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India permits foreign investment in limited liability partnerships

The Indian government has now permitted foreign direct investment in Indian limited liability partnerships involved in certain kinds of business activities and subject to strict guidelines. These guidelines do not clarify whether there are any restrictions on the price at which a foreign partner may purchase interest in an Indian LLP or sell such interest to an Indian resident.

As is the case in the United Kingdom, a limited liability partnership in India is a body corporate and thus a separate legal entity formed and incorporated under the provisions of a law brought into force in early 2009 (LLP Act, 2008). Like a company, the liability of a member of a LLP is limited, however, as is the case with partnerships, the relationship amongst the LLP members is contractually governed. A LLP does not have shareholders or directors.

Foreign direct investment ("**FDI**") in Indian companies is regulated by the foreign exchange laws administered primarily by the Reserve Bank of India ("**RBI**") and FDI policy statements issued by the Government of India ("**GOI**"). These regulate aspects of FDI and identify circumstances where, approval of the GOI and/or the RBI is required for the investment ("**Government Route**"), no approval is required ("**Automatic Route**") where foreign investment is limited to a certain percentage of the shareholding ("**Sector Limits**") and where FDI is prohibited. Indian partnerships may receive FDI from foreign corporations only with the prior approval of the RBI in consultation with the GOI.

The GOI has, by amending its policy on foreign investment, now permitted FDI in LLPs. Corresponding regulations under the Indian foreign exchange laws are expected to be issued by the RBI. An overview of the terms and conditions issued by the GOI for permitting FDI in an Indian LLP is set out below.

(1) FDI is permitted in LLPs involved in sector/activities where 100% FDI is permitted under Automatic Route and there are no '*FDI-linked performance related conditions*'. The meaning of the term '*FDI-linked performance related conditions*' is not completely clear and probably refers to entry conditions applicable to the FDI in certain sectors such as norms for minimum capitalization (e.g. non-banking finance companies) and lock-in period (e.g. construction development and development of townships and housing).

(2) No FDI is permitted for LLPs involved in agricultural/plantation activity, print media or real estate business.

(3) LLPs with FDI cannot make any '*downstream investment*' meaning they cannot invest in other Indian companies or LLPs. On the other hand an Indian company having FDI can make downstream investments in a LLP only if both the company and the LLP are operating in sectors where 100% FDI is allowed through the Automatic Route and there are no '*FDI-linked performance related conditions*'. Foreign institutional investors and foreign venture capital investors (registered with Indian authorities) cannot invest in LLPs.

(4) FDI in a LLP is only allowed by way of cash consideration and a LLP may not raise borrowings from outside India.

(5) LLPs with FDI are permitted to have a body corporate as its 'designated partner' only if such body corporate is a company registered under Indian Companies Act, 1956. It may be noted that the LLP Act, 2008 requires a LLP to nominate two 'designated partners' out of which one has to be a resident in India. If a partner is a body corporate then it may nominate an individual to act as a 'designated partner'.

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(6) A 'designated partner' in a LLP with FDI has to satisfy the stricter test of an 'Indian resident' as is prescribed under the Indian foreign exchange laws.

(7) Conversion of a company with FDI into an LLP is possible but only with the approval of the GOI and compliance of the conditions set out above.

The foreign exchange laws of India prescribe a detailed set of regulations governing all aspects of foreign investment in Indian companies, including restrictions on the price of shares being issued to a foreigner by the company or being sold to or purchased from an Indian resident by a foreigner. These pricing restrictions require the fair value of such shares to be determined based on discounted cash flow method. There are no corresponding restrictions on the pricing of interest for a LLP. Considering the strict regime permitting FDI in a LLP, it may be prudent to assume that the issue and transfer of interest in a LLP to / by a foreigner will be subject to a regime that is similar to the regime for companies. It is likely that RBI will issue detailed regulations covering this and other aspects while issuing regulations permitting FDI in LLPs.