

## Corpsec Hotline

December 12, 2008

### "OPTIONS" - A NEW WINDOW FOR FDI?

Foreign direct Investment ("FDI") in India is currently specifically permitted in the form of equity, compulsorily convertible preference shares and debentures, and warrants. Recently, a proposal was put before the Foreign Investment Promotion Board ("FIPB") by M/s. GSR Sugars Private Limited for granting approval for issuance of options convertible to equity shares at a later date. While the Department of Industrial Policy and Promotion ("DIPP") has responded positively to the proposal, the FIPB is yet to disclose its verdict. In terms of a recent news report, the Ministry of Corporate Affairs is also exploring the option of making an amendment to the Companies Act, 1956 to treat options at par with warrants. Corresponding changes will also need to be made to the Foreign Exchange Management Act, 1999 and the regulations thereunder.

What is an Option? An option gives the holder of the option the right, though not the obligation, to buy (call) a stake in a company at a pre-determined price, within a certain period or on a specific date.

The regulators have in the past expressed concerns in allowing an instrument like an 'option' which would give the flexibility to the foreign investor to fix the price much before the actual acquisition of the stake and also with added liberty that the foreign investor may not actually exercise the right. However, if FIPB does give its approval, the move of the government would be in line with the need of the hour and would give both the domestic investee companies as well as the foreign investors an added option!

- **Mansi Seth & Chittaranjan Datar**  
You can direct your queries or comments to the authors

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