India Update: November – December, 2011

Contents

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Insider trading rules will now apply to trusts managing ESOPs

Employee trusts will have to make disclosures when their holding changes, says Sebi

Rules on insider trading will apply to employee trusts which administer employee stock options plans (ESOPs) and they will have to make disclosures when their holding changes, Sebi said in an informal guidance to an IT company. Pune-based KPIT Cummins Infosystems plans to offer employees the cashless exercise using the trust route, featuring the company funding the trust for the subscription amount. The company had sought an understanding from the regulator on whether the activities of the trust carried out on behalf of employees will attract provisions of Sebi's insider trading rules.

"Activities of the trust shall attract the provisions of Sebi Insider Trading Regulations. Since in the proposed scheme, the trust is undertaking activities of dealing in securities, albeit on behalf of employees exercising their option, therefore, the trust as well as employees shall *inter alia* abide by code of internal procedures and conduct, restriction on trading outside the trading window and disclosure requirements including disclosures under insider trading regulations," Sebi told the company.

Insider trading norms mandate any person holding less than 5% shares or voting rights to disclose to stock exchanges if there is a change which results in shareholding changing by more or less than 2%. Also, a director or officer has to disclose the holdings and changes if it exceeds Rs. 5 lakh[1] or 25,000 shares or 1% of total shareholding or voting rights.

Companies offer equity shares to employees through an employee stock options scheme, allowing them to buy shares of the company at a certain price. The shares, largely offered by IT firms as an incentive to employees, could either be offered at the current market price or at a preferential price.

[1] *1 lakh = 100,000*

Coal India allowed to buy into unlisted foreign companies

Coal India Limited (CIL) has been allowed to buy stakes in foreign unlisted companies by its parent ministry, paving the way for the world's largest coal miner to revisit its offer first made to such entities two years ago.

The company had first come out with an expression of interest in 2009 seeking to buy stakes in foreign companies. 54 companies from Australia, US, Indonesia and South Africa had responded to the offer. Although CIL had begun talks with three listed entities, it had left out seven to eight companies that were unlisted.

CIL had opened talks with three listed foreign companies - Peabody of US, Massey Energy and Indonesian Sinarmas - for a possible partnership that was slated to see investments of about USD 2 billion. The coal major was looking at Peabody Energy's Wilkie Creek mine in Australia; Novem/Sinarmas, Borneo Inclobana and G 3 mines in Indonesia; and Massey Energy Company's Sidney underground mines in the US.

According to a recent finance ministry letter, Coal India will have to adhere to a 12% internal rate of return on all its overseas investments.

A *maharatna* company (such as CIL) can invest 15% of its net worth in a single project for establishing a new venture or undertaking an acquisition with a cap of Rs. 5,000 crore[2] without taking government approval.

[2] *1 crore = 10,000,000*

Defects liability period may be 5 years in road construction sector

Soon, a road construction contractor would be held liable for any defect that happens to his work within five years of its completion, going by a proposed addition to the norms regarding the defect liability period for EPC (engineering, procurement and construction) projects.

Till now, the government has not built any project on the EPC basis; they were all on item-rate contracts. In the existing item-rate model, a contractor builds the road and the government makes the payment. It is the government that pays any change in the design and input cost. The current model does not mandate the contractor to maintain the road. This will change in the new EPC model, where the project cost will be fixed and time-bound.

In the past couple of years, National Highways Authority of India has not awarded any project on EPC. It has awarded projects on BOT (toll) and BOT (annuity).

In BOT (toll), the developer builds the road and recovers investment through toll collection for a period of time. In annuity, the developer builds the roads and the government pays it in instalments.

A number of government committees have favoured award of contracts on EPC model. It is this response that prompted the government to have a model concession agreement for EPC projects.

Director not liable for all wrongs in a company: Supreme Court

A director of a firm cannot be held liable for the wrongs committed by his company unless it is proved that he was involved in the irregularities, the Supreme Court has held. "This court has repeatedly held that in case of a director, complaint should specifically spell out how and in what manner the director was in-charge of or was responsible to the accused company for conduct of its business and mere bald statement that he or she was in-charge of and was responsible to the company for conduct of its business is not sufficient," a bench of justices P Sathasivam and Jasti Chelameswar said.

The court passed the order while quashing criminal proceedings against a former director of Apparel Export Promotion Council in a cheque bouncing case.

The bench also held that a former director cannot be prosecuted in a case of bouncing of a cheque if it has been issued by the company after he ceased to be on its board member.

The court set aside the Delhi High Court order which had dismissed the plea of the director for quashing the criminal proceedings.

The counsel for the petitioner had pleaded that the director had ceased to be part of the company on the date when the cheque was issued by the firm and that the appellant could not be held liable for it getting dishonoured. "We are unable to accept the reasoning of the high court and we are satisfied that the appellant has made out a case for quashing the criminal proceedings," the bench said, adding that it was established that the petitioner had resigned from the company as a director in 1998 while the cheque had been issued by it in 2004.

Lawson eyes tie-up with Future Group's retail business

Japanese company appoints PwC to carry out due diligence

Lawson Inc, Japan's second-largest convenience store chain, has appointed audit and consultancy firm PwC to carry out due diligence on a number of unlisted companies of the Future Group that supply fruit, vegetables and staples for India's largest retailer.

If the deal fructifies, the USD 25 billion Japanese retailer will invest in a holding company that will control six other companies of the Indian retailer that supplies to formats Big Bazaar, Food Bazaar, KB Fair-Price and Aadhaar.

The combined businesses of all these entities — both back and front end — are estimated at over Rs. 3,000 crore.

The Future Group has appointed investment banker Nomura Capital to conduct due diligence on its behalf. The Indian government does not allow foreign companies to set up stores selling directly to consumers. But foreign investment is welcomed in the supply chain as the government is keen on improving sourcing and logistics so that farmers and small manufacturers benefit.

Railways invites coach makers from abroad

Will be first-ever global tender by the railways; bids to be opened in January

To meet the rising standards of modern urban public transportation systems, Indian Railways has, for the first time, opted for a global tender for Kolkata Metro's coaches.

Both domestic and international companies have shown interest in producing broad-gauge air-conditioned rakes for the metro rail.

CHUGGING ON
• Both domestic and international companies have shown interest in producing rakes
• The bidding will take place for 14 air-conditioned rakes
• Kolkata Metro till now was dependent on the railways' Integral Coach Factory at Perambur for rolling stock
• There are reportedly some recurring issues with the recently introduced AC coaches of the Kolkata Metro
• The metro, with an average daily traffic of 500,000, runs 23 rakes, including five AC rakes
• Another eight AC rakes manufactured in ICF will be introduced in 2012

The bidding will take place for 14 air-conditioned rakes (each rake comprises of eight coaches).

While Delhi Metro Rail Corporation has sourced coaches from makers abroad such as Hyundai Rotem and Bombardier, Kolkata's underground mass transit system till now was dependent on the railways' Integral Coach Factory (ICF) at Perambur, Chennai, for rolling stock. There are reportedly some recurring issues with the recently introduced AC coaches of the Kolkata Metro.

The metro railway in Kolkata, with an average daily traffic of 500,000, currently runs 23 rakes, including five AC rakes. Another eight AC rakes manufactured in ICF will be introduced by early 2012.

