Update

FDI policy Of 2013 – key consolidations

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Update

The Ministry of Commerce & Industry released the consolidated Foreign Direct Investment policy of 2013 ("**FDI Policy 2013**") effective from April 5, 2013. In what was termed as the need to revive the "animal spirit" in the country's economy, the Government had opted for some big bang reforms, the key being allowing foreign investment in multi brand retail and civil aviation in the last financial year. The key changes came at a time when FDI in India slumped by 43.3% at US$ 15.85 billion in April-November of FY 2012-13 as compared to US $ 27.93 billion in the corresponding previous year[1].

We list below the key changes incorporated in FDI Policy 2013[2] juxtaposed with the consolidated FDI policy of 2012 ("**FDI Policy 2012**").

Particulars	FDI Policy 2012	FDI Policy 2013
Investment in multi brand retail	No provision	(a) 51% foreign investment has been allowed through the Government route in multi brand retailing in products, as specified, subject to conditions prescribed.[3] (b) The policy is only enabling and a list of States and Union Territories have been specified which would be free to take their own decisions in regard to implementation of the policy.
Investment in single brand retail	(a) Of the many conditions specified one such was that the foreign investor should be the owner of the brand. (b) Further, where proposals involved FDI beyond 51%, sourcing of products of at	(a) It is not required that the foreign investor shall be the owner of the brand. It gives a structuring flexibility to the brand owners. (b) Only one non-resident, be it owner or any other person

[1] Economic Survey 2012-13
[2] The entire text of FDI 2013 can be read at http://dipp.nic.in/English/Policies/FDI_Circular_01_2013.pdf.
[3] *See* paragraph 6.2.16.5 of Chapter 6 of FDI Policy 2013.

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Particulars	FDI Policy 2012	FDI Policy 2013
	least 30% was required from small industries, as defined therein.	allowed to undertake a single brand product retailing in India in relation to a specific brand.[4] (c) Where proposals involve FDI beyond 51%, sourcing products of 30% will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. There is a relaxation from the stringent requirement of sourcing of products.
Investment by Pakistani nationals	Prohibited	Investment possible under the Government route in sectors/activities other than defence, space and atomic energy and sectors/ activities prohibited for foreign investment[5].
Foreign investment in Asset Reconstruction Company (“**ARC**”)	(a) Foreign institutional investors (“**FII**”) were not permitted to investment in equity capital of ARC. (b) 49% of paid up capital of ARC was allowed under the Government route. (c) No specific reference to investment by a sponsor in ARC. (d) FIIs were permitted to	(a) FIIs have been permitted to invest in capital of ARCs. However, not more than 10% of the total shareholding of an ARC to be held by a single FII. (b) Limit has been increased to 74% (FDI + FII) of paid up capital of ARC. (c) Cap of 50% of shareholding of ARC by sponsor has been introduced.

[4] *See* paragraph 6.2.16.4 of Chapter 6 of FDI Policy 2013
[5] *See* paragraph 3.1.1 of Chapter 3 of FDI Policy 2013.

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Particulars	FDI Policy 2012	FDI Policy 2013
	investment up to 49% of each tranche of scheme of security receipts ("**SRs**"). Investment by a single FII in each tranche of SRs shall not exceed 10%. (e) All individual investments in excess of 10% was subject to Section 3(3)(f) of the SARFAESI Act, 2002.	(d) FIIs can invest up to 74% of each tranche of scheme of SRs, subject to extant FDI regulations on FII limits. (e) All investments subject to Section 3(3)(f) of the SARFAESI Act, 2002.[6]
Foreign investment in power exchange	Nil	49% through Government route allowed (FDI + FII).[7]
Foreign investment in civil aviation	Three conditions were laid down for investment in air transport services wherein foreign airlines were not allowed to invest in equity of an Air Transport Undertaking engaged in operating Scheduled and Non-Scheduled Air Transport Services except Cargo airlines.	Foreign airlines are now allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital subject to certain conditions.[8]
Foreign investment in broadcasting	Ceiling limits prescribed.	Ceiling limits for DTH, broadcasting content service changed[9] made 74% foreign investment under Government route in DTH (direct to home) services, cable networks.
Setting up of step down subsidiaries by Non Banking Financial	100% foreign owned NBFC with minimum capitalization of US $ 50 million were allowed to set up step down subsidiaries for specific NBFC activities.	NBFCs with foreign investment of 75% to 100% and minimum capitalization of US $ 50 million can set up step down subsidiaries for specific NBFC activities.

[6] *See* paragraph 6.2.17.1 of Chapter 6 of FDI Policy 2013.
[7] *See* paragraph 6.2.19 of Chapter 6 of FDI Policy 2013.
[8] *See* paragraph 6.2.9.2 of Chapter 6 of FDI Policy 2013.
[9] *See* paragraph 6.2.7 of Chapter 6 of FDI Policy 2013.

Particulars	FDI Policy 2012	FDI Policy 2013
Companies ("**NBFC**")		
Issue price of shares for investment by NRI in Indian company by way of subscription to the Memodandum of Association ("**MoA**")	No separate provision in this regard set out. Issue price determined as per the applicable pricing guidelines for issue of shares to non-residents.	Investments by way of subscription to the MoA may be made at the face value subject to eligibility conditions under FDI norms.[10]
Conversion of company with FDI into LLP	9 mandatory conditions set out which shall be fulfilled and prior approval of FIPB to be taken.	All 9 conditions have been retained. However, in case of a company, the requirement that foreign capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank, has been made optional.[11]

Further, it was expected that the policy regarding FDI, including by a SEBI registered foreign venture capital investor, in venture capital funds ("**VCF**") registered under SEBI (Venture Capital Fund) Regulations, 1996 will be extended to a Category I alternative investment fund ("**AIF**"), registered under the SEB (AIF) Regulations, 2012, or at least a VCF registered as a sub-category of a Category I AIF. It is surprising that no amendment in this regard has been made and no FDI has been made permissible in any category of AIF.

[10] *See* paragraph 3.4.2 of Chapter 3 of FDI Policy 2013.
[11] *See* paragraph 3.2.5 of Chapter 3 of FDI Policy 2013.

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