Foreign Direct Investment in Construction Industry

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Types of Foreign Investments

Foreign Investments

Foreign Direct Investments
- Automatic Route
- Govt. Route
  - NRIs, PIO

Foreign Portfolio Investments
  - NRIs, PIO

Foreign Venture Capital Investments
  - SEBI regd. FVCIs
    - FIIs

Other investments (G-Sec, NCDs, etc)
  - FIIs

Investments on non-repatriable basis
  - NRIs, PIO
Some Important Nomenclatures

**FDI** means **Foreign Direct Investment** by non-resident entity in the capital of the Indian company.

FDI can be made through two routes:

- Automatic
- Government Approval
Some Important Nomenclatures ctd..

Real Estate Business means

[A] dealing in land & immovable property with a view to earning profit / income there from.
[Source: DIPP - Consolidated FDI policy, Cir. 2 dtd 1-10-10 & RBI MC Foreign Investment in India 13/2010-11 dtd 1-7-10]

[B] but does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.
[Source: RBI MC Foreign Investment in India 13/2010-11 dtd 1-7-10]
Some Important Nomenclatures ctd..

**Capital** means
- Equity shares
- Preference shares *
- Debentures *

* Must be fully & compulsorily convertible into equity shares.

Financial Instruments like *warrants, partly paid shares etc* are not considered as capital. These instruments can be issued only after Government approval.
Some Important Nomenclatures ctd..

Non-resident Entity

- Any person (other than an Individual) registered or incorporated outside India.
- An Individual who is not a person resident in India [Sec 2(u) FEMA]

A non-resident entity (other than a citizen/entity incorporated in Pakistan) can invest in India, subject to the FDI Policy.

A citizen/entity incorporated in Bangladesh can invest in India, only under the Government route.
Some Important Nomenclatures ctd..

Person  Resident in India

• Individual *residing* in India for > 182 days in preceding FY,

  Exceptions:
  
  A. gone out / stays outside India
  - for employment / business / vocation
  - any other purpose with an intention to stay for an uncertain period.

  B. Comes or stays in India for any reason other than
  - for employment / business / vocation
  - any other purpose with an intention to stay for an uncertain period.
Some Important Nomenclatures ctd..

Person  Resident in India (ctd.)

• any person or body corporate registered or incorporated in India,

• an office, branch or agency in India owned or controlled by a person resident outside India,

• an office, branch or agency outside India owned or controlled by a person resident in India.
Person of Indian Origin (PIO) is a Citizen of any country other than Bangladesh or Pakistan and

- has at any time held an Indian passport

- he, either of his parents or any grandparents were citizen of India

- spouse of either of the above two categories.
FDI prohibited in

• Real Estate Business,
• Construction of Farm Houses,
• Trading in Transferable Development Rights (TDRs)

However, the above prohibition is not applicable to construction of a Farm House by a NRI for his personal use or for purchase of TDR to be used in construction for personal use.
FDI allowed

up to 100% under **automatic route** for development of Townships, Infrastructure & Construction Development project like

- Housing
- Commercial Premises
- Hotels
- Hospitals
- Educational Institutions
- Recreational facilities

Subject to the prescribed conditions
Minimum Area condition, per project

- Development of Housing Plots : Land area 10 hectares
- Construction–Development Projects : BuA 50000 sq mts
- Combination Projects : Any one of the above

Minimum Capitalization condition

- WoS : US $ 10 million
- JV with Indian Partners : US $ 5 million

- Funds have to be brought in within 6 months of commencement of business of the investee company.
- Original Investment cannot be repatriated for 3 years from the date of completion of minimum capitalization.
Development conditions

- At least 50% of the project must be developed within 5 years from the date of obtaining all statutory clearances.

- Undeveloped plots cannot be sold i.e. roads, water supply, street lighting, drainage, sewerage and other conveniences has to be made available.

- Completion certificate from concerned local body has to be obtained before sale of serviced housing plots.

