Consolidated FDI Policy

Circular of 2015, dated 12th May, 2015
Chapter 6 : Sector Specific Conditions on FDI
Company Cases Volume 191, 2015 (Statutes - Page No.79 & 80)

Para 6.2.18.8 of the Consolidated Foreign Direct Investment [FDI] Policy issued by the Department of Industrial Policy and Promotion [DIPP] under the Ministry of Industry vide Circular dated 12th May 2015 contains a complete guide to FDI in Non- Banking Financial Companies (NBFC).

As per FDI Policy, FDI can come into India under two routes. Automatic route implies investment first; reporting next. Under this route, where FDI is allowed without any prior approval of the Government of India, FDI inflow is unhindered and the investee (recipient entity) has to just make a reporting in the prescribed form to Reserve Bank of India [RBI]. There is also an approval route where in certain sector where even though FDI is permitted, it is subject to prior approval by the Foreign Investment Promotion Board [FIPB] of DIPP. Approval route implies first approval; then remittance. In other words, unless prior approval is obtained no inflow of FDI is allowed.

NBFCs are of different types. In certain types of NBFCs FDI is allowed upto 100% of the total share capital of the company under the automatic route. Para 6.2.18.8.1 states that the following types of NBFCs are entitled for receiving upto 100% of its equity capital (includes capital issued on fully mandatorily convertible basis). No prior approval of any Government authority is necessary for such FDI flow into India.

(i) Merchant banking
(ii) Under writing
(iii) Portfolio Management Services
(iv) Investment Advisory Services
(v) Financial Consultancy
(vi) Stock Broking
(vii) Asset Management
(viii) Venture Capital
(ix) Custodian Services
(x) Factoring
(xi) Credit Rating Agencies
(xii) Leasing and Finance
(xiii) Housing Finance
(xiv) Forex Broking
(xv) Credit Card Business
(xvi) Money Changing Business
(xvii) Micro Credit
(xviii) Rural Credit

However there are conditions attached:

Para 6.2.18.8.2 of the FDI Policy prescribes the following conditions for such inflow of FDI under the automatic route in those types of NBFCs.

1. Investment would be subject to the following minimum capitalisation norms:

- US $ 0.5 million for foreign capital up to 51% to be brought upfront.
- US $ 5 million for foreign capital more than 51% and up to 75% to be brought upfront.
- US $ 50 million for foreign capital more than 75% out of which US $ 7.5 million to be brought upfront and the balance in 24 months.
- NBFCs (i) having foreign investment more than 75% and up to 100%, and (ii) with a minimum capitalisation of US $ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. The minimum capitalization condition as mandated by paragraph 3.10.4.1, therefore, shall not apply to downstream subsidiaries.
- Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.
- Non-Fund based activities: US $0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:
  It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.

  Note: The Following activities would be classified as Non-Fund Based activities:

  1. Investment Advisory Services
  2. Financial Consultancy
  3. Forex Broking
  4. Money Changing Business
  5. Credit Rating Agencies

- This will be subject to compliance with the guidelines of RBI.

  Note:

  - Credit card business includes issuance, sales, marketing and design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards, etc.

- Leasing and Finance covers only financial leases and not operating leases. FDI in operating leases is permitted up to 100% on the automatic route.

2. The NBFC will have to comply with the guidelines of the relevant regulator/s, as applicable.

Approval Route

Please note that in other types of NBFCs or in cases of the above types of NBFCs without meeting any of the conditions prescribed above, FDI is not altogether prohibited as NBFC sector does not appear under the sectors in which FDI is totally not allowed at all as per the FDI Policy. Therefore if any NBFC is desirous of receiving FDI, the first thing it has to see is whether it comes under the automatic route or not. In case it does not come, application can be made to FIPB in DIPP of the Ministry of Industry of the Government of India showing whether it is case of a different type of NBFC where FDI is not allowed under the automatic route or a case where though FDI comes under automatic route one or more of the prescribed conditions could not be met.

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