Recent developments in India's corporate & commercial laws

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Monthly Newsletter
May 2025

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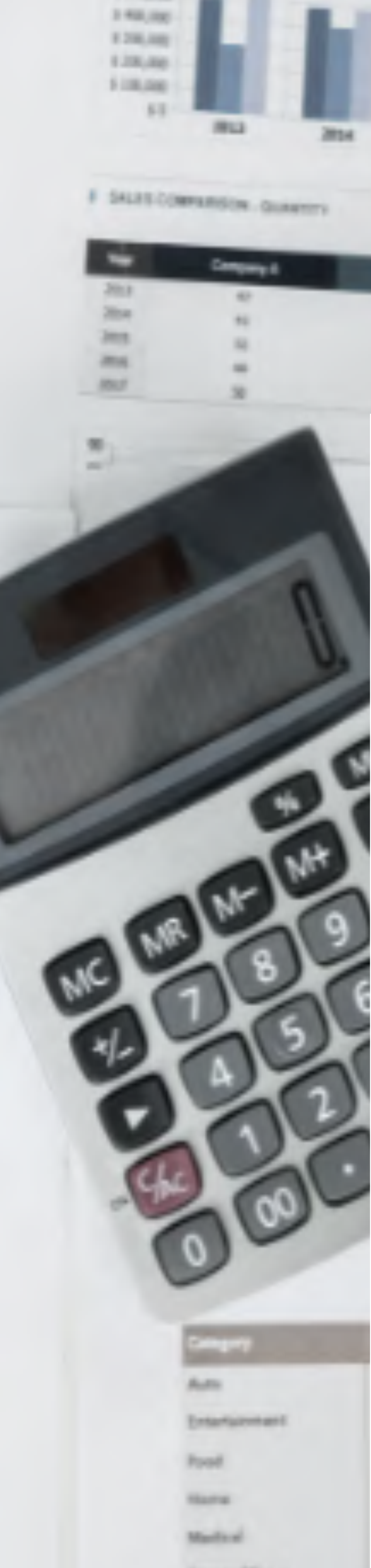

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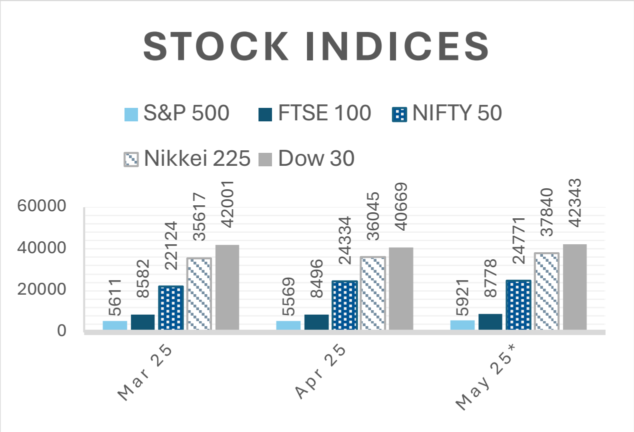
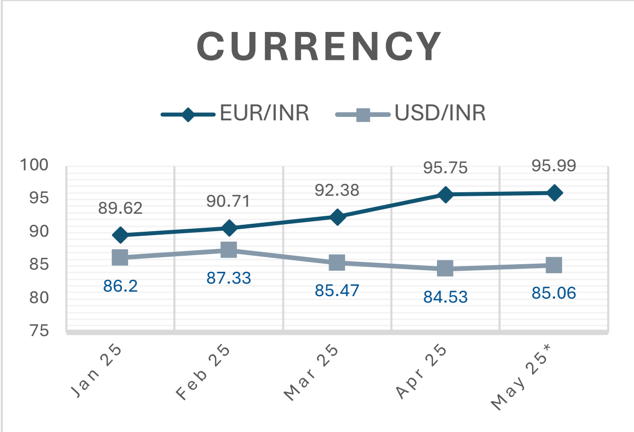
Indian economy

