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THE YEAR IN REVIEW
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India

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This article surveys significant legal developments in India during the calendar year 2015.

I. Employment Law and Indian Immigration

A. The Employment of Foreign Nationals In India

The corporate and government sector of India is increasingly employing foreign nationals despite the significant costs involved. For starters, all foreign national employees must be paid a salary of US$25,000 unless they are foreign language translators, ethnic cooks, or employees of diplomatic personnel.[2] Importantly, the remuneration earned by a foreign national for services rendered in India during the employment period is subject to Indian taxes, even if the payment is received outside of India. Employers in India are required to withhold taxes and deposit them with the income tax department. Certain employees from countries with which India has Double Taxation Avoidance Agreements may obtain a tax credit from India and offset his or her tax incidence in their home country.

These employees need to add the expenses of social security or provident fund payments. Foreign nationals working in companies that are subject to Employees' Provident Fund (EPF) regulations are required to contribute to the Provident Fund (PF) unless a law specifically exempts them. Both the employer and the employee are required to contribute 12 percent of their monthly salary (includes the total salary whether received

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2. *Employment Visa*, MINISTRY HOME AFF. (May 29, 2014), http://mha1.nic.in/pdfs/EmploymentVisa_080114.pdf.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

in India or abroad) to the PF, subject to certain mandatory investments in pension funds.[3] Foreign nationals from countries that have a Social Security Agreement (SSA) with India may also be exempt from making contributions to the PF in India, provided they have a Certificate of Coverage from their home country.

Withdrawals from the PF can be made per the provisions of an SSA if applicable. If no SSA is applicable, foreign nationals can withdraw these contributions on retirement after the age of sixty, or on retirement due to permanent and total incapacity caused by bodily or mental infirmity, as certified by specific medical practitioners.

India has signed SSAs with several countries. The agreements with Belgium, Germany, the Netherlands, France, South Korea, Luxembourg, Hungary, Norway, Sweden, Finland, Czech Republic, Denmark, and Switzerland are currently in effect. SSAs with Austria, Portugal, and Japan have been signed, but are yet to be notified to make them effective. India is in SSA negotiations with Canada, the United States, and Australia. Until India develops a network of SSAs, foreign nationals and Indians working abroad (or their employers) will have to conform to social security payments as applicable.

B. EPF Withdrawals Made Easy - Employer Attestations No Longer Required As Of 2015

Employees in the Indian private sector are protected under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act). The employees' provident fund under the EPF Act plays a very important role in building up the corpus to be used during the post-retirement stage of an employee. Employees covered under the EPF Act contribute 12 percent of their wages every month towards their provident fund with an equal contribution from the employer, thus making a matching contribution to the fund.[4] The money goes into a fund managed by the Employees' Provident Fund Organization (EPFO), the apex decision making body under the aegis of the Ministry of Labour and Employment.

The government permits employers to manage own provident fund schemes, provided that they comply with certain conditions. The EPF Act offers flexibility of withdrawals - an employee can withdraw for higher education or for the purchase of a house. Withdrawals may also be made for paying the premium amount on one's life insurance policy.

Until recently, in order to make a withdrawal from the EPF, an employee was required to obtain an endorsement on the application from his or her employer. This often resulted in employees being harassed by their employers. The EPFO, in response to several complaints about such harassment, eliminated the mandatory requirement for employer attestations in 2015. This is documented in a government notification regarding "New EPF Withdrawal Forms," that also sets out the procedure for effective withdrawals.[5] We

3. The Employees Provident and Funds and Miscellaneous Provisions Act, 1952, No. 19, Acts of Parliament, 1952 (India), *available at* http://labour.nic.in/upload/uploadfiles/files/ActsandRules/SocitySecurity/TheEmployeesAct1952.pdf.
4. *Id.*
5. Press Release, Employees' Provident Fund Organisation, EPFO Launches Simple Forms for Settling Claims based on UAN (Mar. 12, 2015), http://www.epfindia.com/site_docs/PDFs/EPFO_PRESS_RELEASES/PressRelease_03122015.pdf.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

also expect further changes to the EPF Act in 2016. The coming year could result in certain other significant changes including:

(i) Expanding the scope of "basic wages." Currently, PF is deducted only on basic wages, and the proposal will bring about a change in this practice. Under the new proposal, basic salary will also include all allowances (including those paid for authorized leave), strikes and layoffs, or other allowances that are paid at intervals not exceeding two months.

