Beneficial ownership cap under FEMA may be kept open-ended

Issue deferred as ministries fail to reach consensus over threshold

SHRIMI CHOUDHARY
New Delhi, 13 October

The definition of "beneficial ownership" for Chinese foreign direct investment (FDI) in India might be kept open-ended in view of no consensus on this.

Policymakers are of the opinion that placing a threshold on investment would leave the field open for overseas investors, particularly from China, to alter their investment structures, short-circuiting the FDI approval process.

"Several rounds of discussion and deliberation have been done. The ministries, including the Ministries of Finance and Commerce, have failed to reach a consensus on setting a cap on investment from seven neighbouring nations, including China. It is also being argued that giving a definition could be misused by overseas investors to escape scrutiny," said a source in the government, privy to the discussion. Sources say the ministries and departments concerned are at odds on keeping the threshold lower at 10 per cent, in line with the rules on significant beneficial ownership under the Companies Act, 2013. Some of them have been pitching for keeping it at 25 per cent for companies and 15 per cent for investment coming through partnerships (as defined under the Prevention of Money Laundering Act). Hence, the matter was deferred again, a source said.

During the discussion between the ministries held two weeks ago, various trends in capital raising by Chinese players and the role of venture capital (VC) and private equity funds came up.

"There are lots of instances where deals have taken place through VC. The large number of VC deals makes it difficult for India to determine what constitutes beneficial interest," said the source cited above.

On April 18, India tightened its FDI policy for countries with which it shares land borders, by putting investment from them on the approval route.

Policymakers say placing a threshold limit on investment will allow overseas investors to alter their investment structure

On April 22, the Centre had issued notice under the Foreign Exchange Management Act, stating that investment from the seven nations must seek approval from the government.

Under it, a Chinese investor holding one share in the investing entity is a beneficial owner.

Industry has made several representations on this since May, seeking clarity on beneficial ownership, but to little avail owing to border tensions.

Experts say deferment would result in delay in business plans of overseas entities.

Rajesh Gandhi, partner, Deloitte India, said, "If the threshold for beneficial ownership is specified, investors will get clarity and portfolio investors will be able to continue investing smoothly. Otherwise, there would be uncertainties and that would delay business plans."

The government, however, has started looking at Chinese investors proposing to buy less than 10 per cent in companies in non-sensitive sectors.

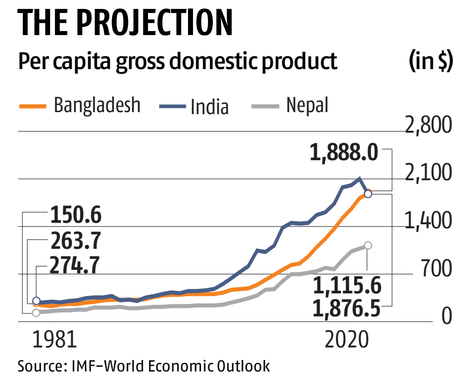
"The government's approach in keeping the definition of beneficial ownership vague is an indication of its apprehension that investors will take advantage of creative structures to escape the ambit of the new provisions. Unfortunately, in the absence of clear directives as to what constitutes beneficial ownership, overseas entities (including listed companies and funds) based out of countries not sharing a land border with India but having a minuscule shareholding/interest from China-based entities are also being covered under this," said Atul Pandey, partner, Khaitan &Co.

He further said foreign investors/funds had been adversely affected and a number of investment proposals which would otherwise have concluded months ago were stuck.

"Considering that the government has come out with beneficial ownership norms for other enactments (most recently, in respect of restrictions on public procurement), I do not see any reason for the government to hold back clarification on beneficial ownership," added Pandey.

India set to slip below Bangladesh in 2020 per capita GDP: IMF

KRISHNA KANT
Mumbai, 13 October



Bangladesh is set to beat India in terms of per capita gross domestic product (GDP) this calendar year, thanks to a sharp contraction in the Indian economy due to Covid-19 and the economic lockdown.

According to International Monetary Fund (IMF)-World Economic Outlook (WEO), Bangladesh's per capita GDP in dollar terms is expected to grow 4 per cent in 2020 to $1,888. India's per capita GDP, on the other hand, is expected to decline 10.5 per cent to $1,877 – the lowest in the last four years. The GDP figure for both countries is at current prices. This makes India the third poorest country in South Asia, with only Pakistan and Nepal reporting lower per capita GDP, while Bangladesh, Bhutan, Sri Lanka, and Maldives would be ahead of India.

