

# Corporate & Commercial

Monthly Newsletter  
February 2024

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## Union Budget 2024 | Key highlights of the interim budget

Union Finance Minister Nirmala Sitharaman (FM) tabled the interim Union Budget for Financial Year 2024-25 before the Parliament on February 01, 2024. The full budget will be presented in July this year after the new government is formed post the Lok Sabha elections. The FM began the speech by summarizing the achievements and steps taken by the current government in the past 5 years, and stressed on inclusive growth & development, social justice, 'garib kalyan, desh ka kalyan', welfare of 'Annadata', empowering Amrit Peedhi – the Yuva, momentum for nari shakti, economic management, vision for 'Viksit Bharat', etc. The FM also stated that 3.4% of the GDP i.e. INR 11,11,111 crore would be utilized towards infrastructure development. Along with expansion of rail/metro and aviation sector, an ecosystem for electric vehicles and green energy would also be built.

### Key estimates for FY 2024-25:

- Total receipts other than borrowings: INR 30.80 lakh crore
- Total expenditure: INR 47.66 lakh crore
- Tax receipts are estimated at INR 26.02 lakh crore
- Gross market borrowings through dated securities during 2024-25: INR 14.13 lakh crore
- Net market borrowings through dated securities during 2024-25: INR 11.75 lakh crore

### Direct tax:

- No changes have been proposed to the current taxation structure
- Certain tax benefits given to start-ups and investments made by sovereign wealth or pension funds as also tax exemption on certain income of some IFSC units are expiring on March 31 2024. To provide continuity in taxation, the FM has proposed to extend the date to March 31, 2025
- FM has proposed to withdraw direct tax demand up to INR 25,000 pertaining to the period up to FY 2009-10 and up to INR 10,000 for FY 2010-11 to 2014-15. This is expected to benefit about a crore taxpayers

### Indirect tax:

- No changes have been proposed to the current taxation structure, and the FM has proposed to retain the same tax rates for indirect taxes.
- The FM stated that the tax base of GST more than doubled and the average monthly gross GST collection has almost doubled to INR 1.66 lakh crore, this year.
- Additionally, it was also highlighted that the States' SGST revenue, including compensation released to states, in the post-GST period of 2017-18 to 2022-23, has achieved a buoyancy of 1.22.
- The FM stated that the Government has taken a number of steps to facilitate international trade. As a result, the import release time declined by 47% to 71 hours at Inland Container Depots, by 28 % to 44 hours at air cargo complexes and by 27% to 85 hours at seaports, over the last four years since 2019.

### Other initiatives:

- 3 major economic railway corridor programs will be implemented: (1) energy, mineral and cement corridors, (2) port connectivity corridors, and (3) high traffic density corridors.
- To achieve 'net-zero' by 2070, the following measures will be taken: (1) viability gap funding will be provided for harnessing offshore wind energy potential for initial capacity of one giga-watt, (2) coal gasification and liquefaction capacity of 100 MT will be set up by 2030 (3) phased mandatory blending of compressed biogas in compressed natural gas for transport and piped natural gas for domestic purposes will be mandated and (4) financial assistance will be provided for procurement of biomass aggregation machinery to support collection.
- A provision of INR 75 crore as 50-year interest free loan is proposed this year to support milestone-linked reforms by the State Governments.
- Under the PM Awas Yojana, 2 crore more houses will be taken up in the next 5 years to meet the requirement arising from increase in the number of families.
- Through rooftop solarization, 1 crore households will be enabled to obtain up to 300 units free electricity per month.
- The Government plans to set up more medical colleges by utilizing the existing hospital infrastructure under various departments.
- Healthcare cover under Ayushman Bharat scheme will be extended to all ASHA workers, Anganwadi Workers and Helpers.
- The Government will further promote private and public investment in post-harvest activities including aggregation, modern storage, efficient supply chains, primary and secondary processing and marketing and branding.
- Implementation of Pradhan Mantri Matsya Sampada Yojana (PMMSY) will be stepped up to (1) enhance aquaculture productivity from existing 3 to 5 tons per hectare, (2) double exports to INR 1 lakh crore and (3) generate 55 lakh employment opportunities in the future.

