India update – August 2008

Contents

Chadha&Co.

Foreign vendors allowed to bank offsets

The Defence Ministry has released the new policy that will govern defence procurements over the next two years.

The Defence Procurement Policy of 2008, or DPP-2008 for short, supersedes the earlier DPP-2006; the new policy will take effect from September 1 this year.

The most important changes in DPP-2008 relate to the new offset policy, which will immediately impact offset proposals for India's Rs 47,000-crore[i] purchase of 126 medium multi-role combat aircraft (MMRCA).

Over the next five years, offsets will arise from defence purchases worth an estimated Rs 300,000 crore. Any defence contract worth more than Rs 300 crore requires vendors to spend 30 per cent of the contract value on Indian defence goods or services.

The new offset policy accepts a key request of foreign vendors, permitting them to bank offsets towards a future contract liability. The banked offsets can be utilized against any tender that is issued within two years of the date when the offsets were banked.

If a foreign vendor joins an offset-related partnership with a private Indian company, the Indian partner will not need a defence-manufacturing licence from the Ministry of Defence (MoD).

THE NEW DPP-2008:

WHAT'S THERE	WHAT'S NOT
Offset banking	Indirect offsets
Offset waiver on fast-track purchases	Technology as offsets
Two-year roll-on plan	Timelines for purchases
More transparent trials	Improved "Make" procedure
Licensing waived for industry	Raksha Utpadan Ratna announcements

The new policy also waives offset liabilities on any procurement under the fast-track procedure, which is employed when Indian needs defence goods in an emergency.

Another step in the DPP-2008 is a two-year "roll-on acquisition plan", in which procurement projects do not lapse at the end of a financial year; instead, they are included in the next year's Annual Acquisition Plan. The earlier procedure involved going through the entire procedure of proposals and sanctions for procurements that lapsed.

Another important decision in the DPP-2008 grants procurement powers to the military for purchases up to Rs 50 crore; and the defence secretary can sanction up to Rs 75 crore worth of purchases.

Earlier, purchases of under Rs 40 crore needed to go to the Defence Procurement Board (DPB); if the purchase was above Rs 40 crore, it needed to go to the Defence Acquisition Council. This not only created delays in smaller purchases (which make up a significant part of the overall defence procurement) but also tied down those important committees in making decisions that have now been deemed within the financial powers of the military.

The Indian military is feared by vendors for the rigorous trials - in all kinds of operating conditions, in deserts, plains and extremes of altitudes - which it conducts on any equipment that it proposes to buy.

Now DPP-2008 lays down that Requests for Proposals (RfP) must lay down clearly the methodology for user trials by the military. The trial process will also be more transparent; not only will vendors be given daily briefings on the performance of their equipment, that communication will be confirmed in writing.

Delhi-based security company makes overseas acquisition

In another instance of a small Indian firm striking a big overseas acquisition, Delhi based Security and Intelligence Services (SIS) has acquired the Australian guarding and mobile patrol business units of American conglomerate United Technologies Corp (UTC) in a deal worth $235 million (around Rs 1,000 crore). The deal catapults SIS to among the largest manpower security firms in the Asia-Pacific region with consolidated revenues of around Rs 2,000 crore.

The deal involves the security services firm taking over three businesses of UTC Fire and Security, which includes Chubb Security Personnel, Chubb Mobile Services and MSS Security Group, sources said. These units are into man-guarding and together fetch revenues worth $400 million annually.

SIS, started by first-generation entrepreneur Ravindra Kishore Sinha in 1974, ranks among India's top three security services firms. Earlier this year, US-based hedge fund DE Shaw had bought 14% in the Indian firm for around Rs 300 crore at a valuation of about Rs 2,150 crore. SIS clients include Tata Steel, Tata Motors, ICICI, Idea Cellular and Future Group.

The transaction would be funded through a mix of debt and equity, which would partially involve internal accruals. The firm is likely to raise funds from SBI and its private equity investor DE Shaw.

RBI wants curbs on foreign VCs

Seeks to stem flow of foreign funds into real estate

The Reserve Bank of India (RBI) has asked the finance ministry to prevent foreign investors from manipulating foreign investment norms by taking to the venture capital route. To check the real estate bubble, the central bank has recommended that foreign venture capital investments (FVCIs) be restricted to nine sectors and investment in other sectors treated as foreign direct investment. The RBI has suggested Sebi set up a screening mechanism for all pending and future FVCI proposals.

The new restrictions on FVCIs would help the government ward off concerns like low capital base, circumvention of takeover guidelines and round-tripping of investments while evaluating FVCI proposals. Out of 58 FVCI applications pending with the RBI, 22 are considered to have low capital base.

Foreign investment coming in as venture capital is accorded special concessions not available for normal foreign direct investment (FDI). The concessions include exemption from entry and exit pricing norms that otherwise apply to foreign investors, exemption from the

Sebi takeover code for sale of shares by FVCIs to company insiders after listing, exemption from the one-year lock-in period for sale after an initial public offering and exemption from sectoral FDI caps for investments in domestic venture capital funds.

The RBI has written to the ministry seeking restriction of venture capital benefits only to the sectors that Budget 2007-08 identified as eligible for the benefit of tax pass-through. The sectors include biotech, IT, nanotechnology, seed research, research & development to create new chemical entities in pharma, dairy, poultry, biofuels and hotel-cum-convention centres with more than 3,000 seats.

It is understood that the RBI's demand for regulating investment flow through the FVCI route stems from the need to curb foreign funds from flowing into the real estate sector without adhering to rules. The current policy provides for regulatory arbitrage, feels the central bank. Therefore, it has suggested that generalized concessions for FVCI across sectors should be done away with, and the concessions restricted to a positive list of industries.

Parallel channel for investment

"Sebi may amend the FVCI regulations, restricting the eligible investment under the route, both in domestic VCFs as well as a domestic venture capital undertaking, only to a positive list of important sectors," says the RBI letter to the finance ministry.

The sectors suggested are such as biotech and IT which have been identified in the 2007 Budget for income tax benefits. The FVCI route was accorded a preferential status presumably in view of the need for an affirmative policy action to encourage development of entrepreneurial capabilities in high-risk, technology-intensive ventures and in greenfield projects.

The RBI has noted that this route of investment has become a misnomer since it allows for direct/indirect investment in all sectors, including real estate. The central bank feels that the FVCI route has opened up a parallel channel for investment, besides the FDI route and presents a classic case of regulatory arbitrage. The present process of registration of FVCIs involves obtaining an NOC from Sebi followed by permission from the RBI under FEMA. A majority of these funds using this route are based in Mauritius, Singapore and Cyprus.

