India Update: November - December, 2012

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Red Bull locks horns with former Indian partner; both initiate legal battle

Austrian energy drinks maker Red Bull and its erstwhile partner Rahul Narang Group (RNG) seem headed for bitter court war.

RNG has moved a Mumbai local court charging Red Bull for disregarding and breaching their long-term agreement and poaching its proprietary distribution network soon after ending one of the oldest alliances in the country's beverage segment.

The Bombay City Civil Court restrained Red Bull from approaching three of RNG's sub-distributors in Pune, Bangalore and Gurgaon, and rejected the firm's plea seeking permission to move the matter to an arbitration court in Geneva.

While Red Bull has been stepping up efforts to build its own India network, RNG had also initiated discussions with competing global energy brands like Monster (US) for a distribution and marketing JV in India.

RNG officials say all channel partners need to comply with the six-month non-compete clause before jumping ship.

The end of the decade-long alliance appears to be largely a case of aspirational mismatch between the two former partners which has been fomenting for some time.

Ever since Red Bull set up its base with a wholly owned subsidiary, Red Bull India Private Limited, in 2008, it became clear that the autonomy of the Indian partner would get curbed.

Over time, Red Bull put in place its own leadership team to oversee key accounts, ground sales and distribution operations of RNG. Logistics and warehousing were partially split while finance and marketing functions came under the direct supervision of the global energy drinks company.

Prior to 2008, RNG was importing and selling Red Bull on its own.

RNG failed to meet mutually accepted targets. Two years back, both had agreed to scale up the venture's reach to 25,000 outlets from 15,000; but only 19,000 outlets were tapped.

Red Bull is small in India but is growing at 30% a year. It is estimated to be a Rs. 160-170-crore[1] brand in the country and controls close to 80% of the Rs. 250-crore energy drinks market. Currently Red Bull reaches to around 21,000 outlets and the company targets to triple that in the next 15 months.

Rahul Narang Group markets and distributes a clutch of international food and beverage brands including Perrier, Evian, Illy Coffee and Lindt Chocolates through its distribution network of over 1.5 lakh points of sale nationwide.

New defence procurement procedure in early 2013

The Defence Procurement Procedure of 2011 (DPP-2011), which governs the buying of military weapons and equipment, is likely to be modified in early 2013.The new DPP is expected to liberalise defence procurement further.

SAAB invests Rs 202 cr in Pipavav

SAAB AB of Sweden has invested Rs 202 crore in Pipavav Defence and Offshore.

Pipavav has issued 24.5 million shares to SAAB at Rs 82 per share which is at a premium of 7.75 per cent to the average six month's weekly closing price of Pipavav's stock price. With this share issue, SAAB will get 3.5 per cent shareholding in the Indian company with an option to increase it further at a later stage.

This is the first strategic investment made by a global defence major into an Indian company focusing on defence production.

Cabinet note soon on shale gas policy

The petroleum ministry is to soon move a Cabinet note for the country's first shale gas policy

The key features in the draft policy related to cost recovery are being retained in the Cabinet note. The draft had proposed a royalty and production-linked payment for auction of shale gas acreage. Cost recovery in blocks offered under the New

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

Exploration Licensing Policy (Nelp) has been at the centre of the dispute between the government and Reliance Industries Ltd. The draft policy suggested a fiscal regime similar to the regime adopted for coal bed methane (CBM) operations, where cost recovery is now allowed.

India is looking to bridge the gas demand-supply mismatch by encouraging shale gas production. State-owned Oil and Natural Gas Corporation has launched an experimental project to test-flow shale gas and learn about proprietary technologies in the Damodar Valley basins. Several Indian basins such as Cambay (in Gujarat), Assam-Arakan (in the northeast) and Gondwana (in central India) are known to hold shale gas resources.

Indian companies have already gained exposure to the business through investments outside the country. Oil India and Indian Oil Corporation have together bought a 30 per cent stake in Houston-based Carrizo Oil & Gas' Niobrara shale gas asset in Colorado for $85.2 million. GAIL has acquired a 20 per cent stake at Carrizo's Eagle Ford shale acreage in south Texas for $95 mn (Rs 490 crore). The acquisition was GAIL's first shale gas asset in the US.

Reliance Industries holds 45 per cent in Eagle Ford and 60 per cent in a Marcellus shale gas field through a joint venture with Carrizo. RIL's shale gas business in the US comprises three upstream joint ventures, with Chevron, Pioneer Natural Resource & Carrizo Oil & Gas, and a midstream joint venture with Pioneer.

Expats from some countries can withdraw PF before they turn 58

Expatriates from some countries may soon be able to withdraw their provident funds before they reach 58 years

The ministry of labour and employment has issued a notification allowing PF refund for expatriates coming from countries that have Social Security Agreements (SSA) with India.

Presently, India has Social Security Agreements with twelve countries. Out of this, SSAs with eight countries, which include Belgium, Germany, France, Switzerland, Luxembourg, Denmark, Korea and the Netherlands, have come into effect.

The Social Security Agreements with Hungary, Czech Republic, Finland and Norway are yet to come into force. Earlier, expatriates could withdraw the amount only after they had achieved 58 years or under specified conditions. As per the notification, provident fund refund is allowed on completion of the Indian assignment and the amount can be received in expatriate's bank account directly or through the employer.

Moreover, the number of years of service in a SSA country will be combined with the services in India for determining pension eligibility. With this notification, the provident fund amount can be withdrawn on completion of the Indian assignment.

From non-SSA countries, the expatriates will be able to withdraw their provident fund only at 58 years or under specified conditions.

As per the notification, expatriates from SSA countries shall be eligible to withdraw provident fund upon cessation of employment with a covered establishment or a company which is covered under employees' provident fund (EPF) in India.