## SEBI | Fast-tracking public issuance and listing of debt securities and boosting investment by non-institutional investors

In order to promote ease of doing business, the Securities and Exchange Board of India (SEBI) recently published a consultation paper containing proposed changes to Listing Obligations and Disclosure Requirements Regulations (LODR) and NCS Regulations as well as introduction of fast-track public issuance and listing of debt securities.

### Key aspects:

- SEBI is considering reduction of the face value of debt securities, including Non-Convertible Debentures (NCDs) and Non-Convertible Redeemable Preference Shares (NCRPS) issued on a private placement basis to INR 10,000 from present INR 1 lakh, with a view to lowering the entry

barrier for non-institutional investors (which constitute a large part of the investor base comprises of online bond platforms) for participating in the corporate bonds market. SEBI also pointed out that such NCDs and NCRPS shall be plain interest/dividend bearing instruments, having a simple structure (i.e. without any credit enhancements or structured obligations).

- Securitized Debt Instruments (**SDIs**) that are issued via private placement and listed, can either have a face value INR 1 lakh or INR 10,000. It also proposed that for all issuances of SDI, such issuer shall appoint a merchant banker who will be responsible for carrying out due diligence for issuance of such privately placed SDIs and disclosures in the private placement memorandum.
- Instead of inserting the audited financials for last 3 FYs and stub period financials in the offer document, the same may be allowed to be provided as a QR code scanning of which opens the web-link to the financials on issuer's website.
- Given that the LODR already require financial results to be sent to the stock exchanges immediately and are published on entity's website in addition to the website of stock exchange, it was proposed that the requirement of publishing the financial results in the newspaper may be made optional.
- Another important proposition in the consultation paper is that of introduction of concept of fast-track public issuance and listing of debt securities, with the following features:
  - Extension of applicability of the General Information Document (GID) and Key Information Document (KID) concepts for introduction of a common document for both fast track public issues and private placements.
  - The need to seek comments from the public on a draft offer document for a fast-track public issue may be reduced to 2 working days.
  - The GID filed shall consist of all the disclosures as specified under Schedule I of NCS Regulations and the KID shall contain Part A – all disclosures that are relevant for a public issue but not in the GID and Part B – details of the offer of debt securities in respect of which the KID is being issued.
  - The issuers may be allowed to utilize the electronic modes including advertisement on issuer's website, stock exchange's website, and debenture trustee's website etc. to advertise the public issue.
  - The issue may be kept open for a minimum of 1 working day and a maximum of 10 working days. Further, in case of revision in the price band or yield, the extant bidding period may be extended by 1 more working day instead of 3 working days for a normal public issue.
  - The requirement of minimum subscription in the case of banks and entities in the financial sector may be removed.
  - The retention limit may be fixed at a maximum of 5 times of base issue size.
  - The timeline for listing may be specified at 'T+3', as opposed to 'T+6' for a regular public issue.

## SEBI | Revision of the previous Circulars on upstreaming of clients' funds by stockbrokers or clearing members to clearing corporations

- The Securities and Exchange Board of India (**SEBI**) via its Circular dated December 12, 2023, (**December Circular**) tweaked the framework requiring Stockbrokers (**SBs**) or Clearing Members (**CMs**) (hereinafter collectively referred to as **Stakeholders**) to upstream clients' funds to Clearing Corporations (**CCs**). The December Circular came after SEBI received representations from various Stakeholders i.e., SBs and Brokers' Associations citing certain operational difficulties in implementation of the framework stated in Circular released on June 08, 2023 and June 30, 2023 (**June Circulars**).
- The December Circular has been notified in supersession of the June Circulars and aims to balance the necessity of upstreaming clients' funds with operational efficiency. The revised framework (under the December Circular) introduces several key principles for upstreaming clients' funds and puts a clear emphasis on specific forms of upstreaming and eligibility criteria for collateral, which aligns with the goal of protecting investors' interests and to ease the compliance for the Stakeholders.

