

FDI route facilitates more real estate investment



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India can be acknowledged as one of the fastest growing economies in the world and real estate has emerged as one of the most appealing investment areas for domestic as well as foreign investors.

This high growth curve in the real estate sector owes some credit to a booming economy and liberalized foreign direct investment (FDI) regime in the real estate sector. 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 were allowed to invest only in the development of integrated townships and settlements either through a wholly owned subsidiary or through a joint venture company in India along with a local partner.

The FDI policy allows up to 100% investment under automatic route in townships, housing, built-up infrastructure, and construction-development projects. Since the liberal policy was adopted by the government, real estate has become a lucrative field for international players to make 100% investments. The development of special economic zones (SEZ) in India has further favoured the growth of the Indian real estate market. The market is thus moving towards maturity offering a wide scope for local and international realtors.

Through Press Note No 2 of 2005, the government allowed FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which include housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure). FDI is permitted subject to the following guidelines:

- The minimum area to be developed will be 10 hectares for serviced hous-

ing plots, 50,000 sq m in construction-development projects, or one of the two for combination projects;

- Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$5 million for joint ventures with Indian partners with the funds required in the country within six months of the start of business;

- The original investment cannot to be repatriated within three years from completion of the minimum capitalization, without prior approval of the Foreign Investment Promotion Board;

- At least 50% of the project has to be developed within five years from the date of obtaining all statutory clearances;

- Undeveloped plots cannot be sold until provision of the requisite infrastructure and acquisition of the completion certificate from the concerned local body or service agency;

- The project has to 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 or municipal or local body concerned.

Long-standing bans

Apart from the well-acknowledged need for foreign investments in this sector because of the sheer demand, the FDI route in the sector has attracted foreign investors interest because of the virtual ban on infusion of funds by other modes.

Use of external commercial borrowings (ECBs) and foreign currency convertible bonds (FCCBs) for raising funds for investment into real estate has been completely banned. Even under the FDI scheme, issue of ADRs

and GDRs for investment into real estate has been banned

In a move that would align the practices in the Indian real estate sector with global practices, the Securities and Exchange Board of India (SEBI) announced on 28 December 2007 the draft Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2008, dealing with the set up and operation of a real estate investment trust (REIT) in India. The REITs Regulations, once approved, are expected to be in effect in India soon.

The importance of foreign investment into real estate development may not be disputed.

The ever increasing demand for housing, commercial space, townships and infrastructure in India may be timely catered to only if foreign investment into this sector is allowed. Foreign participation will also bring in quality and professionalism in the manner in which real estate development takes place.

The central government has recognised this and amended the regulations from time to time to make it convenient for foreign entry into this sector.

FDI assumes a greater role among the various possible routes for foreign participation in this sector because first, investment through FDI not only makes the foreign investor invest in the sector but also makes the foreign entity participate and monitor the way in which the foreign funds are used and, second, the bans in effect on certain routes like ECBs/FCCBs/ADRs/GDRs makes the FDI scheme the best possible route for foreign investors looking to this sector of the Indian economy.

Gautam Khaitan is a partner at OP Khaitan & Co. He works mainly on corporate and commercial matters and has considerable experience over a wide range of corporate and commercial transactions.