CLIENT ALERT

November 2014

EXECUTIVE SUMMARY

FDI IN THE CONSTRUCTION DEVELOPMENT SECTOR

The Union Cabinet on October 29, 2014 has given its approval for amending the existing Foreign Direct Investment ("**FDI**") policy on the 'Construction Development Sector' in India. The existing FDI policy, though allowing for FDI up to 100% in the sector, placed stringent conditions on the entry and exit of foreign investors and the repatriation of profits. The amendments, in the backdrop of the permission to set up and list Real Estate Investment Trusts have further liberalized the sector and have the potential of attracting a tremendous amount of foreign investment.

JURIS LEGAL

FOREIGN DIRECT INVESTMENT NORMS IN THE CONSTRUCTION DEVELOPMENT SECTOR

The salient features of the changes are listed below:

- Minimum Area: There is no longer a restriction on the minimum land area for the development of serviced plots and the minimum land area requirements for construction-development projects has been reduced from 50,000 sq. mts to 20,000 sq. mts.

- Minimum Capitalization: The minimum capitalization has now been reduced to US $ 5 million for wholly owned subsidiaries from the earlier provision of US $ 10 million. The minimum capitalization requirement for joint ventures continues to remain at US $ 5 million.

- Remaining Tranches of Investment: It has been clarified that after meeting the minimum capitalization requirement, the remaining tranches of foreign investment can be brought in within ten (10) years of the commencement of the project or before the completion of the project, which is earlier. Previously, there was a lack of clarity on this subject.

- Exit of Foreign Investor: Foreign investors can now exit either on (i) the completion of the project; (ii) after three years from the date of the final investment provided that trunk infrastructure (such as roads, water supply, street lighting, draining and sewerage), has been made available.

- Permission for Repatriation or Transfer of Stake from Non-Resident to Non-Resident before Exit Conditions are satisfied: The amended policy has provided that transfer of stake from Non-Resident to Non-Resident may be undertaken before the exit conditions are satisfied, with the prior permission of the FIPB.

- Exemption for Entities engaged in Low-cost Affordable Housing: Entities committing 30% or more of the total project cost for low-cost affordable housing are not required to comply with provision related to ‘minimum area’, ‘minimum capitalization’ and ‘remaining tranches of investment’.

- Sale of Developed Plots: The amended policy allows for the sale of ‘developed plots’, which are plots where trunk infrastructure (such as roads, water supply, street lighting, draining and sewerage) has been made available. Previously, there was an additional requirement for the investor to obtain a ‘completion certificate’ from the relevant authorities.

- Investor no longer responsible to obtain the necessary approvals from the state government/ municipal/ local bodies: The responsibility for the same falls squarely on the Indian investee company.

- The amended policy has also specifically clarified that 100% investment under the Automatic Route will be permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centers.

For a detailed analysis of this topic, you may email us at delhi@jurislegal.org or call us on +91 11 4359 3370.