

FOREIGN DIRECT INVESTMENT IN LIMITED LIABILITY PARTNERSHIP¹

I. BACKGROUND

Limited Liability Partnership (LLP) offers a *corporate structure* for doing business which combines the *Organizational Flexibility* and *Tax Status of Partnership Firm* with advantage of *Limited Liability* and Perpetual Succession pertaining to Company. Introduced under **LLP Act 2008**, this new structure bridges the gap between business forms such as Proprietorship/ Partnership firms and Limited Liability Companies.

Ambiguity on permissibility of Foreign Direct Investment (FDI) in a Limited Liability Partnership (LLP) has been a significant hindrance in the feasibility/viability of this structure for doing business in India. To address this hindrance subsequent to detailed discussion between relevant Regulatory Authorities, **Cabinet Committee on Economic Affairs ('CCEA')** issued a [press release on 11th May 2011, proposing the regulatory outline permitting FDI in LLP](#).

The key points of this proposal are listed hereunder:

II. HIGHLIGHTS OF THE PRESS RELEASE

A. FDI In LLPs

FDI in LLPs will be implemented in a calibrated manner, subject to the following **conditions**:

1. All FDI in LLPs would be permitted only through the Government Route and thereby shall require a prior approval from the Foreign Investment Promotion Board ('FIPB').
2. FDI in LLPs will be allowed ONLY in those sectors/activities where 100% FDI is permitted, under the automatic route, as per the existing Consolidated Foreign Direct Investment Policy ("FDI")¹ issued by the Department of Industrial Policy and Promotion ('DIPP'), effective April 1, 2011 which governs FDI in India, and further there Should be no FDI-linked performance related conditions².

¹ Circular 1 of 2011, dated March 31st 2011

² Clarification with respect to 'FDI-linked performance related conditions' is awaited in a formal notification by DIPP

3. LLPs with FDI is not allowed to operate in agricultural/plantation activity, print media or real estate business.
4. LLPs with FDI will not be eligible to make any downstream investments.
5. An Indian company, having FDI, will be permitted to make downstream investment in LLPs only if *both*
 - o the company and LLP are operating in sectors where 100% FDI is allowed, through the automatic route and
 - o there are no FDI-linked performance related conditions.
6. Foreign Capital participation in the capital structure of the LLPs will be allowed only by way of cash considerations, through normal banking channels, or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.
7. Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted to invest in LLPs.
8. LLPs will also **not be permitted to raise External Commercial Borrowings (ECBs) as a source of capital**

B. Operation and Management Of LLPs

1. Under the LLP Act, one of the designated partners needs to necessarily be a resident of India. The press release requires that such residential status of the designated partner is in accordance with the meaning of '*person resident in India*' as defined under Foreign Exchange Management Act 1999 ("FEMA").
2. In case the LLP has a body corporate as a designated partner, the **body corporate should only be a company registered in India under the Companies Act** and not any other body, such as an LLP or a trust.

C. Conversion Of A Company With FDI Into An LLP

- **Prior approval of FIPB/Government** is required for conversion of a company with FDI into an LLP.

D. Responsibility For Compliances

- The *designated partners* will be responsible for compliance with the above conditions and liable for all penalties imposed on the LLP for their contravention.

III. CONCLUSION

The said proposal by CCEA is expected to be formally notified by DIPP which is further expected to clarify certain key aspects like **FDI-Linked performance related conditions**, *et al.* This proposal is expected to further the objective of introducing LLP in India and to provide a beneficial platform for the Small and Medium sector industries.

All other terms for incorporation and operation of a LLP shall continue to be governed by the LLP Act, 2008 and LLP Rules, 2009 as issued by Central Government.

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¹ Source: Press Release dated 11 May 2011 issued by Cabinet Committee on Economic Affairs, Government of India.