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Analysing developments impacting business

REVISED SOP TO PROCESS FDI PROPOSALS - CLEARER PROCESSES AND TIMELINES

1 December 2020

The Department for Promotion of Industry and Internal Trade (DPIIT) *vide* its circular dated 9 November 2020 has introduced revised standard operating procedures (Revised SOP) to process foreign direct investment (FDI) proposals.

By way of background, the Union Cabinet, in its meeting held on 24 May 2017, had decided to wind up the Foreign Investment Promotion Board (FIPB) and accordingly, on 29 June 2017, the DPIIT (then known as Department of Industrial Policy and Promotion or DIPP) had released a standard operating procedure (Old SOP) containing process and procedure for filing and processing of FDI proposals, time limits and internal mechanisms for monitoring the processing of FDI proposals.

Key changes introduced in the Revised SOP (as compared with the Old SOP) are set out below:

- Changes pursuant to Press Note 3 of 2020 and sectoral changes: The Revised SOP incorporates restrictions notified by Press Note 3 of 2020 (PN3 2020) regarding investment from countries which share a land border with India (Neighbouring Countries). Pursuant to PN3 2020, any FDI from Neighbouring Countries requires prior approval of concerned Administrative Ministry / Department as identified by the DPIIT (Competent Authority). To this end, the applicant has been mandated to submit details of ownership and control of investee and investor companies / entities, together with details of significant beneficial owners, as prescribed under the Companies Act 2013. More importantly, the Revised SOP prescribes that the FDI proposals from the Neighbouring Countries will also require security clearance from Ministry of Home Affairs (MHA). Similar to print media sector, the proposals involving investments in the digital media will now require approval from Ministry of Information and Broadcasting.
- Constitution of inter-ministerial committee: To decide on the delayed FDI proposals (and those escalated by the processing Ministry / Department concerned for quicker disposal), an inter-ministerial committee has been constituted. The inter-ministerial committee shall comprise of secretaries from DPIIT, Department of Economic Affairs, Ministry of Corporate Affairs, MHA, concerned administrative Ministry / Department and representatives from Reserve Bank of India and NITI Aayog. The inter-ministerial committee shall examine and guide the Competent Authority for timely disposal of such FDI proposals.
- Time limit for approval on proposals: Time limit for approval / rejection of FDI proposals has been increased from 2 weeks to 4 weeks. Once the proposal is

complete in all respects, the Competent Authority has been mandated to process the proposal for decision and convey the decision to the applicants within 4 weeks.

- Acquisition of shares under Scheme of Amalgamation: Approval of the National Company Law Tribunal (NCLT) is a necessary for issuance of shares pursuant to a merger or amalgamation / demerger or otherwise of an Indian company. Therefore, the Revised SOP now provides that in case of proposals involving mergers / demergers / amalgamations of companies in India, approval of the NCLT would need to be obtained before the grant of approval by the Competent Authority.
- Monitoring and Review meetings: The revised SOP has prescribed that the frequency of meetings to review FDI proposals shall be once in 4 -6 weeks (as compared to quarterly meetings prescribed under the Old SOP).
- Surrender of FDI approval: The Revised SOP provides that if an applicant proposes to surrender FDI approval letter, the Competent Authority is permitted to accept the request after the applicant submits the declaration explaining the reasons for such withdrawal / surrender. Applicants are also permitted to withdraw its FDI proposal on which decision is yet to be made by the Competent Authority. Such surrender / withdrawal facility was not specifically provided under the Old SOP.
- List of Documents: The Revised SOP sets out elaborate list of documentation requirements to be complied with while submitting the FDI proposals. These documentation requirements are required to be complied with while submitting the FDI proposals.

Comments:

The Revised SOP certainly tries to plug gaps in the timelines and processes involved in handling the FDI proposals. The elaborate list of documents to be provided along with the FDI proposals will make overall approval process more efficient and will expedite the timeline for grant of approval. More importantly, creation of an inter-ministerial committee is a welcome step to expedite delayed FDI proposals. The revised monitoring framework envisaged in the Revised SOP also shortens the frequency of review meetings.

Overall, the Revised SOP appears to be more comprehensively drafted with an objective of ensuing timely disposal of the FDI proposals. The Revised SOP will certainly be beneficial for companies which need urgent support given the financial pressure caused by the pandemic.

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