FOREIGN DIRECT INVESTMENT IN REAL ESTATE SECTOR

A Brief Executive Overview

CA. Ranjit Karthikeyan
Partner, Ranjit Karthikeyan Associates
Trivandrum

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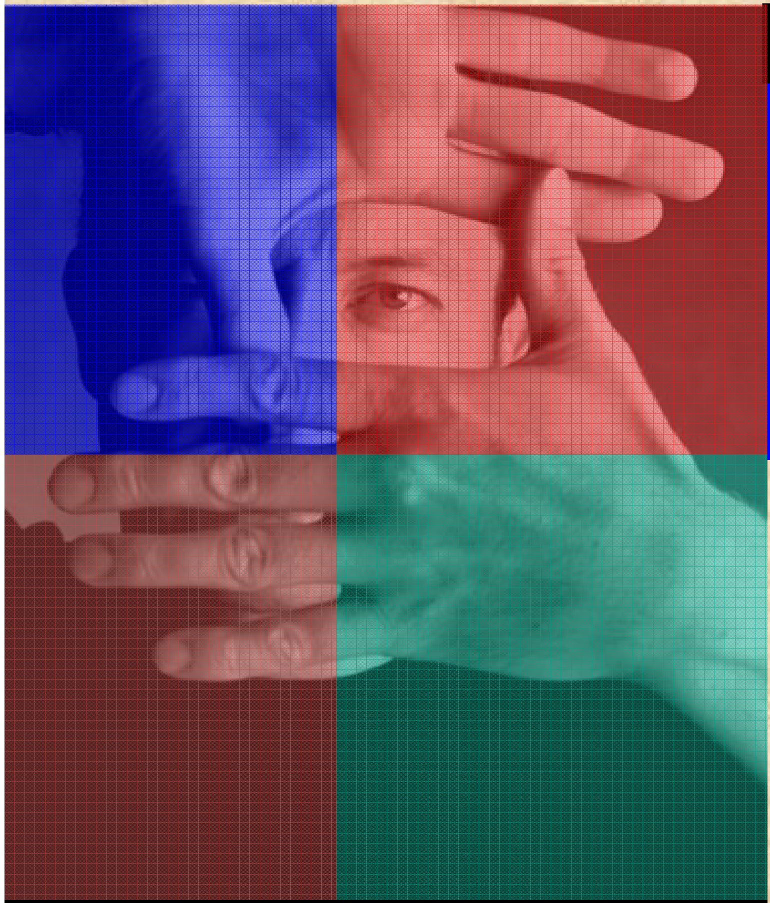

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Real Estate sector – Key Drivers

Growth potential & expected trends

Key demand drivers

Residential	Office Space	Retail	Hotels
• Increase in urbanization & working population • High disposable incomes & aspiration levels • Easier access to finance • Fiscal incentives on house loans	• India accepted as most attractive destination for IT & BPO services	• Entry of global brands • Organised retailing only 2% of total retail industry • India ranked as second most attractive retail destination by AT Kearney	• Increased business travel – both domestic & foreign due to buoyant economic growth & growing FDI • 2004 saw record tourist arrivals of 3 mn. By 2020, India is expected to be a leading tourist destination in South Asia with more than 8 mn tourist arrivals

- Recent opening up of sector to foreign investment
- Foreign developers and investors will be making their presence felt, largely through joint venture arrangements
- Improved environment for debt funding
- Increasing institutionalization of real estate investment market

What is FDI ?

Investing in the Capital of an Indian Company by

Non Resident

Non Resident Indian

Overseas Corporate Bodies

What is Capital as per FDI Norms?

