ICICI Bank, HDFC await clarity on FDI formula

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Synopsis
ICICI Bank and HDFC, are hoping that the government will clarify on Monday whether they will be reckoned as Indian entities for FDI purpose.

MUMBAI/DELHI: Two of the country's largest financial institutions, ICICI Bank and HDFC, are hoping that the government will clarify on Monday whether they will be reckoned as Indian entities for FDI purpose.

The foreign stake in the two institutions is currently higher than the foreign shareholding in some listed multinationals.

The view within ICICI Bank is that it can only be regarded as an Indian bank. Their argument is that 27% shares are held by a custodian on behalf of American depository receipt (ADR) holders. The custodian votes in accordance with the wishes of the board, which is controlled by Indian residents.

Secondly, the voting rights in a bank are limited to 10% irrespective of how much shares an individual holds. Besides, prior approval from RBI is required for transfer of shares of over 5% of the paid-up capital.

According to Majmudar & Co managing partner Akil Hirani, "The extent of foreign shareholding in the companies will determine whether they will be reckoned as foreign or Indian." He adds that their investment in subsidiary companies could, therefore, be seen as foreign investment.

As of December-end, foreign investment in ICICI Bank was 64% which included 36% held by foreign institutional investors and 27% held by overseas investors through ADRs.

In the case of HDFC, the foreign shareholding is higher at close to 74%. Of this, 58.8% is held by foreign institutional investors and 15.3% through foreign direct investment. As against these, Hindustan Unilever has 52% held by its foreign promoters and close to 15% held by foreign institutional investors.

Right now, there is no immediate concern for either institution. The only subsidiary with sectoral limit on FDI are their respective insurance arms, ICICI Prudential Life and HDFC Standard Life. However, here, the government has said there is no confusion as the Insurance Regulatory & Development Authority has clearly defined what is a foreign company.

On Wednesday, the Cabinet committee on economic affairs (CCEA) endorsed new guidelines for computing foreign equity holding in an Indian company. On Friday, a Press note issued by the government said that investments by an Indian-owned company would count as Indian equity.

An Indian-owned company is one where the beneficial foreign ownership is less than 50% and where the right to appoint the board is with resident Indians. The new norms have generated an enormous controversy because the implication of this for sectors such as multi-brand retail, where FDI is prohibited, or where sectoral caps exist as in telecom, insurance and media, are still not entirely clear.

According to bankers, the object of the guidelines is to relax FDI norms to encourage investment and it is unlikely the government would take a stance that would require companies to reduce their holdings. However, besides the issue of entities being Indian or foreign, there are other problem as well. For instance, the stance of investment in hitherto-prohibited sectors.

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"There is a lack of clarity in terms of the latest changes in the FDI policy and we are waiting for the final notification to be issued by the government," Amarchand Mangaldas partner Akila Agrawal said. "It is not clear if downstream investment by investing companies with foreign holding in sectors that do not have sectoral caps has been liberalised," she said.

Overall, corporate lawyers feel the guidelines encourage investment. "There are a lot of positives in a way that sectors such as multi-brand retailing and telecom where there are restrictions in FDI can now avail FDI through investment companies. Having said that, the negative is that the proposed changes in the policy may result in circumventing the restrictions or the sectoral caps that exist under the FDI policy," Premnath Rai Associates partner Premnath Rai said.

According to Fox Mandal Little's Som Mandal and Hammurabi & Solomon���s Manoj Kumar, the recent changes will be helpful for foreign investors as they would not require FIPB approval for downstream projects. Moreover, the changes shall bring about a lot of clarity that was missing

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