The WEO database suggests that the Indian economy will be the worst hit from the pandemic in South Asia after Sri Lanka, whose per capita GDP is expected to shrink 4 per cent in the current calendar year.

In comparison, Nepal and Bhutan are expected to grow their economies this year, while the IMF has not divulged Pakistan's data for 2020 and beyond.

IMF predicts a sharp economic recovery in India next year, which is likely to push per capita GDP ahead of Bangladesh in 2021 by a small margin.

India's per capita GDP in dollar terms is expected to grow 8.2 per cent in 2021, against an expected 5.4 per cent growth for Bangladesh. This will grow India's per capita GDP to $2,030 next year, against Bangladesh's $1,990.

Till five years ago, India's per capita GDP was nearly 40 per cent higher than Bangladesh's. In the last five years, Bangladesh's per capita GDP has grown at a compound annual growth rate of 9.1 per cent, against 3.2 per cent growth reported by India during the period. This has allowed Bangladesh to close the economy gap with its giant neighbour. According to economists, Bangladesh's economic growth has been underpinned by its fast-growing export sector and a steady rise in rate of savings and investment in the country. In contrast, India's exports have stagnated in recent years, while savings and investment have declined.

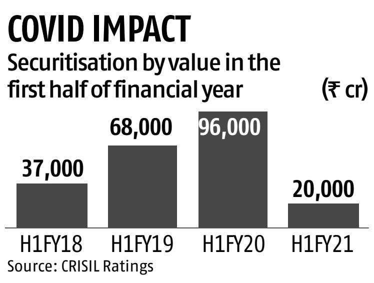
According to the WEO database, India's economic contraction in 2020 will be its worst since the 1990-91 economic crisis when the per capita GDP had contracted 17.5 per cent in 1991. India's GDP per capita in dollar terms had last contracted 1 per cent year-on-year in 2012 due to currency depreciation. In all, India's per capita GDP in dollar terms contracted on eight occasions in 40 years, five of which occurred prior to 2000.

Securitisation deals dip 80% in 1st half of FY21: CRISIL

SUBRATA PANDA
Mumbai, 13 October

The Covid-19 pandemic and the moratorium granted on repayment by the Reserve Bank of India (RBI) have led to 80 per cent drop in securitisation transactions by value, rating agency CRISIL said on Tuesday .

In the first half of the current financial year, securitisation transactions plunged to ₹20,000 crore, against ₹96,000 crore in the same period a year ago. During the first half of FY19, securitisation transactions were ₹68,000 crore. However, there are signs of recovery, as September saw a rebound in securitisation transactions to ₹10,000 crore. "Overall volume continues to be well below the levels seen in the past few years, when securitisation had become one of the preferred fundraising tool for non-banking financial corporations (NBFCs)," said the rating agency.



According to Krishnan Sitaraman, senior director of CRISIL Ratings, the reduced disbursements by NBFCs in the first of this financial year led to a decline in the need to access the securitisation market to churn assets.

"Investors also preferred to wait on the sidelines, assessing the impact of moratorium on collection efficiency and credit behaviour, and awaiting clarity on improvement in borrower cash flows and economic activity," he said.

More importantly, to tide over liquidity concerns, non-banks took recourse in funds made available by the RBI through long-term repo operations and government's partial credit guarantee scheme.

Asset-backed securities made up for 70 per cent of the overall securitised volumes in H1FY21, up 1,000 basis points, against the same period last financial year.

Covid insurance can be renewed with portability

With the rise in the number of Covid cases and no end in sight for a cure, the Insurance Regulatory and Development Authority of India (Irdai) has modified its earlier guidelines for Covid-specific products and allowed renewal, migration as well as portability of such products.

Initially, the insurance regulator had said, lifelong renewability, migration, and portability are not applicable to such products.

However, it has now tweaked the guidelines and allowed Corona Kavach and Corona Rakshak policies of any tenure to be renewed for further terms of three and a half months, six and a half months or nine and half months, according to the option exercised by the policyholder. However, the renewal shall be subject to the underwriting policy of the insurer.

Also, the renewal has to be done before the expiry of the existing policy contract. Hence, these policies have been allowed by Irdai to be renewed till March 31, 2021. **SUBRATA PANDA**

'Chinese' lending apps face Indian resistance over high rates, threats

ANUP ROY
Mumbai, 13 October

As the pandemic pushed people towards economic desperation, shady lending applications mushroomed, trapping hapless borrowers with astronomically high interest rates and threats of bodily harm if the money is not repaid.

