking up-gradation of networks towards digitalization and addressability and Local Cable Operators), the existing limit of 49% foreign investment, under the automatic route, would continue.

(ii) Similarly, for up-linking of 'News & Current Affairs' TV channels / FM Radio, the existing limit of 26 percent foreign investment, under the Government route, would continue and for up-linking of Non-'News & Current Affairs' TV Channels / Down-linking of TV Channels, the existing policy of 100 percent foreign investment, through the Government route, would continue.

Foreign investment, in companies engaged in all the aforestated services, will be subject to sectoral and security conditionalities and guidelines, as may be specified from time to time, by the concerned Ministries.

In the case of companies operating in the telecom sector, the calculation of the direct foreign investment limit includes FDI, investment by Foreign Institutional Investors (FIIs), Nonresident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities. For companies operating in the broadcasting sector, however, the foreign investment (FI) limits for different activities include different components. It has been decided to rationalise the methodology of calculation of direct investment and the methodology, as applicable to the telecom sector, would also be made applicable across the I&B sector. Accordingly, as in the case of the telecommunications sector, the **foreign investment limit in companies engaged in various activities of the I&B sector shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Non Resident Indians** (NRIs), **Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities.**

The existing Foreign Investment (FI) limits in companies engaged in the activity of providing broadcasting services are not uniform. TRAI had earlier recommended different Foreign Investment (FI) limits for companies engaged in providing 'carriage' and 'content' services. It had also stressed the need for a holistic review of the extant Foreign Investment (FI) limits for companies operating in different segments of the broadcasting sector, in order to bring about consistency in the policy, as also to promote a level playing field between competing technologies, in view of the convergence of technologies across the telecommunication and broadcasting sectors.

At present, it is possible to provide broadcasting 'carriage services" using either telecommunication networks or broadcasting networks. Keeping in view the convergence of technologies in the broadcasting and telecom sectors, uniformity has been proposed in respect of companies providing carriage services (except cable services). For the same reason, uniformity is necessary in the method of calculation of direct foreign investment, in companies operating in the telecom and broadcasting sectors.

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