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FOREIGN DIRECT INVESTMENT LIMIT IN BROADCAST SECTOR INCREASED

On 14 September 2012, the Cabinet Committee of Economic Affairs (**CCEA**) increased the cap in foreign direct investment (**FDI**) in the broadcast sector making it uniform across all types of broadcasting. Earlier, the FDI in the broadcast sector (namely cable TV and direct-to-home services) was capped at 49% (subject to prior approval from the Government) while the limit for Head-end in the Sky (**HITS**) services was 74%.

The move to increase the FDI limit in the broadcast sector is pursuant to the recommendations made by the Department of Industrial Policy & Promotion (**DIPP**) and the Telecom Regulatory Authority of India (**TRAI**), over the past few years. The TRAI had, in the years 2010 and 2011, recommended that the FDI limit in cable TV, DTH, teleport and mobile TV services be enhanced to 74% given that most of these businesses were capital intensive and would therefore benefit from increased foreign investment. Further, as part of the various proposals discussed in this years' budget, the Government had proposed to increase the FDI limit in all TV distribution platforms, uniformly from 49% to 74% including cable TV, Direct to Home (**DTH**), Multi System Operators (**MSOs**) and teleport services.

In May 2012, the DIPP cleared this proposal and circulated a draft note to the different ministries (including Home Affairs, Information & Broadcasting, Law, Finance and the Department of Telecommunications) for their approval. While most of the ministries accorded their consent to the proposal, the Home and I&B ministries voiced security concerns that may be associated with the increase in the FDI limit. Further, these ministries also expressed fear about global media barons exercising clout and influencing policies as a result of relaxation in the FDI limits in the sector. Despite these concerns, the CCEA has taken up on the proposals made by the DIPP and TRAI and increased the FDI limit in the broadcast sector to 74%.

Teleports, DTH and Cable Networks (MSOs)

The CCEA has increased the FDI limit in teleports, DTH, MSOs from the existing 49% to 74%. Going forward, up to 49% FDI will be permitted under the automatic route and investment beyond 49% up to 74% will require prior approval of the Government. It is pertinent to note that in relation to the MSOs, the FDI limit has only been enhanced for those MSOs who take up digitization with addressability. This revision is not applicable to MSOs who are not undertaking digitization and local cable operators. This is based on the recommendations of the TRAI which had also recommended that the FDI limit in MSOs other than those described earlier will continue to remain at 49% in order to incentivize the MSOs undertaking digitization to effectively meet the capital needs associated with the process of digitization.

Mobile TV

The current FDI policy does not contain specific guidelines on FDI in mobile TV services. Pursuant to the CCEAs decision, the FDI limit in companies providing mobile TV has been set at 74%. The FDI up to 49% is permitted under the automatic route and investment above 49% requires prior Government approval.

In 2008, the TRAI had made several recommendations on the provision of mobile TV services in India. Broadly, the TRAI had recommended that mobile TV services could be provided either by using a telecom network (that has already been allotted spectrum) or by using broadcast technologies. The TRAI had recommended that telecom operators who held a CMTS and UASL license would not require any

additional license/permission for offering mobile TV services on its network using the spectrum that is already allotted to them. For the broadcast method on the other hand, the TRAI had recommended that a separate license be issued through a closed tender system on the basis of a one-time entry fee. The TRAI had also recommended that the FDI limit for mobile TV services be set at 74%.

The TRAI had also recommended that telecom licensees must only be permitted to transmit channels in the same form for which broadcasters have received permission from the Ministry of Information & Broadcasting (**MIB**). In addition to this, telecom licensees providing mobile TV must also observe the program code and advertising code as provided under the Cable Television Network (Regulation) Act, 1995 and the rules made there under. The MIB accepted most of the recommendations of the TRAI on mobile TV services. The MIB is yet to finalize the policy on mobile TV services.

HITS

The FDI in HITS will remain at the existing level of 74% (automatic route up to 49% and prior Government approval beyond that).

The CCEA has clarified that the FDI limit in cable TV networks (MSOs who do not take up digitization and local cable operators) will remain at 49%. Similarly, the FDI limit in up-linking of news channels will remain at 26%.

The move to enhance the FDI limit in the broadcast sector by the CCEA seems to be backed by the intent of aligning the FDI limit in the broadcast sector with the telecom sector. The fact that technological improvements in the broadcast sector to a large extent depend on and converge with the activities carried on by the telecom sector would only strengthen the need to permit similar levels of the FDI in both sectors.

To bring about uniformity in the telecom and broadcast sector, the CCEA has also confirmed that the method of calculating the FDI in both these sectors will be the same. Therefore, as is in the case of the telecom sector, calculation of FDI in the broadcast sector will include investment by Foreign Institutional Investors, Non-Resident Indians, Foreign Currency Convertible Bonds, American Depository Receipts, Global Depository Receipts and convertible preference shares held by foreign entities.

This relaxation will greatly benefit the broadcast industry, particularly in respect of the digitization mandate issued by the Government this year, the deadline for which has been set as 31 October 2012. The costs for digitization are significant and FDI would help in meeting these costs. Most local cable operators are unorganized and are facing difficulties in accessing funding to carry out the mandatory digitization. This move will assist in fulfilling the capital needs associated with digitization and meeting the deadline set by the Government for digitization.

The information provided in this newsletter is based on the information made available by the Press Information Bureau. The DIPP is expected to make necessary amendments to the FDI policy based on the CCEA's recommendations.

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