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EDITORIAL

FDI IN RETAIL - SUICIDAL FOR INDIA?

CA Vinod Jain*

The Government of India has recently come out with a discussion paper proposing to open multi-brand retail to foreigners. FDI in retail is an important area having long term ramification on business activities in the country and therefore requires a serious discussion and analysis of its impact on consumers, growers, manufacturers, traders and distributors employment.

The very first point which we must keep in mind that effort should be made to attract FDI in those areas where either sophisticated technologies are involved or funding requirements are of larger scales.

- India does not need investment in the retail sector but actually needs the same in infrastructure sector like power, roads, cold storages. It has been noticed that despite of completely open policy, major investments in aforesaid sectors have come only from Indian business houses and there is hardly any presence of foreign investors.
- The retail or even the organized retail do not need any innovative technology and the latest modern systems and processes are very well-known to India and have rather been already implemented by large number of Indian business houses, then why foreigners are needed in this area.
- This will severely impact farmers and unorganized producers including small and medium enterprises as the mighty businesses in retail sector coming from developed world will further oppress the unorganized sector as has been our experience with East India Company.
- Another very important reason as to why FDI in retail should not be allowed is the fact that at present small retail stores, fruit and vegetable vendors, rehdi-walas and patri-walas as well as all other small businesses are providing self employment to about 200 million people. Any move to allow FDI in retail would seriously impair employment of such persons which cannot be in the interest of our nation.
- The organized retail marketing gimmicks and threat of misusing of muscle power and size would necessitate a regulator for the retail sector.
- The proposed discussion paper is actually a conspiracy against the common man in India as a whole and it seems the government is bowing down to the lobby of powerful business houses from foreign countries as well as from within India.
- India is going to become a developed country very soon and the economic prosperity of India will lure the foreigners to make quick money and it is a challenge to the UPA government to show to the whole world that it is a government of the Indians, by the Indians and for the Indians and no foreign interest can impact India's interest. There would be no value addition to the GDP of the nation through FDI in retail rather it would result in major outflow of resources in the shape of imports of finished goods and remittance of profits-royalties for grants.
- The Foreign Direct Investment in Defence Sector as well as in Telecom Sector need necessary monitoring and surveillance.
- Even indirect investment through an Indian company where 49% or less ownership is with foreigners is very dangerous if their downstream investment is to be treated as Indian investment. The side letters, memorandum of understanding and various unofficial agreements written or oral, formally or informally would defeat the very purpose of restricting foreign investments in various areas for security reason and for the reasons that we as a country do not need capital or technology or investment in areas which are very lucrative and where we would like Indians and only Indians to make money.
- Let us work together and oppose FDI in retail which if permitted would be suicidal to the economic growth of the nation in real terms and only help in facilitating global monopolies.

* Mr. Vinod Jain, FCA, FCS, FICWA, LL.B., DISA (ICA), Chairman, INMACS Management Services Limited and Convenor, National Economic Forum (NEF). vinodjain@inmacs.com, vinodjainca@gmail.com, 9811040004

LATEST IN FINANCE

1.0 REPORTING OF OTC TRANSACTIONS IN CERTIFICATES OF DEPOSIT (CDs) AND COMMERCIAL PAPERS (CPs)

Beginning July 01, 2010, all RBI-regulated entities shall report their OTC transactions in CDs and CPs on the FIMMDA reporting platform within 15 minutes of the trade for online dissemination of market information. Detailed procedure in this regard would be advised by FIMMDA.

RBI/2009-10/515 IDMD.DOD. 11 /11.08.36/2009-10 June 30, 2010

2.0 DISCLOSURE OF IMPOSITION OF PENALTIES

In order to maintain transparency with regard to imposition of penalties and in conformity with the best practices in disclosure of penalties imposed by the regulator, it has been decided that the details of the penalty levied on a Primary Dealer should be placed in the public domain.

RBI/2009-10/496 IDMD.PDRD.No. 5533/ 03.64.00 /2009-10 June 15, 2010

3.0 WAIVER OF MARGIN/SECURITY

It has been decided that banks may waive margin/ security requirements for agricultural loans from the existing level of Rs. 50,000/- to Rs. 1,00,000/- with immediate effect.

