

**F. No 12(21)/2016-AEI-Part(1) E-25010**  
**Government of India**  
**Ministry of Heavy Industries**  
**AEI-Section**

**Udyog Bhawan, New Delhi**  
**Dated: 21<sup>st</sup> December 2022**

To,

- i. Director General, SIAM
- ii. Director General, ACMA

**Subject: Stakeholder Consultation with Ministries/Departments for preparation of Reservation List under Investment Liberalization Chapter of FTAs-reg.**

The Undersigned is directed to refer to the above subject and to say that India is engaged in the Free Trade Agreement (FTA) negotiations with several important bilateral partners such as UK, EU, Canada etc. An important aspect of these FTAs is an investment liberalization chapter which proposes provisions on investment protection and promotion. The objectives of the proposed investment chapter, inter-alia, include providing non-discriminatory pre-establishment treatment to investors from these countries and their investment in India and similarly for Indian investors in these countries.

Key aspects of the investment chapter include following commitments:

- i. **Market Access:** It refers to a commitment in a sector or sub-sector to not adopt or maintain measures (as listed in the Chapter), that restrict access to the investor from the other country unless an exception is carved out.
- ii. **National Treatment (NT):** Commitment to treat foreign and domestic investors and their investments equally, i.e., not discriminate between the Indian companies/nationals and foreign companies/nationals in matters relating to establishment acquisition, expansion, management, conduct, operation and sale or other disposition of investments.
- iii. **Most Favoured Nation Treatment (MFN):** Obligation not to discriminate between investors from various countries and their investments in matters relating to establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.
- iv. **Prohibition of Performance Requirement (PPR):** Obligation to not impose performance requirements on foreign investors and their investments.
- v. **Senior Management and Board of Directors (SMBD):** Obligations to not subject the foreign investors to appoint natural persons of any particular nationality at senior management position.

2. Since there is a likelihood that India's existing measures or rules, or laws, presently, may not be in conformity with the above mentioned obligations proposed under the investment chapter in the FTAs, DoC is examining the possibility of identifying a list of sectors/activities wherein India is willing to undertake this commitment with necessary carve-outs for non-conformity measures to be provided in a proposed list of commitments as below:

- i. Identify the sectors/activities where India is willing to undertake the above commitments.
- ii. List the sectors/activities in which policy space for existing and future measures, is carved out given their sensitivity or emerging policy issues. These could be new or emerging sectors or existing sectors.

3. In the above backdrop, it is requested to provide inputs/comments on issues in the proposed list of commitments pertaining to Auto Section:

- i. Whether commitments in any Sector/sub-sector/activity pertaining to Auto Section are to be included in the list of commitments?
- ii. Provide the 'Measures' such as Acts/Regulations/Laws etc. which are in non-conformity with the above-mentioned commitments falling within Auto Section (Market Access/National Treatment/MFN/PPR/SMBD).

4. Further, it is requested to kindly confirm and suitably update/amend/enhance (if required) the following restrictions/limitations/conditions on foreign investment/investors/personnel under sectoral laws/regulations/guidelines:

Sl. No.	Sector/activity	Relevant rules/regulations/guidelines	Restriction/Condition	Remarks
1.	All Sector s/Activities	Companies (Appointment and Qualification of Directors) Amendment Rules, 2022	Rule 8: "Provided further that in case the person seeking appointment is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Government of India shall also be attached along with the consent."  Rule 10(1):	Any national of a country sharing land border with India who seeks appointment as a director in an Indian company, will require prior security clearance from the MHA

			"Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached along with application for Director Identification Number."	
		Special Economic Zones Act, 2005	A person resident outside India will require prior approval by the Board of Approval / Approval Committee constituted under the Special Economic Zones Act 2005 and/ or any other authority, as the case may be, for foreign collaboration and foreign direct investment in a Special Economic Zone. FDI in the permitted sectors may also be subject to all other general and sector specific conditions in the FDI Policy.	

5. In this regard, ACMA & SIAM are requested to furnish their comments on the matter, to this Ministry, at the earliest.

Yours faithfully,

  
(M. Subramanian) 21.12.22

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