- Adherence to the applicable building control regulations
Statutory compliances

The project must comply to the norms, standards and other regulations of the applicable State Govt., Municipal, local bodies.

Exceptions

Conditions pertaining to (i) Minimum Area (ii) Minimum Capitalization and (iii) Development, are not applicable for FDI by
- NRIs,
- Hotels & tourism,
- Hospitals &
- Development of SEZs.
Investments by NRIs

Non Residents other than NRIs cannot invest in India in partnership firms or proprietary concerns without prior approval of RBI.

NRIs can invest in India by way of capital on non-repatriation basis in a partnership firm / proprietary concern Provided
- the amount is invested by inward remittance or from NRE / FCNR / NRO account.
- the firm/proprietary concern is not engaged in agricultural / plantation or real estate business or print media sector.
Investments by NRIs (ctd..)

The investee partnership firm can be carrying on construction and development projects and need not adhere to the conditions pertaining to (i) Minimum Area (ii) Minimum Capitalization and (iii) Development.

NRI can bring in FDI in an Indian company carrying on construction and development projects.

Such investee company is not required to adhere to the conditions pertaining to (i) Minimum Area (ii) Minimum Capitalization and (iii) Development.

Investment in listed company : 5% individually & 10% cumulatively, can be enhanced to 24% if passed by sp. resolution.
FDI in LLPs not permitted

Currently FDI is not permitted in LLP. DIPP has released a discussion paper to review the extant policy on LLP.

The issues identified for analysis:-
- Ownership
- Control
- Valuation
- Treatment of Downstream Investments
- Non Cash Considerations
Remittance by NRIs

NRIs can remit up to **US $ 1 million per financial year** out of balances in their NRO accounts.

Remittance in respect of sale proceeds of immovable property is not available to citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

NRIs can repatriate sale proceeds of residential properties purchased out of foreign exchange, up to **maximum of 2** residential properties.
**Industrial Parks**: 100% FDI is permitted under automatic route subject to fulfillment of certain conditions.

**Industrial Park** is a project where quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottees of units for the purposes of industrial activities.

**Infrastructure and common facilities** are facilities required for functioning of units including roads, approach roads, water, sewerage & CET, telecom, generation and distribution of power, air conditioning, common testing, industrial canteens, convention / conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities etc.
**Industrial Activity** means manufacturing, electricity, gas and water supply, post and telecommunications, software publishing, consultancy and supply, data processing, database activities and distribution of electronic content, other computer related activities, Research and experimental development on natural sciences and engineering, Business and management consultancy activities and Architectural, engineering and other technical activities.

**Conditions to be fulfilled**
- Minimum 10 units.
- No single unit to occupy more than 50% of the allocable area;
- Minimum 66% of the area to be allocated for industrial activity.
- Conditions pertaining to (i) Minimum Area (ii) Minimum Capitalization and (iii) Development, are not applicable.
Reporting of FDI

Funds under FDI have to be received directly by the Indian Investee company. It has to report to RBI within 30 days of receiving FDI in the Advance Reporting Form, details of

• monies received with a copy of FIRC
• KYC report of the non-resident investor.

RBI allots a Unique Identification Number (UIN) for the FDI.

The capital instruments (equity shares, FC Pref Shares etc) have to be issued within 180 days from the date of receipt of funds.

After issue of shares the, Indian company has to file Form FC-GPR within 30 days from the date of issue of capital instruments.
Issue price of capital instruments other than rights issue

Listed – price worked out in accordance with SEBI guidelines

Unlisted – as per DCF method by a CA or Category I Merchant Banker.

Pricing of capital instrument should be decided/ determined at the time of issue of the instruments.

Issue price of rights issue

Listed – price determined by the company (SEBI guidelines)

Unlisted – at a price not less than the offer price on rights basis made to resident shareholders.
FDI in Construction Industry

![Bar chart showing FDI in Construction Industry from 2005-06 to 2009-10 with data in Rs. in crores. The chart is split into Construction Activities and Housing & Real Estate categories.]
Thank you

To my professional colleagues for a patient hearing