



India: Update on Single Brand Retail Trading Sector

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The Government, through the Ministry of Commerce & Industry, Department of Industrial Policy and Promotion, has approved certain amendments to the Consolidated Foreign Direct Investment Policy of 2017 which affect, amongst others, the Single Brand Retail Trading sector ("**Amendment**"). The key provisions of the Amendment with respect to the 'Single Brand Retail Trading' ("**SBRT**") sector have been highlighted herein below:

Amendment

The Amendment permits 100% Foreign Direct Investment ("**FDI**") under automatic route in the entities operating in the SBRT sector, subject to certain conditions. Earlier, the FDI Policy only permitted 49% FDI under the automatic route in the SBRT entities and such SBRT entity required a government approval for receiving any FDI beyond 49%.

In addition to the earlier conditions, the Amendment now permits a SBRT entity having FDI beyond 51%, to set off its incremental sourcing of goods from India for global operations during the initial 5 years, beginning April 1 of the year of opening of the first store against the mandatory sourcing requirement of 30% of purchases from India. The 'incremental sourcing' would mean the increase in INR terms of value of global sourcing from India for that single brand in a particular financial year from India over the preceding financial year, by the non-resident entities, either directly or through their group companies. After the completion of the 5-year period, the SBRT entity is required to meet the 30% domestic sourcing norms directly towards its India operation, on an annual basis. The introduction of this new condition provides flexibility for global SBRT entities setting up its operations in India allowing them to establish their stores in India, understanding the Indian markets before having to comply with the mandatory sourcing requirements for its India operations.

Further, the Amendment has done away with the process of the investing entity providing copy of licensing/franchise/sub-license agreement to the Reserve Bank of India (for investments under automatic route) or to the competent authority (for investments under the Government approval route) specifically ensuring compliance by the SBRT entity of the condition that the non-resident entity or entities (whether owner of the brand or otherwise) shall only undertake 'single brand' product retail trading in India for the specific brand. This eases the process of setting up SBRT entity in India either directly or through a legally tenable agreement with the entity owning the brand.

Conclusion

The recent Amendment further liberalizes FDI in SBRT sector and would lead to further impetus to the SBRT market. The secondary markets and retail trade associations have looked at this development in positive light. However, this Amendment does not provide the much-required clarity regarding SBRT entities retailing sub-brands under the umbrella of the 'Single Brand'. While there have been certain global SBRT entities that have been under the scrutiny of the Government for selling products under sub-brand of its global brand, this issue may require clarity soon as there have been news of global brands investing in or completely acquiring other SBRT entities.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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