

CLIENT ALERT

GOVERNMENT APPROVES CONDITIONAL FDI IN LIMITED LIABILITY PARTNERSHIPS

In Brief

On May 20, 2011, the Government of India reviewed the extant policy on foreign direct investment (“**FDI**”) and decided to permit FDI in limited liability partnership (“**LLP**”) firms, subject to specified conditions. The LLP route though will still remain closed to foreign institutional investors and foreign venture capital investors. LLPs will also not be permitted to avail external commercial borrowings.

The changes made are to come into immediate effect and will be incorporated in the next Circular on Consolidated FDI Policy to be issued on September 30, 2011.

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BACKGROUND

The Government has, vide an amendment to the Consolidated FDI Policy 2011 provided for FDI to be allowed in LLPs, through the Government approval route only in those sectors or activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance related conditions (such as NBFCs, or Development of Townships, Housing, Built-up infrastructure and construction-development projects, etc).

OWNERSHIP AND MANAGEMENT OF LLPs

In case the LLP with FDI has a body corporate as a designated partner (or nominates an individual to act as the designated partner), the body corporate should be a company registered under the Companies Act and not any other body, such as an LLP or a trust. For such LLPs, the designated partners "*resident in India*" (as defined under the LLP Act, 2008) would also have to satisfy the definition of "*person resident in India*", under Section 2(v) (i) (A) & (B) of the Foreign Exchange Management Act, 1999.

The designated partners will be responsible for compliance with the conditions stated above and shall be liable for all penalties imposed on the LLP for their contravention, if any.

CONVERSION OF COMPANY WITH FDI INTO LLP

Conversion of a company with FDI into an LLP will be allowed only if the all the above stipulations are met and the approval of Foreign Investment Promotion Board (FIPB) is obtained.