RBI/2009-10/499 RPCD.PLFS. BC. No. 85 /05.04.02/ 2009-10 June 18, 2010

4.0 INDIAN BANKING SET TO GET A TRANSPARENT BASE

The Indian banking industry is stepping into an age of probable transparency in lending to customers with the new base rate regime.

Top corporate, who currently get the best rates, may bargain for loans at the best rate, or closer to it. But for short-term loans, they will have to tap the commercial paper route or the bond market. For most banks, the migration is unlikely to impact their net interest margin-the difference between the interest earned on deposits and cost of deposits.

5.0 RBI BARS BONDS WITH DAILY PUT & CALL OPTIONS

In its final guidelines on bond issuance of less than one year, RBI has said no entity can issue bonds for less than 90 days and that no entity can offer a put and call option before 90 days. Only those corporates whose accounts are classified as a 'Standard' account - one where all debts are serviced in time by their bankers - can float short-term bonds. Secondly, banks can invest in short-term bonds of those corporates who have been sanctioned working capital limits by a bank.

6.0 INDIA GETS REAL-TIME ACCESS TO DATA ON TERROR MONEY

India has finally become a member of the elite global body Financial Action Task Force, which would allow the country to gain easy access to real-time exchange of information on money laundering and terror financing.

7.0 BANKS NEED OKAY TO DEAL WITH POLITICALLY EXPOSED PEOPLE

The Reserve Bank of India (RBI) has said banks should obtain senior management approval to continue business relationship with an existing customer who has subsequently become a politically exposed person and that banks should conduct customer due diligence (CDD) on politically exposed people (PEP). RBI has defined politically exposed persons as those individuals who are or have been, entrusted with prominent public functions in a foreign country such as heads of states or of governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations or important political party of India. RBI had advised banks to gather information on any person of this category desiring to do business with the bank and check all the information available on the person in the public domain.

8.0 RBI TIGHTENS REGULATIONS ON NBFCs ACCEPTING DEPOSITS

In a bid to ensure effective supervision of the large number of non-banking financial companies (NBFCs), the Reserve Bank of India (RBI) has directed that fresh approvals to NBFCs for accepting deposits will not be considered.

9.0 RBI SEEKS TRANSPARENCY IN SETTLEMENT OF BAD ASSETS

According to RBI deputy governor Subir Gokarn Investors need not worry about the immediate volatility in the exchange value of rupee-vis-à-vis the US dollar in the wake of China allowing yuan to appreciate against the American currency. His optimism is based on hedging tools available. According to him, in a scenario where the hedging opportunity is available and relatively accessible, we should worry on the short-term impact of volatility.

10.0 BANKS TO TIGHTEN LOAN SETTLEMENT NORMS

Loan defaulters will now find it difficult to rid themselves of all their liabilities through the one-time settlement (OTS) scheme. Public sector lenders plan to insert a clause that will bar them from withdrawing criminal cases against private persons, irrespective of a settlement.

11.0 ISSUANCE OF NON-CONVERTIBLE DEBENTURES (RESERVE BANK) DIRECTIONS, 2010

Eligibility to issue NCDs

- the corporate has a tangible net worth of not less than Rs.4 crore
- the corporate has been sanctioned working capital limit or term loan by bank/s or all-India financial institution/s; and
- the borrowal account of the corporate is classified as a Standard Asset by the financing bank/s or institution/s.

Rating Requirement

- An eligible corporate intending to issue NCDs shall obtain credit rating for issuance of the NCDs from one of the rating agencies
- The minimum credit rating shall be P-2 of CRISIL or such equivalent
- The Corporate shall ensure at the time of issuance of NCDs that the rating so obtained is current and has not fallen due for review.

Maturity

- NCDs shall not be issued for maturities of less than 90 days from the date of issue.
- The exercise date of option (put/call), if any, attached to the NCDs shall not fall within the period of 90 days from the date of issue.
- The tenor of the NCDs shall not exceed the validity period of the credit rating of the instrument.

Denomination

- NCDs may be issued in denominations with a minimum of Rs.5 lakh (face value) and in multiples of Rs.1 lakh.

Limit and the Amount of issue of NCDs

- The total amount of NCDs proposed to be issued shall be completed within a period of two weeks from the date on which the corporate opens the issue for subscription.

Procedure for Issuance

- The corporate shall disclose to the prospective investors, its financial position as per the standard market practice.
- The auditors of the corporate shall certify to the investors that all the eligibility conditions set forth in these directions for the issue of NCDs are met by the corporate.
- The requirements of all the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, or any other law, that may be applicable, shall be complied with by the corporate.

