Indian FDI Rules – Real Estate

Government of India (Ministry of Commerce & Industry) - PRESS NOTE NO. 2 (2006 SERIES)

Subject: Clarification regarding Foreign Direct Investment (FDI) in townships, housing, built-up infrastructure and construction-development projects.

1. The Government, vide Press Note 2 (2005 Series) dated 2.3.2005, had notified the policy for Foreign Direct Investment (FDI) in townships, housing, built-up infrastructure and construction-development projects. The Government has received few requests from investors seeking clarifications on applicability of these policy guidelines to some other sectors such as Special Economic Zones, Hotels, Hospitals, etc.

2. The matter has been considered in the light of the policy prevailing prior to issue of the subject Press Note. FDI up to 100% was already allowed under the automatic route in the Hotel and tourism sector vide Press Note 4 (2001 Series) and in the Hospital sector vide Press Note 2(2000 Series). Special Economic Zones are separately regulated under the Special Economic Zone Act, 2005.

3. It is clarified that the provisions of Press Note 2 (2005 Series) shall not apply to Special Economic Zones; neither shall it apply to establishment and operation of hotels and hospitals which shall continue to be governed by Press Note 4 (2001 Series) and Press Note 2 (2000 Series) respectively.

(Umesh Kumar) Joint Secretary to the Government of India - F. No. 12/36/2005-FC dated 16 January 2006

Government of India (Ministry of Commerce & Industry) - Press Note 2 (2005)

Subject: Foreign Direct Investment (FDI) in townships, housing, built-up infrastructure and construction-development projects.

1. With a view to catalyzing investment in townships, housing, built-up infrastructure and construction-development projects as an instrument to generate economic activity, create new employment opportunities and add to the available housing stock and built-up infrastructure, the Government has decided to allow FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure), subject to the following guidelines:

a. Minimum area to be developed under each project would be 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.mts
   iii. In case of a combination project, anyone of the above two conditions would suffice

b. The investment would further be subject to the following conditions:
   i. Minimum capitalization 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 six months of commencement of business of the Company.
   ii. Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.

c. At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell undeveloped plots. For the purpose of these guidelines, "undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.

d. The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.

e. The investor shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.

f. The State Government/Municipal/Local Body concerned, which approves the building/ development plans, would monitor compliance of the above conditions by the developer.

2. Para (iv) of Press Note 4 (2001 Series), issued by the Government on 21.5.2001, and Press Note 3 (2002 Series), issued on 4.1.2002, stand superceded.

(Umesh Kumar) - Joint Secretary to the Government of India No. 5(6)/2000-FC dated 3 March 2005

Government of India (Ministry of Commerce & Industry) - PRESS NOTE NO. 4 (2001 SERIES)

Subject : Revision of existing sectoral guidelines and equity cap on Foreign Direct Investment (FDI), including investment by Non Resident Indians (NRIs) and Overseas Corporate Bodies (OCBs)

With a view to further liberalizing the FDI regime, Government have effected the following changes in the FDI policy:

ii. FDI up to 100% is permitted in airports, with FDI above 74% requiring prior approval of the Government.

iv. FDI up to 100% is permitted for development of integrated townships, including housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems; and manufacture of building materials. Development of land and providing allied infrastructure will form an integral part of township's development, for which necessary guidelines/norms relating to minimum capitalization, minimum land area, etc., will be notified separately by the Government. FDI in this sector would be permissible with prior Government approval.

v. FDI up to 100% is permitted on the automatic route in hotel and tourism sector.

vii. FDI up to 100% is permitted on the automatic route for Mass Rapid Transport Systems in all metropolitan cities, including associated commercial development of real estate.

viii. NRI investment in foreign exchange is made fully repatriable whereas investments made in Indian rupees through rupee accounts shall remain nonrepatriable.

2. The provisions of Press Note No. 2 of 2000 stand modified to the above extent.

(M. S. SRINIVASAN) - Joint Secretary - No. 5(6)/2000-FC I dated: 21 May 2001

Government of India- (Ministry of Commerce & Industry) - Press Note No.2 (2000 Series)

No.7(4)/2000-IP dated 11 February 2000 SECTOR SPECIFIC GUIDELINES FOR FOREIGN DIRECT INVESTMENT

18. Roads & Highways, Ports and Harbors: FDI up to 100% under automatic route is permitted in projects for construction and maintenance of roads, highways, vehicular bridges, toll roads, vehicular tunnels, ports and harbors.

19. Hotels & Tourism: 100% FDI is permissible in the sector. The term hotels include restaurants, beach resorts, and other tourist complexes providing accommodation and/or catering and food facilities to tourists. Tourism related industry includes travel agencies, tour operating agencies and tourist

transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports, and health units for tourists and Convention/Seminar units and organization. Automatic route is also available up to 51% subject to the following parameters. For foreign technology agreements, automatic approval is granted if:

i. up to 3% of the capital cost of the project is proposed to be paid for technical and consultancy services including fees for architecture, design, supervision, etc.
ii. up to 3% of the net turnover is payable for franchising and marketing/publicity support fee, and
iii. up to 10% of gross operating profit is payable for management fee, including incentive fee.