India Update

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E-clusters planned in 8 cities

The government proposes to develop new manufacturing clusters for electronic goods in eight cities as part of its agenda to boost manufacturing. Manufacturing is a priority for the government as the sector has the potential to employ 28 million.

The clusters are proposed to be developed in Bhopal, Bhubaneswar, Hyderabad, Maheshwaram, Bhiwadi, Jabalpur, Hosur and Kakinada.

The government has identified eight other cities where it would offer subsidies and incentives to companies setting up facilities. The government would extend the modified special incentive subsidy scheme (M-SIPS) to Ahmedabad, Ghaziabad, Vadodara, Gandhinagar, Nagpur, Nashik, Aurangabad and Thane. In July 2012, the government had notified M-SIPS, under which refunds would be given on capital expenditure for new units or for expansion of more than 25 per cent of existing capacity in specific new or existing electronics clusters. The earlier government had allocated Rs. 10,000 crore[1] for the scheme.

New energy saving ratings for ACs, fridges likely in 2015

India's Bureau of Energy Efficiency (BEE) is set to announce new energy saving ratings for high-end air conditioners (ACs) and refrigerators, which, manufacturers say, will perk up the market for premium products even if it leads to a hike in their prices by 10-15%.

BEE is already testing the proposed ratings for inverter air-conditioners and side-by-side and multiple door refrigerators in its laboratories. It has also sought feedback from the manufacturers, after which it will lay down the new norms for these premium appliances. The new norms are expected to bring energy rating in India on par with the European and US standards.

BEE plans to roll out the new rating norms from next year, which is likely to make inverter ACs the most energy-efficient with a five-star rating

DIPP for easing labour laws in NIMZs

The Department of Industrial Policy & Promotion (DIPP) has pitched for relaxation in labour laws in the National Investment and manufacturing Zones (NIMZs), proposing that employers be allowed to remove workers without notice or compensation so long as they provide them alternative employment in the same zone, at the same pay and conditions of work. The proposal for exemption of rules related to termination of services of workers under the Industrial Disputes Act and Contract Labour Act is part of the new government's bid to revive the manufacturing sector. DIPP has also proposed setting up of a pool of funds to compensate retrenched workers at the rate of 20 days' wages for every completed year over six months.

NIMZs are industrial townships that were announced as a part of the National Manufacturing Policy in 2011, which aims to increase the share of manufacturing in GDP to 25% by 2022 from 15% at present and create 100 million jobs.

As per the Industrial Disputes Act, for companies that have more than 100 workers, the state government's permission is required for retrenchment of workers employed for over a year along with a three months' notice. Recently, Rajasthan made amendments to three labour laws – Contract Labour Act, Industrial Disputes Act and Factories Act. It introduced a three-year time limit for raising disputes and increased the percentage of workers needed for registration as a representative union from 15% to 30%. As per the amendment, Contract Labour Act will now apply to companies with more than 50 workers from the current 20. With regard to the Factories Act, currently applicable to premises with more than 10 workers with power and 20 without power, the amendments raise these numbers to 20 and 40, respectively.

Foreign portfolio investors permitted to hedge currency risks

The Reserve Bank of India (RBI) has set a limit of $10 million on banks' proprietary positions in exchange-traded currency derivatives (ETDC) and has allowed foreign portfolio investors (FPIs) to hedge their currency risks without any underlying exposure up to the same limit.

FPIs cannot take a short position beyond $10 million at any time and to take a long position beyond $10 million in any exchange, it will be required to have an underlying exposure. The onus of ensuring the existence of an underlying exposure shall rest with the FPI concerned.

[1] *1 crore = 10 million*

Domestic participants who want to take a position exceeding $10 million in the ETDC market will have to establish the existence of an underlying exposure.

RBI has allowed FPIs to access the currency futures or exchange traded currency options for the purpose of hedging the currency risk arising out of the market value of their exposure to Indian debt and equity securities. Such investors can participate in the currency futures/exchange traded options market through any registered/recognised trading member of the exchange concerned. The exchange will, however, be free to impose additional restrictions as prescribed by the Securities and Exchange Board of India (Sebi) for the purpose of risk management and fair trading.

Registration of electronic goods goes online

The Bureau of Indian Standards (BIS) plans to take the process of registering electronic products under its compulsory registration order (CRO) online by reviving a defunct portal that will take some of the sting out of a long-drawn procedure that was impeding introduction of some products. Presently, testing and registration is a 3-4 month long process.

