# India Opens Up Retail and Other Sectors to Foreign Investors

The Government of India recently introduced long-awaited reforms to its Foreign Direct Investment (FDI) policy by allowing foreign investors to invest in Indian supermarkets and other retail stores (multi-brand retail), single brand stores (single brand retail) and broadcasting companies and by allowing foreign airlines to invest in Indian airlines. The reforms open up significant opportunities for foreign investors in India but the applicable conditions could also create risks. Below is a summary of the key reforms.

## Multi-Brand Retail

Foreign investors can hold up to a 51 percent equity interest in Indian supermarkets and other retail stores with the prior approval of the Government of India subject to the following conditions:

- There has to be a minimum foreign investment of US$100 million.
- Foreign-owned retail stores can only be opened in states that permit such stores and only in cities with a population of at least one million, with the exception of certain states where such cities do not exist.
- At least 50 percent of the total foreign investment has to be in developing "backend infrastructure" within three years of the first tranche of investment; "backend infrastructure" includes processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage and warehouses.
- At least 30 percent of the value of manufactured or processed products must be procured from Indian "small industries" that have a total investment in plant and machinery not exceeding US$1 million.

## Single Brand Retail

Prior to the most recent changes, foreign investors could hold up to a 100 percent equity interest in single brand stores with the prior approval of the Government of India subject to certain conditions. The latest reforms maintain the same position but have eased certain of the conditions:

- Products to be sold should be of a single brand, branded during manufacturing and should be sold under the same brand internationally.
- Investors in a single brand store are no longer required to be owners of the brand sold in such stores; irrespective of its ownership of the brand, only one nonresident entity can undertake retail trading for a specific brand.

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- Foreign-owned single brand stores that have more than 51 percent foreign investment are encouraged but no longer required to source from micro, small and medium enterprises but are required to source locally from suppliers within India at least 30 percent of the value of goods purchased; 30 percent requirement is to be satisfied as an average during the first five years and thereafter on an annual basis.

## Civil Aviation

Foreign airlines can now hold up to a 49 percent equity interest in Indian companies that operate air transport services on a fixed flying schedule (scheduled air transport) and companies which operate charter and on-demand services (non-scheduled air transport), in each case with the prior approval of the Government of India subject to the following conditions:

- The 49 percent investment ceiling on foreign airlines will be calculated inclusive of investments by other foreign investors.
- The permission for a company to operate flights on a fixed schedule would be subject to: (1) the place of registration and principal place of business of such company being in India; (2) the chairman and at least two-thirds of the directors of such company being Indian citizens; and (3) Indian nationals retaining a substantial ownership and control of such company.
- Foreign nationals associated with air transport services in India as a result of such investment will need prior security clearance from the Indian government.
- All technical equipment imported into India as a result of the investment will require prior approval of the Ministry of Civil Aviation.

## Broadcasting

Foreign investors can now hold up to a 74 percent equity interest in Indian companies engaged in various broadcasting sectors such as setting up of uplinking hubs and teleports, direct-to-home services, mobile television, cable networks and other specified services. Foreign investment up to 49 percent will not require any prior approval of the Government of India but such investment above 49 percent will require prior approval of the government. The foreign investment cap includes investments made by nonresident Indians, foreign institutional investors and foreign investors holding convertible debt and equity instruments and depository receipts. Any foreign investment will remain subject to a number of security and other conditions relating to citizenship and residence of directors and key officers of the Indian company.

## Implications of the Proposed Changes

The reforms are a welcome change in the right direction and provide reassurance to foreign investors about India's attitude towards foreign investment. These reforms are likely to increase cross-border mergers and acquisitions, joint ventures and private equity investments in the newly liberalized sectors in India. However, careful structuring is critical. As in the past, policy changes include a number of conditions that are vaguely worded and could turn into significant pitfalls.





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