Radiation norms set for mobiles, towers

Around 645 models of low-end handsets do not comply with norms and will have to be redesigned

New radiation emission guidelines for mobile phones and telecom towers finalised by the government will, for the first time, stipulate emission levels for handsets sold in India and make it compulsory for these levels to be displayed on phones and retail outlets. It will also become mandatory for hands-free devices to be sold with handsets as the government feels the use of these devices will significantly reduce the risk of exposure from electromagnetic waves. At present, around 645 models of low-end handsets don't comply with the new emission standards and will have to be redesigned. In a presentation to the government in July this year, the Indian Cellular Association had said the industry will take 6-9 months to redesign these handsets, and their prices would increase by 5-30%. The sale of ultra-low cost handsets will have to be completely stopped, it warned. The new guidelines are expected to be formally announced by telecom minister Kapil Sibal shortly. The minister has instructed his officials to prepare an implementation road map.

The telecom department has finalised these norms in response to growing concerns about impact on consumer health from excessive mobile usage.

An inter-ministerial group consisting of representatives from the communications, health, and environment ministries had earlier this year concluded that radiation from mobile phones and towers poses serious health risks.

The final norms prepared by the telecom department are largely in line with the recommendations of the inter-ministerial group.

Radiation emitted by cellphones varies from instrument to instrument, and is measured in terms of specific absorption rate (SAR) — the amount of radio waves absorbed by the body tissue when a phone is in use. The new rules state that cellphones can be imported and sold in India only if the SAR level is below 1.6 watts per kg (W/kg). So far, India had unofficially followed European norms.

New guidelines closer to US norms

These norms state the maximum SAR level must not exceed 2 W/kg but the new standard is closer to the US norms.

The guidelines state that SAR value, or the radiation emitted by the handset, must be specified on the device, its manual, the box as well as the websites of both the company and the DoT. The radiation figure of each handset model must also be displayed prominently at all retail outlets that sell mobile phones.

Radiation limits for towers have also been tightened to a tenth of the existing exposure level. But a key recommendation of the inter-ministerial group, regarding restrictions on installation of towers close to schools and hospitals, has been kept out of the guidelines for the time being. The telecom minister has asked the DoT to prepare a comprehensive list of places where towers would not be allowed. The minister has also suggested towers should be installed in cities and metros after taking safety clearance from the urban development ministry.

Tata Capital-IFC JV to tap clean energy sector

Tata Capital Ltd, a Tata Sons subsidiary, has set up a joint venture company with International Finance Corporation (IFC) to explore business opportunities in the climate change space. The company, Tata Cleantech Capital Ltd (TCCL), would provide funding and advisory services to small and mid-sized enterprises developing renewable energy projects in India.

The company has been incorporated with an initial capital of $20 million, in which 80 per cent stake is held by Tata Capital. IFC, a member of the World Bank group, would hold the remaining 20 per cent stake.

Through TCCL, Tata Capital plans to finance around 200 renewable energy and energy-efficiency projects over the next five years.

Tata Capital and IFC are hopeful of expanding the capital base of the Mumbai-headquartered TCCL to USD 120 million by 2016. The two partners indicated a third international partner would soon be roped into TCCL. Tata capital would, however, continue to hold 80 per cent in the venture.

Apart from energy efficiency and renewable power generation projects for small and medium enterprises, the joint venture would also focus on water management initiatives. The company would soon start looking at sustainable agriculture and smart-grid projects, besides clean transportation and pollution control. TCCL would utilise Tata Capital's network and huge corporate customer base.

Toyota planning Rs. 780-cr investment in Bidadi plant

Toyota Kirloskar Motor Private Limited (TKML), a subsidiary of Japan's Toyota Motor Corp (TMC), plans to invest another Rs 780 crore at its Bidadi plant near Bangalore.

The company, which has invested around Rs 5,000 crore in India, has approached the Karnataka government for the necessary clearances. The company has set up two car manufacturing plants, and is setting up an engine plant at Bidadi. Currently, TKML employs around 5,000 people.

Toyota has approached the state government with the proposal to invest an additional Rs 780 crore at its Bidadi plant. It also wants additional 16 acres of land for expansion in engine manufacturing and components for its small cars in India. The company's proposal would be discussed by the Karnataka state high level clearance committee, headed by the chief minister, which clears mega industrial investment projects.

In July, TKML had announced it would increase its production capacity to 310,000 units by 2013, with an investment of Rs 898 crore. It is in the process of enhancing production at its first plant from 90,000 units to 100,000 units, while production at its second plant is being increased from 120,000 units to 210,000 units. The first plant would manufacture Innova and Fortuner units, while the second plant would manufacture Etios, Etios Liva and Corolla Altis.

PEs, VCs will lose promoter status

Move aimed at lending flexibility to these investors and companies while planning share sales

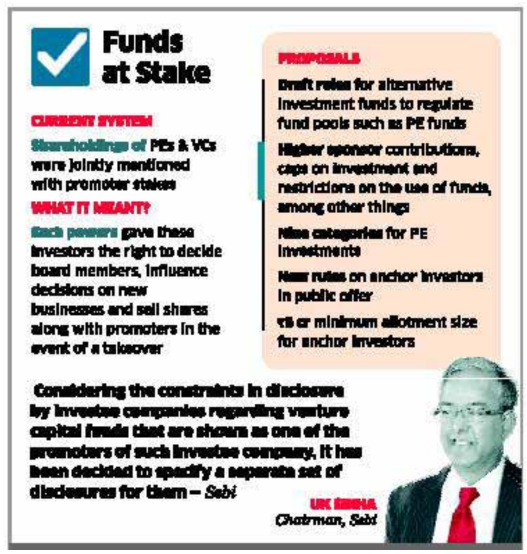
Private equity and venture capital funds will not be clubbed with promoters — a relaxation that the capital market regulator Sebi announced recently to lend greater flexibility to these financial investors as well as companies planning to mop-up funds. The shareholdings of these investors were jointly mentioned with promoter stakes due to the special rights that PEs and VCs enjoyed in companies where they invested. Such powers gave these investors the right to decide board members, influence decisions on new businesses and sell shares along with promoters in the event of a takeover. But, placing them as part of the promoter group often put roadblocks in companies' efforts to get listed and even caused post-listing complications. For instance, if the combined holding of the promoters and the PEs in a company exceeded 75%, these investors, along with the promoters, were under obligation to lower the stake within one year to avoid delisting of the company.

In the context of an initial public offer by an investee company, which has substantial holding by a domestic venture capital or foreign venture capital fund, disclosure requirements can be stifling.

Investment bankers and advisors are awaiting Sebi's final norms on private equity funds. In August, Sebi unveiled draft rules for alternative investment funds to regulate fund pools such as private equity funds. The regulator proposed higher sponsor contributions, caps on investment and restrictions on the use of funds, among other things, to reduce systemic risk and to channelise private equity investment in specified sectors. It also proposed to categorise private equity into nine formats, such as venture capital funds (VCF), private investment in public equity, or PIPE funds, private equity funds, infrastructure equity funds, debt funds, small and medium enterprise funds, social venture funds and strategy funds. The regulator also revised the rules on anchor investors (AIs) in a public offer to make fund raising more efficient. "...it has been decided to prescribe a minimum allotment size of Rs. 5 crore and maximum number of AIs slab-wise," said a Sebi release.