PN-wary FIIs make India entry via equity swaps

Foreign investors who want to escape the regulatory glare seen taking exposure in Indian market through the unregulated OTC derivatives contract route

The restrictions imposed on investments in Indian equities through participatory notes (PNs) last year has those foreign investors, who prefer to stay away from the regulatory glare to tap other routes for investment in the local market.

In the last few months, these investors, including global hedge funds, have been increasingly using the equity swap — an unregulated over-the-counter (OTC) derivative contract — to take exposure to the Indian market. An equity swap is an arrangement where a series of future cash flows are made by two counterparties to each other. The pre-determined set of payments, which is based on a notional principal amount, may be determined by returns on stocks or indices or a fixed or floating rate.

Global hedge funds favour equity swaps, as the product enables them to get the economic benefits of ownership of shares, without the costs attached and the ownership burden. Even though transaction costs may be a little higher than exchange-listed derivatives, the popularity of equity swaps has been enhanced by flexibility in tenure and portfolio compositions.

In the Indian context, a simple equity swap could work this way. Say, a US-based hedge fund, which does not want to be registered with Sebi or with poor credentials, wants to bet on India. It is bearish on India and wants to get the benefits of going short in the markets here.

The hedge fund enters into an equity swap agreement with an international brokerage, with a presence in India, to receive payments on shorting Nifty futures for one year. In turn, the brokerage may demand returns from one of the securities in the hedge fund's portfolio, possibly a country where the brokerage does not have access, but is keen on investing there. So, if the Nifty futures fall, the hedge fund receives payments from the brokerage on the agreed intervals while the brokerage gets returns from the security. In live situations, the equity swap structure is far more complex than the one mentioned here, with many more variations.

Hedge funds have been using this route, especially to gain exposure to India's futures and options market, where trading through participatory notes have been banned since October 2007.

Sebi opens ESOPs to nominee-directors

Directors nominated by financial institutions are now eligible for employee stock options (ESOPs), provided the director and nominating institutions sign an agreement on this and a copy of it is given to the company.

The Securities and Exchange Board of India (Sebi) made this amendment after it received several cases after a grey area in the regulation led to institutions forbidding nominee-directors from receiving ESOPs.

However, the joy of the nominee-directors could be short-lived as sources in Life Insurance Corporation (LIC) and General Insurance Corporation (GIC), which have a substantial shareholding in many large Indian companies, said they would not allow nominee-directors to accept ESOPs since they were government-owned bodies.

Before the amendment to the Sebi (Employee Stock Option Scheme and Employee Stock Purchase Scheme) guidelines, 1999, ESOPs were meant for whole-time directors, employees and officers of an organization. Exempt categories were promoters or directors with over 10 per cent holding in the company.

Plan panel for competitive bidding in JV with private firms

The planning commission has recommended that the private company in 50:50 joint sector infrastructure projects should be selected through competitive bidding. The commission says that it does not subscribe to the existing system were such joint ventures are formed through closed-door negotiations and are not transparent.

The panel has also proposed that in case where the produce of these joint ventures are to be purchased by the public sector partner, the procurement should again be based on competitive bidding.

The proposal is currently under the consideration of the Committee of Secretaries, which will submit its final guidelines shortly after holding consultations with various departments and ministries.

The Planning Commission's move is directed to bring in more accountability and avoid any conflict of interest since the grantor of the concession is also a partner in such joint venture projects.

For instance, Road Infrastructure Development Company of Rajasthan ltd (RIDCOR), a 50:50 JV between IL&FS and the Rajasthan government, was set up to improve and maintain over 1,000 km of roads within Rajasthan. Such JVs have mushroomed across sectors in recent times.

The Planning Commission has also observed that if in such a joint venture the share of public sector is 50 per cent or less, then it is considered a private entity and would, therefore, not be accountable to the government, the public accounts committee and the Comptroller and Auditor General.

Even the government rules relating to procurement and expenditure would not apply to such a joint venture. In such cases, where the joint venture company produces goods or services that are to be purchased by the public sector partner, there is always a chance of the private partner taking undue advantage of it.

Reinsurers to get easier entry

Government rejigs proposed bill; may relax listing norms for insurers, rules for reinsurance companies

The insurance amendment bill, slated to be vetted by an empowered group of ministers soon, has been reworked considerably with changes in listing norms and relaxation in prescribed norms for reinsurance companies. The bill seeks to increase the foreign direct investment (FDI) limit in the insurance sector to 49%.

Foreign reinsurance companies are likely to be allowed to set up branch offices here without entering into joint venture partnership with Indian firms. The government would also work out a favourable tax structure for such companies. The government may relax the norms related to mandatory listing of all insurance companies within 10 years of their operations as the clause is being termed as impractical.

The government would, however, make it mandatory for all the companies to get registered as a public limited entity within one year of the Act comes into place.

Presently General Insurance Company

(GIC) is the only reinsurer in the country. The company had a net owned fund of Rs 4,822 crore as on March 31, 2006. Global asset base of GIC as on March 31, 2006 stood at Rs 27,038 crore.

Entry of foreign players in the reinsurance segment would benefit the general, life and health insurance companies who would be able to negotiate better premium. With the passage of the proposed amendment foreign companies, including Lloyd's of United Kingdom (UK), can set up their branches in the country.

FDI in sensitive sectors may go off auto route

Flow of foreign direct investment (FDI) into sensitive infrastructure sectors such as airports and ports may be taken off from the automatic route once the proposed umbrella law for scrutinizing FDI from the national security angle is put in place.

The home ministry has suggested that clearance for FDI in such projects should be provided only after thorough verification under the proposed National Security Exception Act. It has asked finance ministry to identify such sensitive sectors which are on automatic route. As of now, FDI in airports is allowed to the tune of 100% through the automatic route in case of greenfield projects. In case of ports, 100% FDI is allowed through the automatic route.

The move is significant since FDI has flown into the new international airports at Bangalore and Hyderabad as well as the companies managing two of the busiest international airports in the country — Delhi International Airport and Mumbai International Airport. In case of existing airports, FDI up to 74% is allowed on the automatic route.

The proposed law would work on the lines of the Exxon-Florio provision in the US, implemented by the Committee of Foreign Investment. This provision enables US authorities to stall foreign companies from acquiring any local asset if it is seen to be compromising national security. National Security Advisor M K Narayanan is working on legislation with this objective, but the initiative has been delayed due to resistance from various ministries.