The CRO, which was announced in 2013, mandates testing and registration of 15 types of domestic and foreign electronic products for compliance with Indian standards before they hit the market. Manufacturers, importers, sellers and distributors of products such as laptops, notebooks, tablets, printers, and LED televisions need to self-certify these to comply with Indian safety standards.

The CRO was slated to come into effect in April 2013, but was extended twice until October, 2013. The Department of Electronics and Information Technology (DeitY) had developed an online portal for the BIS to accept applications for registration when the order was passed, but it did not take off because of initial issues.

E-Drive

The Woes

- **The entire** process is manual
- **The order** was supposed to come into effect in April last year, but was extended two more times
- **DeitY had** developed an online portal for the BIS to accept applications for registration when the order was passed, but it did not take off

The Solution

- **Industry expects** a BIS notification to start using the portal in about two weeks' time
- **With the** online portal, the time taken for registration after testing would be cut down to a week, from a month earlier
- **The move** is in line with the government's attempts to promote online initiatives and increase transparency in its dealings

Boost for defence as licensed items list cut by 60%

The government has spelt out the industrial licensing policy for defence production, listing items that will require permission to manufacture. Anything not mentioned on the list can be manufactured by the industry without a licence from the government.

The government has reduced the items requiring industrial licences by about 60%. All products like castings, assemblies, etc. have been removed.

Items that are not included on the list would not require industrial licence for defence purposes.

Dual-use items, having military as well as civilian applications other than those specially mentioned on the list, would also not require industrial licence from a defence angle.

Four broad categories of defence equipment will continue to require industrial licence: arms and ammunitions; defence aircraft and space aircraft; tanks and other armoured fighting vehicles; and warship equipment.

A Clear Framework

ITEMS THAT WILL REQUIRE INDUSTRIAL LICENCE

- **Tanks and** other armoured fighting vehicles
- **Defence aircraft,** spacecraft and parts thereof
- **Warships of** all kinds
- **Arms and** ammunition and allied items of defence equipment; parts and accessories thereof

ITEMS NOT MENTIONED IN LIST

- **Can be** freely manufactured by industry without industrial licence
- **FDI in** these will be governed by sector limit

HOW DOES IT HELP?

- **Freedom** to produce. Earlier manufacturers sought licence for everything, causing delays
- **It will** encourage manufacturers
- **Encourage** more FDI in sector

Anti-lock braking made mandatory in commercial vehicles from April 2015

Anti-lock braking system (ABS) has been made compulsory on all new models of commercial vehicles staring April 2015, an endeavour aimed at making the country's notoriously accident-prone roads safer. ABS helps control vehicles during emergency braking at high speeds by unlocking the wheels and allowing traction control by electronic distribution of pressure to wheels.

While yet-to-be-launched models must have the feature starting next fiscal year, manufacturers will get another six months to fit ABS on new vehicles sold under existing models. ABS has not yet been made

compulsory on passenger vehicles, though most models offer it as an optional or standard feature.

Industrial licence validity extended to 3 years

The government has extended the validity period of industrial licence to three years with a provision for further extension of two years.

The extension would now be granted by the concerned ministry and the applicant will not have to go back to the licensing committee. However, in the case of industrial licence in defence and explosive sectors, the request has to be forwarded to the home ministry and the concerned state government, which, after seeking comments of these agencies, would consider granting the extension.

The licence will lapse automatically after five years in the absence of commencement of commercial production. Companies that fail to start commercial production of items within three years of issue of licence will have to submit an application for extension of licence to the concerned administrative ministry 60 days prior to the expiry of the three-year period, in the absence of which a written justification has to be issued.

The extension would be granted only to applicants who have acquired land, either under ownership or on lease, for a minimum of 30 years and the construction on the projects has commenced under which orders for plant and machinery should have been placed.

If commercial production has not started within a period of five years of issue of licence, the licence will be treated as automatically lapsed.

Carrefour to exit India, shut 5 cash & carry stores

Carrefour, the second-largest retail chain in the world and the largest in Europe, has decided to exit India, less than four years after it opened its first store in the country.

In an announcement, the company said it will shut its five cash-and-carry stores in India by the end of September.

While the company has not indicated the reasons for its exit, analysts say many factors have played a part. The company failed to rope in an Indian partner for its multi-brand foray; the mandatory sourcing from small and medium sector units added to its worries; business has been slow in Europe; cash-and-carry operations in India have been bleeding for Carrefour; and, importantly, the NDA government has indicated it will not clear any new FDI proposals in multi-brand retail, as that will hurt local traders.

