

De Jure

March 30, 2016

FDI in E-commerce



HIGHLIGHTS OF GUIDELINES ISSUED ON FOREIGN DIRECT INVESTMENT IN E-COMMERCE

The Department of Industrial Policy & Promotion ("**DIPP**") has issued a Press Note (Press Note 3 of 2016) on March 29, 2016 ("**Press Note**") which sets out various guidelines on Foreign Direct Investment in the E-commerce sector. The Press Note defines the terms E-commerce, E-commerce entity, Inventory based model of e-commerce and marketplace based model of e-commerce. The guidelines issued by DIPP allow 100% Foreign Direct Investment ("**FDI**") in a "market place model" of e-commerce under the automatic route. However, no FDI is permitted in an "inventory based model" of e-commerce.

DEFINITIONS

The term "**E-commerce entity**" has been defined as "a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under Section 2(42) of the Companies Act, 2013 or an office, branch or agency in India as provided in Section 2(v)(iii) of FEMA, 1999, owned or controlled by a person resident outside India and conducting the e-commerce business" and the term "**marketplace based model of e-commerce**" has now been defined to mean "providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller".

CONDITIONS ON MARKETPLACE E-COMMERCE ENTITIES

The Press Note stipulates conditions to be complied by E-commerce entities receiving foreign investment, few of which are as follows:

- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
 - E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
-

-
- E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory based model.
 - An e-commerce entity will not permit more than 25% of the sales affected through its marketplace from one vendor or their group companies.
 - In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
 - In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
 - E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.
 - Guidelines on cash and carry wholesale trading of the FDI Policy will apply to B2B e-commerce.

Contributed by:

Poorvi Sanjanwala : poorvi@rajaniassociates.net

Kashmira Bakliwal: kbakliwal@rajaniassociates.net

AREAS OF PRACTICE

| Capital Markets | Private Equity | Mergers and Acquisitions | Corporate Litigation & Arbitration | Projects & Project Finance |
| Real Estate & Trust | Corporate & Commercial | Banking & Finance | Structuring | TMT | IPR | Employment

DISCLAIMER

This update only contains a summary/ limited description of the topic dealt with hereinabove for general information purposes and should not be construed as a legal opinion or be relied upon in absence of specific legal advice. For further information or legal advice please feel free to contact us.

Contact US



Rajani Associates

simple solutions

Address: Krishna Chambers
59 New Marine Lines
Churchgate
Mumbai 400020
Maharashtra, India
Telephone: (+91-22) 40961000
Facsimile: (+91-22) 40961010
Email: dejure@rajaniassociates.net
Website: www.rajaniassociates.net
