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Retail joint ventures in India may need restructuring as government scrutinizes sub-brands

 PaRR Strong evidence

Some foreign retailers entering India may need to restructure their joint ventures to meet the country's foreign direct investment (FDI) regulations, as the Indian government scrutinizes whether "sub-brands" are a violation of its single-brand retail policy, industry lawyers said.

In the worst-case scenario, foreign firms that have entered under a single-brand retail license may need to apply under the multi-brand retail policy, two investment bankers told *PaRR*. As leading UK retailer Marks & Spencer has come under the government scanner for an alleged violation of the single-brand retail policy, this has put the brakes on new deals and hurt foreign investment into the country, the bankers said.

[Marks & Spencer is under scrutiny](#) from India's Department of Industrial Policy and Promotion (DIPP) as the retail chain applied for a single-brand license but sells a number of "sub-brands" within its M&S stores. Some sections of the government view this as a violation of the single-brand retail policy, as they do not recognize the concept of "sub-brands," and hence the companies should may need to apply for a multi-brand retail license.

According to the single-brand retail policy, owners can retail products under a single brand sold internationally. Under the multi-brand retail policy, it is possible to sell multiple brands under the same roof. The first banker noted that no other major country makes such a distinction in its retail policies.

There is an urgent need to remove the ambiguities if India is to encourage foreign investment into the "single-brand retail" space, both the investment bankers said. The FDI policy fails to define what is "single-brand" retail, simply stating that products sold should be solely that of a "single brand".

The government is trying to better understand how sub-brands can fall under the single-brand retail policy and how that model differs from the multiple-brand retail policy, industry lawyers said.

"It is a learning curve for the Indian government," a Hong Kong-based lawyer working with international retail brands said. When applying for a single-brand license, companies need to show how the various sub-brands are essentially part of the same umbrella brand and are only differentiated in terms of pricing or fashion, similar to how alcohol companies differentiate between their premium brands and cheaper brands, he explained.

M&S has a number of sub-brands including *Autograph*, *Blue Harbour*, *Collezione* and *Limited Collection* in addition to its namesake *M&S* brand. It runs 24 stores across India through a 51:49 joint venture with **Reliance Retail**, an arm of Mukesh Ambani's Reliance Industries.

When it kicked off phase two of its brand re-launch in May, M&S touted its "clearer and more compelling sub-brands" with distinct identities that will help consumers find the style that suits them best. However, when it first relaunched the sub-brands last year, it seemed to position them as separate brands, saying it had given them "distinctive values and identities, turning them from labels to real brands."

Clarity needed to encourage foreign investment

Vivek Kathpalia, a Singapore-based partner at Indian law firm Nishith Desai Associates, told *PaRR* the firm is looking at how best to file an application with India's Foreign Investment Promotion Board (FIPB) for an international client looking to enter India's single-brand retail space.

"We have not yet decided our move in case the Indian government comes out with some clarification on single-brand retail policy," Kathpalia said.

Bankers and lawyers anticipate the Indian government will have to clarify and clearly define the single-brand retail policy.

When filing an application under a single brand seeking regulatory approval, it might be wise to incorporate and capture within the joint venture agreement the concept of sub-brands that are under the parent brand, Kathpalia told *PaRR*. When filing for regulatory approval, one option the company has is to show the worldwide registration of the brands together, he added.

As a number of retail stores worldwide sell "sub-brands" under a parent brand, the government is studying the policy as to whether there is a need for a change, legal sources told *PaRR*. The DIPP has been asked to clarify whether the sale of various premium and lower end brands under the parent brand is deemed as a violation of the FDI guidelines for single-brand retail in India. M&S is not the only one under scrutiny by the DIPP and the Indian government, one of the lawyers said.

The Indian government has granted single-brand licenses to 63 foreign companies, the *Economic Times* newspaper reported 9 June. In January 2012, foreign direct investment (FDI) cap was increased from 51% to 100% in the single-brand retail space.

Massimo Dutti, an arm of Spanish retail giant **Inditex**, received approval in May from the Indian authorities to set up a 51-49 joint venture in the country with Tata Group's **Trent** unit. Other international chains such as *H&M* and *Gap* are likely to follow suit, according to media reports.

However, bankers pointed out that unless the government clarifies how sub-brands will be treated, most are likely to adopt a wait-and-see approach.

Meanwhile, a government-appointed committee led by Secretary of Economic Affairs Arvind Mayaram has recommended increasing the [FDI cap in multi-brand retail space](#) from the prevailing 51% to 74%, as previously reported by *PaRR*.

It is not clear whether such a move may encourage greater FDI into the multi-brand retail space instead, the first banker pointed out.

"After all, the multi-brand policy imposes harsh conditions including minimum investment in the back end," the banker added. In addition, not all Indian states have approved the entry of multi-brand retail chains, fearing the impact on the mom-and-pop stores, the second banker noted.

by Freny Patel in Singapore