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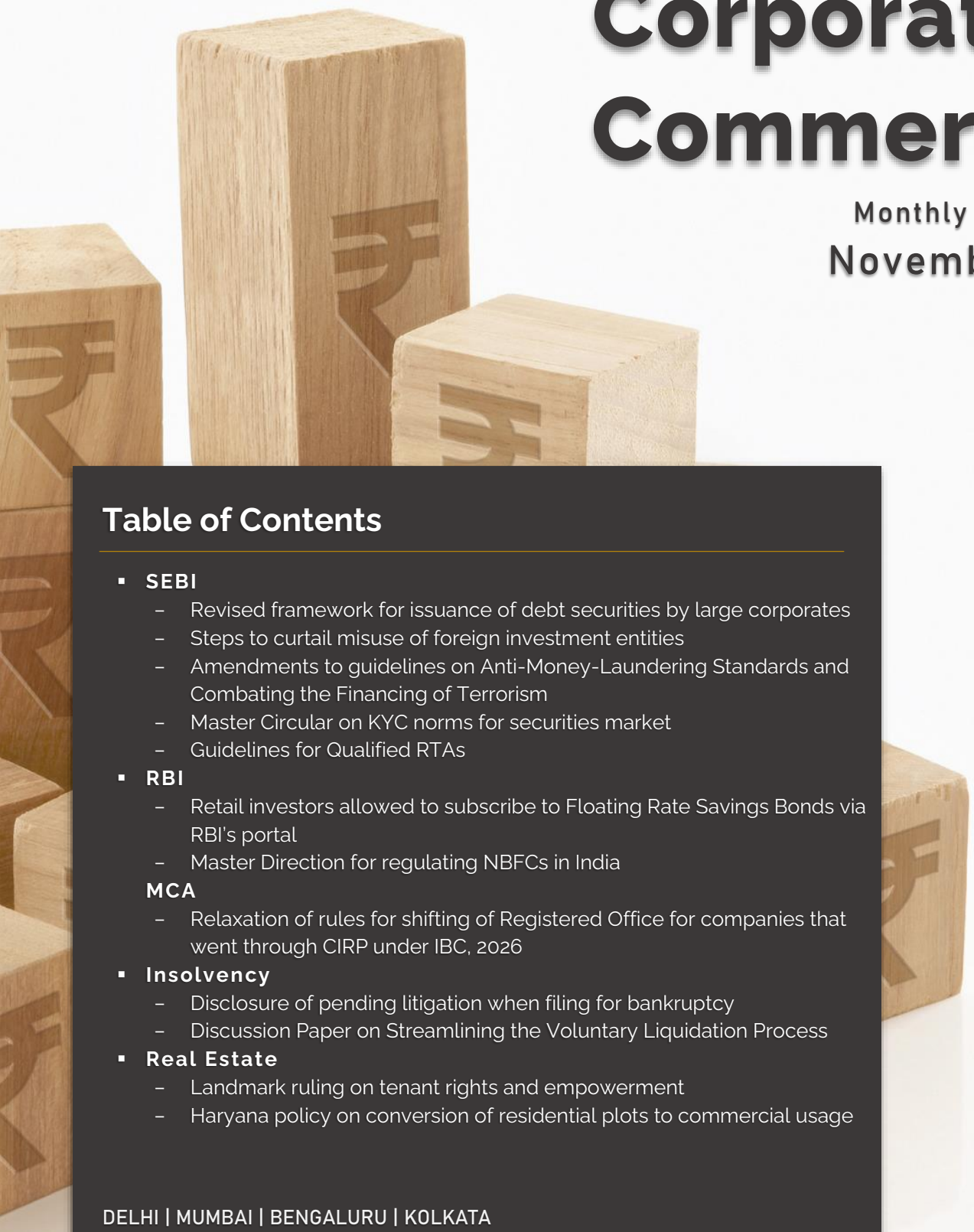

Corporate & Commercial

Monthly Newsletter

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SEBI | Revised framework for issuance of debt securities by large corporates

Regulation 50B of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (**NCS Regulations**)[1] read with Chapter XII of the NCS Master Circular on Fund raising by issuance of debt securities by large corporates (**LC Chapter**)[2] mandates large corporates (LCs) to raise a minimum 25% of their incremental borrowings in a Financial Year through issuance of debt securities. The said obligation was to be met over a contiguous block of three years from FY 2022 onwards. Considering prevailing market conditions and representations from market participants, SEBI issued a Circular on October 19, 2023 (**Circular**)[3] to revise the framework for fund raising by issuance of debt securities by LCs. The Circular shall come into force with immediate effect. The Circular shall replace the present LC Chapter w.e.f. FY 2025.

Key aspects:

- **Applicability:** The framework will be applicable w.e.f. April 01, 2024 for LCs following April-March as their FY and January 01, 2024 for LCs following January-December as their FY. There is a revision on the criteria for qualification of LCs with respect to outstanding long-term borrowing. LCs referred to under the framework mean all listed entities (with the exclusion of Scheduled Commercial Banks) that meet the following criteria on the last day of the FY:
  - **Listing of debt securities:** Having their specified securities or debt securities listed on a recognized stock exchange, AND
  - **Outstanding loan size:** With an outstanding long-term borrowing[4] of INR 1000 crore or above, AND
  - **Credit rating:** Holding a credit rating of AA/ AA+/ AAA.
- **Mandatory qualified borrowing requirement:** An entity in a subsequent year after it is recognized as LC must raise at least 25% of its qualified borrowings[5] by way of issuance of debt securities. Further, it is clarified that the qualified borrowings for FY shall be determined as per the audited accounts for the year filed with the stock exchanges.
- **Contiguous block of three years:** From FY 2025 onwards, the mandatory qualified borrowing requirement shall be met over a contiguous block of three years. Therefore, for listed entities following April-March/ January- December as their FY, the listed entity shall be identified as an LC, as on last day of March 31/ December 31. If FY in which LC was identified is taken as T-1, the relevant 3 contiguous blocks will be T, T+1 and T+2.
- **Incentives:** If at the end of FY T+2 there is surplus requisite borrowing i.e., actual borrowing through debt securities is more than 25% of qualified borrowing for FY T, the following incentives shall be available to the LC:
  - Reduction in annual listing fess of FY T+2 pertaining to debt securities or non-convertible redeemable preference shares.
  - Credit in the form of reduction in contribution to the Core Settlement Guarantee Fund (**SGF**) of Limited Purpose Clearing Corporation (**LPCC**).
- **Disincentives:** However, if there is a shortfall in requisite borrowing at the end of FY T+2 a dis-incentive in the form of additional contribution to the core SGF will apply. As an effort to reduce dis-incentive, the actual borrowing in FY T will be adjusted against the deficit of FY T+2, then adjusted against the deficit of FY T+1 and the remaining amount will be adjusted against the mandatory borrowing for the FY T. The incentive or disincentive will be calculated by the Stock Exchange at the end of FY T+2 for FY T. The stock exchange shall inform about incentive or disincentive to the LCs by May 31 for LCs following April-March as their FY, and by February 28/29 following January-December as their FY.
- **Necessary amendment and infrastructure:** Necessary amendments shall be made by stock exchanges to the relevant byelaws, rules and regulations for implementation of the above directions along with necessary systems and infrastructure. LPCC shall make changes and put in pace the necessary infrastructure and system for LCs to comply with incentive and disincentive provisions w.r.t SGFS contribution.
- **Treatment of earlier identified LCs:** Clause 2.2(d) and Clause 3.1(b) of LC Chapter stands deleted to bring existing framework in line with circulars for the LCs that were identified based on the erstwhile criteria as on FY 2020 to FY 2022.The aforesaid LCs shall endeavor to comply with 25% of their incremental borrowing done during FY 2022, 2023 and 2024 respectively by way of issuance of debt securities till March 31, 2024. A one-time explanation shall be provided LCs Annual Report for FY 2024 in case of failure to comply.

[1] SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-regulations-2021-last-amended-on-april-11-2022-_58126.html

[2] SEBI Master Circular for issue and listing of Non- convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated August 19, 2021 https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-Circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-municipal-debt-securities-and-commercial-paper_73653.html

[3] SEBI/HO/DDHS/ DDHS-RACPOD1/P/CIR/2023/172 dated Oct 19, 2023. https://www.sebi.gov.in/legal/circulars/oct-2023/ease-of-doing-business-and-development-of-corporate-bond-markets-revision-in-the-framework-for-fund-raising-by-issuance-of-debt-securities-by-large-corporates-lcs-_78237.html

[4] Outstanding long-term borrowing shall mean outstanding borrowing having original maturity of more than one year. However, shall exclude ECBs; inter-corporate borrowings involving holding/subsidiary or associate companies; grants, deposits, or any other funds received as per the guidelines or directions by GOI; borrowing arising on account of interest capitalization; and borrowing for the purpose of schemes of arrangement involving mergers, acquisitions and takeovers.

[5] Qualified borrowing shall mean incremental borrowing between two balance sheets having original maturity of more than 1 year but shall have exclusions as set out in footnote 4.

- **Responsibilities of stock exchanges:** Under the Revised Framework the stock exchanges have been given certain responsibilities such as:
  - Finalization of the list of the LCs for the Financial Year based on the financial results and upload the said list of LCs on the website of the stock exchange.
  - Intimation via email to the listed entities that are identified as LCs.
  - Calculate the incentive or dis-incentive at the end of the continuous block of 3 years and intimate the same to the LCs.
  - Share the relevant information with LPCC with regards to the incentive or dis-incentive with respect to the contribution to the Core SGF
  - Make necessary amendment in the byelaws to align with the directions issued by SEBI and develop the necessary infrastructure to implement the same.

In order to align with the directions given by SEBI, the LPCC shall make the necessary changes and develop the necessary infrastructure with respect to the contribution to the Core SGF. The identified LCs under the erst-while criteria under the Circular[6] shall endeavor to comply with the requirement of raising 25% of their incremental borrowings done during financial years 2022-23 and 2023-24 respectively by way of issuance of debt securities till March 31, 2024, failing which such LCs shall provide a one-time explanation in their Annual Report for FY 2024.

The reform brought in this framework characterized by the relaxation of requirements to be classified as LCs, replacement of the term incremental borrowings with qualified borrowings, elimination of penalties and disclosure requirements, and introduction of incentives along with moderated disincentives, grants LCs greater flexibility for ease of doing business and encourages them to participate actively in the debt market. This framework signals a significant transformation in how LCs can fulfil their financing needs within the Indian debt market.

SEBI | Steps to curtail misuse of foreign investment entities

Securities and Exchange Board of India (**SEBI**) together with Foreign Portfolio Investor (**FPI**) custodians have established a standard operating procedure to put a halt to the improper utilization of foreign investment entities by promoter families and investors.

Key aspects:

- **Objective:** The primary objective of this initiative is to prevent promoter families and undesired foreign investors from clandestinely acquiring shares and manipulating the stocks of Indian-listed companies.
- **Standard Operating Procedure (SOP):** An SOP has been introduced to provide guidance and structure to FPIs in complying with new disclosure regulations and to ensure transparent and fair market practices.
- **SOPs requirements:** The SOP specifies that foreign insurers and pooled vehicles acting as FPIs can be exempt from disclosing all beneficial owners only if they can demonstrate that a common portfolio is maintained across investors in each cell and sub-funds.
- **New disclosure regulations:** The plan follows new disclosure regulations that require FPIs exceeding specific investment thresholds to disclose the identities of all individuals associated with the entities that have invested in the fund or have control over it.
- **Thresholds triggering disclosure:** Disclosure rules become effective when an FPIs exposure to Indian equities surpasses INR 25,000 crore or if it invests 50% of its AUM in India in companies affiliated with a single corporate group.
- **Exemptions from disclosure regulations:** Specific FPI entities will enjoy exemptions from disclosure regulations based on their ownership, structure, and objectives, provided they meet specific criteria. This includes overseas insurance and reinsurance entities, pooled investment vehicles, pension funds, and exchange-traded funds.
- **Impact on insurance entities:** Unlike their Indian counterparts, overseas insurance companies offer products that allow investors to influence the allocation of their funds. In such cases, investors can hide their identities by registering as an FPI through the insurance company.
- **Common pool structure:** Pooled vehicles, such as a Protected Cell Structure (**PCC**) in Mauritius or a Singapore-based Variable Capital Company (**VCC**) with multiple sub-funds, can be influenced by one or a few investors who indirectly shape their operations. These structures will be scrutinized for common pool maintenance.
- **Impact on Depository Participants (DDPs):** Issuance of the SOP aims to ensure consistent practices and eliminate regulatory arbitrage among DDPs facilitating FPI transactions. However, it may increase the burden on DDPs in terms of information verification, reporting, and document collection.
- **Compliance deadlines:** FPIs exceeding the investment limit by October 31, 2023 must decrease their exposure within 90 days, with a deadline of January 29, 2024. Failure to comply will necessitate the disclosure of all beneficial owners identities by March 11, 2024 or they risk potential closure.
- **Ongoing scrutiny and oversight:** SEBIs measures are aimed at providing greater transparency and oversight in foreign portfolio investments in India, ensuring that investments are made in compliance with regulations and to protect the Indian capital markets integrity.

These key aspects demonstrate the comprehensive approach taken by SEBI to address potential loopholes and challenges in the FPI investment landscape, with a focus on transparency and regulatory compliance, as well as the safeguarding of domestic listed companies from potential manipulation and covert ownership changes.

[6] Chapter XII, Master Circular for Issue and Listing of Non-convertible Securities, Securities Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper

SEBI | Amendments to guidelines on Anti-Money-Laundering Standards and Combating the Financing of Terrorism

The Government of India has notified Prevention of Money Laundering (Maintenance of Records) (Second Amendment) Rules (**PMLA Rules**) on September 04, 2023. In view of the PMLA Rules and to further enhance the effectiveness of the Anti-Money Laundering (**AML**) Standards and Combating the Financing of Terrorism (**CFT**) framework, Securities and Exchange Board of India (**SEBI**) vide Circular dated October 13, 2023 (**SEBI Circular**) notified the amendments to further amend the SEBI Master Circular dated February 03, 2023 pertaining to the Guidelines on AML standards and CFT /Obligations of Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002 (**SEBI Master Circular**).

Key amendments as per SEBI Circular:

- **Strengthened AML/CFT measures in host countries:** Among the notable updates to the regulations is the stipulation that financial groups must implement supplementary measures when the host country does not permit the proper implementation of AML/CFT practices consistent with the requirements of their home country. These added measures are designed to enhance the management of risks associated with Money Laundering (ML) and Terror Financing (TF). It is imperative for the financial groups to report these measures to SEBI, promoting transparency and accountability in cross-border financial operations.
- **Comprehensive AML/CFT Programs across financial groups:** To reinforce AML/CFT endeavors, financial groups are now obligated to establish programs that encompass their entire group to address ML/TF concerns. These programs must be applicable to all branches and subsidiaries where the group holds a majority stake. Key components of these programs include the sharing of information for Customer Due Diligence (CDD) and risk management purposes, both at the group level and among branches and subsidiaries. Emphasis is also placed on implementing adequate safeguards to prevent any unauthorized disclosure, thus ensuring the confidentiality and integrity of shared information.
- **Disclosure in trust:** In cases involving trusts, reporting entities shall ensure that trustees disclose their status at the commencement of any account-based relationship.
- **Identification of beneficial owners:** The amendments stipulate guidelines on how to identify beneficial owners of various entities including companies, partnership firms, unincorporated associations or bodies of individuals, trusts, and listed entities on Indian stock exchange or in any foreign jurisdictions. The criteria for identifying beneficial owners include ownership percentages, control, and the identification of senior management.
- **Regular updates:** Registered intermediaries are now obligated to provide regularly updated client and beneficial owner information obtained through CDD to ensures that the information remains current, particularly for high-risk clients and reinforces the monitoring of potentially suspicious activities.
- **Rigorous CDD procedure:** The amendments introduce a stringent requirement that no transaction or account-based relationship can be established without following the CDD procedure. This guarantees that thorough due diligence is conducted before engaging in any financial activity, thereby reducing the risk of illicit money flows.
- **Politically Exposed Persons (PEPs):** The amendments incorporate specific standards applicable to PEPs, aligning with the PMLA Rules. These standards also extend to family members, close relatives, and associates of PEPs, ensuring comprehensive coverage in AML/CFT endeavors.
- **Appointment of Principal Officer:** To streamline the reporting of suspicious transactions and assessments, registered intermediaries are now required to designate a Principal Officer, who acts as a central point of reference for these activities. This officer must hold a position at senior level management and able to report about non-compliance to senior management or board of directors.
- **Enhanced Due Diligence (EDD) measures:** Registered intermediaries are now obligated to apply EDD measures that are commensurate with the risks associated with business relationships and transactions involving natural and legal persons from countries for which the Financial Action Task Force prescribes such measures.
- **Retrieval of records:** In cases where registered entities lack records of their clients identity, they must promptly obtain such records. Failure to do so will result in the closure of the clients account considering the importance of record keeping for AML/CFT compliance.

SEBI | Master Circular on KYC norms for securities market

Securities and Exchange Board of India (**SEBI**) recently issued a Master Circular compiling all directions regarding Know your Customer (**KYC**) norms up to September 30, 2023 in one place. Any modification in the existing KYC records is required to be effected in line with the provisions of the Circular by December 31, 2023.

