New norms to ease restrictions on FDI by JVs of Indian companies

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Topics

FDI / JVs

NEW DELHI : In a bid to ease the flow of foreign funds into legitimate business activities, the government may soon ease restrictions on foreign direct investment (FDI) by joint ventures (JVs) or wholly-owned subsidiaries (WOS) of an Indian company without categorising such investments as "suspect" involving 'round tripping' of funds.

The existing legal framework under FEMA does not permit FDI by an overseas JV or WOS of an Indian party without the prior approval of RBI. Similarly, there are restrictions on Indian entities to undertake overseas direct investment (ODI) in a foreign entity which already has existing FDI investment structures in India.

Official sources said that the changes would soon be be made in existing overseas direct investment (ODI) regulations to ease the restrictions and put such investments (FDI and ODI) under the automatic route (without prior approval of RBI).

The changes have become important in the backdrop on slowing of the Indian economy and resultant lack of investment by the corporate sector. The stringent view adopted by the RBI under the objective of preventing 'round tripping' of funds has impacted abilities of certain Indian companies which have made ODI outside India to attract FDI in India even for their group entities, even for legitimate and bona fide business purposes.

A High Level Advisory Group (HLAG)-chaired by economist Surjit Bhalla, on how to increase India's exports, in its report has also suggested sweeping change in FDI regulations with a way to attract funds that go into building businesses in the country.

Sources said that the Department for Promotion of Industry and Internal Trade (DPIIT) is also studying the report for finalising changes in the Press Note pertaining to FDI by JV of WOS of Indian party. Official sources said that though the changes would give free access to FDI by an Indian entity through its own JV or WOS, it would need to be established that such flow of funds is only for bonafide business interests and such funds are invested as FDI in India through proper banking channels.

Accordingly, it is likely that investment by a foreign entity (in which ODI is being made) whose total value of existing FDI does not exceed 25 per cent of its consolidated net worth not be considered as 'round tripping' or in violation of ODI regulations.

Net worth of overseas entity in this case should be at least $10 million. Moreover, any additional FDI may be allowed provided such funds are not directly or indirectly from India. The HLAC in its report has also recommended exemption to overseas listed companies i.e. companies which are listed overseas in Financial Action Task Force (FATF) jurisdictions (with market capitalisation of certain specified thresholds), should also be allowed to invest in India, irrespective of its shareholding being held by persons resident in India.

ODIs include investments done outside India by an Indian by way of subscription to the memorandum of a foreign entity or purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchanges, signifying a long-term interest in the foreign entity.