Investment in NCD

- NCDs may be issued to and held by individuals, banks, Primary Dealers (PDs), other corporate bodies including insurance companies and mutual funds registered or incorporated in India and unincorporated bodies, Non-Resident Indians (NRIs) and Foreign Institutional Investors (FIIs).

Preference for Dematerialisation

- Banks, FIs and PDs are required to make fresh investments in NCDs only in dematerialised form.

RBI/2009-10/505 IDMD .DOD.10 /11.01.01(A)/2009-10 June 23, 2010

12.0 INTEREST RATES ON RUPEE EXPORT CREDIT

Banks may reduce the interest rate chargeable to the exporters as per Base Rate system in the following sectors eligible for export credit subvention by the amount of subvention available under the scheme subject to a floor rate of 7%:

(i) Handicrafts

(ii) Carpets

(iii) Handlooms

(iv) Small & Medium Enterprises (SME)

In respect of other categories of exporters, the provisions of the circular DBOD.Dir.(Exp).BC.No.102 /04.02.001/2009-10 dated May 6, 2010 would continue to apply.

DBOD.Dir.(Exp).BC .No. 114 /04.02.001/2009-10 June 29, 2010

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DIRECT TAX CODE AMENDED

INDIVIDUAL

- Exempt-Exempt-Exempt (EEE) tax regime to continue, but on fewer savings schemes such as the PPF & the new pension scheme. Ulips and equity oriented MFs to lose tax benefits at time of maturity
- Perquisites will be valued at prescribed rates and not at market linked rates
- Employer's contributions to provident fund & retirement benefits will be exempt from income tax, subject to monetary limits
- Interest on home loans up to Rs 1.5 lakh for self occupied houses to be exempt from tax

COMPANIES

- Minimum Alternate tax (MAT) to be levied on book profit of companies & not on gross assets
- New units commissioned in special economic zones after the code comes into force will not enjoy tax sops
- Controlled foreign corporation (CFC) rules to be introduced to tax the income of foreign subsidiaries of Indian firms
- Change in concept of residency to include only those foreign firms whose management take decisions in India

INVESTOR

- Gains from sale of shares & other assets will be added to the total income & the tax payer will be taxed according to slab
- Tax blow will be softened for investors who sell shares after one year of holding them
- Securities transaction tax to stay, but will be calibrated with the new capital gains regime
- FIIs buying and selling shares will pay capital gains tax, but as advance tax
- Treaty shopping will end with general anti avoidance rules

TAXATION

1.0 TAX EXEMPTION LIMIT ON GRATUITY RAISED TO RS. 10 LAKH

The government has raised the income tax exemption limit on gratuity from Rs. 3.5 lakh to Rs. 10 lakh, with effect from May 24. The new rule will apply to employees who retire, become incapacitated, are terminated or die on or after May 24, 2010.

2.0 GOVERNMENT TO REVISE TAX INFORMATION EXCHANGE TREATY WITH 65 COUNTRIES

The government has approached 65 countries, including Switzerland, to revise a tax information exchange treaty for incorporating fresh details while sharing bank related information of individuals and other entities.

3.0 FIIs INCOME TO BE TAXED AS CAPITAL GAIN

The government has proposed to tax the income of FIIs from the sale and purchase of securities as capital gains under the proposed Direct Taxes Code (DTC). The majority of the FIIs are reporting their income from such investments as capital gains, but some of them were showing it as business income and claiming total tax exemption in the absence of a permanent establishment in India, leading to litigation.

AUDIT

1.0 MCA SHELVES PEER AUDIT REVIEW PLAN

The Ministry of Corporate Affairs (MCA) has shelved its idea of auditing the books of listed companies by independent auditors. It was part of the joint plan of market regulator Securities and Exchange Board of India (SEBI) and the ministry to conduct peer review of audits, which involves getting the audit reports of a company vetted by another auditor for a second opinion. To start with, the proposal was intended to audit 30 companies on the Bombay Stock Exchange and 50 companies of the National Stock Exchange. It is now decided that the audit reports will be vetted by a penal of auditors appointed by the financial advisory board of the Institute of Chartered Accountants of India (ICAI).

