

Telecom Hotline

October 21, 2005

FDI LIMIT IN TELECOM SECTOR RAISED TO 74% - CABINET CLARIFICATIONS

On October 20, 2005 the Union Cabinet has issued and approved the amended FDI norms for the telecom sector, which has raised the Foreign Direct Investment ("FDI") in the telecom sector from 49 per cent to 74 per cent.

Computation of FDI: As per the amended norms the total composite foreign holding including but not limited to investments by Foreign Institutional Investors (**FIIs**), Non-resident Indians (**NRIs**), Foreign Currency Convertible Bonds (**FCCBs**), American Depository Receipts (**ADRs**), Global Depository Receipts (**GDRs**), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc. should not exceed 74 per cent. However, total foreign holding in Indian public sector banks and Indian public sector financial institutions will not be counted towards the ceiling of 74 per cent. On the other hand, foreign holding in Indian private sector banks will be considered as foreign equity. The 74 per cent foreign investment may be made, directly or indirectly, in an operating company or through a holding company.

Disclosure: The licensee/telecom company will be required to disclose the status of its foreign holding and certify that the foreign investment is within the ceiling of 74 per cent on a half yearly basis.

Transition: As regards the one-time transition/correction period to be allowed for licensee's/telecom companies to comply with the 74 per cent ceiling, it has been spelt out as 4 months from the date of issue of notification.

Remote Access: The amended norms also stipulate that the licensee shall not permit Remote Access (RA) to any equipment manufacturer or any other agency (network vendors) outside the country for any maintenance/repairs required by the licensee, except in circumstances of catastrophic software failure, which would lead to major part of the network becoming non-functional for a prolonged period. The provision of RA is also circumscribed by a number of rules including (1) RA password being made available for a definite period and from pre-approved locations (2) the requirement that control of RA should be within the country and not abroad, (3) support to the government agency (Intelligence Bureau) notified of the RA to record the transaction for on-line monitoring and (4) and RA being possible only in situations of 'catastrophic software failure where a major part of the network becomes non-functional for a prolonged period,' a phrase which is to be defined by the Department of Telecom shortly.

Riders: The hike in FDI has come with some riders:

- The majority of directors on the Board, including Chairman, Managing Director and CEO have to be resident Indian citizens.
- At least one resident Indian promoter should hold at least 10 per cent equity. This is to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding.
- The Chief Technical Officer (CTO)/Chief Finance Officer (CFO) should be resident Indian citizens.
- No traffic (mobile and landline) from subscribers within India to subscribers within India should be hauled to any place outside India.
- No telecom company will be allowed to transfer any accounting information, user information, and details of infrastructure/network diagram outside India.
- Moreover, the company must provide traceable identity of their subscribers

Some of the above conditions shall also be made applicable to the companies operating telecom services with existing FDI ceiling of 49 per cent.

India has witnessed tremendous growth in the telecom sector in the recent past. According to the government source the number of telephone connections has gone up to 110 million by end of August 2005. The teledensity (number of telephones per 100 population) has almost touched 10 as against the Tenth Plan target of 7. In order to benchmark the telecom services with the other emerging economies, Department of Telecommunications, Ministry of Communications and IT aims to increase telephone connections to 250 million by 2007, which requires an estimated additional investment of about US\$20 billion. In this context the industry has welcomed the increase in the FDI.

-Gowree Gokhale & Sushma George

Source: Press Information Bureau, October 20, 2005 & The Economic Times, October 21, 2005

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