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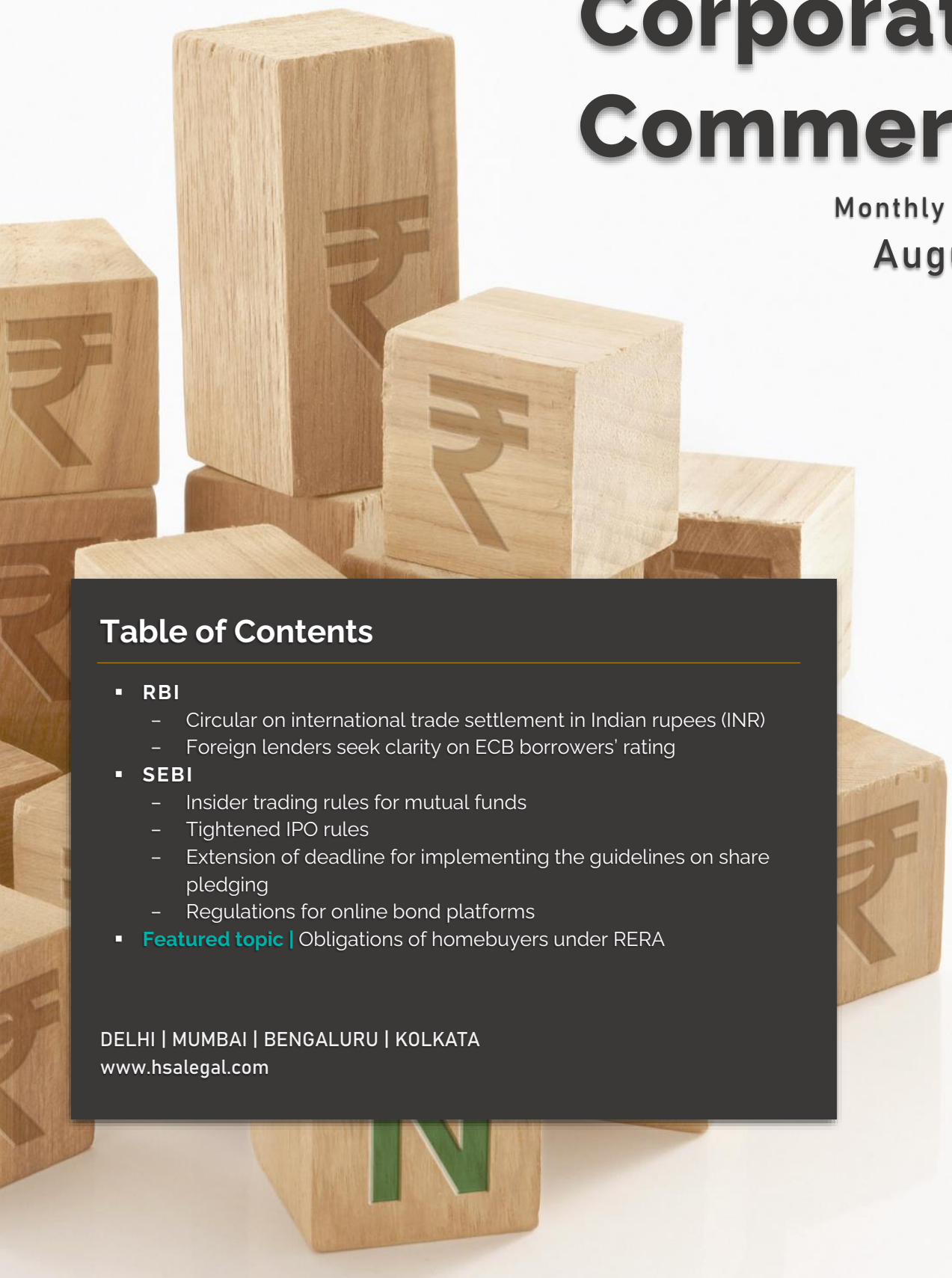

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RBI | Circular on international trade settlement in Indian rupees (INR)

Reserve Bank of India through Circular dated July 11, 2022 (Circular) has permitted international trade settlement in Indian Rupees (**INR**). An INR based mechanism for settlement of international trade signifies that INR, despite being a partially convertible currency, will be a valid currency for exports and imports of goods and services.