Snapshot of key indicators | May 2025

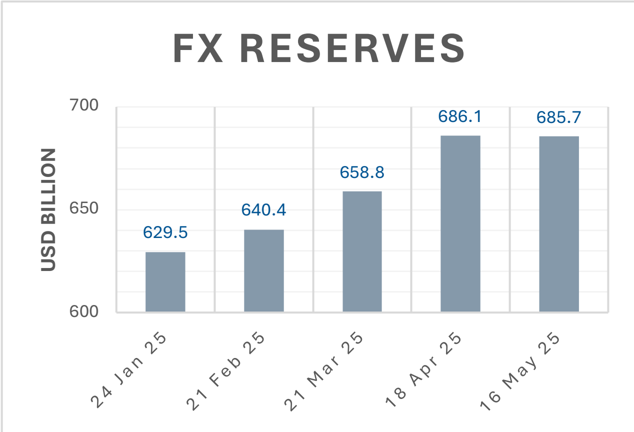


Source: S&P Dow Jones, FTSE Russel, NSE, and Nikkei

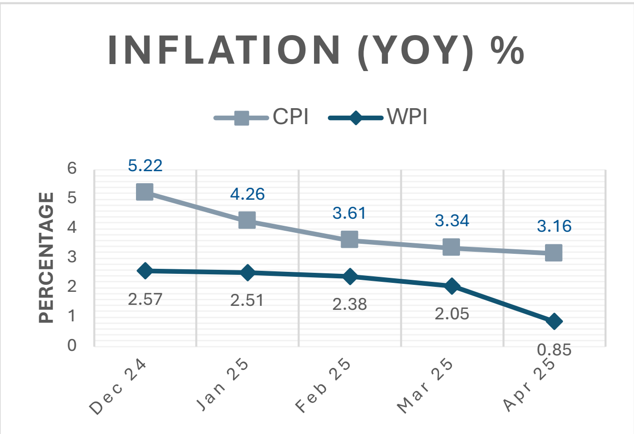


Source: Reserve Bank of India

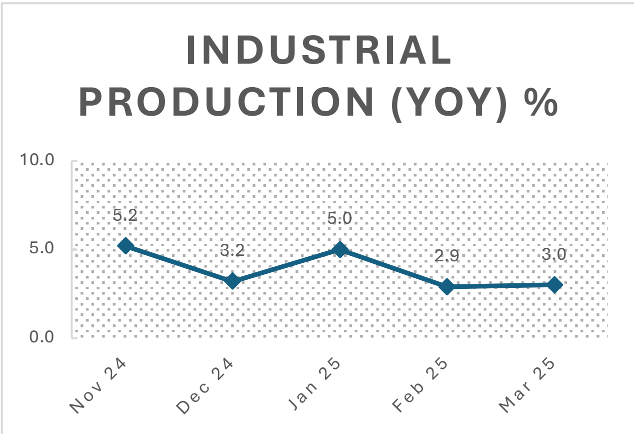
Source: Ministry of Commerce and Industry



Source: Reserve Bank of India



Source: Ministry of Statistics and Programme Implementation



Source: Ministry of Statistics and Programme Implementation

HIGHLIGHTS

- Ministry of Corporate Affairs reported 50% increase in company incorporations in April 2025 in comparison to April 2024.
- Tobacco (66.43%); coffee (47.85%); and electronic goods (39.51%) saw the highest growth in merchandise export in April 2025.
- April 2025 records the lowest CPI and WPI inflation levels since July 2019 and March 2024 respectively.
- The highest inflation in April 2025 was seen in gold (30.8%); refined oil (23.7%); silver (23.3%); mustard oil (19.6%); and apple (17%).
- The top 3 positive contributors for indusrtial production in March 2025 were the manufacture of electrical equipment (15.7%); motor vehicles, trailers and semi-trailers (10.3%); and basic metals (6.9%).
- Union Bank of India projects a significant decrease in industrial production growth to 1.2% in April 2025.

* As per the latest available data for May 2025

RBI enforces a uniform code for digital lending

RBI (Digital Lending) Directions, 2025

In a decisive shift towards a structured framework in digital lending, the Reserve Bank of India (**RBI**) has issued the RBI (Digital Lending) Directions, 2025 (**Directions**), a comprehensive set of guidelines consolidating earlier circulars and addressing persistent issues such as unregulated third-party involvement, data misuse, and predatory lending practices.

Digital lending in India has surged over recent years, facilitated by Regulated Entities (**REs**) (banks and financial institutions) partnering with Lending Service Providers (**LSPs**) as agents of REs to carry out digital lending functions through Digital Lending Apps (**DLAs**) operated by the RE or the LSP. However, the absence of a codified regulatory framework has led to divergent practices, particularly in areas like data collection, loan disbursal, and grievance redressal, often resulting in borrower exploitation. Although the RBI had previously issued guidelines and circulars, compliance was inconsistent. To address this, the RBI has now codified a uniform standard applicable across all commercial banks, Non-Banking Financial Corporations (**NBFCs**), cooperative banks, and All-India Financial Institutions.

Key changes under the Directions

- Clarity on RE-LSP relationships: Any digital lending arrangement between an RE and an LSP must be governed by a formal contract that clearly defines the rights and obligations of each party. REs are required to conduct thorough due diligence of their LSPs, evaluating parameters such as technical capabilities, data protection policies, prior conduct, and compliance readiness; and periodically review their LSPs' performance and implement appropriate oversight mechanisms.
- Transparency in multi-lender platforms: For platforms where multiple lenders are involved, clear and transparent communication is required with the borrowers on all matching loan offers in a fair and unbiased manner through the DLA, including details such as lender names, loan amount, tenure, Annual Percentage Rate (**APR**), repayment obligations, and penalties. This will help the borrowers compare loan offers easily and make informed decisions. Once a loan is sanctioned, borrowers will automatically receive a digitally signed Key Fact Statement (**KFS**), sanction letter, and other important documents without undue delay.
- Stricter data and tech governance: LSPs and DLAs can now only collect borrower data on a need-to-know basis and with the borrower's explicit and informed consent. They are not allowed to access private phone data like call logs, contact lists, or media files, except for a one-time access to camera, microphone, or location during onboarding or Know Your Customer (**KYC**) verification, subject to explicit consent. All personal data must be stored exclusively on servers located within India. If data is processed overseas, it must be deleted from foreign servers and brought back within 24 hours.
- Loan disbursal and repayment protocols: All loan disbursals must be made directly into a verified bank account of the borrower, with certain limited exceptions such as specific statutory mandates or direct disbursals to end beneficiaries. All repayments must be made directly to the RE's account, and funds cannot pass through accounts of the LSP or other third parties. Additionally, any fees or commissions payable to the LSP must be borne by the RE and cannot be passed on to the borrower, either directly or indirectly. However, in cases where recovery is being carried out physically (e.g., through on-ground agents), cash repayments made by borrowers to such recovery agents or service providers will be permitted. In such cases, the RE must ensure that the payment is credited to the borrower's loan account on the same day.
- 'Cooling-off' period: Borrowers must now be provided with a minimum one-day 'cooling-off' period during which they may exit the loan arrangement by repaying the principal and applicable APR without penalty, except for a reasonable one-time processing fee (if disclosed upfront in the KFS).
- New reporting mandates: All loans, including short-term and deferred payment loans, must be reported to Credit Information Companies (**CICs**). REs must also report all DLAs, whether owned or managed by LSPs, on the RBI's Centralised Information Management System (**CIMS**) portal by June 15, 2025.

