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Assessing the Investment Climate and Improving Market Access in Financial Services in India

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Written Testimony

By

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Chairman Warner, Ranking Member Kirk, Distinguished members of the Committee.

I would like to thank this Committee for holding this timely hearing. Financial services firms have consistently been at the forefront of private sector engagement with India and look forward to continuing in this role going forward.

Allow me to state that the views that I am expressing are my own, not of my firm or clients. I do represent clients in the financial services sector that do business in India.

Reality Check- What do Trade and Investment Numbers Show?

When discussing India's trade and investment environment, I always start with a simple reality check: Are American executives making the decision to do business there? With all of the negative press around India's recent economic performance, the paralysis on economic reform, and weakening currency, one would expect that businesses are directing their resources elsewhere.

The real numbers are surprisingly positive. U.S. goods exports to India in the period of January to July 2013 are up 11.4% over the same period last year (U.S. Census data). And last year was our largest export total on record at $22.1 billion, so there is a reasonable chance we will have a new record level of exports to India this year. U.S. imports from India have also increased, up 5.4% year-on-year.

Foreign Direct Investment inflows into India were $5.39 billion in the first quarter of India's 2013-14 fiscal year (which starts April 1), as compared to $4.42 billion during the same period in fiscal 2012-13 (per India's Department of Industrial Policy & Promotion, or DIPP). Total FDI into India for 2013 through July- $12.5 billion, versus $11.8 billion the previous year. That's a 7% increase in dollar terms, and a 13% increase in Rupee terms.

Total FDI into India (USD Billions)	2012	2013
January through March (Q4/2013)	$5.88	$5.51
April through June (Q1/2014)	$4.42	$5.39
Total January through July	**$11.8**	**$12.5**
Total for Year	$22.7	?

** Per India's Department of Industrial Policy and Promotion*

It is important to note that total Foreign Direct Investment into India in 2012 had dropped 34% from 2011 when it hit $34 billion. So we are unlikely to hit a new record this year. However, this does show that investors view the opportunity as roughly equivalent to last year.

I will mention that it is difficult to measure the U.S. share of that FDI due to the fact that a great deal of foreign investment into India is routed through India's treaty partner nations, and therefore is counted in India's statistics as originating in these treaty countries. For example- per official statistics, Mauritius and Singapore account for 55% of FDI so far this year (DIPP). So it is not possible to state definitely whether American firms are leaning into India or leaning away. But the international trend-line is stable.

Even the story on Foreign Institutional Investment is likely better than a casual observer may expect. While FII declined between June and August, it has rebounded in September and stands at around +$7.8 billion for the year (per the Securities & Exchange Board of India).

So, despite the news headlines about India's economic crisis, the numbers show that despite worsening macro-economic data, American business leaders are still betting on India in ever-higher numbers. But as I am sure we all agree, there is a larger untapped potential.

Market Access to India's Financial Services Market

Moving on to the main topic of this Committee Hearing: India's openness to investment by American financial services firms varies by sector. Most sectors comprising India's financial services industry are treated quite independently in terms of the openness to foreign trade and investment. The full list of sectors and their market access regulations are included in my written testimony as Annex 1, but I will briefly provide an overview of market access in a few key sectors.

India allows up to 100% foreign direct investment in some sectors, notably asset management companies and other activities included under a general "Non-Banking Finance Companies" license, such as merchant banking, financial consulting, and more.

For traditional banking, foreign companies can establish branches in India and hold 100% ownership, but face a slow process for getting branch approvals which precludes fast, large-scale growth. So far only two American banks have more than a single office.

U.S. Bank	Branches
Citibank	42
Bank of America	5
American Express Banking	1
J.P. Morgan Chase	1
Bank of New York Mellon, Wells Fargo	1 Rep Office
Wells Fargo	1 Rep Office

**The above is per the Reserve Bank of India monthly report from March 31, 2013.*

Foreign banks can also enter India as subsidiaries and own 74%. The Reserve Bank of India has announced its intention to incentivize foreign banks to shift from branch operations to subsidiaries, and has hinted that it may allow foreign banks to hold 100% after conversion. It is important to note, however, that India's banking rules cap the voting rights of any private shareholder in a bank to 26%, which was increased from 10% in December with the passage of the Banking Laws Amendment in Parliament.

