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India: A Legal Insight into Foreign Investments in The Indian Food Processing Industry

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Food processing includes all the processes under filtration, manufacturing and preservation techniques undertaken for bringing value addition to the agricultural or horticultural produce. Even the produce from animal husbandry and fisheries are subjected through food processing to make it saleable for consumption. Therefore, the food processing industry and the agricultural sector are interdependent for their respective existence and growth. Present day globalisation with evolving international trade laws, policies and regulations are transforming domestic markets into world markets. The produce from Food Processing Industry fetches large-scale demand in every market across the globe thereby making international trade as indispensable as local. Accordingly, the Indian government has been regularly making legal and regulatory reforms essential to make India the most desirable destination for investments and trade in food and food processing in the world. The Indian Food Processing Industry has been accorded a "high priority" status by the Indian government bringing various regulatory reliefs with promotional schemes and financial incentives to the investors in this sector. Authoritative studies in the field reflect that food processing sector plays a prime role in the upliftment of the rural population and achieving country's food self-sufficiency and national food security goals.

Relevant Legislations & Policies

India is ranked amongst the top exporters of food and processed food products in the world. India's humungous productive population together with its strong raw material base makes it an ideal place for such a large-scale labour-intensive industrial sector to thrive and flourish. Despite the global economic meltdown, India,

as an exception has achieved a continuous growth of 0.73% in the number of new food processing units registered in the country. Further the Ministry of Food Processing Industries has set up an "Investors' Help Desk" in association with "Invest India" for offering necessary support and guidance to both domestic and foreign investors in food processing sector. The following paragraphs shall discuss promulgations relevant to the investors in Indian food processing sector:

- **Foreign Direct Investment (FDI) Policy:** The government has approved 100 % FDI under automatic route for all foreign investments in food processing industries and 100% FDI through approval route for carrying out trade including e-commerce in food products manufactured and/or produced in India. The FDI limit for Micro, Small and Medium Enterprises is 24% under automatic route and beyond 24% through the approval route only. Also, the Government of India has set up Foreign Investment Implementation Authority (FIIA) to ease the entire process of Foreign Direct Investment (FDI). The objective of the Authority is to assist foreign investors in implementation of their investment proposals, provide clarity and assistance in obtaining necessary approvals and sort out and provide solutions to operational issues that are faced by foreign investors. Indian legal system does not discriminate between a domestically held company and a company with foreign investment and foreign investors are free to set up a wholly owned subsidiary company or a joint venture with an Indian/foreign company in India. FDI is also permitted in Limited Liability Partnerships (LLPs) and FDI policy for companies and LLPs is the same. A foreign company can also establish a liaison office for making an effective representation essential for its trade promotions for which it may obtain necessary approvals from Reserve Bank of India. A foreign company may also conduct business by setting up a branch office or a project office with the prior approval of the Reserve Bank of India. Also, a foreign company has the option of entering into various arrangements for sale and/or distribution of its products in India, including through franchise, agency or distributorship.
- **Mega Food Parks & Cold Chain Schemes:** The Indian government has extended financial assistance in the form of grants under these two major central sector schemes for facilitating infrastructure development essential for establishing industries within the food processing sector. Any incorporated company including a state enterprise is eligible for assistance under the Mega Food Scheme. The Scheme sanctions a capital grant of 50% of the eligible project cost and 75% in case of those projects which do not exceed Rs 50 Crores each and are located in hilly and remote regions including those areas which are notified by 'Integrated Tribal Development Program'. Mega Food Parks are being promoted with a view to provide entire essential common infrastructure required for any food processing industry to establish and operate successfully. The Cold Chain Scheme sanctions 50% the total cost of the plant with machinery and 75% in case of those projects which do not exceed Rs 10 Crores each located in the hilly and remote regions of the country.

The above schemes also extend import benefits towards installation of mechanized food grain handling systems and pallet racking systems in

markets. Also grants and benefits are made available under these schemes for establishment of warehouses for food grains and sugar; cold storage; cold room (including for farm level pre-cooling); industrial projects for preservation; storage or processing of agricultural, apiary, horticultural, dairy, poultry, meat, aquatic, and marine produce.

