Recent developments in India's corporate & commercial laws

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RBI takes steps to enhance globalisation of the INR

Amendments to FEMA Regulations to boost cross-border transactions

The Reserve Bank of India (**RBI**) introduced amendments to key foreign exchange Regulations pertaining to deposit and foreign currency accounts under the Foreign Exchange Management Act, 1999 (**FEMA**) aimed at promoting the use of the Indian Rupee (**INR**) in cross-border transactions and enhancing India's financial integration with global markets.

As per the current regime, Special Non-Resident Rupee (**SNRR**) accounts could only be opened with authorised dealers in India, limiting flexibility for foreign entities conducting business in India. Additionally, Indian exporters faced restrictions on holding Foreign Currency Accounts (**FCA**) overseas, limiting their ability to manage global trade transactions effectively. To address these operational challenges, the following key changes have been introduced:

- Expansion of SNRR accounts: Non-residents with business interests in India can now open SNRR accounts not only with authorised dealers in India but also with their overseas branches, facilitating easier fund management.
- SNRR accounts for International Financial Services Centres (**IFSC**) units: Entities operating within IFSC can now open SNRR accounts with authorised dealers outside the IFSCs, allowing greater financial flexibility for international transactions.
- FCAs for exporters: Indian exporters are now permitted to open, hold, and operate FCAs with banks outside India to receive export proceeds, manage advance remittances, and make import payments. However, any remaining funds must be repatriated to India within the following month after adjusting for 'forward commitments'. This has created a more efficient mechanism for managing global trade finances while mitigating foreign exchange risks.
- Flexibility in SNRR account operations: SNRR accounts can be used for all permissible current and capital account transactions and are no longer limited to be used for specific business interests. This ensures better banking accessibility for foreign entities investing in India, improving business operations and investor confidence.
- Removal of tenure cap on SNRR accounts: The previous cap of 7 years for SNRR accounts has been removed, allowing accounts to remain open for as long as the underlying business interest continues.
- Increased transferability of INR balances: Funds in repatriable INR accounts can now be freely transferred between SNRR, Non-Resident External (**NRE**), and Non-Resident Ordinary (**NRO**) accounts, provided the transactions are *bona fide*.

By providing much-needed operational flexibility and easing regulatory constraints on cross-border financial transactions, these regulatory changes align with India's long-term objective of promoting INR as a preferred currency for cross-border transactions, reducing dependency on foreign currencies, and improving liquidity in Indian financial markets, while also enhancing India's ease of doing business.

However, certain concerns remain to be addressed:

- The definition of 'forward commitments' for exporters retaining funds in FCAs as well as the mechanism for regulatory oversight require further clarification to remove compliance uncertainties.
- Enabling exporters to directly collect payments in their FCAs could severely impact payment intermediaries and cross-border payment aggregators leading to disruption of existing business models and necessitating adjustments in financial service offerings.
- Managing SNRR accounts outside India requires further operational guidance.

MCA extends dematerialisation deadline for private companies

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2025

The Ministry of Corporate Affairs (**MCA**) has extended the deadline for private companies to comply with the mandatory dematerialisation of shares to June 30, 2025, as per the recent amendment to the Companies (Prospectus and Allotment of Securities) Rules, 2014 (**Rules**).

This requirement for mandatory dematerialisation, introduced *vide* the 2023 amendment to the Rules mandates that all private companies, except small companies, issue shares only in dematerialised form and ensure that all securities held by promoters, directors, and key managerial personnel are converted into electronic form.

The extension addresses the challenges faced by private companies, including lack of awareness, operational complexities, and cost concerns, allowing companies additional time to transition smoothly to a fully dematerialised regime without penalties for interim non-compliance. This much-needed relief supports the alignment of companies with modern financial practices.

