



## KEY CHANGES IN THE MAJOR SECTORS OF FDI AND THEIR BENEFITS

Recently Department of Industrial Policy & Promotion (“DIPP”) and Ministry of Commerce and Industry, introduced a number of Amendments to the extant Foreign Direct Investment (FDI) Policy (“Policy”) of India (“Amendment(s)”). The underlying objective behind the Amendments was to liberalize the policies further, to enhance the understanding and provide clarity with respect to the policies in order to ease the way of doing business in India. This was done with a view to larger FDI inflows thus contributing to growth of investment, income and employment. This Article will analyze few such Amendments: -

### ❖ **100% FDI for Single Brand Retail Trading (SBRT) through Automatic Route:**

This Amendment allows 100% FDI through the automatic route (as compared to earlier up to 49% through automatic route and beyond 49% through Government Approval route), allowing investors to enter into Indian markets without the approval of Government or Reserve Bank of India (RBI). The Amendment also permits SBRT entities to set off its incremental sourcing of goods from India for global operations during initial 5 years. Earlier, Investors were required to source 30% of the value of goods purchased for their Indian businesses through local sources. After completion of this 5 year period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards its India’s operation, on an annual basis.

### ❖ **100% FDI under Automatic Route in Construction Development with respect to Real Estate Broking Services:**

This Amendment clarifies that a real-estate broking services shall not mean a real estate business and hence FDI up to 100% under the automatic route has been permitted in Real-Estate Broking Services. The Amendment shall enable international brokerage companies to invest in Indian companies and also set up their own subsidiaries making the real-estate broking services segment a more organized segment. The Amendment will also help in the ease of doing business in India with respect to the real estate sector. FDI gains more importance with respect to the foreign investment in the sector as the infusion of funds through other modes like External commercial Borrowings (ECBs) and Foreign Currency

Convertible Bonds (FCCBs) for raising funds for investment into real estate has not been allowed.

### ❖ **Foreign Airlines are allowed to invest up to 49% through Government Approval Route in Air India Limited:**

This Amendment was said to be proposed in order to revive Air India. The extant FDI Policy allowed foreign airlines to invest in Indian companies operating scheduled and Non-Scheduled Air Transport services, up to 49% of their paid-up capital under the Government approval route. However, this provision was not applicable to Air India, implying that Foreign Airlines could not invest in the National Carrier. But this move by the Government to work on the modalities for strategic disinvestment of the loss-making Air India, now allows foreign airlines to invest in Air India also under two conditions that (a) the investment by shall not exceed 49 % either directly or indirectly and (b) that the substantial ownership and control of Air India shall continue to vest in India. This will certainly attract more bidders in Air India.

### ❖ **FII/FPIs allowed investing in power exchanges through primary market:**

Earlier, the Policy provided for 49% FDI under automatic route in power exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010. However, FII/FPI purchases were restricted to the secondary market only. The recent Amendment allows investing in primary market as well. This may be a step forward, as it will raise money and gain from international technology as well as open up the option of private placement offerings for FPI/FII.



❖ **Changes in FDI Policy on Pharmaceuticals Sector with respect to definition of ‘Medical Devices’:**

The Amendment seeks to clarify the definition of ‘Medical Devices’ and removes the references to the Drugs and Cosmetics act, 1940 from the FDI Policy. The government has decided to expand the scope of FDI by allowing a wide range of items that can attract up to 100% FDI through the automatic route, in the case of medical devices. This Amendment may prove to be beneficial for the health services sector as India may now get access to modern equipment and machineries.

❖ **Issue of Shares for Non-cash Consideration:**

The Amendment allows issuance of equity shares for non-cash consideration such as pre-incorporation expenses, purchase of machinery, etc. through automatic route in those sectors/activities where FDI through automatic route is allowed, in contrast to the extant FDI policy wherein issuance of equity shares against non-cash consideration was permitted only through Government Approval Route.

❖ **FDI in Investment/ Holding Companies:**

The Amendment seeks to liberalize the FDI Policy for Investing Companies and Core Investing

Company (“CIC”) up to 100% under automatic route, provided the activities are regulated by any financial sector regulator. Earlier, FDI into an Indian company, which was involved only in investing in the capital of other Indian companies/limited liability partnerships and in CICs was allowed up to 100% only with prior Government approval.