These Directions represent a landmark step in reinforcing digital privacy standards and restoring trust in digital lending platforms, striking a crucial balance between innovation and regulatory oversight. The emphasis on data localisation and borrower consent strengthens digital rights, while uniform protocols around disclosures and grievance redressal bring much-needed structure to India's fragmented fintech ecosystem. While implementation may pose compliance challenges, particularly for smaller REs and LSPs, the framework lays the foundation for sustainable, inclusive, and responsible growth in India's digital credit landscape.

SEBI proposes increased flexibility for co-investments

Consultation paper to introduce the Co-Investment Vehicle in the AIF structure

The Securities and Exchange Board of India (**SEBI**) has proposed the introduction of the Co-Investment Vehicle (**CIV**) to facilitate co-investments with Alternative Investment Funds (**AIFs**) without the necessity of a separate Portfolio Management Services (**PMS**) registration. Under the new framework, CIVs would be free to function as parallel schemes under the AIF umbrella, avoiding the regulatory limitations entailing the current PMS mechanism, such as diversification principles, minimum tenor requirements, and sponsor commitment requirements.

The AIFs may establish CIVs under the same category, i.e. Category I such as startups, early stage ventures or social ventures; or Category II for other AIFs, by filing a shelf Private Placement Memorandum (**PPM**) with the SEBI, outlining key principles and criteria, such as the investor's capital commitment in the main AIF, based on which co-investment rights will be extended to the investors of the main AIF. The CIV will be considered registered/approved if SEBI does not issue any queries within 30 days of the filing.

The proposed framework entails the following benefits:

- Avoiding PMS registration route: By removing the need for the operationally burdensome, expensive, and compliance-intensive PMS registration, investors would be relieved of the regulatory and transactional drag that has long hampered co-investment structures.
- Access for investors to high-conviction opportunities: Unlike the traditional pooled investment structures, where capital deployment decisions rest solely with the manager, CIVs would increase investor control by allowing them to selectively participate in deals that align with their strategic vision.
- Parity for Indian fund managers with their global counterparts: The current dual registration requirement, as both AIF and portfolio manager, deters Indian managers from offering co-investment opportunities. This creates a disadvantage compared to offshore funds, which face fewer regulatory hurdles. The proposed CIV framework would remove this disparity.
- Simplifying ownership structure: The existing framework results in 'crowded cap tables', a situation wherein a company's capitalisation table has a high number of shareholders, potentially impacting future fundraising and decision-making. The proposed framework would allow 'cleaner cap tables' by structuring co-investments through the CIV, consolidating investor participation, and enhancing administrative efficiency.
- Co-investor exit flexibility: Under current norms, co-investors are generally required to exit in tandem with the AIF, limiting their ability to respond to individual strategic or market considerations. The proposed open CIV model would enable co-investors to independently time their exit, increasing autonomy and flexibility.

In addition to reducing execution timelines and compliance, the proposed framework would foster a more investor-friendly ecosystem for sophisticated investors demanding tailor-made opportunities and greater control in high-growth opportunities.

Input Tax Credit can be used for payment of GST appeal pre-deposits

Supreme Court permits using credit ledger for 10% GST appeal pre-deposits

In a major relief to companies contesting tax demands, businesses can now use Input Tax Credit (**ITC**) to pay the mandatory pre-deposit (10% of the disputed tax amount) for filing an appeal before the Appellate Authority under the Goods and Services Tax (**GST**) Act, 2017, through the electronic credit ledger.[1]

This is a significant shift in policy. Under the prevailing GST framework, ITC is generally restricted to offsetting output tax liability, and any unused credit can only be refunded under specific circumstances, typically when ITC exceeds output liability, such as in export or inverted duty scenarios. As such, companies disputing tax assessments were previously required to set aside working capital in cash for pre-deposit payments, despite ample ITC balances.

By allowing ITC to be used as pre-deposits for disputing a company's GST liability, the Supreme Court's decision has not only acknowledged the hardship caused by cash outflows during tax disputes but also improved the ease of doing business and liquidity, and is especially beneficial for sectors that are ITC-rich or frequently subject to reassessment, particularly in cases where the disputed tax demand runs into crores, making the 10% pre-deposit requirement a substantial cash burden.

Going forward, businesses would be well advised to reassess their litigation strategies and tax provisioning, as this change could significantly reduce the financial burden of contesting disputed GST demands, making recourse to appellate forums more accessible and less cash-intensive.

