

MAHESHWARI & CO.

ADVOCATES AND LEGAL CONSULTANTS

Monthly Newsletter

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❖ FDI inflows up by 259% in September 2008

The Foreign Direct Investment (FDI) equity inflows in the month of September, 2008 were US \$ 2.56 billion. This represents a growth of 259% over the same month in the previous year (during September, 2007, the FDI equity inflows were US \$ 713 million).

The FDI equity inflows during April-September 2008 have been US \$ 17.21 billion. This represents a growth of 137% over the previous year (FDI equity inflows during April-September 2007 were US \$ 7.25 billion).

The sectors attracting the highest FDI equity inflows during April to August, 2008 have been the services sector (US \$ 2.34 billion), construction activities including roads and highways (US \$ 1.64 billion), housing and real estate (US \$ 1.62 billion) and computer hardware and software (US \$ 1.36 billion).

The top investing countries in terms of FDI equity inflows during April to August, 2008 have been Mauritius (US \$ 5.27 billion), Singapore (US \$ 1.72 billion), USA (US \$ 1.15 billion) and Netherlands (US \$ 580 million).

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❖ Cabinet okays hike in Insurance FDI cap

The Government today (October 31, 2008) approved the comprehensive Insurance Bill, which seeks to raise Foreign Direct Investment cap in private sector to **49 per cent from 26 per cent**, and it would be tabled in the Parliament in December.

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The Union Cabinet gave its approval for introduction of the Insurance (Amendment) Bill, 2008 for amendment to Insurance Act 1938, General Insurance Business Act, 1972, and Insurance Regulatory and Development Act, 1999, in the Rajya Sabha on the basis of recommendations made by GoM.

The amendments will remove archaic and redundant provisions in the legislations and would incorporate certain provisions to provide IRDA with flexibility to discharge its functions effectively and efficiently.

❖ US court says no to biz process patenting

AUS FEDERAL court judgment on Thursday disallowing business method (or process) patenting, may have a direct impact on the ongoing debate over amendments to the Indian patents manual. The US judgment could help in interpreting whether business processes or software written in India can be patented or not.

While large IT players like Microsoft, IBM have given a thumbs up to the Bilski judgement, Indian companies like Infosys had been lobbying for patents on software systems and methods. A US federal court for appeals in Washington ruled against Bernard Bilski, who wanted to patent a method for managing weather-related risk through commodities trading. The court said that business methods (like Amazon.com Inc's one-click to buy goods on the Internet which was quashed later) cannot be patented.

Reacting to the judgement, Sun Microsystems's director, government strategy, India & South Asia, Jaijit Bhattacharya said that it was a positive move towards an appropriate interpretation of innovation and patentability of software. "It would allow a more open regime and would help in wider access to computing technologies," he said.

Companies like IBM, Microsoft lobbied against business method patenting. But companies like Accenture, Royal Philips Electronics NV, Bain Capital LC were asking for more protection for business method patenting. In contrast, companies like Infosys have been lobbying for business method patenting. Pinaki Ghosh, intellectual property head of Infosys has been quoted publicly saying that software systems as well methods should be patented. Infosys Technologies' officials were unavailable for comment. However, the ruling does not significantly impact large Indian IT services companies as none are majorly into product development and patenting, at least at present. India's largest IT services company TCS said that it's reviewing its stand on software patenting in the light of the current judgement.

"The ideas and frameworks for business processes should not be patentable but the content written within those frameworks should be allowed to be copyrighted. Indian law is also within boundaries of the US court judgement," said Nasscom president Som Mittal. There are few world famous Indian IT products – like Flexcube and Finacle. But the judgement may affect smaller companies which want to innovate but were earlier being strangled by large corporations on account of patenting of a process.

The judgement may also be used in the larger debate on software patenting in the country. Venkatesh Hariharan, founding member of Knowledge Commons, a NGO said: "Business method patents are seven times more likely to be litigated as compared to other patents, because it's difficult to determine the boundaries of abstract patents categories like business method and software patents. Indian law is against software patents but in practice, several software and business method patents have been granted and these will need to be weeded out to prevent future litigation. Overall, this is a good decision because it will reduce the risk of litigation that hangs over users and developers of software." Knowledge Commons is lobbying for 'no patents on software in India' if it (the software) is not tied to a specific hardware.