As long as the expatriate continues to work for a covered establishment in India, he will have to continue depositing provident fund and can withdraw the same only after completing the Indian assignment.

The change will benefit all foreign nationals who have contributed to the provident fund in India before the social security agreement between their home country and India came into force.

It will no longer be mandatory for international workers to hold an Indian bank account to claim the provident fund withdrawal

The Notification Fine Print

Following this circular, all eligible international workers who have paid contributions since November 2008 and have since finished their assignment in India, can apply for provident fund withdrawal.

The provident funds department, however, has not issued any separate instructions with respect to documents submitted to claim provident fund refunds. As of now, expatriates and the employer can file a joint application in the prescribed Form No 19.

This form does not require any supporting documents to be submitted along with the application. An important aspect that requires clarification is whether provident fund contributions from 2008 can be withdrawn or only the contributions made after SSA has become effective can be withdrawn.

Tax Implications

The provident fund amount is taxable in India if the contributions were for less than five years. If the individual takes up another job in the home country and applies for a PF refund while his total tenure has been less than 5 years in India, then the amount withdrawn shall be taxable.

Withdrawal from provident fund is exempt from tax in any of the following situations:

1) If the employee has rendered continuous service with the employer for a period of 5 years or more.
2) If the employee has withdrawn from provident fund by reason of ill-health, or any other reason beyond his/her control.
3) If on termination of employment, the refund amount is transferred to the provident fund of another employer in India.

If the individual takes up another job in India and works for more than 5 years in total in India, the lump sum amount will be exempt from tax, provided contribution made in the first employment is transferred to the provident fund account with the second employer.

Diageo to acquire United Spirits

Under the deal terms that involve a four-stage process, Diageo has agreed to buy 53.4 per cent in USL for about Rs 11,166 crore, giving the world's biggest spirits group a larger slice of a fast-growing market. Diageo will pay Rs 1,440 for a USL share.

Vijay Mallya, through UB Holdings, will hold 14.9 per cent stake in USL and will continue to retain the chairman's position after the transaction.

Diageo will first acquire 27.4 per cent in USL, first from the promoters, will buy treasury shares and then get a preferential allotment of 10 per cent. The total value for this will be Rs 5,726 crore. Subsequently, Diageo will launch an open offer for 26 per cent at Rs 1,440 a share, which will be valued at Rs 5,439 crore when fully accepted.

The deal would be the biggest inbound M&A since Britain's Cairn Energy sold majority stake in its Indian arm to Vedanta Resources last year.

The deal will help USL deleverage itself.

Volvo to Invest Rs. 2,000 cr in India

To put money into product development, new test facility and a new engine plant

Sweden's Volvo AB, the world's number two truck-maker, said it will invest Rs. 2,000 crore in India over an unspecified period, as it seeks to establish a stronger footprint in Asia's third-largest economy.

This is in addition to the Rs. 1,800-crore investment the Gothenburg-based company plans to make through its joint venture with India's Eicher Motors Ltd—VE Commercial Vehicles Ltd (VECV).

The VECV investment, which will be through internal accruals, will be used for product development, creating a new test facility and setting up a new engine plant among other things. There are also plans to increase capacity at its engine plant situated in Pithampur, Madhya Pradesh.

Sebi mulls exempting government from open offer obligation

Markets regulator Securities and Exchange Board of India (Sebi) is planning to introduce a set of takeover rules for the government that will be different from what private companies follow. The proposal, on the drawing board, intends to exempt the government from making the mandatory open offer to buy an additional 26 per cent from minority shareholders if its stake in a company crosses 25 per cent.

The move comes in the wake of a recent instance where the government was exempted from making an open offer in financial institution IFCI Ltd, after its holding in the firm jumped from a marginal 0.0000011 per cent to 55.57 per cent, following conversion of warrants into shares.

Sebi might also tweak rules for the government in cases of creeping acquisition, where buyers have to make an open offer it they purchase more than five per cent in a company in a financial year. Earlier, the regulator had exempted the government from making an open offer for IDBI Bank Ltd, when a proposed capital infusion into the bank crossed the creeping acquisition limit of five per cent.

Sebi had introduced the new takeover code increasing the open offer trigger limit from 15 per cent to 25 per cent. Also, it raised the minimum open offer required to be made by the acquirer to 26 per cent from 20 per cent.

The rationale behind the open offer obligation, which in some countries is as high as 100 per cent, is to give an opportunity to the minority shareholders to exit if they don't wish to continue with the new management in case of change in control.

Decision on Chinese investments likely

The core group of secretaries associated with the Foreign Investment Promotion Board (FIPB) is to decide whether any foreign direct investment policy parameter has to be changed and if so, at what stage when dealing with the investment proposals of Chinese telecom companies.

It is likely the group would give its report to the Department of Telecommunications and the Department of Science and Technology so that they can assess the potential risks and suggest pre-emptive action, if necessary, to deal with the telecom companies.

The meeting has been called to discuss a US investigative report received by the finance ministry. The report relates to national security challenges posed by Chinese telecom companies Huawei and ZTE.

Many Chinese companies, including Huawei Technologies and ZTE, have been under scrutiny of the Indian government. These companies, however, play an important role — supplying equipment to their Indian counterparts.

The US report suggested expansion by Chinese telecom companies should be viewed with suspicion, adding mergers and takeovers by these companies should be blocked.

In 2002, Huawei and ZTE had approached FIPB with investment proposals, which were rejected. However, the companies approached the board in 2005 and again, in 2006. The approval was deferred, owing to security issues. Later, the applications were withdrawn, as the activities of the companies came under the automatic route. Also, these companies were operating in India.

Le Creuset fourth to seek approval for fully owned single brand retail

French cookware maker Le Creuset has proposed to start a fully owned single brand retail venture in India, becoming the fourth multinational retailer to do so after the country allowed 100% foreign ownership in single-brand retail.