Market access in the insurance industry tends to get a great deal of attention. The foreign direct investment cap in insurance is among the lowest of any sector in India- 26%- and unlike virtually every other sector in the Indian economy, the foreign investment cap is specifically noted in the governing legislation (with Parliament's approval of the Pension Fund Regulatory Development Authority Bill in September 2013, that sector also now has the foreign investment cap included in the guiding legislation). So enacting an increase in this cap is more difficult than most other sectors as it requires an amendment by Parliament. This Government first stated its intention to do so back in 2004 just after it was elected, but the Bill has not yet been approved by Parliament.

U.S. Insurers in India	Type
MetLife	Life
Prudential	Life
American International Group	P&C
Liberty	P&C

**The above is per the current list from the Insurance Regulatory Development Authority*

India's Attractiveness as an Investment Destination- Not Just About Market Access

While market access issues are important and tend to get the high-level attention, an American executive looking at India will have an additional, entirely different filter for judging the investment potential: Can the company achieve better returns by investing in India than other investment options provide, inclusive of potential risks?

The most important risk that an American financial services firm faces in India is the risk of frequent, dramatic shifts in the regulatory environment. These regulatory shifts can cause fits for companies already in the market, and give pause to potential new investors.

To make a broad generalization, regulators in India are increasingly focused on customer protection: a laudable goal, but there are powerful instances of where regulatory over-reach has crippled the growth of financial services industries. Furthermore, there is a sense among Indian regulators and government officials that companies will always find a way to deal with regulations, as though the net impact of any regulation on a company's bottom line is not going to be significant.

I know the term "regulatory predictability" is frequently raised as a key concern for investors, but let me show how that opaque term is actually more meaningful to a business leader than the fiscal deficit, current account deficit, currency fluctuations or other macroeconomic indicators.

Until 1999, India's life insurance sector was a monopoly controlled by the Government-owned Life Insurance Corporation (LIC). Life insurance premiums made up 2.15% of the economy. In 1999, the Government passed the Insurance Regulatory and Development Authority Act, allowing private companies to compete in the market and allowing up to 26% foreign direct investment. Within two years the first private firms were licensed by the Insurance Regulatory Development Authority (IRDA).

The life insurance industry grew at a torrid pace. Several private insurers reported increases in new life insurance premiums of 100% or more per year. By 2009 life insurance premiums were $55.9 billion: 4.6% of India's GDP.

In the spring of 2010, a regulatory jurisdictional dispute arose between the Securities and Exchange Board of India (SEBI) and IRDA over regulation of the dominant type of insurance product, called a Unit Linked Insurance Product (ULIP, which invests premiums into investment accounts). The Ministry of Finance intervened and clearly authorized IRDA to continue regulating the products, but forced IRDA to adopt tough new rules on how the products could be structured and how agents selling these products could be compensated. Life insurers saw their fees cut, and agents saw their commission rates reduced by 50%. There was no "notice & comment" period, or any studies of the impact of these regulations. Life insurers had to take all their existing products off the market and re-submit new versions. There was an entire week in late 2010 that not a single ULIP was sold in all of India, while just before this change ULIPs had constituted around 85% of life insurance sales.

To put this into context, the National Association of Home Builders (NAHB) estimates that housing construction contributes roughly 5% of U.S. GDP. Imagine if a U.S. regulation forced all home construction to stop for an entire week.

To be sure, there was a rational reason behind the regulatory changes: the fact that some of these products were being sold inappropriately, primarily by agents who promised unrealistic returns. In most countries, regulators would instead establish stricter rules on how the products are sold, rather than enacting regulations that make the products themselves less appealing to sell and be bought.

The impact of this one regulatory change? Life insurance premiums have decreased every year since. Premiums accounted for only 3.19% of GDP in 2012. Through the first quarter of fiscal 2013, premiums are still on the decline (per IRDA's June 2013 "Monthly business figures – Life"). This is a 31% drop in the sector's contribution to GDP.

Looking outside the life insurance industry, another example of the impact of regulations crippling a large industry can be found in India's mutual fund sector. Again, due to concerns about protecting consumers, in August 2009 the Securities and Exchange Board of India (SEBI) banned entry loads on the sale of mutual funds. The industry had, until then, been averaging annual increases of Assets Under Management of approximately 13%. In the two years following this regulatory change, the sector's AUM declined by 6% and 5%. In November 2012, SEBI re-introduced commissions--payable annually as part of the customer's asset management fee--and the industry has seen a turnaround.

