

De Jure

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FIPB Abolishment: The proposed way
ahead



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By way of a press release dated May 24, 2017, the Union Cabinet announced the approval for the phasing out of the FIPB. The aforementioned press release stated that the FDI applications falling under the approval route would be handled by the concerned Ministries/Departments in consultation with the Department of Industrial Policy & Promotion ("**DIPP**").

Ever since the announcement of the phasing out of the Foreign Investment Promotion Board ("**FIPB**"), the fine print on the manner in which the ambit of the FIPB would be replaced under the extant Foreign Direct Investment ("**FDI**") Policy read with the regulations under the Foreign Exchange Management Act, 1999, was being awaited.

The first of such clarifications has come in the form of an Office Memorandum dated June 5, 2017 ("**Office Memo**"), published on the FIPB website. The proposal for abolition of the FIPB as approved by the Government, envisages changes in the framework of the substitution of the FIPB. Certain salient changes have been briefly discussed in a snapshot in the subsequent paragraphs:

- The ministries that will handle FDI applications under the approval route for relevant sectors, have been detailed in the Office Memo and are as follows:

SR. NO	SECTOR/ACTIVITY ADMINISTRATIVE	MINISTRY/DEPARTMENT
1.	Mining	Ministry of Mines
2.	Defence	Department of Defence Production, Ministry of Defence
3.	Cases related to FDI in small arms	Ministry of Home Affairs
4.	Broadcasting	Ministry of Information and Broadcasting
5.	Print Media	Ministry of Information and Broadcasting
6.	Civil Aviation	Ministry of Civil Aviation
7.	Satellites	Department of Space
8.	Telecom	Department of Telecommunications, Ministry of Communications
9.	Private Agencies Security	Ministry of Home Affairs
10.	Trading (Single & multi brand and food products)	Department Of Industrial Policy & Promotion, Ministry Of Commerce &

SR. NO	SECTOR/ACTIVITY ADMINISTRATIVE	MINISTRY/DEPARTMENT
	retail trading)	Industry
11.	Financial Services not regulated by a regulator or where there is more than one regulator or in respect of which there is a doubt about the regulator	Department of Economic Affairs, Ministry of Finance
12.	Banking (Private and Public)	Department of Financial Services, Ministry of Finance
13.	Pharmaceuticals	Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers

- The DIPP has been empowered to deal with:

SR. NO	APPLICATIONS
1.	FDI proposals by Non Resident Indians (NRI)/ Export Oriented Unit's (EOU's) requiring approval of the Government
2.	Applications relating to issue of equity shares under the Government route for import of capital goods/ machinery/ equipment (excluding second-hand/machinery)
3.	Applications relating to issue of equity shares for preoperative/pre-incorporation expenses (including payments of rent etc.)
4.	Applications for foreign investment into a Core Investment Company or an Indian company engaged only in the activity of investing in the capital of other Indian Company/ies (<i>irrespective of the sector</i>)
5.	In case of applications wherein is a doubt about the Administrative Ministry, the DIPP has been empowered to identify the Ministry/Department ¹
6.	The management and responsibility of the FIPB portal, upon abolishment of the FIPB

- Applications under the Government approval route will be continued to be received on the FIPB Portal. The oversight of the FIPB portal will be transferred to DIPP within four weeks.

¹In our view, in order to ensure that the time periods for the application disposal process, envisaged in the Office Memo can be met, the SOP should include a defined mechanism for the manner in the DIPP would provide clarifications in relation to the Administrative Ministry identification process

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- A Standard Operating Procedure ("**SOP**") with detailed guidelines is proposed to be developed by the DIPP in consultation with Administrative Ministries/Departments/sector regulators so as to guide them in processing of the FDI proposals and consistency of treatment across sectors.
 - The SOP will involve the process of Inter-Ministerial consultations for the examination of FDI proposals, where necessary;
 - It will recognise that ordinarily FDI applications should be decided in Sixty Days.
 - All the applications pending with the FIPB portal as on the date of abolition of FIPB shall be transferred to the respective Administrative Ministry/Department by the DIPP immediately upon receipt thereof.
 - The concurrence of the DIPP would be mandatory where FDI applications are proposed to be rejected or where additional conditions not provided for in the FDI Policy, are proposed to be imposed;
 - The monitoring of compliance of conditions under FDI approvals already granted, will be undertaken by the concerned Administrative Ministry/Department;

Our Views

While the first of the clarifications on the way ahead post the abolishment of the FIPB have been issued, given that the proposed changes involve an overhauling of framework within which FDI approval route applications were processed and thereafter monitored, there may be transitional issues involved in the immediate period. However it is hoped that once the various clarifications are in place, including the issuance of the SOP and the transitional glitches ironed out, the elimination of the FIPB layer from the FDI approval route process, will achieve its intended objective of doing each of business in Indian and in promoting the principle of Maximum Governance and Minimum Government.

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