

# How direct is FDI?

Amit Seth, partner and head of litigation & real estate laws practice at Seth Associates, explains the basic guidelines for foreign direct investment (FDI) in Indian real estate

**T**ill recently, foreign investors, other than NRIs, were permitted only in development of integrated townships and settlements, either through a wholly owned subsidiary or through a joint venture company along with a local partner. Later on, the guidelines prescribed and issued by the Ministry of Commerce & Industry via Press Note 2 (2005) series opened up FDI in townships, housing, built-up infrastructure and construction development projects.

## Basic guidelines

The Department of Industrial Policy and Promotion (DIPP), vide Press Note No. 2 (2005), has permitted FDI up to 100% under automatic route. This is in townships, housing, built-up infrastructure and construction development projects (which would include, but not be restricted to housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure facilities, such as roads and bridges, and transit systems), subject to the following guidelines:

1. Minimum area to be developed under a project would be as follows: In case of development of serviced housing plots, a minimum land area of 10 hectares. In case of construction development projects, a minimum built up area of 50,000 sq m. In case of a combination of the above two projects, any one of the two conditions would suffice.

2. Minimum capitalisation norm shall be US\$10 million for a wholly-owned subsidiary and US\$5 million for joint ventures with Indian partner/s. Funds would have to be brought in within six months of commencement of business of the company.
3. Original investment cannot be repatriated before a period of three years from completion of minimum capitalisation. However, the investor may be permitted to exit earlier with prior approval

of the government through the Foreign Investment Promotion Board (FIPB).

4. Development of at least 50% of the integrated project has to be completed within a period of five years from the date of obtaining all statutory clearances. The investor would not be permitted to sell underdeveloped plots (underdeveloped connotes where roads, water supply, street lighting, drainage, sewerage and other conveniences as applicable under prescribed regulations, have not been made available). The investor must provide this infrastructure and obtain the completion certificate from the concerned local body or service agency before being allowed to



dispose of the serviced housing plots.

5. The project shall conform to norms and standards, including land use requirements and provision of community amenities and common facilities as laid down in the applicable building control regulations, by-laws, rules and other regulations of the state government/municipal/local body concerned.
6. The investor shall be responsible for obtaining all necessary approvals, including those of the building and layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements, as prescribed under applicable rules/by-laws/regulations of the state government/municipal/local body concerned.
7. The state government/municipal/local body concerned, which approves the building/development plans, will monitor the developer's compliance to the above conditions. ■