However, policy makers have now begun a review of their stand in view of increasing security apprehensions. Concerns with regard to these sectors is not so much about building the infrastructure but about its operation as also inflow of capital from tax havens like Cayman islands, Cyprus and Mauritius. These largely stem from the fact that some of these sectors are on the automatic route and thus the proposals are not vetted by ministries concerned.

The finance ministry has been against such law as it maintains that existing laws have adequate provisions to deal with such concerns. It is of the view that instead of bringing in an altogether new law, it would be preferable to strengthen existing laws. The Department of

Industrial Policy & Promotion is also wary of new provisions restricting FDI flows, but the ministries of home and defence are keen to put a fool-proof system in place. Security agencies are also in favour of strong checks to prevent national security from being breached.

Higher tax for JVs with foreign companies, rules AAR

Joint ventures with a foreign entity could be treated as Association of Persons (AOP) and attract a higher rate of income tax applicable to Indian residents. The Authority for Advance Rulings (AAR) in a case related to a JV between Austria's Geoconsult and Rites and Secon ruled it would be treated as an AOP. Under the income tax laws, an association of persons is considered legally to be a resident of India and is taxed at similar rates at which an individual is taxed.

The ruling came in response to Geoconsult's query about taxability of the earnings made by its joint venture company with Indian construction groups Rites and Secon. The present case dealt with the earnings made by the joint venture as part of its contract with Himachal Pradesh Road and Other Infrastructure Development Corporation (HPRIDC), for project consultancy to develop seven tunnels across the state of Himachal.

Geoconsult, which claimed to have rendered managerial and consultancy services, contended that it did not have any permanent establishment in India. Hence, it was argued that its earnings be termed as fees for technical services which attracts 10% tax deduction on its gross receipts. The revenue department, on its part, referred to the contractual agreement to highlight that a representative of the Austrian company stayed in India to oversee the project activities.

"A close look into the various clauses (of the joint venture agreement) reveals that all essential ingredients of an AOP, stand satisfied in this case (Geoconsult-Rites-Secon combine)," an AAR bench chaired by P V Reddi said. The quasi-judicial body in its ruling has directed the combined entity to pay tax at 41% on its net earnings made in India.

Supreme Court okays Posco, Sterlite projects with riders

The Supreme Court (SC) today gave the long-awaited green light to the Sterlite and Posco projects in Orissa, but imposed certain conditions to address environmental concerns and rehabilitations of the tribals living in the region.

The special bench headed by Chief Justice K G Balakrishnan today cleared the forest diversion proposal (FDP) of the Rs 51,000-crore steel project of Posco India. The project also includes a captive port at Paradip.

Environmental Concerns

- The clearance of the forest diversion proposal of Posco would facilitate handing over of the government portion of land to the company to set up the project
- SC asks Ministry of Environment and Forests to ensure the Sterlite project complies with the rules and regulations
- As per conditions imposed by the court in December 2007, 5% of Sterlite's profit, or Rs 10 cr,

whichever is higher, will be utilized every year to maintain ecological balance and for the welfare of tribals

However, the FDP relates only to plant and captive port site of the company as the forest diversion, if any, for the mining site will be decided later.

The company proposed to acquire 4,004 acres for its plant and captive port near Paradip, of which 3,566 acres are government land and the rest 438 acres private land.

Of the total stretch, 3,097 acres has been categorized as forest land. This includes 2,958 acres of government owned and 137 acres of private land.

The clearance of the FDP is expected to facilitate handing over of the land, at least, the government portion, to the company.

Sterlite will be able to proceed with its Rs 4,000-crore aluminium project in the ecologically fragile Niyamgiri hills. The company had sought clearance for the diversion of 660.749 hectares of forest land for mining purposes.

The bench today also allowed Sterlite to go ahead with bauxite mining. However, it asked the ministry of environment and forest to make sure the project complied with the rules and regulations.

The other conditions imposed by the court in December 2007 will remain in force. According to these conditions, 5 per cent of the profit of the company, or Rs 10 crore, whichever was higher, would be ploughed back each year to maintain the ecological balance of the area and on the welfare of project- affected tribals.

The centrally empowered committee appointed by the SC would supervise the functioning of the project from the viewpoint of the environment and rehabilitation of tribals.

Year's lock-in on IDR conversion may be removed

Foreign companies looking to list on Indian stock exchanges may soon find it easier to do so. The government is set to relax the rules for floating Indian Depository Receipts (IDRs), making it easier for foreign companies to raise equity capital from India.

Companies issuing IDRs will be able to redeem them into underlying shares soon after the float. The Ministry of Corporate Affairs, which is expected to unveil the liberalized norms shortly, is planning to drop the one-year lock-in period for conversion of the IDRs into underlying shares. Foreign companies will also not be required to submit audited financial statement every quarter.

Like any other depository receipts, IDRs are negotiable financial instruments issued by a local depository against the shares of the foreign company's publicly traded securities held by it. For example, two IDRs could represent one share of the foreign company. These are listed and traded on local exchanges like shares. It is similar to the GDRs and ADRs that allow companies from all over the world to raise funds from the European and American markets, respectively.

The move comes in the backdrop of the IDR scheme failing to attract any foreign company though four years have passed since this instrument was launched. Officials from finance and corporate affairs ministries had a detailed discussion about reasons behind foreign companies not using the IDR route. They had identified such issues, which will be addressed soon.

This is not the first time that the government is simplifying IDR rules. The rules issued in 2004 were relaxed in 2006. The requirement of pre-issue paid-up capital and free reserves of $100 million was brought down to $50 million. The requirement of average turnover of $500 million during the three financial years preceding the issue was dropped. Instead, a new condition, in keeping with the international norms, of minimum average capitalization of $100 million (during the previous three years) in the host country was imposed in the changes carried out in 2006. But despite these changes IDR's failed to elicit interest among foreign companies largely due to these procedural requirements.

With the proposed relaxation in procedures, it is expected that IDRs would generate interest among foreign companies, particularly from neighbouring nations. For companies in Saarc region, raising money from the Indian markets would be much easier and cheaper than US or European markets.

SBI raises PLR 100 basis points

Nearly two weeks after the Reserve Bank of India's latest monetary-tightening measures, the country's largest lender, State Bank of India, raised its benchmark prime lending rate (PLR) 100 basis points to 13.75 per cent.

Bank	Increase (bps)	New (%)
SBI	100	13.75
Bank of Baroda	75	14.00
HDFC Bank	50	16.50
Axis Bank	50	15.75
ICICI Bank		
Corporate	75	17.25
Retail loans	75	14.25

PLR for all banks except ICICI Bank

ECB rate spread may be raised

The government is considering raising the interest rate spread on external commercial borrowings (ECBs) to ease difficulties that Indian companies face in borrowing overseas.