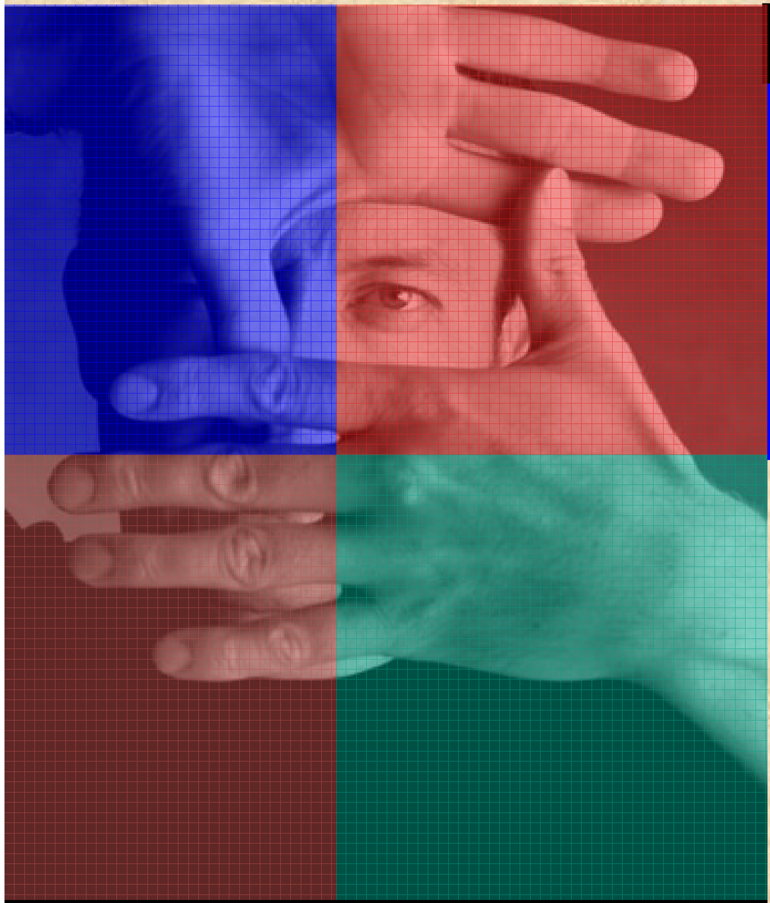
NR/NRI/OCB invests in

- **Equity Share Capital**
- **Preference Share Capital**
- **Convertible PS Capital**
- **Convertible Debentures**

FDI in Real Estate?

FDI not permissible in pure real estate business.

FDI is permissible only in construction development projects termed - Real Sector



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Foreign Direct Investment ("FDI") in India

FDI in Real Estate

Till recently, FDI in real estate was restricted to development of industrial parks, hotels, integrated townships and SEZ's.

On March 3, 2005, Government of India replaced the integrated township policy to permit FDI upto 100% in townships, housing, built-up infrastructure & construction - development projects, under automatic route (Press Note 2 (2005 series))

FDI is now permitted in:

- townships
- housing
- commercial premises
- hotels
- resorts
- hospitals
- industrial parks
- hospitals
- educational institutions
- recreational facilities
- SEZ's, etc

FDI in Industrial Parks and Hotels & Tourism

Industrial Parks

- FDI upto 100% permitted under automatic route in Industrial Parks (ie Technology Parks, Biotech Parks), approved by State Government
- Approval from Department of Industrial Policy & Promotion under Industrial Park Scheme, 2002 is only for availing 100% tax holiday

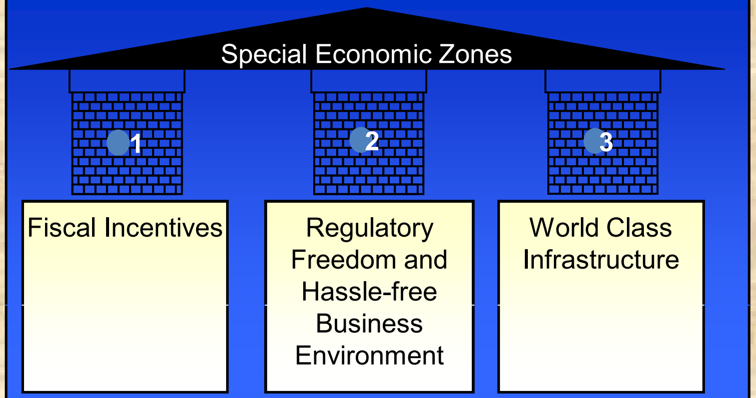
Hotels & Tourism

- 100% FDI permitted in Hotels & Tourism under automatic route
- FDI in Hotels should not be governed by Press Note 2 (2005 series) – clarification required

