



This is India's Century

Doors may open for foreign investment in infra debt fund

The Deepak Parekh Committee on India Infrastructure Debt Fund (IIDF) has recommended a slew of regulatory changes to pave the way for foreign insurance and pension funds to invest in the proposed Debt Fund.

These suggestions come in the wake of the Centre toying with an idea of creating a debt fund (initially about Rs 50,000 crore) to meet the long-term debt needs of infrastructure projects that are set up through public private partnerships (PPP).

A substantial portion of the resource requirement for IIDF is expected to eventually come from foreign pension and insurance funds.

Recommendations

- Creating a special window for foreign debt with a tenure of 10 years or more to enable the requisite flow of investments .
- Investment in IIDF should not form part of existing limit prescribed by SEBI for FII investment in corporate bonds.
- Country's foreign exchange reserves may be used to source up to \$ 2 billion for the Fund.
- The interest income from IIDF exempt from levy of withholding tax.
- The proposed IIDF would provide only long term debt and the minimum lending would be for 10 years. Projects requiring debt for less than 10 years will have to rely on the normal banking system.
- This fund could be set up for a smaller amount initially which could be expanded subsequently.
- The debt fund should be set up by one or more sponsors who will act as the General Partners (GP). The sponsors could be one or a combination of IIFCL, LIC, IDFC, UTI, ICICI, an infrastructure NBFC or investment bank.
- The sponsors may include one or two foreign entities—such as IFC or ADB— as GP in order to enhance the credibility of the fund from the prospective of foreign investors. The sponsors would be required to invest at least 10 per cent of the total investment in the form of subordinated debt.
- The fund may seek investment from domestic sources and gradually invite foreign investors. The option of setting up multiple funds for different target groups should also be kept open. The fund may also be allowed to issue long term bonds for investment by non-Resident Indians.

HIGHLIGHTS

- A slew of regulatory changes have been recommended to pave the way for foreign insurance and pension funds to invest in the proposed Debt Fund.
- Revised guidelines for listed companies, stating that the companies will have to maintain minimum public shareholdings of 25 percent, up from the previous 10 percent
- A panel of lawmakers have drastically revised a draft law on the intellectual property rights of state-funded institutions, relaxing patenting norms for their inventions and giving the government more control over them..
- The government has liberalised employment visa norms. Now companies can hire as per their requirements as against the previous ceiling of 20 employees per company
- On May 7, 2010, the Supreme Court ruled in favour of Mukesh Ambani's Reliance Industries in a gas-pricing dispute with younger brother Anil's Reliance Natural Resources, making the price fixed by the government as binding and also ruling that the family pact arrived at after the fall out between the two brothers, designed at the behest of their mother, is not legally binding.

India Sets 25 Percent Min. Public Shareholding for Listed Companies

India's finance ministry released revised guidelines for listed companies, stating that the companies will have to maintain minimum public shareholdings of 25 percent, up from the previous 10 percent. The government further stated that listed companies have to reach this level by increasing the public's share in the company by at least 5 percent annually.

In order to achieve this new ratio, companies will have to either issue fresh equity to the public or promoters within the company must sell off shares; some combination of the two would also work. The government believes that these new measures will increase transparency in capital markets.

The changes are expected to immediately affect 183 listed companies in the country that maintain less than 25 percent in public shares. Out of these firms, 148 are private and 35 are state-owned. DLF Ltd., Jet Airways (India), Reliance Power, Tata Communications, and Wipro Ltd. are among the prominent private enterprises that are currently below the requisite 25 percent, while Indian Oil Corp, Hindustan Copper Ltd., and Steel Authority of India Ltd. headline the government-owned contingent.

The new regulations also state that companies with a market cap over Rs.40 billion (US\$853.8 million), will be allowed to go public with an initial 10 percent public shareholding, but will be required to increase public shares by at least 5 percent in order to attain the 25 percent minimum.



Redrafting the Indian Bayh-Doyle Act

A panel of lawmakers has drastically revised a draft law on the intellectual property rights of state-funded institutions, relaxing patenting norms for their inventions and giving the government more control over them. The original Bill made it compulsory for all scientific institutions and universities working on government funds to patent their every invention.

It also allowed them to licence it out for commercial use on an exclusive basis, in a bid to make such institutions self-sustainable. Revenue was to be shared with the scientists.

A total of 52 amendments have been made to the original draft.

The panel has removed the requirement that every invention be patented, as well as the penal provisions. The new draft proposes to give the government the right to use any invention patented by a state-funded institution, and to issue non-exclusive licences for the technology to any third party in the public interest.

It also mandates that public-funded institutions disclose all their patents as well as licensing and commercialization details on their websites for public scrutiny.

The revised Bill says that public-funded patents cannot be assigned without the government's permission, and exclusive licences can be granted only when the licensee manufactures the patented product substantially in India.





Visa Norms Liberalized in IT Sector

The government has liberalised employment visa norms. Now companies can hire as per their requirements as against the previous ceiling of 20 employees per company.

Technology companies that sponsor foreigners to work in India will need to give a declaration that the skilled worker has been hired for working in an IT or ITeS company or a software technology park of India or special economic zone dedicated to IT or an IT unit in a multi-product zone.

The foreign worker will have to give a declaration that his salary is above \$25,000 per annum. Purpose of the salary cap is to ensure that only highly skilled employees come to the country .

However, there is no change in the ceiling on the total number of foreign employees for steel and power companies, which remains at 40 per company.

A list of activities in the IT sector has also been circulated to missions abroad to make it easier for them to identify skilled workers and issue work visas.

Reliance Natural Resources Limited v. Reliance Industries Ltd.

Major legal issues arising out of this landmark Judgment can be enumerated as:

- **Legality of a private agreement:** A private agreement or family arrangement between two private parties, cannot bind the shareholders of the company, because anything outside the Articles of Association of a Company cannot bind the shareholders vis-à-vis the company. In the present case, the said MoU or family arrangement was not referred to neither in the demerger scheme of RIL nor in any representation made to the Stock Exchanges.
- **Government a custodian/trustee of Natural Resources:** Here the court invoked the 'Public Trust Doctrine and the Constitutional provisions viz , Articles 297, 14 and 39(b), and held that clause pertaining to pricing is correct. It gives the government the authority for such a contract and it helps to safeguard the natural resources of the country, by casting on the government, the role of a trustee. When the government cannot supersede the Constitutional provisions, even the RIL cannot.
- **Sanctioning of the Scheme of demerger:** The scheme of demerger of RIL, in pursuance of a family arrangement is not consistent with the provisions of the Companies Act, 1956, for the arrangement was not embodied in the scheme of restructuring, though a majority approved the scheme. Further, since the MoU was between three promoters of the Company and the restructuring scheme was between two million shareholders, all of the same equity class, the concept of class of members with similar interests voting on a proposal for reorganization, was negated. Since, the MoU was not ratified or approved by these shareholders it cannot be subsequently added to the scheme.

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