(ii) Setting up zonal appellate tribunals all over India, in addition to the existing one in Delhi, may assist in the speedy redressal of disputes.[6]

II. Tax

A. Contribution Towards Share Capital is Not Income

Tax authorities alleged that a subsidiary of Vodafone in India undervalued the allotment of shares to its UK-based parent entity. Tax authorities demanded a sum of INR 320 million contending that the undervalued amount represented a loan given to the parent entity. They computed the notional interest thereon. On October 10, 2014, the Bombay High Court quashed the order holding this as a capital receipt.[7] The government issued a press release on January 28, 2015, declaring its intention not to challenge the matter in appeal before the Supreme Court and also applied the decision in other similar cases.[8] The step had been taken to assuage investors' concerns on tax issues and to convey a clear and positive message to investors globally that the taxation regime would be "fair, transparent and within the four corners of law."[9]

B. Exemption from Compulsory Alternative Tax to Foreign Institutional Investors (FIIs)

Under Indian tax law, Indian companies that are usually not liable to pay tax due to certain benefits under the tax provisions are otherwise liable to pay a Minimum Alternate Tax (MAT) at the rate of 18.5 percent (excluding surcharge and cess) on book profits, pursuant to the Indian Companies Laws.[10] An issue arose regarding the taxability of capital gains earned by foreign institutional investors (FIIs) that were otherwise exempt due to treaty provisions. The domestic tax law was amended during the 2015 Annual Budget to clarify that FIIs shall be exempt from MAT on such capital gains with effect

6. *See* Memorandum, Gov't of India Ministry of Power, (Mar. 27, 2015), http://powermin.nic.in/upload/pdf/National_Smart_Grid_Mission_Om.pdf; *Government approves Rs 980 crore outlay for National Smart Grid Mission*, Econ. Times (May 7, 2015, 05:39 PM IST), http://economictimes.indiatimes.com/2015-05-07/news/61902759_1_smart-grid-piyush-goyal-power-minister.

7. Vodafone India Services Pvt. Ltd. v. Union of India (2014) 368 ITR 1 (Bom.).

8. Shell India Markets Pvt. Ltd. v. ACIT, (2014) 369 ITR 516 (Bom.).

9. *India drops Vodafone tax case*, Economia (Jan. 29, 2015), http://economia.icaew.com/news/january-2015/india-drops-vodafone-tax-case. Minister Ravi Shankar Prasad made this statement at a news briefing following the announcement that India's government would not appeal this dispute.

10. *See India Presents 2015 Budget*, EY Global Tax Alert Libr. (Mar. 5, 2015), http://www.ey.com/Publication/vwLUAssets/India_presents_2015_Budget/$FILE/2015G_CM5268_India%20presents%202015%20Budget.pdf.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

from April 1, 2015.[11] But a committee headed by Justice AP Shah (Ret'd) recommended that such exemptions should be given with retrospective effect. The government accepted these recommendations on September 1, 2015, and these necessary amendments were proposed during the budget session of Parliament in 2016.[12]

C. Rollback Provisions in Advance Pricing Agreement (APA)

The APA rollback rules were notified by the Central Board of Direct Taxes (CBDT), the nodal agency for the administration of income tax, on March 14, 2015.[13] The rollback rules provide for an extension of the APA terms on the pricing of international transactions for the prior four years (rollback years) preceding the first year from which the APA is to be applicable. Broadly, a rollback agreement allows an agreement between the Indian tax authorities and companies to agree on terms for five prospective years as well as four years thereafter.[14]

