

Corpsec Hotline

September 26, 2006

REALITY CHECK FOR FVCIS

The Indian government has reportedly asked the Reserve Bank of India ("RBI") to approve the long-pending applications by prospective investors for registration as an FVCI, wherein the investor had indicated that it wishes to invest in the Indian real estate sector or in companies dealing in real estate. Some of the FVCI applications with similar investment objectives were not being approved for over 6 - 8 months, since the RBI did not seem comfortable with FVCIs investing in this sector, with possible reasons being that such investments may not be consistent with India's foreign direct investment ("FDI") policy for the real estate sector. The directive may have been issued since such delays were sending wrong signals in the marketplace and contrary to the general view was that the Indian government was actively promoting foreign investment in the country.

Applications for registration as an FVCI are to be submitted to the Securities and Exchange Board of India ("SEBI") under the SEBI (Foreign Venture Capital Investor) Regulations, 2000. However, as part of the approval process, SEBI internally requires the approval of the RBI, before SEBI finally grants the registration. In recent times, FVCI applicants that were not investing in the Indian real estate sector were required to give an undertaking to the RBI that they will not invest in the real estate sector and that their non-real estate investments will comply with the FDI policy. It is only upon submission of such an undertaking that RBI was willing to grant its approval to SEBI. Incidentally, in April 2004, SEBI had removed the real estate sector from the negative list prescribed under the third schedule of the FVCI Regulations, thereby allowing FVCIs to invest in this sector.

Implications:

The Indian real estate sector has been generating considerable interest among foreign investors in recent times. In light of the so-called embargo, the only route available for foreign investors for investments in the Indian real estate sector is the FDI route, wherein the investor can invest up to 100%, subject to compliance with the conditions and restrictions (including minimum capitalization requirement) placed under Press Note No. 2 of 2005. However, assuming that RBI may now allow FVCIs to invest in the Indian real estate sector, this is likely to open up a new investment route for potential foreign investment in this sector.

Whether the RBI is likely to prescribe any specific conditions and/or restrictions for FVCIs' investment in this sector, remains to be seen. It also needs to be ascertained whether the additional benefits that are generally available to FVCIs over FDI (for example, exemption from entry and exit pricing norms, exemption from lock-up post initial public offering, etc.) would continue to be available to FVCIs investing in this sector. Clarifications may also be necessary with respect to the applicability of Press Note No. 2 of 2005 to investments made by FVCIs in this sector.

- **Vikram Shroff & Siddharth Shah**

You can direct your queries or comments to the authors

Source: *The Economic Times, Mumbai edition, September 25, 2006*

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Compendium of Research Papers

April 11, 2024

Third-Party Funding for Dispute Resolution in India

April 02, 2024

Opportunities in GIFT City

March 18, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

The Midnight Clause

February 29, 2024

Enforceability of unstamped or inadequately stamped Arbitration Agreements

January 10, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Cyber Incident Response Management

February 28, 2024

Webinar : Navigating Advertising

**Laws in India Part II Fireside Chat
with Manisha Kapoor**
February 27, 2024

**Webinar : Navigating Advertising
Laws in India**
February 20, 2024
