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## DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

### Review of Policy on Foreign Direct Investment in Pharmaceutical Sector

The Department of Industrial Policy and Promotion (“DIPP”) vide its Press Note No. 2 (2015 Series) (“**Press Note**”) dated January 6, 2015 has reviewed the policy in Foreign Direct Investment (“**FDI**”) in Pharmaceutical Sector carving out for medical devices.

The extant Consolidated FDI Policy Circular of 2014 w.e.f from April 17, 2014 provides for FDI in pharmaceuticals sector through Government and Automatic route up to 100%. Vide this Press Note, the position is further revised to provide for the following:

Pharmaceuticals	
Greenfield	100% Automatic
Brownfield	100% Government

This Press Note, in addition to the existing conditions, has made further inclusions to the same as follows:

- a. The non-compete clause shall not be allowed except in special circumstances subject to the approval of the Foreign Investment Promotion Board (“**FIPB**”).
- b. The prospective investors as well as the investee are required to provide for a certificate along with the FIPB application.
- c. The Government may also incorporate conditions for FDI in brownfield cases at the

time of providing approval.

This Press Note further notes that the FDI upto 100% is permitted for manufacturing of the medical devices. Hence, the above mentioned conditions shall not be applicable for Green-field as well as Brownfield projects of the industry.

This Press note also provides for a detailed definition of the term 'medical devices' and the same shall be subject to amendment in Drugs and Cosmetics Act.

The decision on the aforementioned came into force from January 21, 2015.

*For further information, please visit the link provided herein.*

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## RESERVE BANK OF INDIA

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### *ODI by Proprietorships Concern or Un-registered Partnership Firms in India*

The Reserve Bank of India ("RBI") vide this [Circular No. 59 dated January 22, 2015](#), has reviewed the policy framework for Overseas Direct Investments ("ODI") by a proprietorship concern/unregistered partnership firm in India keeping in mind the changes in the definition/classification of the exporters as per the Foreign Trade Policy of the Ministry of Commerce and Industry issued from time to time as follows:

- a. The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Govt. of India
- b. The proprietorship concern / unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the average export realisation of the preceding three years and a consistently high export performance;
- c. The Authorised Dealer bank is satisfied that the proprietorship concern / unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated;



- d. The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. and does not appear in the exporters' caution list of the RBI or in the list of defaulters to the banking system in India; and
- e. The amount of proposed investment outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern / unregistered partnership firm in India, whichever is lower.

Hence, these revised terms and conditions are required to be complied with for considering the proposal of ODI, by a proprietorship concern / unregistered partnership firm in India, by the RBI.

*For further information, please visit the link provided herein.*

## ***Remittance of Salary Outside India***

RBI vide A.P. (DIR Series) Circular No. 62 dated January 22, 2015 draws attention towards the Foreign Exchange Management Regulations, 2000 ("**FEMA Regulations**") – Remittance of Salary.

RBI has received queries as to whether the remittance of salary outside India can be affected for employees on deputation to a group Company in India and for employees of Limited Liability Partnership.

RBI stated that the facility which is available to an employee of a Company under Regulation 7 (8) of the **Notification No. FEMA 10/2000-RB** dated May 3, 2000 shall also be available to an employee who is deputed to a group Company in India.

Further, the RBI has amended the Principal FEMA Regulations through the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Amendment) Regulations, 2014, vide **Notification No. FEMA. 328/2014-RB dated December 3, 2014.**

*For further information, please visit the link provided herein.*

## Review of Security for External Commercial Borrowings

The RBI vide Circular No. 55 dated January 1, 2015 invited the attention of Authorised Dealers Category-I (AD Category-I) banks to Paragraphs 1 (A) (vii) and 1 (B) (vi) of Annex to A P (DIR Series) of Circular No. 5 dated August 1, 2005 and A P (DIR Series) Circular No. 1 dated July 11, 2008 relating to creation of charge over securities for ECB. Whereas, the extant ECB guidelines, the choice of security to be provided to the overseas lender/supplier for securing ECB is left to the borrower.