In India, Carrefour's five stores (in Delhi, Agra, Jaipur, Meerut and Bangalore) reported losses of $17 million (about Rs 102 crore) in 2012, on a turnover of Rs 190 crore. Carrefour has invested a total of about Rs 300 crore in India since its entry. India is the only Asian country in which Carrefour operates cash-and-carry stores.

Ikea to set up its first India unit in Hyderabad

Swedish furniture company Ikea will set up its first Indian outlet in Hyderabad involving an investment of at least $100 million (600 crore), apart from establishing backward integration for supplier linkages.

A memorandum of understanding between Ikea and the Government of Telangana will be signed in a month or two. The store will come up on a 10-acre plot, offering direct employment to at least 1,000 people. IKEA proposes to locally source materials such as bamboo, handicrafts and handloom fabrics, apart from locally outsourcing furniture production to indigenous manufacturers by offering designs and technology to suit local needs and tastes.

After Hyderabad, Ikea plans to expand into Bangalore, Mumbai and Delhi.

MNCs manufacturing in India can engage in e-commerce

Foreign companies that have entered India as manufacturers will be allowed to engage in ecommerce even if they source products from third-party producers in the country, allowing brands such as Samsung, LG, Panasonic and Lenovo to sell directly online to customers.

However, overseas firms only engage in retailing in India will not be allowed to do so by merely sourcing

products within the country. This means that Marks & Spencer and furniture maker Ikea, among others, which came in as single-brand retailers, will not be allowed to sell online in India.

Swatch seeks approval for single-brand retailing

Switzerland-based watch chain Swatch has made a formal proposal to the commerce ministry to set up stores in India under the 100 per cent foreign direct investment (FDI) route.

Currently, Swatch watches are sold in India through dealer networks and third-party stores.

RBI announces new regulatory framework for big banks

The Reserve Bank of India (RBI) has announced a new framework for identifying and dealing with large banks in the country, termed domestic systemically important banks (D-SIB).

Due to their size, cross-jurisdictional activities, complexity, lack of substitutability and interconnectedness, such banks become systemically important. These big lenders, perceived as "too big to fail", will be publicly identified as such by the regulator from August 2015.

The move comes as remedial measures to the problems faced during the global financial crisis of 2008, when certain large and highly interconnected financial institutions hampered the orderly functioning of the financial system, which in turn, negatively impacted the real economy.

RBI said from data it had compiled as of March 31, 2013, four to six domestic banks would qualify under the D-SIB category.

It also said four sub-categories of D-SIB lenders would be created, each with different requirements for additional common equity tier-1 capital requirements that would range from 0.2-0.8 per cent of risk-weighted assets.

The banks designated as D-SIBs will be subjected to more intensive supervision in the form of higher frequency and higher intensity of on- and offsite monitoring.

Based on the sample of banks chosen for computation of their systemic importance, a relative composite systemic importance score of the banks will be computed and then RBI will determine a cut-off score beyond which banks will be considered D-SIBs.

The amount of additional capital requirements for D-SIBs is based on a mix of quantitative calibration and consideration of country-specific factors. D-SIBs will also be subjected to differentiated supervisory requirements and a higher intensity of supervision, based on the risks they pose to the financial system.

On foreign banks with a branch presence in India, those with a parent which is not a global-SIB but is a D-SIB in India will have to maintain a D-SIB additional capital surcharge here.

In case a foreign bank having branch presence in India is both a G-SIB and a DSIB in India, it would have to maintain a capital surcharge in India at a rate which is the higher of the two.

Indian shipping firms allowed to operate ships with foreign flags

Domestic shipping lines have been permitted to operate foreign flag vessels, shedding a key restriction.

So far, Indian operators were not allowed to own foreign flag vessels — at most, they could charter these for specified periods. Also, they could not employ foreigners on Indian flag-bearing ships. Most companies, therefore, floated a foreign subsidiary that had a downside as the entire benefit of the activity would go to the foreign country.

The restriction has now been removed. The flag signifies that a particular state has exclusive jurisdiction and control over the vessel. However, the ownership can be in a third country.

A foreign arm essentially means additional cost for Indian operators as they have to comply with regulations in the other country. A number of shipping lines have set up their arms in Singapore to ply vessels with foreign flags.

