

❖ Government moots FDI in investment cos.




PERSISTING with its efforts to boost foreign investment flows through policy liberalization, the government is likely to allow foreign direct investment (FDI) in investment companies. The finance ministry and the Reserve Bank are of the view that foreign investment should be allowed in investment companies since they are similar to holding companies. Investment companies invest money in other companies, but do not implement projects on their own.

Since FDI is allowed in holding companies with permission from the Foreign Investment Promotion Board (FIPB), it is felt that the same facility should be provided to investment firms which may invest foreign funds in downstream businesses. While holding companies invest in group companies, investment firms pump money into businesses other than their own.

FM, RBI support move

Usually, FIPB provides approvals for FDI in 'operating companies' that implement projects of their own.

The issue came up for discussion in the context of a proposal from the Tata Group for bringing in FDI into an investment company owned by it. The FIPB first deferred it and then recommended that it should be rejected since investment companies do not figure in the list of 18 NBFC activities in which foreign investment is allowed. The rejection was recommended on technical grounds though deliberations between the department of industrial policy & promotion (DIPP), the finance ministry and the Reserve Bank highlighted the intention to allow foreign investment in such firms.

-  **Govt. proposes: allow FDI in investment cos.**
-  **FIPB not in favour: might reconsider the proposal**
-  **Approval from FIPB and minimum capital norms would be made mandatory for FDI in investment companies**

It is understood that finance minister P Chidambaram has asked the FIPB to reconsider the proposal from Tata Investment Corporation in view of the emerging situation.

Highly-placed government sources said on condition of anonymity that the board is likely to discuss the proposal once again in the backdrop of the government's intention to boost foreign investment flows. Approval from FIPB and minimum capital norms would be made mandatory for FDI in investment companies since similar norms are applicable for other NBFC activities, the sources added.

The sources said FIPB can recommend approval of the proposal with the perspective that investment companies would be added to the list of NBFC activities in which foreign investment is allowed. Waiting for the list to be modified would be a time consuming exercise since it would require approval from the Union Cabinet which was the authority that approved the list.

Investment companies do not figure in the list of 18 NBFC activities in which foreign investment is allowed. Non-banking financial services companies (NBFCs), also known as residuary non-banking companies, are



firms engaged in the business of loans, purchase of securities, leasing, hire-purchase, insurance business and chit business. Unlike banks, they cannot accept demand deposits -- funds deposited at a depository institution that are payable on demand, immediately or within a very short period like a savings bank account.

The Tata Investment Company proposal has generated significant interest since it is leading to rationalization of the FDI policy for financial services, opening up yet another avenue for FDI.

❖ **Duty-free shops need local Customs clearance too**

THE finance ministry has clarified that companies that plan duty-free shops in the country will need to take a separate clearance from local Customs authorities, once their plan is cleared by the Foreign Investment Promotion Board (FIPB).

The FIPB's approval is only for the purpose of permitting foreign investment and any such approval does not automatically confer a right on the applicant to open a duty-free shop at any port, an official said. Requisite clearances from the Customs authorities as envisaged in the Customs Act, 1962 are mandatory, the official said.

 FIPB approval only for foreign investment; does not confer a right to open a duty-free shop at any port
 CBEC sets guidelines for duty-free shops in Customs area

At present, duty-free shops can only be set up in Customs areas and the Central Board of Excise and Customs has laid down guidelines for it. The board has asked field officials to ensure proper implementation of the conditions, restrictions and guidelines before a licence is granted for setting up a duty-free shop. This would be applicable even in cases where FIPB has given its go-ahead to the proposal.

The official said FIPB considers many proposals for bringing in FDI (foreign direct investment) which are considered in totality. The recommendation of FIPB in respect of these proposals is only for foreign financial and technical collaboration and keeping in view the sectoral policy requirements. If the approval is for an industry which requires a licence, then that has to be applied for separately by the applicant company, he explained.