Key aspects:

- The KYC process requires every SEBI registered intermediary to obtain and verify the Proof of Identity (**PoI**) and Proof of Address (**PoA**) through physical or digital mode from the clients at the time of commencement of an account-based relationship.
- The Account Opening Form (**AOF**) for clients shall be divided into two parts:
  - Part I of the AOF shall be the KYC capturing the basic details about the client
  - Part II of the form shall obtain additional information specific to the area of activity of the intermediary
- To strengthen the KYC norms, PAN shall be the unique identification number for all participants transacting in the securities market with some exceptions such as transactions on behalf of Government or Court officials, investors residing in Sikkim, UN or multilateral entities, and SIP of Mutual Funds up to INR 50,000 per year.

- The name mentioned in the KYC form has to match the name as mentioned in the PoI.
- Documents accepted as PoI shall include Officially Valid Documents (**OVD**) defined as per Rule 2(d) of Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (**PML Rules**) or any other identity card with applicants photo issued by Government departments, statutory/regulatory authorities, Public Sector Undertakings (**PSUs**), Scheduled Commercial Banks and Public Financial Institutions or a letter with a photo issued by a Gazetted Officer.
- Documents accepted as PoA shall include OVD defined as per Rule 2(d) of PML Rules.
- Further, in terms of Rule 9(18) of PML Rules, 2005, in case the OVD furnished by the client does not contain updated address, PoA can be established for a limited time using documents such as utility bill, property/municipal tax receipt, pension payment orders by Government departments or PSU, or letter of allotment of accommodation from specified employers.
- For non-residents and foreign nationals, (allowed to trade subject to RBI and FEMA guidelines), copy of passport/Persons of Indian Origin Card/Overseas Citizenship of India Card and overseas address proof is mandatory.
- A client can authorize to capture the address of a third party as a correspondence address, provided that all prescribed KYC norms are also fulfilled for the third party.
- For identification of beneficial ownership, registered intermediaries may be guided by the provisions of SEBI Master Circular dated February 03, 2023 on Guidelines on Anti-Money Laundering Standards and Combating the Financing of Terrorism/Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 (**PMLA**) and Rules framed thereunder.
- There are additional documents required for non-individual legal entities such as corporate body, partnership firm, trust, HUF, etc.
- The e-KYC service launched by Unique Identification Authority of India (**UIDAI**) shall be accepted as a valid process for KYC verification.
- Aadhaar authentication services by entities other than the banking companies and entities in the securities market as may be notified by the Central Government shall be allowed to undertake Aadhaar authentication under Section 11A of the PMLA.

SEBI | Guidelines for Qualified RTAs

The Securities and Exchange Board of India (**SEBI**) through its Circular titled Guidelines for Business Continuity Plan (**BCP**) and Disaster Recovery (**DR**) of Qualified RTAs, dated October 20, 2023[7] introduced guidelines to bolster the resiliency, procedures, governance, and practices of Qualified RTAs (**QRTAs**).

Registrar and Transfer Agents (RTAs) are SEBI-registered entities responsible for maintaining records of investors and facilitating transfer and redemption of securities. These entities ensure proper execution and documentation of transactions in the securities market. The RTAs servicing an aggregate number of more than 2 (two) crores of physical and dematerialized (demat) folios in a financial year are categorized as a QRTA[8].

In the dynamic and highly competitive landscape of financial markets, the ability to adapt to disruptions, to ensure continuity of operations and to maintain data & transaction integrity are paramount. Accordingly, these guidelines are aimed to facilitate a robust infrastructure and frameworks for a smooth and seamless functioning of the securities market.

Key aspects:

- QRTAs are mandated to have a comprehensive Business Continuity Plan (**BCP**)-Disaster Recovery (**DR**) policy document (**Policy**) outlining a range of aspects such as disaster scenarios, standard operating procedures, escalation hierarchies, communication protocols, performance monitoring and documentation policies.[9] The Policy should be periodically reviewed and updated at least once every 6 months and after every disaster occurrence.[10]
- The QRTAs to ensure that Policy is vetted by their technology committee, approved by their governing board and thereafter communicated to the SEBI.[11] However, for the compliance purpose, the QRTAs are advised to submit the revised Policy to SEBI within 3 months from the date of the Circular.[12]
- QRTAs are mandated to constitute an incident and response team or crisis management team chaired by the Managing Director (**MD**) of the QRTA, or the Chief Technology Officer in case of the MDs unavailability. These teams are responsible for declaring a disaster, invoking the BCP, and shifting operations from QRTAs Primary Data Center (**PDC**) to Disaster Recovery Site (**DRS**) when needed. The roles, responsibilities, and actions during a disaster is to be well-documented in the Policy[13].
- As part of the disaster recovery planning, QRTAs are required to maintain a DRS at a minimum distance of 500 kilometers from PDC to mitigate the risk of both centers being affected by the same disaster. Apart from DRS, QRTAs are also required to maintain the Near Site (**NS**) to ensure zero data loss[14].
- QRTAs to ensure that along with manpower[15], hardware, software, networks, and security devices at DRS should mirror those at PDC. The transition between PDC and DRS should be seamless[16] and require no configuration

[7] Circular No.: SEBI/HO/IMD/IMD-TPD-1/P/CIR/2023/173 dated October 20, 2023 https://www.sebi.gov.in/legal/circulars/oct-2023/guidelines-for-business-continuity-plan-bcp-and-disaster-recovery-dr-of-qualified-rtas-qrtas-_78272.html
[8] Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/36 dated March 10, 2023 https://www.sebi.gov.in/legal/circulars/mar-2023/clarification-with-respect-to-qualified-rtas_68824.html
[9] Supra Note 1, guideline 3.1
[10] Supra Note 1, guideline 6.2
[11] Id
[12] Supra Note 1, guideline 7
[13] Supra Note 1, guideline 3.3
[14] Supra Note 1, guideline 4.1
[15] Supra Note 1, guideline 3.2
[16] Supra Note 1, guideline 4.11

changes[17], to allow DRS to function independently even at short notice[18].