This could mean that the maximum number of AIs will be fixed depending on the size of an issue. Till now, there was no minimum subscription requirement for anchor investors.

Sebi had introduced the concept of anchor investors in June 2009 as a class of committed investors who could be relied upon to anchor an issue of capital in all market conditions. An anchor investor, who cannot be related to the promoter or the promoter-group companies, can subscribe up to 30% of the portion for institutional investors in an initial share sale. They have to pay 25% of the total investment at the time of applying for the public offer and their shares are locked-in for a period of one month from the date of allotment.



Top MNCs jostle with India Inc to secure Mumbai

Mumbai is gearing up for a Rs 600-crore homeland security and video surveillance makeover by private companies. Security for the city has thrown up a business opportunity for large corporates from India and abroad, such as Reliance Industries, Tata Group, Bharti, Wipro and IBM.

The Maharashtra government has shortlisted seven consortiums for a project involving installation of 5,000 surveillance cameras, video analytics and management, data preservation centres, and six command and control centres. These will eventually be integrated with fire and ambulance services in the city, said persons aware of the ongoing negotiations, leading Mumbai to eventually have its own version of 'Call-911-for any-emergency' number.

BUSINESS OF SAFETY 7 players shortlisted for Mumbai surveillance project
The consortia
• Wipro-Airtel
• Schneider-IBM
• Allied Technologies and Cisco
• HCL and Revmax Infotech
• TCS, its subsidiary CMC Ltd and MTNL
• Reliance Industries and Siemens
• Electronics Corporation of India, Divitel and Acosta Electric
What they will do
• Install 5,000 cameras, video analytics, six command & control centres, data servers
• Rs 600 crore contract for 5 yrs, a likely template for similar exercises in eight other Indian metros

The corporate interest for the Mumbai project — the largest homeland security project in India till date — stems from the fact that most see this as a template for similar mega exercises nationwide, in cities such as New Delhi, Jaipur, Bangalore, Chennai, Ahmedabad, Hyderabad and Kolkata.

In the US, which suffered the 9/11 attacks, the private sector homeland security market was USD 7.7 billion in 2010, data from a market research company in Washington shows.

Some cities in India have tested the waters for privately-provided homeland security. During the Commonwealth Games, Delhi saw a limited usage of a video surveillance exercise by HCL along with government-owned ECIL. Kolkata, too, has had a small pilot project.

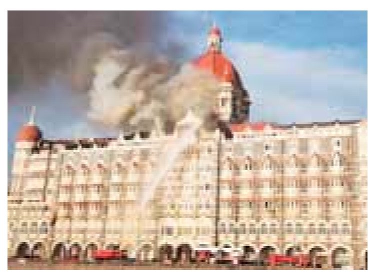
The five-year Mumbai turnkey project will include installation of cameras, creating and managing software architecture to monitor the streaming footage, analysing them at a command centre and storing the data in large servers. The vendors will have to upgrade the systems at the end of the fifth year.

These tasks have made technology and surveillance specialists tie up with telcos or project management companies. Reliance Industries, for instance, will provide its fourth generation seamless telecom bandwidth and project management skills to its consortium partner Siemens, which offers security solutions globally. Reliance already operates the world's largest integrated security automation system of over 12,000 cameras, advanced sensors, radars and video analytics for its corporate headquarters, campuses, retail stores and refineries.

Others such as Wipro, Bharti, and the Tatas, keen to expand into urban infrastructure and homeland security, have also leveraged their expertise in information technology or telecom to form joint ventures or consortiums.

The shortlisted vendors will be screened on their technical capabilities, proof of concept and commercial terms. The state government will not pay vendors in the first year of the project. After that, it will make a deferred quarterly payment of 20 instalments. This will lead to vendors pump money to support their own capex.

The Ram Pradhan Committee, which looked into the role of the police and administration after 26/11, had sought installation of CCTV cameras as a preventive step. A team led by home minister R R Patil had visited London's Scotland Yard to gather expertise.



Tough disclosures for Indian firms with FDI

Indian companies with minority foreign ownership will have to comply with stringent disclosure norms if they wish to set up subsidiaries, as the government seeks to plug a loophole that allows sector-specific foreign investment caps to be violated. Any company that has more than 50% Indian ownership is considered a domestic company under the current foreign direct investment (FDI) policy and all investments by such a company are treated as Indian investment. This provision allows an Indian company with even 49% foreign equity to create a wholly owned subsidiary and invest in a sector where no foreign investment is allowed or where the foreign investment cap is less than 49%.

The finance ministry, the Department of Industrial Policy and Promotion (DIPP), and the Reserve Bank of India (RBI) are working together to finalise a comprehensive disclosure form to spot such violations and prevent them from taking place.

The disclosure requirements will include details of investment in subsidiaries, the sectors where the money will be invested, as well as subsequent proof of such investments.

Foreign companies will also have to make a declaration under the Prevention of Money Laundering Act that they will not undertake any activity detrimental to India's interest.

The stringent regulations follow recommendations from a committee of secretaries that has suggested changes in the foreign direct investment policy for certain sensitive sectors and a new law for post-investment surveillance of investors.

The government is worried that through multiple layers of subsidiaries, foreign investment can slip into prohibited sectors. In other cases, the foreign investor can use the subsidiary arrangement to indirectly invest more than the permitted limit in sectors that have restrictions on foreign ownership.

Norm to apply to all companies across sectors

At present, there are several sectors such as insurance, defence, print media, banking and others where the foreign investment cap is less than 50%. In sectors such as agriculture and lottery, foreign investment is banned. Also, until the government notifies the new rules, no foreign investment will be allowed in the multi-brand retail sector.

The RBI and finance ministry have repeatedly raised concerns about downstream investments, particularly because in a large number of FDI cases, the government is not aware of the source of funds. India has attracted USD 224 billion in foreign investment till September 2011, but more than 40% of this investment has come from Mauritius, raising concerns in the government that these are third-country investments, which may be difficult to trace. The disclosure requirement could apply to all companies in all sectors, including those where foreign investors do not need to take the Foreign Investment Promotion Board's approval. The declaration will be on the lines of FC-GPR (Foreign Collaboration - General Permission Route), a form an Indian company has to file with the RBI within 30 days of receiving foreign capital raised through shares or convertible debentures. But, this declaration would be in addition to FC-GPR.

Criminal liability catches up with companies

Recent judgements have cleared the air on whether corporations are liable to be prosecuted for offences

There has been a gradual and structural shift in stance taken by courts. Indian courts, like western courts, now recognise criminal liability of a corporate. Prime Minister Manmohan Singh recently referred to trying corporates indulging in criminal activities. A company has a distinct legal personality. It can sue or be sued, can own and sell assets, or commit an offence that is of civil or criminal in nature. The old school of thought was that a company acts through its directors and officers, and should not attract criminal liability. It has been argued that punishment for criminal offences such as imprisonment cannot be conferred on companies and, hence, there cannot be criminal liability on companies. Major hurdles that faced the attribution of criminal liability on corporates were factors such as artificial juristic personality and absence of *mens rea* on the part of the corporate.

In India, there is uncertainty over whether a company can be convicted for an offence where the punishment prescribed by the statute is imprisonment and fine. This controversy was first addressed in MV Javali vs. Mahajan Borewell & Co and Others in 1997 where the Supreme Court had held that mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, but where it cannot be imposed — namely, on a company — fine will be the only punishment.