A third example is playing out as we speak. On June 28, 2013 the Reserve Bank of India (RBI) issued "Draft Guidelines on Wealth Management/Marketing/Distribution Services offered by Banks." Included in these Draft Guidelines is a proposal to ban incentives for the sale of insurance products through banks. Approximately 30% of private sector life insurance sales are conducted by bank partners (called "Bancassurance"). If the RBI does enact a ban on incentives for selling insurance through banks, it is likely this key distribution channel will be greatly reduced.

The underlying theme in these examples is that regulators are currently focused on consumer protection, and not the expansion of their relevant industries. But instead of governing sales practices, the regulators choose to discourage the sale and purchase of the products. These types of quick, dramatic changes shape the sentiments of current investors, discourage new investment, and may ultimately hurt the consumers they want to protect.

How to Increase Investment into India

On high-level market access issues, I believe the various institutions in the U.S. that engage with India---Congress, White House, Treasury, Commerce, State, the U.S. Trade Representative's Office--have done an admirable job of maintaining the drumbeat on the importance of economic reforms when engaging their Indian counterparts.

When it comes to promoting regulatory consistency, we have more limited options. India's financial regulators operate largely free of influence from their own elected officials. Apart from banking, competition in India's financial services sectors is relatively new, and regulators are tinkering with the mixture of protection and promotion. We should encourage our friends in India to learn from their own work so the instances of overshooting the intended outcome diminish over time. India is increasingly open to learning from "international best practices," and we should continue to use this angle to provide assistance as requested.

I have three specific recommendations on how the U.S. engages India that I firmly believe can play a role in triggering game-changing shifts in the investment environment:

1. **Push Harder to Conclude a High-Standards Bilateral Investment Treaty**

   There is a wide gap between the commitments in the revised U.S. Model BIT and India's model treaty (called a Bilateral Investment Promotion Agreement, or BIPA). India does not include "National Treatment at Establishment": code for removing FDI caps. India also does not typically include an article on "Performance Requirement," which would potentially alleviate the local content concerns raised by America's information technology, telecommunications, electronics, and other industries. I will note that India did include a section on Performance Requirements in its BIPA with Kuwait (Annex 2). While the Performance Requirement language in the India Kuwait BIPA is far less exhaustive than the U.S. Model BIT, it does provide a starting point.

   India is in the process of reviewing its own model treaty, which has frozen negotiations for more than a year. We should encourage India to conclude this process and return to negotiations as quickly as possible.

2. **Continue and Escalate Engagement with Key State Leaders**

   While the supposed "rise of state leaders" often cited by experts and the press is typically overstated (Congress and BJP, the nation's 2 main national parties, currently hold 18 states-- up from 10 states in 1998), there are important state-level parties which have a strong influence on policy reforms because they:

   a. Control their home state, thus are directly interested in encouraging development; and,
   b. Hold a relevant number of Parliament seats, thus could potentially vote in favor of reforms.

   We should increase our engagement with these state leaders and encourage them to support economic reforms from the Central Government that can help unlock increased investments into their own states. Amb. Nancy Powell has already made state engagement in India a key tenet of her tenure, and these actions should be increased.

The state of Andhra Pradesh is an important example of how key state leaders can become champions of reform. The insurance regulator, IRDA, is based in Hyderabad. This is a strange phenomenon, considering all the other financial regulators are based in Mumbai (or in the case of the pension regulator, PFRDA, in New Delhi). A key reason the insurance regulator is in Hyderabad is that when the bill to open the sector was moving to Parliament for a vote in 1999, the Andhra Pradesh-based Telugu Desam Party used its 29 votes to support the bill.

3. **Constantly Review and Reshape Our Areas of Engagement with India** The United States Government is capable of engaging India on a wide range of topics simultaneously. India, however, cannot always reciprocate on so many fronts simultaneously due to a variety of limitations. The resultant mismatch in expectations often leads to frustration on our side as U.S. officials sometimes find their Indian counterparts unresponsive or indifferent to our proposals. And it also leads to similar sentiments in India about the United States.

   But if we are able to dynamically review and reshape the ways we engage India, we can achieve a much higher level of engagement and satisfaction. While foreign commentators often claim that India's reform process is stalled, in some areas that perception does not match reality. Quite a few truly transformational exercises are taking place. But the changes are not aligned with what we consider our highest priorities so they get less attention than deserved. Whether our guiding aim in engaging with India is simply promoting commerce, or if it is encouraging the growth of a large democratic nation in an unstable region, I am confident that if we have the flexibility to find the open doors to push upon, we can establish more realistic expectations for the relationship.