In another significant ruling, it was held that ITC cannot be denied merely because the construction involves immovable property, especially when such construction is integral to business operations.[2]

[1] Union of India v. Yasho Industries Ltd, Special Leave Petition (Civil) No. 14841 of 2025

[2] Chief Commissioner, CGST v. Safari Retreats Pvt Ltd, Review Petition (Civil) Diary No. 1188 of 2025

Infrastructure projects and activities cannot be granted *ex post facto* Environmental Clearance

MoEFCC's 2021 Office Memorandum for retrospective Environmental Clearance is invalid

In a landmark ruling that safeguards environmental protection, the Supreme Court has prohibited the grant of *ex post facto* Environmental Clearance (**EC**), mandating the requirement of prior EC for various real estate, infrastructure, mining, and power projects and activities.[3]

On September 14, 2006, the Ministry of Environment, Forest, and Climate Change (**MoEFCC**; previously, Ministry of Environment and Forests) had issued a notification mandating prior EC for certain categories of projects and activities including mining, power generation, material production and processing, manufacturing, transportation, storage, and infrastructure (**EIA Notification**).

This was followed by a notification in 2017, enabling the *ex post facto* grant of EC to projects existing as on March 14, 2017, as a 'one-time measure' (**2017 Notification**).

In 2021, the MoEFCC issued an Office Memorandum (**2021 OM**) providing a Standard Operating Procedure (**SOP**) for grant of *ex post facto* EC, providing for demolition of projects that would not have been eligible for grant of prior EC, and temporary closure of projects that would have been eligible, until the *post facto* EC is granted.

While deciding the validity of the 2017 Notification and the 2021 OM, the Supreme Court noted that the underlying ulterior objective was to protect the industries that wilfully violated the EIA Notification, which had been in existence since as early as 2006. While the 2017 Notification was stated to be a 'one-time measure' for existing projects as on March 14, 2017, the 2021 OM was craftily drafted as an SOP to bring in an *ex post facto* regime for subsequent projects.

The Court struck down the 2017 Notification and the 2021 OM, while preserving the ECs already granted under them, and barred the Central Government from issuing any subsequent notification providing for *ex post facto* EC, reiterating the compelling necessity to adopt a strict stance against environmental violations. The concept of *ex post facto* or retrospective EC is alien to environmental law, as the grant of an EC requires a careful application of mind, entailing public hearing, screening, scoping, and appraisal, to appropriately consider the environmental consequences of an activity. Further, if the EC were to be ultimately refused, irreparable harm would have been caused to the environment.

This ruling follows another recent decision wherein the Supreme Court reaffirmed that unauthorised constructions must be demolished without leniency, and regularisation requests should not be entertained, as doing so undermines the rule of law and promotes a culture of impunity.[4]

These decisions mark a pivotal shift in compliance norms for sectors like real estate, infrastructure, and power. Prior EC is now a strict legal requirement, not a *post facto* formality, as violations will not be excused through regularisation. Companies should reinforce internal environmental governance frameworks and engage early with the EIA process to mitigate legal, financial, and reputational risks.

[3] Vanashakti v. Union of India, 2025 SCC OnLine SC 1139
[4] Kaniz Ahmed v. Sabuddin, 2025 SCC OnLine SC 995

Singapore recognises India's insolvency resolution process

CIRP granted 'foreign proceeding' status under the UNCITRAL Model Law

In a landmark decision that strengthens the cross-border insolvency cooperation between India and Singapore, the High Court of Singapore has formally recognised Corporate Insolvency Resolution Process (**CIRP**) conducted under the Insolvency and Bankruptcy Code, 2016 (**Code**) as a 'foreign proceeding' under the UNCITRAL Model Law on Cross-Border Insolvency (**Model Law**) paving the way for repatriation of assets across national boundaries.[5]

Compuage Infocom Ltd (**CIL**), an Indian company, had a branch office and a subsidiary in Singapore. Once CIL was admitted into insolvency in 2023, the Resolution Professional (**RP**) approached the Singapore High Court seeking recognition of CIRP and repatriation of the assets of CIL's Singapore branch.

The Court recognised CIRP has a 'foreign proceeding' under Article 17 of the Model Law observing that it is a 'collective proceeding' involving all the secured and unsecured financial and operational creditors dealing with all the assets of the debtor; conducted by a foreign judicial or administrative authority (National Company Law Tribunal); under a law for corporate reorganisation and debt restructuring, i.e. the Code.

Further, India was determined as CIL's Centre Of Main Interests (**COMI**) since CIL's registered office was located in India, which controlled its Singapore branch and subsidiary, and hosted its directors, main assets, substantial business and operations, and most of its creditors. Thus, the CIRP of CIL was recognised as a 'foreign *main* proceeding'.

To secure the interests of Singaporean creditors, the RP had notified them of CIL's CIRP, and only one creditor filed its claim (accepted in full). The RP also proposed to publicly invite all potential Singapore-based creditors to file their claims upon the recognition of CIRP. However, since the Singaporean insolvency law provides for payment of liabilities to Singaporean creditors in priority to creditors in the home jurisdiction in the case of a foreign company in liquidation, the Court put all Singaporean creditors on notice, giving them one last opportunity to raise any objection to the repatriation request.