Usually, ships are registered in jurisdictions such as Panama, Singapore, the Marshall Islands and St Kitts, popularly called the 'flags of convenience'. A ship has to follow the rules of the jurisdiction it has registered with.

Since some jurisdictions have lax regulations, they are preferred by ship owners. India is known to have stringent regulations for ships registered here.

Essentially, removing the restriction would mean Indian companies will be able to register ships in these jurisdictions and yet operate them out of India. This will bring them on par with competition that extensively uses dual flags.

The change in rules means also that Indian ship owners will not have to set up foreign subsidiaries and the revenue from these operations will come to India. The tonnage carried would be counted towards the Indian company's tonnage, helping them raise foreign funds more easily.

The government will earn taxes. The flexibility to own a foreign vessel is crucial for ship lines as just like India, many countries insist on employment for their nationals to operate in their waters.

No pass-through status for alternative investment funds

The income tax department has said that alternative investment funds (AIF) such as private equity funds with unknown investors would not be given the pass-through status and the income will be taxed in the hands of the trustees of such funds at maximum rate of up to 30 per cent.

The exemption is currently enjoyed only by venture capital (VC) funds. Other AIFs such as hedge funds, private equity funds, and infrastructure funds have also asked for a similar treatment where the income arising in the hands of the fund is treated as tax exempt, while investors are liable to pay tax.

A pass-through status means the income generated would be taxed in the hands of the investor, and the fund itself would not have to pay tax on the same.

In a recent circular, the Central Board of Direct Taxes stated that in cases where the trust deed neither names the investor nor specifies the beneficial interests, the entire income of the fund would become liable to be taxed at the maximum marginal rates in the hands of trustees.

The domestic fund will need to be appropriately structured as per the relevant provision of the trust taxation of the Income Tax Act in order to get a pass through status. However, in funds such as private equity, investors enter after the deed is made and it is difficult to re-structure them as per the needs of the I-T Act. Even if the names of the investors are given in the trust deed, the trustees will still have to pay tax at the maximum rate, if the Fund's income is assessed as business income and not capital gains.

This will have an impact on private equity funds and others qualified as AIFs. This is because if these funds are given a pass through status, tax will be levied at the investor level. On listed entities it will come at nil for the long term and 20 per cent for unlisted entities. If the pass through certificate is not given, the maximum tax at the hands of trustees could be imposed at the rate of 30 per cent.

Unlike VC funds, other funds including small and medium enterprise, social venture, infrastructure, private equity, debt, and hedge funds are not recognised under the I-T Act and their income is liable to tax depending on legal status of the fund - company, limited liability partnership or trust.

More than 90 AIFs are registered with markets regulator the Securities and Exchange Board of India (Sebi). Most of these AIFs are set up as non-charitable trusts and the identity of their investors is not known at the date of creation of the trust. Under the law, if the name of the beneficiary is not specified in the trust deed, then the trust is subject to tax and not the investor. This gives an advantage to VC funds over other AIFs. The industry had asked the finance ministry to remove this tax disparity and provide a level playing field so that more investors could be drawn toward AIFs.

The issue emanated from the introduction of Sebi regulations in May 2012 about AIFs, bringing all investments under one roof and repealing the earlier venture capital regulations issued in 1996. In the Finance Act, 2013, the government made changes to the existing provisions of the IT Act to harmonise them with Sebi's norms, but the pass-through status was allowed only to VC funds and not other AIFs.

DIPP sets maximum time frame to process single-brand retail applications

The Department of Industrial Policy and Promotion (DIPP) has set a maximum time frame of 90 days to process all applications pending with it.

Under the new time frame, DIPP will process and forward all complete and compliant applications to the Foreign Investment Promotion Board (FIPB) within 20 days for clearance.

The incomplete ones will be sent back to applicants within the same time period for submitting a rectified application within 30 days.

If an applicant does not respond within a month, it will be given a final 20 days' time to comply with all requirements, and the completed application forms will be sent to FIPB within 20 days.

The 90-day timeline will include giving time and date to the applicant to visit office to complete formalities, failing which proposal will be rejected.

The new time frame applies only to new proposals.

Consumer Protection Act to be amended to facilitate mediation

Alarmed by the piling up of cases in consumer courts across the country, the Department of Consumer Affairs is mulling a significant change in the Consumer Protection Act, 1986 to facilitate mediation and arbitration.

The department plans to create a structure of arbitration and mediation at the point of grievance (the place where the consumer is located) before the case is finally moved to the court.

