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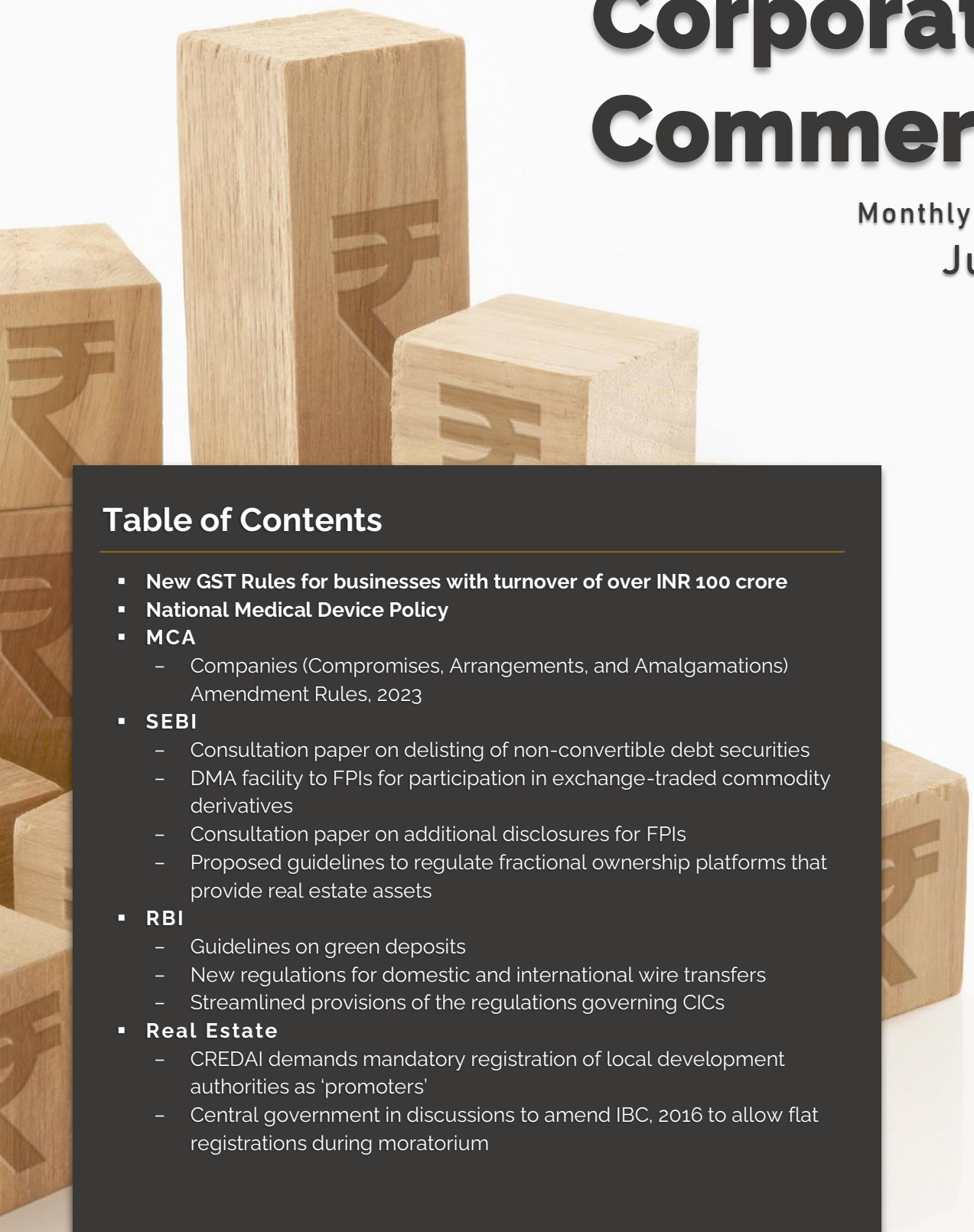

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New GST Rules for businesses with turnover of over INR 100 crore

An advisory was recently issued on the Goods and Services Tax Portal regarding the time limit for reporting invoices on the Invoice Registration Portal (**IRP**) for taxpayers with Annual Aggregate Turnover (**AATO**) of greater than or equal to INR 100 crore. As per the advisory, taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting. This restriction will apply to all types of documents for which Invoice Reference Number (**IRN**) is to be generated, including debit/credit notes. It is further clarified that there will be no such reporting restriction on taxpayers with AATO less than INR 100 crore. The change was to be implemented from May 01, 2023; however, the timeline has been deferred by 3 months, and will now be implemented from August 01, 2023 onwards.