Funds have become expensive the world over. There is a need to change the interest rate spread on ECBs," the official said.

The spread has been prescribed to enable companies to raise funds overseas and not as an exchange rate control instrument. A final decision is expected soon. The move follows demands from Indian industry for raising the cap, which is regulated by the government. On May 18, 2007, the finance ministry had reduced the all-in-cost ceilings to 150 basis points per year over the six-month London Inter Bank Offered Rate (Libor) from 200 basis points for ECBs of tenor of three- to five-years. For a tenor of more than five years, the cost ceiling was reduced to 250 basis points over Libor, down from the 350 basis points earlier. The changes were applicable to ECBs under both automatic and approval routes.

The move was aimed at containing capital flows, which had emerged as a major contributing factor to inflation. Fund flows have moderated since then, partly on account of several other restrictions on ECB borrowings by the real estate sector.

Despite these measures, inflation has risen to the highest since 1995 and led to several rounds of interest rate increases by the central bank. As a result, companies are complaining about the cost of money and have sought relaxations in the restrictions.

The government had modified some aspects of the ECB policy on May 31. It decided that borrowers in the services sector — hotels, hospitals and software companies — may avail of ECBs up to $100 million for import of capital goods under the approval route.

Tesco gears up for wholesale entry

UK supermarket group Tesco has announced plans to develop a wholesale cash-and-carry business in India, committing an initial investment of up to £60 million (Rs 480 crore) in the first two years. The wholesale outlets, which will be initially set up in Mumbai, will sell fresh food, grocery and non-food products to small retailers, restaurants, kirana stores and other business owners.

Tesco has also signed an exclusive franchise agreement with Trent, the Tata Group's retail arm. Trent will draw on Tesco's retail expertise and technical capability to support the development of its hypermarket business, called Star Bazaar, for which the UK retailer will be paid a fee. Tesco's wholesale business will also supply merchandise to Star Bazaar.

Currently, foreign retailers are only allowed to sell to retail consumers through franchises and licences. However, 100% FDI is allowed in cash-and-carry wholesale formats - the model chosen by Germany's Metro and South Africa's Shoprite Holdings for operating in India. Cash-and-carry can only sell to other retailers and not to individual consumers.

Rights issues to now get cleared in just 43 days

New QIP, QIB pricing norms; PNs hang fire
Indian corporates looking to raise money will now be able to reach out to their shareholders faster, with capital market regulator Sebi reducing the time line for approving a rights issue from 109 days to 43 days.

Sebi has also revised pricing norms for qualified institutional placements (QIP) and preferential allotment to qualified institutional buyers (QIBs), a move that will facilitate capital-raising efforts. The floor price for QIPs will now be based on two weeks' average with the relevant date being the day on which the board decides to open the QIP. The floor price is currently based on the higher of the average of the weekly high and low of the share's closing price during the two weeks or six months preceding the relevant date.

Sebi, however, has not changed the relevant date for preferential allotment to QIBs as the resolution for this kind of issue is valid only for 15 days as against one year for QIPs.

Nod likely for foreign VCFs, realty to wait

Foreign venture capital investors (FVCI), who have been awaiting RBI approval for the past few weeks, may finally get the nod to go ahead. The central bank is likely to start the process of approving pending FVCI applications. Over 50 applications from foreign venture capital funds are pending. However, applications of venture investors eyeing the real estate sector may still have to wait.

Out of 50 applications, at least 21 pertain to real estate. The High-Level Coordination Committee on Financial Markets has favoured clearing applications that pertain to other sectors. These applications were pending with RBI for Foreign Exchange Management Act, despite Sebi vetting them as per the FVCI regulations. Sebi had raised the issue at a meeting recently.

The government has begun a review of the FVCI regulations in view of concerns expressed by RBI. The meeting, chaired by the RBI governor, favoured clearing these applications pending this review. A decision on applications from investors who want to invest in real estate would be taken later when the new norms are firmed up.

The review was initiated after RBI upped its ante on FVCI investments flowing into real estate. This is because foreign direct investments into real estate face a three-year lock-in while FVCI investments do not. They are also exempt from takeover code and also do not have to pay tax, unlike their domestic counterparts who enjoy tax benefits only if they invest in select sectors. Most FVCIs, on the other hand, do not have a permanent establishment and hence do not need to pay tax here.

The new norms will aim to level the field for FVCIs and domestic venture capital funds. The main objective behind the review is to ensure capital flows into risky ventures and encourages entrepreneurship in the country.

Foreign monies inflow hits $22 b by half time

April-June FDI tops $10 bn, bulk targeted at greenfield projects

Foreign investment in the country's industrial and other firms has surged to nearly $22 billion during the first six months of the year, with the momentum of flows continuing in the first quarter of 2008-09.

After record flows of $11 billion during the last quarter of 2007-08, foreign direct investment (FDI) during April-June 2008 has topped $10 billion providing comfort to fiscal and policy managers considering that foreign portfolio investors have been major sellers since the beginning of the year. They have sold stocks worth $6.5 billion this year.

What is most encouraging this time is that bulks of the inflows have been channelised into greenfield projects. Indications are the FDI flows would be enhanced with an estimated investment of $5 billion by Dai-chi Sankyo in Delhi-based pharma company, Ranbaxy.

According to the latest RBI data, at $10.1 billion, FDI inflows during April-June were double the amount of what the country received a year ago. However, according to the Prime Minister's Economic Advisory Council, it is possible this doubling in April-May is due to bunching of transactions and is unlikely to be sustained through the year.

FDI inflows have been on the rise in the past three years. In 2007-08, inflows touched $32 billion. However, a sizeable portion is reinvested earnings by companies, i.e., money invested in acquisition of existing shares or private equity inflows. However, the FDI figures for the latest quarter don't include reinvested earnings.

Also, of the $10.1-billion FDI, only $2.3 billion is towards share acquisition. Even private equity flows, also included in the FDI numbers, are believed to have slowed significantly in the wake of the turmoil in the global credit market.
However, what could be adding to the discomfort of policy makers is the sectors that the money is flowing into. Nearly 15% of the FDI inflows during April-May, for which the data is available, have gone to the real estate and housing sector. Services and infrastructure are the other sectors witness to huge inflows.

The FDI figures seem to indicate that the country's long-term growth story is strong. In fact, in its report released earlier during the week, credit rating firm Standard and Poor's has forecast that although the country's growth projections have been lowered over the initial forecast twice this year, it would still be the second-fastest growing economy in Asia-Pacific after China.