The structure could involve empowering panchayats, gram sabhas or similar institutions to mediate and arbitrate between parties. The idea is to ensure an aggrieved consumer moves court only after he has exhausted all other options.

The purpose of the amendment is to ensure that justice is delivered fast to the consumers and at their nearest point of contact and they are not made to run from pillar to post to file a basic complaint.

According to the proposed amendment, the mediator appointed by the government will the facilitate resolution of disputes between parties through the normal process. The mediator will facilitate discussion between the parties, assist to identify issues, reduce misunderstandings, clarify priorities, explore areas of compromise, generate options to solve the dispute and emphasise it is the parties' own responsibility for making decisions that affect them.

Union Cabinet clears labour reform bills

The Union Cabinet has approved amendments to three labour laws. Among key proposals cleared is doing away with the clause that allows arrest of employers for not implementing the Apprenticeship Act. However, relaxed norms for retrenchment, like those proposed by Rajasthan in its labour reforms, were not part of these Bills.

Besides the Apprenticeship Act, 1961, amendments to the Factories Act and the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act were approved. These pieces of legislation are expected to be tabled in Parliament shortly.

There has been a growing feeling that employers tend to avoid hiring apprentices over fear of arrest under the Act. Amendments to the Act are expected to encourage more employers to join the apprenticeship training scheme and also remove the fear of prosecution.

To complement the Prime Minister's vision on skill development, the Apprenticeship Act amendments will add 500 new trades. Companies might also be allowed to start new trades without waiting for the Centre to notify those.

Amendments to the Factories Act include increasing the overtime limit for employees from 50 hours a quarter to 100 hours, relaxing restrictions on night work for women in factories and empowering the central government to make rules on health and safety hazards.

Changes in the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act include reducing the need for small firms to maintain registers. The definition of small establishments has also been proposed to be changed to firms hiring up to 40 employees, against 10 currently.

The Centre is also actively considering amendments to the Child Labour (Regulation and Abolition) Act, 1986, and the Minimum Wages Act, 1948.

The government might exempt National Investment and Manufacturing Zones from certain provisions of the Contract Labour Act. Under the proposal, workers at units in these zones could be removed without notice or compensation, if the employer provides them with alternative employment in the same zone at the same pay and conditions of work. Talks with trade unions over this are on.

EASIER WORK RULES

Factories Act, 1948

NIGHT WORK: Norms for woman factory workers to be relaxed
OVERTIME: Limit to be raised to 100 hours (from 50) in a quarter
SAFETY & HEALTH: Centre to get power to make rules on key aspects of occupational safety and health

Apprenticeship Act, 1961

EMPLOYERS: The clause allowing employers' imprisoned for not implementing the Act to be dropped; a Rs 500 fine per shortfall of apprenticeship month to be imposed
NEW TRADES: Companies could add new trades under the Act without the Centre's approval
AMBIT: Contractual workers, daily workers, agency workers and casual workers to come under Act
PARITY: Holidays, leaves, shift working for apprentices to be made the same as regular workers

Labour Laws Act, 1988

REGISTERS: The need for small firms to maintain registers under the Scheduled Acts to be lowered to two; very small firms may maintain only one
E-RECORDS: Records to be maintained in electronic media
DEFINITION: 'Small establishments' to mean firms employing between 10 and 40 people.

David Lloyd to buy 20% in Talwalkars

British health and fitness group David Lloyd is buying around 20% stake in Talwalkars Better Value Fitness for Rs 100 crore at Rs 300 per share, valuing the health fitness chain at Rs 500 crore

Talwalkars is a Mumbai-based chain of health centres. In 2012, the company announced its partnership with David Lloyd Leisure Group to provide consulting for leisure and sports clubs in high-end residential developments, gated communities and corporate campuses. The joint venture focuses on consulting, execution, management and operations of leisure and sports clubs.

No-frills airports planned to bring down flying costs

The government is planning to build small airports with rudimentary facilities, in order to bring down the cost of flying.

As per a blueprint being prepared by the Airports Authority of India (AAI), these airports, which will be located in small towns, will lack conveyor belts, arrival lounges and even air-conditioning. Luggage will have to be checked in manually. One air traffic control (ATC) tower will cater to a number of such airports.

The plan is to keep the cost of building and operating these airports to a minimum. This may mean that security will be taken care of by police personnel from the respective states and harnessing solar energy to power the airports. The plan being discussed includes remote controlled ATCs where one ATC tower will be able to guide planes for more than one such airport. Not every airport would require a full-fledged ATC since there will not be many flights.

