



INDIAN LEGAL AND BUSINESS UPDATE
NOVEMBER 1-NOVEMBER 30, 2010

1. Government mulls changes to foreign direct investment oversight.

The government proposes significant changes to the country's foreign direct investment oversight regime. A committee of secretaries will be meeting soon to consider a draft proposal, which suggests that decision making on all policy issues pertaining to foreign direct investment (FDI) be transferred from the Department of Industrial Policy and Promotion (DIPP) in The Ministry of Commerce to the Department of Economic Affairs (DEA) in The Ministry of Finance.

Currently, the Foreign Investment Promotion Board (FIPB) clears proposals for foreign investment and falls under the DEA, while policymaking functions on FDI are still under DIPP. This leads to two centers of authority. The move, if accepted, will provide foreign companies a one stop shop for resolving all issues relating to foreign investment. Currently, while FIPB deliberates on proposal by foreign companies, any matter that requires clarification or a change in policy has to be cleared by DIPP. The proposal will also help in decisions on many policy issues being taken quicker.

There have been many delays between a policy decision and its notification by DIPP, like in the case of FDI in the print media or indirect foreign investment under Press Notes 2, 3 and 4, which have not been notified even after a public announcement of a change in policy 19 months ago. These delays, which also lead to delays in FIPB clearing proposals of foreign companies, can be resolved if the matter is overseen by one ministry.

Making a case for the change, the draft note argues that since FEMA is administered by DEA, the appropriate authority for all capital account transactions should be DEA. This would be consistent with the overall context, where policy issues relating to other forms of foreign investment like that via foreign institutional investors and external commercial borrowings are administered by DEA.

2. Navi Mumbai Airport Gets Environmental Clearance

The Environment Ministry has cleared the Navi Mumbai International Airport project after a three year delay. The ministry had resolutely opposed the project on environmental grounds, despite it receiving in-principle Cabinet approval in July 2007.

Mumbai will become the first city in the country to have two operational airports.

Together, they will have a capacity to handle 50 million passengers a year by 2015. Phase one of the new airport will handle 10 million passengers, a figure that will expand to 40 million by 2030 at an investment of Rs. 9,970 crore (2.2 USD Billion approx.).

The Navi Mumbai airport is vital as Mumbai's existing International Air Port already handles 25.8 million passengers a year and will reach its 40 million capacity in four years with no space to expand. As the Navi Mumbai airport will take around five years to complete, Mumbai airport is likely to face severe congestion in the interim.

3. TRAI issues revised Telemarketing Guidelines

Hardening its stand against telemarketers who violate guidelines, the Telecom Regulatory Authority of India (TRAI) has decided to impose a hefty penalty of up to Rs 2.5 lakhs (USD 5,500 approx.) if they call a mobile subscriber registered for not receiving commercial calls. The penalty is a staggering 250 times the earlier maximum stipulated penalty of Rs 1,000. The minimum penalty is only Rs 500.

Under the revised guidelines released today, a telemarketer will be fined Rs 25,000 for a first offence, rising progressively to Rs 2.5 lakh for a sixth offence, following which its number will be blocked by all service providers. The new regulations will be effective from January 1, 2011.

Telemarketers will also be issued a series of 70 numbers to help subscribers recognise commercial calls. Similarly, a unique Short Messaging Service (SMS) header has also been mandated for easy identification of commercial SMSs. No commercial communication, even for unregistered customers, will be permitted between 9 pm and 9 am, the regulator said.

4. Supreme Court Dismisses Bayer's Appeal

The Supreme Court dismissed an appeal from German pharmaceutical major Bayer for stopping the Drugs Controller General of India (DCGI) from giving marketing approval to low-cost versions of medicines that are under patent protection in the country. The appeal was against an earlier judgement of the High Court, which did not find merit in Bayer's argument in favour of a system that links the patent status and marketing approval process of a drug in India.

While patent protection comes under the domain of the patent office and is governed by the Intellectual Property Laws, drug approval is the responsibility of the DCGI, which enforces the Drugs and Cosmetics Act. Dismissing Bayer's petition, the High Court had in February held that the patent system was distinct from the drug regulatory system and Indian law did not prevent DCGI from granting marketing approval to generic versions of patented drugs.

Bayer had wanted the DCGI to be restrained from granting marketing approval to generic versions of sorafenib tosylate, a cancer drug, as it holds patent rights for the drug in India. The court refusal had seen generic drug manufacture Cipla getting marketing approval for the product.

5. Delhi High Court upholds Centre's National Sports policy of fixing tenure and upper age limit of the heads of sports federations

The Delhi High Court gave its approval to the Government's National Sports policy which mandates that the upper age limit of the heads of sports federations be 70 years, and they can serve for a maximum of three terms.

A bench comprising Chief Justice Dipak Misra and Justice Manmohan dismissed the petitions of five federations, which had sought to stay the government policy limiting the age for the persons heading the organisations to 70 years, and said the policy should be implemented forthwith. On May 1, 2010, the Centre had formed a policy and issued guidelines to the sports bodies to amend their functioning accordingly and directed all federations to remove all those who are above 70 and holding the posts. The policy said apart from upper age limit fixed at 70 years, the head of a sporting body was allowed to continue on the post for a maximum of three terms. The sports bodies challenged the policy in the court stated that the experienced persons are required to head the federations as there are only a few left with the talent but the court, refused to grant any relief to them and declined to stay the government's decision.

6. Fresh Amendments to the Employees' Provident Funds Schemes and Employees' Pension Scheme

In October, 2008, Employees' Provident Funds Schemes and Employees' Pension Scheme was broadened to include specific category of International Workers and it was made a mandatory requirement for these International Workers to contribute to the Indian Social Security Contribution Schemes. The Ministry has recently brought in certain vital amendments to the provisions of the Employees' Provident Funds Schemes and Employees' Pension Scheme.

As per the erstwhile provisions, International Workers were permitted to withdraw their respective Social Security Contributions at the end of their employment in India. However, by virtue of the above amendments, the International Workers are likely to face a significant constraint in the free withdrawal of their contributions made to the Social Security Schemes in India

By virtue of the above amendments, international workers would not be permitted to withdraw their social security contributions before attaining the age of 58 years, unless they are covered by Social Security Agreements executed between India and their home countries or fall under certain specified situations. Currently, India has entered into 12 social security agreements but only two with Belgium and Germany are operational. Therefore, while structuring the

contracts for deputation of the foreign expatriates to work in India, social security contributions made in India on their account will be a significant issue.

7. Wipro Chairman – Azim Premji makes India’s biggest charity contribution

In the country’s largest ever contribution to philanthropy, Wipro Chairman Azim Premji has announced the transfer of 213 million equity shares valued at around approximately Rs 8,846 crore (USD 2 Billion approx.) to an irrevocable trust that will finance social and not-for-profit initiatives undertaken by the Azim Premji Foundation. With this, Premji’s holding (including entities controlled by him) in the company slides from 79.36 per cent to about 68.42 per cent. The transfer will be effected by December 7. The trust will fund, among other things, the proposed Azim Premji University that aims to improve the standard of elementary education in the country.
