



## LATEST STATUTORY SNAPSHOT

MONDAY, 1<sup>ST</sup> DECEMBER 2019



### **FOREIGN DIRECT INVESTMENT IN CONTRACT MANUFACTURING CONTINUES TO BE UNDER APPROVAL ROUTE**

The Central Government has been promoting various measures for ease of doing business and for attracting investments in the manufacturing sector. Further, the Central Government has been providing many a fillip for Foreign Direct Investment (FDI) in manufacturing sector through liberalizing the FDI Policy from time to time.

As a major impetus to the manufacturing sector, the Ministry of Commerce and Industry vide Press Note No.4 (2019 Series) dated 18<sup>th</sup> September, 2019 provided amendment to the FDI Policy (Circular of 2017 effective from 28<sup>th</sup> August, 2017) inter alia as under:

"Subject to the provisions of the FDI policy, foreign investment in 'manufacturing' sector is under automatic route. Manufacturing activities may be either self-manufacturing by the investee entity or contract manufacturing in India through a legally tenable contract, whether on Principal to Principal or Principal to Agent basis. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/ or retail, including through e-commerce, without Government approval."

Hence by virtue of the above amendment, FDI in the manufacturing sector will include contract manufacturing also. However, the said Press Note No.4 (2019 Series) states that aforesaid amendment to FDI Policy will take effect from the date of notification under the Foreign Exchange Management Act, 1999 (FEMA).

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In the meantime, Ministry of Finance (Department of Economic Affairs) vide its Notification dated 17<sup>th</sup> October, 2019 has notified the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 (“new Rules”). The new Rules are in supersession of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

It is pertinent to note that the new Rules replaces an erstwhile Regulations notified under Section 47 of FEMA by RBI. Hence there seems to be a tangent shift in the Central Government assuming the Rule making power under Section 46 of FEMA with regard to FDI in contrast to RBI which notified Regulations for FDI under Section 47 of FEMA, earlier.

Further, the new Rules does not include the amendments proposed under Press Note No.4 (2019 Series) permitting FDI under automatic route in contract manufacturing sector. Hence it appears that despite the Press Note No.4 (2019 Series) being in place, the Central Government has not thought it fit to either notify the same or include the contract manufacturing under the manufacturing sector under the new Rules for FDI.

**Hence, it appears that contract manufacturing is still not under automatic route for FDI. Entities which have plans to accept FDI for contract manufacturing have to either wait until Central Government amends the new Rules to incorporate the provisions of Press Note No.4 (2019 Series) or seek approval of the Ministries/Departments concerned in consultation with the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce, Government of India.**

**Hence despite Press Note No.4 (2019 Series) and the new Rules, FDI for contract manufacturing continues to be under ‘Approval Route’.**

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