Similarly, the official explained that a company that is planning to set up duty-free shops receives FIPB nod only to bring in investment into the country and the body does not go into the details like the location or the number of shops. For setting up these shops in Customs area, it will have to take approval in accordance with the policy laid out by the Department of Industrial Policy and Promotion, he said.

❖ **SEBI goes the distance to infuse market confidence**




WITH stock markets plummeting and most regulators imposing harsh measures like banning short selling, SEBI has once again (after relaxing restrictions on participatory notes) attempted to walk the tightrope for discouraging further selling not by imposing restrictions, but by encouraging buying on bourses by relaxing the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the "Takeover Code") to extend creeping acquisition limit beyond 55%, if done on the floor of the stock exchange.

SEBI recently amended Regulation 11(2) of the Takeover Code to do away with public announcement requirements for consolidation of shareholding through creeping acquisition (including passive acquisition by way of buyback) up to 5% by persons holding 55% and above, but below 75% shares of the target company ("Target"), provided the acquisition is by way of open-market purchases in the normal segment, and not by way of bulk/ block/ negotiated deal, or through preferential allotment and post-acquisition shareholding of the acquirer does not increase beyond 75%. Prior to the amendments, an acquirer had to make a public announcement for even acquisition of one share if his shareholding in the target was 55% or more. Though this

amendment provides leeway to promoters to gain special majority (75% shareholding) over the target, SEBI has however, tried to protect retail investors by subjecting such creeping acquisitions exclusively to open-market purchases.

While SEBI's efforts are indeed commendable, the amendments leave certain scope for confusion and interpretation. The most critical ambiguity in the amendments perhaps is not to clarify whether the 5% acquisition limit stipulated in Regulation 11(2) is applicable for each financial year, or is only a one-time affair. In fact, on account of the above ambiguity, though a little far-fetched, it is possible to interpret Regulation 11 (2) to imply that a person holding more than 55% shares can go on acquiring shares of the target by open market purchases in less than 5% tranches multiple times in a year. However, in light of the spirit of the Takeover Code and more particularly Regulation 11(1), it appears likely that the market regulator intended to apply such 5% limit each financial year.

Having said that, there are also views that SEBI probably wants to permit such creeping acquisitions beyond 55% only once in the lifetime of the target, and any further acquisitions whether in the same year, or in the subsequent years should mandate a public announcement. This view is not entirely without foundation as the amendments were introduced as an aggressive measure to bolster the bearish stock market, and it appears likely that SEBI would like to regress to a more cautious position as and when the markets gain momentum. In fact, earlier this year, the finance ministry was contemplating steps to make 25% minimum public shareholding a uniformity across the board for listed companies, but decided against it, apprehending it might encourage further selling activity by promoters and disappoint an already distressed stock market.

-  SEBI relaxes the Takeover Code
-  Creeping acquisition limit extended below 55%
-  Amendments leave room for confusion and interpretation

Another aspect of the amendments, which encourages debate, is the application of Regulation 11(2) to non-promoters due to buyback, as the amendments obligate even a non-promoter shareholder to make a public announcement for increase in shareholding not intended by him. In fact, the amendments are even more disadvantageous to promoters if their shareholding increases by more than 5% due to an open market buyback, as they will be required to make a public announcement even when the law prohibits them from participating in such buybacks.

Finally, the clarification restricting shareholding consolidation beyond 75% leaves a room for interpretation whether the 75% threshold will stand modified to 90% in case of companies which are required to have a minimum public shareholding of only 10%. In fact, had the amendments not stipulated the 75% limit, it would have been only natural to read the 75% threshold in conjunction with the earlier proviso to Regulation 11(2), which provides that the 75% threshold will stand modified to 90% in cases where listing norms permit minimum public shareholding of 10%.

❖ Change in de-listing norms proposed: Promoters to buy 50% of public stake for delisting

PROMOTERS of listed Indian companies may have to acquire at least half the public shareholding in their firms to become eligible for delisting, going by a proposal being considered by capital markets regulator SEBI.

