INDIA JURIS

WORLD PRACTICE

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In this issue:

Reserve Bank of India increases remittance limit for resident individuals

Vide circular RBI/2013-14/624 A.P. (DIR Series) Circular No. 138 dated June 3, 2014 Reserve Bank of India (RBI) increased the limit under Liberalised Remittance Scheme (LRS) for resident individuals from USD 75,000 to USD 125,000 per financial year (April-March). This would be applicable on any permitted current or capital account transaction or a combination of both. The Scheme ought not be utilized for making remittances for any restricted or unlawful exercises, for example, margin trading, lottery, and so on.

Top

It may soon be possible for PE Investors to avail OFS route

Securities and Exchange Board of India (SEBI) may soon allow private equity funds and other large investors to off load their stakes in listed companies through an offer-for-sale (OFS) route. OFS route is a system vide which a promoter shareholder can sell a large chunk of its shares to any class of investors and the buyer has to provide the money upfront.

Currently, only the top 100 companies by market capitalization can avail the OFS route. SEBI also plans to modify norms relating to the minimum issue-size requirement for initial public offerings (IPOs) as many companies have been bypassing these rules. As per the present situation, a company has to sell at least 25% stake if its valuation is below Rs. 4000 crore, while a company with a valuation of more than Rs. 4000 crore can divest 10% of its stake in an IPO.

Top

DIPP proposes 100% FDI in Defence

The Department of Industrial Policy & Promotion (DIPP) has prepared a draft Cabinet note that proposes to allow up to 100 per cent foreign direct investment in defence as part of its plan to boost domestic manufacturing. Defence Ministry indicated that it would consider the issue of increasing the foreign direct investment (FDI) cap from the existing 26% to 100% in this sector.

The draft note has been circulated for inter-ministerial comments and can be seen as the first and the most significant move by the government to revive manufacturing, where the output fell to about 0.2 per cent in the fiscal year ended on March 31, 2014. Reviving the manufacturing industry is on the top priority of the new government and DIPP is working overtime to get new ideas going. The department has proposed three different caps for FDI in defence — 49 per cent, 75 per cent and 100 per cent — which propose to incentivize technology transfer.

India Juris

International Desks

Asia & Australia
M.P.Mehani
asia@indiajuris.com

Americas
Shiv U Idnani
americas@indiajuris.com

UK & Europe
Sameer Rastogi
europe@indiajuris.com

Africa
Surabhi Tyagi
africa@indiajuris.com

It has proposed allowing 49 per cent FDI in case of no technology transfer and 74 per cent where there is a technology transfer. It has suggested that the no-cap policy (100% FDI) should be reserved only for those which bring in state-of-the-art technology. However, it maintains that entry though the automatic route may still be barred on account of security-related concerns.

Bharatiya Janata Party (BJP), the elected party, had in its manifesto spoken about allowing FDI in all sectors for asset and job creation and giving thrust to manufacturing to pull up economic growth. DIPP officials had earlier stated that FDI in defence can be one of the biggest drivers of manufacturing and can help reduce dependency on imports. Experts are baffled by India's reluctance to open defence to FDI even as it continues to meet a large portion of its defence equipment requirements through imports.

RBI updates rules on obtaining prior approval for acquisition of NBFCs

Under Section 45 IA (4)(c) of the Reserve Bank of India (RBI) Act, 1934, a certificate of Registration can only be given to a company if the RBI is satisfied, inter alia, that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interests of its depositors.

Earlier, vide circular DNBS (PD) C.C.No.160/ 03.10.001/2009-10 dated September 17, 2009 prior approval of the RBI was required in cases of acquisition/ transfer of control of Non Banking Financial Companies (NBFCs) accepting deposits. In supersession of those instructions, and to enable RBI to ensure that the 'fit and proper' character of the management of NBFCs, both deposit accepting and non-deposit accepting, is continuously maintained, it has been decided as under:

The prior written permission of the Reserve Bank of India shall be required for –

i. any takeover or acquisition of control of an NBFC, whether by acquisition of shares or otherwise;
ii. any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC that would give the acquirer / another entity control of the NBFC;
iii. any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC which would result in acquisition/transfer of shareholding in excess of 10 percent of the paid up capital of the NBFC.
iv. Prior written approval of the Reserve Bank would also be required before approaching the Court or Tribunal under Section 391-394 of the Companies Act, 1956 or Section 230-233 of Companies Act, 2013 seeking order for mergers or amalgamations with other companies or NBFCs.

Finance Ministry for disinvestment in PSUs

Finance ministry has proposed for divestment through follow-on offers and open offer for

Middle East
Dinesh Sabharwal
middleast@indiajuris.com

India Contact

New Delhi
newdelhi@indiajuris.com

sale to increase the market float of state-run companies. The few Maharatna and Navratna public sector units (PSUs) where government has room to dilute more stake include Coal India, Sail, MMTC, NMDC, NHPC, Neyveli Lignite, etc. Some officials in Finance Ministry are of the opinion that the government can accept the recommendations made by market regulator Stock Exchange Board of India (SEBI) to bring public float in state-run firms at par with private firms.

At present, private companies have to maintain a minimum 25% public float while the limit for PSUs is 10%. It has been made clear by the Ministry officials that a 51% stake will be maintained by the government in all PSU's even if disinvestment takes place. National Democratic Alliance (NDA) government stated that unlike the previous government, disinvestment will be pursued by the new government in earnest to increase the market capitalisation in these PSUs.

Top

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Top