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FIIS CAN INVEST IN REAL ESTATE IPOs

In a market place that is hungry for anything which is in connection with real estate, there is some good news, Foreign Institutional Investors ("FIIs") can invest in real estate Initial Public Offerings ("IPOs") and pre-IPO placements.

Department of Industrial Policy and Promotion ("DIPP") under the Ministry of Commerce and Industry has clarified that FIIs are allowed to take part not only in the IPOs by real estate companies, but can also participate in pre-IPO placements undertaken by such real estate companies without regard to the Foreign Direct Investments ("FDI") stipulations since the FIIs investment is under the Portfolio Investment Scheme and not under the FDI route.

What this means is that FIIs will not be required to comply with the conditions and restrictions under Press Note 2 of 2005 issued by DIPP, which are applicable to FDI investments in real estate sector ("Press Note 2"). Press Note 2 allows 100% FDI in the real estate construction and development sector under the automatic route, subject to the fulfillment of certain conditions stipulated therein, and are primarily with respect to minimum land size, built up area of the construction and capitalization norms.

Analysis

The conditions and restrictions for investment under the FDI route are governed under Schedule 1 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 ("FEMA Regulations"), while those for the investment by FIIs are separately governed under Schedule 2 of the FEMA Regulations.

Prior to the above clarification, it was uncertain if FIIs could invest in real estate IPOs or pre-IPO placements, if the project concerned was a non-FDI compliant in accordance with Press Note 2.

In view of the above, at the time of IPOs, real estate companies like DLF Universal Limited, GMR Infrastructure Limited and Parsvanath Developers Limited had approached DIPP for clarification on whether FIIs can participate in pre-IPO placements and IPOs of such companies. In response to which the DIPP has clarified the position by stating that FIIs are allowed to participate in such IPOs, since, as stated earlier, investments in such companies (by way of subscription in IPOs or by way of pre-IPO placements) is governed under a separate schedule to the FEMA Regulations.

Implications

The clarification from DIPP is a positive step towards clearing the uncertainties regarding FIIs participation in real estate IPOs. In addition to this, such a clarification would also have a major impact on future IPOs by real estate companies, more particularly considering the number of such issuances as well as the size of the offerings. Having said this, it would be prudent to wait for the views of the Reserve Bank of India on this issue.

- Vyapak Desai & Ruetveij Pandya

You can direct your queries or comments to the authors

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