❖ **Joint Audits by Indian Investee Companies Receiving FDI:**

The Amendment pertains to stipulate ‘Joint Audits’ of Indian investee Companies receiving foreign investment wherein the foreign investors are required to specify an audit firm having international network and another audit firm that does not belong to the same network for carrying out ‘Joint Audits’. Previously, the FDI Policy did not have any provision with regard to the specification of auditors appointed by the Indian Investee Companies receiving foreign investments. The DIPP has introduced this Amendment to allow domestic firms to grow, as compared to earlier, wherein only the big four firms or Indian firms that were part of foreign investor’s network were given the opportunity to carry out audits.

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## HIGHLIGHTS OF THE NEGOTIABLE INSTRUMENTS AMENDMENT BILL, 2017

In a bid to promote cash-less economy and quick prosecution of cheque bounce cases, the Negotiable Instruments Bill, 2017 was introduced in the Lok Sabha. The Amendment aims to prevent long-drawn litigations in cheque bounce cases and boost trade and commerce. It allows the lending institution, including banks, to continue to extend financing of the economy, without the apprehension of loan default on account of bouncing of a cheque.

❖ **Objective of the Negotiable Instruments Act, 1881**

The underlying objective behind the Negotiable Instruments Act, 1881 was to simplify and legalize a system to pass financial instruments from hand to hand through negotiation. Negotiable Instruments have been rooted into the then Mercantile Law which aimed to provide an easy mode for payment

of money by endorsement or delivery of these financial instruments. Negotiable Instruments have been used in the commercial world for a long period of time as a convenient mode of transferring money, cheque being the most prominently used instrument. However, due to fall of moral standards, the cheques issued, had started to lose their credibility by not being honoured. The delay in use of cheques had



shaken the faith of traders in use of cheques as a reliable negotiable instrument. Moreover, injustice was caused to the payee of a dishonoured cheque who has spent a considerable amount of time and resources in court proceedings to realize the value of the cheques, compromising the sanctity of cheque transactions. Thus, Section 143 was inserted via Amendment to the Negotiable Instrument Act, 1881 in 2002 intending to achieve speedy trial of cheque bounce cases (“**Amendment**”).

## ❖ Need for an Amendment

The said Amendment has been proposed to address and comply with the main objective of the Negotiable Instruments Act, 1881 i.e. to allow speedy disposal of cases relating to dishonour of cheques. The proposed Amendments will aid in avoiding frivolous and unnecessary litigations and to address the issue of undue delay in final resolution of cheque dishonour providing relief to payees of dishonoured cheques. Most importantly, the Amendments aim to strengthen the credibility of cheques as a financial instrument. This will benefit those in the trade and commerce sector especially the MSME sector by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

## ❖ Features of the Amendment

**a. Power of the Court to direct Interim compensation under Section 143(A):** The new Bill empowers the Court trying an offence under Section 138, to order the drawer of the cheque to

pay interim compensation to the complainant in a summary trial or a summons case where the drawer pleads not guilty and in any other case, upon charges being framed, within sixty days from the date of the order. However, the compensation shall not exceed more than 20% of the amount of the cheque. Further, if at a later stage, the drawer of the cheque is acquitted, the court shall direct the complainant to repay the amount of the interim compensation with interest to the complainant within Sixty days from the date of the order. This interim compensation shall be recovered as fine under Section 421 of the CrPC. However, the amount of fine paid under Section 138 of the CrPC, shall be reduced by the amount paid or recovered as interim compensation under section 143(A).

**b. Power of the Appellate Court to order payment of against conviction in case of pending Appeal under section 148:** In case the drawer files an appeal against the conviction, the Court may direct the appellant to deposit a sum amounting to a minimum of 20% of the fine or compensation awarded by the trial court, in addition to any interim compensation paid by the appellant under Section 143(A), to be deposited within 60 (sixty) days from the date of the order. The Court has the power to direct release of the amount deposited anytime during pendency of the Appeal, however in case of Acquittal of the Appellant the Court shall direct the Complainant to repay the amount released with interest to the Appellant.