Le Creuset, best known for its coloured cast-iron casseroles and saucepans, has agreed to the 30% mandatory local sourcing conditions as it already sources from Indian suppliers. The company operates a cash-and-carry business in the country and opened a franchisee retail store in Bangalore this year.
Once it gets clearance from the Department of Industrial Promotion and Policy (DIPP), Le Creuset India Pvt Ltd plans to open company owned outlets, shop-in-shops in hypermarkets and department stores, and appoint franchisees to grow faster in India.

Le Creuset is only the fourth overseas company to apply for 100% FDI in the single brand retailing after UK-based shoemaker Pavers England, US-based accessories retailer Fossil Inc and Swedish furniture maker IKEA.

The lukewarm response to the policy initiative is mostly attributed to tough riders such as mandatory sourcing of 30% items from local small and medium vendors. In recent months, the government sugar-coated the pitch by changing the norm of mandatory sourcing from local SMEs from "compulsory" to "preferably".

Some potential investors have sought further clarification on this. Further clarification has been sought on whether a foreign company's global centralised base that sources from India would qualify as mandatory local sourcing.

The policy says a company registered in India and receiving FDI should source products from the country.

Ethanol-blending made mandatory for OMCs

The Cabinet Committee on Economic Affairs (CCEA) has made it mandatory for oil marketing companies (OMCs) Bharat Petroleum, Hindustan Petroleum and Indian Oil Corporation to blend 5% ethanol with petrol. This is likely to reduce the fuel import bill and lower India's dependence on fossil fuel as ethanol prices are lower than petrol prices.

OMCs have been blending ethanol with petrol for the past two years but the policy was partially implemented in absence of any clear directive. The committee has also approved market-based pricing of the biofuel, opening the market for ethanol producers, mostly sugar companies.

So far, the OMCs have been contracting ethanol at the provisional procurement price of Rs 27 per litre, fixed by the Cabinet Committee on Economic Affairs (CCEA) in August 2010.The petroleum ministry is now likely to come up with a gazette notification and float tenders for price discovery and procurement of ethanol.

The CCEA has also allowed import of ethanol if OMCs face any shortage of the biofuel in the domestic market for blending purpose. There is no shortage of ethanol in the country as it had produced 220 crore litres of ethanol in 2010-11. However, if need be, the OMCs may be allowed to imported for blending purpose.

Ethanol-blended petrol is in effect in 13 states out of 19 states mandated for the EBP programme. In these 13 states also, the implementation was partial with offtake of only 44 crore litres of ethanol. The department of chemicals, which is a major user of ethanol, had been opposing the EBP programme arguing that it would hurt the chemicals industry by diverting its share of ethanol to the OMCs. The EBP programme will require 105 crore litres of ethanol annually and will help OMCs to save cost by way of difference in the prices of ethanol and petrol.

While a litre of petrol costs around Rs. 70, ethanol costs Rs 40 a litre. Besides, ethanol gives better mileage to the consumer. A study by Indian Oil Corporation says that it also lowers emissions cutting down pollution levels. The committee has asked the petroleum ministry to ensure that oil companies compulsorily sell petrol doped blended with 5% ethanol.

Bharti Wal-Mart probe may invoke insurance cover

Bharti Wal-Mart's insurance cover against litigation and scandals faced by its directors and senior officers may be triggered as the probe into potential violations of America's anti-bribery laws by the Indian unit Wal-Mart gathers pace.

The company has a directors & officers' liability cover (or D&O policy) worth $5 million from HDFC Ergo General Insurance. The insurance policy partly protects the company and its directors and officers for wrongful actions that cause financial harm and result in a lawsuit. If there is a litigation filed against the executive for any decision taken by the person, the cover ensures that the concerned insurer bears the legal expenses.

Bharti Wal-Mart has suspended its chief financial officer (CFO) and the entire legal team as part of a global investigation into potential violations of America's anti-bribery laws.

Since early 2011, the US company has faced allegations of potential violations in a number of foreign markets like Brazil, China, Mexico and India. Wal-Mart has no retail stores in India, but its joint venture with Bharti Enterprises runs 18 cash-and-carry outlets in the country.

Investigations under the US and US anti-bribery laws have triggered many D&O covers worldwide. There is a growing market for the product in India as well. One of the largest claims was Tata AIG General Insurance's payment of Rs 60 crore following the Satyam fiasco. Post the Satyam fiasco, there has been a surge in demand for products covering directors' and officers' liability from Indian corporates, including small and medium companies.

Companies blow fuse on China's high-powered India push

China's top power equipment makers are keen to set up manufacturing facilities in India, and are seeking easier visa and import rules as the global slowdown has prodded suppliers such as Shanghai Electric to boost business in India.

Chinese firms have formally approached Indian authorities. Indian suppliers, including state-run Bhel, are resisting Beijing's moves, worried that they may face unfair competition from China, which restricts access to its own market and helps its suppliers. Funding by Chinese banks helped Reliance Power place a $10-billion order, the world's largest, with Shanghai Electric two years ago.

The issue came to the fore at a meeting between Indian and Chinese executives and officials coordinated by the Planning Commission.

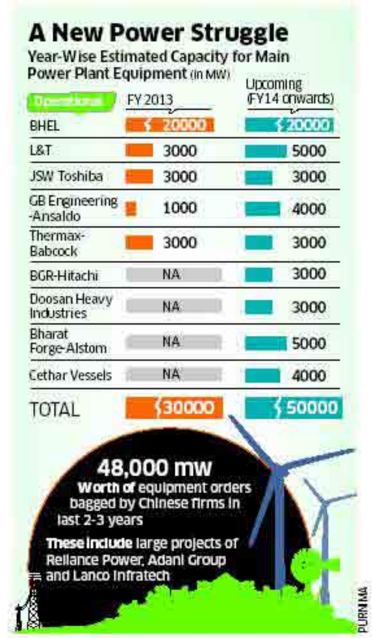
Chinese companies are worried about the global slowdown in the sector. China has added about 600,000 MW power generation capacity in the last 10 years. Chinese power equipment makers have built huge capacities and the slowdown in the US and European markets is hitting them.