- The guidelines outline critical systems for QRTAs serving Asset Management Companies (**AMCs**). Functions such as transaction processing, connectivity with AMCs and net asset value calculations are encompassed as critical systems.[19] Further, following timelines are prescribed:
- In the event of disruption to any of the critical systems, the QRTA to declare the disruption as a disaster within 30 - minutes of the disruption[20.]
- After declaration of disaster, the QRTAs are required to restore the operations of critical systems within a time limit of 45 minutes. This guideline to be implemented within 90 days from the date of the Circular.[21]
- In the event of disaster, a toleration of maximum 15 minutes has been allowed for data loss.[22] However, the guidelines mandate that a solution architecture is in place to ensure high availability, zero data loss with data and transaction integrity.[23]
- The QRTAs are obligated to conduct quarterly DR drills that simulate real-life scenarios with minimal notice to DRS staff.[24] In addition to scheduled drills, unannounced live operations from DRS should occur at least once every 3 months on regular working days, with a short 45 minute notice.[25] Further, the guidelines recommend non-involvement of PDC staff in both scheduled and unscheduled drills.[26] The results and observations from these drills are to be documented and placed before the governing board of QRTAs for comments, and subsequently forwarded to SEBI for review within a month from the date of DR drill.[27]
- The guidelines stipulate that System Auditors, as part of their annual System Audit, should include an evaluation of the ability of QRTAs to shift operations from PDC to DRS unannounced.[28]

RBI | Retail investors allowed to subscribe to Floating Rate Savings Bonds via RBI's portal

- The Reserve Bank of India (**RBI**) has expanded its list of offerings via the Retail Direct Portal by allowing individual investors to subscribe to Floating Rate Savings Bonds (**FRBs**), 2020 (Taxable).
- FRBs are interest bearing, non-tradeable bonds, issued by the Government of India, which are repayable on the expiration of 7 years from the date of issue.
- Earlier, it was only available at any branches of State Bank of India, Nationalized banks, private sector banks specified by the RBI and any other entity as authorized by the RBI, as per the guidelines on floating rate bonds released by the Government in June, 2020.
- The subscription of FRBs will be in the form of cash (up to INR 20,000 only)/drafts/cheques or any electronic mode.
- Other than FRBs, retail investors can already invest in Central Government securities, treasury bills, State Government securities, and sovereign gold bonds through the Retail Direct Portal.
- RBI-Retail Direct Scheme was launched in 2021, wherein individual investors are permitted to open Retail Direct Gilt account with RBI, using an online portal (https://rbiretaildirect.org.in), through which investments in G-secs can be made in primary and secondary market.

RBI | Master Direction for regulating NBFCs in India

Reserve Bank of India (**RBI**) has issued Master Direction - RBI (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023 (**SBR Directions**), vide Circular dated October 19, 2023. The SBR Directions have been issued in supersession of the Old Regime which includes:

- Non-Banking Financial Company - Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016
- Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016

Further, the SBR Directions amend the Scale Based Regulation Framework for Non-Banking Financial Companies (**NBFCs**), published by the RBI on October 22, 2021 and effective from October 01, 2022 (**SBR Framework**). Under the SBR Directions NBFCs are categorized into four layers based on size and activities of NBFCs. Below are the key regulatory amendments introduced by the SBR Directions, as applicable to each layer of NBFC:

- **Base Layer (NBFCs-BL):** This category comprises of non-deposit taking NBFCs with assets below INR 1,000 crore and NBFCs involved in following activities: (a) Peer-to-Peer Lending Platforms (**NBFC-P2P**), (b) Account Aggregators (**NBFC-AA**), (c) Non-Operative Financial Holding Companies (**NOFHC**), and (d) NBFCs without public funds and customer interface. Below are the key changes which were earlier applicable to NBFCs having an asset size between INR 500 crore and INR 1,000 crore, but are no longer applicable to such NBFCs as these will now be classified as NBFCs-BL:
  - Credit concentration norms: This norm is no longer required to be complied with by NBFCs-BL.
  - Capital adequacy ratio: Minimum capital adequacy ratio requirement is no longer required for NBFCs-BL and is only applicable to NBFCs-ML and NBFCs-UL.
  - Dividend declaration: NBFCs-BL are now exempt from reporting details of dividend declared during a FY.

[17] Supra Note 1, guideline 4.3
[18] Supra Note 1, guideline 3.2
[19] Supra Note 1, guideline 4.5
[20] Supra Note 1, guideline 4.4
[21] Id
[22] Supra Note 1, guideline 4.6
[23] Supra Note 1, guideline 4.8
[24] Supra Note 1, guideline 5.2
[25] Supra Note 1, guideline 5.3
[26] Supra Note 1, guideline 5.4
[27] Supra Note 1, guideline 5.7
[28] Supra Note 1, guideline 5.8