As the decision facilitates streamlined resolution for companies with multi-jurisdictional operations, it fosters greater clarity and protection to creditors by ensuring their claims are considered in a coordinated, Court-recognised process. This enhances confidence in India's insolvency regime, reaffirming the global credibility of the Code, and encouraging investment in the foreign operations of Indian companies. To effectively assert their rights, creditors must stay aware of proceedings and jurisdictional developments in cross-border cases.

[5] In the matter of Compuage Infocom Ltd, (2025) SGHC 49, Originating Application No. 1272 of 2024

UGC issues framework for recognising foreign degrees

UGC (Recognition and Grant of Equivalence to Qualifications obtained from Foreign Educational Institutions) Regulations, 2025

To facilitate smoother academic and professional integration for Indian students returning with foreign degrees, the University Grants Commission (**UGC**) has issued a structured framework for the recognition of foreign qualifications (**Regulations**).

Key highlights of the Regulations

- Equivalence certificates: An equivalence certificate affirms that the foreign qualification meets the Indian academic standards and is valid as a UGC-recognised degree. It is not required if the institution has a formal agreement with the Indian Government or the qualification was obtained under other UGC Regulations.
- Dual accreditation for offshore campuses: Degrees from offshore campuses of foreign institutions are recognised only if the campus and the parent institution are both accredited by the relevant regulators in the host and home countries. Additionally, the academic program must meet the accreditation standards in both jurisdictions.
- Franchising: Degrees obtained through a campus or institution under a franchise arrangement, where a third party delivers a program on behalf of a foreign institution, are not recognised, owing to concerns over academic quality and lack of direct oversight.
- Excluded courses: Professional courses like law, medicine, pharmacy, nursing, and architecture are excluded from the ambit of the Regulations, as their recognition is governed by domain-specific statutory councils.
- Application process: Applicants seeking equivalence must apply through a dedicated UGC portal. Applications will be assessed by a Standing Committee, with an option for review by a Review Committee upon request.

The UGC's initiative introduces statutory oversight and digital efficiency into the recognition of foreign qualifications, addressing a long-standing grievance of returning students and Indian employers. By drawing firm lines on quality, the UGC aims to uphold the credibility of India's higher education system. While the Regulations are an important step toward enabling the internationalisation objectives of NEP 2020, their long-term effectiveness will depend on India's capacity to establish strong partnerships with foreign institutions.

SEBI proposes to simplify QIP disclosure requirements

Consultation paper on rationalisation of the placement document for QIP

Aligning with the Securities and Exchange Board of India's (**SEBI**) recent review of the rights issue and preferential issue frameworks, wherein disclosure obligations have been significantly reduced, SEBI has proposed an overhaul of the disclosure requirements under Schedule VII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**) to rationalise the disclosures in placement documents required for Qualified Institutions Placement (**QIP**) and minimise duplication of information already that is publicly available.

A QIP is a key mechanism through which listed companies raise equity capital from Qualified Institutional Buyers (**QIBs**) through private placement, including an offer for sale of specified securities by promoters or promoter groups. Despite being a private placement route targeted exclusively at institutional investors, QIPs are subject to extensive disclosure norms similar to public offerings. In the context of QIP of listed companies, much of this information is already periodically disclosed under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and is not very relevant for QIBs, who possess the expertise, analytical capabilities, and access to information necessary to make well-informed investment decisions regarding the issuer's business, financials, and industry landscape. As such, the proposed changes aim to:

- Reduce duplication of information already publicly disclosed.
- Enhance process efficiency by shortening documentation timelines.
- Align QIP disclosures with those applicable in the case of rights issue.
- Ensure that disclosures remain material and relevant for QIBs.

A significant change in disclosure requirements is proposed in the following areas:

- Risk factors: Rather than a broad enumeration of general risks associated with the issuer's business and industry, issuers shall disclose specific risk factors directly relating to the issue, objects of the issue, and risks material to the issuer and its business. Past instances of adverse developments and their financial impacts, where applicable, must also be mentioned to add contextual depth.
- Financials: Since issuers are required to disclose their financial statements as part of their audited financial statement filing with the stock exchanges, only an extract of the audited financial statement including the total income from operations, net profit or loss before tax and extraordinary items, and net profit or loss after tax and extraordinary items, shall be disclosed. This will cover specifics such as equity share capital, reserves and surplus, net worth, basic and diluted Earnings Per Share (**EPS**), return on net worth, and Net Asset Value (**NAV**) per share.
- Management Discussion & Analysis (**MD&A**) section: The MD&A section shall no longer be required.
- Industry and business descriptions: Instead of providing a detailed description, a summary of the issuer's business and industry shall be adequate, given the expertise and resources available to QIBs.
- Material litigation thresholds: All ongoing litigation shall be presented in a tabular format disclosing the amounts involved, details of cases involving commission of criminal or economic offences, or material violations by the issuer. Material violations shall be assessed based on the materiality policy of the issuer or the litigation value/expected impact, if it exceeds either 2% of the turnover/net worth or 5% of average profit/loss after tax over 3 years.

