

FOREIGN INVESTMENT

Foreign Investment- Clarificatory Guidelines for downstream investment

In supersession of Press Note No. 9 (1999 Series), the Government has issued Press Note. No. 4 (2009 Series) to clarify and lay down the policy relating to downstream investments by Indian investing companies '**owned or controlled by non-resident entities**'.

The Indian investing companies have been categorized into the following companies:-

1. Operating Companies.
2. Operating-cum-Investing Companies
3. Investing Companies
4. Companies with neither operations nor downstream investments.

1. Operating Companies

FDI in Operating Companies would need to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

2. Operating-cum-investing Companies

Both the Operating-cum-investing Companies and the subject Indian Companies (into which downstream investments are made through such companies) are required to comply with relevant sectoral conditions on entry route, conditionalities and caps.

3. Investing Companies

FDI in Investing Companies would require prior approval of Government/FIPB irrespective of the quantum or extent of foreign investment. An investing company has been defined as an Indian company holding only investments in another Indian company, directly or indirectly, other than for trading of such securities.

The subject Indian Company (into which downstream investments are made through such Investing company) would be required to adhere to the sectoral conditions on entry route, conditionalities and caps.

4. Companies with no operations or downstream investments

For infusion of FDI in a Company, which does not have any operations or any downstream investments, Government/FIPB approval is required. Further, when such company commences business or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Common conditions for companies listed at para 2, 3 and 4 above-

Operating-cum-investing Companies, Investing Companies and companies with no operations or downstream investments respectively are required to notify SIA, DIPP and FIPB of their downstream investment duly supported by a board resolution (including shareholders agreement, if any) within 30 days of such investment.

Investing Companies would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This does not preclude downstream operating companies from raising debt from the domestic market.

Further, issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines.

A copy of the Press Note No. 4 (2009 Series) is attached.



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