Key aspects:

Date of notification	Event
June 21, 2019	The GST Council in its 35th meeting recommended the introduction of electronic invoices (**e-invoice**) in GST in a phased manner on a voluntary basis for online generation of B2B e-invoices from January 2020. Thereafter, a technical sub-group was constituted to look into the technical aspects of e-invoicing.[1]
September 20, 2019	The GST Council in its 37th meeting approved the recommendations of the technical sub-group on e-invoicing.[2]
December 13, 2019	The Central Board of Excise and Customs (**CBIC**) issued a notification whereby e-invoicing was made mandatory for all taxpayers with AATO above INR 100 crore from April 1, 2020.[3]
July 30, 2020	The CBIC issued a notification enhancing the AATO to INR 500 crore.[4]
October 01, 2020	The CBIC issued a notification allowing 30 days of time period to generate IRN for any invoice prepared between October 01, 2020 to October 31, 2020.[5]
November 10, 2020	The CBIC issued a notification providing that e-invoicing provisions will be applicable for the registered persons whose AATO in any preceding financial year from 2017-18 onwards exceeds INR 100 crore with effect from January 01, 2021.[6]
March 08, 2021	The CBIC issued a notification whereby the AATO was further reduced to INR 50 crore with effect from April 01, 2021.[7]
February 24, 2022	The CBIC issued a notification whereby the AATO was further reduced to INR 20 crore with effect from April 01, 2022.[8]
August 01, 2022	The CBIC issued a notification whereby the AATO was further reduced to INR 10 crore with effect from October 01, 2022.[9]
April 13, 2023	As per the GST Network's advisory, the taxpayers with AATO equal to or more than INR 100 crore must report tax invoices and credit-debit notes on IRP within 7 days of invoice date from May 01, 2023.[10]
May 06, 2023	As per the GST Network's advisory, the time limit of 7 days to report the old e-invoices on the IRP was deferred by 3 months.[11]
May 10, 2023	The CBIC issued a notification whereby the AATO was further reduced to INR 5 crore with effect from August 01, 2023.[12]

The implementation of timelines for reporting invoices on IRP will certainly assist in administering compliances and serves as a significant step towards digitalization. It will not only enhance efficiency but also reduce the scope for errors in invoice processing. It is crucial for businesses falling under this threshold to comply with the new rules to ensure a smooth transition and avoid any potential penalties.

The new measures will aid in increasing the GST collection as well as reduce the rampant practice of backdating invoices and decrease tax leakage. There are significant chances that the government may extend this rule to businesses having lower AATO in a phased manner in the future, and we believe that such extension would bring smaller businesses into the fold of digital invoicing, promoting uniformity and standardization across the GST ecosystem.

National Medical Device Policy

In April 2023, the Union Government approved the National Medical Device Policy, 2023 (Policy) aiming to make India a global leader in the manufacturing and innovation of medical devices by achieving 10-12% share in the expanding global market over the next 25 years. This Policy is expected to help the medical devices sector grow from the present USD 11 Billion to USD 50 Billion by the year 2030. The Policy is in line with the Government's 'Atmanirbhar Bharat' and 'Make in India' programs of encouraging domestic investments and production of medical devices. It is estimated that India's current market share in the medical devices category is 1.5% of the global space and 80-90% of medical devices are imported by India.

This has led to the Government of India introducing this export-driven manufacturing of affordable high-end offerings, that will in turn increase India's per capita spending on medical devices and make costly medical devices accessible and affordable. The Policy is aimed to be implemented with a patient-centric approach for facilitating an orderly growth of the medical device

[1] Signed Minutes - 35th GST Council Meeting.pdf
[2] Signed Minutes - 37th GST Council Meeting.pdf
[3] Notification70-2019- Central Tax, dated 13th Dec. 2019
[4] Notification 61-2020-Central Tax, dated 30th July 2020
[5] Notification 73-2020-Central Tax, dated 1st Oct. 2020
[6] Notification 83-2020-Central Tax, dated 10th Nov. 2020
[7] Notification 05-2021-Central Tax, dated 8th March 2021
[8] Notification 01-2022-Central Tax, dated 24th Feb. 2022
[9] Notification 17-22-Central Tax, dated 1st Aug. 2022
[10] GSTN Advisory dated April 13, 2023
[11] GSTN Advisory dated May 06, 2023
[12] Notification 10/23-Central Tax, dated 10th May 2023

sector to meet the public health objectives of access, affordability, quality and innovation.