India's power sector, which added 20,000 MW of capacity last year, is a lucrative market for foreign firms. Supplies from Chinese firms such as Dong Fang and Harbin Electric International Co would also reduce costs for power producers, which are facing high costs, fuel scarcity and distribution bottlenecks.

India imposed a 21% duty on imported power equipment after strong demand from local suppliers. Chinese firms want to set up facilities in India, but they want the import regime eased. They are also concerned about various obstacles, including restrictions on Chinese participation in tenders.

Chinese companies also want a more liberal visa regime. India allows only highly skilled Chinese technicians at power plants that have to justify the requirement at site.

State-run companies like NTPC and electricity boards are seeking only locally made equipment for their power plants, putting another obstacle for Chinese companies.



Mitsubishi wants to increase stake in Linc Pens

Japan's largest writing instrument maker, Mitsubishi, wants to scale up its shareholding in the Indian company Linc Pens where it acquired up a little over 13% stake in early 2012. The Japanese company is extremely eager to invest in its Indian partner since it has identified India as its main growth market, with growth rate slowing down in Europe and the US.

The company also wants to start local production in the next 6-12 months. Mitsubishi will initially use the Linc Pen facilities for production but may later set-up its own factory.

Mitsubishi operates in the value-added segment with pens priced in Rs. 50- 100 segment, compared to the mass market where Linc operates in sub-Rs. 30 segment. Linc has been the exclusive sales partner for Mitsubishi pens in India for last 20 years till the Japanese company picked up a stake in March 2012.

Sharp can't use non-compete fee to lower tax outgo: Delhi High Court

A company cannot use non-compete fee to lower its tax outgo, according to a recent order by the Delhi High Court

The court accepted the income-tax department's argument that non-compete fees are in the nature of capital expenditure and therefore, not entitled to deduction.

The order was given on an appeal filed by the taxpayer company, Sharp Business System, a joint venture between Sharp Corporation, Japan and L&T India.

Sharp Business system is a company that imports, markets and sells electronic office products in India. The taxpayer company paid Rs 3 crore to L&T as non-compete fees to stay out of the same business for seven years. During the relevant year, the taxpayer company claimed deduction for the entire amount of non-compete fee.

The taxpayer company argued that it was entitled to deduction as the non-compete terms did not alter the fixed capital of the company, though it facilitated the business and therefore, ought to be treated as revenue expenditure. The assessing officer, however, disallowed the deduction on account of the non-compete fees on the ground that the non-compete terms provided a capital advantage of enduring nature to the taxpayer company.

The first appellate authority, Commissioner Income tax (Appeal), and the second appellate authority, Income tax Appellate Tribunal (ITAT), gave decisions in favour of the department.

Following this, the taxpayer company moved the high court. The income-tax department argued that the non-compete fee had ensured that L&T stayed out of business for seven years. Consequently, the company's business was not threatened by competition from L&T, its erstwhile partner for seven years. Therefore, the purpose of paying non-compete fees was not restricted to facilitating business as was claimed by the taxpayer company.

Further, there is a need to see whether the advantage of paying non-compete fees was short term or long term. In this case, the non-compete fees were paid to stay out of business for seven years. Therefore, the non-compete fee was in the nature of capital expenditure.

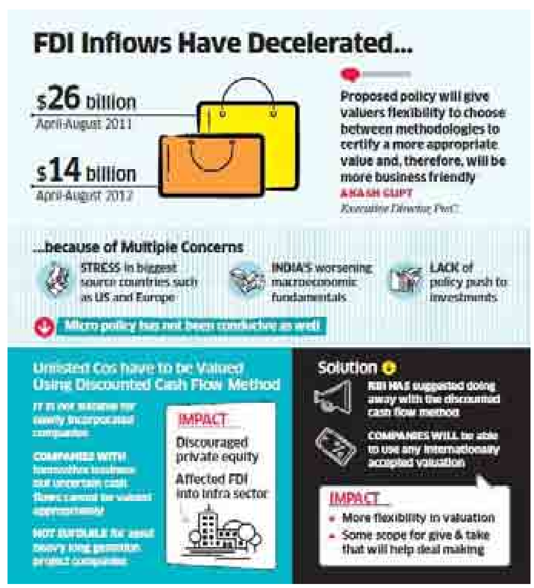
Government, RBI for flexibility in valuation norms of unlisted Indian firms

The government and the Reserve Bank of India (RBI) are considering relaxation in the stiff valuation norms governing foreign direct investment in unlisted Indian firms, a move that could potentially boost private equity flows.

The proposal is among measures being considered to boost capital flows to fund India's current account deficit that is weakening the currency.

The RBI had favoured inclusion of any internationally accepted valuation method in place of the existing discounted cash flow method prescribed in the policy in 2010 (Indian investors cannot sell shares in unlisted companies at less than the value determined by the discounted cash flow method).

The central bank now feels that the current situation warrants a relaxation in the pricing restrictions it had specified in the Foreign Exchange Management Act to curb speculative inflows through price manipulations.



Third parties to check labour safety norms

To free construction firms from the clutches of inspector raj, the government plans to allow independent accredited professionals to check their compliance with labour safety norms. The new system, apart from curbing corruption and harassment, is also expected to boost workers' safety in the high-risk sector that directly employs over 30 million Indians. Currently, around 600 labour safety inspectors appointed by state governments are responsible for ensuring safety at over 300,000 construction sites across the country.

