Suggestions regarding relaxing current FDI regulations/ guidelines and for construction development sector

S. No	Current Regulations	Suggestion	Key rationale for our suggestions
1	<u>*Lock in restrictions*</u> Original investment (i.e. entire amount brought in as FDI) cannot be repatriated before a period of three years from the date of receipt of each installment/ tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB. *(Clause 6.2.11.2(3) of Consolidated FDI policy)*	It is suggested that the current lock in restrictions **should be removed** so as to permit FDI made in an Indian company to be freely transferable to residents or non residents, so long as Indian company (recipient of FDI), (i) Satisfies the prescribed FDI policy guidelines for construction development sector; and (ii) Amends its Memorandum of Association (MOA)/ Articles of Association (AOA) to specifically incorporate all necessary conditions/ requirements laid down in the FDI policy for this sector so as to restrict its activities to undertake FDI policy compliant projects only.	► To present necessary exit options to the foreign investors ► Increase investor confidence ► Provide greater flexibility to the foreign investors ► To address current economic and commercial/ business issues and challenges ► To ensure self compliance to FDI policy guidelines by incorporation of necessary FDI policy requirements in the charter documents
2	<u>*Applicability of FDI policy regulations*</u> The **investor**/investee company shall be responsible for obtaining all necessary approvals, including those of the building/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/bye-laws/regulations of the State Government/ Municipal/Local Body concerned. *(Clause 6.2.11.2(6) of Consolidated FDI policy)*	It is suggested that the Indian Company (recipient of FDI), should alone be mandated to comply with the project level restrictions/ conditions stated in the FDI policy and that such project level guidelines should not be applicable to the foreign investors under any circumstances.	► To reduce project level compliance burden on foreign investors ► Provide greater clarity to foreign investor community ► To make investments in this sector to be more attractive
3	<u>*Completion requirements*</u> The extant FDI policy guidelines for construction development sector, requires the foreign investor to provide necessary infrastructure and obtain completion certificate from respective local body/ service agency before disposing serviced housing plots. *(Clause 6.2.11.2(4) of Consolidated FDI policy)*	It is suggested that there should be **no** requirement for obtaining of completion certificate for housing plots from any local body/ service agency either by the FDI investor or by the Indian Company (which is the recipient of FDI), as a pre-requisite for selling/ disposing such plots. Instead, it is suggested that all 'developed plots' should be permitted to be sold/ disposed. It should be further clarified that the term 'developed plots' for this purpose includes (a) serviced housing plots; and (b) serviced plots for identified projects, which have necessary approvals/ licenses and where basic infrastructure (such as roads, street lightning, water supply etc) has been provided as per the concerned state government's rules/ regulations/ bye laws.	► To reduce project level compliance burden of procuring completion certificates as a pre-requisite for selling housing plots ► To reduce delays in project completion ► To provide greater assurance levels to foreign investors about construction development projects
4	<u>*Mixed use projects*</u> Currently, the extant FDI policy guidelines are silent on such projects.	It is suggested that that an Indian company (recipient of FDI) undertaking mixed use projects which have more than 50,000 sq meters of built up area, should be permitted to sell identified land parcels to other Indian companies so long as the Indian company (recipient of FDI) is undertaking at least 50,000 sq meters of development and is responsible for overall development of the entire project.	► To equip the Indian companies (recipient of FDI) with necessary financial resources to carry out new projects ► Help in better management of their multiple projects ► Ensure over-all high development activity levels in this sector
5	<u>*Foreign capital providers*</u> Under the extant FDI policy, all foreign investments to this sector need to comply with the prescribed guidelines and conditions.	It is suggested that foreign investments up to 49 percent should be freely permitted in this sector with no attached restrictions/ conditions either on the investor or investee entities. This is on the ground that under such cases, (i) the control and ownership of the subject construction development asset would continue to lie in India, and (ii) such foreign investment shall only facilitate provision of foreign equity capital to satisfy	► To attract huge inflows of foreign capital ► To make clear distinction for foreign capital providers which do not have long-term interest in construction development assets ► To enable players of this sector to raise foreign capital at competitive rates ► To reduce dependency on already over

