



The new Foreign Direct Investment (FDI) policy aims at simplifying existing norms to attract foreign investment into India. It potentially opens doors for new business opportunities but also raises fresh issues which add to the confusion. DTZ analyses these opportunities and issues with their impact on Indian real estate below.

Issue 1 - Definition of Foreign Investment

All forms of foreign investments – Foreign Institutional Investment (FI), Non-Resident Indian (NRI), Foreign Currency Convertible Bond (FCCB), American Depositary Receipt (ADR), Global Depositary Receipt (GDR) have been merged into one category for calculation purpose.

Implication on real estate

While this is a welcome move, there is no clarity on how this new regime would be

superimposed on the existing sectoral guidelines. Further, the new merged category of foreign investment has many grey areas e.g. it is unclear how FDI and NRI investments would be merged.

Issue 2 - Notion of Ownership and Control

A downstream investment made by an Indian “owned and controlled” company with minority foreign partner holding will not be considered as FDI, even if it is engaged in sectors where foreign investment is restricted. “Owned” is defined as having a more than 50 per cent shareholding and “Controlled” has been defined as where owners having the power to appoint majority Board of Directors and legally direct the Board’s actions.

Implications on Real Estate

This is a significant deviation from the existing norms as it gives the opportunity for Indian-owned and controlled companies to bring foreign capital via downstream investments without being restricted to existing sectoral caps. The other implication is that foreign entities can invest into Indian companies without getting the corresponding control for the same. This has multiple benefits as below:

- **Opening FDI into Multi – Brand Retail which was prohibited earlier**

This marks a seminal change in the foreign investment policy in retail in India. This will be possible through parent company which is “owned and controlled” by an Indian resident which impacts existing retailers who want to increase their stake but are unable to do so due to the existing FDI cap of 49%.

- **Making FDI available for projects under 50,000 sq m**

Companies having FDI will be able to invest in non-FDI compliant projects, which are smaller than 25 acres/ 50,000 sq m. This would provide Indian developers greater strategic freedom by expanding their funding options, and could also help small developers build the required scale.

Prima facie, the new policy allows foreign entities to invest in Indian companies via the downstream investment route, however more clarifications on this are awaited. It is also predicted that on an overall basis, foreign inflows to India are unlikely see a significant transformation in the near future given the current global economic slowdown.

Third Stimulus Package by Indian Government released on 24 February 2009

- General excise duty reduced from 10% to 8 %
- Rate of service tax cut from 12.3% to 10.3%
- Duty on bulk cement reduced from 10 % to 8%

Implications

- Cut in service tax will benefit companies who are on rent in large commercial complexes.
- Architectural, design and property consulting services will become cheaper
- The reduction in excise duty on bulk cement to 8% will help reduce costs of real estate and infrastructure development
- Boost to consumer confidence

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