The rate of fatal accidents among construction workers is five times higher than among manufacturing sector workers, and 165 out of every 1,000 workers get injured at the workplace, making it the riskiest sector to work in. The government has asked the Quality Council of India to develop a programme for accredited professionals who can go to building sites where inspectors are unable to go, and regularly certify their compliance with safety norms.

Though the powers of regulation will remain with the state government, the use of third party professionals is expected to help red-flag genuine safety risks without causing harassment to the industry. Apart from the risk of fatal accidents, workers also face health hazards from the materials they work with such as asbestosis, silicosis and lead poisoning. Construction workers are the most vulnerable segment of the workforce across the world, as their work is largely unorganised in nature. Till 1996, India did not have any laws for workers' protection and the implementation of the Building and Other Construction Workers Act introduced that year has been patchy.

India to grow 6.5% in 2013: Goldman Sachs

India's economy could gather pace in 2013, putting behind a dismal year, according to Goldman Sachs.

Goldman Sachs said that the Indian economy is expected to expand 6.5% in 2013 thanks to an improvement in external demand and pick-up in reforms, and further accelerate to 7.2% in 2014. Its upbeat assessment was based on "easing financial conditions, in part driven by some reduction in policy rates, a continuation of reforms boosting confidence, and a normal agricultural crop."

The investment bank pegged 2012 growth at 5.4% and listed a number of measures to accelerate the economy.

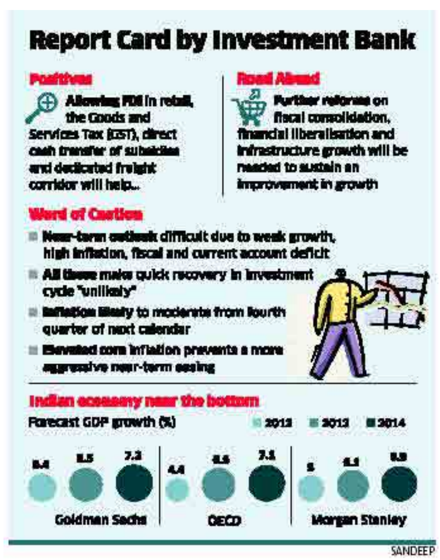
"While allowing FDI in retail, the Goods and Services Tax, direct cash transfer of subsidies, and dedicated freight corridor will help, we believe further reforms on fiscal consolidation, financial liberalisation and infrastructure growth will be needed to sustain an improvement in trend growth," the note said.

However, the investment bank warned that the near-term outlook was "difficult" because of weak growth, high inflation, and the twin deficits – fiscal and current account – that makes a quick recovery in investment cycle "unlikely".

It expects inflation to moderate only from the fourth quarter of 2013 and warns that "elevated core inflation prevents a more aggressive near-term easing".

Goldman expects the Reserve Bank of India to cut policy rates by 50 bp in each of 2013, 2014 and 2015.

The OECD had also, in its bi-annual assessment, said that India's economy will recover to 6.5% in 2013 and 7.1% in 2014, though the two estimates may not be strictly comparable because of differences in methodology. India's official estimates peg growth in the current financial year in the range of 5.5% - 6% while RBI has pegged GDP expansion at 5.8% in the financial year 2012-13.



Wal-Mart to apply US anti-bribery laws to Indian operations

Wal-Mart is demanding anti-bribery undertakings from landlords of its Indian stores along with rights to inspect their books, the latest blowback from its global anti-bribery campaign that has put an unflattering spotlight on its fledgling India operations.

The US supermarket group's India venture, Bharti Wal-Mart, now at the centre of a raucous political debate on the entry of foreign firms into the supermarkets sector, wants landlords of all its stores in India, including Easyday stores operated by partner Bharti Enterprises, to give undertakings saying they are not party to and will not indulge in corrupt practices, effectively bringing them under the ambit of US anti-bribery laws.

Landlords are not only expected to certify that they have not paid any bribes while building the premises, but also give undertakings that give Bharti Wal-Mart powers to periodically check their books and other documents.

Bharti Wal-Mart has engaged KPMG to spearhead its anti-corruption campaign in India, and the consulting firm has undertaken programmes to sensitise employees about FCPA. It is also tasked with certifying vendors that are fit to do business with the retailer.

The US firm's demands are unlikely to go down too well with its property partners, most of whom could find it hard to give such undertakings because of the nature of doing business in India.

Developers have to obtain more than a dozen approvals from assorted government offices before building and operating malls in India.

These range from design and usage of the property to fire and safety clearances to environmental approvals, many of which are provided by agencies and departments that many view as hotbeds of corruption.

Kotak Capital in tie-up with Sumitomo for M&A

Kotak Mahindra Capital, investment banking arm of Kotak Mahindra Bank, has entered into an exclusive strategic alliance with Sumitomo Mitsui Banking Corporation (SMBC) and SMBC Nikko Securities for cross-border merger and acquisition (M&A) advisory services between India and Japan.

SMBC acquired a 4.5 per cent stake in Kotak Mahindra Bank in 2010, through preferential allotment of shares worth Rs 1,366 crore. Kotak and SMBC had also entered an agreement for business cooperation across various businesses of mutual interest, subject to relevant regulations. Since then, both have collaborated in and are working on a number of areas such as trade, finance, treasury products, corporate customer referrals, asset management and alternate assets.

The cooperation has now been extended to investment banking to complete the bouquet of offerings for companies in India and Japan.

With the new agreement, Kotak, SMBC and SMBC Nikko Securities aim to play an active role in the growing cross-border M&A activity between India and Japan by leveraging their combined advisory capability, knowledge of local markets and long-standing corporate relationships.

In calendar 2012, Japan ranked among the top three acquiring nations into India, and three of the 10 largest M&A transactions involving India took place in the India-Japan corridor.