In the Velliappa Textiles case in 2003, the Supreme Court held that since a company is an artificial person, it cannot be physically punished to a term of imprisonment. The court opined that where the statute provides for imprisonment or fine, it is not a problem, but where the statute provides for imprisonment and fine, the court is not given the discretion to impose fine in lieu of imprisonment. And, therefore, the company cannot be prosecuted as the custodial sentence cannot be imposed upon it.

A couple of years after this decision, the Supreme Court, by majority, overruled its own judgment in Standard Chartered Bank vs. Directorate of Enforcement. It held that there is no immunity to companies from prosecution merely because the prosecution is in respect of offences for which punishment prescribed is mandatory imprisonment. In Iridium India Telecom Ltd vs. Motorola Incorporated and Others in October 2010, the Supreme Court held that a company is virtually in the same position as any individual and may be convicted under common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs and relied on the ratio in Standard Chartered Bank Case. The apex court held that corporations can no longer claim immunity from criminal prosecution on the grounds that they are incapable of possessing the necessary *mens rea* for the commission of criminal offences. The notion that a corporation cannot be held liable for the commission of a crime had been rejected by adopting the doctrine of attribution and imputation. The criminal intent of the 'alter ego' of the corporation, i.e., the persons or the group of the persons that guide the business of the corporation, would be imputed to the corporation. In another judgment in July 2011 of CBI vs. M/s Blue-Sky Tie-up Ltd and Others, the Supreme Court reiterated the position of law and held that companies are liable to be prosecuted for criminal offences and fines may be imposed on the companies.

In the US and the UK, it has been a settled principle that corporates can be held criminally liable.

The recent judgments in India make it clear that corporations are liable to be prosecuted for offences under Indian Penal Code. With this, India is now in sync with other jurisdictions such as the US and the UK when it comes to law in relation to criminal liability on corporates.

MNCs keep the faith while India Inc. frets

India is indispensable for Irene Rosenfeld, the high-profile CEO of Kraft Foods. Her growth blueprint: A bigger bite of the market as a top-five snacking powerhouse. To sustain double-digit growth, she's already pumping 70 per cent more investments in Kraft-Cadbury's India operation.

It's the same story for her rivals from Atlanta. With a war chest of USD 2 billion (Rs. 10,000 crore), Coca-Cola India and its bottling partners will tap into the potential in the non-alcoholic, ready-to-drink beverage market over the next five years. That's equal to the investments Coke has made in the past 18 years of its presence in India. "India has reached a scale where we want to see it in the top five countries," says Ahmet C Bozer, Coke's president, Eurasia & Africa Group.

It's not only companies in the global fast moving consumer goods (FMCG) sector. In automobiles or retail, engineering or even the regulated insurance sector, the traction for foreign investors seems to be rising. Siemens and ABB have both taken long-term calls on India, making it a hub for other emerging markets. Earlier this year, each shelled out Rs. 5,000 crore to raise their stakes in their India subsidiaries.

Also, Siemens is seriously indigenising local research and development to develop 60 innovative, low-cost, base line products to cater to local price points. This means an additional USD 250 million investment over the next decade, with an aim to generate an incremental USD 1 billion revenue. "We are here for the long run. India, besides China and the US, is a focus market for us," explains Armin Bruck, managing director, Siemens India.

"India is a strategic destination because of the tremendous investments that have to occur in the economy, for example in the infrastructure sector. There is growing domestic consumption and a very young population. Foreign MNCs see this as very long runway for growth," observes Greg Guyett, CEO, Global Corporate Bank, JP Morgan. So, even though growth in the Indian economy is coming down, it is still better than in the West.

THE CONTRAST

The gloom, doom and paralysis of policy theory doing the rounds don't seem to be affecting these CEOs, who continue to pump their dollars into India. Between January and September this year, foreign direct investment has touched Rs 101,614 crore, up 38 per cent, compared to the same period a year before. These FDIs accounted for 7.6 per cent of total investments in India. The view from outside seems very different from the one within. Especially, the upbeat sentiments from the global managers are in stark contrast with the sense of despondency and ennui in India Inc.

There are, of course, some headline-grabbing projects on the ground — Reliance Industries' Rs. 40,000-crore capacity expansion of the Jamnagar refinery, Essar Power's Rs. 55,000-crore power portfolio of 9,500 MW, Tata Steel's expansion in Jamshedpur and its Kalinganagar venture (these two projects alone are a Rs. 50,000-crore bet) or Hindalco's Rs 40,000-crore expansion of Indian operations through a series of expansions and new projects — but these have been mostly work-in-progress or already-committed projects.

Fearing a demand slowdown, fresh investments by most Indian companies have almost dried up. Infrastructure projects are moving at a snail's pace. ICICI Bank MD & CEO Chanda Kochhar says: "The current credit growth is still coming from past sanctions that are now getting disbursed. The new approval rate has gone down, as there are no projects or very few projects coming for financial closure."

Engineering heavyweight Larsen & Toubro, which saw a 23 per cent slump in orders in the engineering and construction segment, has reduced the full-year outlook for order inflows to just five per cent, from the earlier 15 per cent, has a similar concern. "Conditions have undergone a sea change. There has been a slowing of investment and projects are getting reviewed," says chief financial officer R Shankar Raman.

Some in India Inc say while the pessimism is real, it is unfair to compare MNC investments in India with that of corporate India.

"One needs to differentiate the complexities of setting up mega projects that are land, capital and labour-intensive, requiring outlays in thousands of crores, with the smaller-sized investments that have less interdependencies," says Koushik Chatterjee, group CFO, Tata Steel.

In simpler terms, even today it is far easier to set up an FMCG plant or an ancillary industry where one doesn't need a large land bank or natural resources or even a large workforce. "Today, the challenge is for regulated sectors, where environmental clearances and land acquisitions are becoming a serious threat. One may argue that the vindictiveness seems more towards India Inc, but it affects even the global players. What is happening to Posco's plan or that of ArcelorMittal in India? They were to bring billions of dollars of investments, but they have not been able to move ahead even after so long," says a corporate strategy head of one of India's leading business house, on condition of anonymity.

For Tata Steel, MoUs signed in 2004 with the Orissa government are only now coming to fruition. Delays in government approvals are estimated to have held up Rs. 150,000 crore of projects and investments affecting JSW, the Aditya Birla Group, HCC, Vedanta, Essar and other leading companies. More than currency volatility, the courts and the government have wreaked havoc on the business plans of many of these companies. "Unless there is more certainty in the process, serious capital flow would be hard to come by, as corporations would find alternate deployment of expensive capital," Chatterjee adds.

The environment is precipitating efforts of Indian entrepreneurs to geographically de-risk, but Raj Balakrishnan, MD, M&A, investment banking, DSP Merrill Lynch, adds another dimension. He sees India Inc's globalisation drive as a normal process of corporate evolution. "Compared to many of their Korean or European counterparts, large Indian conglomerates are still extraordinarily exposed to India. For most global corporations, only a small part of their total sales comes from their native countries. Why should our conglomerates be an exception? Prudent boards, therefore, need to diversify geographically," he adds.

