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FDI in E-commerce - Marketplace Model is here to stay!

The Department of Industrial Policy & Promotion has vide a press note dated 29th March 2016 (the **"Press Note"**) allowed 100% FDI under automatic route in online retail of goods and services with certain key conditions. This FYI provides a brief overview of the changes and its impact.

1) *Position prior to the Press Note for FDI in B2C*

Prior to the issuance of the Press Note, FDI up to 100% under automatic route was permitted only in Business to Business (B2B) e-commerce and 100% FDI in Business to Consumer (B2C) e-commerce was permitted only for the following:

(a) a manufacturer to sell its products manufactured in India through e-commerce retail;

(b) a single brand retail trading entity operating through brick and mortar stores; and

(c) an Indian manufacturer selling its own single brand products through e-commerce retail, provided, it manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers.

2) *Position following the Press Note*

100% FDI under automatic route in online retail of goods and services under the 'Marketplace based model' has now been allowed.

Marketplace v. Inventory based model

The Marketplace based model of e-commerce has been defined to mean the model through which an e-commerce entity provides information technology platform on a digital and electronic network and acts merely as a facilitator between buyer and seller. The Inventory based model of e-commerce has been defined to mean the model where the inventory of goods and services is owned by an e-commerce entity and is sold to the consumers directly. FDI in Inventory based model is not permitted.

Key Conditions

The Press Note lays down certain key conditions while allowing 100% FDI in an e-commerce entity engaged in the Marketplace model:

(a) The e-commerce entity providing marketplace/platform will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field;

(b) The e-commerce entity will need to cap the total sales originating from one vendor or its group companies at 25%;

(c) The e-commerce entity will not exercise ownership over the inventory/goods sold through it's marketplace/platform;

(d) The goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller and the post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller, however, support services like warehousing, logistics, etc. can be provided by the e-commerce entity; and

(e) Any warranty/guarantee of goods and services sold will be responsibility of the seller; etc..

3) ***Impact:***

The Press Note has clarified the position on FDI in e-commerce however, certain key conditions in the Press Note (particularly, one relating to cap of sourcing not more than 25% from a single vendor or its group companies) may hit the existing marketplace structures.

Further, conditions like 25% cap on sale by one vendor or its group companies, along with other conditions of requirement of a marketplace entity to not, directly or indirectly, influence the pricing of goods/services and conditions relating to ultimate responsibility of goods on sellers have the potential to bring the existing marketplace models (flush with foreign funds, which enabled them to offer deep discounts) at par with brick and mortar retailers, thereby allaying their fears. This may force the online market players either refusing certain products or depending on sale forecast pulling off certain products from display - whether this may arise competition law issue is something which time may tell.

While the Press Note is a welcome move in so far as it clarifies the position and sets out conditions with respect to a sector which has been widely discussed – it remains to be seen how the Press Note applies for FDI in an e-commerce entity which is owned and controlled by persons resident in India (given the manner in which the Press Note defines 'e-commerce entity'). Clarification is also required with respect to duration in which calculation of 25% cap on sourcing from a single vendor/group is to be made (whether it's a financial year or otherwise).

If you or your colleagues require any assistance in relation to the above, please do not hesitate to contact, Mr. Aninda Pal; aninda.pal@jclex.com (+91 (22) 67205555); or Mr. Abhinav Surana; abhinav.surana@jclex.com (+91(22) 67205520); Mr. Arunabh Choudhary; arunabh.choudhary@jclex.com (+91 (80) 46698207).

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