Prior to the Policy, the Drugs and Cosmetics Act, 1940 (**DCA**) was enacted to govern the quality and safety of medical devices in India as well as the production and distribution of it. Under the DCA, the Medical Devices Rules, 2017 (**MDR**) were brought into force by the Ministry of Health and Family Welfare, Government of India to govern and provide for a regulatory framework for medical devices for bringing all medical devices within the ambit of the MDR.

The Government of India has also introduced Production-Linked Incentive (**PLI**) schemes that aims to boost the manufacturing sector in India by offering financial incentives to companies that produce goods locally to reduce reliance on imports. Companies in certain sectors such as electronics, pharmaceuticals, and textiles are eligible to receive such financial incentives based on their incremental sales over a particular period in the form of a percentage of the additional sales which are paid over a period of several years. By providing incentives to companies that manufacture locally, the government hopes to attract more investment in the manufacturing sector and create employment opportunities for the local workforce. The Government of India under the PLI schemes has already approved 26 projects with an investment of approximately INR 1,206 Crore. The domestic manufacturing and production of high-end medical devices like linear accelerator, MRI scan, CT-scan, mammogram, C-arm, MRI coils, high-end X-ray tubes, etc., have already begun under the PLI schemes.

Key aspects:

- The Policy, with the aim of reducing dependency on imports, will be in addition to the existing PLI schemes that are already underway.
- The Policy recognizes the need for intensive research and development in the medical sector and thus aims to establish 'Centers of Excellence' in academic and research institutions, promote innovation, support start-ups, encourage private investments, venture capital funding, and public-private partnerships in this segment.
- The Policy intends to create and fill employment opportunities by skilling, reskilling, and upskilling professionals in the medical device sector through the Ministry of Skill Development and Entrepreneurship, Government of India through multidisciplinary courses in institutions for ensuring the availability of skilled manpower and producing future-ready med-tech human resources.
- To ease and promote manufacturing of medical devices in India, the Policy aims to simplify the regulatory framework by streamlining the regulatory approval process for medical devices by introducing a single-window clearance system for the import, manufacture, and sale of medical devices by providing incentives such as tax exemptions, subsidies, and funding support. This will help reduce the dependency on imports.
- To promote domestic investments, the Policy is expected to introduce a dedicated export promotion council for the medical devices sector to improve brand positioning and awareness, promoting studies and projects to learn the best global practices of manufacturing and adopt globally successful models in India.
- The Policy has also outlined the various sources of possible investment such as seed capital, funding from venture capitalists (VCs), government initiatives/ policies, public procurement through a blend of finance from public and private funds.

MCA | Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2023

The Ministry of Corporate Affairs (**MCA**) recently issued a notification on May 15, 2023[13] regarding the Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2023 (**Amended Rules**), which will be effective from June 15, 2023. These Amended Rules have been introduced to modify and enhance the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, with the aim of streamlining the process of schemes related to mergers or amalgamations under Section 233 of the Companies Act, 2013, and ensuring quicker approvals for such schemes.

Key aspects:

- **Time-bound process for objections/suggestions:** The Amended Rules specifically amended the sub-Rules (5) and (6) of Rule 25 in the previous Rules of 2016. Previously, there was no specific time mentioned for receiving objections/suggestions from the Registrar, Official Liquidator, or any person affected by the scheme. The Amended Rules address this by introducing a time-bound process.
- **30-day period for objections/suggestions:** Rule 25 (5) of the Amended Rules provides a 30-day period for receiving objections/suggestions from the Registrar, Official Liquidator, or any person affected by the scheme. After the expiration of this period, the Central Government may issue a confirmation order for the scheme within 15 days using Form No. CAA 12[14].
- **Deemed approval:** Rule 25(5) also states that in case Central Government fails to issue an approval within 60 days of receiving the scheme, it will be considered a 'deemed approval,' and the confirmation order shall be issued accordingly.
- **Actions by the Central Government:** Rule 25(6) of the Amended Rules empowers the Central Government to take specific actions upon receiving objections/suggestions within the 30-day period mentioned in sub-Rule (5) of Rule 25 of the Amended Rules. These actions include:

[13] Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 available at https://www.mca.gov.in/bin/dms/getdocument?mds=1Wyd8lldgilFPq8Dx6A3QA%253D%253D&type=open

[14] Form No. CAA 12, pursuant to section 233 and rule 25(5), available at http://ca2013.com/wp-content/uploads/2016/12/CAA.12.pdf

- Issuing a confirmation order within 30 days after the expiry of the 30-day objection/suggestion period if the objections/suggestions are found to be unsustainable and the scheme is in the interest of the public/creditors.
- Filing an application before the Tribunal within 60 days from the receipt of the scheme, in Form No. CAA 13[15], if the Central Government, based on the objections/suggestions or otherwise, believes that the scheme is not in the interest of the public/creditors. The application requests the Tribunal to reconsider the scheme under Section 232 of the Companies Act, 2013.