### Background of June Circulars:

- SEBI had, via its Circular dated June 08, 2023, mandated that no clients' funds shall be retained by the Stakeholders on the End of Day (**EOD**) basis and also mandated upstreaming of all client funds received by Stakeholders to CCs with a view to safeguard clients' funds placed with the Stakeholders.
- The June 08, 2023 Circular also mandated that clients' funds shall all be upstreamed by the Stakeholders to CCs only in the form of either cash, lien on Fixed Deposit Receipts (**FDRs**) or pledge of units of Mutual Fund Overnight Schemes (**MFOS**).
- The June Circulars, inter alia, prescribed for cut-off period for upstreaming of the clients' funds to CCs and the Stakeholders were directed to receive funds from clients beyond the prescribed cut-off time for upstreaming subject to the condition that there shall not be any further movement of funds from that account till the opening of upstreaming window on the next day.

### December Circular – Key aspects:

- **Principle of upstreaming:** The Stakeholders are now required to upstream all clients' clear credit balances to CCs on an EOD basis in the form of cash, lien on FDRs, or pledge of units of MFOS created from clients' funds.
- **Nomenclature and accounts:** The Stakeholders must maintain designated client bank accounts, distinguishing between Upstreaming Client Nodal Bank Account (**USCNBA**) from which the Stakeholders shall receive the clients' funds and Down Streaming Client Nodal Bank Account (**DSCNBA**) to which the Stakeholders shall make payments to clients.

The December Circular also mandates the modification of demat account categories to include a 'Client Nodal MFOS Account' which will be used for subscription and redemption of MFOS units, and it is the obligation of the depositories to allow subscription or redemption transactions only in the said account.

- **Upstreaming by way of FDRs:** FDRs created from clients' funds and all existing FDRs (created out of clients' funds and having tenor of more than 1 year) created prior to June 30, 2023 and upon maturity of such existing FDRs and such existing FDRs at the time of renewal, shall meet the following conditions:
  - The tenor of FDRs shall not be more than 1 year and 1 day and the FDRs should be pre-terminable on demand.
  - The Stakeholders may create FDRs out of clients' funds only with those banks which satisfy the CC's exposure norms as specified by SEBI or CCs from time to time.
  - Every FDR created out of clients' funds shall necessarily be lien-marked to one of the CCs at all times. Through this lien, CCs shall have explicit precedence on the FDR funds over every other stakeholder, including over the bank providing the FDR.
  - The principal amount of the FDR shall remain protected throughout the tenure, even after accounting for all possible pre-termination costs.
  - The Stakeholders shall not avail any funded or non-funded banking facilities based on FDRs created out of clients' funds.
- **Upstreaming by way of MFOS:** The Stakeholders can pledge units of MFOS with CCs. Further, the Stakeholders shall ensure that client funds are invested only in such eligible MFOS that deploy funds into risk-free government bond overnight repo markets and overnight Tri-party Repo Dealing and Settlement (TREPS).
- **Operational efficiency and compliance:** To enhance operational efficiency and reduce transaction costs, CCs shall build a mechanism, which shall be available to all clearing members from January 1, 2024 for utilizing surplus unutilized collateral lying with CC in cash form towards fund pay-in requirements across segments, and to adjust the margin blocked in the form of cash towards client fund pay-in obligations.
- **Eligibility of bank instruments as collateral:** Bank instrument provided by the clients as collateral to the Stakeholders cannot be upstreamed to CCs and they will be ineligible as collateral in any segment of the securities market. However, bank guarantees provided by non-individual clients shall be allowed as margins on the following conditions:
  - Non-individual clients shall give declaration and underwriting that they shall have no recourse to SEBI

or exchanges in case of wrongful invocation of such bank guarantees by the Stakeholders.

- The net worth of such non-individual clients should be at least INR 1000 crore. If the net worth of the such client is less than INR 1000 crore and client is a part of a group company of a MNC group or large conglomerate in India and that MNC or large conglomerate has ultimate beneficial ownership of more than 50% in the concerned client, then the net worth of the MNC group as a whole or the net worth of the large conglomerate can be considered which should be minimum INR 5000 crore.

