INDIA GOVERNMENT EASES RULES ON FDI ON MORE SECTORS

The Indian government has on 20 September 2012 opened more sectors for foreign direct investment ("FDI") especially multi-brand product retail trading and foreign investment in Indian airlines by foreign airlines. Besides this, the Indian government has also taken the following decisions to increase investment opportunities for foreign investor in India:

- Increase in FDI limits from existing 49% to 74% in teleports, direct to home, and cable networks activities falling under the broadcasting sector. However, FDI in excess of 49% in these activities is under the government approval route.
- Permitting FDI up to 74% in mobile television. However, FDI in excess of 49% in mobile television activities is under the government approval route.
- Permitting FDI up to 49% in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 under the automatic route.

1.- FDI In Multi-Brand Product Retail Trading

FDI in multi-brand product retail trading has been allowed subject to the following conditions:

a FDI up to 51% has been permitted under the government approval route.

b Minimum amount to be brought in as FDI by the foreign investor is US$ 100

c At least 50% of total FDI brought in shall be invested in 'back-end infrastructure' within 3 (three) years of the first tranche of FDI. Back-end infrastructure' will include capital expenditure on all activities excluding that on front-end units, e.g., investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of back-end infrastructure.

d At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian 'small industries', i.e., industry which has a total investment in plant & machinery not exceeding US$ 1 million.

e Such multi-brand product retail outlets may be set up only in cities with a population of more than 1 million (as per Census of India 2011) and may also cover an area of 10 km around the municipal/urban agglomeration limits of such cities.

f Government will have the first right to procurement of agricultural products.

g Interestingly, retail trading in any form by means of e-commerce is not permissible for companies with FDI engaged in multi-brand product retail trading activities.

h Most importantly, this policy is merely an enabling policy of the Indian government and the government of respective State/Union Territories has to take their own decisions with regard to allowing FDI in multi-brand product retail trading in their States/Union Territories. Therefore, retail sales outlets may be set up only in those States/Union Territories which have agreed, or agree in future, to implement this policy in their States/Union Territories. The ten Indian States/Union Territories which have allowed multi-brand product retail trading in their States are Andhra Pradesh, Assam, Delhi, Haryana, Jammu & Kashmir, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman & Diu (Union Territory) and Dadra and Nagar Haveli (Union Territory).

2.- <u>FDI In Civil Aviation Sector</u>

FDI in Indian airline companies by foreign airlines is allowed subject to the following conditions:

a Foreign airlines are allowed to acquire up to 49% in the equity of Indian companies operating in cargo airlines, helicopter and seaplane services under the government approval route.

b This 49% limit subsumes FDI and investment by foreign institutional investor.

c A scheduled operator's permit can be granted only to a company (i) that is registered and has its principal place of business within India; (ii) the Chairman and at least two-two-thirds of its directors are citizens of India; and (iii) the substantial ownership and effective control of such a company is vested in Indian nationals.

d All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of FDI shall be cleared from security view point before deployment.

e All technical equipment that might be imported into India as a result of FDI shall require clearance from the relevant authority in the Ministry of Civil Aviation, Government of India.

f This policy is not applicable to M/s Air India Limited which is owned by the Indian Government.