As part of a plan to improve regional connectivity, the government plans to develop 50 low-cost airports in smaller cities across the country. The Prime Minister's Office (PMO) has asked the civil aviation ministry to develop five such no-frills airports during the current fiscal year.

The costs with such initiatives are expected to be very low and are estimated to be as low as Rs. 50 crore for each airport. These airports will be built in the form of modules, which means a block can be added once there is increase in demand.

Cheque bouncing: SC settles law on where to file a complaint

The Supreme Court has ruled that a complaint about a bounced cheque must only be filed at the place where the bank dishonoured it, settling doubts raised by its own earlier conflicting judgments on the jurisdiction of a magistrate.

Some judgments had specified the place where the cheque was issued, others from where the notice of dishonour was sent and still others the place of receipt. Owing to this confusion in law, the matter was referred to a larger bench of the SC.

A three-judge bench headed by Justice T. S. Thakur has unanimously laid down that the place of dishonour is the right place to file a complaint. However, to avoid inconvenience to persons already prosecuting such cases, the new rule is to come into force only with respect to cases in the future. Those in which trials have begun will remain in the same courts.

The judgment was delivered on a large number of appeals, including those moved by Videocon Industries and Kitchen Appliances Ltd., which raised the question of jurisdiction of the magistrate who can try cases under Section 138 of the Negotiable Instruments Act. According to this provision, it is an offence to issue cheques without a sufficient balance in the account, if the payment is made to discharge a debt or liability. If the amount is not paid within two weeks, the payee can file a criminal complaint.

This is the second major ruling in recent months dealing with this Act. There are a little more than four million cheque-bounce cases in the courts. In April, another bench issued a series of guidelines, including issuance of summons through e-mails and completion of evidence within three months.

Environment rules eased to push investments

Through a quick series of notifications, the Union Environment Ministry has eased rules for mining, roads, power and irrigation projects and other industrial sectors. It has diluted a host of regulations related to environment, forest and tribal rights. Besides, more changes in regulations are in the pipeline.

The Environment Ministry had earlier done away with the requirement of public hearing for coal mines below 16 million tonnes per annum (mtpa) wishing to expand output by up to 50 per cent. This has now been extended to mines above 16 mtpa, permitting them to mine up to 5 mtpa more without consulting affected people. Public hearings, the only occasion when affected people are consulted for clearances, have in the past turned violent at times, or seen protests leading to litigation.

The Union Power & Coal Minister had approached the Environment Ministry in May requesting similar rules for expansion of coal output in big and small mines. The Environment Ministry had earlier exempted public hearing if the increased mine output was up to 4 mtpa. The Centre, on the request of the Coal Ministry, had in June also decided to consider group clearances for Coal India Ltd mines that were in close proximity, rather than individual project proposals.

The need for consent from gram sabhas for prospecting in forests has also been done away with. This dilutes the Forest Rights Act, which requires the consent of tribals before forest land is diverted to industrial activity. Further, inspection of mining projects by ministry officials for plots less than 100 hectares has been removed. The ministry has also set aside the requirement of compensatory afforestation for prospectors.

The government recently laid down that instead of tribal village councils certifying their rights had been settled and they had consented to projects, the district administration would be empowered to do so in 60 days, regardless of the number of villages affected by the projects. Settling of rights is a lengthy process and in many parts of the country it is far from complete.

Besides these, the government has also amended the environment impact assessment notification of 2006, letting several industries up to a certain size go to state governments for clearance, instead of approaching the Centre. Industry has usually found it easier to get clearance from state governments.

Mid-sized polluting industries have been permitted to operate within five km of national parks and sanctuaries with state clearances, compared with the 10-km limit imposed by the Supreme Court. This has been done by changing the pollution-related classification of industries.

Also, the amended environment impact assessment notification allows coal tar processing units to get clearances from state governments. Mineral beneficiation projects up to 0.5 mtpa will also be cleared by state governments. Earlier, only those up to 0.1 mtpa capacity were allowed to approach the states.

Irrigation projects below 2,000 hectares need not apply for clearances anymore and those between 2,000 and 10,000 hectares can be cleared by state governments. By also separating power from irrigation projects, developers can now take projects piecemeal to different agencies for clearance.

The government has also taken the teeth out of the National Board of Wildlife. The board's standing committee, now without independent wildlife and ecology experts, is slated to clear several dozen projects shortly.

