

De Jure

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Standard Operating Procedure



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simple solutions

We write in furtherance to our Dejure dated June 14, 2017 titled "**FIPB Abolishment: The proposed way ahead**" where we had mentioned that a Standard Operating Procedure ("**SOP**") will be issued by the Department of Industrial Policy & Promotion ("**DIPP**").

The DIPP has by way of a notification dated June 29, 2017, issued the SOP, detailing the procedure to be followed by the Competent Authorities while considering FDI proposal. Under the SOP, the Competent Authorities refer to the concerned Administrative Ministry/Department as identified by the DIPP, responsible for handling FDI applications for relevant sectors

Some of the key features set out in the SOP are as follows:

- The FIPB has now been rechristened as Foreign Investment Facilitation Portal ("**FIIP**");
 - Applications for FDI which fall under the approval route are required to be submitted online on the revamped portal;
 - Once the applications are filed online, the DIPP will e-transfer proposals to the concerned Competent Authority;
 - In addition to circulation of the application to the Ministry of External Affairs ("**MEA**") and Department of Revenue ("**DoR**"), the application would also be circulated by the DIPP to the RBI for comments from a FEMA perspective;
 - Applications which require security clearance (*detailed below*) would be forwarded to the Ministry of Home Affairs ("**MHA**") for clearance;
 - Consultation with the DIPP is intended to be need based. Consultation with other Ministries/Departments to require complete justification and approval from the concerned Secretary;
 - Timelines have been provided in the SOP for the Ministries/Departments/Regulatory Bodies to revert with their comments on the applications forwarded to such Ministries/Departments/Regulatory Bodies;
 - In order to expedite the processing of FDI proposals, all comments to be obtained from the relevant Governmental authorities, or clarifications from the applicant are to be in online mode;
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- The SOP sets out the process steps and timelines which the application for FDI under the approval route will entail and which have been briefly summarized as under:

Step 1 Applicant to file the FDI proposal online, on FIIP, in prescribed format¹ *DIPP will e-transfer the application to the respective Administrative Ministry / Department within 2 days*

Step 2 If the application is not digitally signed, the Applicant will be required to submit a signed physical copy of the application to the Competent Authority within 5 days of an intimation from the DIPP² *Not required if application is digitally signed*

Step 3 DIPP to circulate the proposal to the Reserve Bank of India within 2 days for comments from a FEMA perspective. The proposal would also be forwarded to the MEA and DoR for information and comments. Proposals for FDI in sectors requiring security clearance (investments in Broadcasting, Telecommunication, Satellites - establishment and operation, Private Security Agencies, Defense, Civil Aviation and Mining & mineral separation of titanium bearing minerals and ores, its value addition and integrated activities; and investments from Pakistan and Bangladesh) would be forwarded to the MHA

Step 4 The Competent Authority to scrutinize the proposal and call for *Within 1 week.*

¹ Annexure A of the notification dated June 29, 2017 issued by DIPP sets out the format of such application

²The date of filing is considered to be the disposal time of the applications, in case the applications are filed online. In case the signed physical copy is not submitted within 7 days of communications from DIPP to the competent authority, then the date of filing is the date when the physical application is received

relevant additional information/documents from the applicant.

Note. The time taken by the applicant in responding to the queries raised by the Competent Authority will be excluded from the time limits for disposal of the application.

Step 5 Within 4 weeks, the concerned Ministries/ Department/Regulatory Body to upload their comments on the FIIP.

Step 6 The MHA to provide comments to the Competent Authority on the applications referred to it for security clearance (*refer Step 3 above*) within 6 weeks

Where MHA is not in a position to provide its comments with 6 weeks, it will intimate the Competent Authority of the expected time frame within which it would be able to give its comments.

Step 6 Proposal to be completed* in all respects within six weeks from Step 3

The proposal has to be complete within eight weeks in the event comments from the MHA have been sought.

*It is assumed that the reference to the complete proposal implies that comments from all relevant Ministries/Departments/Regulatory Bodies have been received on the application by the Competent Authority

Step 7 The Competent Authority to process the proposal and convey its decision to the applicant within 2 weeks from step 6.

Approval/rejection to be sent to applicant, consulted ministries/department and DIPP.

Where the Competent Authority proposes to reject the proposal or where additional conditions are to be included, the Competent Authority will be required to seek concurrence of the DIPP within 8weeks. (*10 weeks in case comments from MHA have been sought for security clearance*) from the receipt of the proposal.

Our Views

While the abolishment of the FIPB is a welcome move towards further liberalization of the Indian economy, the success of the SOP in shortening time periods for FDI applications under the approval route, would be primarily dependent on the Competent Authority to dispose of applications within the envisaged time periods. This in turn would also require a relatively seamless movement of each of the steps entailed in the disposing of the application. To use a clichéd phrase, time would provide the answer to this. However it is hoped that the SOP is able to achieve the objective of the Government, of an expeditious disposal of FDI applications (*falling under the approval route*) in a simplified manner

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