Rating agencies have been expressing concern about the country's external finances in addition to their concerns about inflation and fiscal deterioration.

However, rising FDI flows appear to have bolstered the balance of payments — a balance sheet of the country's financial transactions with the outside world — especially against the backdrop of an outflow of $5 billion of portfolio investments during the period.

Notably, while FDI is seen as stable foreign money, portfolio investment is volatile and considered hot money that may be drawn down swiftly during a financial or an economic crisis.

The report on the outlook for the economy in 2008-09 released by the Prime Minister's Economic Advisory Council released earlier this week is bullish on FDI inflows, though it has scaled down the country's growth projections. For the year as a whole, it has taken a 43% increase in in-bound FDI to $46.2 billion (including private equity).

Stricter norms to ensure healthy medical devices

Companies manufacturing medical devices are likely to face more stringent regulations for selling products in the country. The Drugs & Cosmetics Amendment Act is set to enforce stricter standards and classifications for medical devices like catheters, stents, pace makers and bone cements. The idea is to ensure sale of safe medical devices to avoid adverse effects in treatment of critical diseases.

The government has proposed inclusion of a separate chapter on medical devices in the Drugs & Cosmetics Act. A draft of the schedule for medical devices, prepared by the Drug Controller General of India (DCGI) and the medical technology industry last year, is already in Parliament.

Once the Bill goes through and the

amendment Act is in place, both domestic and global companies would have to meet the standards and comply by the classifications defined in the Act.

The move would ensure that only companies with a quality certification of compliance of standards defined by the Act get a licence to sell in the domestic market. The standards are meant to test and verify the medical devices, whereas the classification will be in terms of the risk associated with the devices. There would be four classes based on risks. The riskier the device, the higher the class.

The Act may make it mandatory for companies to get certification from notified bodies like ISO which are supervised by the government.

Foreign firms engaged in offshore Indian projects not taxable: ITAT

Profits of a foreign company arising from offshore supplies to Indian projects are not liable to be taxed in India if the foreign company's office in India has no role in these projects, according to a ruling by the Income-tax Appellate Tribunal. The ITAT order last week was on an appeal filed by South Korean company L G Cables Ltd. In this case, the ITAT bench headed by president Vimal Gandhi held that though the agreement for supply of equipment was entered in India, this alone cannot be the ground for taxing the income of the foreign company from these projects.

L G Cables has a project office in India with RBI approval. L G Cables was awarded contracts for the execution of onshore fibre optic cabling system and for offshore supplies and services by Power Grid Corporation of India, a Public Sector Undertaking. The tax payer claimed a loss of Rs 86 lakh[ii] on the project execution of onshore fibre optic but on the offshore supply aspect, the company took a view that this income was out of the ambit of Indian tax authorities. The Indian income-tax department accepted the claim of loss on onshore business but rejected the claim that offshore business was not taxable in India. The department took a stand that the Indian operation of the company was closely linked to its offshore operation. And hence the department brought it under the tax net. Commissioner (Appeal) also confirmed the income-tax department's view on the matter and held that supply of offshore equipment was linked to certain operations in India. The Income-tax Appellate Tribunal did not agree with this. According to Mr Gandhi, "The delivery of goods, documents and substantial part of the sale consideration took place outside India where the sale took place and income accrued." Therefore, he said, this income could only be taxed outside India and not under the Indian tax laws.

Tribunal ruling to help companies save tax on share sale

Corporates, brokerages and banks can take advantage of a recent ruling on taxation of gains from sale of shares. The income-tax tribunal has said that if a company sells stocks after moving the securities held as 'stock-in-trade' (or trading portfolio basket) to capital assets (equivalent to an investment portfolio), then the gain from such transaction will be considered as 'capital gain'.

The case pertains to a small Mumbai-based investment company, Bright Star Investment. The firm had bought shares of a particular company and reported them as 'stock-in-trade' in its books. After some time the company decided to convert these shares into capital asset. This was possibly done in anticipation that the value of these stocks would appreciate in future.

When Bright Star sold a slice of the portfolio in the next financial year, it drew the attention of the income-tax department. Technically, since the shares were sold after a gap of one year, the profit from the transaction was a long-term capital gain and hence, tax free. However, the income-tax assessing officer had a different argument.

According to the tax official, such a transaction has two legs and should be re-computed to arrive at the tax implication: First, the conversion of the securities from 'stock-in-trade' to 'capital asset', which itself is a sale; and second, the actual sale in the secondary market.

So, even if the actual sale (taking place after one year of the purchase) is tax free, the first leg of the transaction should attract tax, and here the difference between the purchase price and the price of the stock at the time of conversion should be considered as a 'business income'. Business income, it may be mentioned attracts 30% tax, as against zero for long-term capital gain and 15% for short-term capital gain. If an investment is held over a year of its acquisition, long-term capital gains are applicable which is tax-exempted.

The Commissioner of Income Tax (Appeals) ruled the case in favour of Bright Star. What helped Bright Star was the absence of a specific provision in the tax laws for dealing with the situation. Under the present laws, the tax implications are well laid out when an entity converts shares from capital assets to stock in trade, but not the other way around.

Notably, gains from selling a 'stock-in-trade' share is business income, but selling securities considered as capital assets attract only capital gains tax. Nonetheless, brokerages do this when it perceives that a stock is tradable. More importantly, a conversion to stock in trade is done when a brokerage takes a hit and uses the loss figure to set off the gain (and thereby minimize the tax) on sale of securities held as stock in trade.

Revenue dept tells FIPB to reject telecom FDI from tax havens

In another instance of Indian tax authorities adopting a hard-nosed stance to prevent abuse of tax avoidance treaties, the revenue department recently opposed a proposal of a Cyprus-based company to increase its stake in an Indian telecom services company from 40 per cent to nearly 74 per cent.

Cyprus-based Daltotrade Ltd had proposed to raise its stake in Meta Telecomm Pvt Ltd, a company registered in India that has applied for licences to offer domestic and international long-distance services.

Earlier this month, the Foreign Investment Promotion Board (FIPB) rejected the proposal on security concerns and the revenue department saying the source of funds is not clear.

Advising FIPB, the nodal agency for approving foreign investment proposals, to reject the proposal, the department pointed out that the gains from the future sale of the shares in question would not be taxable in India due to the double taxation avoidance agreement (DTAA) with Cyprus.

Under the DTAA, Cyprus residents (individuals and companies) are exempt from capital gains tax in India. Cyprus also does not levy capital gains tax on its residents. This effectively provides for double exemption for such investors, a feature prevalent in other similar treaties that India has with countries like Mauritius.