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## LEX REVISERS

### - India Signs Advance Pricing Agreements with the Netherlands:

The Central Board of Direct Taxes (India) signed a bilateral Advance Pricing Agreement (“APA”) with Netherlands pertaining to the electronics and technology sectors, majorly covering transactions like distribution, providing business and market support services. The APA Scheme strives to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance. The scheme also includes “Rollback” provisions under the Income Tax Act, 1961 for the settlement of transfer pricing disputes and strengthens the Government's resolution of fostering a non-adversarial tax regime.

### - Consumer Protection Bill Introduced in Lok Sabha:

The Consumer Protection Bill, 2018, was introduced in Lok Sabha to address the constantly emerging vulnerabilities of consumers and protect them from unfair/unethical trade practices. The bill seeks to incorporate stricter provisions to regulate misleading advertisements, keep a check on adulteration, penalties by way of fine or imprisonment and “mediation” as an Alternative Dispute Redressal Mechanism for resolving disputes. The bill seeks to encourage effective administration by establishing “Central Consumer Protection Authority” (CCPA) which will have the power to intervene whenever necessary to prevent consumer detriment arising from unfair trade practice and to initiate class action including enforcing recall, refund and return of products.

### - Customs Duty Raised on Electronic Goods: A Boost to promote Make in India Initiative:

To foster the national initiative of Make in India, and in order to boost local manufacturing and give the manufacturers cost advantage over imports, further creating employment opportunities, Central Board of Excise and Customs has recently hiked Custom Duty on various electronic products including mobile phones, microwave ovens and cameras. It may also encourage foreign consumer durable companies to manufacture products in India rather than import from other countries. Imported smart phones will cost more with customs duty on them being increased to 15% from nil now whereas the duty on the set top boxes has been increased to 20%. The microwave ovens are also expected to rise by 5-7%. Customs duty on lamps and lighting fittings including searchlights and chandeliers has been doubled to 20% while the same on electricity meters has been increased from 10% to 15%.

### - Clarification regarding the definition of “Startup” under the Patent Amendment Act, 2017:

The Department of Industrial Policy and Promotion has amended the definition of “Startup” under section 2(fb) of the Patent Amendment Rules, 2017 as “*Startup means (a) an entity in India recognized as a startup by the competent authority under Startup India Initiative (b) In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation/registration as per Startup India Initiative and submitting declaration to that effect.*” The Amendment seeks to clarify the confusion with respect to the eligibility of the period of incorporation/registration of an entity. As per the Amendment, the definition accepted by the Startup India Initiative shall be applicable now with respect to the period of incorporation/registration of an entity i.e. an entity, incorporated or registered in India not prior to 7 years shall be eligible for startup, as compared to the earlier patent rules 2016, which had the eligibility of 5 years.



- **Geographical Indication for Rasogulla- West Bengal true owners:**

The West Bengal's Rasogulla has finally won the two years long claim for GI of the sweet Rasogulla against Odisha. A geographical indication tag is awarded to a specific geographical place of origin of an agricultural, natural or a manufactured cultural which possess qualities or a reputation that are due to that origin. This tag helps monetarily and also to help recognize their work in the domestic and international markets. The Geographical Indication (GI) tag authorities concluded that the traditional iconic sugar-boiled sweet, famously known as "Roshogolla", originated in Calcutta, by confectioner Nabin Chandra Das (a 19-century sweet maker back in 1868).

- **GST Council Revises Rates For 29 Goods, 53 Services Categories:**

The GST Council has recommended reduction in GST on several goods and services, including second-hand motor vehicles and drinking water. The Council has also suggested simplifying the procedure for filing of returns for businesses marking a step ahead in the GST regime.

- **Company Incorporation fees slashed:**

Ministry of Corporate Affairs has announced that it would charge 'zero fee' for incorporation of all companies with authorised capital of up to Rs. 10,00,000/- (Rupees Ten Lakhs), among its other initiatives to simplify the company incorporation process.

- **Insolvency and Bankruptcy Amendment Bill passed by the Parliament:**

The Amendment replaces the ordinance passed earlier on the same accord. It bars wilful defaulters from participating in the resolution process unless they have paid their dues within a month. It also allows asset reconstruction companies, alternative investment funds and banks to participate in the bidding process.

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