

India opens door for multi-brand retail trade

On 14 September 2012, the Government of India ("GOI") amended its foreign investment policy permitting foreign direct investment ("FDI") in multi-brand retail trading up to 51%. The GOI had initially approved the proposal in November 2011, but put it on hold for developing broader consensus on the subject.

After rounds of debate, the GOI has opened the way for global retailers to enter the Indian retail market by allowing 51% FDI in multi-brand retail trade ("Policy"). The Policy, *inter-alia*, provides the following:

- Each proposal for FDI shall require specific approval of the GOI.
- The foreign investor will have to make a minimum investment of US\$100 million with at least half the amount to be invested in 'backend infrastructure' within three years. Expenditure on land cost and rentals shall not be counted towards backend infrastructure.
- Retail outlets may only be set up in cities with a population of more than 1 million as per the 2011 census and may cover areas of 10 kilometres around the municipal/urban agglomeration limits of such cities. Fifty three cities are presently covered by this threshold. States which do not have any city with a population exceeding 1 million have the discretion to implement the Policy.
- A minimum of 30% of products have to be sourced from 'small industries' which have a total investment in plant and machinery not exceeding US\$1 million.
- Fresh agricultural produce including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products may be unbranded.
- Establishment of outlets to be in compliance with applicable State laws/regulations. State Governments shall also be responsible for related aspects, such as zoning regulations, warehousing requirements, access, traffic, parking and other logistics.

The Policy is widely expected to have a positive impact on India's economic development with far-reaching effects creating job opportunities, combating inflation, improving technology and infrastructure, helping farmers and small manufacturers and, most importantly, benefiting consumers both in terms of quality as well as price. In addition, because of the direct correlation between retailing and requirement of space, the Policy is also expected to boost development of real estate in India.

There may be some challenges in implementation of the Policy. The Policy has not been made mandatory for all States, thereby leaving the decision on the States as to its implementation. In terms of the Policy, the State Governments will decide whether and where a multi-brand retailer, with FDI, is permitted to establish its sales outlets within the State. However, doubts prevail over the legal framework under which a State Government may refuse permission to an Indian company that has foreign investment to open retail outlets while not applying such foreign

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investment parameter to a pure domestic entity.

The Policy is expected to restore investor confidence in India and has been warmly welcomed by global multi-brand retailers who will now be allowed to explore various joint venture opportunities with Indian partners.

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