The proposed norms for delisting by companies, which are expected to be approved by the regulator shortly and then notified, will mean that promoters will have to buy at least half the non-promoter holding, keeping the threshold limit of 90% intact. The rules now in vogue allow a company to opt out from listing its shares on an exchange or delist if promoters acquire 90% of the share capital of the company. The new regulations being considered effectively implies that a promoter with a shareholding of over 80% will have to not just acquire another 10% to delist shares but an additional half of the remaining public holding after the 90% threshold limit. In other words, once the promoter has acquired control of the 90% of the share capital of a company, he will have to still buy out 5% of the remaining 10% public shareholding.

- ✚ To de-list promoters to buy additional 5% in addition to 90% of the total share capital
- ✚ The additional 5% is to be out of Public shareholding.

However, for promoters holding up to 80%, the new rule will not make much of a change from the existing delisting rule, while those holding more than 80% will have to buy more shares to abide by the new rule. The new rules will, however, retain the two crucial criteria of the existing regulations – the minimum threshold level for opting out of listing on an exchange will continue to be 90% promoter holding and the price discovery through a reverse book building mechanism.

“The new delisting norms will be introduced very soon. We have sent the new proposed delisting norms to the law ministry for approval, which is expected to come shortly,” said a top finance ministry official. According to sources, under the new rules, the acquisition of shares by promoters for their companies to qualify for delisting is likely to hinge on their shareholding levels. Incidentally, this will ensure that more shares will have to be obtained from public shareholders before delisting. SEBI has also decided to retain the present reverse book building exercise, rejecting an alternative price mechanism based on a fair value determined by a rating agency plus a premium of 25%.

The reverse book building method is followed only in India. Reverse book building allows shareholders to tender their shares at a price of their choice while providing the acquirer the freedom to accept or reject the offer. Once the reverse book building process is completed, the final price is determined as the price at which the maximum shares are tendered. According to the listing agreement, all companies are required to maintain a public holding of 25% for continuous listing. However, some companies have been allowed to maintain a public holding of minimum 10% if their market capitalization is more than Rs 1,000 crore and their share capital is more than 2 crore shares or such companies that have diluted less than 25% of their equity at the time of their IPO. Under the current rules, the minimum promoter shareholding threshold for delisting a company is 90% and 75%.

Some companies which got recently de-listed are Rayban, Syngenta and Panasonic AVC Network. SEBI is also likely to allow easy delisting norms for small companies. This will enable them to get listed on the regional stock exchange, whereby they can get into bilateral agreements with public shareholders to fix the delisting price of the shares. “It will provide more clarity in the exact delisting threshold for a company compared to the current norms,” said Ripplewave Equity CEO Mehul Shah.

❖ BSE may sell 10% each to Deutsche, Singapore Stock Exchanges

AFTER announcing a liberal bonus offering to its shareholders, the Bombay Stock Exchange (BSE) is considering to offer an additional stake of up to 10% each to two of its strategic investors – Singapore Stock Exchange and Deutsche Bourse. The move is aimed at ensuring a better price discovery ahead of a planned listing by the Asia’s oldest exchange.

According to investing banking sources, BSE may approve a proposal to offer an additional stake of 10% each to both Singapore Stock Exchange and Deutsche Bourse. Both these stock exchanges now hold 5% stake each in BSE – offered to them last year as part of the demutualisation process kicked off by BSE.

- ✚ Proposal to sell additional 10% stake to Singapore Stock Exchange and Detusche Bourse.
- ✚ Currently each holds 5% holding in the BSE
- ✚ Plans to offer board seats to the two bourses

BSE has approached financial sector regulators for offering additional stakes to both its strategic investors. Securities market regulator SEBI recently raised the equity holding limit in stock exchanges by anchor or strategic investors to 15% from 5%. Only a select band of investors, such as stock exchanges, depositories, clearing corporations, banks and insurance companies, will be allowed to raise their equity holding limit.

