news flash

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FDI IN RETAIL TRADE – THE DEBATE CONTINUES

It appears that initial euphoria following the Cabinet's decision to liberalize foreign investments in retail trading is quickly turning into skepticism. The Cabinet's decision to permit 100% Foreign Direct Investment ("**FDI**") in single brand retail trading ("**SBRT**") and 51% FDI in multi brand retail trading ("**MBRT**") is already facing criticism from various quarters.

The existing FDI Policy (a) does not permit FDI in MBRT and (b) permits 51% FDI in SBRT subject to prior approval from the Foreign Investment Promotion Board ("**FIPB**") and certain other conditions. These conditions were first notified in 2006. Currently, 100% FDI is permitted in the cash and carry model only under the automatic route.

Following the news items that broke on Thursday, 24 November 2011 announcing the Cabinet's decision to liberalize foreign investments in retail trading, the Ministry of Commerce & Industry on Friday, 25 November 2011 issued clarifications on the Press Information Bureau's (PIB) website regarding the nature of the conditions and riders that will accompany this change in policy.

The conditions pertaining to 100% FDI in SBRT provide:

- 100% FDI in SBRT will require prior approval of the FIPB.
- Products to be sold should be of a Single Brand only.
- Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
- Single Brand product retailing would cover only products, which are branded during manufacturing.
- The foreign investor should be the owner of the brand.
- 30% sourcing would mandatorily have to be done from SMEs/ village and cottage industries artisans and craftsmen in respect of proposals involving FDI beyond 51%. 'Small industries' would be defined as industries, which have a total investment in plant & machinery not exceeding USD 1 million.

For details of this press release, kindly refer to the PIB website: http://pib.nic.in/newsite/erelease.aspx?relid=77619.

On Monday evening, 28 November 2011, the Ministry of Commerce & Industry issued another press release on the PIB website to further highlight the rationale behind the liberalization. By this press release the Ministry of Commerce & Industry has *inter alia* clarified that -

- The policy rollout will cover only cities with a population of more than 1 million. As per the 2011 census, there are only 53 such cities that qualify.
- The policy mandates a minimum investment of USD 100 million with at least half the amount to be invested in back end infrastructure, including cold chains, refrigeration, transportation, packing, sorting and processing. This is expected to considerably reduce the post harvest losses and bring remunerative prices to farmers.
- Sourcing of a minimum of 30% from ***Indian*** micro and small industry having capital investment of not more than USD 1 million has been made mandatory. This will provide the scales to encourage domestic value addition and manufacturing, thereby creating a multiplier effect for employment, technology upgradation and income generation.

Another controversial clarification provided in this press release is that "*India has a federal structure of government. The FDI policy is an enabling framework and it remains the prerogative of the states to adopt it.*"

For details of this press release please refer to the PIB website: http://pib.nic.in/newsite/erelease.aspx?relid=77725.

The condition that the 30% of the sourcing will have to be made from small industries has also been very controversial with some reports suggesting that this condition will potentially violate Article III of the General Agreement on Tariff and Trade and the WTO's Trade Related Investment Measures Agreement.

Reports have come in of several opposition parties like the Bharatiya Janata Party, the Communist Party of India, the Communist Party of India – Marxist, etc. voicing their concerns over this decision and threatening to impede its execution in the states where they have majority or non-Congress alliances. It remains to be seen how in fact they will enforce these impediments. Needless to state, the resistance to the Cabinet's decision has been severe enough to delay the Parliament's Winter Session bringing about a deadlock scenario.

Amidst these controversies there have also been reports that the Finance Minister has chaired an all-party meeting to arrive at some form of solution to this stiff opposition but to no avail. There appeared to be some respite with the Cabinet agreeing to the opposition's requirement for an adjournment motion to discuss this issue, however, at the time of publication of this article, there were reports that the opposition leaders in both houses of the Parliament were refusing to accept the Finance Minister's proposal of a watered down proposal and would not alter the contents of its adjournment motion. Senior opposition leaders were quoted on several news reports stating that the Cabinet should either roll back their decision or if they were confident should permit the motion to be passed.

What remains to be seen is will this change in policy; that could possibly herald the next chapter in India's economy, be a mere paper legislation or will it become a reality.

Disclaimer

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