SEZ – the next frontier

100% FDI permitted under automatic route for setting up of SEZs

The concept



Envisaged "Pillars" of the SEZ concept:

- A bundle of fiscal incentives to zone investors, zone occupants and zone suppliers
- An overall zone governance that provides for efficient unhindered business activities particularly for export oriented enterprises
- Superior infrastructure of global standards

Recent developments

- Provides single window approval mechanism for developers & units in SEZs
- Provides fiscal concessions for SEZ units/ developers - exemption from customs duty, excise, cess, service tax, income tax, stamp duty (under Indian Stamp Act, 1899), etc
- Expected to trigger significant inflow of funds in infrastructure, increase production capacity and creation of new employment opportunities

FDI in construction-development – guidelines*

FDI backed projects would be accorded national treatment at par with local developers - State Government's/ Municipal bodies will now approve projects for construction-development involving foreign investment.

Development criteria

- Minimum 10 hectares/ 25 acres area to be developed for serviced housing plots
- For construction-development projects, minimum built-up area of 50,000 sq mts prescribed
- In case of a combination project, any one of above two conditions would suffice

Investment conditions

- Minimum capitalization of US$ 10 million for wholly owned subsidiaries & US$ 5 million for joint ventures with Indian partners
- Funds to be brought in within 6 months of commencement of business
- Original investment cannot be repatriated before a period of 3 years from completion of minimum capitalization. Investor may be permitted to exit earlier with prior Government approval

Other conditions

- At least 50% of project must be developed within of 5 years from date of obtaining all statutory clearances
- Investor not permitted to sell undeveloped plots**
- Project to conform to norms & standards laid down by respective State authorities
- Investor responsible for obtaining all necessary approvals as prescribed under applicable rules/bye-laws/regulations of the State
- Concerned Authority to monitor compliance of prescribed conditions by developer

** As per Press Note 2 (2005 series) dated March 3, 2005*

*** "Undeveloped" plot means where roads, water supply, street lighting, drainage, sewerage & other conveniences have not been made available. It will be necessary that investor provides this infrastructure & obtains a completion certificate prior to sale of serviced housing plot*

FDI in Real Estate – Aspects to be considered

Q. Minimum built up area in case of construction-development projects – super built up area or covered (carpet) area?

A. May be governed by local regulations which is typically based by Floor Space Index (FSI)/ Floor Area Ratio (FAR)

Q. Requirement of minimum land area of 25 acres for serviced housing plots. Whether applicable to 'constructed housing'?

A. Requirement of minimum land area of 25 acres is only for projects where land developed with provision of common facilities & infrastructure for subsequent sale as plots for independent housing ie serviced housing plots. By implication, for 'constructed housing', criteria of minimum built up area of 50,000 sq mtrs should apply

Q. Minimum capitalization requirement of US$ 5 million - Capitalization requirement for JV company or minimum capital contribution by foreign investor?

A. Refers to capital to be brought in by the foreign investor in the JV Company

FDI in Real Estate – Issues to be addressed

- 'Built up area' condition - To be fulfilled at initial sanction stage or at time of completion?
- What constitutes 'commercial premises'? Whether FDI permitted in malls/ shopping centres?
- Whether 'date of commencement of business' implies 'start date of construction activities' or 'date on which agreement for construction/ acquisition of land are signed'?
- For sale of serviced housing plot, completion certificate to be obtained for entire project or only the land to be disposed? Whether State laws to be amended to provide for requirement of issue of 'completion certificate'?
- Whether FDI allowed in project specific SPV or also permitted in existing listed/ unlisted real estate companies engaged in prescribed activity?
- Whether FDI permitted for acquisition of SPV's which owns developed/ partly developed property and intends to develop future properties?
- Definition of Industrial Parks for the purpose of FDI policy?
- In the definition of 'undeveloped plots', what does the word 'other conveniences' include?