SEBI's initiative is a forward-looking step towards making India's capital markets more agile and efficient, in alignment with global best practices. By tailoring the disclosure framework to suit institutional investors who already possess the expertise and resources to assess investment risk independently, the proposal reflects SEBI's endeavour to modernise the regulatory landscape while maintaining adequate investor protection. The QIP route has already emerged as a key capital-raising avenue, accounting for nearly 35% of total equity mobilisation in FY 2023-24, with over INR 68,972 crore raised across 61 issues, and these proposed reforms are poised to further bolster this momentum by enhancing process efficiency and reducing regulatory burden.

C&D waste generators are responsible for overall waste management and recycling

Construction and Demolition Waste Management Rules, 2025

To address the waste generated from the ever-increasing infrastructure activities, the Ministry of Environment, Forest and Climate Change has issued the Construction and Demolition (**C&D**) Waste Management Rules, 2025 (**Rules**). The Rules, effective from April 1, 2026, apply to construction, renovation, and demolition projects but not to waste generated in relation to atomic energy, defence, natural disasters, and war.

Key features of the Rules

- Extended Producer Responsibility (**EPR**): The 2025 Rules make developers of projects, having built-up area of 20,000 sq meters or more (**Producers**), responsible for the entire lifecycle of C&D waste, which includes meeting defined recycling targets – 25% of the waste generated in the year 2025-26, 50% in 2026-27, 75% in 2027-28, and 100% from 2028-29 onwards – and recording compliance by purchasing EPR certificates issued by registered recyclers. Producers must also register on the Central Pollution Control Board's (**CPCB**) online portal for submission of waste management and utilisation plans and other regulatory compliance.
- Registration and monitoring: The Rules establish an exclusively digital system for oversight through a portal for uploading compliance data and tracking EPR obligations. Monitoring is carried out at the Central and State levels, ensuring dual accountability and enforcement.
- Waste utilisation: This framework mandates the use of processed construction and demolition waste in building activities undertaken by Producers and in road construction. Registered recyclers must supply materials that meet prescribed quality standards. Following are the minimum waste utilisation targets as a percentage of the total construction material used are as follows:

Year	Road construction	Other projects
2026-27	5%	5%
2027-28	10%	10%
2028-29	10%	15%
2029-30	15%	20%
2030-31 onward	15%	25%

These Rules represent a decisive shift toward a circular construction economy. Developers, contractors, and infrastructure companies may be well advised to integrate waste planning early in project design, forge partnerships with registered recyclers, and invest in digital compliance systems. Early alignment with the Rules not only mitigates regulatory risk but also positions companies as leaders in sustainable construction.

RBI introduces an indicative penalty matrix for compounding FEMA contraventions

Master Directions on the compounding of FEMA contraventions

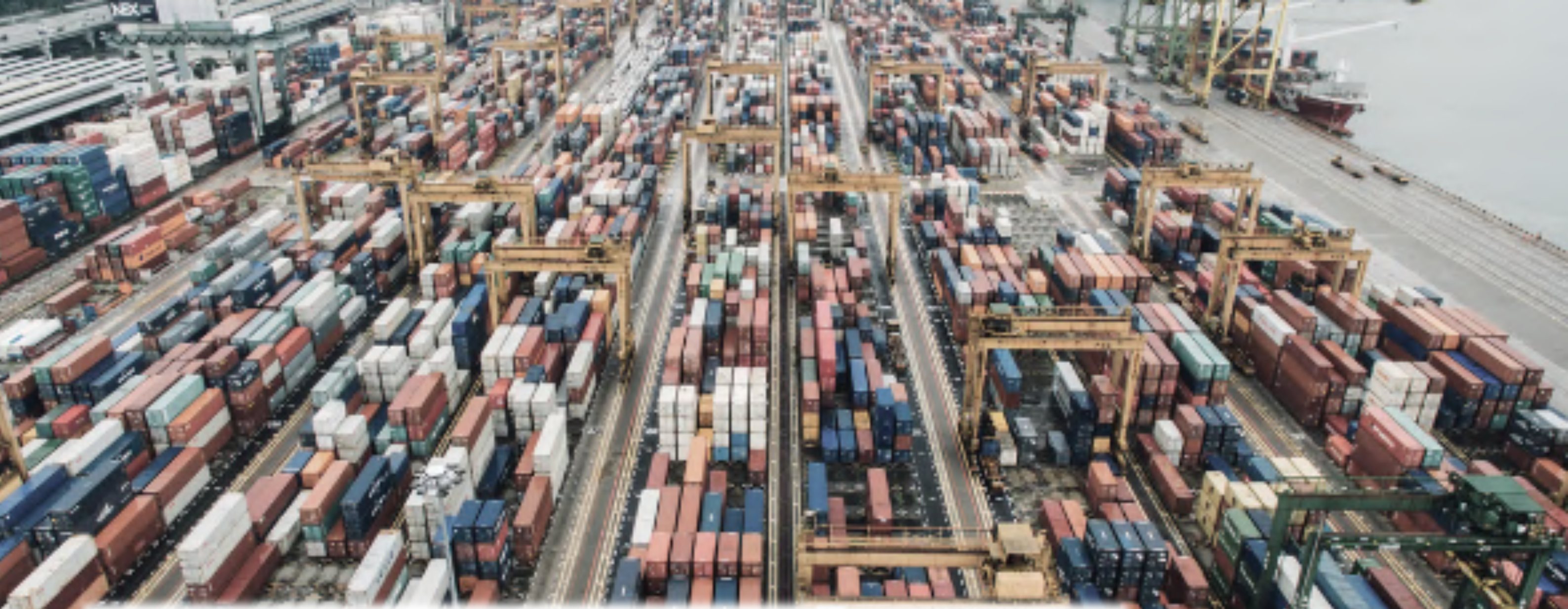
In a move to streamline and modernise the compounding framework under the Foreign Exchange Management Act, 1999 (**FEMA**), the Reserve Bank of India (**RBI**) has issued Master Directions to enhance legal certainty and regulatory efficiency in dealing with FEMA contraventions, following the recently notified Foreign Exchange (Compounding Proceedings) Rules, 2024.

