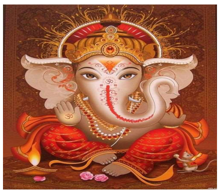

# ***STANDARD OPERATING PROCEDURE (SOP) FOR PROCESSING FOREIGN DIRECT INVESTMENT (FDI) PROPOSALS***

*Dear Friends,*

*The Ministry of Commerce & Industry (DPIIT) has issued Standard Operating Procedure (SOP) for Processing Foreign Direct Investment (FDI) Proposals on 17th August,2023 for processing new FDI Proposals.*

## ***I. ONLINE FILING OF APPLICATION;***

*The significant amendment of earlier SOPs is that all applications for approval of FDIs from the government should be Online through National Single Window System(NSWS) Administrative Ministries/ Departments will continue to examine FDI proposals on Foreign Investment Facilitation Portal (FIF Portal).*

*The applicant shall prepare FDI application as per the format and requirement under the NSWS and upload documents digitally signed by authorized person filing the application as listed in Annexure – I of this SOP. The applicant shall also be required to file Security Clearance Form as per Annexure – II of this SOP, wherever applicable (See para II (3) of this SOP).*

*The main aim of this amended SOP is to make process of application online and in case of authenticity of any scanned documents is in doubt then the concern Administrative Ministry/Department may call for physical copy of original documents with approval of the Secretary concerned.*

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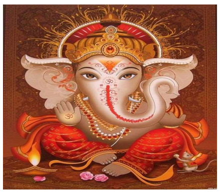

## *II. PROCEDURE FOR PROCESSING OF APPLICATIONS SEEKING APPROVAL FOR FOREIGN INVESTMENT.*

1. *After a proposal is filed online, Department for Promotion of Industry & Internal Trade (DPIIT), under Ministry of Commerce & Industry, will identify the concerned Administrative Ministry/Department and assign the proposal within prescribed timeline to the concerned Administrative Ministry/Department (Competent Authority) for processing and disposal of the proposal.*

2. *The same shall also be circulated online within prescribed timeline as per part IV of this SOP by DPIIT to Reserve Bank of India (RBI) for comments from the perspective of Foreign Exchange Management Act, 1999 (42 of 1999) and rules/regulations thereunder (FEMA).*

   *Further, all proposals shall be forwarded to Ministry of External Affairs (MEA) for information. MEA may give their comments within the stipulated time period, wherever necessary. All comments shall be provided directly to the concerned Administrative Ministry/Department.*

3. *Following proposals shall require security clearance from MHA, as per the extant FDI Policy:*

*i). Investments in Broadcasting, Telecommunication, Satellites - establishment and operation, Private Security Agencies, Defence, Civil Aviation and Mining & mineral separation of titanium bearing minerals and ores, its value addition and integrated activities.*

*ii). Applications falling under the purview of Press Note 3 of 2020 dated 17.04.2020 read with Foreign Exchange Management (Nondebt Instruments) Amendment Rules, 2020 dated 22.04.2020.*

4. *Proposals requiring clarification from the point of view of FDI Policy may be referred to DPIIT for clarification with the approval of Secretary of the concerned Administrative Ministry/Department. Consultation with DPIIT will, hence, be need based and not routine or regular.*

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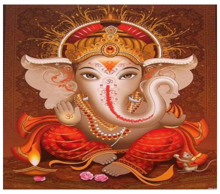

5. *Consultation with any other Ministry/Department shall require full justification and approval of Secretary of the concerned Administrative Ministry/ Department.*

6. *All Ministries/ Departments consulted on any proposal including RBI, MHA and MEA shall provide their comments within the timeline prescribed as per Annexure V of this SOP. In case comments of consulted Ministries/Departments and Regulatory Bodies are not received within the prescribed time, it shall be presumed that they have no comments to offer. In cases where MHA is not in a position to provide its comments within prescribed timeline, it will intimate the concerned administrative Ministry/Department of the expected time frame within which MHA shall be able to give its comments.*

7. *The Competent Authority shall, within the timeline prescribed as per Annexure V of this SOP, scrutinize the proposal and documents attached therewith and ask the applicant for relevant additional information/documents, if so required. All such queries shall be raised only through FIF Portal to the applicant. To the extent possible, all queries to the applicant shall be raised by the Competent Authority in the initial communication itself.*

8. *While examining the proposals, adequate care has to be exercised keeping in view the FDI Policy, Press Notes, FEMA/RBI Notifications/Guidelines issued from time to time. The Competent Authority should take into consideration the sectoral requirements and the sectoral policies vis-à-vis the proposals.*

9. *Once the processing of proposal is complete in all respect, the Competent Authority shall take a decision within prescribed timeline as per Annexure V of this SOP and convey the same to the applicant with a copy to all consulted Ministries/Departments, Regulatory Agencies and DPIIT through FIF Portal itself.*

10. *Further, in order to take appropriate decision on delayed FDI proposals and those escalated by the processing Ministry/Department concerned for quicker disposal, an inter-ministerial committee has been constituted, consisting of Secretaries from DPIIT,*

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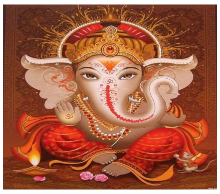

*Department of Economic Affairs, Ministry of Corporate Affairs, MHA, concerned administrative Ministry/Department and representatives from RBI and NITI Aayog to examine and guide the concerned Administrative Ministry/department to process such proposals for timely disposal.*