The revenue department's stance assumes importance given that India is trying to renegotiate the Cyprus treaty with an eye on taxing capital gains taxable in the jurisdiction in which the income is earned. This is not the first instance of such an effort by India. In fact, it has already reworked the DTAA with the United Arab Emirates and removed the capital gains tax exemption clause. India is also trying to renegotiate a similar treaty with Mauritius.

The tax department is currently in litigation with Vodafone on paying withholding tax for acquiring Hong Kong-based Hutchison's stake in a Mauritius-based outfit that held a majority stake in Indian mobile service provider Hutch-Essar.

FDI is rising sharply from Cyprus and Mauritius, compared with inflows from developed countries like the United States and the United Kingdom. From an inflow of $58 million in 2006-07, FDI from Cyprus rose sharply to $834 million in 2007-08. In the first two months of the current fiscal, FDI from Cyprus stood at $177 million.

Similarly, FDI from Mauritius rose from $6.3 billion in 2006-07 to $11 billion the next year. In the first two months of the current fiscal, FDI from Mauritius stood at $2.85 billion.

With overseas companies structuring their investments to maximize benefits and minimize tax cost by routing investments through tax havens, preventing abuse of tax treaties is high on the agenda of the Indian revenue authorities.

Cap on single holding in bourses may rise to 15%

In a bid to encourage competition, Sebi mulls trebling the ceiling for individual investors—both domestic & foreign

Market regulator Sebi is examining a proposal to raise the equity holding limit in stock exchanges from 5% to 15%. The revised cap will be applicable for single investors—both local and foreign.

The decision to revisit the norms on investment in stock exchanges was prompted by the fact that the present cap could deter potential promoters of new exchanges.

Both Sebi and the government want to foster competition among bourses. The proposal seeking to revise the norms was discussed at Sebi's last board meeting, the official said. It was decided that a final view should be taken after seeking wider comments, he said.

If the proposal is approved, foreign investors such as New York Stock Exchange, Deutsche Borse and Singapore Exchange, which have acquired shares in Indian stock exchanges, will be able to raise their holdings in these entities.

In November 2006, Sebi had notified demutualization of stock exchanges, making it mandatory for at least 51% of the equity to be continuously held by the public.

The guidelines capped individual investment, both direct and indirect, at 5%, besides putting in place a stringent criterion for persons acting in concert. The norms stipulate that no person can acquire more than 1% in the paid-up capital of a stock exchange unless he is "fit and proper", which implies the investor must satisfy all the requirements set by the regulator. Prior Sebi approval is necessary for acquiring even a 1% equity stake.

Foreign investment in stock exchanges was allowed in December 2006. While the overall limit is pegged at 49%, the cap for foreign direct investment is 26%. For foreign institutional investors, the investment limit is 23%.

STOCK TAKING

Why the 10% hike	Policymakers feel diverse ownership will bring in more transparency & efficiency
Why the hike	Sebi & govt want more competition among bourses. The 5% cap on holding deters strategic investors
How would it help	It'll help bring in fresh capital and also strategic inputs in terms of technology
Who will gain	Revised cap will apply on single investors, both local and foreign

CURRENT CAP

5%	On individual investment (both direct & indirect)
49%	On foreign holding (26% on FDI and 23% on FIIs)
51%	Minimum stake required to be held by public

MUKESH

Lens on treaty shoppers

To check tax losses arising from treaty shopping or 'round tripping'—routing of domestic funds overseas to bring them back through tax havens like Mauritius—the government has stepped up scrutiny of FDI proposals. Several proposals, especially those involving FDI flow from Mauritius and Cyprus, have been put on hold during recent weeks. The finance ministry wants to prevent treaty shopping—channeling of investments through countries like Mauritius with which India has double taxation avoidance treaties to evade capital gains tax.

The proposals recently put on hold include those of UK-based investment firm Ashmore, which manages funds worth about $37.5 billion, OP Jindal Group and brokerage house CLSA. The department of revenue in the finance ministry has objected to the Jindals' proposal of bringing in FDI through a Mauritius-based entity for JSW Infrastructure as it believes the deal involves round tripping. It has also objected to a proposal from Kanodias to bring in $50 million through a Mauritius-based holding entity.

FDI from tax havens surging

DoR has also objected to a number of proposals on the ground that they could be cases of treaty shopping, and these include CLSA's FDI in beauty and wellness chain VLCC, Ashmore's bid for 74% in internet service provider Broadband Pacenet, ICP's plan to acquire 40% in construction firm Umang Realtech from another investment fund 2i Capital and the Ruias' proposal to bring in Rs 590 crore into truck maker Asia Motor Works through Cayman Islands-based Essar Global.

The department had also objected to a proposal by Future Group's private equity arm, In division, to invest in security services firm Tops Security for suspected treaty shopping. However, the proposal was subsequently cleared by the Foreign Investment Promotion Board (FIPB), the nodal body for clearing foreign investment in India.

According to sources in the Department of Industrial Policy and Promotion (DIPP), the government is concerned about Indian residents parking money in tax havens to route them back into the country as FDI.

The clampdown comes at a time when FDI into India from tax havens such as Mauritius and Cyprus witnessed a sharp rise last fiscal even as that from mature economies either stagnated or declined. Last year, Mauritius and Singapore were the top source of FDI into India while inflows from Cyprus were more than those from Germany, Japan, the Netherlands and France. The FDI inflow from these three tax havens during 2007-08 was Rs 60,187 crore, which was about 61% of the total FDI inflow into India.

Significantly, FDI from mature economies into India was not too impressive during the last fiscal as many companies from developed countries have been routing their money through tax heavens.

Cabinet clears IPTV policy

The Union Cabinet has cleared the policy framework for Internet Protocol TV (IPTV) and also made changes to the down linking guidelines for television channels. The Cabinet clearance paves the way for the commercial roll-out of IPTV services by telcos, cable TV operators and ISPs. Under the down linking norms, broadcasters are only to offer their channels for cable and direct-to-home platforms.

IPTV is a new method of delivering and viewing television programmes using an IP network and high-speed broadband technology. It is fast becoming a popular value-added service in many countries. The rapid development in telecom technologies, enormous capabilities of the IP platform and increasing digitalization of broadcasting is driving services like IPTV. With the introduction of IPTV services, customers have a wider choice about the platform they want to use for viewing TV channels. Other competing platforms include Direct-to-Home (DTH) and Conditional Access Systems offered by cable TV operators. Customers will need Set-Top-Boxes for all these three platforms—IPTV, DTH and CAS.