Hitachi, Panasonic to make India base to access Africa, Middle East

Hitachi and Panasonic plan to invest more than Rs 5,700 crore in India as they have identified the country as one of their biggest bets for growth and a base to expand in Africa and Middle East markets.

Hitachi, which held its first board of directors meeting outside Japan in its 102-year history in New Delhi in December, announced Rs 4,700-crore expansion plans that include building 5 manufacturing plants.

Japan's largest industrial power and electronics conglomerate has formulated a 'India business strategy 2015' plan to make the country one of its top markets and targets a three-fold jump in its India revenues to Rs 20,000 crore by 2015-16.

Panasonic has lined up more than Rs 1,000 crore investment in a new plant at Haryana and targets Rs 20,000-crore revenues by 2014-15. Panasonic wants to set up more such plants and become the country's largest appliances maker by 2018.

In August 2012, Sony Corp. President and CEO Kazuo Hirai came to India within months of taking charge and announced plans to increase investment in the market and expand sales by more than 30% from last year's $1.1-billion revenue (Rs 5,500 crore) to make India its fifth largest market.

Both Hitachi and Panasonic plan to make India their base to expand their business in Africa and the Middle East. Hitachi has named Hitachi India as its regional headquarters, making India a separate management area outside Japan. The other such areas are China, Southeast Asia, Europe, and the Americas.

Both Hitachi and Panasonic plan to pursue growth in India by localising development and production of their businesses and products, and focus on developing Indian talent. Hitachi plans to double the number of its employees in India to 13,000 by 2015, while Panasonic plans to add 3,500 more to the over 12,500 people on its present rolls.

Honda, Toyota developing India as a major parts export hub

Japanese automobile majors Honda Motor Company (HMC) and Toyota Motor Corporation (TMC) are looking at shaping up their domestic operations as major parts exporters after the introduction of India-specific models Brio and Etios, respectively, in the country.

While Honda Cars India (HCI) is expecting revenues from component exports to increase to Rs 471 crore this year on demand for small-car Brio parts in Thailand, Toyota will ship transmissions for the Etios and Liva to Brazil in January.

Quality and competitiveness are high in India. Apart from de-risking business, exports help in countering the impact of adverse forex fluctuations.

Honda exports engine and critical components for the Brio, Jazz and City to Argentina, Brazil, Indonesia, Malaysia, Japan, Philippines, Taiwan, Thailand and the United Kingdom. The company has a vendor base of 150 suppliers in India.

Toyota, too, which made the global debut of hatchback Liva and sedan Etios in India, will start supply of transmissions from Toyota Kirloskar Auto Parts (TKAP) to its Brazilian affiliate early next year. TKAP has invested Rs 500 crore to commission a gasoline engines' assembly facility and a transmissions production unit in Karnataka.

While the gasoline engine unit started operations in August this year, the transmissions production facility with an annual capacity of 240,000 units will be commissioned in January 2013.

TKAP already exports transmissions for multi-utility vehicles (MUV) Hilex and sports utility vehicle (SUV) Fortuner to manufacturing facilities in Thailand and Argentina

Environment Ministry eases SEZ clearance norms

A recent order issued by the environment ministry states that the environmental clearance process for SEZs will now follow the system laid out for

National Industrial and Manufacturing Zones under the National Manufacturing Policy 2011.

Under the new system, the central and state governments will delegate power to the State Pollution Control Board official posted in the zone to implement environmental laws and regulations. The ministry has exempted individual units from meeting the requirement of public hearing in cases where the entire SEZ has gone through the public hearing process.

In practice, clearance is mandatory for 30 notified industries. These include petroleum refineries, chemical fertilisers, pesticides, petrochemical complexes, bulk drugs and pharmaceuticals, oil exploration, synthetic rubber, distilleries, raw skins and hides, dyes, cement, foundries and electro-plating.

However, if new units in the SEZ project area are not of the type for which clearance was given in the first place, then a fresh public hearing would be required for the unit. With a view to improve industrial growth, the ministry has said that both the central and state governments would issue "facilitative instructions and guidelines" from time to time.

While these instructions will be aimed at promotion of SEZs these will also seek to safeguard environmental integrity. The Environmental Impact Assessment Notification of September 2006 stipulates a time limit of 60 days from the day the complete application has been submitted to set out the terms of reference for a project. It also sets out 105 days for appraisal of the project and a decision.

The environment ministry is seen by industry as a big hurdle in project execution as many large investment proposals have been blocked because of issues with the ministry.

Lok Sabha passes Companies Bill

The Lok Sabha has passed a comprehensive law to amend the Companies Bill that will now require corporates *inter alia* to set aside funds for social initiatives and strengthen the framework for independent directors.

The Companies Bill, 2011 will strengthen the Serious Fraud Investigation Office (SFIO) to investigate wrongdoing of companies. The Bill amends the Companies Act, 1956.

The Bill proposes that profit-making companies that meet certain conditions will need to set aside 2% of their profits for corporate social responsibility (CSR).Companies that are unable to adequately spend as provided in the law would have to disclose the reasons in their annual accounts. It is expected that companies shall voluntarily undertake CSR activities and not fear that the legislation amounts to return of "inspector raj".

The amended legislation says an auditor cannot auditor more than 20 companies and also clearly spells out the criminal liability of auditors. Auditors can be appointed for five years but the appointment has to be ratified every year. The Bill introduces the concept of class action suits, strengthens the framework for independent directors that makes them more accountable but adequately shields them from management wrongdoings.