BSE is now waiting for SEBI to spell out its policy on self-listing as it wants to go public and get its shares listed on its own exchange as well as on the National Stock Exchange (NSE). However, the market regulator is yet to take a view on the listing policy for stock exchanges.

Some brokers believe it's a positive move. "It would help in price discovery before the shares are listed. Strategic partners would be keen on raising their stakes given the long-term nature of their investments in the exchange," said a broker shareholder, who did not want to be identified.

As part of the corporatisation and demutualisation scheme, BSE offered 5% of its equity to Deutsche Bourse and Singapore Exchange at Rs 5,200 per share. BSE is also planning to offer board seats to both these investors in an effort to ensure that the bourse is run more professionally.

At the last AGM, many shareholders insisted on speeding up the listing process, following which the BSE board decided to offer a generous bonus to them. The shareholders are being offered 12 shares for every share held by them.

❖ Himalayan blow to Mount Everest

THE Registrar of Trademarks has said that Mount Everest Mineral Water cannot register names of mountains as trademarks, dealing a blow to the Tata Group firm in its tussle with Ramesh Chauhan's Bisleri over the name Himalaya. Citing the Geographical Indications Act, the office of the Registrar of Trademarks has maintained that names of mountains are not acceptable for registration as trademark for agricultural and natural products. This means that any other player can use the word Himalayan to market its products. Sources said Mount Everest may now further challenge this move. Based on the Registrar's observation, the Appellate Board may instruct the Registrar to cancel Himalayan from the register as a trademark.

- ✚ Names of mountains not acceptable for registration as trademark for agricultural and natural products
- ✚ "Himalayan" or "Himalaya" wrongly registered as trade marks: May be cancelled
- ✚ Mount Everest may further challenge this decision.
- ✚ Tata Tea holds 31.73% share in Mount Everest

Mt Everest had filed an injunction against Bisleri in the Delhi High Court in June 2008 preventing Bisleri from using the word Himalaya as a trademark. Mount Everest claimed that Himalayan is the registered trademark of the company and that nobody should be allowed to use the words Himalayan, Himalayas and Himalaya.

Bisleri, in turn, filed an application with the Intellectual Property Appellate Board seeking to cancel the trademark on the premise that Himalayan is a descriptive word, which is source, quality and properties of the water.

Currently, other water brands such as Paras, Catch, Hello, Qua and Natural also use the descriptive word Himalaya. Rectification is a correction of a trademark where any error or omission has occurred in a registered trademark. The Geographical Indications Act provides for the protection of geographical indications in relation to goods.

“Geographical indication such as Himalayan or Himalaya, which serves to denote the geographical origin of the products in question, is not prima facie registrable as trademark. Accordingly, the entries in the Register in respect of these two trademarks may have to be considered as wrongly made,” the Registrar of Trademarks said in a letter dated September 9 this year.

“Bisleri was taken to court for using the generic word ‘from the Himalayas’. We had no choice but to go to the Intellectual Property Board to strike off the brand Himalayan. Now anyone who is making water in Himalayas can use the expression from the Himalayas. There are at least four other manufacturers of mineral water using the word Himalaya. This is a statement of fact and cannot be objected,” Bisleri International chairman Ramesh Chauhan said.

“The ‘Himalayan’ trademark issue is sub-judice before the Hon’ble Delhi High Court and the Intellectual Property Appellate Board, Chennai. We have not received any official communication from the IPAB, Chennai. It is our understanding that the proceedings in the IPAB will go through the requisite paces under the Trademark Act and will be decided in accordance with law,” Mount Everest Mineral Water GM (legal) & company secretary APK Chettiar said.

Bisleri claims that it launched its mountain water “from the Himalayas” in December 2006 while Mount Everest did so in April 2008. Bisleri has a manufacturing facility for natural mineral water plant in Uttaranchal, which has natural springs.