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According to section 3(k) of the Indian Patent Act:

“A mathematical or business method or a computer programme per se or algorithms is not patentable.” But software in conjunction with hardware is patentable in accordance with Indian law which is giving rise to ambiguity. The Bilski judgement may however be used as a reference for drafting the amendments to the Indian Patents Manual and will also help in interpretation of the Indian Patent Act. While rulings over the years have used different methods to determine if a process is patentable, the Federal Court ruling said the sole analysis should be the “machine-or-transformation” test – which requires showing that the claimed invention is either tied to a particular machine or that it transforms an “article” (such as a substance or data).

❖ LIC picks up Rs 15,000-cr NCDs in six months.

LIFE Insurance Corporation (LIC) has come to the rescue of corporates scrambling to raise funds. The public sector life insurer has invested around Rs 15,000 crore in the past six months (this financial year) in non-convertible debentures (NCDs) issued by companies. Its clients range from Tata and Birla group companies to L&T and Mahindra & Mahindra.

According to sources close to the development, LIC has invested in over 50 companies in the recent past. One of the key criteria, though, is the company should have a minimum “AA” rating from one of the four approved credit rating agencies in the country. Last month, the country’s largest life insurer invested close to Rs 2,200 crore in NCDs issued by four Tata Group companies, including Tata Steel and Tata Sons, the sources said. However, ET could not verify this with the companies concerned.

NCDs are structured debt products that cannot be converted into equity shares of the issuing company, as opposed to convertible debentures. They usually earn a higher interest rate than convertible debentures. LIC’s investment in NCDs of these corporate will earn it an interest of about 11% (as per current market interest rates) for 5-10 years.

- 🚩 *Three key Tata Group companies—Tata Motors, Tata Investment Corporation and Indian Hotels.*
- 🚩 *Corporates issue non convertible debentures largely to meet their working capital requirements as well as long-term capital expenditure plans.*
- 🚩 *A lot of companies have been increasingly using the debenture route to raise debt as funding through the ECB route has seen a big drop, said ICICI Securities head of capital markets Anil Ladha.*

“In this financial year, our investments in NCDs have seen a marked improvement because of the high interest we are getting...Also, we want a mix of both equity and debt in our portfolio,” said a senior executive of LIC. “A lot of companies have been approaching us in recent months,” he added. LIC is relatively flush with funds, at a time when both the Indian and world markets have been afflicted by a severe credit crunch.

Corporate issue non-convertible debentures largely to meet their working capital requirements as well as long-term capital expenditure plans. As far as debentures are concerned, insurance companies and provident funds are a substantial source of funding for companies. Insurance

companies largely invest in tradeable securities like debentures and bonds.

Last year, external commercial borrowing (ECB) was the favourite fundraising route for corporates. However, this year, corporates haven’t tapped this route due to the ongoing financial turmoil. “A lot of companies have been increasingly using the debenture route to raise debt as funding through the ECB route has seen a big drop,” said ICICI Securities head of capital markets Anil Ladha. In a volatile market, other equity fund-raising options such as initial public offers, qualified institutional placements and private equity have dried up. With the global financial crisis, investors have increasingly become cautious towards these equity products.

Recently, three key Tata Group companies—Tata Motors, Tata Investment Corporation and Indian

Hotels—received a tepid response to their rights issues from institutional and retail investors and eventually had to be bailed out by the promoters.

❖ 40 FDI Proposals Approved

Based on the recommendations of Foreign Investment Promotion Board (FIPB) in its meeting held on 24th October, 2008, Finance Minister, Shri P. Chidambaram has approved 40 Proposals of Foreign Direct Investment amounting to Rs. 1498.51 Crore approximately.

The proposals relate to Ministries/Departments, namely, Commerce, Economic Affairs, Industrial Policy & Promotion, Information & Broadcasting, Power, Urban Development, Information Technology, Telecommunication, Financial Services and Road Transport & Highways.

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Feed Back:

Your suggestions and contributions are of great importance to us. Please give us your FEEDBACK, so that this Bulletin may be made of real use to you. Please write to us with your views and contributions at: info@maheshwariandco.com

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*The editors of this report can be reached at **MAHESHWARI & CO., Advocates and Legal Consultants, B – 7/1, Safdarjung Enclave Extension., New Delhi –110 029, Tel: 91-11-26101906,09910066777 Fax: 91-11-26171201.***

E.mail: info@maheshwariandco.com