

Corpsec Hotline

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FOREIGN DIRECT INVESTMENT IN LIMITED LIABILITY PARTNERSHIPS ALLOWED

The Department of Industrial Policy and Promotion (“DIPP”) has released Press Note 1 (2011 Series) (“Press Note 1”) allowing foreign direct investment (“FDI”) into Limited Liability Partnerships (“LLPs”) subject to certain specific conditions. The Press Note 1 modifies the Circular 1 of 2011 i.e. the Consolidated Foreign Direct Investment Policy dated April 1, 2011 (“FDI Policy”) and such changes introduced under the FDI Policy will become effective immediately. Recently, on May 11, 2011, the Cabinet Committee on Economic Affairs, Government of India (“CCEA”) had approved the proposal to amend the FDI Policy to permit FDI in LLPs, subject to certain specific restrictions. We, at Nishith Desai Associates, had analyzed the notification of the CCEA approval in our hotline titled ‘**Government Permits FDI in LLPs: A Welcome Move, But Restrictions May Be A Dampener**’. The Press Note 1 essentially permits FDI in LLPs on similar terms as prescribed under the CCEA approval dated May 11, 2011.

CCEA had approved FDI in LLPs only through Government approval route and in only those sectors in which 100% FDI is allowed under automatic route and there are no ‘FDI-linked performance related conditions’. While the FDI Policy places conditions in allowing FDI in certain sectors, the CCEA approval did not provide clarity on what exactly would amount to ‘FDI-linked performance related conditions’. In comparison, the Press Note 1 sheds some light to this aspect, by giving examples of certain sectors such as Non-Banking Finance Companies (i.e. fulfillment of minimum capitalization norms, etc.), or development of townships, housing, built-up infrastructure and construction-development projects’ (i.e. minimum area to be developed, minimum capitalization norms, etc.). By implication, all sectors for which the FDI Policy prescribes any such conditions may get excluded from the list of eligible sectors for which FDI in LLPs is permissible.

Presently, these restrictions as per the Press Note 1 appear to have been introduced to allow the regulators to first test the waters by permitting FDI in LLPs in a stepwise manner. As indicated by CCEA, it appears that the regulators are cautiously allowing FDI in LLPs as a start and as things progress, the Government may remove the shackles imposed gradually. Drawing a parallel, it is yet to be seen how Reserve Bank of India would monitor FDI in LLPs i.e. allowing disclosures by amending the existing forms or by introducing new forms.

- Vivaik Sharma, Sambhav Ranka & Kishore Joshi

You can direct your queries or comments to the authors

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