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No. DPE/13(12)/10-Fin.
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhavan
Block No. 14, CGO Complex
Lodhi Road New Delhi-110003

Dated: 4th August, 2016

OFFICE MEMORANDUM

Subject: Raising of limit for investment by FPIs in Central Public Sector Enterprise (CPSEs) from 24% to 49%-regarding.

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The undersigned is directed to forward herewith a copy of the Department of Economic Affairs, Ministry of Finance O.M No 10/1/2016-FIU, Dated 21st July, 2016 on the subject mentioned above.

2. All the Administrative Ministries/Departments are requested to issue suitable instructions to CPSEs under their administrative control for strict compliance.

Kalyani Mishra

(Kalyani Mishra)
Director
Tel: 24362061

Encl. : As above

To

1. All Secretaries of Administrative Ministries/Departments.
2. Chief Executive of CPESs.
3. Department of Economic Affairs w.r.t. their O.M No 10/1/2016-FIU) Dated 21st July, 2016

Urgent

F. No. 10/1/2016-FIU
Government of India
Ministry of Finance
Department of Economic Affairs
(Investment Division)

North Block, New Delhi
Dated 21 July, 2016

OFFICE MEMORANDUM

Subject: Raising of limit for investment by FPIs in Central Public Sector Enterprises (CPSEs) from 24% to 49%- regarding.

The undersigned is directed to refer DPE's O.M. No. DPE/3(12)/2010-Fin dated 10.5.2016 and 19.4.2016 and to say that DEA had consulted DIPP, DPE, MoCA, and DIPAM on the proposed instruction to be issued for implementation of the captioned Budget (2016-17) announcement. Based on the consultation, the following has been finalized:

2. In terms of Schedule 2 or Schedule 2A of FEMA Notification 20/2000-RB dated 3.5.2000 (hereafter referred as FEMA 20), Foreign Institutional Investors (FIIs) and Foreign Portfolio Investors (FPIs), respectively may invest in an Indian company under portfolio investment route upto a limit 24% of paid up equity capital of the Indian company. Thus 24% was the default limit for FII/FPI investment until issue of FEMA Notification 354 dated October 30,2015. The FEMA Notification 354 dated October 30,2015 which amended FEMA 20 introduced the concept of composite cap i.e. total foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), Schedule 2 (FII), Schedule 2 A (FPI), Schedule 3 (NRI-Portfolio Investment), Schedule 6 (FVCI), Schedule 8 (QFI) , Schedule 9 (LLP) and Schedule 10 (IDRs) of FEMA Notification 20. It also provided that portfolio investment upto aggregate foreign investment level of 49% or sectoral /statutory cap whichever is lower will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to condition of Government approval and compliance of sectoral conditions, as laid down in the FDI policy.

3. Thus, the extant FDI policy already allows FPI investment up to 49% of paid up equity capital in all sectors except defence sector and public sector banks. Post this amendment in FEMA 20, FPI investment can be raised beyond 24% and upto 49% of paid up equity capital or the sectoral cap, as applicable, by the Indian company without the need for Government approval, provided there is no transfer of ownership from Resident to Non-Resident. The Indian company concerned has to only have a resolution passed by its Board of Directors followed by passing of a special resolution to that effect by its General Body.

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4. This proviso would have applied to Central Public Sector Enterprises (CPSEs) also, but for the procedural requirement of approval from the administrative Ministries/Departments having CPSEs. Thus, as of now, in case of CPSEs, apart from the approval from its Board of Directors and General Body meeting, subsequent approval is required from line/Administrative Ministry or Department concerned which may include an approval from Department of Public Enterprises.

5. To streamline these approval procedures in light of the above mentioned FEMA Notification, necessary instructions/administrative guidelines have to be issued to the CPSEs. Accordingly, the following guidelines are issued:

"A Central Public Sector Enterprise (CPSE), other than a Public Sector Bank may raise the Foreign Portfolio Investment (FPI) investment limit beyond 24 percent of the paid up equity capital and up to 49% of the paid up equity capital without the need for an approval from the line or Administrative Ministry concerned of Department of Public Enterprises/Ministry of Finance, provided there is no transfer of control or management from resident shareholders to non-resident individual and/or non-resident entities. Further, the investment by FPIs should be in compliance with the extant FDI policy, FEMA Regulations and SEBI regulations. The concerned CPSE will be required to pass a resolution to that effect by its Board of Directors with the concurrence of all the Government nominee Director(s). This would be followed by passing of a special resolution to that effect by a duly convened General Body meeting."

6. DPE vide O M dated 19.04.2016 had also suggested that policy guidelines relating to FPI may be framed by DEA with instructions to DPE for circulating them to the concerned Administrative Ministries/Departments having CPSEs for compliance. Therefore, DPE is requested to circulate the above instructions to all CPSEs through their Administrative Ministries/Departments.

7. This issues with the approval of Hon'ble Finance Minister.

Encl: As above

21.7.16

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