Tata Tea acquired 31.73% holding in Mount Everest in 2007 and has drawn up ambitious growth plans from the regular and mineral water business, including functional and enhanced water. Mount Everest Mineral Water was incorporated in 1991 with its plant at Dhaula Kuan in Sirmour District of Himachal Pradesh. The company was promoted by Dadi Balsara, an NRI from Singapore.

❖ Loans set to get cheaper as banks slash PLR by 75 bps

THE big state-owned banks on Thursday gave in to finance minister P Chidambaram’s demand for lower lending rates. Several public sector banks, led by the country’s biggest lender, State Bank of India (SBI), lowered their prime lending rates (PLR)—the benchmark interest rate to which all loans are linked—by around 75 basis points.

The move is expected to bring down deposit and lending rates, including home loan rates, across banks. Loans for business would also get cheaper, though the once popular sub-PLR rates to corporates may still take a long time to return.

Banks that are in a position to cut their deposit rates along with lending rates would be better placed to preserve their profit margins. The release of liquidity through aggressive cuts in the cash reserve ratio maintained by banks with RBI will also enable the industry to earn over Rs 14,000 crore a year, by deploying the fund which would have otherwise earned no interest.

- Several banks including SBI lowered PLR
- PLR reduced to 13.25% w.e.f. Nov 10
- Citi only private bank to cut lending rates; lowered to 15% with immediate effect

Other banks that announced rate cuts on Thursday were Bank of Baroda, Allahabad Bank, Central Bank of India, Oriental Bank of Commerce and Corporation Bank—all of which reduced lending rates by 75 bps to 13.25% with effect from November 10. Dena Bank cut its PLR from 14.25% to 13.5%, and among the foreign banks, Citibank lowered its benchmark lending rate by 50 bps to 15% with immediate effect.

❖ Tamil Nadu Opens Doors To Imported Drinks

THE international drinks industry clinched a decisive breakthrough with Tamil Nadu, among the largest alcoholic beverage markets in the country, opening doors to imported brands formally, sources said. The move comes barely a week before European Union (EU) team's visit to kick off WTO proceedings against India for failing to remove discriminatory trade practices in two states—Tamil Nadu and Maharashtra.

Sources said Tamil Nadu, which has blocked bottled-in-origin (BIO) spirits and wines for long, moved hurriedly to allow global giant Diageo's four international brands enter the state-run retail shops. Tamil Nadu State Marketing Corporation (TASMAC), which controls wholesale and retail liquor trade, has given price approval and placed orders for Johnnie Walker Black Label, Johnnie Walker Red Label, Smirnoff Black and Gordon's Dry Gin with importing firm Brindco that is dealing in Diageo brands.

-  State okays Diageo's four global brands to avoid WTO wrath
-  More international brands to come through formal tender process
-  EU team to arrive on 11th November for consultations

According to sources, the four brands are hitting Chennai and other cities at the following retail price—Johnnie Walker Red Label (Rs 1,753); Johnnie Walker Black Label (Rs 3,605); Smirnoff Black (Rs 1,839 for one litre) and Gordon's (Rs 1,681). A Diageo spokesperson confirmed the development, when contacted. Sources said TASMAC was working on bringing more international brands through a formal tender process, even as the arrangement with Brindco will see it escaping a WTO case technically. Tamil Nadu has made tentative moves

in the past to fall in line with WTO commitments, but never took a formal decision on pricing and placing orders. The pricing strategy adopted for Diageo brands include 24% TASMAC margin and 58% sales tax, sources added.

EU team is arriving for consultations with the Indian government on November 11. The original agenda included lack of access for international brands to Tamil Nadu and differential taxation for imported wines in Maharashtra and Goa. With Tamil Nadu opening up, much of the focus will now be on Maharashtra.

Maharashtra levies 200% tax on the declared value of imported international wines, and 150% on wines coming in other states ostensibly to protect its local grape farmers. Since 2001, the state has zero excise duty on local wineries as it went all out to boost locally made wine consumption. The international drinks community has been up against a powerful local agricultural lobby, and the move to press ahead with WTO action may prove to be decisive in the case of Maharashtra as well.

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