

Clarification of foreign direct investment norms in the construction development sector

March 23, 2015

In brief

The Government of India (GOI) had issued Press Note 10 of 2014 (PN 10) on 3 December 2014, that amended the foreign direct investment (FDI) policy on 'Construction Development sector'. The GOI has now issued a clarification on certain aspects of the PN in matters relating to investments, exits and other conditions. A summary of the clarifications issued by the GOI is provided below:

In detail

Particulars	Clarification
Investment related	
Fresh FDI six months after project commencement	Investors can invest additional FDI in a project only if such a project was capitalised by a minimum FDI of USD 5 million within six months of the commencement of the project. Furthermore, no FDI can be made after ten years from project commencement or after project completion.
Reckoning date for determining project commencement	The date of approval of the building/ layout plan by the relevant statutory authority (i.e. initial approval) would be considered to be the project commencement date. All subsequent approvals would be considered addenda/ modifications to the initial approval, and would not be relevant for determining the time limit for minimum capitalisation of FDI under the automatic route.
Minimum capitalisation is project specific or company specific	A minimum capitalisation of USD 5 million under PN 10 is required for each project undertaken by a single company.
Exit related	
Exit related conditions	Exit is allowed under the automatic route after project completion or after development of trunk infrastructure, whichever is earlier. However, Foreign Investment Promotion Board (FIPB) approval is required where an exit is planned before project completion or development of trunk infrastructure.

Particulars	Clarification
Non-resident to Non-resident transfer	FIPB approval is required for transfer of stakes between two non-residents before completion of the project or before development of trunk infrastructure.
Certification of completion of Trunk infrastructure	A certificate from an architect registered with the Council of Architecture is be considered sufficient to demonstrate completion of trunk infrastructure development.
Others	
Grandfathering of past investments	PN 10 will supersede the investments made under PN 2 of 2005.
Meaning of business centre	A building where a number of businesses of same or different nature were being carried out would be considered as Business Centre.
Disposal of unusable or idle parcels of land by companies that had FDI	Exit from a FDI project where trunk infrastructure had not been developed and had unused land will be subject to FIPB's prior approval.
Possession of completed projects in townships, malls, shopping complexes and business centres by foreign investor	<p>FDI is allowed under the automatic route for operation and management of completed townships, malls/ shopping complexes and business centres provided that it did not fall within the ambit of real estate business.</p> <p>Real estate business has been defined as <i>“dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.”</i></p>

The takeaways

While the intent of the GOI was to bring clarification and certainty on various aspects of PN 10, clarification issued on certain aspects of PN 10 may lead to further confusion about its conditions. Specifically, some of the clarifications are not in line with industry standards. Lastly, the applicability of PN 10 to past investments made under PN 2 of 2005, specifically on exit related conditions, may need to be reconsidered.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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