

# REALTY SECTOR

## Liberalizing FDI & Clarifying Policy Only

### Way to improve further

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#### INTRODUCTION

Year 2005 was the golden year for the real estate and construction activity as the DIPP vide Press Note 2 (2005) has liberalized FDI regime in townships, housing, built-up infrastructure and construction-development projects by making it 100% open under the automatic route.

Until now, only Non-Resident Indians (NRIs) and Persons of Indian Origin (PIOs) were permitted to invest in the housing and the real estate sectors. Foreign investors, other than NRIs /PIOs, were allowed to invest only in development of integrated townships, either through a wholly owned subsidiary or through a joint venture company in India, along with a local partner.

As per aforesaid Press Note, the investment will be subject to the following guidelines:

1. The minimum area to be developed under each project would be as follows:
  - a) In case of development of serviced housing plots, a minimum land area of 10 hectares.
  - b) In case of construction development projects, a minimum built-up area of 50,000 sq.mts.
  - c) In case of a combination of the above two projects, any one of the above two conditions would suffice.
2. The minimum capitalization norm shall be US\$ 10 million for a wholly owned

subsidiary and US\$ 5 million for joint ventures with Indian partner/s. The funds would have to be brought in within six months of commencement of business of the company.

3. 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 Foreign Investment Promotion Board (FIPB).

4. Development of at least 50% of the integrated project has to be completed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell underdeveloped plots (underdeveloped connotes, where roads, water supply, street lighting, drainage, sewerage and other conveniences as applicable under prescribed regulations, have not been made available). The investor must provide this infrastructure and obtain the completion certificate from the concerned local body/service agency before being allowed to dispose of the serviced housing plots

5. 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, by-laws, rules and other regulations of the State Government / Municipal / Local Body concerned.

6. 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 Body / Local Body concerned.

7. The State Government / Municipal / Local Body concerned, which approves the building / development plans, will monitor the developer's compliance to the above conditions.

#### **RESTRICTION ON FDI**

FDI is not allowed in real estate business or construction of farm houses. Real estate business means buying and selling of real estate or trading in Transferable Development Rights (TDR's).

#### **RESULTS OF ALLOWING FDI INTO THE REAL ESTATE SECTOR**

The DIPP data suggests that India has attracted FDI worth USD 193.6 Billion during April, 2000 to February 2011 and real estate sector was not the exception and accordingly the sector has attracted FDI worth US\$ 1127 Million during April 2000 to March 2011. Various realty majors across the world made entry into the lucrative and booming property market of India which includes Emaar, Ireo, etc.

#### **FURTHER CHALLENGES & UNRESOLVED QUESTIONS**

It is evident from the above that real estate sector has risen to a great extent after opening of the 100% FDI in 2005 and there is looking back for the sector since then.

However one should be more concerned now that what needs to be done by the Government of India so that it does not lose the momentum. There are some of the problems faced by the sector as of now along with their probable solutions:

1. **Minimum Area Restriction:** Although minimum area stipulation seems to be reasonable but keeping in mind the high cost involved in land acquisition especially for urban area it becomes very difficult for mid & small size player to acquire that land. Further the confusion around acquiring the agricultural land with foreign funds still there so the Government may think over it to reduce it.
2. **State Laws not in sync with FDI Policy:** Some of the state laws need changes in line with the above FEMA Guidelines. In some states, the states has fixed the amount of the land a person can hold which sometime is less than the above minimum area as specified in FEMA.
3. **Minimum Capitalization:** Further minimum capitalization may further be reduced so that small players

may also invest into the growing industry.

- 4. Clarity in Definitions:** Some of the definitions given in the FDI need more clarity in order to infuse confidence in the mind of foreign investor.

For example the word 'Real Estate Business' can be defined more accurately and precisely. It is to be noted that the FDI Policy prohibits FDI into Real Estate Business.

Another example is that whether brokers, advisers etc are covered under the definition of Real Estate Business. DIPP draft policy suggests that these would be covered under the word Real Estate Business and accordingly would be prohibited. It seems that DIPP has taken a very restrictive view.

- 5. Land Titles:** India has not till date digitized its land records and accordingly title records in India are not in good shape. So the Government of India should ensure that land records should be digitized at the earliest.
- 6. Independent Regulator:** An independent body regulating the sector is required to control and monitor the industry. Real Estate (Regulation & Development) Bill is pending since long. Indian Government should ensure that it gets passed at the earliest.

## CONCLUSION

It is clear that due to the government policy and legal framework, the sector has achieved a lot. Now the demand for the sector is to take it to the next level. The right step towards achieving that would involve small small initiatives like clarifying the rules, harmonizing the laws etc.

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