Logically, then, the MNC investments here should also be seen through a similar prism. "For these global corporations, their India operations are a relatively small part of their overall portfolio. So, for all those who believe in India's long term potential, it's important to continue to invest prudently through the cycle," feels Alok Eknath Kshirsagar, director and head of McKinsey Asia Centre.

Balakrishnan has a final word of caution. While advising clients for big-ticket mergers and acquisitions, he says, compared to a year ago, even foreign companies are getting cautious about India. "Most MNCs are moving away from the extreme positions and now there is an appropriate balance between euphoria and skepticism. Old fashioned metrics like generating RoIs, or EVs are getting more important now to build a business case around India."

Ministry steps in to reduce transfer pricing disputes

After the hue and cry by corporate India over huge transfer pricing orders slapped by the tax department running into thousands of crores, the government has stepped in with a key reform. The finance ministry has directed the Central Board of Direct Taxes (CBDT) to put in place a framework for an Advance Pricing Agreement (APA) mechanism. The CBDT is working to get the mechanism running by April 1, 2012.

Transfer pricing refers to adjustment of charges made between related parties for goods, services or use of property.

APA ADVANTAGES
FOR COMPANIES
• Resolution of uncertainty on a prospective basis
• Prevention of double taxation
• Avoidance of penalties and litigation costs
• Lower compliance costs
• Development of a cooperative relationship with the tax authorities
FOR GOVERNMENT
• Increase in foreign direct investment as a result of more certainty around transfer pricing matters
• Reduced administration and enforcement costs
• Removal of disputes, litigation time and costs
• Experience helps with future improvements in regulations

At present, the taxman has a 43-month window after a tax year is over to come up with adjustments on transfer pricing. For example, in October 2011, the tax department raised adjustments amounting to thousands of crores for transactions completed in financial year 2007-08. This creates a huge uncertainty for multinational corporations, often skewing their budgets and hitting investment plans.

A lack of clarity and retrospective adjustments also result in double taxation in many cases. Companies find it difficult get refunds in such cases.

In this context, the government move is a welcome relief as it will help bring some kind of certainty for companies on their tax liabilities on account of transfer pricing, said consultants. The finance minister had talked about the APA in past Budget speeches. Provisions related to APA were also included in the Draft Direct Taxes Bill of 2010. But, this is the first concrete step the government has taken towards operationalising the mechanism and could come into force independent of the implementation of the Direct Taxes Code.

An APA is a binding contract between the revenue department and a taxpayer by which the department agrees not to seek a transfer pricing adjustment for a transaction if the taxpayer files the tax return for a year consistent with the agreed transfer pricing method.

The mechanism is designed to resolve actual or potential transfer pricing disputes in a cooperative manner, as an alternative to getting into lengthy legal disputes. The direct taxes Bill had proposed a maximum validity of five years for such agreements.

APAs may be unilateral (involving the tax authority of one country) or bilateral and multilateral, involving the tax authorities of two or more countries.

Foreign firms flock to auto market

Despite high, and almost inevitable, rate of JV separations, attractive dowry prospects keep drawing suitors.

More trucks and buses have been sold this year in India than cars, giving the commercial vehicle (CV) segment a growth that beat forecasts.

Optimism derived from this data gave Munich-headquartered MAN SE the confidence to fork out Rs. 1,050 crore to buy the stake held by its partner of five years, Force Motors of Pune, in Man Force Trucks.

The German company will tread solo in the Indian CV market, which, analysts say, is poised to grow at a compound annual rate of 12 per cent.

In a similar case of a JV ending but with the Indian partner buying out the foreign one, the Munjals who run the 55-year-old Hero Group bought out Honda Motor Corporation in the sector's most successful joint venture company, Hero Honda. This paved the way for the Indian group to develop its own research and development (R&D) and enter the two-wheeler segment and export market, which were earlier restricted.

Over little more than a decade, 13 foreign automotive companies (see table) have dissolved their partnerships with Indian companies before deciding to venture solo, setting up their own manufacturing, sales and distribution shops.

JVS THAT BROKE	REASON	YEAR*
Force Motors MAN	Operational restrictions	2011
Hero Honda	Operational restrictions	2010-11
Mahindra Renault	Sliding sales	2010
Bajaj Renault Nissan	Change of plans	2009
Swaraj Mazda	Indian partner exits	2009
Mahindra Renault Nissan	Change of plans by M&M	2008
Kinetic Hyosung	Steep pricing	2004
TVS Suzuki	Technology issues	2001
Premier Fiat	Labour strike	2001
Premier Peugeot	Mounting losses	2001
GM Hindustan Motors	GM buys stake	1999
LML Piaggio	Ownership issues	1999
Kinetic Honda	Ownership issues	1998
Yamaha Escorts	Failing demand	1996
Hero BMW	Poor consumer response	1995-96

Despite a spate of failed JVs, more partnerships were formed over the past decade than were broken. New JVs, for development of products and engines in trucks, buses, motorcycles and construction equipment, were formed.

JVs to go on

The Indian market holds significant importance for automotive companies experiencing saturation in Western demand. This means JVs in the automobile sector will continue to be formed. Foreign companies know the Indian automotive market cannot be counted in the same breath as other international markets, as the demand dynamics is different, owing to different consumer aspects. The key is to bring a local partner on board, understand the market movements and establish the auto component supplier base before you achieve full control of the operations.

A recent JV break-up that got wide attention was of Mahindra & Mahindra and Renault. The Indian SUV market leader bought Renault's 49 per cent stake in the JV after its only model, the Logan car, failed to clock encouraging numbers.

When perspectives change, initial agreements fail to benefit both companies in an alliance. JVs (eventually) fall apart.

Among reasons why partnerships come apart are lack of brand exposure and sales growth, insufficient funds, lack of focus on segments, reluctance to part with technology, labour trouble and independent ambitions.

In the Hero Honda case, the partners split to follow individual strategies. While the Munjals have unveiled a new brand identity, Hero MotoCorp, to start establishing the company's presence abroad, Honda is preparing to corner a larger share in the Indian market, the second biggest in the world for two-wheelers.

The length of a partnership depends, in some cases, on whether both players are willing to dig in their heels and invest money. Start-ups have long gestation period and require considerable monetary commitment from both partners. Foreign companies entering India have deep pockets, unlike their domestic counterparts. How long a JV can sustain depends on how much appetite Indian companies have for investing money. They often decide to sell off their stake.

The Premier-Fiat JV of the late 1990s illustrates his point. The Indo-Italian JV produced the affordable Uno hatchback from the Kurla plant in Mumbai. However, the car did not sell as much as both companies had hoped for, resulting in under-utilisation of the plant, with Fiat losing money. A labour strike also crippled the factory, shutting production. Fiat's brand and that of Premier took a hit, inducing the Italian car maker to shift to Pune for a new facility, where it brought Tata Motors on board. The Fiat Tata JV still makes cars.

Move to restrict pack sizes irks FMCG companies

Firms say move will hurt low-income consumers, want the government to revisit the decision

A government move to restrain companies from changing pack sizes and weight of products such as soaps, detergent, biscuits and coffee to help consumers easily compare them is facing strong resistance from makers of these products. The Ministry of Consumer Affairs wants about 20 packaged products to be retailed only in stipulated pack sizes. But marketers say this will take away their flexibility to buffer the impact of inflation on the consumer and urged the government to at least keep sensitive price points such as Rs. 1, Rs. 2, Rs. 5, Rs. 10 and Rs. 20 out of this rule in the interest of the lower-income group.

