

**Clarifications - the DIPP - Multi-Brand Retail Trading**

The Department of Industrial Policy & Promotion (DIPP) has clarified the Government's stance on various queries posed by prospective investors in relation to the extant FDI policy ("FDI Policy") on multi-brand retail trading in India. The key highlights of the clarifications issued by the DIPP by circular dated June 6, 2013 are enumerated below:

a) 30% sourcing from Indian 'small industries'

The FDI Policy mandates that at least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian 'small industries'.

In this regard, the DIPP has clarified that a certificate issued by District Industries Centre would qualify as adequate authentication on the status of a supplier as 'small industry'. Further, the sourcing condition is in respect of manufactured and processed products only. Procurement of fresh produce will not fall within this ambit. Moreover, the condition of 30% sourcing from Indian 'small industries' will be considered implemented if such sourcing is made for the front end entity only, i.e. the finished products shall not be sold through cash & carry business nor exported to foreign investor's overseas outlets.

b) 50% investment in back-end infrastructure

The FDI Policy stipulates that at least 50% of total FDI brought in is to be invested in back-end infrastructure within three years of the first tranche of investment.

The DIPP has clarified that such investment should be made in greenfield assets only. The company may be 100% foreign owned. Acquisition of/ investment in existing supply chains/back-end assets or investment in the equity of an existing infrastructure company will not be counted towards the mandatory back-end investment requirement. The DIPP further clarified that the back-end infrastructure company will not be eligible to supply the foreign retailers, such a company may only supply the front-end stores set up by the retailer.

Also, it is clarified that back-end infrastructure companies may be established even in those States that have not approved the FDI Policy for multi-brand retail. It should be noted that the back-end company cannot be in the business of wholesale cash & carry and that investment in back-end infrastructure cannot be aggregated.

c) Front – end stores/ e-commerce

The DIPP clarifies that existing retail stores cannot be acquired and also that a franchise model is not permissible.

It is also clarified that e-commerce in multi-brand retail is prohibited.

d) Discretion of each State

The DIPP observed that investment in multi-brand retail trade is also subject to State laws/regulations and hence State Governments may impose additional conditions. If a State Government is not included in the list supporting FDI in multi-brand retail trade, consent from such State will be sufficient and a suitable amendment will be made to the FDI Policy.

**IndusLaw Quick View:**

*It seems strange that procurement of fresh produce has not been included under the ambit of sourcing requirement from small industry. Including fresh produce procurement with the aforesaid sourcing condition, would have only gone to benefit the local players in this sector. Also, by not allowing the back-end company to supply to foreign retails, we have missed an opportunity for greater exports from our local markets. However, by making it obligatory for the company having FDI in multi-brand retail trading to operate only by company owned outlets and by investing for back-end infrastructure through green field assets only the department has tried to ensure that new infrastructures are created, fresh supply chain and back-end assets established, more employment opportunities generated and the local interconnected markets developed in each city/state that the company decides to operate in. The requirement might look a little cumbersome to the Investors but goes a long way in elaborating the aim with which the government has molded the policy on FDI in multi brand retail trading. Also, the States have been further incentivized to allow FDI in multi brand retail trade, by the department clarifying that they could impose additional conditions while allowing FDI in multi brand retail trade. How the industry reacts to these clarifications is something that we will have to wait and watch.*



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