

Corpsec Hotline

March 08, 2005

REAL-LY BURGEONING FDI

Pursuant to the Cabinet Committee on Economic Affairs announcing its in-principle approval for increased Foreign Direct Investments (**FDI**) in the real estate sector last month, the Department of Industrial Policy and Promotion has issued a formal notification, vide Press Note 2, dated March 3, 2005, implementing this liberalization.

Up to 100 per cent FDI in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure), would now be permitted through the automatic route, subject to the following conditions:

- Minimum area to be developed under each project would be (i) a minimum land area of 10 hectares in the case of serviced housing plots (against the earlier requirement of 100 acres); (ii) a minimum built-up area of 50,000 square meters in the case of construction-development projects (against the earlier requirement of 2,000 dwelling units) and (iii) in the case of a combined project, any one of the above two conditions would suffice.
- Minimum capitalization requirement of USD 10 million for wholly owned subsidiaries and USD 5 million for joint ventures with Indian partners. Further, the minimum capitalization amounts have to be brought into India within six months of commencement of business.
- Repatriation of original investment will be permitted only after three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with the prior approval of the Government through the Foreign Investment Promotion Board.
- A minimum of 50 per cent of the project has to be developed within 5 years of receipt of all statutory clearances.
- Sale of undeveloped plots (i.e. plots where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available) will not be permitted. In fact, the foreign investor will be permitted to dispose of serviced housing plots only upon receipt of completion certificate from the concerned local body/service agency.
- Conformity with the existing norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, by-laws, rules and other regulations of the State Governments, municipal bodies and other concerned local bodies.
- Procurement of all necessary approvals, including those of the building / layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and compliance with all other requirements as prescribed under applicable by-laws, rules and regulations of the State Governments, municipal bodies and other concerned local bodies.

The State Governments, municipal bodies or other concerned local bodies approving the building / development plans will monitor compliance of the above conditions by the developer.

While the tenor of the liberalization appears to be more construction-centric than land-centric and provides a number of stipulations preempting speculation in real estate, the move comes as a welcome fillip to the Indian real estate sector and has heralded announcements by a number of private equity funds and financial institutions, including HDFC and ICICI Ventures, of plans to set up structures for real estate investments through Real Estate Investment Trusts (**REITs**) or other REITs products.

With the announcement of these guidelines, the government has lived up to the expectations of foreign investors keen on investing in the Indian real estate sector; a sector which has shown promising returns over the last few years. This is clearly one of the most significant liberalizations for foreign investment in recent times .

Source: Department of Industrial Policy and Promotion

You can direct your queries or comments to **Siddharth Shah** and **Roshan Thomas**

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