

## **FDI POLICY IN DEFENCE: REGULATIONS AND PROCEDURE**

As per '**Consolidated FDI Policy**' of Jun 2016 (Press Note 5) Foreign Investment in Defence Industry is subject to Industrial license under the Industries (Development & Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959 up to 100% FDI Cap. According to the revised guidelines FDI up to 74 % is allowed through automatic route and above 74 % under government route wherever it is likely to result in access to modern technology or for other reasons to be recorded.

### **1) Conditions/Prerequisites to be fulfilled prior seeking FDI approval in Defence sector:**

- Investee company should be structured to be **self-sufficient in areas of product design and development**
- License applications will be considered and licenses given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs
- Infusion of **fresh foreign investment** within the permitted automatic route level, in a **company not seeking industrial licence**, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will **require Government approval**.
- Foreign investment in Defence sector is subjected to approval of Ministry of Home Affairs and guidelines issued by the Ministry of Defence in this regard.

### **2) Governing Laws and Regulations regulating FDI proposal approval in Defence Sector**

- FEMA Act, 1999
- Industries (Development & Regulation) Act, 1951
- Manufacture of small arms and ammunition under the Arms Act, 1959 and rules framed therein.

### **3) Competent Authority to approve FDI proposal in Defence Sector.**

- DPIIT (Department for Promotion of Industry and Internal Trade)
- Department of Defence Production, Ministry of Defence (Items requiring Industrial Licence under the Industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DIPP)
- Ministry of Home Affairs ( In case of Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959)
- Cabinet Committee of Economic Affairs (In case of FDI investment beyond Rs. 5000 Crores).

#### **4) Procedure for seeking Government approval to make foreign investment in Defence sector**

The following procedure is adopted for approving FDI proposal

- ★ **Online submission of FDI proposal** at single window Foreign Investment Facilitation Portal (FIFP) along with required documents.
- ★ **Submission of hard-copy** of application for seeking FDI proposal approval along with copy of the required submitted documents within 5 days (extendable up-to 7 days) on the request of Department for Promotion of Industry and Internal Trade (DPIIT).
- ★ **DPIIT assigns the matter within two days to the Department of Defence Production, Ministry of Defence.** In addition to this, FDI proposal is also circulated online within two days to RBI for seeking its review from FEMA perspective.
- ★ DPIIT will give its comment within 4 weeks in case proposed **investment to be made from Pakistan, Nepal, China and Bangladesh**, which requires **clearance of Ministry of External Affairs**, who will give its comment within 6 weeks. MEA may request to the applicant to other useful information/Clarification and he has to do so within 1 week.
- ★ Ministry of Home Affairs will give its approval within 6 weeks in case FDI to be made in the Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959
- ★ In case of **foreign equity inflow is more than Rs. 5000 Crore**, the competent authority is required **to place the same to Cabinet Committee on Economic Affairs** for consideration within fixed time limit.
- ★ DPIIT has to **communicate its final decision of approving or rejecting FDI Proposal** to the applicant within 8-10 weeks after getting required comments from the **Department of Defence Production, Ministry of Defence**. In case the competent authority rejects the FDI proposal, a period of two weeks is provided to DPIIT for additional consideration on the same and decides on the proposal.