With a view to liberalising, expanding the options of securities and consolidating various provisions related to creation of charge over securities for ECB at one place, it has been decided that AD Category-I banks may allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised / raised by the borrower, subject to satisfying themselves that:

- a. the underlying ECB is in compliance with the extant ECB guidelines.
- b. there exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender / security trustee, on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee.
- c. No objection certificate, wherever necessary, from the existing lenders in India has been obtained.

The AD Category-I bank may permit creation of charge on the aforesaid assets during the currency of the ECB with security co-terminating with underlying ECB, subject to the following conditions, detailed particulars of which are mentioned therein:

- a. Creation of Charge on immovable assets
- b. Creation of Charge on Movable Assets
- c. Creation of Charge over Financial Securities
- d. Issue of Corporate or Personal Guarantee

The abovementioned amendments to the ECB guidelines shall come into force with immediate effect.

*For further information, please visit the link provided herein.*



## ***GERC - Order in Suo motu petition no. 1442/2014***

The Gujarat Electricity Regulatory Commission (“**GERC**”) had initiated the present **Suo motu petition no. 1442/2014** (“**Petition**”) for the Compliance of Renewable Purchase Obligation (“**RPO**”) by Obligated Entities for the year 2013-14 under the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 (“**2010 Regulations**”) read with the First Amendment to the 2010 Regulations, 2014 (“**2014 Amendment**”), notified by the Hon’ble GERC. Both the aforementioned Regulations stipulate, *inter-alia*, the RPO to be fulfilled by the Distribution Licensees in the State of Gujarat during the period 2010-11 to 2016-17.

In view of this Suo motu petition, various objectors filed their submissions before the Hon’ble GERC. On hearing the parties and considering the submissions made by various objectors, the Hon’ble GERC opined to exempt certain obligated entities such as Kandla Port Trust, Aspen Infrastructure Limited, Paschim Gujarat Vij Company Limited etc. from the RPO compliance for FY 2013-14. Subsequently, considering the issue of RPO compliance in case of Gujarat Urja Vikas Nigam Limited (“**GUVNL**”), Torrent Energy and MPSEZ Utilities Private Limited the Hon’ble GERC opined as follows:

1. **GUVNL**

GUVNL, overall attained a renewable purchase level of 7.44% against the RPO of 7%. Highlighting this, the GUVNL requested the Hon’ble GERC to adjust its excess solar energy purchased into the non-compliance in the Non-solar part, stating that the solar energy is costlier than the Non-solar energy and further purchase of non-solar energy would result in an additional burden on consumers of the distribution licensee.

2. **MPSEZ Utilities**

The Hon’ble GERC, in the order opined that considering the nascent stage of operation of the deemed distribution licensees of SEZ and quantum of power requirement by them for fulfilment of RPO, which is very less, the Hon’ble GERC exempted the licensee from applicability of RPO for FY 13-14.

3. **Torrent Energy**

Torrent Energy submitted that it has complied with RPO of 4.55% against a total of 6% in case of Non-solar, and 0.07% against 1% in case of solar RPO. On account of non-availability of renewable energy and factors beyond control, which lead to shortfall in RPO compliance for FY 13-14, the Hon'ble GERC was requested to revise the RPO percentage of FY 13-14 to the actual targets achieved by the company.

The Hon'ble GERC in the order opined that Torrent Energy has made sufficient efforts to fulfil the Solar and Non-solar energy as well as RECs and also considered the fact that non-availability of renewable energy and factors beyond control resulted in shortfall in RPO compliance. In view of the arguments, the Hon'ble GERC opined that Torrent Energy cannot be forced to buy more RECs. The Hon'ble GERC ordered to revise the RPO of Torrent Energy as non-solar RPO at 4.55 % and Solar RPO at 0.07 % for FY 2013-14.

*For further information, please visit the link provided herein.*



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