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PERMANENT RESIDENCY STATUS TO FOREIGN INVESTORS

1. INTRODUCTION

Taking forward its *Make in India* initiative, on August 31, 2016, the Union Cabinet approved the scheme for grant of permanent residency status ("**PRS**") with multiple entry to foreign investors, provided they fulfil certain conditions.

This scheme was reaffirmed pursuant to a press release dated November 29, 2016 though detailed rules regarding this new scheme are awaited.

2. PRS: ELIGIBILITY CONDITIONS

In order to be eligible for PRS, a foreign investor must fulfill the following criteria:

- Bring a minimum of Rs. 10 crores (approximately USD 1.46 million) within 18 months or Rs. 25 crores (USD 3.67 million) within 36 months;
- The foreign investment should result in generating employment for at least 20 resident Indians every financial year;
- The foreign investment needs to comply with restrictions under the FDI Policy;
- The foreign investment must conform to further rules as will be notified by the Government of India.

In addition to the foreign investor bringing in such investment, PRS will also be granted to the spouse or dependents of the eligible foreign investor.

PRS will serve as a multiple entry visa without any stay stipulation. PRS holders will be exempted from registration requirements. PRS will be granted for a period of 10 (ten) years initially, with multiple entry facility. This can be renewed for another 10 (ten) years, if the PRS holder has not come to adverse notice.

PRS holders will be allowed to purchase one residential property for dwelling purpose. The spouse or dependents of the PRS holder will also be allowed to take up employment in the private sector (in relaxation to salary stipulations for employment visa) and undertake studies in India.

3. IMPACT OF THE NEW PRS PROVISIONS

3.1 TAXATION UNDER INDIAN LAWS

A foreign investor with PRS in India, would be treated as an Indian resident, and therefore be subject to taxation under the Income Tax Act in India. The entire global income of such a foreign investor, would thus be taxed in India. Foreign investors would then have to plan their incomes accordingly, prior to availing the PRS scheme.

3.2 FDI POLICY

The conditions under the PRS scheme, are subject to the restrictions under the Consolidated Foreign Direct Policy of India (the "**FDI Policy**"). The FDI Policy also provides for certain rules regarding investment by foreign investors, (for example, minimum capitalization norms, lock-in periods, sectoral caps, and other nuances).

Once the complete rules regarding this new PRS scheme are notified, the foreign investor must ensure that he is in compliance with both the FDI Policy as well as all the rules under the PRS scheme.

IndusLaw View:

While at present the rules regarding resident status are governed by the Income Tax Act, 1961, the new PRS scheme seeks to grant residency status in India to foreigners who bring in specified quantum of investment and fulfil certain other conditions.

Foreign investors who fulfil the eligibility conditions by way of their investment, run the risk of having their global incomes taxed in India. Therefore, they would have to plan their investments into India accordingly.

The success or failure of the new PRS scheme will only become evident, upon notification of the relevant provisions and rules and examining how many foreign investors actually opt for such PRS in India.

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