## SEBI | Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2024

The Securities and Exchange Board of India (SEBI) recently brought major changes in the regulatory framework governing Alternative Investment Funds (AIFs) and issued a Notification<sup>1</sup> recently to amend the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012<sup>2</sup> (Amendment). Key aspects:

- **Investments to be held in dematerialized form (Regulation 15):** The Amendment mandates that the AIFs are required to hold their investments in dematerialized form. However, some exceptions are carved out such as AIF's investments in instruments which are not eligible for dematerialization, investments held by a liquidation scheme of AIF or such other investments as specified by SEBI from time to time.
- **Appointment of a Custodian (Regulation 20):** The Amendment also states that the Sponsor or Manager of the AIF shall appoint a Custodian registered with the Board for safekeeping of the securities of the AIF in the specified manner. Such a Custodian is also required to report or disclose such information regarding investments of the AIF as specified by the Board from time to time. Further there are specific guidelines for the Custodian of Category III AIF.
- **Conditions for Associated Custodian (Regulation 20-11A):** The newly inserted sub-Regulation provides conditions that need to be fulfilled by a Custodian which is an associate of the Sponsor or Manager of an AIF to be able to act as one. These conditions pertain to net worth, representation of interest by Directors of the Custodian, non-subsidiary relationships and non-common Directors.

These amendments underscore a continuation of the drive to boost transparency, operational efficiency, and the safeguarding of investors. The adoption of dematerialization mandates and the meticulous organization of custodian relationships reflect SEBI's commitment to keeping pace with the evolving financial market environment and enhancing the overall health of India's financial markets.

<sup>1</sup> Securities and Exchange Board of India, No. SEBI/LAD-NRO/GN/2024/163 dated January 05, 2024, available at: [https://www.sebi.gov.in/legal/regulations/jan-2024/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2024\\_80608.html](https://www.sebi.gov.in/legal/regulations/jan-2024/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2024_80608.html)

<sup>2</sup> Securities and Exchange Board of India, LAD-NRO/GN/2012-13/04/11262 dated May 21, 2012, available at: <https://www.sebi.gov.in/legal/regulations/apr-2017/sebi-alternative-investment-funds-regulations-2012-last-amended-on-march-6-2017-34694.html>

## RBI | Key changes to Master Directions on lending to MSMEs

The Reserve Bank of India (RBI) vide its Master Direction - Lending to Micro, Small & Medium Enterprises Sector dated July 24, 2017 (**MSME Master Directions**) issued a number of instructions and guidelines to scheduled commercial banks (excluding regional rural banks), in relation to lending to the Micro, Small and Medium Enterprises (**MSME**) sector.

The Ministry of MSME – the nodal ministry for MSMEs – had issued a notification vide Gazette Notification S.O. 2119 (E) dated June 26, 2020<sup>3</sup> (**GOI MSME Notification 2020**) in terms of which RBI, on July 29, 2022, inter alia, revised the criteria for classification as an MSME under the MSME Master Direction, as below:

- A micro enterprise, where the investment in plant and machinery or equipment does not exceed INR 1 crore and turnover does not exceed INR 5 crore.
- A small enterprise, where the investment in plant and machinery or equipment does not exceed INR 10 crore and turnover does not exceed INR 50 crore.
- A medium enterprise, where the investment in plant and machinery or equipment does not exceed INR 50 crore and turnover does not exceed INR 25 crore.

Further, the Ministry of MSME issued another notification vide Gazette Notification S.O. 1296(E) dated March 20, 2023<sup>4</sup> (**GOI MSME Notification 2023**) and accordingly, RBI on December 28, 2023, made certain amendments in the Master Directions on MSME.

### Key aspects:

- **Classification for priority sector lending:** As per the Master Directions – Priority Sector Lending – Targets and Classification dated September 04, 2020, bank loans extended to MSMEs that fall within the classification of MSMEs (as stated above) and who are engaged in the manufacture or production of goods<sup>5</sup>, or engaged in providing or rendering of any service(s), inter alia, shall qualify for classification under the priority sector lending<sup>6</sup>. However, the banks will now, for purposes of priority sector lending to MSMEs, adhere to the classification recorded in the Udyam Registration Certificate.
- **Certification of informal micro enterprises:** For formalization of enterprises that are unable to get registered on the Udyam Registration Portal due to lack of mandatory required documents such as Permanent Account Number (**PAN**) or Goods and Services Tax Identification Number (**GSTIN**) (such enterprises being Informal Micro Enterprises or **IMEs**), RBI, vide its Circular dated May 09,

2023 introduced the 'Udyam Assist Platform' for online generation of the Udyam Assist Certificate. Now, the MSME Master Directions state that IMEs with an Udyam Assist Certificate shall be treated as micro enterprises for the purpose of availing of priority sector lending benefits.