While all telcos will now be able to offer triple play services, only those ISPs which have a net worth of more than Rs 100 crore can provide IPTV services. The policy also stipulates that that foreign direct investment in players who provide IPTV services will continue to remain as per the existing structure.

Select FDI may face filter

Management services, technology transfers & government tenders likely to encounter security check

Cross-border money transfers related to project management services, foreign technology transfers and government tenders may be put under a security lens. The proposed National Security Exception Act (NSEA), being enacted for scrutinizing FDI from the national security angle, would look at such transfers. The ambit of the Act is being expanded to cover these aspects.

Today, global tenders invited by government departments do not go through detailed security checks. Financial flows linked to project management services and tech transfers also face little scrutiny as most of them are done automatically and the only requirement is to notify RBI.
The proposed NSEA is likely to take tenders off the automatic route.

The proposed NSEA is modeled on the lines of the Exxon-Florio Act of the US which enables its authorities to stall foreign companies from acquiring a local asset if it is seen compromising national security. National security adviser M K Narayanan is working on the proposed legislation with this objective, but the initiative has been delayed due to resistance from various ministries.

The Department of Industrial Policy & Promotion, for instance, is wary of new provisions restricting FDI flows but the ministries of home as well as defence are keen to put in place a fool proof system. Security agencies are also in favour of stringent checks to prevent breach of national security.

As far as project management services and foreign technology transfers are considered, RBI grants automatic approval in cases where the lump sum payment does not exceed $2 million and payment of royalty does not exceed 5% on domestic sale. After the proposed law is implemented, the RBI mechanism would have to be tweaked

Court moots norms for taxing foreign companies' subsidiaries

The Bombay High Court has prescribed a ground rule for calculating tax on profits of companies operating in India without a permanent establishment or a branch office, including those that do not maintain country-wise accounts.

The court's decision, which comes as a part of the ruling in a case related to Singapore-based Sony Entertainment Television (SET), can put to end several controversies related to such companies.

The court has ruled that tax authorities could work out the income of such companies at 10 per cent of gross receipts meant for remittance overseas or the income filed for return, whichever is higher. The income then could be taxed at a prescribed rate of 55 per cent, which is the case at present. There are several methods, including the arm's-length pricing and tax rates prevailing in the double taxation treaties.

Gross receipts are calculated by excluding the amount retained by the advertising agent and the Indian agent of the non-resident foreign telecasting company, SET, as their commission or charges. SET operates in India through a permanent establishment.

In addition, the judgement also said in case a country had a Double Taxation Avoidance Agreement (DTAA) with India, the authorities should accord priority to the tax rates provided for in the treaty instead of following the arm's-length pricing rule. The method should be adopted if DTAA is more favourable to the assessee, it said. This is because the arm's-length pricing is not the only criterion for taxation on profits earned by foreign companies from their operations in India.

Even with a DTAA, it is up to the discretion of tax officials to use the arm's-length pricing under the transfer pricing rules or apply tax rates prescribed in the treaty. However, this ruling could set a precedent for other cases. At present, India has a DTAA with around 65 countries and there are country-specific rates of taxation on dividends, interest and royalties and all such cases could benefit from the SET ruling.

Arm's-length pricing is the method used for taxation on financial transactions of foreign companies with their Indian affiliates at market prices as would have been done with any other entity other than their own arms.

The ruling could generate new issues for foreign telecasting companies, business process outsourcing firms, travel portals, among other foreign companies. A case in point is the tax demand raised for Hong Kong-based Star TV. The court held that if the company had once made a payment to its Indian PE at the arm's-length pricing, then no further tax could be charged on the companies. At present, over and above the arm's-length pricing, the tax authorities also impose a presumptive rate of taxation for those with PEs as well.

MNCs may get automatic entry in multiple mining JVs

Foreign mining companies may forge multiple joint ventures with domestic partners without seeking government's prior approval. The government is amending foreign direct investment (FDI) regulations to boost investment by global mining firms such as Rio Tinto, De Beers, BHP Billiton and Vale.

Today, foreign firms interested in joint ventures with domestic firms are required to give a mandatory declaration to the government that they don't have another JV in the country. In the mining sector, foreign companies do not require to take Foreign Investment Promotion Board's (FIPB) clearance as stipulated in the Press Note 1. However, a declaration is mandatory.

Under the proposed change, the Department of Industrial Policy & Promotion (Dipp) is planning to scrap the rule, allowing foreign miners form multiple JVs for the same mineral, an official source said. A note to this effect is expected to come up for Cabinet approval soon.

"Mines are scattered across the country and foreign companies are located in different locations. The companies are engaged in the same line of mineral business in more than one location. Hence, there is need to allow them to carry out multiple businesses seamlessly by removing the clause. FDI in mining comes through the automatic route and there is no reason for holding back proposals for such declarations," a mines ministry official said. However, permission for FDI in the sector has to be in line with the Mines & Minerals (Development & Regulation) Act (MMDR), 1957.

The government has placed 100% FDI in exploration and mining of diamonds and precious stones on the automatic route, but subjected clearances to MMDR Act and self-declaration about 'no existing joint venture' in the same field. Similar is the case with coal and lignite mining for captive consumption. Restrictions have slowed FDI in the mining sector that reached a level of $510 million during 2000-07, which is less than 1% of total FDI inflows till 2007.

Several multinational mining companies and smaller players in the field of prospecting have demanded scrapping of the self-declaration as this was causing unnecessary delay in carrying out expansion plans. In fact, none of the overseas mining companies have announced big investment plans in the country. The changes would also clear decks for Rio Tinto to have multiple Indian companies as JV partners in different projects. The company has a joint venture with Orissa Mining Corp and is considering a similar joint venture with NMDC.

Clarification on service tax liability

In a significant ruling, the larger Bench of the Delhi Income-Tax Tribunal has held that service tax liability of the recipient of a taxable service who receives such service in India from a non-resident, commences from January 1, 2005 and not since August 16, 2002. The clarification was needed in the following context—Service Tax Rules 1997 prescribe that services received in India from a foreign service provider not having any office in India, the 'person liable for paying service tax' will be the service recipient. As per the Finance Act 1994 that lays down the method of the payment of tax, the service provider is required to pay the tax. The Act also says that in respect of the notified services, service tax shall be paid "by such other person and in such other manner as may be prescribed." A Jan 1, 2005 notification said that in respect of all the taxable services received from a Foreign Service provider not having any office in India, the recipient was liable to pay the tax. The contention of the Revenue Department in the case we are discussing was that with the recipient of services being included in the definition of 'person liable to pay service tax' from August 16, 2002, the liability of payment of tax in respect of the services received from a foreign provider was fixed on the recipient from that day.