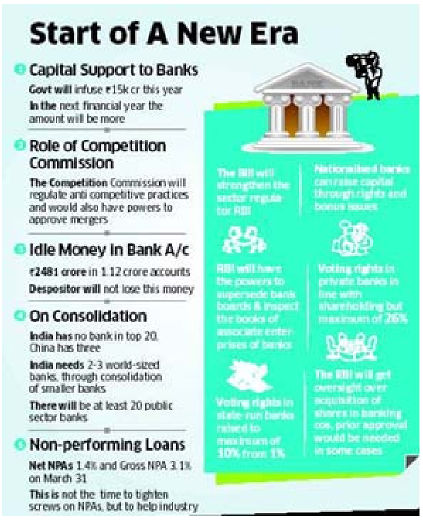
Pilot said that under the new legislation, companies will be encouraged to create an employees' welfare fund. The law provides that remuneration of a director of a company should not be more than 5% of the net profit. The bill, with 470 clauses, seeks to make CSR spending compulsory for companies that meet certain criteria. Firms having Rs. 5 crore or more profits in the last three years have to spend on CSR activities.

RBI gets power to issue new bank licences

The Lok Sabha has approved a crucial Bill which could eventually see many of India's largest business houses return to banking, a sector from which they evicted in 1969 after the then Prime Minister Indira Gandhi nationalised banks. The Banking Laws (Amendment) Bill brings about changes in three laws, giving the Reserve Bank of India more power to regulate banks, raising voting rights for investors in banks and allowing state-owned banks to raise capital through bonus and rights issues. The Bill was passed by a voice vote after the government decided to drop a controversial proposal to allow banks to trade in commodities futures, clearing the way for the RBI to begin the process of issuing new licences.

If approved by the Rajya Sabha, which looks likely as the Congress and BJP are on the same page, the

Bill will lift the voting right of investors in private sector banks, subject to a maximum of 26%, while in the case of state-run banks the limit will rise to 10%. Further, the RBI will have the power to supersede the boards of banks and to inspect the books of associates of banks. The RBI had made it clear that it would not issue licenses unless it gained these powers.



M&M buys out truck JV partner Navistar's stake

India's largest utility vehicle maker Mahindra & Mahindra has bought out its US joint venture partner Navistar Groups 49% stake in the groups struggling commercial vehicle joint ventures Mahindra Navistar Automotives (MNAL) and Mahindra Navistar Engines (MNEPL) for.175 crore or $33 billion. Following the purchase, both MNAL and MNEPL would become wholly-owned subsidiaries of Mahindra & Mahindra.

The sale requires regulatory approval in India, and is subject to the conclusion of definitive agreements. It is expected to be completed in early 2013. The agreement allows Navistar to continue sourcing components from India, while Mahindra would continue to provide engineering services to Navistar. Navistar group would continue to support M&M through a licence agreement and extend necessary support to MNAL and MNEPL for the purposes of business continuity. US truck maker Navistar has been facing regulatory challenges and a takeover threat from a clutch of private equity investors and global majors like Volkswagen and Fiat in the domestic market and therefore it wants all its capital invested in the domestic market.

Mahindra Navistar has so far invested over Rs. 800 crore on new products and engines for the Indian market and there was an additional Rs. 250-crore investment lined up for the next 12-18 months. The truck joint venture, however, has been operating at very low utilisation levels as the truck market remains incredibly hard to break into for new players. As a result, the two joint ventures (assembly and engine) made a loss of Rs. 370 crore in FY12, compared to Rs. 240 crore in FY11.

Ceiling for FDI in ARCs raised to 74% from 49%

The government has increased the ceiling for foreign direct investment (FDI) in asset reconstruction companies (ARCs) to 74 per cent from 49 per cent. This is, however, subject to the condition that no sponsor should hold more than 50 per cent of the shareholding in an ARC, either by way of FDI or by routing through a foreign institutional investor (FII).

Foreign investment in ARCs will have to comply with the FDI norms in terms of entry route conditionality and sectoral caps.

The 74 per cent FDI limit in ARCs will be the combined limit of FDI and FII. With this, the prohibition on investment by FIIs in ARCs will be removed.

However, the total shareholding of an individual FII should not exceed 10 per cent of its total paid-up capital, according to the release.

The Reserve Bank of India and the Securities and Exchange Board of India will issue relevant notifications.

Tesco sets up sourcing arm to buy food from India

Tesco Plc has set up an Indian subsidiary to buy fresh and processed foods from the country for its global stores, in a move that could help the world's third largest retailer trim costs and develop local expertise before opening shops here.

Fruits, marine, rice would be a few of the things the company would be exploring. It already does

around 7% of its international sourcing from India.
Tesco has been sourcing general merchandise and apparel from India for almost a decade through its international sourcing company's offices in Bangalore and New Delhi that act like liaison centres. This is the first instance of Tesco opening a sourcing arm in the country.

Having a local company will help Tesco build back-end operations and negotiation clout among suppliers, which will be handy when it decides to enter the country's estimated $400-billion, or about Rs. 22 lakh crore, retail market.

The Indian Parliament has given the go-ahead to foreign supermarkets to invest in India, paving the way for global companies such as Wal-Mart, Carrefour and Tesco to operate retail stores in partnership with Indian companies.

Tesco in India has a franchisee agreement with Tata's retailing arm Trent Ltd to provide retail expertise and supplies for the latter's Star Bazaar hypermarket chain.

While India has for long allowed 100% overseas ownerships in wholesale companies that are only allowed to sell to retailers and businesses, Tesco hasn't opened any such store unlike its global rivals such as Wal-Mart and Carrefour.

Government set to remove last hurdle for IKEA

The Foreign Investment Promotion Board (FIPB) is set to review its conditional approval given to IKEA on November 20. It is likely to permit the company to operate cafés and restaurants in India, along with its furniture stores.