- **General Credit Card (GCC) facility:** Banks which are eligible to issue credit cards<sup>7</sup> may issue GCCs to individuals or entities that have sanctioned working capital facilities for non-farm entrepreneurial activities which are eligible for classification under the priority sector guidelines. GCCs are issued in the form of a credit card conforming to the stipulations mentioned under the RBI Master Direction - Credit Card and Debit card - Issuance and Conduct Directions, dated April 21, 2022. The terms and conditions of the GCC credit facility extended by the bank to individuals and entities shall be as per the board approved policies of the banks<sup>8</sup>. Further, the banks shall comply with the guidelines on collateral free lending for micro and small units and the GCC data reporting instructions issued by RBI from time to time.

This amendment by RBI clarifies that the banks will now simply be guided by the Udyam Registration Certificate for the purposes of priority sector lending and has introduced the issuance of GCC facility for individuals or eligible entities. Further, RBI has made the certificate issued on the Udyam Assist Platform to IMEs at par with the Udyam Registration Certificate for the purpose of availing priority sector lending benefits. These changes will have a significant impact on regularization of the MSMEs and will help improve the ease of doing business in the MSME sector.

## RBI | Master Direction – Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity up to one year) Directions, 2024

The Reserve Bank of India (RBI) recently published the Master Direction – Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity up to one year) Directions, 2024<sup>9</sup> that will be applicable to all persons/agencies dealing in Commercial Paper (**CPs**) and/or Non-Convertible Debentures (**NCDS**) of original or initial maturity up to one year. These shall come into force with effect from April 01, 2024.

These guidelines shall supersede Master Direction on Money Market Instruments: Call/Notice Money Market, Commercial Paper, Certificates of Deposit and Non-Convertible Debentures

<sup>3</sup> This Ministry of MSME Notification dated June 26, 2020 revised the criteria for classification of enterprises as Micro, Small and Medium enterprise.

<sup>4</sup> This Ministry of MSME Notification dated March 20, 2023 specified that the certificate issued on the UAP to IMEs shall be treated at par with Udyam Registration Certificate.

<sup>5</sup> MSME shall be engaged in the manufacture, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951.

<sup>6</sup> Para 9 of Master Directions – Priority Sector Lending (PSL) – Targets and Classification (updated as on July 27, 2023).

<sup>7</sup> Banks which are eligible to issue credit cards under the Master Direction -Credit Card and Debit card- Issuance and Conduct Directions, dated April 21, 2022 as updated from time to time.

<sup>8</sup> The board approved policy of the bank shall be within the overall framework laid down by RBI.

<sup>9</sup> Reserve Bank of India, Notification No.

FMRD.DIRD.10/14.02.001/2023-24 dated January 03, 2024, available at: [Reserve Bank of India - Master Directions \(rbi.org.in\)](https://www.rbi.org.in)

(original maturity up to one year), 2016<sup>10</sup>, Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016<sup>11</sup> and the Reserve Bank Commercial Paper Directions, 2017<sup>12</sup>.