		funding requirement.	strained domestic financial institutions ► To put it in line with provisions of erstwhile PN2(2009) which permits down-stream investment by an Indian company held by Indian residents to the tune of 51% or more
6	*Land disposal under exceptional circumstances* Current FDI regulations do not permit investor or investee company to sell undeveloped plots or carry out real estate business. *(Clause 6.2.11.2(4) and note (ii) to clause 6.2.11.2 of Consolidated FDI policy)*	It is suggested that the Indian Company (recipient of FDI) should be permitted under the automatic route to dispose away necessary land (including land without requisite approvals) held by it under the said project(s), on **no profit basis** under exceptional circumstances which may render a construction development project to be un-viable (see illustrations below). To illustrate, consider the following: ► A construction development project may be considered to be un-viable where, *inter alia*, **(i)** substantial land disputes exit, which do not permit construction/ development of the project; or **(ii)** where necessary approvals/ licenses cannot be procured or, necessary state bye-laws cannot be adhered to; or **(iii)** where the project has landed into legal disputes to raise high concerns over the completion of the project in the foreseeable future; or **(iv)** where project can no longer be developed or constructed due to un-resolvable issues due to various economic, social or political issues. Under such exceptional cases, the land should be permitted to be sold or exchanged on condition that the Indian company (recipient of FDI) does not make any profit on such transaction.	► To allow exits under exceptional circumstances ► To ensure that foreign capital is not blocked in un-productive/ unviable projects
7	*Contiguity requirements* Currently construction development projects need to be contiguous while meeting the minimum built up area conditions.	It is suggested that a suitable clarification should be issued to treat/ consider a construction development project to be 'contiguous', where the minimum built up area of land is located either within a 5 km radius or, within the same master plan notified by state government. Further, exchange/ barter/ sale or purchase of land should be permitted in order to make a project contiguous in nature.	► To help meet the minimum built up area conditions ► To ensure high development activity levels in this sector ► To provide greater flexibility to construction development players ► To ensure high development activity levels in metro cities where meeting contiguity conditions is difficult
8	*Joint development* The extant FDI policy guidelines are currently silent on this.	It is suggested that a suitable clarification should be issued to permit Indian companies (being the recipient of FDI) to undertake joint development with other Indian companies for parts of a large contiguous project so long as the Indian company (being recipient of FDI) continues to be responsible for overall project and carries out development of minimum of 50,000 sq meters in the entire project. To illustrate, consider the following: ► An Indian company (recipient of FDI) which is undertaking construction and development of built up area of say, 100,000 square meters, should be permitted to jointly construct/ develop the project, *inter alia*, by (i) entering into joint ventures with other Indian entities; or (ii) executing joint development agreements with other Indian entities; or (iii) outsourcing completely or partially, the construction/ development activity of part(s) of the entire project to other Indian entities. Such joint development should be freely permitted where the Indian company (recipient of FDI) continues to be responsible for the construction and development of the entire project (i.e. of the entire 100,000 square meters) and engages itself to develop at least 50,000 square meters in the entire project.	► To ensure overall higher development activity levels in this sector ► To reduce delays in project completion ► To ensure better project management ► To enable achievement of efficiencies in terms of pricing, quality standards and resource management etc
9	*Non-resident to Non-resident transaction*	It is suggested that foreign investment in this sector should be	► To provide exit options to foreign

	Currently, there exists ambiguity on permissibility of transfer of foreign investment made in this sector by one non-resident investor to another non-resident.	freely permitted to be transferred by one non-resident investor to another non-resident as such transaction shall not entail transfer of funds out of India.	investors ► To make investments in this sector more lucrative ► To provide greater investor confidence