The ministry has issued a notification, Packaged Commodities Rules 2011, saying baby food, weaning food, biscuits, butter, cereals, bread, tea, coffee, edible oil, beverages, milk powder, rice, atta, salt, aerated drinks, mineral water, soap, detergents, cement and paint must be retailed only in stipulated pack sizes. The new policy comes into effect from July 2012.

According to the Ministry, in some cases, manufacturers were incrementally increasing grammage into non-standard sizes but charging a much higher price. Consumer goods makers have been reducing pack sizes while keeping prices constant for the past two-three years when prices of raw materials such as palm oil, sugar and wheat, and other costs have been escalating—effectively charging the consumer the same for less, thus protecting their profitability. So, coffee brands are retailed in 170 gram and 175 gm packs, while detergents are available at 713 gm and 400 gm, which will not be allowed once the new rules are implemented.

The government has now stipulated different weight restrictions on different products. For example, coffee can only be retailed in 25 gm, 50 gm, 100 gm, 500 gm, 1 kg and thereafter in multiples of 1 kg. For certain categories such as detergents and milk powder, there is no restriction below 50 gm. And salt can be sold below 50 gm in multiples of 10 gm. Violations will invite fines from Rs. 25,000 up to Rs. 1 lakh. Most companies say the move will make shopping more difficult for price-sensitive consumers.

On the Way Out

Some packets that will need to be withdrawn as per new rules

CATEGORY	PACK SIZES ON RETAIL SHELVES	STANDARD PACK SIZES*
Biscuits	Unibic Fruit and Nut 67 gm, Britannia Bourbon 78 gm, Parle Hide & Seek 82.5 gm	25 gm, 50 gm, 75 gm, 100 gm, 150 gm, 200 gm, 250 gm, 300 gm and thereafter in multiples of 100 gm up to 1 kg
Coffee	Nescafe Gold 170 gm, Nescafe Gold Pouch pack 175 gm	25 gm, 50 gm, 100 gm, 200 gm, 250 gm, 500 gm, 1 kg and thereafter in multiples of 1 kg
Tea	Brooke Bond Red Label Tea 490 gm	25 gm, 50 gm, 100 gm, 125 gm, 250 gm, 500 gm, 1 kg and thereafter in multiples of 1 kg
Detergent powder	Surf Excel Blue 713 gm and Henko Stain Champion 400 gm	Below 50 gm no restriction, 50 gm, 100 gm, 200 gm, 500 gm, 700 gm, 1 kg, 1.5 kg, 2 kg and thereafter in multiples of 1 kg
Toilet soap	Lifebuoy 70 gm, Lux Strawberry & Cream 90 gm, Fiama Di Wills 115 gm	25 gm, 50 gm, 75 gm, 100 gm, 125 gm, 150 gm and thereafter in multiples of 50 g
Cereals and pulses	Kellogg's Extra Muesli Fruit Magic 275 gm, Bagrry's Muesli 425 gm	100 gm, 200 gm, 500 gm, 1 kg, 2 kg, 5 kg and thereafter in multiples of 5 kg

*Second schedule, The Legal Metrology (Packaged Commodities) Rules, 2011

Sebi will soon set rules for analysts

Regulator wants to ensure analysts aren't influenced by their companies' i-banking divisions

The Securities and Exchange Board of India (Sebi) plans to make it more difficult for investment banks to influence the recommendations of analysts through strict new rules aimed at a clear separation of the two functions.

The regulator is framing rules to ensure that financial services firms strengthen barriers — referred to as a Chinese wall — between research and business units, mainly investment banking. While there is little clarity on the exact proposals, the regulator will attempt to keep investment banking officials from influencing the recommendations of the research unit.

In India, while credit rating agencies that offer analytical services and portfolio managers that provide advisory services and manage clients' assets are governed by Sebi, analysts don't come under any comprehensive regulatory framework. The proposed rules will require brokers to clearly state the reporting lines and compensation structure of analysts to eliminate conflict of interest. Sebi also plans to regulate analysts' trading activities of the firms they cover. Currently, analysts are required to disclose their holding in a client company. They are also not allowed to trade in the shares of the company whose report they are preparing for 30 days from preparation of such a report.

Investment banks make money by arranging financial transactions either between companies or between companies and stock and the debt markets. A company, which needs to do an IPO, rights issue, an overseas equity or bond issue or which needs to sell or buy a business will usually turn to an investment bank to facilitate the transaction.

Research analysts, on the other hand, are supposed to perform a different function of informing investors, both retail and institutional of the quality of the financial health of a company. Very often, the contents of a report or the timing of a buy or sell recommendation leads to the perception that the research is being used to gain new business or sell a public issue. Given the inter-link between investment banking and research arms, the obvious question was, did investment banking officials arm-twist analysts into issuing a buy and did not highlight the risks.

The suspicion that research arms of banks only function as extended sales teams of investment banks is an old one, but it has got strengthened in recent years due to intense competition between banks and the aggressive expansions of Indian companies.

Sebi is debating whether research analysts should be brought under the proposed investment advisor regulations or they should have separate rules.

In 2007, Sebi had issued a concept paper proposing to bring analysts and publishers of research reports under the regulatory framework provided in the Indian context. This may then require the financial conglomerates with broking and investment banking arms to separate their research units and create a Chinese wall to mitigate conflicts of interest and improve confidence in the independence of research analysis or reports.

Few firms have managed to keep research activities separate from arms that generate business for them. For instance, when the investment banking division of a broking firm gets a mandate to manage an IPO, it also offers research coverage with favourable recommendations. This helps the investment banking arm to market the IPO better.

Companies Bill tabled in Lok Sabha

Amendment aims to strengthen governance and increase transparency

The long awaited Companies Bill, which will overhaul the country's corporate law to strengthen governance and increase transparency, was tabled in the Lok Sabha recently.

Through its 470 provisions, the new law proposes to make it mandatory for firms to maintain their documents in electronic format, introduces the concept of e-governance, asks big companies to set aside funds for corporate social activity and suggests rotation of auditors.

The new law seeks to ensure greater accountability thorough additional disclosure norms, facilitate raising of capital, mergers and acquisition and protection of investors and minority shareholders, the statement on objects and reasons of the bill said.

The Companies Act was enacted first in 1956. The amendment bill was introduced in 2008 but due to the dissolution of the 14th Lok Sabha was referred to the Parliamentary Standing Committee in 2009. After incorporating several recommendations, it was decided to introduce the bill again as the Companies Bill 2011.

The bill provides for at least one woman director on the board of companies. It also recommends setting up of a corporate social responsibility (CSR) committee to ensure that companies with net worth above Rs. 500 crore set aside 2% of the average net profit in previous three years for CSR activities.

Further, it has spelt out a fixed term of four years for auditors and five years for independent directors, who must constitute one-third of the total directors. This is to ensure transparency in the internal workings of companies in order to avoid any future Satyam like scams.

The bill has put in place several provisions for strengthening of the Serious Fraud Investigation Office (SFIO) such as the power of arrest. But it has refrained from giving it *suo moto* powers such as those enjoyed by the Competition Commission of India. SFIO can act only when someone lodges a complaint or initiates an enquiry.