FIPB had earlier recommended the core furniture business of IKEA for consideration of the Cabinet Committee on Economic Affairs (CCEA), after striking off the chain's request for cafés/restaurants, besides 18 other product categories of the 50 it had proposed for India. Even as IKEA had sought approval to invest Rs 10,500 crore, FIPB nod came for just Rs 4,500 crore. But in a "review", FIPB will take up the IKEA case again, based on a "request of the Department of Industrial Policy & Promotion", according to the board's agenda note.

Ingka Holding Overseas, the applicant company for IKEA's investment proposal, recently sought government clarification and approval on the mandatory categories of products it could sell in India to make the IKEA concept possible. The company has conveyed to the Indian government that it was not ready to compromise on the "concept" it represented across the world, primarily referring to its signature cafés, restaurants and meat balls sold there. IKEA, which operates over 300 stores in 40 countries, does not have outlets without the cafés and restaurants in any market across the world.

If FIPB revises its recommendation on IKEA, by approving its cafés and restaurants, this will be the second instance of the government paying heed to the company's concerns. Earlier in 2012, the government had relaxed the single-brand retail FDI policy, by removing the condition of 30 per cent mandatory sourcing from small and medium enterprises. The move had come after IKEA told the government it was not feasible to follow the single-brand FDI norms with such rigid sourcing conditions.

While the FDI limit for single-brand retail companies was increased to 100 per cent from 51 per cent in 2011, the multi-brand retail sector was opened up for 51 per cent foreign investment in September 2012. No investment proposal has come from any multi-brand retail chain yet.

In ministry's clean-up exercise, onus for verification to be on CAs

In a massive clean-up exercise to address the age-old problem of shell companies and directors with questionable credentials, the ministry of corporate affairs (MCA) has tightened the rules governing the registration of addresses and appointment of directors. The exercise has been set off through a series of notifications amending key rules, released in December and followed up with newspaper advertisements.

The ministry has amended Form 18, the standard filing for details of the registered office or any change in it. Under the new form, the onus will be on the chartered accountant (CA), cost accountant or company secretary (CS) to physically verify the filing and check the existence of a firm.

Under the old form, the verifying professionals had to give a certificate that they had verified the address from the "books of account and records" of a company. A new clause has been added where the CA/CS has to declare: "I further certify I have personally visited the new address, verified it and I am of the opinion the premises are indeed at the disposal of the applicant company."

Further, both the company official filing the form (managing director, manager or the company secretary) and the CA/CS verifying it are required to give identification details such as PAN number/Director Identification number (DIN) or membership numbers.

In addition to the complete address of the registered office and the address of the police station under which it falls (the original requirements), companies will also have to produce the proof of address, mandatory under the new Form 18.

The practice of using hundreds of shell firms with the same addresses, some fictitious, as holding company and subsidiaries has lately become common. Many promoters also follow the practice of appointing distant relatives or personal staff as directors, thereby keeping control without taking responsibility. Recent instances of such companies being used to route political payments and other corporate favours seem to have triggered the latest reforms.

If a firm does not own the premises or has taken it on lease, it has to produce further documentary evidence. If the registered office premises are owned by one of the directors of the company, a no-objection certificate from the director is required to be attached. If the premises are owned by any other entity, a proof that the company is permitted to use such an address needs to be filed, the amended Form 18 says.

Also, the Ministry has given firms six months to rectify any error or mistake in the key forms like Form 1 (for incorporation), Form 1A (for name) and Form 44 (registration form for a foreign company).

Further, through a separate notification, the ministry has also amended the form for DIN application. In addition to proof of identity and residence proof, persons appointed as directors will also need to be verified and certified, along with their photographs.

For retail, 'group company' to follow trade policy definition on sourcing norms

The government has decided to apply the foreign trade policy's definition of 'group company' for sourcing norms in the retail sector that prevent foreign cash-and-carry firms from selling more than a fourth of their goods to affiliated entities.

The foreign trade policy defines a 'group company' as an entity that directly or indirectly can exercise 26% or more of voting rights in the other enterprise or appoint more than 50% of board members.

The Department of Industrial Policy & Promotion (DIPP), which frames the foreign direct investment policy, had in 2010 introduced a regulation restricting cash-and-carry companies from selling more than 25% goods to 'group companies'. The stipulation was brought in to preclude indirect entry of foreigners in multi-brand retail, although earlier this year the sector was opened to FDI up to 51%.

DIPP, however, did not say in the policy what a 'group company' meant for this purpose, leading to ambiguity as the definition varies under different laws. Differences between the finance and commerce ministries over which definition should be adopted for the FDI policy didn't help matters either.

While the DIPP wanted a liberal definition covering only wholly owned subsidiaries, the finance ministry favoured a more stringent one given by RBI that included affiliate entities with more than 20% interest as 'group companies'. Both the ministries have now converged on the definition given in the foreign trade policy and the DIPP is expected to soon issue a clarification.

The government has in the past examined if Bharti Wal-Mart and Bharti Retail were 'group companies', but could not decide in the absence of a clear definition.

Bharti Wal-Mart had in 2011 sold nearly 60%of its merchandise to Bharti Retail. Bharti Wal-Mart is a 50:50 cash-and-carry joint venture between billionaire Sunil Mittal's Bharti Group and Wal-Mart.

Bharti Retail is the wholly owned retail arm of the Bharti Group and Wal-Mart has invested $100 million in the holding company of the retail arm through Compulsorily Convertible Debentures (CCDs). It is likely that Bharti Wal-Mart and Bharti Retail will not classify as 'group companies' under the definition.

The structures of ventures operating in the retail space will be analysed to see if they were in compliance. Industry wants the government to apply the definition prospectively to avoid confusion.

Clearing the Air

What Trade Policy Says

A 'group company' exercises 26% or more of voting rights in the other enterprise or appoints over 50% of board members

Why the New Law

DIPP restricted cash-&-carry cos from selling over 25% of goods to 'group firms', but didn't define it

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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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