These unscrupulous lenders, originating from various countries, including within India, are simply known as 'Chinese Apps'. They are hard to stop despite the Reserve Bank of India (RBI) coming down hard on non-banking financial companies (NBFCs) supporting these apps from a deep-layered background.

This is largely because borrowers are seldom aware of the unscrupulous lending practices until it is too late, and those that are following all rules have no voice.

A bunch of CEOs in their mid-30s and early 40s are trying to rectify that. They are bringing all technology-focused, regulated lenders under a common industry association named FinTech Association for Consumer Empowerment (FACE) so that a common ethical lending practice code can be evolved, and customers be made aware of their rights and ways to avoid falling for loan-sharks on smartphones.

Besides, FACE can also act as the voice for the industry to engage with governments and regulators while formulating policies in the space. The platform can be used to disseminate research in the field and act as an industry lobby group, much like Indian Banks' Association, or MicroFinance Institutions Network (MFIN).

The founding members of FACE are also the founding members of top fintech lenders in the country — Akshay Mehrotra of EarlySalary, Satyam Kumar of LoanTap, Ranvir Singh of Kissht, Yogi Sadana of CASHe, Madhusudan E of Krazybee. These five companies control roughly 75 per cent of the market space, and between them they have facilitated disbursement of over ₹21,000 crore in the past three-four years, either directly or as partners, serving 4.5 million customers across 19,000 locations in the country. The industry is constantly evolving, and these companies might not remain at the top, but they want to unite for the future.

The association also has three governance council members — Srinath Sridharan, strategic counsel and independent markets commentator; Ram Rastogi, independent digital payment strategist; and, Avtar Monga, managing partner at Stride Ventures.

ILLUSTRATION: BINAY SINHA

THE CHALLENGE

- Fintech lenders are forming an industry body to check risky lending
- FACE to be an association of more than 100 fintech lenders
- Primary objective is to become industry voice, but also to educate borrowers
- Fintech lending growing at 3-4 times every year, attracting even unregulated foreign lenders
- The association aims to fight unscrupulous lenders that act as loan sharks

"Industry self-governance is critical and the need of the hour. We need, as a responsible industry, to weed out subprime lending products and players and build governance rules similar to those followed in banking and NBFC for capital governance and consumer products," said Mehrotra of EarlySalary.

"As we build FACE, we want to send a common message that we want to protect the best interest of consumers, improve convenience in doing fintech lending and help build a better industry," Mehrotra said.

The so-called "Chinese Apps" piggyback on two loopholes. Firstly, capital to lending entities in NBFCs and fintechs can be routed through any origin or lending can be made by an off-balance sheet lender and, thus, regulatory scrutiny can be avoided for some time.

Once discovered, these apps can quickly close their operations and resurface with a new name. Since there is no restriction on lending rate or duration, foreign origin lenders can offer ₹500 to ₹50,000 at 100 per cent to 800 per cent interest rates for tenures of seven days to six months.

These lenders resort to criminal means of recovery, and since these are not regulated properly, they can wreak havoc to the borrower's life, often leading to suicides.

On the contrary, regulated fintech lenders follow strict rules of the RBI, and are in the process of bringing more people into the credit market by creating their credit profile. Fintech lenders mostly target people in tier-II or lower cities, or in urban unbanked areas, who are hungry for credit but have no access.

Madhusudan estimates that 400-500 million people are still not served by formal credit. "Every year, we are bringing two million new credit customers to credit scores," he said. Therefore, the industry can only expand at a rapid pace, for which self-regulation is needed.

Fintech lenders themselves are growing at three-four times every year, albeit at a small base. But they can do so even without disturbing the banks' customer base. This is a space that banks don't venture into, for example, giving loans to students.

These companies don't have the same physical presence as banks, but delinquencies are low because the fintech companies use cutting edge technology for data evaluation and deep analytics.

"We may not have the physical presence, but the technology and processes we follow are not easily available to banks," said Ranvir Singh of Kissht.

Borrowing using the smartphone "is going to be a way of life," said Yogi Sadana of CASHe, "just as our life in urban areas is becoming a bit like that in the West."

And, hence, fintech lending will only gain traction, and "we cannot airbrush unethical practices in lending anymore. We not only want everyone to follow ethical lending practice, we want to communicate it too," said Mehrotra.