D. Clarification on Use of Multiple Year Data and Range Concept

The CBDT has issued rules defining availability of range and permitting use of multiyear data of the comparable entities as against the erstwhile principle of using only single year data for the computation of Arm's Length Price (ALP).[15]

Hitherto, transfer pricing guidelines provided that where more than one ALPs were determined, the "arithmetic mean" of such prices were taken as the ALP. "Such approach lead to a single point ALP instead of a range and did not provide flexibility of exclusion of any comparable with abnormal result[s]."[16] Further, the earlier guidelines provided that data "relating to the financial year in which the international transaction has been entered into shall be considered."[17] The data of the prior two "years may be considered only if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared."[18] These new rules have been implemented in order to bring the manner of computation of Arm's Length Price (ALP) in conformity with the best international practices.

E. Goods and Services Tax (GST) is Likely to be Ushered in 2016

Efforts are being made to subsume major indirect taxes, such as: excise duty, customs, service tax, state-level value added tax, and other local taxes into one levy as GST. The

11. *See id.*
12. Gov't of India Ministry of Finance, Dep't of Revenue (Central Board of Direct Taxes, TPL Division), Applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 1.04.2015, Instruction No. 18/2015 (Dec. 12, 2015).
13. *See Rules on roll back of Advanced Pricing Agreements notified*, Lexology (Aug. 6, 2015), http://www.lexology.com/library/detail.aspx?g=B8b0a16f-c453-40e4-9ef9-b0abded705bd.
14. The Government of India issued Circular No. 10/2015 on June 10, 2015.
15. The Government of India notified the amended Rules for determining ALP vide S.O. No. 2860 (E) dated Nov. 19, 2015.
16. Keyur Shah & Jaiman Patel, *CBDT Draft Rules on "range concept" and "multiple year data" – A boon or bane?*, Taxsutra, at 1 (May 25, 2015), http://www.tp.taxsutra.com/expertprint?sid=209.
17. *Id.* at 2.
18. *Id.*

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

necessary amendments required in the Indian Constitution are currently pending before the upper house of Parliament.[19] The new law is likely to be in force with effect from April 1, 2016, hopefully mitigating the cascading effect[20] of "tax on tax" to a good extent by providing a mechanism of "set off" for tax paid on goods and services and multiple statutory compliances.[21] The GST rate is likely to be set at 18 percent.[22]

III. Indian Climate Change and Clean Energy Update

In 2015, the Modi government announced a series of initiatives, policies, and laws to strengthen the climate change and clean energy framework in India.[23] The primary driver for this push has been the lead up to the historic United Nations Framework Convention on Climate Change's (UNFCCC's) Conference of the Parties (COP21) that was held in Paris at the end of 2015.[24] This summary provides the significant national and international developments in 2015 on India's climate and clean energy policy.

A. International

1. *Intended Nationally Determined Contributions (INDC)*

Responding to the Conference of the Parties (COP) Decision 1/CP.19 and COP Decision 1/CP.20,[25] India formally submitted its "intended nationally determined contributions" (INDC) on October 1, 2015, to the United Nations Framework Convention on Climate Change (UNFCCC).[26] INDCs represent self-defined mitigation goals of countries from 2020 onwards, and, per the COP Decision 1/CP.10 and Decision 1/CP.20, parties were encouraged to submit their INDCs before COP21. India's INDC establishes its climate change framework for the period beginning in 2020, and includes both mitigation and adaptation goals.[27] The INDC builds on two existing frameworks: National Environment Policy (2006) and National Action Plan on Climate Change (2008).[28] The key elements of the plan include: reducing "the emissions intensity of its GDP by 33 to 35 percent by 2030 from 2005"; achieving "about 40 percent cumulative electric power installed capacity from non-fossil fuel based energy resources by 2030 with the help of transfer of technology and low cost international finance" including from UNFCCC's Green Climate Fund (GCF); creating "an additional carbon sink of 2.5 to 3