The new bill prohibits insider trading by any director as well as key managerial personnel. It also bars offering any stock option to the independent directors on board of a company.

Bid rules for ultra mega power projects to go back to drawing board

The bidding norms for coastal ultra mega power projects (UMPPs) and those for pit-head ones are to undergo a change, delaying the ambitious project further.

The norms for pit-head projects are to be made tighter, to avoid contractual disputes. Besides, observations of the Comptroller and Auditor General (CAG) with regard to UMPPs would be incorporated in the revised bidding norms.

Among likely changes in the bid document is the purpose for which surplus coal from blocks given out with UMPP contracts can be utilised. The option being considered is to allow incremental coal to be utilised in other power projects of the UMPP developer or to sell the incremental coal to (state monopolist) Coal India Ltd at a government-determined price.

A draft of the new norms is likely to be put out for discussion shortly. The government finds itself in a fix on whether to allow coal from blocks given out with UMPPs to be used by the same developer. It has made this provision for the Sasan UMPP (in Madhya Pradesh) but if an explicit provision is not made in the bidding norms for other pit-head projects, it can lead to similar legal problems as in the case of Sasan.

Reliance had won the Sasan project in 2007. In 2008, an empowered group of ministers decided to change the rules to permit the company to use for other projects the surplus coal from the block allotted for Sasan UMPP. Tatas Power, which had also bid for the Sasan project, has challenged the rule in court.

In the event of the government not permitting use of incremental coal — surplus ore from the allotted block — by the developer, questions can be raised on why an exception was made only in the case of Sasan. An empowered group of ministers has referred the matter relating to use of incremental coal for Reliance Power's Sasan and Tilaiya (in Jharkhand) UMPPs to the Ministry of Law.

In the revised bidding documents, the government would also need to state what incremental coal is. The decision would largely be based on the mining plan filed by the developers.

STALLED

UMPPs are 4,000 MW thermal power projects envisaged by the government to plug the generation capacity shortfall. The first project was awarded in 2007. Since Feb 2009, no project has been awarded

Projects awarded	Developers	New commissioning schedule#
Mundra, Gujarat	Tata Power	September 2011**
Sasan, Madhya Pradesh	Reliance Power	January 2012*
Krishnapatnam, Andhra	Reliance Power	**
Tilaiya, Jharkhand	Reliance Power	May 2015*

#Central Electricity Authority
**An empowered group of ministers permitted the developer to use extra coal from captive mines for its other projects. In the case of Sasan, Tata Power challenged the decision on the grounds that it was not explicit at the stage of bidding*
***Developers have cited the new Indonesian government policy prohibiting sale of coal at below benchmark price as the reason for delay. While work at Krishnapatnam has been stopped, Mundra plant is ready for commissioning.*

Projects in the pipeline	
Sarguja, Chhattisgarh	**Sakhigopal**, Orissa
Sundargarh, Orissa	**Ghogarpalli**, Orissa
Cheyyur, Tamil Nadu	**Coastal**, Maharashtra
Tatiya, Andhra Pradesh	**Coastal**, Karnataka

For the coastal UMPPs, the provision of making the increase in fuel cost a pass-through exists even in the current documents. The bidders took a call (of not opting for it) that did not turn out to be correct. Officials said the Ministry of Power was also reviewing clauses related to the net worth criteria and stress-taking capability of the developer, in line with the CAG suggestions. Finalisation of the guidelines would take two to three months, pushing bidding for coastal and pit-head UMPPs to next year. Pending finalisation of new norms, the Union government has postponed bidding for the Bedabahal UMPP in Orissa and Sarguja in Chhattisgarh.

Foreign investors can get equity in lieu of dividend

In a significant liberalisation of the foreign direct investment policy, the government has permitted the issuance of additional equity shares to a foreign investor that already has shareholding in a company in lieu of its dividend income.

The approval will, however, be subject to the regular conditions on valuation and pricing norms laid down by the Reserve Bank of India.

Such transactions are not permitted under the prevailing policy. The issue of shares other than against cash requires FIPB (Foreign Investment Promotion Board) clearance. But, the policy does not provide for the issuance of equity shares in lieu of dividend to foreign investors.

However, according to the international practice, reinvested earnings are considered foreign direct investment in many countries. That is why, the Department of Industrial Policy & Promotion (DIPP) had referred the issue to the FIPB for suggestions on a policy change or to take a call.

The issue came up before the government when the Bangalore-based Grameen Financial Services Pvt. Ltd., engaged in the business of credit financing to groups and individuals, as well as providing credit, thrift and other financial services, made an application to the FIPB. The company wanted approval for the issuance of 28,409 equity shares to its foreign investor, Aavishkar Goodwell India Microfinance Development Company, based in Mauritius, at a premium of Rs. 23 in lieu of its total dividend of Rs. 937,505 payable to the investor for its preference shares in the company. The company had issued compulsorily cumulative preference shares to the investor in 2009, which were also converted into equity shares.

In the deliberations on the issue, the Department of Financial Services in the Ministry of finance conveyed to the FIPB that the matter had been examined in consultation with the Reserve Bank of India and both were of the opinion it should be permitted. However, the Department of Revenue, also a part of the Ministry of Finance, opined that the grant of approval for the issuance of equity shares in lieu of dividends should be examined by the DIPP and the Department of Economic Affairs.

The revenue department, however, had objections to the specific proposal on the ground that investment into India was being routed through Mauritius to take advantage of the India-Mauritius DTAC, making it a clear case of treaty shopping.

However, the board in its final decision said the objection of the revenue department was general in nature and could be overruled. Clearance to the change in policy was then granted.

Visa norms for expats relaxed

No need to take fresh job visa for inter-group transfers

Expats working at senior positions in India will not need to go back home and seek a fresh Indian employment visa when they take intergroup transfers, the government has said in updated rules. This will provide flexibility to foreign companies that have multiple businesses in India in deploying their resources. "Ministry of Home Affairs may approve change of employer only if the foreign national holds a senior or skilled position," says the amended guideline issued by the ministry.

The earlier guideline was seen as a major irritant by expats and companies employing them as any transfer within the group would mandate a homeland visit and a fresh work visa. This not just inflated costs for companies who employed foreign nationals but also led to loss of crucial work hours.

However, the relaxation will only be limited to changing jobs between registered holding company and its subsidiary and between subsidiaries. In other cases, where the foreign national desires to change employer, he will be required to return to his home country and obtain a fresh employment visa. Change of employer will be permitted only once during the tenure of five years of the original employment visa and five years of residency on employment visa would be counted from the original date of its issue and not from the date of change of employer.

Sarfaesi laws may lessen banks' bad loan burden

Securitisation law changes to allow banks 'buy' property seized from defaulting borrowers

Banks will be allowed to take property seized from defaulting borrowers onto their own books, or in effect 'buy' the asset they sequester, thus reducing their non-performing loans, according to a revised securitisation law awaiting parliamentary sanction.

In effect, this would allow banks to clean up their books but at the risk of being saddled with an asset worth far less than what the bank paid for it. This change, which forms a part of the proposed amendments to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Sarfaesi), introduced recently, comes at a time when banks face the risk of rising non-performing loans, and of being saddled with property seized from borrowers unable to pay back their loans. Worse, a weak property market means that banks may be unable to find buyers for the property they have seized — at least at the price they want.

