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Radical changes announced to the Foreign Direct Investment Policy

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BACKGROUND

Monday morning June 20, 2016, people woke up to the news of Mr. Raghuram Rajan returning to academia after his term as the RBI Governor ends. Before the Indian markets could react to this news, by mid-day, the scenario changed as the Indian Government announced its decision to bring about sweeping changes to the Foreign Direct Investment ("*FDI*") Policy.

The FDI Policy has been further liberalized thereby providing an extremely favourable environment for a further impetus to increased foreign direct investment into the country. This will result in the creation of more job opportunities and increasing overall competitiveness in the economy ultimately leading to tremendous growth opportunities. As stated in the Press Release of June 20, 2016 by which the said liberalisations have been issued, India now stands as the most liberalized country for foreign investment in the world. A number of sectors have been thrown open for foreign investment either under the 100% automatic route or few sensitive sectors thrown open partially under the automatic route. This is second major overhaul after the last set of liberalisations of November 2015 which witnessed reforms in a number of sectors such as tea sector, coffee plantations, Limited Liability Partnership, Defence, Cable networks, Broadcasting, Air transport service, Construction development projects, Single Brand Product Retail Trading, Duty Free Shops, etc.

The Press Release of June 20, 2016 has paved way for the following changes which have been set out in brief[1]:

Sr. No.	SECTOR	NOW
1.	**Food Products manufactured/produced in India**	• 100% FDI permitted under Government approval route for trading, including through e-commerce, in food products manufactured or produced in India.
2.	**Defence Sector**	• FDI up to 100% permitted; • FDI beyond 49% permitted through approval route, in cases resulting in access to '*modern technology*' in the country or for other reasons to be recorded.

[1] Further details are elaborated in the Press Release dated June 20, 2016.

Sr. No.	SECTOR	NOW
3.	**Broadcasting Carriage Services**	• Entry Routes have changed to permit 100% FDI in the following: (a) Teleports; (b) Direct to Home; (c) Cable Networks; (d) Mobile TV; (e) Head end-in-the-Sky Broadcasting Services; and (f) Cable Networks. • However, infusion of fresh foreign investment, beyond 49% in a company not seeking license/permission from sectoral Ministry which results in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, would require FIPB approval.
4.	**Pharmaceuticals**	• FDI up to 74% permitted under automatic route in brown field investments; • FDI beyond 74% will continue to be under the approval route.
5.	**Civil Aviation Sector**	• 100% FDI permitted under the automatic route in brown field aviation projects; • For Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and regional Air Transport Service : (a) 100% FDI permitted with FDI upto 49% permitted under the automatic route and FDI beyond 49% through the Government approval route; (b) NRIs will continue to be allowed to invest 100% under the automatic route; and (c) Foreign airlines would continue to be 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 and subject to the laid down conditions in the existing policy.

Sr. No.	SECTOR	NOW
6.	**Private Security Agency**	• FDI up to 74% permitted with: (a) 49% FDI permitted under automatic route; and (b) FDI beyond 49% and up to 74% under Government approval route.
7.	**Establishment of branch office, liaison office or project office**	• RBI approval or separate security clearance is done away with, where FIPB approval or license/permission of the concerned Ministry/Regulator has already been obtained in the event the principal business of the applicant is Defence, Telecom, Private Security or Information and Broadcasting.
8.	**Animal Husbandry**	• The requirement of '*controlled conditions*' has been done away with.
9.	**Single Brand Retail Trading**	• Relaxed local sourcing norms for upto 3years and relaxed sourcing regime for another five years for entities undertaking Single Brand Retail Trading of products having 'state-of-art' and 'cutting edge' technology.

OUR VIEW

As can be seen from the Press Release, the FDI policy has been further progressively overhauled and a new wave of reforms have been ushered in. While the fine print of these relaxations which will be set out in the Press Note, will have to be awaited, these liberalisations are expected to have a significant impact on the sectors so liberalised including pharmaceuticals which may see heightened levels of M&A activity as also the recognition of a new sector of food manufacturing and food production.

Please look out for our next "Intra Legem" which will be providing an over-arching view of FDI in the pharma sector.

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