

Corpsec Hotline

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REALITY CHECK FOR FVCIS

The Indian government has reportedly asked the Reserve Bank of India ("RBI") to approve the long-pending applications by prospective investors for registration as an FVCI, wherein the investor had indicated that it wishes to invest in the Indian real estate sector or in companies dealing in real estate. Some of the FVCI applications with similar investment objectives were not being approved for over 6 - 8 months, since the RBI did not seem comfortable with FVCIs investing in this sector, with possible reasons being that such investments may not be consistent with India's foreign direct investment ("FDI") policy for the real estate sector. The directive may have been issued since such delays were sending wrong signals in the marketplace and contrary to the general view was that the Indian government was actively promoting foreign investment in the country.

Applications for registration as an FVCI are to be submitted to the Securities and Exchange Board of India ("SEBI") under the SEBI (Foreign Venture Capital Investor) Regulations, 2000. However, as part of the approval process, SEBI internally requires the approval of the RBI, before SEBI finally grants the registration. In recent times, FVCI applicants that were not investing in the Indian real estate sector were required to give an undertaking to the RBI that they will not invest in the real estate sector and that their non-real estate investments will comply with the FDI policy. It is only upon submission of such an undertaking that RBI was willing to grant its approval to SEBI. Incidentally, in April 2004, SEBI had removed the real estate sector from the negative list prescribed under the third schedule of the FVCI Regulations, thereby allowing FVCIs to invest in this sector.

Implications:

The Indian real estate sector has been generating considerable interest among foreign investors in recent times. In light of the so-called embargo, the only route available for foreign investors for investments in the Indian real estate sector is the FDI route, wherein the investor can invest up to 100%, subject to compliance with the conditions and restrictions (including minimum capitalization requirement) placed under Press Note No. 2 of 2005. However, assuming that RBI may now allow FVCIs to invest in the Indian real estate sector, this is likely to open up a new investment route for potential foreign investment in this sector.

Whether the RBI is likely to prescribe any specific conditions and/or restrictions for FVCIs' investment in this sector, remains to be seen. It also needs to be ascertained whether the additional benefits that are generally available to FVCIs over FDI (for example, exemption from entry and exit pricing norms, exemption from lock-up post initial public offering, etc.) would continue to be available to FVCIs investing in this sector. Clarifications may also be necessary with respect to the applicability of Press Note No. 2 of 2005 to investments made by FVCIs in this sector.

- **Vikram Shroff & Siddharth Shah**

You can direct your queries or comments to the authors

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