External Commercial Borrowings

- All corporate borrowers are eligible to raise ECBs up to a maximum of US$ 500 million under automatic route
- ECB can be raised only for investment in real sector - industrial sector including small and medium enterprises and infrastructure sector in India, including industrial/ technology parks and for working capital requirement
- ECB not permitted for real estate activities other than development of integrated townships as defined by Press Note 3 (2002 series) (ie the 100 acres area criteria)

By implication, ECB not permitted for projects qualifying under Press Note 2 (2005 series)?

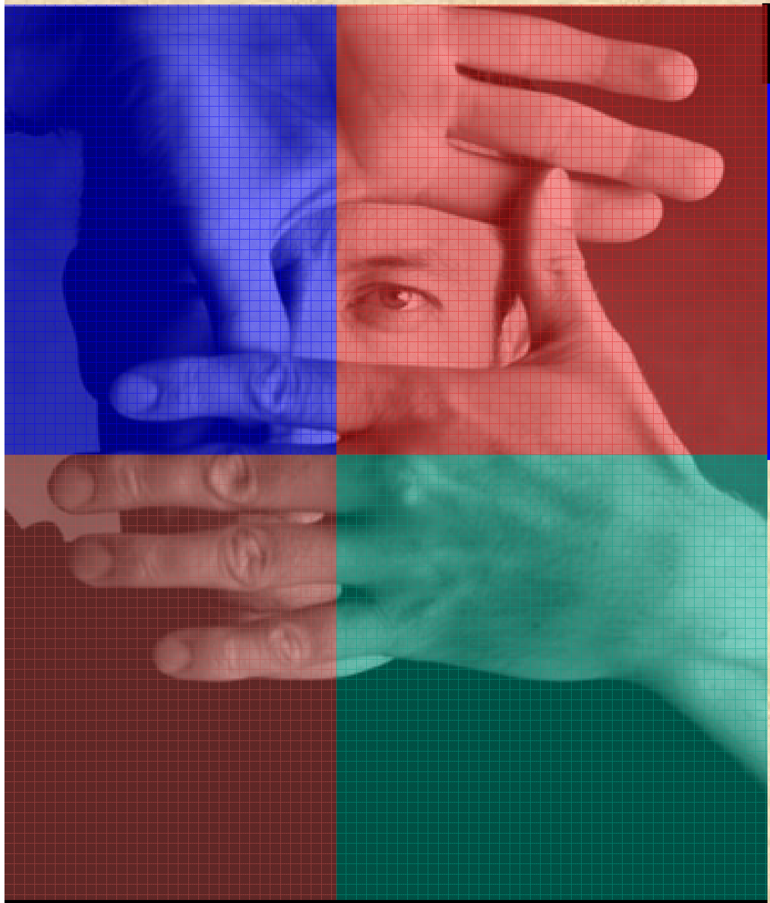
If permitted, would corresponding changes be incorporated in the ECB policy?

Foreign Collaboration – Typical models

PRIVATE EQUITY CAPITAL - Pure financial investment to provide base capital required to undertake larger projects and reduce exposure to debt financing

JOINT VENTURE COMPANY – Foreign investor to contribute capital and engineering capabilities. Indian developer to contribute land and local resources. Both partners have joint ownership of project specific SPV.

JOINT DEVELOPMENT AGREEMENT – Foreign investor sets up Indian presence and undertakes development activity. Indian partner contributes land and receives deferred consideration in terms of share of development or share of revenues.



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Procedures to be followed

Permissible Investment Methods

Equity — 100% Automatic Route as per under FDI policy subject to conditions.

Debt — ECB route subject ECB Guidelines.

Procedure in connection with FDI

FIRC should be submitted to RBI through authorised bank within 30 days of receipt of Forex Investment along with Know Your Customer (KYC) Report.

Allotment of shares within 180 days from the date of receipt of the amount .

