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CAPITAL MARKETS & TRADE

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» Comprehensive Economic Cooperation Agreement (CECA) between India and Singapore

The following paragraphs provide a brief overview of the CECA and its possible influence on the trade and commerce between two countries. CECA is likely to be followed by amendments to some local laws of both countries including Double Tax Avoidance Agreement (DTAA). Actual scope and implications of CECA are difficult to be determined at this stage as it is still very nascent. We believe there could be some resistance before CECA is fully implemented (especially in case of DTAA as was the case between Inda-Mauritius treaty). Some of the comments in italics in the following paragraphs are based on clippings and news reports from some of the leading news daily in India.

Background

- Singapore has emerged as a global financial center with the presence of 7,000 MNCs and 600 financial institutions and is perhaps one of the most successful international trading hub of the world.
- The Cabinet has on Monday, June 27, 2005 cleared the CECA with Singapore. It is a first of its kind model agreement for India as it incorporates agreements in goods, services and investments. India has for the first time entered into any kind of bilateral agreement in services. The agreement gives India a firm presence in the ASEAN region.
- The key objectives of CECA include: free trade agreement in goods, liberalise and promote trade in services, establish a transparent and facilitative investment regime and to form a bridge between India and the ASEAN region for the India-ASEAN free trade agreement.

Investments

- CECA provides a very wide definition for the term 'investments' which includes moveable and immoveable property; shares, stocks, debentures and similar interest in companies; rights to money or performance of financial value; intellectual property rights; goodwill, technical process and know-how and business concessions for search and extract or exploit oil and other minerals and other natural resources.

- CECA envisages free transfer of capital and the returns from any investments including profits, capital gains, dividends, royalties, license fees, other current incomes; proceeds of liquidation; repayments under loan agreements; payments of technical assistance fees and earnings of nationals in connection with the investments.

  Indian companies are allowed to tap US and European markets through ADR/GDR. Indian companies will now be able to tap the Singapore capital markets likewise Singapore based companies will be able to tap Indian capital markets through derivative products. Free transfer of capital and returns is expected to give great boost to trade and commerce between two countries.

- Investors and investments of either Country will be granted regional or local level treatment no less favorable than the most favourable treatment accorded by that particular regional local level in like circumstances.

  This residence-based taxation can give good fillip for routing investments through Singapore (as opposed to Mauritius and other tax heavens). This is because the capital gains tax exemption under Singapore law for income from sale of shares would prevail over Indian law.

  The process of integration of Indian and Asean markets could also play major role in influencing investments in India through Singapore.

  CECA will be providing more safeguards in terms of confidentiality, information sharing etc to ensure that the India-Singapore DTAA is not used a conduit to round-trip the investments. Further, it is also proposed not to provide favorable treatment to shell companies which have nil or negligible business operations.

  CECA has an interesting annexure whereby Government of Singapore Investment Corporation and Temasek holdings will be treated as two separate and distinct legal entities for investments in Indian capital markets.

- India has agreed to provide national treatment for investments in several sectors including food products, textiles, manufacture of paper and its products, chemical products, basic metals, manufacture of motor vehicles, transport equipments, infrastructure, etc. However, India has kept its reservations on: (a) items requiring Industrial license; (b) where joint venture or technology transfer/trademark agreement existed on 12.1.2005 in the 'same' field; (c) for transfer of equity in an existing company to the investor where SEBI Takeover Code is attracted; and (d) investments by registered FII, including portfolio investments.
- Similarly, Singapore has reserved certain sectors or activities from the favorable treatment such as registration of business, own restricted properties, measures affecting the publishing or printing of newspapers, manufacture of products such as beer, cigars, drawn steel products, chewing gum, cigarettes, matches, etc.

Financial Service and other Sectors

- <u>Financial Services</u>: Both countries will provide national treatment to each others banks on entry.

Under this, three Singapore owned banks i.e. Development Bank of Singapore, Keppel Bank and Overseas Bank will be allowed to open subsidiaries in India. Indian banks will qualify for similar treatment in Singapore. This means that they will operate in each others countries as 'local' banks with electronic fund transfer and clearance besides use of local ATMs. The three banks have also been permitted to set-up insurance company's with a FDI of not exceeding 26%, in both life and non-life insurance sector. Money broking, factoring, financial leasing, etc are other areas of business opportunities in this sector.

- Infrastructure: India has agreed to consider on a case-by-case basis requests from Singapore investors for exemption of custom duties for import of capital goods, excluding consumables, for the purposes of infrastructure projects in India, such as, roads, highways, airports, power, water resources management, housing and township, etc.
- Free Trade Agreement for Goods: Under the FTA, India has to lower duty barriers for goods of Singapore origin without actually gaining much by way of duty reduction for its exports to Singapore. In any case, Indian goods face much lower duties in Singapore than is the case vice-versa.
- Professional and consultancy: Several avenues for cooperation has been agreed in areas such as accounting and bookkeeping, architecture services, engineering services, medical and related services, constriction engineering, etc.
- Telecommunication: Development of telecommunication infrastructure in India has been recognized as key sector for growth with Government ready to consider customs duty exemption on case-to-case basis. Similarly the agreement provides for cooperation to access each countries telecom infrastructure. Investments would be subject to the requirement of ownership and control by persons in India and Singapore for three years.

Movement of natural persons

- To improve business travel and immigration both countries have agreed to facilitate temporary entry of natural persons on a comparable basis and of establishing transparent criteria and procedures.
- Professionals can obtain one year entry and stay permits during their service contract including training, conducting seminars, etc.

Others:

- Similarly the CECA envisages cooperation in areas such as e-commerce, intellectual property, science and technology, education, media and air services.

For further details please contact our Capital Markets Team.

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