This decision of RBI is intended to promote growth of global trade in INR, and to foster and support an increasing interest of the global trading community in the currency. International trade settlement in INR is in addition to extant practice of trade settlement in any freely convertible foreign exchange.

The Circular lays down the foundation to a framework for cross border trade transactions in INR. It allows denomination and invoicing of all exports and imports in INR and market determination of exchange rate between the currencies of two trading partner countries. Additionally, it allows AD banks in India to open 'Special Rupee Vostro Accounts' of correspondent banks of the partner trading country, for settlement of trade transactions, subject to approval of Foreign Exchange Department of the RBI. Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into such account, while Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balance in such account.

The AD banks maintaining the account shall ensure that the correspondent bank is not from a country or jurisdiction designated as high risk or non-cooperative by the Financial Action Task Force (**FATF**). AD banks should refer to FATF's list of countries having weak measures to combat money laundering and terrorist financing.

India has taken this step forward, to promote INR as a global currency, for various reasons, including the following:

- **Preserve foreign exchange:** INR has recently slid to lifetime lows against the US Dollar (USD), exacerbating the threat of inflation as India relies on overseas shipments for meeting four-fifths of its annual fuel demand. Delinking trade settlement to the USD, and possibly introducing a greater share of INR in the global economy, will help preserve India's foreign exchange stockpile.
- **Trade with sanctioned and neighboring countries:** This will facilitate trade with partners of India facing sanctions from the west, particularly US and Europe, such as Russia and Iran. It has become extremely difficult to trade with these countries in freely convertible currencies of USD and the Euro, virtually cut off from standardized international cross-border payment platforms. Further, the move will also facilitate easier trade with neighboring countries such as Sri Lanka, removing the USD exchange rate risk.
- **Control trade deficit:** India has recently been seeing a massive outflow of foreign portfolio investments and record trade deficits. The move by RBI will help in controlling the increased trade deficit as it is more likely that an INR trade settlement mechanism is adopted by countries where India has trade surplus as opposed to countries which have trade surplus with India. This also comes at a time when RBI is taking other measures to control trade deficit and preserve foreign exchange, such as allowing banks to raise interest rates on foreign-currency-holding accounts of non-resident Indians, doubling the External Commercial Borrowing (ECB) limit under the automatic route and allowing foreign portfolio investors to invest in more debt securities.

The Circular, focusing on the international trade settlement in INR, is a step in the right direction. However, various other relevant factors/ aspects will have to be considered to make this mechanism work as intended and in an effective manner. For instance, export incentives are calculated based on the net foreign exchange realized and a clarification may be required to recognize the INR payment received as a receipt of foreign exchange.

An international trade settlement mechanism in INR may also be successful with only a few countries, such as with countries where India is the major trading partner/ exporter. India is still a foreign exchange regulated country with partial capital account convertibility. However, it is hoped that this mechanism will eventually lead to a greater regional and global presence of the INR.

RBI | Foreign lenders seek clarity on ECB borrowers' rating

Vide a Circular titled 'ECB Policy – Liberalisation Measures', RBI on Ausgust 1, 2022 doubled a local company's borrowing limit to USD 1.5 billion via the External Commercial Borrowing (**ECB**) mechanism under the automatic route. This will be available for ECBs to be raised till December 31, 2022.

Necessary amendments to the relevant regulations have been made through the Foreign Exchange Management (Borrowing and Lending) (Amendment) Regulations, 2022, notified vide notification No. FEMA.3(R)(3)/2022-RB dated July 29, 2022.

Several foreign lenders engaged in raising overseas loans and bonds for Indian companies have sought clarity from the RBI on whether the relaxed rules on higher offshore borrowing will apply only to globally higher rated firms. Given that many companies that are rated high domestically may not be similarly rated by overseas agencies, such a criterion threatens to limit the number of potential beneficiaries. Hence, bankers have raised the query regarding applicability of RBI's reference to rating for eligibility to the domestic context or even overseas.

