Cornellia Chambers

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SOME FREQUENTLY ASKED QUESTIONS ON FOREIGN INVESTMENT

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1. Is there a minimum investment requirement for a foreign investor?

   Minimum Capitalisation requirement: As per the foreign investment regime, there may be a requirement of 'minimum capitalisation' depending upon the sector in which foreign investment in equity or equity linked securities are to be made.

   For example, foreign investment in 'Other Financial Services' activities are subject to conditionalities, including minimum capitalization norms, prescribed by the financial sector regulators such as Reserve Bank, Securities and Exchange Board of India, National Housing Bank etc. The term 'Other Financial Activities' means financial services activities regulated by the financial sector regulators.

   On a first blush, we did not find any 'minimum capitalisation requirements' for investment in the manufacturing sector. However, depending upon the kind of manufacturing sector into which foreign investment is proposed to be made, there may be 'minimum capitalisation' requirements. We can analyse this with accuracy once there is more clarity about the sub-sector (in the manufacturing space) in which the foreign investment is being proposed.

   Convertible Notes: As per the foreign investment regime, a foreign investor interested in purchasing 'Convertible Notes' issued by a government-recognised Indian Start-Up Company is required to purchase Convertible Notes for an amount of at least twenty five lakh rupees (INR 25,00,000) or more in a single tranche.

   Minimum Investment requirements for investment into Indian Alternative Investment Funds: There are minimum investment requirements for making investment into different kinds of Alternative Investment Funds. For example, Alternative Investment Fund regulations require an angel fund to accept an investment of not less than Rupees Twenty Five lakh (approx. USD 35,206) from an angel investor, for up to a maximum period of five (5) years.

   Please note that the minimum investment requirements discussed above are not exhaustive.

2. Are there any foreign investment control/registration requirements?

   Under the foreign investment regime, investment can be made into prescribed capital instruments (primarily equity and equity linked instruments) through the 'automatic route' or the 'government route'. The foreign investment regime allows foreign investment through the 'automatic route' into permitted sectors and up to permitted 'sectoral caps' (i.e, 'Sectoral Cap' is treated as the composite limit for investment into an investee Indian company or Indian LLP). Any foreign investment proposed to be made in sectors other than permitted sectors and beyond permitted sectoral caps will require 'government approval'. 'Automatic route' means the entry route through which investment by a person resident outside India does not require the prior approval from the Reserve Bank of India or Government. 'Government route' means the entry route through which investment by a person resident outside India requires prior Government approval.

Similarly, as per the external commercial borrowing regime, an external commercial borrowing can also be raised by an Indian company under the 'automatic route' or the 'government route'. Broadly, for an Indian company to raise an external commercial borrowing beyond a certain threshold will also require a 'government approval'.

Furthermore, in order to make an investment in India as a Foreign Venture Capital Investor **("FVCI")** or a Foreign Portfolio Investor ("**FPI**"), the foreign entity is required to obtain a registration from the Securities and Exchange Board of India as per the Indian FVCI regulations and FPI regulations respectively. Further, the FPI and FVCI are permitted to make investments in accordance with the FVCI regulations and FPI regulations.

3. Are there any costs for making the investment?

   There could be additional costs such as stamp duty costs on transactional documents and costs related to government approvals/registrations (depending on the strategy and route adopted for making foreign investment into India).

4. Is it possible for the foreign investor to bring back the return of the investment either as dividends, liquidation events or debt and interest pay back?

   Yes, under the foreign investment regime, generally returns on foreign investments are repatriable (net of applicable taxes) where investment is made on 'repatriation basis'; except in cases where the investment is made or held on non-repatriation basis. 'Investment on repatriation basis' means an investment, the sale/ maturity proceeds of which are, net of taxes, eligible to be repatriated out of India.

5. Will the return of the investment be taxable?

   Yes, all returns on foreign investment repatriated out of India, are required to be done so subject to applicable taxes.

6. Does the foreign investor need to have a permanent establishment or office in India?

Broadly speaking, the foreign investment regime does not require a foreign investor investing in equity or debt instruments to have a presence in India in terms of an office or a permanent establishment in India.

7. Is there anything one should keep in mind while investing in a non-governmental organisation?

   If a foreign investor is interested in investing in a non-profit organisation, it is important to at least make sure of the following: (i) if the target non-profit organisation has a proper registration / approval (depending upon the kind of non-profit entity it is); and (ii) whether the non-profit holds a registration certificate under the Foreign Contribution Regulation Act.

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