Framework for retail investor participation in algorithmic trading

SEBI introduces regulatory framework for retail algorithmic trading

The Securities and Exchange Board of India (**SEBI**) has introduced a robust regulatory framework to ensure safer participation of retail investors in algorithmic trading effective from August 1, 2025, in response to their growing demand for algorithmic (**algo**) trading. This development follows SEBI's consultation paper of December 2021 and its Circular of September 2022 whereby SEBI had banned brokers from collaborating with unregulated algorithmic platforms and prohibited performance-based claims for algorithms, in order to increase transparency and prevent mis-selling.

Algorithmic trading uses automated execution logic for placing orders and has traditionally been the domain of institutional investors. SEBI's framework is designed to address the risks associated with algo trading while enabling retail investors to benefit from its advantages, such as precision and speed.

Following are the key components of the framework:

- Retail investor participation: Retail investors with technical expertise can register self-developed algorithms with exchanges through their brokers, provided they meet specified order-per-second thresholds. These registered algorithms can only be used by the investor and their immediate family members, including the spouse, dependent children, and parents. This restriction ensures that the use of such algorithms remains personal and controlled.
- Application Programming Interface (**API**) usage and security: A principal-agent relationship between brokers and algo providers is mandatory. All algo orders must carry unique identifiers provided by stock exchanges, and unique vendor-specific API keys must be used instead of open APIs (accessible to all). Additionally, Open Authentication-based authentication and two-factor authentication are mandatory. These measures aim to prevent unauthorised access and ensure accountability.
- Broker responsibilities: Brokers play a pivotal role in the framework in ensuring compliance and gatekeeping the algo trading ecosystem. They are required to obtain approval from the exchanges for each algorithm and ensure that all algo orders are tagged with unique identifiers for audit purposes. Brokers must also monitor APIs for prohibited activities, handle investor grievances, and conduct due diligence before onboarding empanelled algo providers.
- Exchange oversight: Exchanges are tasked with comprehensive supervision of algorithmic trading. They must establish Standard Operating Procedures (**SOPs**) for algo testing, maintain kill switch capabilities to halt malfunctioning algorithms, and specify turnaround times for algo registration. Exchanges are also responsible for defining the roles and responsibilities of brokers and algo providers, as well as the criteria for empanelment of algo providers. These measures aim to ensure that exchanges remain vigilant and proactive in overseeing algo trading activities.
- Algo categorisation: Algorithms are classified into 'white box' (the logic is disclosed and replicable, primarily execution-focused) and 'black box' (logic is not disclosed to the user). While 'white box' algos require a simple registration with the exchanges before being offered, 'black box' algos require additional compliance as providers must register as research analysts with SEBI, maintain detailed research reports, and re-register the algo in case of any logic changes. This categorisation ensures transparency and accountability, particularly for more complex algorithms.
- Implementation timeline and compliance: The framework will be implemented in phases, with the formulation of implementation standards by April 1, 2025, and full applicability from August 1, 2025. Exchanges are required to update their systems, amend relevant bye-laws, and disseminate this framework on their websites and to brokers. These steps are crucial for ensuring a smooth transition to the new regulatory regime.

A recent study conducted by SEBI found that 97% of the profits of foreign funds in FY 2024-25 were from algo trading, indicating the importance of extending access to retail investors – SEBI's regulatory framework for algorithmic trading is a landmark initiative that addresses this growing interest. By implementing security measures, defining clear roles for stakeholders, and categorising the algorithms, SEBI has created a balanced environment that fosters innovation while safeguarding investor interests. While adequate safeguards will have to be established to ensure incidents like the Flash Crash (2010) and trades in the London Whale incident (2012) do not happen, the framework is expected to strengthen the overall integrity of the securities market.

RBI updates Master Direction on foreign investment

Downstream investment aligned with FDI norms

The Reserve Bank of India (**RBI**) amended the Master Direction on foreign investment in India (**Master Direction**), addressing key regulatory ambiguities and inconsistencies and aligning foreign investment rules with market realities.