19. India Const. art. 246(a), *amended by* The Constitution (122nd Amendment) (GST) Act, 2014.
20. For example, any product manufactured is subject to excise duty further, at the time of sale, VAT is levied on the transaction value which is inclusive of excise duty, thus leading to inefficiency in pricing and tax on tax situation.
21. Referencer on Goods & Services Tax, Inst. Company Secretaries India, at 7 (Sept. 2015), https://www.icsi.edu/Docs/Website/GST_Referencer.pdf.
22. *Id.* at 3.
23. *See Intended Nationally Determined Contributions (INDCs)*, UNFCCC Newsroom, http://unfccc.int/focus/indc_portal/items/8766txt.php (last visited Apr. 13, 2016).
24. *See id.*
25. *See id.*
26. *See* India's Intended Nationally Determined Contribution: Working Towards Climate Justice, UNFCCC (Sept. 5, 2015), http://www4.unfccc.int/submissions/INDC/Published%20Documents/India/1/INDIA%20INDC%20TO%20UNFCCC.pdf.
27. *See id.* at 8-26.
28. *Id.* at 7.

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billion tons of CO_2, equivalent through additional forest and tree cover by 2030; and better adapting "to climate change by enhancing investments in development programmes," particularly in "agriculture, water resources, [the] Himalayan region, coastal regions, health, and disaster management."[29]

2. *International Solar Energy Alliance*

At COP21, Prime Minster Modi, along with French President Hollande, announced the launch of the International Solar Energy Alliance.[30] The alliance includes around 120 countries, and will serve as a platform for cooperation among solar resource rich countries.[31] Participating countries commit to making efforts through various measures and financial instruments to mobilize more than US$1 trillion of investments that are needed by 2030 for the massive deployment of affordable solar energy.[32]

B. National

One of the first structural changes the Modi government made upon coming into power was to rename India's environment ministry to the Ministry of Environment, Forests and Climate Change, and to reconstitute the primary advisory body on climate change, the Prime Minister's Council on Climate Change. In 2015, several new initiatives, targets, and policies have been announced, the most significant being the rapid acceleration of renewables.[33]

1. *Renewable Energy*

The Ministry of New and Renewable Energy (MNRE) revised renewable energy targets to increase capacity to 175,000 MW by 2022.[34] This target comprised of 100,000 MW solar, 60,000 MW wind, 10,000 MW biomass and 5,000 MW small hydro.[35] The Union Budget (2015) allocated US$400 million for this expansion in renewables.[36]

To align these targets with the relevant Missions (under the National Action Plan on Climate Change), the National Solar Mission target was revised. Targets for grid connected solar power projects increased from 20 GW by 2022 to 100 GW by 2022.[37]

29. *Id.* at 29.
30. *International Solar Energy Alliance Launched*, Sustainable Energy Pol'y & Prac. (Nov. 30, 2015), http://energy-l.iisd.org/news/international-solar-energy-alliance-launched/.
31. *Id.*
32. *Id.*
33. *See* Ministry of Fin., Gov't of India, Key Features of Budget 2015-2016 (Feb. 28, 2015), *available at* http://indiabudget.nic.in/ub2015-16/bh/bh1.pdf [hereinafter Key Features of Budget 2015-16]; *see also* Smiti Mittal, *India Allocates $400 Million For Renewable Energy Expansion in Annual Budget*, Clean Technica (Mar. 4, 2015), http://cleantechnica.com/2015/03/04/india-allocates-400-million-for-renewable-energy-expansion-in-annual-budget/.
34. Key Features of Budget 2015-16, *supra* note 33, at 6.
35. *Id.*
36. Mittal, *supra* note 33.
37. Press Release, Press Info. Bureau, Gov't of India, Revision of cumulative targets under Nat'l Solar Mission from 20,000 MW by 2021-22 to 1, 00,000 MW [sic]: India surging ahead in the field of Green Energy – 100 GW Solar Scale-Up plan (June 17, 2015), http://pib.nic.in/newsite/PrintRelease.aspx?relid=122566.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

