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NEWSALERT

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Review of the policy on Foreign Direct Investment ("FDI") in construction sector

The Union Cabinet has given its approval for amending the existing FDI policy on the construction development sector in line with the budget announcement of the government.

Under the extant FDI policy, 100% FDI in construction development sector was permitted under the automatic route subject to several restrictions. The key conditions were as follows:

1. Minimum area to be developed under each project was as under:
   (i) In case of development of serviced housing plots, a minimum land area of 10 hectares.
   (ii) In case of construction-development projects, a minimum built-up area of 50,000 sq. meters.
   (iii) In case of a combination project, any one of the above two conditions would suffice.

2. Minimum capitalization norms of US $10 million for wholly owned subsidiaries and US $ 5 million for joint ventures with Indian partners. The funds would have to be brought in within 6 (six) months of commencement of business of the Company.

3. Original investment could not be repatriated before a period of 3 (three) years from completion of minimum capitalization. Original investment meant the entire amount brought in as FDI. The lock-in period of 3 (three) years was to be applied from the date of receipt of each installment/tranche of FDI or from the date of completion of minimum capitalization, whichever was later. However, the investor was permitted to exit earlier with prior approval of the Government through the FIPB.

4. At least 50% of each such project must have been developed within a period of 5 (five) years from the date of obtaining all statutory clearances.

5. The investor/investee company would not be permitted to sell undeveloped plots.

100 percent FDI under automatic route will now be permitted in the construction development sector subject to the following conditions:

A. Minimum area to be developed under each project would be:
   (i) In case of development of serviced plots, there is now no condition of minimum land area.
   (ii) In case of construction-development projects, a minimum floor area of 20,000 sq. meters.
   (iii) In case of a combination project, any one of the aforesaid two conditions will need to be complied with.

B. The investee company will be required to bring minimum FDI of US$ 5 million within 6 (six) months of commencement of the project. The commencement of the project will be the date of approval of the building plan/lay out plan by the relevant statutory authority. Subsequent tranches of FDI can be brought till the period of 10 (ten) years from the commencement of the project or before the completion of the project, whichever expires earlier.

C. The investor will be permitted to exit on completion of the project or after 3 (three) years from the date of final investment, subject to development of trunk infrastructure.

D. The Government may, in view of facts and circumstances of a case, permit repatriation of FDI or transfer of stake by one non-resident investor to another non-resident investor, before the completion of the project. These proposals will be considered by FIPB on case to case basis.

E. The project shall conform to the norms and standards, as laid down in the applicable building control regulations and other regulations of the state government/municipal/local body concerned.

F. The Indian investee company will be permitted to sell only developed plots. Developed plots will mean plots where trunk infrastructure including roads, water supply, street lighting, drainage and sewerage, have been made available.

G. The Indian investee company shall be responsible for obtaining all necessary approvals and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the state government/ municipal/local body concerned.

H. The state government/ municipal/ local body concerned, which approves the building / development plans, will monitor compliance of the above conditions by the developer.

Further, it is to be noted that:

1. FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in Transferable Development Rights (TDRs). It is further clarified that 100 percent FDI under the automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.

2. The conditions at (A) to (C) above, will not apply to hotels and tourist resorts; hospitals, SEZs, educational institutions, old age homes and investment by NRIs.

3. The conditions at (A) and (B) above, will also not apply to the investee/joint venture companies which commit at least 30 percent of the total project cost for low cost affordable housing.

4. An Indian company, which is the recipient of FDI, shall procure a certificate from an architect empanelled by any authority authorized to sanction building plan to the effect that the minimum floor area requirement has been fulfilled. 'Floor area' will be defined as per the local laws/regulations of the respective State governments/Union territories.

IndusLaw quick view:

The move by the Government to liberalize FDI in construction comes as a welcome change. The relaxation of the capitalization norms for investment into the construction sector will serve as a catalyst to encourage FDI.

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