  - Non- Performing Assets classification: Under the SBR Directions, Non–Performing Assets (NPA) classification norm applicable to all NBFCs-BL stands changed to the overdue period of more than 90 days. The RBI has prescribed a glide path to NBFCs-BL in relation to this requirement, where NPA overdue period greater than 150 days by March 31 2024, 120 days by March 31 2025 and 90 days by March 31, 2026.
  - Corporate governance: Certain board committees which were earlier required to be constituted in the Old Regime are no longer required to be constituted as NBFCs-BL. Other requirements such as fit and proper criteria for directors and appointment of a Chief Risk Officer are also no longer required to be complied with by NBFCs-BL.
  - Tiers Capital: NBFCs-BL are not eligible to categorize perpetual debt instruments as part of their Tier I Capital and Tier II Capital.
- **Middle Layer (NBFCs-ML):** This category consists of all deposit-taking NBFCs irrespective of their asset size, non-deposit taking NBFCs with assets of INR1,000 crore and above and NBFCs undertaking following activities: (a) Standalone Primary Dealers (**SPD**), (b) Infrastructure Debt Fund-NBFC (**IDF-NBFC**), (c) Core Investment Companies (**CIC**), Housing Finance Companies (**HFC**), and (d) Infrastructure Finance Companies (**NBFC-IFC**). All the compliances for NBFCs- BL are required to be complied with by NBFCs. Additionally, NBFC -ML are also required to comply with compliances such as capital adequacy ratio of 15%, disclosures made in financial statements and other as prescribed under SBR Guidelines.
- **Upper Layer (NBFCs-UL):** This category comprises of NBFCs which are specifically identified by the RBI for enhanced regulatory requirements based on predefined parameters and scoring methodology as stipulated under the SBR Directions. The top 10 NBFCs by asset size would always consider in the NBFCs-UL. All compliance requirements that are prescribed for NBFC- BL and NBFC – ML shall remain applicable to NBFC – UL unless specifically exempt by the RBI. There are no other changes w.r.t to compliance requirement under Old Regime.
- **Top Layer (NBFCs-TL):** There are no changes prescribed under the NBFCs – TL. RBI has kept its discretion in putting an NBFC in this category so that if a certain NBFC in the upper layer poses a substantial systemic risk, it can be considered under top layer.
- **Multiple NBFCs in a group:** NBFCs that are part of a common group or are floated by a common set of promoters are classified in the middle layer and shall not be viewed on a standalone basis. The total assets of all the NBFCs in a group shall be consolidated to determine the threshold for their classification in the middle layer.
- **Conversion and asset size:** Once an NBFCs asset size reaches INR 1,000 crore or more, it will be subjected to the regulatory requirements as prescribed under the SBR Directions for Middle Layer, irrespective of its size on the last balance sheet date.

MCA | Relaxation of rules for shifting of Registered Office for companies that went through CIRP under IBC, 2026

The Ministry of Corporate Affairs (**MCA**) vide its Circular dated October 20, 2023 notified the Companies (Incorporation) Third Amendment Rules, 2023 (**Amended Rules**), effective from October 21, 2023. Pursuant to the Amended Rules, MCA has amended Rule 30 of Companies (Incorporation) Rules, 2014 (**Rules**) which provide for shifting of the Registered Office of a company from one State or Union Territory to another.

It is mandatory for all companies to have a Registered Office on and from the 15th day of their incorporation, as per Section 12 of Companies Act, 2013 (**Act**). This office serves as the place of official correspondence for companies and is thus capable of receipt and acknowledgement of any and all communications/notice addressed to such an office. Under Section 12(4) of the Act, companies are required to intimate the Registrar of Companies through a notice in case they intend to change the location of their Registered Office within 15 days from the date of such change. Moreover, Section 13(4) states that any change to the memorandum pertaining to a change of Registered Office from one State to another shall not be effective unless approved by the Central Government.

Under the Rules, a company is not allowed to shift their Registered Office if it is undergoing an inquiry, inspection, prosecution or investigation. However, the Amended Rules states that a company which has undergone a Corporate Insolvency Resolution Process (**CIRP**), whose resolution plan has been approved as per Section 31 of the Insolvency and Bankruptcy Code, 2016 (**IBC**), and whose management has been replaced by a different management, may be allowed to shift their Registered Office. The relevant portion of the Amended Rules is as follows: *where the management of the company has been taken over by new management under a resolution plan approved under Section 31 of the Insolvency Bankruptcy Code, 2016 (31 of 2016) and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the Registered Office may be allowed*. The use of the phrase *may be allowed* in the proviso indicates that changing of Registered Office for a company that qualifies as per the Amended Rules is not a matter of right for the company but is upon the discretion of the Central Government.

As can be seen from the Amended Rules, there can be various reasons for the inclusion of this provision. One primary reason is that the purpose of CIRP under IBC is to allow companies to take a new shape, involving a new management that allows a company to continue its operations with maximized assets. Therefore, if a company does not have any pending complaints, inquiries, investigations, etc. against it, it would be unfair to not allow a fresh management to shift their Registered Office, especially if it is a part of the managements attempts to allow the company to rehabilitate by repositioning themselves. Further, the Amended Rules seek to allow flexibility for the new management in case they want to reorganize the company's

structure and operations, since the Registered Office serves as the location from where all official correspondence takes place.

Insolvency | Disclosure of pending litigation when filing for bankruptcy

On October 5, 2023, the Insolvency and Bankruptcy Board of India (**IBBI**) issued a Discussion Paper titled Enhancing Efficiency in the Voluntary Liquidation Process[29]. This initiative aims to streamline the voluntary liquidation process and introduces proposed amendments to the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (**IBBI Regulations)**[30]. One of the main themes of this Discussion Paper relates to compelling corporate entities initiating voluntary liquidation to prioritize comprehensive disclosures, thereby emphasizing transparency and accountability. This note focuses on the above theme and further elucidates the potential impacts and advantages in relation to one of the proposals laid down in the discussion paper.

Key aspects:

- The draft regulations entail the incorporation of novel sub-clauses into Regulation 3(1)(a) of the IBBI Regulations, providing for disclosing information concerning ongoing proceedings, evaluations, and legal disputes. Further, they establish a mandate dictating that corporate entities must have adequately reserved resources to meet the obligations arising from these aforementioned affairs[31].
- The Directors of a corporate entity are mandated to reveal any impending legal actions, assessments conducted by statutory bodies, and unresolved legal disputes affecting the entity. This mandate serves a multifaceted purpose vis-à-vis ensuring comprehensive awareness among all stakeholders engaged in the liquidation proceedings about potential legal and financial hurdles that might materialize. Further, it affords the corporate entity an opportunity to evaluate the potential financial responsibilities stemming from these matters and set aside appropriate reserves to fulfil these commitments. Furthermore, this safety net not only upholds the interests of creditors and shareholders but also streamlines the liquidation process by minimizing the prospect of unforeseen complexities.
- The erstwhile regime of IBBI Regulations stated that for a corporate person to initiate voluntary liquidation, the liquidator had to prepare a final report which should State that there is no pending litigation against the corporate debtor. However, in the new proposed regime, the directors are now compelled to divulge not just the pending proceedings or assessments before statutory authorities, but also pending litigation, in respect of the corporate person. This expansion substantially augments the range of disclosures expected from directors, reinforcing their duty and accountability, and ensuring a thorough comprehension of potential challenges in the liquidation process.
- Moreover, the first proposal of the Discussion Paper states that '*Disclosure about pending proceedings or assessments before statutory authorities, and pending litigation, in respect of the corporate person. Sufficient provision has been made to meet the obligations arising, if any, on account of these pending matters'*. (emphasis added) The lacuna regarding what constitutes a sufficient provision to fulfil obligations stemming from pending matters introduces an element of uncertainty. This could potentially lead to confusion among directors and liquidators, thereby undermining the effectiveness of the proposed changes, whereas the absence of a mechanism for evaluating the sufficiency of the disclosures made by directors leaves room for the possibility of misrepresentation, particularly when directors have vested interests. In terms of establishing repercussions or penalties for non-disclosure or false disclosure by directors, the proposals are deficient. This inadequacy reduces the impact of the deterrent and may inadvertently foster noncompliance. In addition, although the proposals aim to enhance transparency, they also impose added responsibilities on directors.

The proposed amendments under the Discussion Paper offer certain advantages. The prompt revelation of pending legal proceedings and litigation can expedite their resolution, thereby reducing legal expenses for all parties involved and safeguarding the assets of the corporate entity undergoing liquidation. By providing clear timeframes and guidelines for disclosure, corporate entities can allocate their resources effectively to address outstanding issues and legal matters, ensuring that valuable resources are not needlessly ensnared in protracted legal disputes. In addition, the proposal aids a more streamlined and transparent voluntary liquidation process which is directed to by providing definitive information to the stakeholders on pending litigation and disputes against the distressed company and its directors.

Insolvency | Discussion Paper on Streamlining the Voluntary Liquidation Process

IBBI (Voluntary Liquidation) Regulations, 2017 provide that the liquidator shall endeavor to complete the liquidation process of the corporate person within 90 or 270 days from the liquidation commencement date. However, as on August 31, 2023, around 55% of the ongoing cases were continuing for more than 1 year due to delays in making foreign remittances, pending appeal regarding demand/penalty imposed and refund from statutory departments and other litigations. In order to address this issue and to streamline the voluntary liquidation process, IBBI has recently issued a Discussion Paper and invited public comments on the same.

Key aspects:

- With respect to disclosures by corporate person, it is proposed that the directors of the corporate person, while

[29] Discussion Paper on Streamlining the Voluntary Liquidation Process, dated October 5, 2023 https://ibbi.gov.in/webfront/Discussion%20Paper_VL%20process_October%202023.pdf

[30] https://ibbi.gov.in/IBBI%20(Voluntary%20Liquidation)%20Regulations%202017.pdf

[31] Supra note 1, Paragraph 3.

making declaration for initiation of the process, shall also make the following disclosures:

  - Disclosure about pending proceedings or assessments before statutory authorities, and pending litigation in respect of the corporate person
  - That sufficient provision has been made to meet the obligations arising, if any, on account of these pending matters

- With respect to status report, it was proposed that if the liquidator fails to liquidate the corporate person within stipulated period of 90 days or 270 days as the case may be, she/he shall hold a meeting of contributories of the corporate person and file within 15 days after the end of the quarter in which the stipulated period for completion of liquidation has expired, a status report to the Board explaining why the liquidation has not been completed and specify, along with reasons, the additional time that is required for completing the process.
- With respect to voluntary liquidation of Financial Service Providers (FSP), it was proposed that if the corporate person falls under the category of FSP, it shall declare the following:
  - The category of FSP has been notified by the Central Government under Section 227 of the Insolvency and Bankruptcy Code, 2016
  - The corporate person has obtained prior permission of appropriate regulator for initiating voluntary liquidation proceedings
- With respect to withdrawal from Corporate Voluntary Liquidation Account, it was proposed that where a request for withdrawal is received from the claimant, the Board would have to direct the liquidator in all such cases where dissolution order has not been passed, for verification of the claim. This includes checking the legitimacy of the claim, the amount involved, and any other relevant details. Post verification, the liquidator shall submit their findings and opinion to IBBI to enable it to permit withdrawal even before dissolution.
- With respect to sharing final report and Form H, it was proposed that Form H and final report may be submitted on the electronic platform to be notified by Circular by the Board.
- With respect to order of dissolution, it was proposed that Regulations may be amended to provide for submission of order of dissolution to the Board, along with the final data in the electronic platform to be notified by Circular by the Board.

The new disclosures shall ensure that both the liquidator and corporate person are aware about the pending issues and the corporate person makes necessary provisioning for the same. Further, the proposal regarding FSP shall ensure that only eligible corporate persons initiate the process.

Real Estate | Landmark ruling on tenant rights and empowerment

The Bombay High Courts ruling in the Chandralok Society case (***Chandralok Peoples Welfare Association v. the State of Maharashtra***[32]) signifies a pivotal moment for residents of aging, dilapidated societies who are yet to claim ownership of their flats. The Courts decision stands as a beacon of hope and justice, reaffirming two critical principles:

- **Tenant rights remain inviolate:** The Court emphatically declared that tenant rights do not vanish with the demolition of the building. This principle is especially just in cases where demolition is mandated by statutory laws rather than tenant actions.
- **Empowering tenants for self-redevelopment:** The Courts decision empowered the tenants association to take the reins of rebuilding their demolished abode.