   One key example where the Government of India is clearly putting a great deal of time, money, and energy is on establishing a unique identification number for all the nation's citizens. At the same time, the Government is trying to establish a bank account for everyone given an identification. In tandem with these moves, the Government is now launching an innovative program to begin direct electronic transfers of Government subsidies and other payments to recipients. The net result of this move, if it works: the 500 million Indians currently outside the formal financial sector may be rapidly pulled in, given bank accounts, a credit card, and having various subsidies sent to them directly-- cutting down on leakages in the system.

When we see an important initiative like the unique ID/financial inclusion/direct benefit transfer taking place in India, we must be quick to reshape our engagement to focus efforts in ways India will find beneficial. There will be resultant commercial opportunities, development opportunities, and a higher degree of goodwill.

Looking Forward

I am very hopeful for Dr. Raghuram Rajan's tenure as the new Governor of the Reserve Bank of India (RBI). While I want to be careful to not overstate the impact he can have on the nation's economy, I am heartened by his inaugural speech at RBI in which he stated, "To the existing traditions of the RBI, which will be the bedrock of our work, we will emphasize two other traditions that become important in these times: transparency and predictability." As I hope I have successfully conveyed, the lack of predictability has diminished India's attractiveness as an investment destination.

The RBI plays a leadership role among India's financial regulators. Hopefully this emphasis on transparency and predictability will carry throughout the system. It is among the lowest-hanging fruit that India can grasp to make itself a more attractive investment destination for America's financial services firms.

I will conclude my remarks with a terrific point made by the former chairman of Microsoft India, Ravi Venkatesan, in his new book "Conquering the Chaos." Ravi points out that much of the world's growth in the next 50 years will come from places that look more like India than Canada. Helping America's financial services firms get in the door and compete on a level field in India will prepare them to remain competitive in the future.

America has much to learn, and much to teach, in this process. I know American financial services firms appreciate the attention given to their issues by this Committee.

Annex 1: Market Access Regulations for Financial Services, per India's Department of Industrial Policy and Promotion

Taken from the DIPP's "Consolidated FDI Policy, April 5, 2013" with additions from Press Note 6 of 2013.

6.2.17.2	**Banking –Private sector**		
6.2.17.2.1	Banking –Private sector	74% including investment by FIIs	Automatic up to 49% Government route beyond 49% and up to 74%
6.2.17.2.2	**Other conditions:**		
	(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by FIIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders. (2) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank. (3) The stipulations as above will be applicable to all investments in existing private sector banks also. (4) The permissible limits under portfolio investment schemes through stock exchanges for FIIs and NRIs will be as follows: (i) In the case of FIIs, as hitherto, individual FII holding is restricted to 10 per cent of the total paid-up capital, aggregate limit for all FIIs cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body. (a) Thus, the FII investment limit will continue to be within 49 per cent of the total paid-up capital. (b) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non- repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to		

that effect in the General Body.

(c) Applications for foreign direct investment in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA)
in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.

(d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per para
3.6.2 above as applicable.

(e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will continue to apply.

(f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to non-resident investors as well.

(ii) Setting up of a subsidiary by foreign banks

(a) Foreign banks will be permitted to either have branches or subsidiaries but not both.

(b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank‟s licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.

(c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.

(d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para (i) (b) above.

	A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks. (f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI (g) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI. (d) (iii)At present there is a limit of ten per cent on voting rights in respect of banking companies, and this should be noted by potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.		
6.2.17.3	**Banking- Public Sector**		
6.2.17.3.1	Banking- Public Sector **subject to** Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate	20% (FDI and Portfolio Investment)	Government
6.2.17.4	**Commodity Exchanges**		
6.2.17.4.1	1 Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges. 2 For the purposes of this chapter, (i) "Commodity Exchange" is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities. "recognized association" means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952 (iii)"Association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative. (iv)"Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract. (v) "Commodity derivative" means-		