The key changes are as follows:

- Downstream investments (indirect foreign investments): Foreign-Owned or Controlled Companies (**FOCCs**) can now structure investments using deferred payment mechanisms and equity instrument swaps, bringing them in line with Foreign Direct Investment (**FDI**) rules to reduce unnecessary restrictions and enhance deal flexibility.
- Form DI filing: Resident entities that become FOCCs must reclassify and report their investments within 30 days by filing Form DI with the RBI, ensuring timely regulatory disclosures.
- Net Owned Fund (**NOF**) compliance: Investments made to an Indian investee company regulated by a financial sector regulator to meet the minimum NOF criteria are now permissible provided they are exclusively for capitalisation/NOF purposes and not used for operational needs. However, this restriction may limit flexibility for financial sector entities seeking to optimise capital utilisation
- Rights issue: The unsubscribed portion of a company's rights issue can be offered to non-residents, provided it complies with the conditions under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, including sectoral caps, entry routes, and pricing guidelines, ensuring greater clarity on the issuance of shares.
- Share-based employee benefits: Foreign investment percentage calculations shall be on a fully diluted basis at the time of issuance, ensuring uniformity in ownership assessments.
- Deferred payment and escrow: Share transfer agreements must explicitly document transactions involving deferred payment structures, indemnifications, or escrow mechanisms, reducing post-transaction disputes.
- Role of Authorised Dealer (**AD**) banks: AD banks now serve as formal intermediaries for regulatory clarifications by the RBI, streamlining investor interactions and expediting responses to compliance queries.

While these changes address long-standing concerns and contribute to a more predictable and business-friendly investment climate, further refinements may be necessary to address issues such as the extent to which FOCCs must adhere to FDI rules across all aspects of downstream investments. Additionally, further clarifications may be required to ensure the smooth execution of deferred payment structures and sectoral cap compliance in rights issue.

IBBI amends CIRP Regulations to streamline real estate insolvency

IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2025

The Insolvency and Bankruptcy Board of India (**IBBI**) amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) to streamline the insolvency process with a special focus on real estate projects.

Key highlights of the amendments are:

- Handover of possession: The Resolution Professional (**RP**) can hand over possession of flats to homebuyers during the pendency of the Corporate Insolvency Resolution Process (**CIRP**), affording relief to distressed homebuyers.
- Appointment of facilitators: Facilitators may be appointed to ensure effective communication including dissemination of information and clarifications between the authorised representative of a class of creditors and the sub-class represented by the facilitator.
- Participation of the Competent Authority: Land authorities such as New Okhla Industrial Development Authority (**NOIDA**) and Haryana Urban Development Authority (**HUDA**) may be invited to participate in the Committee of Creditor (**CoC**) meetings for inputs on regulatory issues, to ensure feasibility of resolution plans and enhanced homebuyer confidence.
- Report on regulatory requirements: The RP must prepare a report on the status of development rights, approvals, and permissions for real estate projects within 60 days of the commencement of CIRP enabling creditors to make informed decisions promptly.
- Participation of homebuyers: The CoC has been empowered to relax certain conditions such as eligibility criteria, performance security, and deposits for groups/associations of homebuyers that wish to participate as resolution applicants and submit resolution plans.
- Monitoring Committee: The CoC is now mandatorily required to consider setting up a Monitoring Committee to supervise the implementation of the resolution plan.
- MSME registration status: The RP is now required to disclose the Corporate Debtor's registration status as a micro, small, or medium enterprise, encouraging greater participation of resolution applicants to avail the benefits under the Code.

This amendment will help ensure the continuity of real estate development projects, benefiting both homebuyers and creditors by fostering timely project completion and cash inflow. Additionally, it is expected to incentivise resolution applicants to propose more viable and financially beneficial plans, enhancing the overall effectiveness of the insolvency resolution process.

Mandatory dematerialisation of listed securities

SEBI proposes amendments to LODR Regulations

The Securities and Exchange Board of India (**SEBI**) has published a consultation paper seeking feedback on proposed amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) for mandatory dematerialisation of securities and related provisions for transfer of shares.

