The Essence of Press Note 18/1998 & 1/2005 (Joint Ventures in India)

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GUIDELINES PERTAINING TO APPROVAL OF FOREIGN/TECHNICAL COLLABORATIONS UNDER THE AUTOMATIC ROUTE WITH PREVIOUS VENTURES/TIE-UP IN INDIA

A SYNOPSIS


The Government having a rather protective and conservative frame of mind with respect to foreign investments had decided that foreign financial/technical collaborators with previous ventures/tie-up in India would be subjected to certain stringent guidelines. The essence of those guidelines is reproduced below:

I) Automatic route for Foreign Investment (FDI) and/or technology collaboration was not made available to those who had any current or previous joint venture or technology transfer/trade-mark agreement in the same or allied field in India. Necessary declarations were therefore required to be stipulated to the Reserve Bank of India (RBI), before applications for the automatic route were to be taken on record.

II) Investors of Technology to the suppliers of the above category therefore had to necessarily seek the Foreign Investment Promotion Board (FIPB) / Project Approval Board (PAB) approval route for joint ventures or the technology transfer agreements (including trade-mark) giving details as to the reasons and requirements to set-up a new joint venture/enter into new technology transfer (including trade-mark).
III) The onus was clearly put on such foreign investors/technology suppliers to provide the requisite justification as also proof to the satisfaction of FIPB/PAB that the new proposal would not in any way jeopardize the interests of the existing Indian joint venture or technology/trade-mark partner or other stakeholders. It would be at the sole discretion of FIPB/PAB to either approve the application with or without conditions or reject, duly recording the reasons for doing so.

2005: Press Note 1 (2005 Series)

The Government becoming more investor friendly with the efflux of time reviewed the guidelines notified vide Press Note 18 (1998 series) and amended certain versions. The essence of those amendments is reproduced below.

I) Prior approval of the Government would be required only in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement in the ‘same’ field.

II) The onus to provide requisite justification as also proof to the satisfaction of the Government that the new proposal would or would not in any way jeopardize the interests of the existing joint venture or technology/ trademark partner or other stakeholders would lie equally on the foreign investor/ technology supplier and the Indian partner.

III) Even in cases where the foreign investor has a joint venture or technology transfer/ trademark agreement in the 'same' field prior approval of the Government will not be required in the following cases:

- Investments to be made by Venture Capital Funds registered with the Security and Exchange Board of India, (SEBI), or
• Where, in the existing joint-venture investment by either of the parties is less than 3%; or

• where the existing venture/collaboration is defunct or sick.

2007: The Future

As per the latest business newspaper reports\(^1\), the Government has decided to exclude sectors like agriculture, farming and allied industries from the purview of Press Note 1/2005. Currently, sectors like information technology and venture capital investments are excluded. Once the new rules are implemented, then the foreign investor/company would not require permission from its Indian partner to make fresh investments in India. This would also mean that companies in these sectors would not have to reapply to the FIPB to invest in the country either.

According to the Government’s plans, it may be possible that Press Note 1 is abolished altogether as this has been a problematic issue for a large number of foreign companies. Around 40 investment proposals have been in an indeterminate state since October 2006 as the foreign companies have not managed to acquire a No-Objection Certificate from their Indian partners to make fresh investments in India.

\(^1\) The Financial Express – 24/07/2007