	• a contract for delivery of goods, which is not a ready delivery contract; or (ii) a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities.		
6.2.17.4.2	**Policy for FDI in Commodity Exchange**	49% (FDI & FII) [Investment by Registered FII under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%	Automatic
6.2.17.4.3	**Other conditions:**		
	(i) FII purchases shall be restricted to secondary market only and (ii) No non-resident investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies. (iii) Foreign investment in commodity exchanges will be subject to the guidelines of the Department of Consumer Affairs/ Forward Markets Commission		
6.2.17.5	**Credit Information Companies (CIC)**		
6.2.17.5.1	Credit Information Companies	49% (FDI & FII)	Automatic
6.2.17.5.2	**Other Conditions:**		
	(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005. (2) Foreign investment is permitted under the Government route, subject to regulatory clearance from RBI.		
	(3) Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 74% for foreign investment. (4) Such FII investment would be permitted subject to the conditions that: (a) No single entity should directly or indirectly hold more than 10% equity. (b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and (c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.		
6.2.17.6	**Infrastructure Company in the Securities Market**		

6.2.17.6.1	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital]	Automatic
6.2.17.6.2	**Other Conditions:**		
6.2.17.6.2.1	FII can invest only through purchases in the secondary market		
6.2.17.7	**Insurance**		
6.2.17.7.1	Insurance	26%	Automatic
6.2.17.7.2	**Other Conditions:**		
	(1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route. (2) This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities.		
6.2.17.8	**Non-Banking Finance Companies (NBFC)**		
6.2.17.8.1	Foreign investment in NBFC is allowed under the automatic route in only the following activities: (i) Merchant Banking (ii) Under Writing (iii) Portfolio Management Services (iv) Investment Advisory Services (v) Financial Consultancy (vi) Stock Broking (vii) Asset Management (viii) Venture Capital (ix) Custodian Services (x) Factoring (xi) Credit Rating Agencies (xii) Leasing & Finance (xiii) Housing Finance (xiv) Forex Broking (xv) Credit Card Business (xvi) Money Changing Business (xvii) Micro Credit (xviii) Rural Credit	100%	Automatic
6.2.17.8.2	**Other Conditions:**		
	(1) Investment would be subject to the following minimum capitalisation norms: (i) US $0.5 million for foreign capital up to 51% to be brought upfront		

	(ii) US $ 5 million for foreign capital more than 51% and up to 75% to be brought upfront (iii)US $ 50 million for foreign capital more than 75% out of which US$ 7.5 million to be brought upfront and the balance in 24 months. (iv)NBFCs (i) having foreign investment more than 75% and up to 100%, and (ii) with a minimum capitalisation of US$ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. **The minimum capitalization condition as mandated by para 3.10.4.1, therefore, shall not apply to downstream subsidiaries.** (v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below. Non- Fund based activities : US $0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition: It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company. **Note:** The following activities would be classified as Non-Fund Based activities: (a) Investment Advisory Services (b) Financial Consultancy (c) Forex Broking (d) Money Changing Business (e) Credit Rating Agencies (vii) This will be subject to compliance with the guidelines of RBI. **Note:** (i) Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc. (ii) Leasing & Finance covers only financial leases and not operating leases. (vi) (2) The NBFC will have to comply with the guidelines of the relevant regulator/ s, as applicable

Annex 2: Comparison of Performance Requirement Sections in the U.S. Model BIT and India's BIPA with Kuwait

Performance Requirements under India's BIPA with Kuwait	4. Once established, investment shall not be subjected in the host Contracting State to additional performance requirements which may hinder or restrict their expansion or maintenance or adversely affect or be considered as detrimental to their viability unless such requirements are deemed vital for reasons of public order, public health or environmental concerns and are enforced by law of general application.
Performance Requirements under 2012 U.S. Model Bilateral Investment Treaty	Article 8: Performance Requirements 1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (a) to export a given level or percentage of goods or services; (b) to achieve a given level or percentage of domestic content; (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory; (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market; or (h) (i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of persons of the Party12; or (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, particular technology, so as to afford protection on the basis of nationality to its own investors or investments or to technology of the Party or of persons of the Party. 2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement: (a) to achieve a given level or percentage of domestic content; (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory; (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or (d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings. 3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

	(b) Paragraphs 1(f) and (h) do not apply: (i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.13 (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), (f), and (h), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures: (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Treaty; (ii) necessary to protect human, animal, or plant life or health; or (iii) related to the conservation of living or non-living exhaustible natural resources. (d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs. (e) Paragraphs 1(b), (c), (f), (g), and (h), and 2(a) and (b), do not apply to government procurement. (f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas. 4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs. 5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.