

Corpsec Hotline

November 10, 2006

'ROAD CLOSED' FOR FII INVESTMENT IN IPOs OF RETAIL COMPANIES

As reported in the Business Standard, the Government has, while clarifying on the policy guidelines for the sectoral cap in the retail sector, conveyed to the investment bankers that the FIIs will be prohibited from participating in the book-building process in retail sector IPOs, as buying shares through the primary market is considered as Foreign Direct Investment (FDI). The FIIs will, however, be allowed to buy shares up to 24% only from the secondary market, after the listing of the shares.

Regulatory Provisions

Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (RBI Regulations), which provides for investment under the FDI scheme, allows FDI up to 49% in single-brand retail chains, but prohibits FDI in multi-brand retail chains.

As against the above, Schedule 2 of the RBI Regulations, which provides for investment by FIIs under the Portfolio Investment scheme, allows the SEBI-registered FIIs to invest up to 24% of the total paid-up capital of an Indian company, both through primary as well as secondary market. The Indian company is allowed to increase this limit up to the sectoral cap / statutory ceiling, by passing a resolution by the board of directors followed by a special resolution by its general body.

The Schedule 2 simultaneously allows the FIIs to purchase shares of an Indian company through offer / private placement, subject to the ceilings specified therein, provided that in case of a public offer, the price of the shares to be issued to the FIIs is not less than the price at which shares are issued to residents.

Implications

While the intention of the Government may be to impose the restrictions on the FIIs in line with the FDI policy, it goes against the provisions of Schedule 2 of the RBI Regulations.

Further, the news report seems to suggest that the restriction is only on multi-brand retail companies. In fact, the Foreign Investment Promotion Board, while issuing clarifications in respect of FII investment in the real estate companies which have non-FDI compliant projects, have clarified their position that the FDI is distinct from the FII investment and hence, it is unclear why the ratio should differ in respect of retail companies.

It, however, looks that the proposed restriction would hamper the business plans of Reliance Industries, Bharti and Aditya Birla group, who are planning to enter the multi-brand retail industry in a big way.

- Kishore Joshi & Siddharth Shah

You can direct your queries or comments to the authors

Source: The Business Times, November 10, 2006 - Singapore edition

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Taxing Offshore Indirect Transfers in India

February 28, 2025

Unlocking Corporate Philanthropy

February 27, 2025

Digital Health in India

February 26, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

SIAC 2025 Rules: Key changes & Implications

February 18, 2025

How Cross Border M&A Will Shape the AI Age

February 13, 2025