These new rules introduced by the Central Government are a commendable initiative aimed at streamlining the approval process and facilitating smoother and quicker procedures for companies seeking to initiate fast-track mergers or amalgamations. These amendments will undoubtedly contribute to creating a more efficient and business-friendly environment for corporate restructuring activities in India.

SEBI | Consultation paper on delisting of non-convertible debt securities

On May 12, 2023, the Securities & Exchange Board of India (**SEBI**) published a consultation paper discussing the delisting of non-convertible debt securities (**NCDs**) seeking comments and suggestions from the public on the proposed changes in the SEBI (Issue and Listing of Non-Convertible Security) Regulations, 2021 (**NCS Regulations**) and the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 (**LODR Regulations**).

Delisting means permanent removal of securities of an entity from the trading platform of a stock exchange, either voluntarily or compulsorily; no trading is permitted in securities which have been once delisted from a stock exchange. There may be several reasons for delisting of NCDs. Some of the major reasons are as follows:

- Very few holders of a particular class of NCDs desiring to hold such security until its maturity.
- Delisting in pursuance of restructuring debt.
- In pursuance of capital restructuring as a part of a scheme of merger or amalgamation between two entities.

Key aspects:

- **Existing framework:**
  - Currently, the NCS Regulations and the LODR Regulations do not contain a provision for delisting of NCDs. Considering the lacuna of a prescribed legal procedure concerning the delisting of NCDs, SEBI has published the consultation paper seeking inputs from the public to build a mechanism for such delisting.
  - Regulation 64 (2) of the LODR Regulations provides that in case the NCDs or the non-convertible redeemable preference shares of a listed entity do not remain listed on the stock exchange, the listed entity shall need to comply with provisions of Chapter IV of the LODR Regulations.
  - Chapter IV of the LODR Regulations provides that the listed entity which has its specified securities and NCDs listed on the stock exchange is under an obligation to provide a prior intimation to the stock exchange about the meeting of its board of directors where the proposal for voluntary delisting by the listed entity is being considered. The Regulations currently do not provide a mechanism. The NCS Regulations too only prescribe issuance and listing of NCDs and are silent on the aspect of delisting of NCDs.
  - Regulation 59 of the LODR Regulations lays down that a listed entity cannot make any material modification to a NCDs without prior approval of the stock exchange. Such permission shall be sought only after a resolution in this regard has been duly passed by the board of directors and the approval of the debenture trustee is obtained in the case of non-convertible debentures, and after receiving approval/ consent of the majority of holders of the class of securities sought to be materially modified in compliance with the Companies Act, 2013.
- **Global Position on delisting:** The perusal of rule books of top stock exchanges including Euronext, KRX Stock Exchange, Luxembourg Stock Exchange and the Bahrain Bourse reveals the mechanism for delisting of NCDs is aligned at the global level as follows:
  - Globally, stock exchanges are the bodies clothed with the power to decide upon admission, suspension, withdrawal and delisting of securities in absence of other laws, rules and regulations.
  - The reasons for delisting securities have been identified as follows:
    - Redemption of securities before final maturity
    - If securities are listed for trading on some other platform
    - Conversion of debt securities into other kind of securities due to exercise of conversion rights
    - Non-compliance by the issuer with statutory rules, regulations, etc.
    - If the issuer fails to include material information necessary for investor protection or provides false particulars in the issue documents for such securities
    - Restructuring of debt/ capital on account of merger or amalgamation, or under a scheme of compromise
    - Subsequent developments with the issuer or the security which leads to such delisting
    - Liquidation or dissolution of the listed entity
- **Proposed procedure:** SEBI has invited comments on the following procedure it has decided for delisting of the securities:

[15] Form No. CAA 13, pursuant to rule 25(6), available at http://ca2013.com/wp-content/uploads/2016/12/CAA.13.pdf