This comprises of 40 GW rooftop and 60 GW through large and medium scale grid connected solar power projects. For the first phase, the government is providing INR 15,050 crore as a capital subsidy.[38]

The government has similarly announced that it will launch a National Wind Energy Mission with a goal of increasing wind capacity to sixty GW.[39] In September 2015,[40] the Union Cabinet approved the National Offshore Wind Energy Policy.[41] This mission sets a path for offshore wind energy development including setting up offshore wind power projects and research and development activities, in waters in or adjacent to the country, up to the seaward distance of 200 Nautical Miles (EEZ of the country) from the base line.[42] It also establishes the Ministry of New and Renewable Energy (MNRE) as the primary ministry for use of offshore areas within the Exclusive Economic Zone (EEZ) of the country, and establishes the National Institute of Wind Energy (NIWE) as the primary agency for development of offshore wind energy in the country.

The Union Budget announced the electrification of the remaining 20,000 villages by 2020, including electrification using off-grid solar power.[43]

To help meet these aggressive targets, the government has released the Draft Renewable Energy Act (2015). The purpose of this Act is to promote renewable energy production and to contribute to ensuring fulfillment of national and international objectives of increasing the proportion of energy produced through the use of renewable energy sources.[44]

Simultaneously, the government has proposed amendments to the Electricity Act (2003)[45] and Tariff Policy (2005).

Proposed amendments to the Tariff Policy (2015), relevant to the clean energy sector, include:

- Promotion of renewable generation sources is proposed to become the fifth objective of the policy;
- Renewable purchase obligation (RPO) revised to eight percent by 2019;
- Discoms (power distribution companies) allowed to procure bundled solar power from the existing conventional power generators on a cost plus basis to meet their RPOs; and
- Renewable sources exempted from inter-state transmission charges.[46]

38. *Id.*
39. Mittal, *supra* note 33.
40. Press Release, Press Info. Bureau, Gov't of India, Approval of Nat'l Offshore Wind Energy Policy (Sept. 9, 2015), http://pib.nic.in/newsite/PrintRelease.aspx?relid=126754.
41. Ministry of New & Renewable Energy, Gov't of India, National Offshore Wind Energy Policy (Oct. 1, 2015), http://mnre.gov.in/file-manager/UserFiles/National-Offshore-Wind-Energy-Policy.pdf.
42. *Id.*
43. *Id.*
44. Key Features of Budget 2015-16, *supra* note 33, at 2.
45. These amendments were introduced in 2014 and are not covered by this summary. *See* The Electricity (Amendment) Bill, 2014, No. 191, Acts of Parliament, 2014, (India), *available at* http://www.prsindia.org/uploads/media/Electricity/Electricity%20(A)%20bill,%202014.pdf.
46. Ministry of Power, Gov't of India, Amendments Proposed in the Tariff Policy (2015), http://powermin.nic.in/upload/Amendments_proposed_in_the_Tariff_Policy.pdf.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2. *Clean energy cess*

Per the 2015 Union Budget, the clean energy cess levied on coal, lignite, and peal was increased from INR 100 to INR 200 per metric ton and will continue to be used to finance clean environment initiatives.[47]

3. *Electric Vehicles*

The Union Budget announced the launch of the Faster Adoption and Manufacturing of Electric Vehicles (FAME) Scheme for which an initial outlay of INR 75 crore was set-aside for 2015-2016.[48] Additionally, concessions on custom and excise duty available to electrically operated vehicles and hybrid vehicles were extended until March 2016.[49]

4. *National Smart Grid Mission*

The National Smart Grid Mission announced in May 2015, will promote the development of smart grids and micro grids.[50] It will aim to establish a smart electrical grid based on state-of-the-art technology in the fields of automation, communication, and IT systems that can monitor and control power flows from points of generation to points of consumption. It will also serve as an institutional mechanism for planning, monitoring and implementing policies and programmes related to the smart grid.