SEBI | Insider trading rules for mutual funds

SEBI proposes to bring the purchase and sale of mutual fund units under the purview of the insider trading rules. The objective is to ensure parity between MF units and other securities regarding insider trading rules under SEBI (Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations**).

SEBI believes there is a need to harmonize the provisions in PIT Regulations to initiate serious enforcement actions against those who misuse the sensitive, non-public information pertaining to the scheme of mutual fund, directly or indirectly, which they have access to by virtue of their fiduciary capacity.

Key aspects

- Any person associated with the fund, who has direct or indirect access to Unpublished Price Sensitive Information (**UPSI**), or any immediate relative of the connected person, officials or employees, be subject to the insider trading rules.
- The connected persons should disclose their transactions and holdings in mutual funds, or those of their immediate relatives every quarter.
- Price-sensitive information includes likelihood of change in investment objectives, accounting policy, valuation of assets, winding up of the plan and restrictions on redemption.
- An independent platform to be set up on which information can be accessed by participants in the plan so as to eliminate any discrimination.

SEBI | Tightened IPO rules

According to a notification dated January 14, 2022, SEBI has tightened Initial Public Offering Rules (IPO) rules. To give effect to these new norms, SEBI has amended various aspects of the regulatory framework under the ICDR (Issue of Capital and Disclosure Requirements) Regulations.

Key aspects

- Under offer for sale (**OFS**), shareholders with more than 20% stake in the company before the IPO will not be allowed to sell more than 50% of their shares.
- Companies will now use only 25% of the IPO proceeds for unidentified acquisitions. Similarly, spending on acquisitions will be capped at 35%. In addition, rating agencies will monitor how the funds are used.
- SEBI also increased the lock-in period for anchor investors from 30 days to 90 days to prevent share-price volatility and losses for retail investors. This will apply to only 50% of the allocation to anchor investors and will take effect in April 2023.
- A valuation report will need to be furnished if a company allots more than 5% shares to any entity.
- The difference between the floor price and the upper price band shall be at least 5%.
- Companies will have to get their non-financial metrics, key performance indicators (**KPI**) audited, and then explain how they were used to arrive at an IPO's valuation.

SEBI | Extension of deadline for implementing the guidelines on share pledging

September 01, 2022 for implementation of the guidelines related to pledging and re-pledging of stocks for margin purpose. The guidelines, aimed at curbing possible misuse of Power of Attorney (**PoA**) given by clients to stockbrokers, were to come into effect from July 1, 2022. In view of the representation received from depositories and that the changes to the systems are still under process, it has been decided to extend the implementation date to September 1, 2022.

With the implementation of the guidelines, PoA would be replaced with Demat Debit and Pledge Instruction (**DDPI**) document. With the DDPI, clients will explicitly agree to authorize the stockbroker and depository participant to access their beneficial owners account for the limited purpose of meeting pay-in obligations for settlement of trades executed by them.

The use of DDPI will be limited only for two purposes:

- Transfer of securities held in the beneficial owner account of the client towards stock exchange related deliveries or settlement obligations arising out of trades executed by such a client.
- Pledging or re-pledging of securities in favor of the trading member or clearing member for the purpose of meeting margin requirements of the client.

Once the guidelines come into force, PoA will no longer be executed for these two purposes. A client can use the DDPI or opt to complete the settlement by issuing a physical Delivery Instruction Slip (**DIS**) or electronic Delivery Instruction Slip (**EDIS**) themselves. However, the existing PoAs will continue to remain valid till the time client revokes the same. Thus, the stockbroker and depository participant will not directly or indirectly compel the clients to execute the DDPI or deny services to the client if the client refuses to execute the DDPI.

SEBI | Regulations for online bond platforms

SEBI proposed to bring online bond platforms that are selling listed debt securities under its regulatory framework.