- The listed entity shall file an application with the stock exchange seeking for an in-principle approval for delisting of NCDs within fifteen days of passing of the special resolution regarding such delisting as well as obtaining of other statutory approvals.
- The in-principle approval shall be given after the stock exchange has satisfied itself that:
  - Necessary approval from the board of directors has been obtained
  - The debenture trustee has issued a no objection certificate
  - All investor grievances have been duly resolved
  - All listing fees, and fines and penalties have been duly paid upon the securities proposed to be delisted
  - Interest of other stakeholders have been addressed
- The listed entity shall obtain approval of all holders of the class of NCDs proposed to be delisted within three days of the in-principle approval of the stock exchange. This shall be done through a notice which shall be sent to all shareholders. The notice shall also be published upon the website of the company.
- The approval of the holders of the class of NCDs proposed to be delisted shall be communicated to the stock exchange within five working days.

SEBI | Direct Market Access facility to FPIs for participation in exchange-traded commodity derivatives

Securities and Exchange Board of India (**SEBI**) allows Direct Market Access (**DMA**) facility to foreign portfolio investors (FPIs) for participating in exchange-traded commodity derivatives.

Key aspects:

- SEBI has permitted FPIs to access the commodity derivatives market in India directly through DMA.
- FPIs can now directly access commodity derivatives exchanges, such as Multi Commodity Exchange (**MCX**) and National Commodity and Derivatives Exchange (**NCDEX**), for trading purposes.
- DMA facility enables FPIs to trade in commodity derivatives without the need for intermediaries or brokers.
- SEBI has laid out the regulatory framework for FPIs accessing commodity derivatives through DMA. FPIs will need to comply with various requirements, including eligibility criteria, risk management norms, and reporting obligations, as specified by SEBI.
- DMA facility is available to FPIs registered with SEBI under the Category III framework, which includes eligible entities such as sovereign wealth funds, pension funds, and regulated entities from Financial Action Task Force (**FATF**) compliant jurisdictions.
- Introduction of DMA for FPIs will enhance the liquidity and depth of the commodity derivatives market in India. It is expected to attract more FPIs to participate in this market segment.
- SEBI will closely monitor the trading activities of FPIs accessing commodity derivatives through DMA to ensure compliance with regulations and to maintain market integrity.

SEBI | Consultation paper on additional disclosures for foreign portfolio investors

Securities and Exchange Board of India (**SEBI**) has issued a consultation paper seeking public comments on the proposal to introduce additional disclosure requirements for FPIs. The aim is to enhance transparency and provide more detailed information about the beneficial owners and other entities related to FPIs.

Key aspects:

- Proposed regulations would require FPIs to disclose detailed information about their beneficial owners. This includes providing information about individuals, corporate entities, and other structures that ultimately own or control the FPI.
- Paper proposes that FPIs disclose the UBOs beyond a certain threshold. This disclosure would provide information on individuals who hold substantial ownership or controlling interests in the FPI.
- Proposed regulations also focus on entities acting in concert with the FPI. This includes disclosing information about entities that have common beneficial ownership, control, or significant influence over the FPI.
- Consultation paper suggests requiring FPIs to disclose if they are coming from or have exposure to jurisdictions identified as high-risk for money laundering, terrorist financing, or other illegal activities.
- Proposed regulations will introduce additional reporting obligations for FPIs. This includes periodic reporting of any changes in beneficial ownership, significant holdings, and changes in the entities acting in concert with the FPI.

SEBI | Proposed guidelines to regulate fractional ownership platforms that provide real estate assets

A recent notification issued by the Ministry of Corporate Affairs Securities and Exchange Board of India's (**SEBI**) proposed norms to regulate fractional ownership platforms that offer real estate assets. SEBI has proposed a regulatory framework to oversee and regulate platforms that offer fractional ownership in real estate assets. Fractional ownership platforms allow investors to own a fraction or a portion of a property, enabling smaller investments and diversification of real estate holdings.

Key aspects:

- Proposed norms set out certain eligibility criteria for platforms operating fractional ownership models in real estate. These criteria include minimum net worth

requirements, compliance with anti-money laundering and know-your-customer norms and obtaining necessary approvals from SEBI.

- SEBI's proposed regulations aim to strengthen investor protection in the realm of fractional ownership. The norms may include requirements for detailed disclosures, risk factors associated with the investment, and clarity on exit options available to investors.
- Proposed regulations may necessitate the use of an escrow mechanism by fractional ownership platforms. This mechanism would help ensure that investor funds are held in a separate account and are used solely for acquiring and maintaining the real estate assets.
- Regulatory framework may also focus on governance and transparency aspects of fractional ownership platforms. This could involve the establishment of robust governance structures, reporting requirements, and regular audits to maintain transparency and accountability.
- SEBI's norms may align the regulations for fractional ownership platforms with existing guidelines for Real Estate Investment Trusts (**REITs**). This alignment would help bring consistency and clarity to the regulatory landscape for real estate investments.