2.0 ICAI CONFRONTS SBI ON SINGLE AUDITOR

The Institute of Chartered Accountants of India (ICAI) has opposed State Bank of India's (SBI) decision to appoint a single audit firm for its tax audit for the current fiscal, a move which it says could compromise its quality of audit as opposed to the bank's present practice of getting the work done by multiple firms.

3.0 ERRANT AUDITORS WOULD NEED TO PAY INVESTORS

Audit firms may be asked to financially compensate investors for losses resulting from their lapses, with the government panning to strengthen the mechanism for fixing responsibility for corporate fraud and protecting investors.

4.0 APEX COURT REFUSES TO STAY CAG AUDIT, TO HEAR PLEA IN AUGUST

In a set back to telcos, the Supreme Court has refused to stay a Delhi High Court order enabling the Comptroller and Auditor General (CAG) to audit their account books to ascertain revenue leakages in licence fee payable to the government.

INSURANCE

1.0 INSURANCE REGULATOR EXTENDS PROTECTION TO PREMATURE WITHDRAWALS OF ULIPs

The Insurance Regulatory and Development Authority (IRDA) has come up with fresh guidelines that are expected to bring some protection and cheer to policyholders of unit-linked insurance plans (ULIPs). Those who wish to prematurely withdraw now have a reason to be happy as their investments will soon have some protection.

2.0 INSURANCE FIRM ASKED TO COMPENSATE COMPANY HIT BY NAXALITES

The National Consumer Commission has directed United India Insurance Company to pay compensation to NVC Group Farms in Andhra Pradesh whose drip irrigation system and other properties were destroyed by Peoples War Group militants.

3.0 IRDA CRACKS WHIP ON CORPORATE AGENTS

In a move to pin more responsibility upon insurance companies for actions of corporate agents, insurance regulator IRDA has said that a decision to appoint a corporate agent should be taken at the highest level of an insurance company. The regulator has also made it mandatory for insurers to undertake physical inspection at their corporate agent offices.

4.0 IRDA TO ENSURE FEE WON'T BE A CRITERION IN POLICY SALE

The Insurance Regulatory Development Authority (IRDA) may have had its way in the SEBI-IRDA tiff, but it now wants to make sure that not a single policy is thrust upon individuals when they do not require it. Agents and brokers will soon have to make sure they are selling the right insurance policy to clients.

CAPITAL MARKET

1.0 SEBI FAVOURS NIFTY, SENSEX AS BENCHMARKS FOR MF SCHEMES

Mutual funds may soon have to mandatorily benchmark the performance of their equity schemes primarily with one of the two most widely accepted indices the Sensex or Nifty along with the index chosen by the fund house.

2.0 NSE SET TO LAUNCH FUTURES IN S&P 500

The National Stock Exchange (NSE) is set to launch futures contracts in the S&P 500 Index on its platform, which will enable Indian investors to take exposure to the most-actively traded futures contract in the world.

3.0 DELISTING IF 25% FLOAT CLAUSE VIOLATED

Companies failing to comply with the minimum public holding norm could face delisting suspension of trading or a find of Rs. 25 crore. The existing provisions that deal with listing norms violations will continue to be in effect. But these provisions will be more effective now with them getting incorporated in the Securities Contracts (Regulation) Rules, say company law experts.

4.0 BSE TO PROVIDE CORPORATE INFO IN GLOBAL STANDARD FORMAT

The Bombay Stock Exchange (BSE) has tied up with SWIFT to provide 'Corporate Actions to Custodians' in ISO 15022 format, a globally accepted standard for messaging for securities trading. The initiative makes BSE the first securities market infrastructure member of SWIFT in India.

5.0 SEBI GIVES MORE TIME FOR NEW DEBT VALUATION NORMS

Security Exchange Board of India (SEBI) has postponed the deadline for implementing new norms for valuation of mutual fund houses' debt any money market instruments by a month and will now come into effect from August 1 instead of July 1 announced earlier.

6.0 REPORTING OF LENDING OF SECURITIES BOUGHT IN THE INDIAN MARKET

The public dissemination has also accordingly been changed to once a week - i.e. every Tuesday. The first such weekly dissemination shall be made on July 13, 2010.

http://203.199.12.51/SecuritiesLentMain.html
Cir No.IMD/FII&C/ 4 /2010 June 29, 2010

CORPORATE LAW

1.0 APEX COURT RULES ON EMPLOYEE'S RIGHT TO REGULARISATION

The Supreme Court has ruled that if the initial appointment of an employee was irregular, he has no right to regularisation even though he had worked in the post for many years. In case Md Ashif vs State of Bihar.

