

- Corporate

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Clarificatory Guidelines on Downstream Investment by Indian Companies

The Department of Industrial Policy and Promotion (“DIIPP”) has, vide Press Note 4 (2009 Series)¹, issued the Guidelines for downstream investment by Investing Indian Companies ‘owned or controlled by non resident entities’. This press note was issued pursuant to Press Note 2 (2009 Series) which interalia include downstream investment for calculation of total foreign investment, both direct and indirect in an Indian company.

The Press Note stipulates the following:

1. Definitions:

- The term ‘Indian Company’ means a company registered or incorporated in India as per the Indian Companies Act, 1956
- ‘Operating Company’ is an Indian company which is undertaking operations in various economic activities and sectors.
- ‘Downstream investment’ means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Press Note 2 of 2009. Para 5.2 of the said Press Note provides the guidelines for calculation

¹ D/o. IPP File No. 12(22)/2007-FC dated February 25, 2009

of indirect foreign investment with conditions specified in para 5.5.

- 'Investing Company' means an Indian Company holding only investments in another Indian company, directly or indirectly, other than for trading of such holdings/securities.
- 'Foreign Investment' would have the same meaning as in Press Note 2 (2009 series).

2. Guidelines for downstream investment by Investing Indian Companies 'owned or controlled by non resident entities' as per Press Note 2 of 2009:

- The Policy on downstream investment comprises policy for (a) only operating companies (b) operating-cum-investing companies (c) only investing companies.
- The Policy in this regard will be as below:
 - (a) Only operating companies: Foreign investment in such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating.

- (b) Operating-cum-investing companies: Foreign investment into such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating. Further, the subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
- (c) Investing companies: Foreign Investment in Investing Companies will require the prior Government/FIPB approval, regardless of the amount or extent of foreign investment. The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
- (d) For companies, which do not have any operations and also do not have any downstream investments, for infusion of foreign investment into such companies, Government/FIPB approval would be required, regardless of the amount or

extent of foreign investment. Further, as and when such company commences business(s) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

- For Operating-cum- investing companies and investing companies and for companies which do not have any operations and also do not have any downstream investments, for infusion of foreign investment, downstream investments can be made subject to the following conditions:
 - (a) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if equity shares/CCPS/CCD have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);
 - (b) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders Agreement if any;
 - (c) issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;
 - (d) Investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market

for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

- Para 11 of Press Note 3 of 1997 and Press Note 9 of 1999 stand deleted. These guidelines will be effective from the date of issue of this Press Note. FDI Policy announced vide Annex to Press Note 7 (2008) dated June 16, 2008 stands amplified to the above extent.

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