By way of background, Chandralok Society (**Society**) was a residential complex in Goregaon, Mumbai wherein Shamina Pramod Jaykar owned the land, while Mr. Dwivedi owned the building constructed in 1965 in a dual ownership agreement. The building had deteriorated significantly and was rendered nearly uninhabitable by 2014. The Municipal Corporation of Greater Mumbai (**MCGM**), governed by the Mumbai Municipal Corporation Act of 1888, asked the Society for a Structural Stability Report (MCGM has the authority to compel landlords of buildings older than 30 years to provide a Structural Stability Report; similarly, Section 354 allowed the Municipal Commissioner to order the demolition of severely dilapidated structures if landlords failed to comply after a notice under Section 353B).

Post the Structural Audit, Chandralok Society was deemed C1 (buildings in need of urgent repair are categorized under C1 and require immediate evacuation and demolition) and the residents/tenants faced eviction. Notices under Section 353B (April 2019) and Section 354 (June 2019) led to the buildings evacuation and demolition on July 16, 2019, leaving tenants in a challenging situation. In the period from 2019 to the present petition in 2023, the tenants had not received any compensation in the form of transit rent. Consequently, the Petitioners sought relief from the Court.

Key aspects:

- **Tenant rights after demolition:** In addressing this issue, the Court delved into the question of whether tenant rights persisted after the demolition of the building. The Court made it clear that this issue was not new as the Supreme Court had previously ruled on it, establishing that tenancy did not terminate with the demolition of a building. The Bombay High Court relied on the Supreme Courts judgment in ***Shaha Ratansi Khimji & Sons v Kumbhar Sons Hotel Pvt Ltd & Ors***[33] to settle this matter. Additional cases, such as ***Hind Rubber Industries Pvt Ltd & Ors v State of Maharashtra & Ors***[34] and ***Andheri Purab Paschim Cooperative Housing Society Ltd v Municipal Corporation of Greater Mumbai & Ors***[35], further supported this position. These cases reinforced the idea that the rights of tenants persist even when the building itself no longer exists.
- **Landlords responsibilities:** To address this issue, the Court examined the Maharashtra Rent Control Act of 1999,

[32] 2023: BHC-OS:12498
[33] (2014) 14 SCC 1
[34] WP (Stamp) No. 11986 of 2022
[35] WP (L) No. 4234 of 2023

particularly Section 17, titled Recovery of possession for repairs and re-entry. This Section provided various remedies for tenants if their landlord failed to return possession after repairs. It also included provisions for situations where tenants vacated their premises, and the landlord failed to perform necessary repairs. In such cases, the landlord could be subject to fines and imprisonment.

- **MCGMs obligations:** To tackle this issue, the Court turned to Section 499 of the Mumbai Municipal Corporation Act (**MMC Act**), 1888. This Section outlined the MCGMs role following the demolition of a building in compliance with Section 353B or 354 of the MMC Act. It stated that if a landlord failed to reconstruct or repair the building within a specified period of three years (with permission), the MCGM could empower tenants to form their association and take steps for repair or reconstruction. Importantly, the tenants rights extended only to the demolished building, not the redeveloped structure. The Court granted the tenants the right to seek tenders and independently reconstruct the demolished building without the prior consent of the owner.

The Bombay High Court, through this judgment, reaffirmed its role as a Peoples Court that tirelessly works to protect the interests and rights of individuals. By interpreting the law correctly and providing a legal foundation for its decisions, the Court has set a crucial precedent that can be cited in similar cases, ensuring fairness and justice in circumstances like these. With the increasing prevalence of housing issues, this ruling brings hope to those who may find themselves in similar situations, reminding us all of the importance of justice and empowerment in the legal system. It underscores the fact that tenant rights remain inviolate even after demolition of the building and empowers the tenants for self-redevelopment, thereby serving as a reminder that the law can be a powerful instrument for positive change, even in the most challenging of circumstances.

Real Estate | Haryana policy on conversion of residential plots to commercial usage

On October 11, 2023, the Haryana Government announced the Haryana Municipal Urban Built-Plan Reform Policy, 2023 (**Policy**) that aims to allow and facilitate conversion of residential plots to commercial use. Whilst the extract of the Policy is not yet available in public domain, this article shall analyze the applicability of the Policy, its intent, and commensurate implications on the real estate sector.

- **Applicability:** The Policy is applicable to residential plots that conform to all of the following (Applicable Areas), even though the original Floor Area Ratio (FAR), Ground Coverage, and plot height, as per the parent scheme of the plot, would continue to be applicable:
  - Residential plots must be situated areas developed under some planned schemes, such as Model Town Schemes, Rehabilitation Schemes, Town Planning Schemes, and Improvement Trust Schemes, etc. that have been in existence for at least 50 years
  - Residential plots must be situated in the core municipal limits but beyond the areas/sectors being developed Haryana Shahri Vikas Pradhikaran (HSVP), Housing Board (Haryana), Haryana State Industrial Infrastructure Development Corporation, and areas governed by Town and Country Planning Department (Haryana)
  - Residential plots that have been developed under other Government Policies/Rules, provided that such plots are permitted to be sub-divided
- **Enforcement:** The Policy, in addition to providing for prospective conversions, also intends to regularize conversions that have taken place unauthorizedly in retrospect. To achieve this objective, it provides for the Municipalities to conduct surveys and property owners who have had illegal conversions will receive notices from them, with a 30-day window in which they are required to restore the property or file for regularization. Legal action, including sealing or demolition, may follow noncompliance. Municipalities have the authority to cancel licenses and permits, return a building to its former State, or enforce adherence to building codes in the event that a property is refused or does not file for regularization.

Ensuring conformity to usage of residential plots that find genesis under Planned Schemes, is one the cardinal considerations in such planned schemes actuated by the purpose of the scheme and the intent of the agencies developing them and therefore, the conversion of the usage of these plots was prohibited. By permitting conversion of such plots in the applicable areas, the Government has attempted to foster a better urban development and town planning whilst allowing for potential mixed usage of lands. However, it may be imperative to note that this Policy may run into teeth with the Governments initiative of housing for all, since conversion to commercial use may result in dearth of housing.

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