#### Key aspects:

- **Eligible issuers:** Entities allowed to issue CPs and NCDs include companies, NBFCs (including HFCs), InvITs, REITs, All India Financial Institutions (AIFIs), and other corporates with a net-worth of at least INR 100 crore, provided they are legally allowed to incur or issue debt in India. Additionally, entities specifically approved by the Reserve Bank can also issue these instruments. Co-operative societies and limited liability partnerships with a net-worth of INR 100 crore or more are also permitted to issue CPs under certain conditions. A key prerequisite for all issuers is that any fund-based facilities they have from banks, AIFIs, or NBFCs must be classified as Standard at the time of issue.
- **Eligible investors:** Eligible investors for CPs and NCDs include both resident and non-resident individuals and entities, with the stipulation that non-residents' investments must adhere to the guidelines set by the Foreign Exchange Management Act (FEMA), 1999, and its related regulations. However, a critical restriction applies to all potential investors: neither residents nor non-residents are permitted to invest in CPs and NCDs issued by parties related to them, regardless of whether the investment would be made in the primary or secondary markets.
- **Primary issuance:** CPs and NCDs must be issued in dematerialized form within SEBI guidelines, with a minimum denomination of INR 5 lakh. CPs have a tenor of 7 days to 1 year, while NCDs range from 90 days to 1 year. Options such as call/put are not allowed, nor is underwriting or co-acceptance. Further, issuance must be settled within T+4 working days, and disclosure requirements are specified in the Master Directions.
- **Discount/coupon rate:** CPs are to be issued at a discount, and NCDs can be at a discount or have a fixed/floating rate coupon. Further, the floating rate NCDs must be linked to a benchmark as specified.
- **Credit enhancement:** Banks, AIFIs, and non-bank entities can provide credit enhancements under certain conditions.
- **End-use:** Funds from CPs and NCDs should primarily finance current assets and operating expenses, with specific disclosures required for other uses.
- **Rating requirement:** A minimum 'A3' credit rating is required for issuance.
- **Primary market - other conditions:** An Issuing and Paying Agent (IPA) and, for NCDs, a Debenture Trustee must be appointed. Subscription and aggregate issuance limits are outlined.
- **Secondary market:** Trading can occur OTC or on exchanges, with specific settlement cycles and mechanisms.

- **Buyback:** Conditions for buyback include timing and procedural requirements.
- **Repayment:** There's no grace period for CP/NCD repayment, which must be routed through the IPA.
- **Default:** Issuers must promptly inform of defaults, with public dissemination of default information required. Restrictions apply post-default.
- **Market timing:** Specifies trading hours.
- **Market practices and documentation:** FIMMDA may prescribe standardized procedures and documentation.
- **Reporting Requirements, Roles, and Responsibilities:** The Master Directions also specifies reporting requirements for primary issuances, secondary market transactions, buybacks, and defaults. Additionally, these directions mandate that the Issuing and Paying Agent (IPA), Depositories, and Debenture Trustees (DTs) adhere to the designated reporting schedules and formats as stipulated within the Master Directions. Top of Form Furthermore, the roles and responsibilities of the IPA, DTs and Credit Rating agency is also specified clearly. These regulations aim to ensure the orderly functioning of the CP and NCD markets, emphasizing transparency, credit quality, and investor protection.

## RBI | Draft for bond forwards directions

The Reserve Bank of India (RBI) has recently released the draft directions on bond forwards in Government Securities with an aim to expand interest rate derivative products in the market and enable market participants, particularly long-term investors, to manage cash flows and interest rate risk in a standardized manner.

#### Key aspects:

- Resident and non-residents, who are eligible to invest in Government Securities under the Foreign Exchange Management (Debt Instruments) Regulations, will be eligible to undertake transactions in bond forwards.
- Transactions in bond forwards shall be undertaken on Central Government Dated Securities and State Government Securities.
- At least one of the parties to a transaction in bond forwards must be a market-maker or a central counter party authorized by the RBI as an approved central counterparty for bond forward transactions. A market-maker can be a scheduled commercial bank, except small finance banks, payment banks, local area banks, regional rural banks, and standalone primary dealers.
- Market-makers may undertake long positions and covered short positions in bond forwards without any limit but are

<sup>10</sup> Reserve Bank of India, FMRD. Master Direction No. 2/2016-17 dated July 07, 2016, available at:

[https://rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=10495](https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10495)

<sup>11</sup> Reserve Bank of India, Master Direction

DNBR.PD.002/03.10.119/2016-17 dated August 25, 2016, available at:

[https://www.rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=10563](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10563)

<sup>12</sup> Reserve Bank of India, FMRD.DIRD.2/14.01.002/2017-18 dated August 10, 2017, available at:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?id=11089&Mode=0>

not allowed to undertake any uncovered short position in bond forwards.

