GIANNI, ORIGONI, GRIPPO & PARTNERS

Recent Developments in the Indian Legal System

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I. Consolidated FDI policy

Single document to replace multitude of press notes

The Government of India has replaced various Press Notes with a Consolidated Foreign Direct Investment Policy ("FDI") framework (the "Circular") effective from 1 April 2010. This document is available on the Department of Industrial policy and Promotion ("DIPP") website at *http://dipp.nic.in*.

The Circular is a mere compilation and does not intend to change the existing legal framework. In the event of any interpretation of the Circular, the relevant Foreign Exchange Management Act ("FEMA") rule would prevail.

In the sector of wholesale trading, the Circular has introduced some new guidelines, however it provides that in order to determine whether a sale is considered wholesale trading, one needs to consider the type of customers to whom the sale is made as opposed to the size or volume of sale. Accordingly, sale for the purpose of trade, business and profession would be regarded as wholesale trading.

The Government has also decided to update the FDI policy on a six monthly basis, by issuing a new circular which would supersede all prior press notes and circulars. Thus, the next circular will be issued on September 30, 2010.

II. FDI rule changes

Threshold amount for approval raised

In a procedural modification aimed at expediting foreign investment inflows and attracting more such funds, the Cabinet Committee on Economic Affairs ("CCEA"), chaired by the Prime Minister, Dr Manmohan Singh, decided that only proposals involving total foreign equity inflow of over Rs 1,200 crore (approx. Euro 200m) need to be placed for its consideration.

Previously, the Foreign Investment Promotion Board's recommendations on proposals with total project cost of up to Rs 600 crore (approx. Euro 100m) were approved by the Finance Minister, while proposals of higher amounts had to be placed before the CCEA. Also, the total project cost, and not just foreign equity inflow, was taken into account in deciding whether the proposal needed the CCEA's approval.

III. Budget 2010-2011

Various changes

The Union budget of India for 2010-11 was presented by Finance minister Pranab Mukherjee in Parliament on February 26, 2010. Some of the relevant sections were:

Tax: Basic rates of corporate tax remain unchanged for both domestic and foreign companies. However, surcharge on corporate tax for domestic companies will be reduced from 10% to 7.5%. Further, Minimum Alternate Tax ("MAT") will be increased from 15% to 18%.

Banking: The Finance Minister also announced the creation of a super regulator dubbed the "Financial Stability & Development Council", which will aim to prevent future financial crisis by coordinating the different financial regulators. He also stated that more private sector banks will be given banking licenses.

Energy: The Government will set up a Coal Regulatory Authority to create a level playing field in the coal sector and to facilitate resolution of issues like economic pricing of coal and benchmarking of standards of performance. It will also introduce a competitive bidding process for allocating coal blocks for captive mining to ensure greater transparency and increased participation in production of coal.

IV. Non banking financial companies

New category created for infrastructure companies

Having recently amended the External Commercial Borrowing ("ECB") policy to create favourable conditions for infrastructure development, the Reserve Bank of India ("RBI") has gone one step further and created a new category of Non-Banking Financial Company ("NBFC") called Infrastructure Finance Companies ("IFC").

This change (the "Amendment") defines an IFC to be a NBFC which deploys at least 75% of its total assets in infrastructure loans. To be categorised as an NBFC the IFC should have a net worth of about Euro 50m, capital adequacy ratio of 15% and a minimum credit rating of 'A' or equivalent from accredited rating agencies.

The Amendment lays out less stringent credit concentration norms for IFCs as compared to those in place for other NBFCs. IFCs may exceed the concentration of credit norms by 10% of its owned fund in lending to any single borrower and by 15% of its owned fund in case of a single group of borrowers. Also, IFCs may exceed the concentration of credit norms by 5% of its owned fund in lending to and investing in a single party and by 10% in case of a single group of parties.

The Amendment opens up a large opportunity for private players to lend to the infrastructure sector.

V. ECB and credit enhancement

Rules for infrastructure companies

In addition to the Amendment, circulars (the "Circulars") were issued on March 2 introducing further reforms to the ECB policy. IFCs can raise foreign currency loans for funding the infrastructure sector (as defined under the ECB Policy) with the prior approval of the RBI subject to certain conditions. The definition of 'infrastructure' was also widened to include 'cold storage or cold room facilities.

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For any further clarifications or research please contact:

Milan:
Rosario Zaccà
Tel. +39 02 763741
rzacca@gop.it

Padua:
Stefano Beghi
Tel. +39 049 6994411
sbeghi@gop.it

Rome:
Francesca Cesca
Tel. +39 06 478751
fcesca@gop.it

Pursuant to the Circulars, the RBI has now announced a comprehensive policy framework for credit enhancement of domestic debt raised through capital market instruments such as bonds and debentures, by Indian companies engaged in the development of infrastructure and by IFCs.

This is subject to certain conditions, such as credit enhancement being provided by multilateral/regional financial institutions and Government owned development financial institutions only, the underlying debt instrument having a minimum average maturity of 7 years, restriction on prepayment and call/put options. The rest of the conditions are available on the RBI website.

VI. Investing in the food processing sector in India

Opportunities and incentives

Foreign investment in the food processing sector in India is growing at an exponential rate. The industry received FDI totalling around US$ 2 billion from the period April 2009 to November 2009. Automatic approval for foreign equity up to 100% is available for most of the processed food items. They have also been exempted from the purview of licensing under the Industries (Development & Regulation) Act, 1951, except for alcoholic beverages.

The increase in income levels of the Indian population and the emergence of the consumer class that has a higher propensity to spend offers great growth opportunities for companies across various sectors: the food-processing sector has been impacted by these trends, as there has been an increase in the demand for processed, ready-to-cook and ready-to-eat food. These trends imply significant growth potential for the sector in future and add to its investment attractiveness.

According to a FICCI-E&Y study on the Indian food industry, investment opportunities in the Indian food industry are set to shoot up by a huge 42.5%t to US$ 181 billion in 2015 and to US$ 318 billion by 2020. In order to promote investment, several policy initiatives have been taken in recent years, in particular tax incentives. In fact, Income Tax rebate is allowed, 100% of profits for 5 years and 25% of profits for the next 5 years, for new industries to process, preserve and package fruits and vegetables. In this year's budget, the Government has agreed to provide agriculture and related sectors "project import status" with a concessional import duty of 5% for the setting up of mechanised handling systems and pallet-racking systems in warehouses for food grains and sugar as well as full exemption from service tax for the installation of and commissioning of such equipment. It has also agreed to provide "project import status" at a concessional customs duty of 5% with full exemption from service tax to the initial setting up and expansion of cold storage, cold room including farm pre-coolers for preservation or storage of agriculture and related sector produce; and processing units for such produce. Other new measures announced in the budget were concessional customs duty of 5% to specified agricultural machinery not manufactured in India, full exemption from excise duty to trailers and semi-trailers used in agriculture and exemption from Service Tax to the testing and certification of agricultural seeds. Other incentives are represented by "Mega Food Parks", "Special Economic Zones" and "Agri-Export Zones". For additional information, please go to www.mofpi.nic.in.

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