11. *In case of proposals involving total foreign equity inflow of more than the limit as stated in para 4.1.5 of Chapter - 4 of the FDI Policy, Competent Authority shall place the same for consideration of Cabinet Committee on Economic Affairs (CCEA) within the timeline prescribed as per Annexure V of this SOP. After the receipt of the decision of CCEA, letter conveying decision shall be issued within one (01) week.*

12. *An application filed through NSWS seeking amendment(s) to earlier approvals is to be considered as a valid application and this does not require a fresh application.*

13. ***Closure:** Where the FDI applications are incomplete i.e., either the applicant has not submitted requisite documents/ information in proper format or the applicant has not responded to the queries despite repeated reminders, the Administrative Ministry/ Department may close the proposal after giving a final reminder to the applicant. It should be noted that closure of FDI application will not amount to its rejection and is without prejudice to the applicant reapplying with all requisite documents. While closing the FDI applications, the applicant may be advised to apply afresh along with all requisite documents, if they so wish. The Competent Authority for the closure of the FDI proposal, due to inadequate/incomplete information/documents shall be Secretary of the concerned Administrative Ministry/Department.*

14. ***Rejection of Proposal or Insertion of Additional Conditions:** In respect of proposals where the Competent Authority proposes to reject the proposals or in cases where conditions for approval are stipulated in addition to the conditions laid down in the FDI Policy or sectoral laws/regulations, concurrence of DPIIT shall compulsorily be sought by the Competent Authority, with the approval of the Secretary concerned.*

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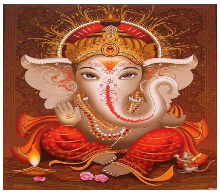

*Secretary, DPIIT is the competent authority for decision on cases referred by other Administrative Ministries/ Departments, seeking concurrence of DPIIT for rejection of the proposal/ stipulation of additional conditions in approval letter.*

***It is clarified that concurrence of DPIIT is not required for imposing conditions concerning compounding under FEMA provisions and/or compliance of laws/ regulations of the land or court orders.***

*Upon issue of rejection letter by the Administrative Ministry/Department, a copy of the rejection letter should be marked to all consulted Ministries, Departments and Regulatory agencies.*

15. ***Withdrawal by the Applicant:*** *An applicant may withdraw its FDI proposal, pending for decision, subject to submission of a duly authorized letter of withdrawal clearly explaining the reasons for such withdrawal addressed to the Competent Authority with a copy to DPIIT. Such withdrawal request should be acknowledged by the Competent Authority on NSWS Portal, after which the proposal shall be treated as withdrawn.*

16. Approval letter shall be issued by the Competent Authority in the format prescribed at Annexure – III of this SOP.

17. ***Surrender of Approval by the Applicant:*** *If an applicant proposes to surrender the approval letter granted to the investee entity/investor, then concerned administrative Ministry/Department may accept the surrender of the approval letter after the applicant submits such declaration in original signed by the authorized representative of the applicant clearly explaining the reasons for such surrender. Further, an acknowledgement in this regard has to be sent to the applicant clearly indicating the date from which the approval letter stands withdrawn. Copy of the same should be marked to all consulted Ministries, Departments and Regulatory agencies.*

18. ***Rectification of mistakes in Approval Letter:*** *The applicant may request for rectification of typographical or grammatical mistakes in the text of Approval Letter as apparent from the records. After necessary verification and due diligence, the Administrative Ministry/ Department may issue corrigendum, with approval of the Secretary*

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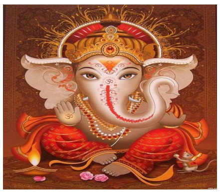

*concerned. Format for issuing corrigendum is placed at Annexure-IV of this SOP. Rectification shall not entail any change other than typographical or grammatical mistakes in the text of the Approval Letter.*

*19.* ***Compounding of Contraventions:*** *FDI is a capital account transaction and thus any violation of FDI regulations is covered by the penal provisions of FEMA. Provisions of para 3 of Annexure-5 of FDI Policy and Section 15 of Foreign Exchange Management Act, 1999 permit compounding of contraventions, and Foreign Exchange (Compounding Proceedings) Rules, 2000, as amended from time to time, lays down the basic framework for the compounding process. Administrative Ministries/ Departments are advised to refer to the Master Direction- Compounding of Contraventions under FEMA, 1999 FED Master Direction No.4/2015-16 issued by the RBI, as amended from time to time.*

***III. A QUICK LOOK AT THE LIST OF ANNEXURES SHOWS THE FOLLOWING:***

***Annexure I****- Documents and contents of the FDI Application to be filed by the applicant on NSWS after affixing his digital signature.*
***Annexure II*** *– Proforma for Security Clearance as applicable to FDI proposals.*
***Annexure III*** *– Format of Approval Letter to be issued by the Concerned Department/Competent Authority to the applicant.*
***Annexure IV –*** *Format of Corrigendum to Approval Letter in Annexure III*
***Annexure V*** *– Timelines to be adhered to by different departments in scrutiny and approval of the FDI proposal.*
***Annexure VI*** *– Draft of Affidavit of Applicant to be filed along with the FDI Proposal.*

***DISCLAIMER: the*** *article presented is only for sharing information with readers. In case of necessity do consult with professionals.*

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