2.0 NOD FOR SEZ UNIT MIGRATION

The government has allowed industrial units to shift from one special economic zones (SEZ) to another after approval of the apex authority, the board of approval (BOA). The permission to relocate units will be given on a case-to-case basis by the BOA, a commerce department official has said. The board, chaired by commerce secretary, clears SEZ, proposals and frames rules guiding these zones.

3.0 SECURITISATION ACT GETS PRIMACY

The Bombay high court has dismissed the petition of Nouveaw Exports Ltd. Against the ruling of the Appellate Authority for Industrial and Financial Reconstruction which allowed the auction and sale of assets of a sick company by the sole creditor bank. The creditor bank invoked the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act to sell the property. The company argued that since the revival of the unit under the Sick Industries Act was pending, the bank could not have sold the property. The high court rejected this contention and gave primacy to the Securitisation Act.

4.0 DISMISSAL ONLY PUNISHMENT IN CORRUPTION CASE

The Supreme Court has stated that in a case of corruption or misappropriation by an employee, the only punishment is dismissal. The punishment should always be proportionate to the gravity of the misconduct. It does not matter whether the amount involved was big or small. Any sympathy shown in such cases is opposed to public interest, the court asserted in the case, UP Transport Corporation vs Suresh Chand sharma.

FEMA

1.0 PRIVATE EQUITY TO FOLLOW FDI GUIDELINES

A customary practice among foreign private equity funds and overseas investors is to link the number of shares on conversion to the performance of companies in which they invest. A company which does well has to convert less shares than one which misses performance milestones. In other words promoters of firms that have performed badly will suffer significant dilution to their holdings. This sliding rule mechanism has now been questioned, thanks to changes in the FDI guidelines and the new method for calculation of floor price at which local companies and existing shareholders can sell their stocks to foreign investors.

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FEMA

2.0 INSURERS CAN RETAIN PRICE DEALS WITH ALLIES

In a clarification released, IRDA said RBI's guidelines dated May 4, 2010, are applicable to Indian companies in sectors other than the financial sector. In view of the same, it is clarified that provisions of the said circular continue to be not applicable to the insurance sector.

3.0 FINMIN TO KEEP TABS ON END USE OF TAX-FREE CORE BONDS

Public sector banks that raise funds through tax-free infrastructure bonds will have to show incremental lending to the sector to the extent of funds raised in that year, as government seeks to ensure that money raised actually flows to the infrastructure sector.

The special window of tax-free infrastructure bonds will be available to PSBs only on the condition of incremental infrastructure lending, said a finance ministry official.

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)
3 Month LIBOR	0.53	0.54
3 Month MIBOR	6.48	5.98
SENSEX	17937	17065
NIFTY	5383	5119
Gold (per 10 gm)	18655	18710
Silver (per kg)	29150	28900
Crude (USD/bbl)	74.97	74.63
Rs. vs USD	46.73	46.82
Rs. vs Euro	58.80	56.66

* as on 12th July, 2010.

(Sources: Bloomberg, NSE, MCX)

● **Contact details :** Dharampal (9968960264) / Chhaya (9873230416) All India Chartered Accountants' Society - CFO World 422, Okhla Industrial Estate, Phase-III, New Delhi-110020. Ph: 26223712, 26228410, 26226933 E-mail:aicas.cfo@gmail.com / cfoworld@gmail.com ●**EDITOR**: Pankaj Gupta, LLB, FCS E-mail: pankajguptafcs@gmail.com ●**PUBLISHED & PRINTED:** At New Delhi by Satish Chandra, Administrative Officer, on behalf of All India Chartered Accountants' Society, 4696, Brij Bhawan, 21A, Ansari Road, Darya Ganj, New Delhi-110 002 Phone 23265320, 23288101 E-mail : aicas.cfo@gmail.com Printed at: EIH Ltd., Unit : Printing Press, No. 7, Sham Nath Marg, Delhi-110054. Views expressed by contributors are their own and the Society does not accept any responsibility.

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All India Chartered Accountants' Society
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Darya Ganj, New Delhi-110 002