While the earlier regime was effective in reducing the regulatory burden, it lacked uniformity in penalty calculations and failed to align with evolving foreign investment laws such as the Non-Debt Instruments (**NDI**) Rules, 2019. This led to ambiguity, particularly in cases involving reporting and other procedural lapses. The revised Master Directions aim to address these gaps by introducing a harmonised penalty structure along with discretionary relief for minor, technical contraventions.

Key changes under the Master Directions

- Revised computation matrix: The revised compounding matrix prescribes indicative penalty amounts for various categories of contraventions, providing applicants with greater clarity on the financial implications of non-compliance and their eligibility for compounding. This improved transparency is expected to encourage timely and voluntary compliance.
- Cap on penalties for non-reporting contraventions: For contraventions falling under the category of 'All other non-reporting contraventions', the compounding authority now has the discretion to limit the penalty to INR 2 lakh per contravention, taking into account the nature of the contravention, exceptional circumstances, and broader public interest.

The Master Directions marks a significant step in India's ongoing efforts to simplify its FEMA compliance architecture without compromising on regulatory oversight. By setting up a clear penalty framework and allowing caps in certain cases, the RBI has made the compounding process more predictable and accessible, particularly for smaller entities and those committing unintentional or first-time errors. Crucially, this alignment with the current investment framework helps eliminate the risk of double jeopardy or policy inconsistency. While serious contraventions will continue to be addressed with due severity, the RBI's calibrated approach signals a maturing enforcement philosophy, one that distinguishes between inadvertent errors and wilful misconduct.



Legal test clarifies classification of manufactured goods for exemptions under the EXIM policy

A manufactured product is a new, distinct commodity

Providing much-needed clarity to businesses in the manufacturing and trade sectors, the Supreme Court has laid down a test to determine what constitutes a manufactured product, crucial for availing duty exemptions and incentives, and assessing tax liability.[6]

Noble Resources & Trading India Pvt Ltd (**NRTIPL**) imported crude degummed soyabean oil under a Duty-Free Credit Entitlement Certificate (**Scheme**) issued under the Export-Import (**EXIM**) policy of 2002-07. Customs authorities denied the benefits of exemption, holding the oil to be an agricultural product, which had been excluded under the Scheme. This led to a legal challenge.

The Supreme Court held that crude degummed soyabean oil is not an agricultural product but a distinct, manufactured product. While clarifying that it is immaterial whether the end product is consumable or not, the Court laid down the essential features that constitute manufacture, for a product to be determined as a manufactured product:

- There must be a process or a series of processes.
- The original commodity or raw material undergoes a transformation through such process(es).
- At the end of the process(es), a new commodity emerges.
- The new commodity should have a distinct name, character, or use, and can no longer be regarded as the original commodity.
- It should be regarded as distinct from the original commodity and recognised as such in the trade.

Though rendered in the context of customs law and the EXIM policy, the decision has wider relevance, including under income tax law, as the Court relied on precedents from tax cases to lay down the aforementioned test. The decision is significant for businesses in the import-export and manufacturing sectors as it provides clear guidance on what qualifies as a manufactured product, eases tax liability assessment, and reduces the risk of disputes. Businesses involved in processing raw materials may be well advised to maintain detailed records of their manufacturing processes to support exemption claims.

[6] Noble Resources & Trading India Pvt Ltd v. Union of India, 2025 SCC OnLine SC 1108

Recent IBC updates

Insights on joint claims, unliquidated damages, and minority rights in a consortium of lenders

The following are key recent developments under the Insolvency and Bankruptcy Code, 2016 (**Code**):