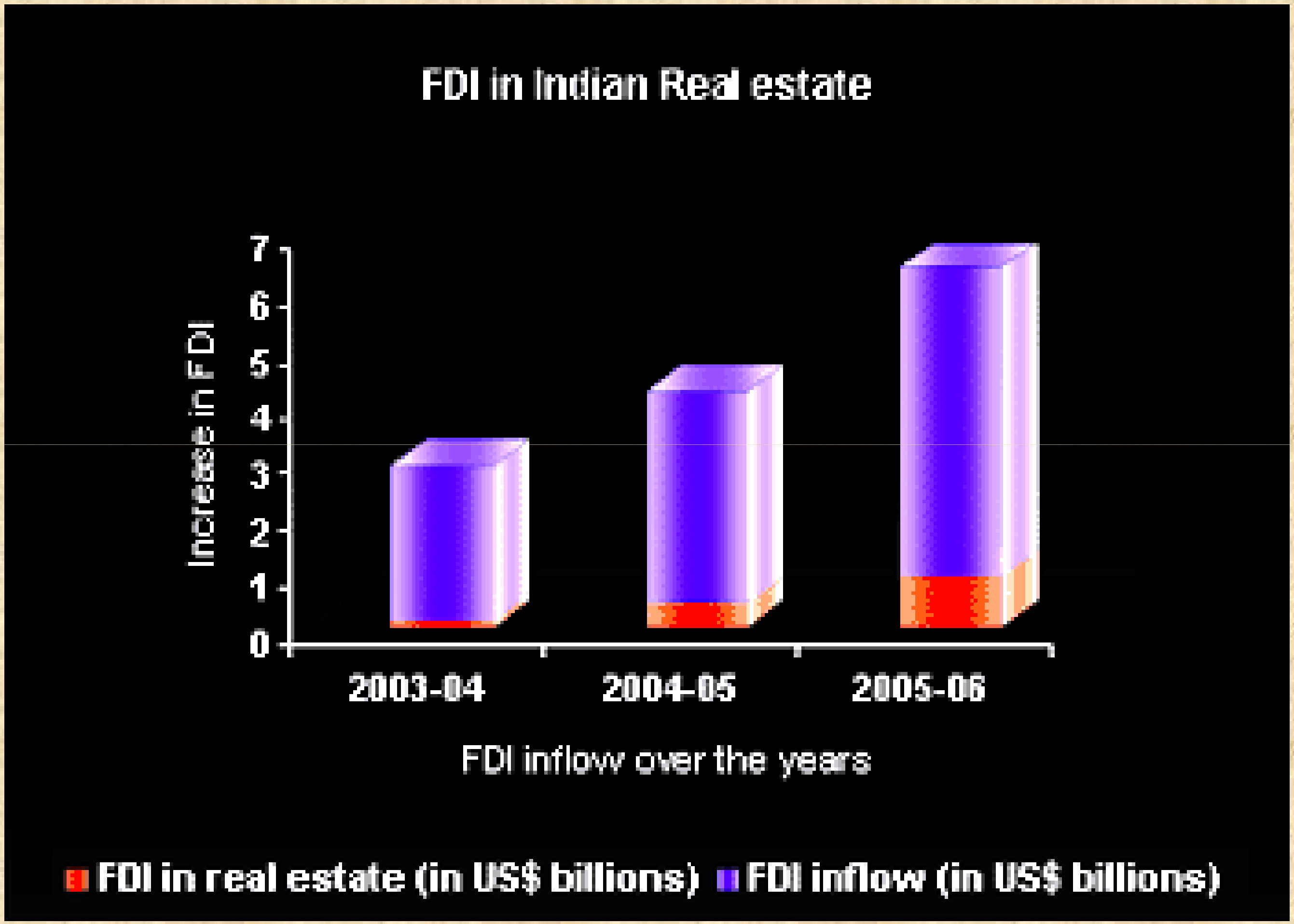
Form FC GPR-Part A should be submitted to RBI after the allotment of shares within one month.