Dematerialisation refers to the conversion of physical securities into an electronic format. Under the current LODR Regulations, listed companies can issue securities in physical form for the following corporate actions:

- Consolidation of face value: Combining multiple shares to increase their nominal value.
- Subdivision or stock split: Splitting shares to reduce their nominal value.
- Schemes of arrangement: Securities issued as a result of any mergers, demergers, or reconstructions.

SEBI now proposes requiring all new securities issued through these actions to be in dematerialised form. In cases where an investor does not have a demat account, companies will be required to open a 'suspense escrow account' to hold the securities temporarily until the investor's demat account is operational. Although holding securities in physical form remains legally permissible, such securities can only be sold or transferred after they are dematerialised. In this regard, SEBI highlighted several advantages of dematerialisation:

- Enhanced security: Dematerialised securities eliminate risks such as theft, forgery, loss, or damage associated with physical certificates.
- Faster transfers: Electronic transfers are more efficient and transparent, reducing the risk of disputes.
- Improved regulatory oversight: Dematerialised holdings offer better traceability and transparency for regulatory monitoring.
- Cost savings: Both investors and companies can reduce administrative and operational costs by transitioning to electronic securities.
- Reduced risks: Dematerialisation of shares will curb transactions such as benami share transfers carried out for the purpose of tax evasion ensuring all such transactions are traceable to their legitimate owners.

Other proposed changes relating to the transfer of shares:

- Omission of Sub-Regulations 40(4) and (5), which restrict the transfer of shares in cases of prohibition under law or by a Court/Tribunal's order, as the said provisions are applicable to physical shares and had become redundant in view of SEBI's decision to discontinue the transfer of shares in physical form from April 1, 2019.
- Removal of the requirement to maintain 'proof of delivery' of the intimation of any difference or non-availability of the signature (from Schedule VII of the LODR Regulations), as currently, listed companies retain dispatch records (including delivery confirmations) for up to 6 months, which is considered impractical.

These proposed amendments underscore SEBI's ongoing commitment to modernising India's securities markets, and promoting safer, more efficient and transparent practices, aimed at enhancing the corporate governance structure of listed entities.

Real estate developers cannot forfeit more than 10% of the Basic Sale Price

Godrej Projects Development Ltd v. Anil Karlekar

In a recent decision in *Godrej Projects Development Ltd v. Anil Karlekar*,[1] the Supreme Court held that real estate developers cannot forfeit more than 10% of the Basic Sale Price (**BSP**) of the allotted flat in case of cancellation by the allottee.

Anil Karlekar (**homebuyer**) booked an apartment in the residential project 'Godrej Summit' after submitting INR 10 lakh as application money. He was allotted a flat having BSP of INR 1.7 crore. The parties entered into an Apartment Buyer Agreement (**ABA**), as per which the developer was entitled to forfeit 20% of the BSP as 'earnest money' in the event of termination on account of default by the homebuyer and was required to refund the remaining paid amount without interest.

After completion of construction and procurement of the Occupancy Certificate by the developer, the homebuyer sought cancellation of the allotment (due to recession in the market) along with a refund of the total paid amount, i.e. INR 51 lakh.

Referring to its previous decisions, the Supreme Court held that, despite the explicit stipulation in the ABA that 'earnest money' would be forfeited in the event of termination due to the homebuyer's default, the Court was not bound to enforce such a one-sided agreement tilted in favour of the developer, since a lopsided agreement between parties of unequal bargaining power fell within the scope of 'unfair trade practice' and 'unfair contracts' under the Consumer Protection Act, 2019.

Since the ABA provided for only a meagre compensation in the event of termination due to the developer's default, the Court observed that a forfeiture amount of 20% is a lopsided, unreasonable and unenforceable stipulation. The Court partly upheld the NCDRC's decision to the extent that 10% of BSP is a reasonable amount liable to be forfeited as 'earnest money' and set aside the direction to pay interest as being unjustified.

[1] Civil Appeal No. 3334 of 2023

IBBI suggests steps to improve the insolvency regime

Discussion paper on amendments to streamline CIRP

The Insolvency and Bankruptcy Board of India (**IBBI**) has released a discussion paper on proposed amendments to streamline the Corporate Insolvency Resolution Process (**CIRP**).