RBI | Guidelines on green deposits

On April 11, 2023, the Reserve Bank of India (RBI) addressed the Regulated Entities (**REs**)[16] about a framework that would accept green deposits, effective from June 1, 2023. A green deposit is an interest-bearing deposit made to a RE for a predetermined amount of time with the intention of using the funds for green financing. RBI proposes to encourage REs to recommend green deposits to customers, protect depositors' interests, assist customers in achieving their sustainability goals, resolve greenwashing concerns, and increase the flow of credit to green activities/projects.[17]

Previously, the RBI joined the Network for Greening the Financial System (NGFS), a global network of central banks and prudential supervisory authorities committed to voluntarily exchanging experiences, sharing best practices, and mobilizing mainstream finance to green the financial ecosystem.[18]

Subsequently, RBI highlighted the financial system's goal for moving towards green financing based on global best practices and ensuring long-term financial stability.[19] Furthermore, RBI has stated that it will provide guidelines for REs in connection to disclosures, stress testing and scenario analysis, and green deposits[20]. As part of the transition to a low-carbon economy and in support of national climate goals, it has been accepted that banks and other financial institutions also play a crucial role[21] because both, the hazards of climate change and the need to take action to lessen its impacts, are not something that the financial markets are immune to.[22]

Key aspects:

- The definition of REs under the ambit of RBI circulars have been variable on a case-to-case basis. RBI through this notification[23] has restricted the definition of REs in the case of green deposits.24
- Green deposits resemble fixed deposits in the way they provide interest and are subject to withdrawal or renewal at the depositor's discretion. The green deposits shall be denominated in Indian Rupees only and must be based on Indian green taxonomy.[25] The main distinction is that the proceeds will be used by REs to invest in approved green projects listed in the notification.[26]
- The Board of Directors (**BOD**) of REs must be vigilant in risk management and seek advice of an expert to control the financial risks associated with climatic and environmental changes. The BOD must analyze climate-related challenges to facilitate such practice. The RBI regards it as a requirement for the BOD of such REs to support a sustainable funding system.[27]
- The RBI mandates REs to make proper disclosures about green deposits in their annual financial statements. Additionally, REs has to present a review report before its BOD within three months from the end of the financial year regarding a list of the green initiatives and projects to which the revenues from the green deposits have been given along with a brief description of each initiative, funds set aside for the qualifying green projects and activities, amount raised under green deposits during the previous financial year. Furthermore, the Board approved Financing Framework (**BFF**) is also required to be reviewed by an external reviewer and the opinion of the external reviewer, which must be uploaded on the REs website.[28]
- RBI also mandates REs to annually conduct an independent third-party verification and assurance process for the allocation of funds they have acquired from green deposits.

[16] Scheduled Commercial Banks including Small Finance Banks (excluding Regional Rural Banks, Local Area Banks, and Payments Banks), all deposit taking Non-Banking Finance Companies (NBFCs) including Housing Finance Companies (HFCs).

[17] https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12487&Mode=0

[18] https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR1310A00813402454FD398F06

[19] https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/CLIMATERISK46CEE62999A4424B

[20] https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=55179

[21] https://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/BSBFSISUMMITF9F9354E0E074B9DAC7DC5D38AA78559.PDF

[22] https://corporate.cyrilamarchandblogs.com/2023/04/greening-bank-deposit-rbi-releases-framework-for-green-deposits/

[23] *Supra*. Note 2

[24] *Supra*. Note 1

[25] *Supra.* Note 2 - Renewable energy, energy efficiency, clean transportation, climate-change adaptation, sustainable water and waste management, pollution prevention and control, green buildings, management of living natural resources and biodiversity conservation.

[26] https://www.lexology.com/library/detail.aspx?g=1d727d68-d303-4591-b1e8-a1fda619dc97

[27] *Supra*. Note 7.

