

NANGIA REGULATORY UPDATE

Government notifies changes in
single brand retail and select
sectors for FDI

September, 2019

Single brand retail trading

1. **Allowing e-commerce trading prior to opening brick and mortar stores**

Prior to the amendment, SBRT entities operating through brick and mortar stores were also permitted to undertake trading through e-commerce. However, with the change, Government has now permitted SBRT entities to undertake retail sales in online mode even prior to opening of their brick and mortar stores. Such relaxation is however limited to a period of 2 years from date of commencement of operations through e-commerce.

2. **Change in the criteria for meeting Local Sourcing Requirements**

In terms of the extant FDI policy, FDI in SBRT is permitted up to 100% under automatic route. For SBRT entities having foreign investments beyond 51%, local sourcing of 30% of the value of goods purchased, was required to be done from India, which needs to be met as an average during the first 5 years and thereafter, on an annual basis. In addition, SBRT entity was permitted to set off its incremental sourcing of goods from India, by SBRT entity or their group companies, for global operations against the mandatory sourcing norms.

To attract further FDI in the SBRT sector, Press Note 4 of 2019 series has relaxed the following conditions in relation to local sourcing:

All procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported. The current limitation of considering exports for sourcing purposes (global sourcing) for 5 years only, has also been removed. Single brand retailers will be allowed to adjust their entire procurement of goods from India (earlier it was on an incremental basis) for global operations for meeting the local sourcing norms. Sourcing of goods from India may additionally be done directly by the entity undertaking SBRT or its group companies (resident or non-resident), or indirectly by through a third party under a legally tenable agreement

CONTRACT MANUFACTURING

In terms of extant FDI policy, FDI in “manufacturing” sector is allowed up to 100% under automatic route. However, there was no specific definition and clarity with respect to the term contract manufacturing. Through Press Note No. 4 (2019 Series), the Government has for the first time clarified that ‘Contract Manufacturing’ is covered within the definition of the Term Manufacturing Activity.

The amendment takes into account that as an investee entity, manufacturing activities may be either self-manufacturing or contract manufacturing in India through a legally tenable contract whether on principal to principal or principal to agent basis. Further, a manufacturer is also permitted to sell its products manufactured in India through wholesale and/ or retail, including through e-commerce, without Government approval.

DIGITAL MEDIA

In terms of extant FDI policy, FDI in Up-linking of ‘News & Current Affairs’ TV Channels under Broadcasting Content Services is permitted up to 49% under the Government approval route. FDI up to 26% is also permitted for print media i.e., publishing of Newspapers and Periodicals dealing with News and Current Affairs. There was however, no clear provision for Uploading / Streaming of News & Current affairs through Digital Media. The Government has, through the amendment in broadcasting content sector, allowed uploading/ streaming of news and current affairs, through digital media up to 26% under approval route.

COAL MINING

The extant FDI Policy permits FDI up to 100% under automatic route for coal and lignite mining for captive consumption by power projects, iron and steel and cement units and other eligible activities permitted under and subject to applicable laws and regulations. Similarly, FDI up to 100% is currently permitted under the automatic route for setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed coal or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing. With the liberalisation, FDI up to 100% is permitted under automatic route for sale of coal, for coal mining activities including associated processing infrastructure subject to applicable laws and regulations. Associated Processing Infrastructure includes coal washery, crushing, coal handling, and separation (magnetic and non-magnetic).

Nangia's Take

The Government of India has been able to further its cause of “Make in India” initiative through the clarity brought under the concept of ‘Contract Manufacturing’ together with relaxation of norms under SBRT. Both these shall together provide a shot in the arm for strategic investors who were waiting to enter Indian markets but were hesitant to make large investments towards infrastructure set up. Further, liberalization in the Coal sector shall also help attract newer foreign companies to the sector while offering respite to companies already in this space. Overall, the move is a welcome step and should lead to an increase in FDI inflows, growth in employment opportunities, as more investors will look forward to setting up operations in India.

About Us

Nangia & Co LLP is a premier professional services organization offering a diverse range of Taxation, Transaction Advisory and Business Consulting services. Nangia & Co LLP has presence currently in Noida, Delhi, Gurugram, Mumbai, Dehradun, Bengaluru, Chennai and Pune. Nangia & Co LLP has been in existence for more than 38 years and has been consistently rated as one of the best advisory firms in India for entry strategy, taxation, accounting & compliances over the past many years.

Quality of our people is the cornerstone of our ability to serve our clients. For this reason, we invest tremendous resources in identifying exceptional people, developing their skills, and creating an environment that fosters their growth as leaders. From our newest staff members through senior partners, exceptional client service represents a dedication to going above and beyond expectations in every working relationship.

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Our Offices

NOIDA

A-109, Sector-136,
Noida (Delhi-
NCR) 201304,
INDIA
T : +91 120 2598000

DELHI

B-27, Soami
Nagar, New Delhi
110017, INDIA
T: +91 120 2598000

GURUGRAM

812-814, Tower B, Emaar
Digital Greens Sector 61,
Gurugram,
Haryana- 122102
T: +0124-4301551/1552/1554

MUMBAI

11th Floor, B Wing, Peninsula
Business Park, Ganpatrao
Kadam Marg, Lower Parel,
Mumbai – 400 013. INDIA
T: +91 22 61737000

DEHRADUN

First Floor, "IDA"
46 E. C. Road,
Dehradun – 248001,
Uttarakhand, INDIA
T: +91 135 271 6300/301
/302/303

BENGALURU

Embassy Square, # 29,
306, 3rd Floor, 148
Infantry Road, Bangalore
– 560001

PUNE

Office number 3, 1st floor,
Aditya, Centeegra, Fergusson
College Road, Next to Mantri
House, Pune - 411004

CHENNAI

Suite 118, 31-A, Cathedral
Garden Road, Nungambakkam,
Chennai-600034
T: +91-44-40509200