

# ETERNITY:LAW APPRISE

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## DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE

### CLARIFICATION ON FDI POLICY ON CONTRACT MANUFACTURING

The Department for Promotion of Industry and Internal Trade (“DIPP”) has vide *clarification notification dated December 9, 2019* provided clarifications in paragraph 5.2.5.1 of the *Foreign Direct Investment (“FDI”) Press Note 4* on contract manufacturing and the following clarifications have been made:

Sr. No.	Issue	Clarification
1.	Whether, an entity having foreign direct investment (“Principal”) will be deemed to be a manufacturing entity itself, if the manufacturing is done by a third party contractor (“Contractor”) under a legally tenable document;	Vide Press Note 4(2019), it has been provided clearly that foreign investment in ‘manufacturing’ sector is under automatic route and the manufacturing can be either self manufacturing or contract manufacturing in India through a legally tenable contract; Accordingly, contract manufacturing in India is also covered under the definition of manufacturing provided the manufacturing is done with the third party under a legally tenable contract.
2.	If contract manufacturing will be deemed as manufacturing under Regulation 16 of TISPRO, would the Principal entity which has outsourced the manufacturing to the contractor to be eligible to sell the products so manufactured through wholesale, retail or e-commerce on the same footing as an entity which manufactures directly.	As clarified above, contract manufacturing in India is also covered under the definition of manufacturing provided the manufacturing is done with third party under a legally tenable contract. Further, as per the extant FDI Policy, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval.

However, compliance with all the conditions enumerated in the FDI Policy and as notified under FEMA would continue to be responsibility of the manufacturing entity.

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**FOREIGN EXCHANGE MANAGEMENT (EXPORT OF GOODS AND SERVICES)  
(AMENDMENT) REGULATIONS, 2019**

The Reserve Bank of India (“RBI”) has vide *Notification dated December 9, 2019* made the following amendments in the *Foreign Exchange Management (Export of Goods & Services) Regulations, 2015* (“**Principal Regulations**”), namely:

**1. Short title and commencement: -**

These Regulations may be called the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2019.

They shall come into force from the date of their publication in the [official Gazette](#).

2. In the Principal Regulations, in regulation 4, after sub-regulation (e), the following shall be inserted, namely :-

“(ea) re-export of leased aircraft/ helicopter and/or engines/auxiliary power units (APUs) re-possessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under ‘Cape Town Convention’ subject to permission by DGCA/Ministry of Civil Aviation for such export/s.”

SECURITIES AND EXCHANGE BOARD OF INDIA- (FOREIGN PORTFOLIO INVESTORS)  
(AMENDMENT) REGULATIONS, 2019

The Securities and Exchange Board of India (“SEBI”) vide a *Circular dated December 19, 2019* has made the following regulations to amend the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019:

1. These regulations may be called the Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2019.
2. These regulations shall come into force on the date of their publication in the Official Gazette
3. In the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019
  - (I) in regulation 2, in sub regulation (1), in clause (n), the words and symbols “regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017” shall be substituted with the words and symbols “rule 2 of the Foreign Exchange Management (Non debt Instruments) Rules, 2019”
  - (II) in regulation 20, in sub-regulation (8), the words and symbols “Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) 2 Regulations, 2017 made under the Foreign Exchange Management Act, 1999” shall be substituted with the words and symbols “the Foreign Exchange Management Act, 1999, rules and regulations made thereunder”.
  - (III) In regulation 20, sub-regulation (9) shall be omitted

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2019

Insolvency and Bankruptcy Board of India has notified *the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019* which would come into force from December 29, 2019 . The following amendments have been notified:

1. In Section 5 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as principal Act), —

(i) In clause (12), the proviso shall be omitted;

(ii) In clause (15), after the words “during the insolvency resolution process period” occurring at the end, the words “and such other debt as may be notified” shall be inserted.

2. In Section 7 of the principal Act, in sub-section (1), before the *Explanation*, the following provisos shall be inserted namely:

“Provided further that for financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporation insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, such an application shall be modified to comply with the requirements of the first or second provisos as the case may be within

thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.”

4. In Section 11 of the Principal Act, the *Explanation* shall be numbered as Explanation I and after Explanation I as so re-numbered the following *Explanation* shall be inserted, namely:-

“*Explanation II.*— For the purposes of these sections, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.”

5. In Section 14 of the Principal Act, —

(a) In sub-section (1), the following *Explanation* shall be inserted, namely:-

*Explanation-* For the purposes of this subsection, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, a permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government or local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, license, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(b) after sub-section (2), the following sub-section shall be inserted, namely:-

“(2A) Wherein the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods and services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the

moratorium period or in such circumstances as may be specified.”

(c) in subsection (3), for clause (a), the following clause shall be substituted, namely:

(a) such transactions, agreements or other arrangements notified by the Central Government in consultation with any financial sector regulator or any other authority.

6. In Section 16 of the Principal Act, in subsection (1), for the words “within fourteen days from the insolvency commencement date”, the words “on the insolvency commencement date” shall be substituted.

7. in Section 21 of the Principal Act, in sub-section (2), in the second proviso, after the words “convertible into equity shares”, the words “or completion of such transactions as may be prescribed” may be inserted.

8. In Section 23 of the Principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:-

“Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority”.

9. In Section 29A of the Principal Act,

(i) In clause (c) in the second proviso, in the *Explanation I*, after the words, “convertible into equity shares”, the words “or completion of such transactions as may be prescribed” shall be inserted;

(ii) in clause (j), in *Explanation I*, in the second proviso, after the words ‘convertible into equity shares’, the words “or completion of such transactions as may be prescribed” shall be inserted.

10. After section 32 of the principal act, the following section shall be inserted, )  
namely;-

“32A. (1) Notwithstanding anything contrary contained in the Code, or any other law for the time being in force, the liability of a corporate debtor for offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under Section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who has not—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) A person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant Adjudicating Authority or a Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a ‘designated partner’ as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an “officer who is in default”, as defined in clause (60) of Section 2 of the Companies Act, 2013, or was in any manner and who was directly and indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.



(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change of control of a corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of the Code to a person who was not—

(i) a promoter or in the management and control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the statutory authority or Court.

*Explanation*— For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process”.

11. In Section 227 of the principal Act,-

(i) for the words “examined in this Code”, the words “contained in this Code” shall be substituted:

(ii) The following *explanation* shall be inserted, namely:-

“*Explanation*– For the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for financial service providers or categories of financial service providers may be conducted with such notifications and in such manner as may have be prescribed”.

12. In Section 239 of the principal Act, in sub-section (2), after clause (f), the following clauses shall be inserted, namely:-

“(fa) the transactions under the second proviso of sub-section (2) of section 21;

(fb) the transactions under the *Explanation I* to clause (c)of section 29A;

(fc) the transactions under the second proviso of clause (j) of Section 29A

13. In Section 240 of the principal Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:-

“(ia) circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the moratorium under sub-section (2A) of section 14”.

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Warm Regards,

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