[28] http://vinodkothari.com/2023/04/rbi-framework-for-green-deposits/

Such an evaluation, however, would not free the REs from its responsibility for the final use of funds, for which internal checks and balances as set forth for other loans would have to be adhered to.[29]

- The REs must conduct an annual external assessment of the impact of the funds invested in green finance activities/projects. If the REs is unable to measure the impact of their investment, they must explain reasons and challenges they faced, and offer a timeline to address those challenges in the future, which would be optional currently but would be mandatory in the fiscal year 2024–2025.[30]

In our view, green deposits are predicted to become a significant source of revenue and the green deposit framework makes it transparent to ensure that proceeds are used to achieve the objectives of combating climate change and reduce concerns about greenwashing. As a result, the green finance market obtains clarity, and the green deposits are directed towards legitimate green projects.

RBI | New regulations for domestic and international wire transfers

Reserve Bank of India (**RBI**) has introduced new regulations to streamline and strengthen the process of domestic and international wire transfers in India. These rules aim to enhance transparency, security, and efficiency in fund transfers.

Key aspects:

- RBI has mandated the use of the ISO 20022 messaging standard for wire transfers. This standardized format ensures consistency in the information provided in payment messages, making it easier for banks to process transactions accurately.
- RBI has introduced the Legal Entity Identifier (**LEI**) as a mandatory requirement for all entities participating in the wire transfer system. The LEI is a unique identification code that helps identify entities involved in financial transactions, enhancing transparency and traceability.
- New rules will require additional information to be included in wire transfer messages. This includes details such as the purpose of payment, the nature of the transaction, and the relationship between the sender and the beneficiary.
- RBI has emphasized the importance of timely processing of wire transfers. Banks are required to ensure that domestic wire transfers are processed within two hours, while cross-border transfers are expected to be completed on the same day or within one working day.
- Banks are mandated to maintain records of wire transfers and provide necessary information to regulatory authorities when required. These reporting obligations help in monitoring and detecting any suspicious or fraudulent transactions.
- Banks are required to promptly notify customers about the status of their wire transfers, including any delays or rejections. Customers are entitled to receive information about charges applicable to their transactions upfront.

RBI | Streamlined provisions of the regulations governing CICs

The Reserve Bank of India (**RBI**), in order to streamline and simplify the registration process for a Holding or Core Investment Company (**CIC**), has conducted an extensive revaluation of the present process of registration and introduced a comparatively more practical and simplified regime by issuing a notification on April 10, 2023[31].

Key aspects:

- RBI's aim is to reduce the regulatory burden on CICs by streamlining the compliance requirements. The simplification of regulations is expected to ease the administrative and reporting obligations imposed on CICs, thereby promoting ease of doing business.
- RBI has consolidated various circulars and notifications related to CICs into a single master direction.
- RBI has provided a revised definition of CICs to bring more clarity. The new definition emphasizes that companies with the sole purpose of holding investments in group companies will be considered as CICs, while those engaged in other activities will be categorized as NBFCs.
- RBI has simplified the corporate structure of CICs by allowing them to hold only one layer of downstream CICs.
- RBI has revised the capital adequacy requirements for CICs. The minimum capital requirement has been reduced from 30% to 15% of the adjusted net worth of the CIC, aligning it with the norms applicable to NBFCs.
- RBI introduces guidelines to enhance the governance and risk management practices of CICs. This includes the appointment of independent directors, the establishment of a board-level risk management committee, and the implementation of robust internal control systems.

Real estate | CREDAI demands mandatory registration of local development authorities as 'promoters'

In a recent development, the Secretary of Confederation of Real Estate Developers Associations of India (**CREDAI**), Gaurav Gupta, appealed to the Uttar Pradesh Real Estate Regulatory Authority to bring the state development authorities such as the Noida Authority, the Greater Noida Authority, etc., under the ambit of 'Promoters' with concomitant responsibilities and obligations, under the Real Estate (Regulation and Development) Act, 2016 (**Act**). CREDAI pointed out that often the Developers are not able to complete the construction of the project within the stipulated timeline owing to delays in obtaining permissions and clearances from these state development authorities or on

[29] *Supra* Note 12.

[30] https://www.financialexpress.com/industry/explainer-the-green-deposit-framework/3046363/

[31] Notification is available at https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=55494

account of faulty land acquisition by the state development authorities, which in the opinion of CREDAI is unaccounted for under the scheme of the Act. A similar request was made by the Chairman, CREDAI, Manoj Gaur, in the Fourth Meeting of the Central Advisory Council constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016 held on May 9, 2023.