Certificate regarding valuation of shares from Chartered Accountant

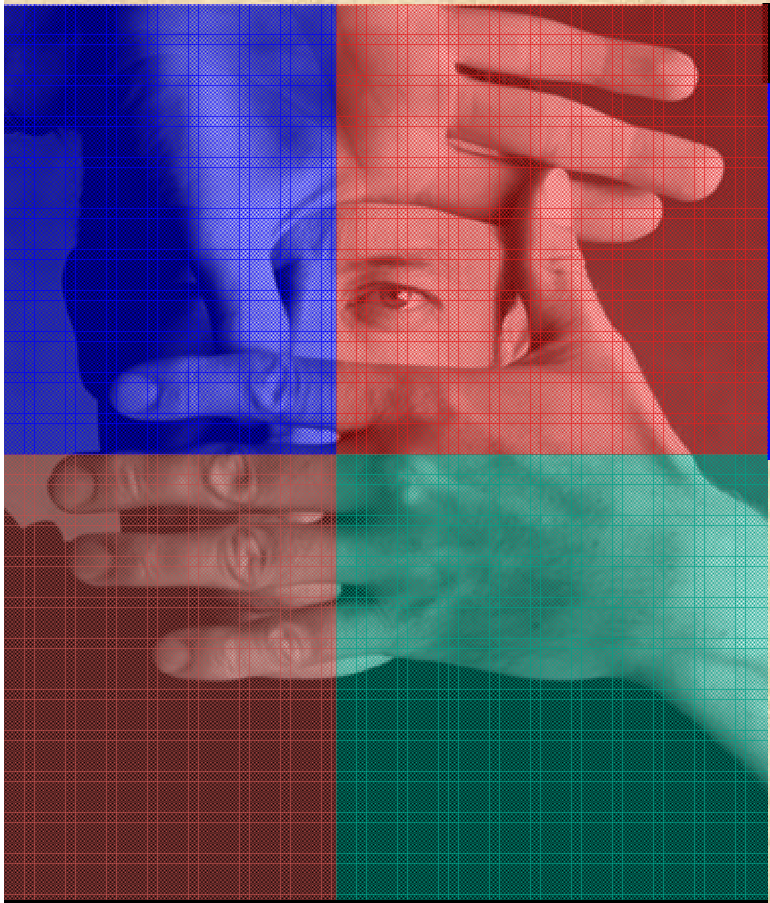
Certificate regarding legal compliance from Company Secretary

Form FC GPR- Part B should be submitted 31st July, every year.
(Consolidation of investments)

FDI - STATS



FDI in Indian Real estate
7
6
5
4
3
2
1
0
Increase in FDI
2003-04
2004-05
2005-06
FDI inflow over the years
FDI in real estate (in US$ billions)
FDI inflow (in US$ billions)



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Tax environment

Tax environment - Developers

Industrial parks*

- 10 year tax holiday (in a block of 15 years) on profits derived from developing, developing & operating, maintaining & operating industrial parks in India, developed before March 31, 2006
- Tax holiday available subject to obtaining Government approval under Industrial Park Scheme, 2002 & subsequent notification by Central Board of Direct Taxes

Special Economic Zones*

- 10 year tax holiday (in a block of 15 years) on profits derived from developing SEZ's in India, notified on or after April 1, 2005 (as per SEZ Bill 2005)
- Tax holiday available subject to obtaining Letter of Permission from Board of Approvals in the Ministry of Commerce and notification by Central Government

**Additionally, various States in India extend fiscal incentives towards development of Industrial Parks/ SEZ's.*

Tax environment - Developers

Housing projects

- Income tax holiday available to housing projects approved by local authority before March 31, 2007
- Construction of project to be completed within 4 years from end of financial year in which approval is obtained
- Residential unit should have maximum built up area of 1,000/ 1,500 sq ft (based on city of location)
- Project should be on a plot of land which has minimum area of 1 acre
- Built up area of shops & other commercial establishments included in housing project not to exceed 5% of aggregate built up area of housing project or 2,000 sq ft, whichever is less