- INR 1 crore threshold must be met individually by the operational creditors initiating CIRP: 12 former employees jointly sought to initiate insolvency proceedings against their ex-employer for salary and dues totalling nearly INR 2.9 crore. While each individual's claim was below INR 1 crore, they relied on a provision of the insolvency application rules, which permits employees to file jointly through an authorised representative. The application was rejected, holding that each operational creditor must independently meet the INR 1 crore threshold.[7] While the said provision allows for procedural flexibility in filing, it does not override the substantive requirement under the Code that the default amount owed to each applicant must individually exceed INR 1 crore. The provision allowing joint filings by workmen or employees is meant to streamline process logistics, not to enable claim aggregation for statutory compliance. The exception for trade unions applies narrowly, recognising their statutory character and representational role, and does not permit general groupings of individual employees.[8] Operational creditors with sub-threshold claims must consider alternate remedies or pursue claims post-admission of the Corporate Insolvency Resolution Process (**CIRP**) initiated by a qualified party. The ruling ensures that insolvency is reserved for significant, clear defaults and not diluted into a general recovery forum through a procedural workaround.
- Multiple communications between the parties raising concerns over the work constitutes a pre-existing dispute: A construction contractor raised an insolvency claim against a developer over unpaid dues relating to a commercial project, asserting that all assigned work had been completed, and that invoices had been raised after obtaining required approvals. The developer, however, had been raising concerns highlighting specific performance issues through a series of written communications during the pendency of the works, including a formal show-cause notice, alleging defects, project delays, and potential cost recovery. The Tribunal rejected the insolvency application, finding that such contemporaneous exchanges reflected substantive operational disagreements and could not be dismissed as trivial or an afterthought.[9] The decision sets a realistic threshold for establishing a pre-existing dispute, underscoring that formal legal steps are not a prerequisite to demonstrate a genuine dispute, and even informal communications, such as emails, letters, and meeting notes, can suffice if they point to genuine issues raised before the demand notice. To safeguard their position, parties should document concerns promptly and clearly, as failure to do so may undermine later claims of dispute.
- Unliquidated damages do not constitute operational debt: Under a charter party agreement for shipment of cargo from India to China, the shipping company raised a demurrage claim of over USD 240,000, 8 months after the shipment was completed, without any prior communication. The shipping company filed an insolvency petition in respect of the demurrage claim, which was contested by the charterer, asserting that the demurrage was neither quantified through mutual agreement nor admitted at any stage. The Tribunal set aside the initiation of insolvency proceedings, holding that the demurrage constituted a claim for unliquidated damages, which had not crystallised into a definite, payable sum.[10] Since the liability was not definite and required adjudication, it did not meet the threshold for initiating insolvency. The Code is not intended to enforce contested or stale commercial claims, and a debt must be definite, due, and undisputed. Charges such as demurrage, which often require calculation and assessment, must be resolved through adjudication or mutual settlement. Where claims are delayed, lack supporting documentation, or are actively contested, the insolvency route is unlikely to succeed. As such, timely assertion and formal substantiation of dues is essential.
- Minority consortium members may independently initiate CIRP: Despite 90% of the lenders in a loan consortium arrangement agreeing in principle to restructure the debt and transfer it to the National Asset Reconstruction Company Ltd (**NARCL**), 1 dissenting member bank initiated insolvency proceedings under the Code against the corporate debtor. The corporate debtor opposed the initiation, citing the consortium's majority resolution and ongoing due diligence by NARCL, and argued that the matter should have been put on hold until the transfer was finalised. Preserving the independence of financial creditors, it was held that unless the loan is formally assigned or settled, the statutory right to initiate CIRP cannot be suspended or overridden even if the majority has agreed to restructure the loan by internal consortium arrangements.[11] Further, the Code does not impose any requirement for consensus among consortium members for one member to proceed with recovery, reinforcing the creditor-centric design of the Code even within consortium frameworks.

[7] Kavindra Kumar v. Desein Pvt Ltd, Company Appeal (AT) (Ins) No. 1272 of 2023
[8] JK Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Company Ltd, (2019) 11 SCC 322
[9] Drilltech Engineers Pvt Ltd v. DLF Ltd, Company Appeal (AT) (Ins) No. 394 of 2025
[10] Navin Madhavji Mehta v. Jaldhi Overseas Pte Ltd, Company Appeal (AT) (Ins) No. 792 of 2024
[11] Apresh Garg v. Indian Bank, Company Appeal (AT) (Ins) No. 396 of 2024

CONTRIBUTORS

Arindam Sarkar | Partner
arindam.sarkar@foxandmandal.co.in

Timothy Franklyn | Deputy Managing Partner
timothy.franklyn@foxandmandal.co.in

Ashutosh Gupta | Partner
ashutosh.gupta@foxandmandal.co.in

Saurav Bhaumik | Associate Partner
saurav.bhaumik@foxandmandal.co.in

Anwesha Sinha | Senior Associate`
anwesha.sinha@foxandmandal.co.in

Abhinav Jain | Associate
abhinav.jain@foxandmandal.co.in

Ayushi Awasthi | Associate
ayushi.awasthi@foxandmandal.co.in

Rangita Chowdhury | Associate
rangita.chowdhury@foxandmandal.co.in

Tanika Rampal | Assistant Manager
tanika.rampal@foxandmandal.co.in

Rudresh Mandal | Senior Associate
rudresh.mandal@foxandmandal.co.in

Aman Maini | Associate
aman.maini@foxandmandal.co.in

Biprojeet Talapatra | Associate
biprojeet.talapatra@foxandmandal.co.in

Shrinwantu Choudhury | Associate
shrinwantu.choudhury@foxandmandal.co.in

Arnav Channahalli | Intern

OUR OFFICES

BENGALURU
G 102, Embassy One Pinnacle
8 Bellary Road, Bengaluru 560 032
Email: bengaluru@foxandmandal.co.in

KOLKATA
7th Floor, 206 AJC Bose Road
Kolkata 700 017
Email: calcutta@foxandmandal.co.in

KOLKATA
12, Old Post Office Street
Kolkata 700 001
Email: calcutta@foxandmandal.co.in

MUMBAI
105, Arcadia Building, 195 NCPA Marg
Nariman Point, Mumbai 400 021
Email: mumbai@foxandmandal.co.in

NEW DELHI
Fox & Mandal House
D 394, Defence Colony, New Delhi 110 024
Email: newdelhi@foxandmandal.co.in