The same set of amendments also propose to give the finance ministry wide-ranging powers to notify certain types of banks to whom the provisions of Sarfaesi will not apply, or apply only with certain 'exceptions, modifications and adaptations'.

It also brings multi-state co-operative banks within the ambit of Sarfaesi and allows asset reconstruction companies (ARCs) to convert debt into equity as part of a restructuring.

At present, Sarfaesi allows banks and ARCs to seize assets from loan defaulters, which in many cases include immoveable property. Banks then typically hold an auction to sell the property. However, if a bank is unable to find buyers willing to bid above the reserve price, or the minimum bid amount, it currently has little option but to postpone the auction to a future date, and hope for a better bid.

Under the proposed changes, in case of a failed auction, the bank can depute one of its own officers to bid for the property at the reserve price at any future auction. If there are no other bidders yet again, or the bank's own bid is the highest, the property stands 'sold' to the bank. Under current law, a bank is not allowed to bid for property it puts up for auction. The changes also apply to ARCs.

Firms get MCA breather

The Ministry of Corporate Affairs (MCA) is likely to allow Indian companies to minimise the losses they may have to incur on account of unfavourable fluctuations in foreign currency exchange rates by allowing them to keep such losses or gains out of the profit and loss accounts for the time being.

The ministry's technical advisory committee, the National Advisory Committee on Accounting Standards (NACAS), is known to have taken this view in the wake of heavy foreign currency fluctuation in the international market. MCA is expected to take a final view on the matter shortly.

The Indian rupee has depreciated around 20 per cent against the dollar since August 2011.

The move, meant to be a face-saving measure for companies with huge foreign currency borrowings, will allow them to report better financial results in the coming quarters.

The implementation of the Accounting Standard 11 (AS-11), which deals with differences in foreign exchange rates, may be deferred till further notice.

In 2009, MCA had given an exemption to companies from adopting AS-11 until March 2011. In the absence of further notification, companies were facing the prospect of following AS-11 system while preparing their 2011-12 financial results.

Once the AS-11 implementation gets extended, companies will have the option of adjusting such exchange differences to the cost of the asset, and showing those separately in the balance sheet. The exemption, however, will be subject to conditions.

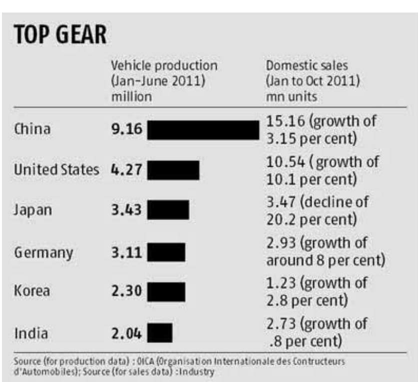
The Institute of Chartered Accountants of India, the apex body regulating the profession of chartered accountancy in India, is known to have favoured the extension.

India overtakes Brazil as sixth largest vehicle maker

With 7 million units, it is projected to overtake Japan, Germany and Korea by 2017; to beat initial estimate of becoming third-largest market globally by 2020

India has overtaken Brazil as the world's sixth largest automobile manufacturing country, going by data on the first six months this year, according to the international organisation of motor vehicle manufacturers.

The Organisation Internationale des Constructeurs d'Automobiles also reveals that India is steadily inching its way up on the global charts to make its mark as the third largest automobile market over the next five years, even as high interest rates and fuel prices have put a spanner on automobile sales in the domestic market. In 2009, India had raced past Spain in annual automobile production to become the seventh largest vehicle-manufacturing country in the world. India is now projected to overtake Japan, Germany and Korea to sell seven million units by 2017. This is way ahead of the initial estimate of becoming the third largest market globally by 2020.



As many as 2.04 million vehicles were produced in India till June this year, 20 per cent higher than the 1.71 million units rolled out in Brazil.

On the exports front, India stands at around a tenth of the 3.77 mn units exported by Germany till October 2011. India is fast narrowing the gap with China. Till October 2011, China (which accounts for 24 per cent of global automobile production) exported only 703,341 units, while Indian exports grew by 17.45 per cent to 489,675 units.

Government relaxes telecom M&A norms

Telecom Commission accepts Trai's recommendations, paves way for consolidation

The Telecom Commission has accepted industry regulator Trai's recommendations to relax rules for mergers and acquisitions in the sector and allow spectrum-sharing among telcos, paving the way for consolidation in the 14-player market.

The highest decision-making body of the communications ministry is also open to the regulator's proposal to levy a one-time fee on operators for holding spectrum beyond 6.2 MHz. Mergers and acquisitions will get automatic clearance if the combined market share of the new entity is less than 35% and spectrum holding is less than 25%.

When the market cap is more than 35% but less than 60%, the Telecom Regulatory Authority of India will examine the case to avoid monopoly in the market. The move is expected to pave the way for consolidation in the industry, where a number of new entrants are yet to make a mark despite millions of Indians start using mobile phones every month.

While this is good news for telcos, it is estimated that they may have to shell out more than Rs 17,500 crore as one-time fee on excess spectrum, based on Trai's recommendation of a fee of Rs

4,571.87 crore on each mega hertz beyond 6.2 MHz.

The commission favoured discovery of spectrum prices through auction for future allocation of airwaves.

It also fixed the annual revenue share at a uniform 8% for all telcos, against 6%-10% share depending on factors such as service and region. This is likely to be implemented in two phases over two years.

Telecom tower companies and internet service providers, who do not pay any annual licence fee now, too will now have to share 8% of their annual revenues.

The commission will send all these decisions to the Telecom Minister Kapil Sibal and subsequently it will seek Cabinet's nod to implement them.

Changi Airport makes fresh attempt to enter India

Said to be in talks with Hyderabad-based GVK Group; if the deal sails through, the alliance would be the biggest player in India's airports market

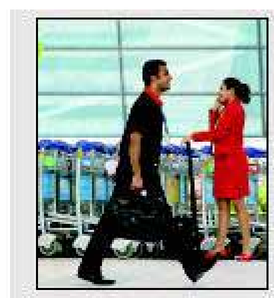
After several false starts, Singapore's Changi Airport is making a fresh bid to get a firm foothold in India, which has eluded it for many years.

Changi Airports International (CAI), an arm of the Changi Airport Group, which runs the Singapore airport, is said to be in talks with Hyderabad-based GVK Group to acquire a stake in its lucrative airport business. GVK operates two of India's busiest airports in Mumbai and Bangalore.

If the deal goes through, the Changi-GVK combine will handle over 40 million passengers a year, making it the biggest player in India's airports market. Bangalore-based GMR Group, which operates the Delhi and Hyderabad airports, handles 37 million passengers a year. However, the alliance will have less capacity in India compared to GMR's. GVK can handle 51 million passengers a year, while GMR has a capacity to handle 72 million per annum. The Bangalore and Mumbai airports are collectively valued at close to Rs 13,000 crore at recent deal prices.

A deal with Changi will help GVK both in funds and technical expertise in bidding for the Navi Mumbai airport. The group has the first right of refusal for the Navi Mumbai airport bid.

Changi has a 26 per cent stake in Bengal Aerotropolis Projects Ltd, which will construct an airport to handle one million passengers annually at Durgapur in West Bengal. Previously, the Singaporean company was involved in providing technical assistance to the Mumbai airport and Nagpur's cargo hub project.



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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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