FOREIGN INVESTMENT IN INDIA: AVENUES IN MULTI-BRAND PRODUCT RETAIL TRADING & INDIAN AIRLINES

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1. The Indian government has, after overcoming the political hurdles, taken some crucial and long pending policy reforms decisions in September 2012 to push the economic growth. These reforms include opening more sectors for foreign direct investment ("**FDI**") especially multi-brand product retail trading and foreign investment in Indian airlines by foreign airlines. It is expected that these reforms will stimulate the economic growth in India.

2. Besides permitting FDI in multi-brand retail trading and Indian airlines by foreign airlines, the Indian government has also taken the following decisions to increase investment opportunities for foreign investor:
   (a) Increase in FDI limits from existing 49% to 74% in teleports, direct to home, and cable networks activities falling under the broadcasting sector. However, FDI in excess of 49% in these activities is under the government approval route.
   (b) Permitting FDI upto 74% in mobile television. However, FDI in excess of 49% in mobile television activities is under the government approval route.
   (c) Permitting FDI up to 49% in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 under the automatic route.

3. **FDI IN MULTI-BRAND PRODUCT RETAIL TRADING**

3.1 Permitting FDI in multi-brand product retail trading has been most debated decision of the Indian government. Due to political opposition and lack of consensus amongst Indian political parties, this proposal though approved by the cabinet in November 2011 was deferred for evolving a broader consensus on the subject. However, pending such consensus, the Indian government has made an enabling policy decision to allow FDI in multi-brand product retail trading but the respective State Governments have the final authority in regard to implementation of FDI in multi-brand product retail trading in their respect States. Though this move of Indian government has been widely criticised by various Indian political parties, the Indian business associations have supported this decisions of the Indian Government. Post implementing this policy decision, the Prime Minister of India in his address to the nation on 21 September 2012[1] *inter alia* stated the following about multi-brand product retail trading:

> "…….the opening of organised retail to foreign investment will benefit our farmers. According to the regulations we have introduced, those who bring FDI have to invest 50% of their money in building new warehouses, cold-storages, and modern transport systems. This will help to ensure that a third of our fruits and vegetables, which at present are wasted because of storage and transit losses, actually reach the consumer. Wastage will go down; prices paid to farmers will go up; and prices paid by consumers will go down.

[1] http://pib.nic.in/newsite/PrintRelease.aspx?relid=87912

The growth of organised retail trade will also create millions of good quality new jobs."

3.2 FDI in multi-brand product retail trading has been allowed subject to the following conditions:

(a) FDI upto 51% has been permitted under the government approval[2] route.

(b) Minimum amount to be brought in as FDI by the foreign investor is US$ 100 million.

(c) At least 50% of total FDI brought in shall be invested in 'back-end infrastructure[3]' within 3 (three) years of the first tranche of FDI.

(d) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian 'small industries[4]'.

(e) Such multi-brand product retail outlets may be set up only in cities with a population of more than 1 million[5] and may also cover an area of 10 kilo meters around the municipal/urban agglomeration limits of such cities.

(f) Government will have the first right to procurement of agricultural products.

(g) Interestingly, retail trading in any form by means of e-commerce is not permissible for companies with FDI engaged in multi-brand product retail trading activities.

(h) Most importantly, this policy is merely an enabling policy of the Indian government and the government of respective State/Union Territories has to take their own decisions with regard to allowing FDI in multi-brand product retail trading in their States/Union Territories. Therefore, retail sales outlets may be set up only in those States/Union Territories which have agreed[6], or agree in future, to implement this policy in their States/Union Territories.

4. FDI IN CIVIL AVIATION SECTOR

4.1 The study of ASSOCHAM on FDI in Civil Aviation[7] observed that huge amounts of additional investments required to realizing the vision of the Indian Civil Aviation industry. Indian airlines are expected to add around 370 aircrafts worth INR 1,500 billion. Presently, the Indian airline industry suffers from huge debt burden of nearly US$ 20 billion (estimated 2011-12). The much awaited decision of Indian government to allowing the foreign airlines to pick up 49% stake in three major Indian airlines, namely, Kingfisher, Jet Airways and Spice Jet would result in capital infusion of approximately upto INR 25.30 billion. The amount raised can be used to address working capital requirements of the Indian airlines.

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[2] Applications would be processed in the Department of Industrial Policy & Promotion to determine whether the proposed investment satisfies the notified guidelines, before being considered by the Foreign Investment Promotion Board for Government approval.

[3] 'Back-end infrastructure' will include capital expenditure on all activities excluding that on front-end units, e.g., investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of back-end infrastructure.

[4] Industry which has a total investment in plant & machinery not exceeding US$ 1 million.

[5] As per Census of India 2011 (http://www.censusindia.gov.in/default.aspx)

[6] The ten Indian States which have allowed multi-brand product retail trading in their States are Andhra Pradesh, Assam, Delhi, Haryana, Jammu & Kashmir, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman & Diu (Union Territory) and Dadra and Nagar Haveli (Union Territory).

[7] http://www.assocham.org/arb/general/Indias_Experience_with_FDI_Role_of_a_Game_Changer.pdf

4.2 FDI in Indian airlines by foreign airlines is allowed subject to the following conditions:

(a) Foreign airlines are allowed to acquire upto 49% in the equity of Indian companies operating in cargo airlines, helicopter and seaplane services under the government approval route.

(b) This 49% limit subsumes FDI and investment by foreign institutional investor.

(c) A scheduled operator's permit can be granted only to a company (i) that is registered and has its principal place of business within India; (ii) the Chairman and at least two-thirds of its directors are citizens of India; and (iii) the substantial ownership and effective control[8] of such a company is vested in Indian nationals.

(d) All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of FDI shall be cleared from security view point before deployment.

(e) All technical equipment that might be imported into India as a result of FDI shall require clearance from the relevant authority in the Ministry of Civil Aviation, Government of India.

(f) This policy is not applicable to M/s Air India Limited which is owned by the Indian Government.

5. CONCLUDING REMARKS

In last one year or so, economic growth in India has slowed. The fiscal deficit was increasing, inflation was high and the Indian rupee has declined over 20% against the U.S. dollar. It was widely discussed that whether India can maintain its investment grade rating, or become the first "fallen angel" among the BRIC nations (Brazil, Russia, India, and China)[9].

In the "Approach Paper to Twelfth Five Year Plan[10] of Planning Commission of India, it was stated that "as far as financing the current account deficit (CAD) is concerned, two alternative scenarios have been generated with the same constraint that the CAD should not exceed 2.5 per cent of India's GDP. It was further stated that for prudent management of the external account, it is desirable to restrict the CAD to an average below 2.5 per cent over the Twelfth Plan period. This approach paper noted that it should not be difficult to secure the capital inflows necessary to finance a level of the CAD of 2.5 per cent of GDP, relying on stable long term FDI flows but for this to happen it is also necessary to ensure that policies relating to FDI are appropriately tailored to encourage such FDI flows.

In view of above, it was considered necessary by the Indian government to take such policy reform decisions to encourage the FDI inflows to meet capital requirements and to bring India back on the path of high and inclusive growth as indicated by the Prime Minister in his address to the nation.

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[8] A company is considered as "Controlled" by resident Indian citizens if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company.

[9] http://www.standardandpoors.com/spf/upload/Ratings_US/IndiaFirstBRICFallenAngel080612.pdf

[10] http://planningcommission.gov.in/plans/planrel/12appdrft/appraoch_12plan.pdf

6. ABOUT THE AUTHORS

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