

## Corpsec Hotline

June 11, 2004

### APPLICATION OF PRESS NOTE 18 CHALLENGED IN A CIVIL SUIT

A foreign company, whose application for setting up a Wholly Owned Subsidiary ("WOS") in India was rejected based on Press Note 18, has filed a civil suit in the Delhi High Court challenging the applicability of the same to its case.

As per the current Indian exchange control regulations, foreign direct investment is permitted in various sectors in India without prior regulatory approval. However, this automatic route of making investments into India is not available in the event the foreign investor "has or had any previous joint venture ("JV") or technology transfer / trademark agreement in the same or allied field". This condition is laid down in the Guidelines pertaining to approval of foreign/technical collaborations under the automatic route with previous ventures/tie-up in India issued on December 14, 1998 by the Ministry of Commerce, Government of India and commonly referred to as Press Note 18.

Press Note 18 further stipulate that where the foreign investor does not qualify for the automatic route, he should seek the prior approval of the Foreign Investment Promotion Board ("FIPB") by filing justification and proof before the FIPB that the new undertaking would not jeopardize the interests of the existing JV or technology/trademark partner.

The FIPB recently rejected an application by Draeger Medical AG ("Draeger Medical"), a German medical instruments major, to set up a WOS in India on the grounds of objections received from RKKR Infotech, ("RKKRI") an USHA group company. RKKRI claims that it has an existing 50:50 JV with Draegerwerk AG ("DW-AG") and thus the Indian JV's interest would be jeopardized if Draeger Medical is permitted to set up a WOS in India. RKKRI has contended that the restrictions under Press Note 18 apply to Draeger Medical as Draeger Medical and Draeger cannot be considered as different entities.

Aggrieved by the rejection of its application by FIPB, Draeger Medical has filed a civil suit in the Delhi High Court. In its submissions before the Delhi High Court, Draeger Medical has contended that Press Note 18 has no application to other members of a group of companies wherein any of the companies within that group have an existing tie-up or venture in India. Draeger Medical further disputes the contention that Draeger Medical and DW-AG should be regarded as the same entity for purposes of compliance with Press Note 18. It is explained that DW-AG holds 65% of shares of Draeger Medical while the remaining 35% shares are held by Siemens AG. Further, it is DW-AG who holds 50% in the existing Indian JV with RKKRI, and not Draeger Medical. Thus, Draeger Medical should not be made to comply with the requirements of Press Note 18.

Source: *The Economic Times*, dated June 11, 2004

*Disclaimer* This hotline has been prepared based on the newspaper reports published in this regard. This hotline is for information purposes only and should not be construed as a legal opinion. No reader should act on the basis of any statement contained herein without seeking professional advice. The firm expressly disclaims all and any liability to any person who has read this hotline, or any extract thereof, with respect to anything, or consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this hotline.

You can direct your queries or comments to [Roshan Thomas](#) &/or [Shagoofa Khan](#)

### DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### Little International Guide (India) 2024

November 08, 2024

### Unmasking Deepfakes

October 25, 2024

### Are we ready for Designer Babies

October 24, 2024

## Research Articles

### The Bitcoin Effect

November 14, 2024

### Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

### Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

## Audio

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

[Click here to view Hotline archives.](#)

## Video

### "Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI8 event in Riyadh

October 31, 2024

### Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