The Tribunal rejected the Revenue's arguments and held that a definition clause cannot be read as a substantive provision creating a liability in a tax statute. As the taxable services were only notified through Jan 1, 2005 notification, the recipient could be made liable to tax from that date alone.

Foreign VCFs may get only equity stake

Likely to be barred from investing in compulsory convertible debentures, other quasi-equity instruments

The government is likely to bar foreign venture capital funds (VCF) from investing in compulsory convertible debentures (CCD) and other quasi-equity instruments. Officials rewriting the norms governing foreign venture capital investor (FVCI) plan to restrict investments to pure equity.

Sources said the new definition of venture funding would ensure they are directed towards equity that has risk associated with it.

Fundamentally, venture funding is associated with risk as its aim is to finance startups and upcoming entrepreneurs.

However, there is a view among the policymakers that venture capital funds have been avoiding the risks associated with funding startups and going in for more secure forms and avenues of investments such as debt and listed securities.

The risks associated with debt were low as it ensured an assured return to the investor. Pointing out that the benefits the funds got were in lieu of the risks associated with funding startups, they said the new definition of venture funding would reflect the risk element. Foreign venture funds enjoy exemption from Sebi takeover code, lock-in or entry and RBI's exit pricing norms. Officials from the finance ministry, RBI and Sebi have had a detailed discussion on the overall review of norms for FVCIs and new guidelines are being formulated.

RBI had raised an alarm about investments of foreign venture funds not following the norms both in letter and spirit. Since debt exposure of the funds was *de facto* external commercial borrowing, RBI had asked the government to look into the issue. Its concern stems from the fact that a large number of real estate players were receiving funding from foreign venture funds in the form of financial instruments camouflaged as equity but were debt in all respects, such as CCDs with a put option. While the picture emerged with respect to real estate, policymakers felt the issue needed to be examined in detail as such debt side-stepped the limit set by the government and RBI.

New FTA: Asean tariff cuts from Jan 1, 2009

Negotiations on Asean-India free trade agreement (FTA) — which will result in elimination of tariffs on 80% of the commodities traded between the two sides by 2015 —have formally concluded. Economic ministers from India and the 10 Asean countries have decided to target implementation of tariff reduction commitments from January 1, 2009.

The FTA is expected to boost bilateral trade between India and Asean to $50 billion by 2010 from the present level of $35 billion.

Negotiations on opening up services and investments, the areas of greater interest to India, will begin as soon as possible as part of a single undertaking, the ministers said. The ministers are aiming at introducing a complete Asean-India Comprehensive Economic Cooperation Agreement (Ceca), including goods, services and investment, by 2009-end.

It took six years for the two sides to conclude the negotiations as the talks tripped several times over issues such as rules of origin (ROO) and market opening by India for five sensitive agricultural products including palm oil, tea, coffee and pepper.

While the ROO issue was sorted out some time ago, the talks kept getting stuck on the levels of tariff reduction on the five products, especially crude palm oil (CPO) and refined palm oil (RPO).

An agreement on palm oil duties was finally reached earlier this month after India decided to improve its offer in CPO to 37.5% and RPO to 45% over its offer of 43% and 51%, respectively, made in January this year.

India has also agreed to lower duties on coffee and tea to 45% and pepper to 50%. Under the pact, India and Asean will eliminate import duties on 71% products

by December 31, 2012, and another 9% by 2015. Duties on 8-10% products that have been kept in the sensitive list will also be brought down to 5%.
India will keep 489 items in the negative list of products to be excluded from tariff reduction commitments.

Companies Bill gets Cabinet clearance

Far-reaching changes in the company law to improve investor protection, corporate governance and use of electronic documents would become a reality once the proposed amendments to the Companies Bill are carried out. Changes in the law to this effect have been cleared by the Union Cabinet. The proposed amendments would enable incorporation of single-person companies and allow up to 100 partners in partnership firms compared to 20 at present.

The amendments mandate that at least 33% of the members on the board of companies should comprise independent directors. The proposed changes would be introduced in Parliament during the forthcoming winter session.

The proposed amendments have been approved by the Cabinet four years after a decision to review the six-decade-old company law was mooted. Many changes are based on the recommendations of the Irani Committee. Amendments to the Companies Bill, 2008, coupled with the new law on limited liability partnership (LLP) firms would bring about a significant change in the way companies are regulated. The Bill calls for substantial reduction in government control on the affairs of companies, by promoting an era of self-regulation and shareholder democracy. Electronic documentation is being made mandatory in several cases to make information accessible to shareholders. With the Ministry of Corporate Affairs high on its e-governance initiative, the new company law promotes easy access of corporate data over the Internet.

In a major boost for individual entrepreneurs to set up their own companies, the proposed law allows formation of one-person companies, a shift that will change the present requirement of at least two persons. Partnerships are set to gain a major advantage with the Bill extending the present threshold of 20 partners to a maximum 100, a move which is likely to promote the setting up of firms with high expertise and domain specialization. The Bill recognizes insider trading by company officials like company CEO, CFO and company secretaries as a criminal liability.

Giving away with the regulatory overlaps coming in the way of operation for companies, the Bill demarcates a jurisdictional domain for legislations such as company law, Sebi Act and Banking Regulation Act. The new company law will apply to all companies while Sebi Act will be applicable to listed companies in matters such as issue and trading of shares and payment of dividend to shareholders. In such cases, special laws such as the Sebi Act will have overriding powers.

Appointment of managing directors and decisions on internal affairs of companies will be left to shareholders, with the government shunning its regulatory oversight in such matters. The policy under the new law substitutes governmental control in internal corporate processes by shareholder control. Transition of private companies to public companies and vice versa will get easier. To speed up the process of resolving corporate disputes, the Bill provides for setting up special courts to deal with various company law offences. The Bill has introduced a revised framework for regulation of insolvency of a company in cases of its liquidation.

The new law seeks to provide a single forum for approval of mergers and acquisitions. While high courts are responsible for clearing M&As, the new law enables the sectoral regulators to approach courts for enabling hassle free clearance for companies.

Source

Press clippings

About Chadha & Co.

Chadha & Co. is a law firm based in New Delhi, India, with a strong Corporate and Commercial practice. The Firm has a specialized inbound practice in advising domestic and foreign corporations doing business in India on all Indian laws and regulations that are relevant to their business.

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[i] 1 crore = 10,000,000
[ii] 1 lakh = 100,000