Key aspects

- Bond platforms should register as stockbrokers (debt segment) with SEBI or be run by SEBI-registered brokers
- The stock-broker regulations will be applicable to these entities, which would govern their code of conduct and other aspects related to their operations and risk management, which will ensure fairness in their dealings with clients.
- Listed debt securities issued on a private placement basis, offered for sale on bond platforms should be locked in for a period of six months from the date of allotment of such debt securities by the issuer.
- The transactions executed on the online bond platforms should be routed through the trading platform of the debt segment of exchanges or through the RFQ (Request for Quote) platform of the stock exchanges, where the transactions will be cleared and settled on a Delivery Versus Payment (DVP-1) basis.
- Registration of the bond platforms as stockbrokers under Sebi rules will be beneficial to the market and market participants, as the standard KYC requirements will be applicable while registering clients on bond platforms
- The net worth and deposit requirements prescribed for stockbrokers will ensure that the bond platform has sound and stable financial health.

Featured topic | Obligations of homebuyers under RERA

For a long time, the real estate industry in India has been riddled with unceasing real estate project scams resulting, amongst others, due to the unregulated nature of the sector and multifarious unscrupulous conduct of the builders including not honoring the commitment of delivery of homes in a timely manner. The Real Estate (Registration and Development) Act, 2016 (**RERA**) was enacted with the objective of regulating the real estate sector, for balancing the interests of the stakeholders and in the process, ensuring the protection of the interests of homebuyers.

Notwithstanding, the fact that protection of homebuyers is one of imperative objectives of RERA, the legislation is not a beneficial and benevolent legislation; it is inherently in the nature of a balancing legislation and the legislative intention is to create a balance between the various stakeholders in the real estate sector. This apparent object has been manifest and bolstered by a plethora of judgements of the Hon'ble Supreme Court of India and has recently been reiterated in an Order in the case of **Bikram Chatterjee v. Union of India WP(C) No 940 2017**. Succinctly stated, the Hon'ble Court had issued directions and guidelines to be adhered to by the homebuyers, home development authorities, creditors, and the lenders for the execution and completion of the Amrapali home development project and had appointed a Court Receiver to manage the allotment of flats to the home buyers in a time-bound manner and has issued several directions towards ensuring steps and measures for execution and completion of all pending projects of Amrapali.

The homebuyers were directed to register themselves with the customer portal of the Court Receiver to make their outstanding dues clear against their units. In the subsequent order dated August 2021, the Court Receiver had approached the Hon'ble Court with a plea for amendment of the judgement to ensure better execution and management of the Amrapali home development projects. The Hon'ble Court directed to amend the original judgement and the court gave the Court Receiver the authority to cancel the allotments if homebuyers fail to make the payments in the stipulated time with due information for non-payment. In this regard, the Court has specified in the order that the 'Court Receiver shall have the authority to cancel the allotment of such units, where the homebuyers fail to honor payments, as per the Collection Milestones (stipulated and posted on the website of the Court Receiver), within three months or any such grace period as decided by the Committee from the day such payment became due.'

Following the directions, the Court Receiver posted a long list of Home Buyers who had defaulted in payments on the website along with the newspaper publication with an intention of affording them a last opportunity to get registered in the customer portal and to clear the outstanding dues before July 04, 2022. In the event the home buyers fail to comply with the aforesaid timelines, the Court Receiver has been granted the power to cancel the allotment of the units and the same will be treated as unsold inventory eligible to be sold to the interested buyers. Recently, in July, 2022, the Court Receiver posted a notice on the website stipulating that owing to increase in construction costs, the homebuyers would be asked to deposit an additional, but refundable, sum of INR 200 per square feet for effective and timely completion of the project. Homebuyers have agitated against the same before the Supreme Court, but the matter is yet to reach finality.

It is our view that while the advent of RERA has ushered a new protective regime for the home buyers in the real estate sector by granting them rights and avenues to enforce their rights against the developers, however, the rights and obligations are two faces of the same coin. The order of the Supreme Court has reinforced this notion by reminding the homebuyers of their own obligations. The Hon'ble Court has also impressed upon the fact that failure to comply with their obligations, would attract grave consequences against the home buyers. By doing so, the Hon'ble Court has also drawn inspiration of the principle of equity that one who approaches the court, must do so with clean hands.

It would be pertinent to note that RERA imposes obligations on the home buyers with commensurate penalties, in addition to the contractual obligations emanating from the Agreement. There is a tendency of loss of sight of such obligations in the face of the euphoria surrounding the sword of Damocles that hangs upon the developers/promoters.

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