IV. India's Foreign Direct Investment Policy: Key Developments of 2015

India has emerged as one of the fastest growing economies in the world with its GDP projected to grow annually at the rate 7.6-7.7 percent in 2015.[51] One of the key drivers of this economic growth has been the reform-oriented approach of the Government of India (Government) aimed to make India an attractive destination for foreign investment.

Foreign investment in India has to be in accordance with the policy framework on Foreign Direct Investment (FDI) prescribed and updated by the Government on an annual basis. Specific policy changes or sectoral updates may be introduced in the interregnum to keep pace with the economic demands. FDI in India can be broadly classified as falling under the automatic or the approval route. Under the automatic route, FDI up to 100 percent is permitted in most sectors without any prior approvals.[52] Investment under the approval route is subject to the specific sectoral caps with the prior approval of the Foreign Investment Promotion Board (FIPB).

47. Key Features of Budget 2015-16, *supra* note 33.
48. *Id.*
49. *Id.*
50. *See* Memorandum, *supra* note 6; *Government approves Rs 980 crore outlay for National Smart Grid Mission*, *supra* note 6.
51. U.N. DEPT OF ECON. & SOC. AFFAIRS, WORLD ECONOMIC SITUATIONS AND PROSPECTS 2015 (2015), http://www.un.org/en/development/desa/policy/wesp/wesp_archive/2015wesp_full_en.pdf.
52. *Frequently Asked Questions: Foreign Investments in India*, RES. BANK INDIA (Feb. 10, 2015), https://www.rbi.org.in/scripts/FAQView.aspx?Id=26.

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Starting with the Consolidated FDI Policy in May 2015,[53] to the FDI policy announcement in November 2015,[54] the slew of policy announcements this year were essentially aimed at liberalizing the FDI policy and advancing the "Make in India" initiative of the Government.[55] This is sought to be accomplished by including a majority of industries/sectors under the automatic route, relaxing sectoral investment caps and dispensing with the prior approval requirement process to a large extent.

A. Key Sectors

1. *Construction*

While FDI in construction development has been permitted since 2005, it has been subject to onerous conditions such as: development of minimum area, minimum capitalization, investment lock-in, restriction on FDI in residential plots, and restriction on transfer of shares.[56] These conditions could be met only by the big industry players. In a welcome initiative to give the required boost to construction and development sector and promote affordable housing, significant changes have been made in relation to "minimum area to be developed" and "reduction in minimum capitalisation' requirements."[57]

FDI, up to 100 percent, has been permitted under the automatic route in construction-development projects (which include: development of townships and construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, and city/regional level infrastructure).[58] Further, each phase of the construction development project will be treated as a separate project for FDI purposes.

Earlier, the original investment amount was subject to a lock-in and could not be repatriated before a period of three years from the date of completion of minimum capitalization.[59] The lock-in period has now been relaxed to permit a foreign investor to exit and repatriate its investment on completion of the project or after development of trunk infrastructure, *i.e.* roads, water supply, street lighting, drainage and sewerage, after the completion of three years, from the date of each tranche of foreign investment. Hotels, tourist resorts, hospitals, educational institutions have been exempted from the lock-in requirements.[60]

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53. Ministry of Commerce & Indus., Dep't of Indus. Policy & Promotion, Consolidated FDI Policy Circular of 2015 (2015), http://dipp.nic.in/English/policies/FDI_Circular_2015.pdf [hereinafter Consolidated FDI Policy 2015].

54. Ministry of Commerce & Indus., Dep't of Indus. Policy & Promotion, *Review of Foreign Direct Investment (FDI) Policy on Various Sectors*, Press Note No. 12 (2015), http://dipp.nic.in/English/acts_rules/Press_Notes/pn12_2015.pdf.

