

Dipp Proposes Widening of Definition of “Real Estate”

Government to Monitor M&A Activities

New Accounting Standards in Line With IFRS

LexCounsel, Law Offices

C-10, Gulmohar Park
New Delhi 110 049, INDIA.

Tel.: +91.11.4166.2861
Fax: +91.11.4166.2862

Recommended by:



DIPP Proposes Widening of Definition of “Real Estate”

The Department of Industrial Policy and Promotion, Government of India (“DIPP”) proposes to clarify the meaning of “real estate”, as used in the Foreign Direct Investment Policy of India (“FDI Policy”). With the clarification, DIPP also intends to include services rendered by consultants, advisors, valuers and brokers. DIPP has circulated a draft note to the other ministries for their comments on the proposal of widening the ambit of the term “real estate”.

The current FDI Policy of India prohibits foreign investment in real estate sector but does not define the scope of the real estate business. In terms of the proposal, consultancy or advisory services related to location, space and property issues of any kind will be included within the ambit of “real estate”. Additionally, agents, advisors, brokers and consultants dealing with residential, commercial or industrial property are proposed to be included within the ambit of “real estate”, if they offer certain services. The FDI Policy would be amended to include comprehensive list of such services.

The move of the DIPP to widen the scope of the term “real estate” follows the queries received by the DIPP from foreign investors asking if foreign investment is permitted in broking services in the reality sector.

Subject to the aforesaid proposal of the DIPP being passed, it is expected that FDI Policy due to be released vide Circular 1 of 2011 would provide for widened scope of the term “real estate”.

Government to Monitor M&A Activities

The Ministry of Corporate Affairs (“MCA”) has issued notifications for giving effect inter alia to sections 5 and 6 of the Competition Act, 2002 (“Act”) with effect from June 1, 2011. Upon these sections being effective, all mergers, acquisitions and amalgamations that meet the limits prescribed under the Act would require compulsory pre-notification to the Competition Commission of India (“CCI”), and will not come into effect until 210 days or by the order of CCI, whichever may be earlier. CCI, thus, would now have the power to monitor mergers, acquisitions and amalgamations.

The notifications issued by the MCA exempt an enterprise whose control, shares, voting rights or assets are being acquired has assets of the value of not more than INR 250 crores or turnover of not more than INR 750 crores from the provisions of Section 5 of the Act for a period of five years.

The notifications also exempt, from the provisions of Section 5 of the Act (for a period of five years), the ‘Group(s)’ exercising less than fifty percent of voting rights in other enterprise. Additionally, the notifications have enhanced, on the basis of the wholesale price index, the value of assets and the value of turnover, by fifty percent for the purposes of Section 5 of the Act.

New Accounting Standards in Line With IFRS

The Government of India (“GoI”) has notified 35 new accounting standards in line with IFRS (International Financial Reporting Standards) to be followed by large companies. GoI has introduced new accounting standards with an intention to update the Indian accounting norms with the global standards.

The new accounting standards inter alia deal with preparation of accounts, valuation of financial assets and recognition of income and expenditure. In accordance with the earlier road map laid out by MCA, the new accounting standards will be implemented in a phased manner, beginning with the companies having net worth of over INR 1,000 crores from April 1, 2011.