

Regulatory Hotline

January 06, 2010

EQUALLY FOREIGN: 50:50 JV ENTITIES TO BE CONSIDERED FOREIGN ENTITIES

Continuing the efforts to revise and streamline the foreign investment policy of the country, the Department of Industrial Policy and Promotion (“DIPP”) has proposed to classify a joint venture which has 50% foreign investment as a foreign owned Indian entity. In a formal press note that is expected in this regard, the DIPP seems set to clarify that the foreign investor will be required to divest at least 0.5% of the joint venture in favor of the Indian partner to be re-classified as an Indian owned entity.

The DIPP had, thorough Press Notes 2, 3 and 4 of 2009 (“2009 Press Notes”), issued a series of guidelines¹ redefining the method by which direct and indirect foreign investment is to be calculated. One of the concepts introduced in the 2009 Press Notes is that of ownership and control. An entity would be considered an Indian, if (i) more than 50% of the equity interest is beneficially owned by resident Indian citizens and/or Indian companies, which companies are in turn owned and controlled ultimately by resident Indian citizens; and (ii) if the power to appoint the majority of the directors in the entity (company) are vested with resident Indian citizens and/or Indian companies, which companies are in turn owned and controlled ultimately by resident Indian citizens. However the 2009 Press Notes were silent with respect to a 50:50 joint venture.

If a 50:50 joint venture company is categorized as a foreign owned Indian entity, then under the 2009 Press Notes downstream investments and sectors in which investments are made will be subject to foreign investment restrictions. Conversely, such restrictions are not applicable to an Indian owned entity.

While this announcement is a welcome move to clarify the existing guidelines, the formal text of the Press Note is eagerly awaited. The clarification as announced does seem to leave open the window to indirect foreign participation (of less than 50% in a chain of companies) in sectors such as retail where direct foreign participation is restricted. In the same vein, one may hope for more clarity on other grey areas resulting from the 2009 Press Notes, for e.g., the treatment and intention to cover investment through trusts and partnerships within the purview of the 2009 Press Notes, as well as the backdoor relaxation on indirect foreign participation in restricted sectors as alluded to above.

1 **Welcome to India: Foreign investments framework overhauled!**

- **Yamini Dwarkanath & Kartik Ganapathy**

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

India's Oil & Gas Sector— at a Glance?

March 27, 2025

Artificial Intelligence in Healthcare

March 27, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against “Unfiltered” Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

**Vaibhav Parikh, Partner, Nishith
Desai Associate on Tech, M&A, and
Ease of Doing Business**

March 19, 2025

**SIAC 2025 Rules: Key changes &
Implications**

February 18, 2025