55. Consolidated FDI Policy 2015, *supra* note 53; Press Note No. 12, *supra* note 54.

56. Ministry of Commerce & Indus., Dep't of Indus. Policy & Promotion, *Foreign Direct Investment (FDI) in Townships, Housing, Built-Up Infrastructure and Construction-Development Projects*, Press Note No. 2 (2005), http://dipp.nic.in/English/policy/changes/pn2_2005.pdf.

57. *Id.*

58. *Press Note No. 12*, *supra* note 54.

59. Ministry of Commerce & Indus., Dep't of Indus. Policy & Promotion, Consolidated FDI Policy Circular 1 of 2012 (2012), http://dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf [hereinafter Consolidated FDI Policy 2012].

60. *Press Note No. 12*, *supra* note 54.

2. *Single Brand Retail*

FDI is permitted up to 49 percent under the automatic route and up to hundred percent under the approval route for companies in the Single Brand Product Retail Trading (SBRT) space.[61] Further, SBRT entities operating through brick and mortar stores have been permitted to undertake retail trading through e-commerce. The earlier stringent local sourcing requirements for single brand retail companies having FDI beyond 51 percent have been considerably relaxed.[62]

3. *Other Notable Sectors*

Other sectors that have been significantly impacted by relaxation of sectoral caps and liberalized policy measures include insurance, banking, broadcasting, civil aviation, defence, medical devices, duty-free shops, and plantations (for coffee, rubber, cardamom, etc.).[63] Besides permitting FDI in the manufacturing sector, the sale of products manufactured in India through wholesale, retail or e-commerce, has been permitted without any prior approval. This is an impetus to foreign investors to "Make in India".

B. FDI in Limited Liability Partnerships (LLP)

FDI in LLPs as well as downstream investment by such LLPs in an Indian entity has been permitted under the automatic route in LLPs operating in sectors that allow 100 percent FDI through the automatic route with no FDI-linked performance conditions.[64] Earlier, FDI in LLPs was permitted under the approval route and downstream investment by such LLPs was not permitted.

C. Eligible Capital Instruments for FDI

The eligible capital instruments for FDI were earlier restricted to equity shares and fully, compulsorily, and mandatorily convertible instruments. Now, investment through share warrants, partly paid shares, and share swaps has also been permitted under the automatic route for sectors falling in the automatic route.[65]

D. Composite Foreign Investment Caps

Besides sectoral caps prescribed for specific sectors, the erstwhile FDI policy also set out sub-limits for different classes of investors. For example, if FDI in a specific sector is allowed up to a 49 percent cap, there were further ceilings for different categories of foreign investors (*i.e.* a regular foreign investor, a foreign portfolio investor, etc.). This

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61. *Id.*
62. Ministry of Commerce & Indus., Dep't of Indus. Policy & Promotion, *Review of the Policy on Foreign Direct Investment (FDI)- Caps and Routes in Various Sectors*, Press Note No. 6 (2013), http://www.dot.gov.in/sites/default/files/pn6_2013.pdf.
63. Consolidated FDI Policy 2015, *supra* note 53; *Press Note No. 12*, *supra* note 54.
64. *Press Note No. 12*, *supra* note 54.
65. *Press Note No. 9 (2015 Series)*, Gov't of India, Ministry of Commerce & Indus., Dep't of Indust. Policy & Promotion (Sept. 15, 2015), http://dipp.nic.in/English/acts_rules/Press_Notes/pn12_2015.pdf.http://dipp.nic.in/English/acts_rules/Press_Notes/pn9_2015.pdf.

has been done away with. This new measure is expected to give greater flexibility to foreign investors to raise capital.[66]

E. Approval Route

The list of sectors and activities falling under the approval route has shrunk considerably over time. This is even more visible with the raising the investment thresholds requiring the permission of the FIPB to INR 50 billion (from INR 30 billion) in November.[67]

It can be safely concluded that India is moving towards unshackling investment restrictions and simplifying the process for foreign investment in India.

66. *Consolidated FDI Policy Circular of 2015*, *supra* note 53.
67. *Press Note No. 12 (2015 Series)*, *supra* note 54.

THE YEAR IN REVIEW
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