FOREIGN DIRECT INVESTMENT UPDATE

The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

The consolidated FDI Policy 2015 subsumes and supersedes all Press Notes/Press Releases/ clarifications/circulars issued by DIPP, which were in force as on May 11, 2015 and reflects the FDI Policy standing as on April 17, 2014. This Circular accordingly takes effect from May 12, 2015. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

A brief comparative analysis of the FDI Policy dated May 12, 2015 with the earlier policy issued on April 17, 2014 is tabulated below:

S. No.	Earlier Position (As per Consolidated FDI Policy dated April 17th, 2014)	Revised Position (As per Consolidated FDI Policy dated May 12th, 2015)
Defence		
1.	FDI upto 26% was permitted by way of Approval Route. Above 26 % will be procured by Cabinet Committee on Security (CCS) on case to case basis[1].	Government Route increased upto 49%. Above 49% by way of CCS on case to case basis. FURTHER (i) FDI limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Non Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. (ii) Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/joint venture

[1] wherever it is likely to result in access to modern and 'stateof-art' technology in the country

		company. Portfolio investments will be under automatic route.
	Certain Conditions Relaxed	
	Licensees were required to procure approval of Department of Defence Production.	Licensee now permitted to sell defence items to government departments without approval of Department of Defence Production (DoDP), however selling to any other entity will require approval.
	Proposals involving inflows in excess of **Rs. 1200 crore** being approved by Cabinet Committee on Economic Affairs (CCEA)	The amount of INR 1200 is now increased to **INR 2000 crore**
Civil Aviation Sector ***(Construction Development: Townships, Housing, Built-up Infrastructure)***		
2.	**Sectoral caps remain same i.e 100% FDI by Automatic Route**	
	Change in certain conditions for the investment	
	Minimum area to be developed under each project would be as under: (i) In case of development of serviced housing plots, a minimum land area of **10 hectares** (ii) In case of construction-development projects, a minimum built-up area of **50,000 sq.mts.**	Minimum area to be developed under each project would be as under: (i) In case of development of serviced plots, **no minimum land area requirement**. (ii) In case of construction-development projects, a minimum floor area of **20,000 sq. meter**.
	Minimum capitalization of US $10 million for wholly owned subsidiaries and US $ 5 million for joint ventures with Indian partner	Investee company will be required to bring minimum FDI of US$ 5 million within six months of commencement of the project. Thus distinction between wholly owned subsidiary and joint venture with Indian partner, is removed.

	Satisfaction of minimum lock in period mandated for repatriation.	Repatriation permitted on satisfaction of certain conditions notified in this regard[2].
		NOW, It is clarified that 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres
Railway Sector (Railway Infrastructure)		
3.	FDI **not permitted** in Railway sector, except in Railway line/sidings including electrified railway lines and connectivities to the main railway line by way of FDI in Industrial Parks	100% FDI **permitted** by way of Automatic Route
	Areas and conditions for investment in Railway Sector	
	AREAS **Construction, operation and maintenance** of the following: (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems	

[2] Depends on case to case basis such as development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage

	CONDITIONS (i) Foreign Direct Investment in the abovementioned activities open to private sector participation including FDI is subject to sectoral guidelines of Ministry of Railways. (ii)Proposals involving FDI beyond 49% in sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.	
Financial Sector (Insurance)		
4.	26% of (FDI+FII/FPI+NRI) by Automatic Route in: (i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors	49% of {FDI+FPI(FII,QFI)+NRI +FVCI+DR} ***[Automatic Route upto 26% and Government Route beyond 26% and upto 49%]***, in: (i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors (v)**Other** Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)
	Additional Conditions	
	(a) No Indian insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed forty-nine percent of the paid up equity capital of such Indian insurance company[3]. (b) Foreign direct investment proposals which take the total foreign investment in the Indian insurance company above 26 percent and up to the cap of 49 percent shall be under Government route[4]. (c) Foreign investment in the sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities. (d) An Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities referred to in Notification No. G.S.R	

[3] Rule 3 of Indian Insurance Companies (Foreign Investment) Rules, 2015
[4] Rule 6 of Indian Insurance Companies (Foreign Investment) Rules, 2015

	115 (E), dated 19th February, 2015[5]. (e) Foreign portfolio investment in an Indian insurance company shall be governed by the provisions contained in sub-regulations (2), (2A), (3) and (8) of regulation 5 of FEMA Regulations, 2000 and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations. (f) Any increase of foreign investment of an Indian insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA. (g) The foreign equity investment cap of 49 percent shall apply on the same terms as above to Insurance Brokers, Third Party Administrators, Surveyors and Loss Assessors and Other Insurance Intermediaries appointed under the provisions of the Insurance Regulatory and Development Authority Act,1999 (41 of 1999): (h) Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Insurance Regulatory and Development Authority of India to function as an insurance intermediary, the foreign equity investment caps applicable in that sector shall continue to apply, subject to the condition that the revenues of such entities from their primary (i.e. non-insurance related) business must remain above 50 percent of their total revenues in any financial year. (i) The provisions of paragraphs 6.2.18.2.2(4) (i) (c) & (e), relating to 'Banking-Private Sector', shall be applicable in respect of bank promoted insurance companies. (j) Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G.S.R 115 (E), dated 19th February, 2015.	
Others (Pharmaceuticals)		
5.	Sectoral Cap on Pharmaceuticals in Greenfield, 100% FDI by Automatic Route and Brownfield, 100% FDI by Government Route.	Sectoral Cap on Pharmaceuticals ***continues to remain same*** i.e in Greenfield, 100% FDI by Automatic Route and in Brownfield, 100% FDI by Government Route, HOWEVER, **100% FDI under automatic route is permitted for manufacturing medical devices.**

[5] Rule 4 of Indian Insurance Companies (Foreign Investment) Rules, 2015

	Certain Clarifications
	i. FDI up to 100%, under the automatic route is permitted for manufacturing of medical devices. ***The abovementioned conditions will, therefore, not be applicable to greenfield as well as brownfield projects of this industry.*** ii. Medical device means- a. any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of- (aa) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder; (ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or handicap; (ac) investigation, replacement or modification or support of the anatomy or of a physiological process; (ad) supporting or sustaining life; (ae) disinfection of medical devices; (af) control of conception, and which does not achieve its primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means; b. an accessory to such an instrument, apparatus, appliance, material or other article; c. a device which is reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of in vitro examination of specimens derived from the human body or animals. iii. The definition of medical device in (ii) above would be subject to the amendment in Drugs and Cosmetics Act.

A copy of the aforesaid public release may be reviewed and downloaded from the following link:
http://dipp.nic.in/English/policies/FDI_Circular_2015.pdf