- The draft directions also provide a list of eligible entities that can undertake transactions in bond forwards as users along with directions for such users.
- It is provided that bond forwards shall be traded in over the counter markets, including on electronic trading platforms
- With respect to settlement and unwinding, the directions state that bond forwards can be physically, or cash settled. In the case of physical settlement, it shall be through any clearing agency approved by the RBI and in case of cash settlement, it can be settled bilaterally or through any RBI approved clearing agency. Additionally, the settlement basis and market conventions for bond forwards will be specified by FIMMDA, in consultation with market participants.
- Reporting with respect to underlying debt instrument, settlement type, instances of unwinding, novation, bilateral settlement of transactions will have to be done by market-makers within 60 minutes of entering into the transactions, to the Trade Repository of Clearing Corporation of India Limited (CCIL).
- In case the any provision of these directions is violated, the RBI may, in addition to taking any penal or regulatory action in accordance with law, disallow the market participant from undertaking bond forward transactions for a period not exceeding 1 month at a time, after providing reasonable opportunity to the person or agency to defend its action.

## RBI | Guidelines on declaration of dividend by banks

- RBI has recently issued draft guidelines for declaration of dividend by banks and remittance of profits to Head Office (HO) by foreign bank branches in India (**Guidelines**). These guidelines have been reviewed in the light of implementation of Basel III standards, the revision of the Prompt Corrective Action (PCA) Framework, and the introduction of differentiated banks.
- The Guidelines state that while considering the proposal for declaration of dividends or remittance of profits, the board of directors or the bank's management should consider the provisioning for Non-Performing Assets (NPAs), the auditors' report to the financial statements, current as well as projected capital position vis-à-vis applicable capital requirement and long-term growth plans of the bank. Further, the Guidelines also lay down the prudential requirements to be eligible to declare dividends or remit profits which are as follows:
  - A bank should meet the applicable regulatory capital requirement for each of the last 3 FYs including the FY for which the dividend is proposed.
  - The net NPA ratio, for the FY for which the dividend is proposed, should be less than 6%.
  - The bank should comply with Sections 11(2)(b)(ii), 15, and 17(1) of the Banking Regulation Act, 1949, as applicable.
  - The bank shall be compliant with the applicable laws, regulations/guidelines issued by the RBI including,

inter alia, creating adequate provisions for impairment of asset and employee benefits, transfer of profits to statutory reserves etc.

- The RBI should not have placed any explicit restrictions on the bank for declaration of dividends or remittance of profits.
- The conditions on quantum of dividend payable as well as the ceiling on payout ratios for eligible banks is also stated in the Guidelines.
- The proposed dividend payable shall include dividend on equity shares only and the Dividend Payout Ratio (DPR) will be the ratio between the amount of the dividend payable in a year and the net profit as per the audited financial statements for the FY for which the dividend is proposed.
- In case the net profit for the relevant period includes any exceptional and/or extra-ordinary profits/income, or if the financial statements are qualified by the statutory auditor that indicates an overstatement of net profit, the same shall be reduced from net profit while determining the DPR. Additionally, no request for ad-hoc dispensation on declaration of dividend will be entertained by the RBI.
- With respect to remittance of profits to HO by foreign banks operating in India in the branch mode, it can remit net profit of a quarter or year, earned from its Indian operations, without prior approval of the RBI, only after the accounts of the bank are audited and in the event of excess remittance, the HO of that foreign bank is immediately required to make good the shortfall.
- These guidelines will come into effect for declaration of dividends for the FY 2024-25 and onwards.

## Real Estate | Advertisement Guidelines for real estate promoters regarding promotion, marketing and sale of the real estate projects

The Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) vide its Circular dated November 29, 2023 has raised concerns regarding non-compliance with the provisions under Section 11(2) of the Real Estate (Regulation and Development) Act, 2016 (**Act**), by the promoters/developers, which delineates the duty on them to prominently publish the website address of the RERA Authority and the registration number of the real estate project.