A host of other changes in norms for environment and forest clearance are also being discussed within the environment ministry and the Prime Minister's Office, alongside with a review of the powers of the National Green Tribunal.

Easier Norms

Coal Production

- Coal companies' expansion up to a fixed limit without mandatory public hearing
- Clearance in clusters for nearby mines, instead of separate approvals

Mine Prospecting

- Prospecting in forest areas exempt from tribal rights settlements and consent
- No government inspection for prospecting up to 100 hectares
- Compensatory afforestation done away with

Tribal Rights

- Tribal gram sabhas' powers for securing rights over forest land diluted; settlement and consent for projects to be managed by district administration

Regulatory Easing

- National Board for Wildlife (NBW), without independent forest and wildlife experts, to clear projects
- Plan to dilute National Green Tribunal's powers

Industrial Belts

- Ban on new industries in critically polluted industrial areas lifted; pollution index-based moratoriums stopped

Industries

- Irrigation projects get easier route, separate from power components
- Thermal, coal, paper pulp, mining and other polluting industries can, to a larger extent, get clearance from states
- Norms for protective ring against polluting industries around wildlife areas diluted

Discretionary powers of inspectors to be scrapped

Among its initiatives to make doing business in the country easier, the labour ministry proposes to on September 1 launch a scheme to liberalise the way inspection for compliance with labour-related laws is done. In what could be a move to crack down on the so-called inspector *raj*, the new inspection scheme will take away inspectors' discretionary powers.

The next such initiative will be a unified portal, to be launched on October 2, that will serve as the common platform for employers to file their annual returns and compliance & inspection reports.

The new inspection system will initially cover 16 of the 44 legislations administered by the Union labour ministry, including the Industrial Disputes Act, 1947. It will have three kinds of inspections - the areas where inspection is mandatory, those where it is optional and the instances where it is based on compliance.

All inspections for the Employees Provident Fund Organisation (EPFO) and the Employees' State Insurance Corporation (ESIC), besides those in the ambit of the Chief Labour Commissioner and the Directorate General of Mines Safety (DGMS) will be covered under the new scheme.

Under this system, mandatory inspections will be done only in extreme cases. For instance, if a fatal or serious accident has taken place, or in the cases of continuous strikes or lockouts.

Optional inspections will be automatically generated through a system on the basis of the priorities of the organisation concerned.

For the inspections based on compliance, a Central Analysis and Intelligence Unit (CAIU) will be set up to analyse and collect field data; the cases will be referred to this unit for evidence-based approval for inspection.

An inspector will then have to file his or her report within three days of going to the field. Inspectors sometimes use their powers to harass both employees and employers. The new system will make them more accountable and take away their discretionary powers. The inspectors will not be able to go to inspect of their own accord. Their reports will not be considered valid if they are not uploaded within three days of inspection; action will be taken against them in the event of delay.

The unified web portal will make the compliance process easier for industry and initially cover 16 central laws. Through this portal, the companies can file their annual returns and inspection reports and the format for these would be simpler from those in force at present. This integrated portal will operate through a unique labour identification number for each employer or establishment. The employers will be allotted labour identification number (LIN) after registration on the web portal.

The annual return has been reduced from an 80-page long format to a five-page document. Similarly, the inspection reports have also been reduced considerably.

Removing Hurdles

New inspection scheme

What is the aim?

To curb inspector raj, take away inspectors' discretionary powers

How does it work?

Mandatory: Extreme cases

Optional: System-generated

Compliance-based: Only after approval of a separate unit

Unified web portal

What is the aim?

To ease compliance with labour-related laws

What is it and what does it cover?

A common window for online registration of units, reporting of inspections, submission of annual returns and redressal of grievances; covers 16 of the 44 Central Acts

FDI cap raised to 100% for railways, 49% for defence projects

The Union Cabinet on has cleared the proposal to set the composite cap for foreign investment in the defence sector at 49 per cent, compared with the current 26 per cent foreign direct investment (FDI) ceiling. Management control of companies receiving these investments must, however, remain in the hands of Indians. Also, some railway operations and projects were allowed to receive up to 100 per cent FDI.

The decisions come soon after the Cabinet approved a similar proposal to set the composite foreign investment cap for private insurance firms at 49 per cent, provided 'control' remained with Indians.

All proposals for FDI in the defence sector, even those for less than 26 per cent, will require approval from the Foreign Investment Promotion Board (FIPB); these clearances will be given on a case-to-case basis. This is believed to have been done keeping in mind "national security concerns, as it (defence) is a highly sensitive sector".