Minimum Alternate Tax ("MAT") applicable where company is availing tax holiday and deriving book profits @ 8.42% of 'book profits' as defined under domestic tax laws

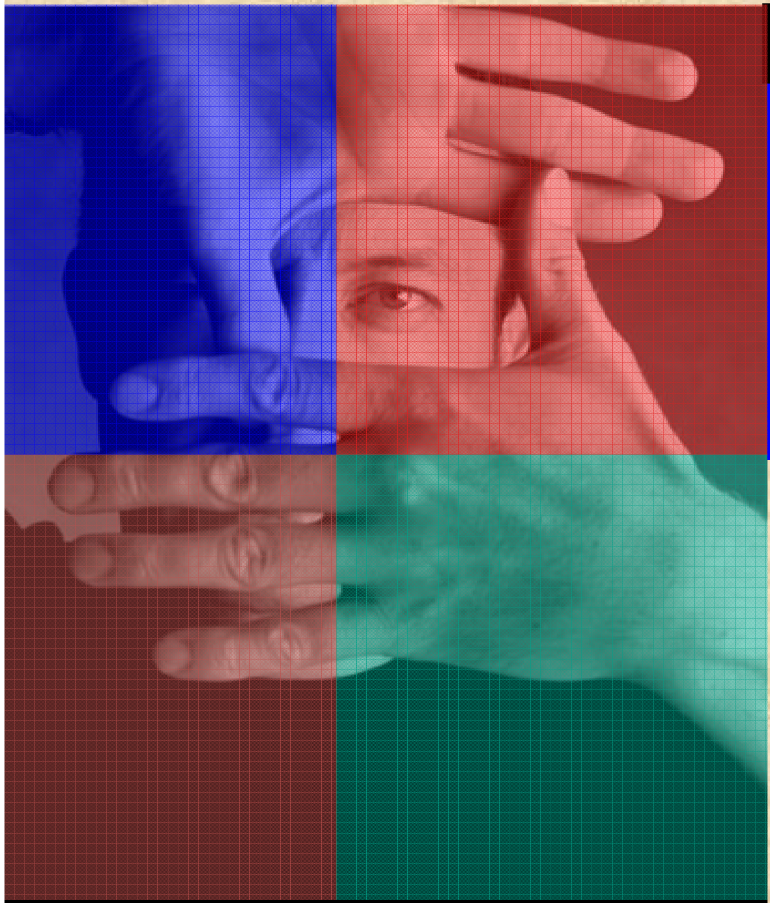
Tax environment - Investors

Section 10(23G)

- Income from dividends, interest and long term capital gains by companies/ trusts from investments in shares/ long term finance (more than 5 years), of specified infrastructure development companies (eg engaged in industrial parks, hotels, housing projects, etc) is tax exempt
- However, MAT may apply on such income of investors computed @ 8.42% of book profits
- In order to claim above exemption, the project company should be notified by CBDT

Section 115O

- Domestic companies declaring dividend liable to pay dividend distribution tax ('DDT') @ 14.025%
- DDT is in addition to regular corporate tax payable by companies @ 33.66%



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Key challenges facing Real Estate sector

Challenges facing Real Estate sector

Legislation

- ULCRA yet to be repealed in key states of Maharashtra and Karnataka
- Tenancy laws not in favor of owner, though this is now changing

Transaction Costs

- Stamp duty is as high as 14-15% in some states
- Stamp duty rates applicable for all transactions

Title

- High percentage of land holdings do not have clear titles
- Ownership is unclear and hence land is off market

Lack of corporatization

- Land typically held by individuals/ families
- Non corporatization restricts organized dealings and hinders transfer of title

Absence of REITs

- REITs are a significant capital and liquidity source for real estate industry globally
- Absence of REITs has restricted retail investor participation and limited capital flows

FDI IN TOWNSHIPS – NEW GUIDELINES FOR 2009

Questions

ca. ranjit karthikeyan

ranjit karthikeyan associates

ranjit@rkaglobal.com