



FOREIGN DIRECT INVESTMENT POLICY OF INDIA

SINGLE BRAND RETAIL TRADING AND MULTI BRAND RETAIL TRADING

- **DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION**

The Department of Industrial Policy and Promotion (hereinafter referred to as, “**the DIPP**”) serves as the nodal authority of India for the formulation, updating, and management of the Foreign Direct Investment Policy (hereinafter referred to as, “**FDI Policy**” or “**the Policy**”) of India. The same is based off of the remittance reports received by the Reserve Bank of India.

In recent years, a consistent and undeniable approach has been chosen by the DIPP underlying the premise of further liberalisation of the FDI Policy, by adopting measures directed to open new sectors for FDI, increase the sectoral limit of existing sectors and simplifying other conditions of the Policy. FDI policy reforms are meant to supplement the ease of doing business initiative of the Government and accelerate the pace of foreign investment in India.

- **CONSOLIDATED FDI POLICY CIRCULAR, 2017**

The DIPP released the Consolidated FDI Policy Circular, 2017, effective from August 28, 2017 and superseding all Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on August 27, 2017. As per the consequent amendments to the same, the below detailed is the policy pertaining to Single Brand Product Retail Trading (hereinafter referred to as, “**SBRT**”) and Multi Brand Retail Trading (hereinafter referred to as, “**MBRT**”).

- **SINGLE BRAND PRODUCT RETAIL TRADING**

FDI in SBRT is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

In terms of the Press Note No.1 (2018 Series) released by DIPP (hereinafter referred to as, “**SBRT Sector Amendment**”) effective from January 23, 2018, the Government has liberalised the SBRT sector of the FDI Policy, with 100% FDI under automatic approval route, subject to following conditions:

- (a) Products to be sold should be of a ‘Single Brand’ only;
- (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India;

The condition set out in (b) herein above is not applicable for undertaking SBRT of Indian brands.



- (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing;
- (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake SBRT in the country for the specific brand, either directly by the brand owner or through a legally tenable agreement between the Indian entity undertaking SBRT and the brand owner;
- (e) In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors.
- (f) Subject to the conditions mentioned herein above, a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce; and
- (g) SBRT entity would be permitted to set off its incremental sourcing of goods from India for global operations during initial 5 years, beginning 1st April of the year of the opening of first store, against the mandatory sourcing requirement of 30% of purchases from India. For this purpose, incremental sourcing will mean the increase in terms of value of such global sourcing from India for that single brand (in Indian Rupees terms) in a particular financial year from India over the preceding financial year, by the non-resident entities undertaking BRT, either directly or through their group companies. After completion of this 5 years period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards India's operation, on an annual basis.

Other Key Considerations:

- (a) Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens; and
- (b) Sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store for entities undertaking SBRT of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, provisions of the condition set out in (e) herein above will be applicable.

• **MULTI BRAND RETAIL TRADING**

As per the Consolidated FDI Policy Circular, 2017, the below are the applicable details pertaining to FDI in Multi Brand Product Retail Trading:

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Multi Brand Retail Trading	51%	Government

Subject to Below Conditions:



- (a) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded;
- (b) Minimum amount to be brought in, as FDI, by the foreign investor, would be USD 100 million;
- (c) At least 50% of total FDI brought in the first tranche of USD 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on frontend units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements;
- (d) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding USD 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer, and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of USD 2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis;
- (e) Self-certification by the company, to ensure compliance of the conditions set out herein at (b), (c), and (d) hereinabove, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors;
- (f) Retail sales outlets may be set up only in cities with a population of more than 10 Lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 Kms. around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking;
- (g) Government will have the first right to procurement of agricultural products;
- (h) The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy.



(i) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.

The Article is authored by Palak Sehgal, Associate Advocate, Lex Favios, Advocates & Solicitors

The lawyers at Lex Favios, Advocates & Solicitors are experienced in handling commercial transactions for structuring entry of entities in India under different sectors of the Foreign Direct Investment Policy. If you have questions, queries, or feedback about the subject matter this Article, please give us a call at +91-011-41435188 or email at admin@lexfavios.com.