In the present scheme of the Act, Promoter as defined under Section 2(zk) exempts state development authorities from the ambit of the Act, unless such authorities are constructing the units or plots on lands owned by them. In the case titled, ***Ravindra Kumar Bhadani & Sons (HUF) v. Spaze Towers Pvt Ltd (Complaint No. 436 of 2021)***, the Developer had argued that he had applied for the grant of Occupancy Certificate (**OC**) on January 23, 2017; however, it remained under consideration till October 31, 2018 and the OC was finally received only on April 30, 2019, therefore the Haryana Real Estate Regulatory Authority while deciding the case, exempted the period between January 23, 2017 and October 31, 2018 for the purpose of awarding delay possession charges. No observations or directions were issued against the development authorities which in this case was Department of Town and Country Planning, Haryana.

Similarly, in the infamous case of Supertech Twin Towers wherein the Supreme Court while upholding the demotion of the Twin Towers constructed without proper sanctions/illegal sanctions observed that, '*the record of this case is replete with instances which highlight the collusion between the officers of NOIDA with the appellant and its management. The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law*.'

This case is one amongst various instances of flouting of rules and regulations by the state development authorities and the officials of such authorities, who sometimes sanction plans and grant permissions which are against the building laws and the brunt is ultimately faced by the homebuyers. Under the scheme of the Act, neither the homebuyers nor the Developers have any remedies against the local development authorities and even the Authority established under the Act has no powers to take action against the development authorities. Therefore, CREDAI may not be wrong in demanding inclusion of development authorities under the gambit of 'Promoter' under the Act as it is high time that obligations and liabilities be put and fostered upon state development authorities which may not be as stringent as applicable on the Developers, but to such extent which shall ensure that as a stakeholder, the development authorities are fulfilling their obligations in a transparent and best possible manner.

Real estate | Discussions to amend IBC, 2016 to allow flat registrations during moratorium

The Central Government has proposed a measure allowing the registration of flats when the homebuyers have fully paid the proposed amount, despite the initiation of the Corporate Insolvency Resolution Process (**CIRP**) against the developer. This is seen as aligned with the objectives of the Real Estate Regulatory Authority Act, 2016 which seeks to ensure a secure investment environment in real estate for consumers.

This proposal aligns with the proposed amendments in the Insolvency and Bankruptcy Code, 2016 (**IBC**), focusing on conducting proceedings on a project-wise basis when a developer defaults rather than initiating proceedings against all projects under the same developer. Despite the inclusion of allottees/homebuyers in real estate projects under the meaning of Financial Creditors through the 2018 amendment in the IBC, their interests often do not align with the objectives of the CIRP. Once the developer/builder is declared insolvent, the developer loses right to transfer his assets including the unregistered projects and the homebuyer has the remedy of taking part in the CIRP process to get the refund of the amount paid by them.

The Supreme Court in ***Pioneer Urban & Land Infrastructure Co Ltd v. Union of India***[32] upheld the amendment in the IBC and further declared homebuyers/allottees as Financial Creditors who must be offered protection in payment of their debts against the Developers. This gave them leverage over other creditors during the repayments of debts under Section 53 of the IBC, often known as the Waterfall Mechanism.

In this context, while the homebuyer's claim is prioritized over other creditors, their interest is still not protected under the old regime of the IBC as unlike other creditors, the homebuyers prefer ownership of their property rather than repayment of their advances with little to no interest. The current regime of IBC through moratorium also poses restriction on the homebuyers to take alternative recourse against the Developer in Courts. Section 14 of the IBC deals with moratorium, and it gets triggered from the date of admission of an application for initiating CIRP by the Adjudicating Authority. This, in turn, prohibits any Court of law from passing any decree against the Developer and in addition, prohibits the Developer from transferring, encumbering, alienating, or disposing of any of its assets.

For realization of the Government's proposal, amendment in IBC is being discussed as under:

- Lifting of moratorium where the homebuyer has acquired possession of their flat and full payment towards its purchase has been made.
- Considering the flats as stocks or goods of the company rather than assets, thereby excluding them from the effect of Moratorium under Section 14.
- Addition of clause in IBC framework for transfer and registration of flat developed by the insolvent Developer, in consultation with the Real Estate Regulatory Authority.

This proposal shall act as a catalyst for increasing investments in the real estate sector and providing enhanced protection to the homebuyers. Through the proposed move, the government shall also be facilitating the citizens with realization of the constitutional right to property. Furthermore, if this proposal is implemented, it will not only reduce the litigation burden on courts related to Developers but also shield the homebuyers from getting duped at the hand of the Developers.

[32] (2019) 8 Supreme Court Cases 416

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