

FDI policy for construction and development sector

Outlined below are certain recommendations with respect to the current FDI policy for construction and development sector, which, if addressed, could attract significant FDI and further promote & enable significant opportunities for growth in this vital sector.

I. Minimum area requirements

Minimum built up area requirement for construction development projects should be relaxed to 20,000 sq meters.

Indian company, which is the recipient of FDI, should procure a certificate from an architect that the minimum built up area requirement has been fulfilled.

II. Contiguity requirements

A suitable clarification should be issued to treat/ consider a construction development project to be 'contiguous', where the minimum built up area of land is located either within a 5 km radius or, within the same master plan notified by state government.

Further, exchange/ barter/ sale or purchase of land should be permitted in order to make a project contiguous in nature.

III. Lock in restrictions

Lock in restrictions **should be removed** so as to permit FDI made in an Indian company to be freely transferable to residents or non residents, so long as Indian company (recipient of FDI):

- (i) Satisfies the prescribed FDI policy guidelines for construction development sector; and
- (ii) Amends its Memorandum of Association (MOA)/ Articles of Association (AOA) to specifically incorporate all necessary conditions/ requirements laid down in the FDI policy for this sector so as to restrict its activities to undertake FDI policy compliant projects only, including but not limited to, (a) completion of 50% of the project within 5 years from the date of obtaining all statutory clearances; and (b) prohibition on sale of undeveloped land.

IV. Non-resident to Non-resident transactions

Foreign investment in this sector should be freely permitted to be transferred by one non-resident investor to another non-resident so long as the original investment is compliant with the FDI policy, as such transactions do not entail transfer of funds out of India.

V. Applicability of FDI policy guidelines

The Indian Company, which is the recipient of FDI, should alone be required to comply with the project level restrictions/ conditions stated in the FDI policy and that such project level guidelines should not be applicable to the foreign investors under any circumstances.

VI. 50% project completion requirement

At least 50 % of each project carried out by the Indian Company (which is the recipient of FDI) should be developed within a period of 5 years from the date of obtaining all statutory clearances.

The Indian company, which is the recipient of FDI, should procure an annual certificate from its auditor confirming the status of the project(s).

VII. Completion requirements before disposal of plots

There should exist **no** requirement for obtaining of completion certificate for housing plots from any local body/ service agency either by the FDI investor or by the Indian Company (which is the recipient of FDI), as a pre-requisite for selling/ disposing such plots.

Instead, all 'developed plots' should be permitted to be sold/ disposed.

The term 'developed plots' should be clarified to include (a) serviced housing plots; and (b) serviced plots for identified projects, which have necessary approvals/ licenses and where basic infrastructure (such as roads, street lightning, water supply etc) has been provided as per the concerned state government's rules/ regulations/ bye laws.

VIII. Foreign capital providers

Foreign investments up to 49 percent should be freely permitted in construction development sector with no attached restrictions/ conditions either on the investor or investee entities.

This is on the ground that under such cases, (i) the control and ownership of the subject construction development asset would continue to lie in India, and (ii) such foreign investment shall only facilitate provision of foreign equity capital to satisfy funding requirement. Further, this shall put it in line with provisions of erstwhile PN2 (2009) which permits down-stream investment by an Indian company held by Indian residents to the tune of 51% or more.

IX. Mixed use projects

An Indian company (recipient of FDI) undertaking mixed use projects which have more than 20,000 sq meters of built up area, should be permitted to sell identified land parcels to other Indian companies so long as the Indian company (recipient of FDI) is undertaking at least 20,000 sq meters of development and is responsible for overall development of the entire project.

X. Land disposal under exceptional circumstances

The Indian Company (recipient of FDI) should be permitted under the automatic route to dispose away necessary land (including land without requisite approvals) held by it under the said project(s), on **no profit basis** under exceptional circumstances which may render a construction development project to be un-viable (see illustrations below). To illustrate, consider the following:

- ▶ A construction development project may be considered to be un-viable where, *inter alia*, (i) substantial land disputes exit, which do not permit construction/ development of the project; or (ii) where necessary approvals/ licenses cannot be procured or, necessary state bye-laws cannot be adhered to; or (iii) where the project has landed into legal disputes to raise high concerns over the completion of the project in the foreseeable future; or (iv) where project can no longer be developed or constructed due to un-resolvable issues due to various economic, social or political issues. Under such exceptional cases, the land should be permitted to be sold or exchanged on condition that the Indian company (recipient of FDI) does not make any profit on such transaction.

XI. Joint Development

A suitable clarification should be issued to permit Indian companies (being the recipient of FDI) to undertake joint development with other Indian companies for parts of a large contiguous project so long as the Indian company (being recipient of FDI) continues to be responsible for overall project and carries out development of minimum of 20,000 sq meters in the entire project. To illustrate, consider the following:

- ▶ An Indian company (recipient of FDI) which is undertaking construction and development of built up area of say, 100,000 square meters, should be permitted to jointly construct/ develop the project, *inter alia*, by (i) entering into joint ventures with other Indian entities; or (ii) executing joint development agreements with other Indian entities; or (iii) outsourcing completely or partially, the construction/ development activity of part(s) of the entire project to other Indian entities. Such joint development should be freely permitted where the Indian company (recipient of FDI) continues to be responsible for the construction and development of the entire project (i.e. of the entire 100,000 square meters) and engages itself to develop at least 20,000 square meters in the entire project.

XII. Real estate business

The extant FDI policy states that FDI in real estate business is not permitted. However, the term “Real Estate Business” has not been elaborately defined to bring abundant clarity in the minds of the foreign investor community. Accordingly, we believe that the DIPP should appropriately define the term “Real Estate Business”.