- **National Mission on Food Processing (NMFP):** The Ministry of Food Processing Industries (MOFPI) launched this centrally sponsored Scheme with the objective to empower the state governments to facilitate the integration of food processing sector with agricultural and horticultural production in those states. The different schemes within NMFP are (i) Technology Up-gradation/ Establishment/ Modernisation of Food Processing Industries; (ii) Cold Chain, Value Addition and Preservation Infrastructure for Non-Horticultural Products; (iii) Modernization of Abattoirs; (iv) Human Resource Development; (v) Promotional Activities; (vi) Old Food Parks; (vii) Creating Primary Processing/Collection Centres in Rural Areas; (viii) Modernization of Meat Shops and Reefer vehicles.
- **Income Tax Benefits :** Business establishments engaged in processing, preservation and packaging of fruits, vegetables, meat, meat products, poultry, marine and dairy products are permitted to claim 100% tax exemption during their initial 5 years, and thereafter for next five years are entitled for 25% tax exemption, whereas if it's a company then the claim cannot exceed 30%.

The Cold Chain Units and the warehousing facilities for storing agriculture produce can avail 100% deduction in respect of the capital expenditure incurred by them for setting up these facilities under the investment-linked Income Tax incentive. Such businesses if commenced on or after 01.04.2012 are allowed 150% tax deduction.

- **Custom Duty Benefits:** The government of India has extended 'Project Imports' benefits to cold storage, cold room (including for farm level pre-cooling) and industrial projects for preservation, storage and processing of agricultural, apiary, horticultural, dairy, poultry, meat, aquatic and marine produce. Therefore, irrespective of their tariff classification, all the aforementioned produce is entitled to a uniform assessment at a concessional basic customs duty.
- **Excise Duty Benefits:**
 - **Food Products:** As against standard excise rate of 12%, Processed Fruits & Vegetables carry a merit rate of 2% without CENVAT or 6% with CENVAT. Soya Milk Drinks, Flavoured Milk of Animal origin also carry a duty of 2% without CENVAT or 6% with CENVAT.
 - **Food Processing Machineries:** All refrigeration machineries and parts used for installation of cold storage, cold room or refrigerated vehicle for the pasturing, drying, evaporating, preservation, storage, transport or processing of agricultural, apiary, horticultural, dairy, poultry, meat, aquatic and marine produce are exempted from Excise Duty. The Excise duty on presses, crushers, machinery used for the manufacture, preparation and packaging of meat, poultry, fruits, nuts, vegetables,

wine, cider, fruit juices and such other beverages has been reduced from 10% to 6%.

- **Service Tax Benefits:** Following food processes and activities are exempted from Service Tax: Pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables. Tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging of agricultural produce. Construction, erection, commissioning, or installation of infrastructure for post-harvest storage of agricultural produce including cold storages for such purposes. Mechanised food grain handling system and equipment for units processing agricultural produce other than alcoholic beverages.
- **Vision Document 2015:** This document by the Ministry of Food Processing Industries envisages the limitless potential of the Indian food processing sector with the objective to attract huge foreign investments towards India. Accordingly, the government has envisaged an increase in processing of perishables from current 6% to 20% which is likely to result in their value addition from 20% to 35%. The government also aims to increase India's share in global food trade from 1.5% to 3%.
- **Major legislations listed below govern and regulate the food processing industry within India:** Food Safety and Standards Act 2006 (Rules & Regulations 2011) Agriculture Produce (Grading & Marking) Act 1937 with respective state laws Essential Commodities Act, 1955 Insecticides Act, 1968. Export (Quality Control and Inspection) Act, 1963. Environment Protection Act, 1986. Pollution Control Laws Bureau of Indian Standards Act, 2016. Industries (Development & Regulation) Act 1951 Agricultural and Processed Food Products Export Development of Authority Act, 1985 Legal Metrology Act, 2009 Legal Metrology (Packaged Commodities) Rules, 2011 Cable Television Networks (Regulation) Act, 1995.
- **Road ahead:** The forecast of food processing in India is extremely promising which shall materialise better only if India adopts the food safety and quality assurance mechanisms adopted by most developed countries in the world. The most prominent ones are Mechanism Total Quality Management (TQM) including ISO 9000 & ISO 22000, Hazard Analysis and Critical Control Points (HACCP), Good Manufacturing Practices (GMP), Good Hygienic Practices (GHP). These mechanisms keep the food processing industries technologically abreast to adopt international best practices essential to safeguard consumer health while at the same time making the products eligible for the global competition.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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