Earlier on, UP-RERA in its Circular dated October 29, 2023, bearing letter no. 13967 had directed the promoters to mandatorily follow the provision of Section 11(2) of the Act while publishing any advertisement and also cautioned them against punitive measures in case of non-compliance. Further, in another Circular dated November 29, 2023, bearing letter no. 14288, UP-RERA issued guidelines to the promoters reiterating that without RERA registration, advertising, booking or sale of any project which has a land area of more than 500 square meters, or more than 08 apartments will be prohibited under Section 3 of the Act.

It was brought to the notice of UP-RERA that in many instances the promoters do not comply with the provision of the Act. In order to promulgate strict adherence to the provisions of the Act and ensure compliance with the Rules and Regulations, the UP-RERA has issued notices to 130 Promoters over illegal advertisements.

To alleviate many of these concerns, UP-RERA in 2021 issued the following Advertisement Guidelines, with the following key aspects:

- **Newspapers and magazines in print and digital media:** All advertisements in newspapers and magazines (print or e-media) or a website advertisement must contain the link of the website of UP-RERA and also the complete RERA registration number of the project advertised.
- **Brochure and leaflets:** All paper prints with promotional material such as brochures, leaflets and flyers must also contain the link of the UP-RERA website as well as the RERA registration number of the project.
- **Electronic media:** Every audio-visual media or only audio announcements on radio shall mention RERA registration number along with its website address in clear audible manner at a slow pace. The above is applicable to all audio-visual mediums such as radio, TV commercials, video clips, audio clips, media streaming, digital media content, etc. All media houses must ensure strict compliance with these directions. In case of non-compliance, the matter will be referred to the Ministry of Information and Broadcasting as well as concerned media regulatory bodies for appropriate action and UP-RERA will have the power to take appropriate penal action against such errant media house.
- **Social media and digital media:** Every marketing collateral on promoter's or project's social media channels including Facebook, X (formerly Twitter), Instagram or LinkedIn pages as well as any banner, text ads or any other marketing creative shall mention the link of the UP-RERA website as well as the RERA registration number.
- **Outdoor publicity:** Large size outdoor publicity billboards and any hoardings should also display link of the website of UP-RERA as well as the RERA registration number of the project in a manner that is easily readable with bare eyes by a viewer.

property sales laws and procedures and applies to new agents seeking registration as well as existing agents renewing their registration.

- Section 9(3) of the Act enables the Authority to grant registration only upon the fulfillment of certain conditions prescribed, and Rule 14(2) of the Rules under the Act states that it is mandatory for every registered real estate agent to quote the registration number on all the documents provided by them.
- Existing registered real estate agents were required to obtain this Certificate before January 1, 2024 and upload the same on the Authority's web page. In case of failure to do so, action as deemed fit will be taken by the authority. Section 38 of the Act also gives the power to the Authority to impose interest or penalties in relation to any contravention of obligations placed on the promoters, agents, allottees. Non-compliance to the new provisions will result in stringent actions.
- Only real estate agents having a valid MahaRERA real estate agents' Certificate of Competency will be eligible to apply for MahaRERA real estate registration/renewal of registration.
- The new regulations also apply to developers and those engaged in related responsibilities. The regulatory body had earlier mandated the training and certification for the agent registrations and renewals as some 8000-odd agents qualified through 3 examinations conducted until now, but despite of multiple extensions some agents were yet to undergo the mandated training. Henceforth, only certified agents will be listed on project websites as per MahaRERA's directive.
- The registration for real estate agents is mandatory and shall be valid for 5 years until it is revoked. It is necessary for the registered agent to keep books of accounts and all relevant documents. In case of any correction in the information after obtaining registration, it can be done by applying for correction application.

## Real Estate | Real estate agent's certification under MahaRERA

- The Maharashtra Real Estate Regulatory Authority (**MahaRERA or Authority**) has made it mandatory for real estate agents to have a valid certificate from the Authority to operate. The Real Estate (Regulation and Development) Act, 2016 (**Act**) came into force with effect from May 01, 2017 and aims to introduce professionalism and standardization across India. To further this objective, MahaRERA has made it mandatory for every real estate agent to be registered with it before facilitating or acting on behalf of any person to facilitate sale or purchase of any plot, apartment, unit or building in a real estate project or a part of it being sold by the promoter.
- This directive that came into effect from January 1, 2024 aims to ensure agents have essential knowledge about



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