By comparison, the decision for the insurance industry was that FIPB's clearance would be required in proposals for more than 26 per cent FDI. Also, unlike the insurance decision, the approval for defence FDI is an executive decision and will not require Parliament's clearance.

The Cabinet has permitted foreign investment in rail operations like dedicated freight lines, high-speed trains and mining & port connectivity, besides allowing FDI in some projects such as construction of new lines, gauge conversion, doubling of lines and maintenance projects under the public-private partnership model. For joint venture in the area of projects, up to 74 per cent FDI will be allowed.

These FDI proposals will be allowed under the automatic route, so these will not require FIPB approval. This decision, too, is an executive one and need not go to Parliament.

The Railways Policy of 2012 had also allowed foreign players in rail projects, but this could not become a reality as the Industries Act, 1951, and the consolidated FDI policy of 2013 did not have enabling provisions. The present decisions will remove this anomaly.

Companies will probably have to float special-purpose vehicles to bring in FDI in the areas of rail operations to provide last-mile connectivity to ports and mines. However, there is no clarity on this in the Cabinet decision.

OPENING UP

Defence

Earlier position:

- Up to 26% FDI allowed through the Foreign Investment Promotion Board (FIPB) route
- Clearance from the Cabinet Committee on Security required for FDI beyond 26%; approval on a case-to-case basis

New position:

- Up to 49% FDI allowed after FIPB approval
- Control has to be with Indian companies

Railway projects

Earlier position:

- FDI prohibited

New position:

- Up to 100% FDI permitted in in some operations like freight corridor, high-speed train, port and mining connectivity projects through different modes
- Up to 100% FDI allowed in most cases in rail projects like gauge conversion, construction of new lines, doubling of new lines and maintenance PPP projects

RBI relaxes takeout financing norms for existing infrastructure loans

The Reserve Bank of India (RBI) has relaxed the norms pertaining to takeout financing for existing infrastructure loans by lowering the minimum takeout requirement to 25 per cent from 50 per cent.

RBI has also clarified that loans with a minimum of Rs 1,000 crore would be eligible for takeout financing agreement. In addition, a project should have started commercial operation after achieving the date of commencement of commercial operation. Only standard loans are eligible for takeover.

The government and RBI have taken several steps in recent times to boost infrastructure financing. Banks have been exempted from maintaining cash reserve ratio (CRR) and statutory liquidity ratio (SLR) and also priority sector lending (PSL) targets for raising resources via long-term bonds to fund infrastructure and affordable housing sector.

Draft bill on wilful defaulters proposed

The finance ministry is considering a new 'wilful defaulter' legislation that will empower banks to induct new members on the boards of defaulting borrower companies and attach even those assets that had not been pledged.

At a time when the asset quality of state-owned banks is deteriorating, the Reserve Bank of India (RBI) is also planning harsher penalties for wealthy promoters of wilful defaulters.

A committee headed by former law secretary VK Bhasin, with some finance ministry officials as members, has prepared draft of the Bill on 'wilful defaulters'.

Banks will be able to induct a new management if a company is unable to pay. A name-and-shame policy might be adopted for wilful defaulters. Assets on which security was not deposited could also be seized. For recovery of assets, banks may also be able to look at other bank accounts as well since defaulters sometimes divert funds to other banks.

Besides this new Bill, the finance ministry is revisiting recovery laws to make those more effective. Amendments have been proposed to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Sarfaesi Act) to remove lacunae in these laws.

The proposed Bill, as well as amendments to the existing laws, are likely to give banks the power to reconstitute the boards of defaulting companies.

The new law would make provisions for faster disposal of cases by debt recovery tribunals (DRTs) and might propose harsher penalties for defaulters deliberately trying to slow down the hearing process.

On its part, RBI is considering stricter guidelines to enable banks to declare promoters of defaulter companies wilful defaulters and recover dues from them.

At present, if a company has defaulted on a loan payment, banks cannot recover money from its promoters. Banks have asked the central bank to amend its master circular in this regard. This might happen shortly.

Currently, a company is declared a wilful defaulter if it fails to meet its payment obligations despite capacity to honour it, or fails to utilise the finance for the specific purposes it was taken for, or siphoned off funds. Promoters of such companies could be barred from floating new ventures for five years from the date the wilful defaulter's name is published in a list by RBI.

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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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