Key proposed amendments:

- Two-step approval of resolution plans: The Committee of Creditors (**CoC**) would be empowered to request the Adjudicating Authority (**AA**) for a two-stage approval process where the financial bid and basic implementation framework of the resolution plan may be approved early enabling the successful resolution applicant to take over the Corporate Debtor (**CD**) and proceed with the plan implementation while inter-creditor disputes, distribution and other matters are resolved parallelly. An early approval of the plan is aimed to incentivise resolution applicants to submit higher bids rather than a conservative approach that is often adopted after factoring in the challenges – deteriorating asset value, changes in market dynamics, and difficulties in maintaining committed funding arrangements – arising out of the time taken between the submission of the resolution plan and its final approval by the AA.
- Part-wise resolution of the CD: The Resolution Professional (**RP**) may, with CoC's approval, invite resolution plans *concurrently* for both the CD as a whole and for its specific businesses or assets, removing the current *sequential* requirement that results in extended CIRP timelines and loss of value. This proposal is particularly crucial in the cases of CDs with multi-sectoral operations that attract different types of investors with specific expertise and interests in different segments, possibly leading to increased competition and attracting higher bids.
- Review of operational expenditure during CIRP: The RP would be required to present a comprehensive assessment of all substantial operational expenses, particularly focused on leased properties protected under the moratorium, within 30 days of the constitution of the CoC and quarterly thereafter. This continuous oversight would likely enable the CoC to make informed decisions about continuing or surrendering specific lease agreements based on their necessity for the CD's revival.
- Coordinated CIRP of interconnected entities: A new mechanism involving joint hearings, a common resolution professional, information-sharing protocols, and coordinated timelines would be introduced to capitalise on the intricate web of synergies and interdependencies in interconnected/group companies prevalent in modern business ecosystems. This is aimed at avoiding the unfavourable characteristics of the present framework (diminished collective value, unnecessary complications to the CIRP, and suboptimal outcomes), which treats each entity as a standalone unit.
- Incentivising interim finance providers: The CoC would be empowered to invite interim finance providers to its meetings as observers (where deemed beneficial to the CD's operations), enabling them to assess and monitor investment risk, understand the CD's operational performance during CIRP, and make informed funding decisions. This would possibly bridge the existing information gap that disincentivises such entities from providing interim finance.
- Filling the vacuum in personal insolvency: To address the vacuum in case the debtor in a personal insolvency proceeding fails to submit its repayment plan under Section 105 of the Insolvency and Bankruptcy Code, 2016 (**Code**), the RP would be required to notify the AA, which may then terminate the insolvency process, enabling the creditor to initiate bankruptcy proceedings.
- Removing the option of sale as a going concern: The provisions relating to the sale of the CD as a going concern would be omitted since it yields lower recovery than regular dissolution and results in prolonged legal disputes, maintenance costs, and delays. The slump sale provision would continue to address situations where the assets of the CD need to be sold together for better realisation.
- Presentation of all resolution plans to the CoC: The RP would be required to present all resolution plans before the CoC along with a detailed report highlighting the areas of non-compliance with the provisions of the Code, and not just those plans that are deemed compliant. This will ensure complete transparency and avoiding potential litigation while enabling the CoC to identify valuable elements of all plans.
- Statement of Affairs of the CD: The CD will be required to submit its 'Statement of Affairs', along with its reply to a Financial Creditor's application seeking initiation of CIRP (under Section 7 of the Code), containing essential information, including financial statements for the last 3 years, details of employees/workmen, and information about the books of accounts and records. This may bridge the information gap and asymmetry, decrease the risk of asset dissipation, and enable more informed decision-making by the CoC.
- No modification to an approved resolution plan: Modifications of the resolution plan after its approval by the AA under Section 31 of the Code would be explicitly prohibited. This would remove uncertainty surrounding the impermissibility of reliefs and concessions after approval of the plan.

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