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Department Of Industrial Policy & Promotion

Review of Foreign Direct Investment on Insurance Sector

Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India ("**DIPP**"), vide its Press Note No. 1 (2016 Series) dated March 23, 2016 reviewed the Foreign Direct Investment ("**FDI**") on Insurance Sector. In the said Press Note Paragraph 6.2.18.7 of the 'Consolidated FDI Policy (Effective from May 12, 2015)' ("**FDI Policy 2015**") has been amended as follows:

1. The percentage of Equity/ FDI Cap in the FDI Policy 2015 was 49% [FDI + FPI (FII, QFI) + NRI + FVCI+ DR] through Automatic up to 26% and Government route beyond 26% upto 49%, however the same has been amended to FDI upto 49% through Automatic route.
2. Further under the Other Conditions in Paragraph 6.2.18.7.2 point (b) has been amended. In the FDI Policy 2015, foreign direct investment proposals which take the total foreign investment in the Indian insurance company above 26% and up to the cap of 49% shall be under Government route has been amended to the Foreign Investment proposals upto 49% of the total paid up equity of the Indian Insurance Company shall be allowed on the automatic route subject to verification by the Insurance Regulatory and Development Authority of India .

Review of Foreign Direct Investment on Pension Sector.

DIPP vide its Press Note No. 2 (2016 Series) dated March 23, 2016 reviewed the FDI policy on Pension Sector. In the said Press Note the following points are added in Paragraph 6.2.18.7 of the FDI Policy 2015:

1. Paragraph 6.2.18.7 provides for FDI in Pension sector upto 49% under the automatic route and
2. The other conditions are as follows:
    - Foreign investment in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.
    - Foreign Investment in Pension Funds will be subject to the condition that entities bringing in foreign equity investment as per Section 24 of the PFRDA Act shall obtain necessary registration from the PFRDA and comply with other requirements as per the PFRDA Act, 2013 and Rules and Regulations framed under it for so participating in Pension Fund management activities in India.
    - Wherever such foreign equity investment involves control or ownership by the foreign investor or, transfer of control or ownership of an existing pension fund from resident Indian citizens and/or Indian companies owned and controlled by resident Indian citizens to such foreign investing entities as a consequence of the investment, including through transfer of shares and or fresh issue of shares to Non-Resident entities through acquisition, amalgamation, merger etc., it would require Government approval in consultation with the Department of Financial Services, PFRDA and other entities concerned and the onus of compliance to these conditions will be on investee Indian pension fund company. The meaning of ownership and control would be as per the Foreign Direct Investment policy .

Guidelines for Foreign Direct Investment on E- commerce.

DIPP vide its Press Note No. 3 (2016 Series) dated March 23, 2016 gave guidelines for FDI on e-commerce. In the FDI Policy 2015, FDI upto 100% under automatic route is permitted in Business to Business (B2B) e-commerce. However, no FDI is permitted in Business to Consumer (B2C) e- commerce. Therefore vide the said Press Note FDI in B2C e-commerce is permitted in the following circumstances:

i. A Manufacturer is permitted to sell its products manufactured in India through e- commerce retail.

ii. A single brand retail trading entity operating through brick and mortar stores is permitted to undertake retail trading through e- commerce.

iii. An Indian manufacturer is permitted to sell its own single brands products through e-commerce retail. Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, atleast 70% of its products in house, and sources, at most 30% from Indian manufactures.

Definitions of E- commerce, E- Commerce entity, inventory based model of E-commerce, marketplace based model of e- commerce are also given in the said Press Note.

Further, according to the guidelines for FDI on e-commerce sector is that the 100% FDI under automatic route is permitted in market place model of e- commerce; however, FDI is not permitted in inventory based model of e- commerce.

Other conditions are also given in the said Press Note .

SECURITIES EXCHANGE BOARD OF INDIA.

Security And Exchange Board of India – Investments by FPIs in Government Securities.

1. SEBI vide its Circular No. IMD/FPIC/CIR/P/2016/45 dated March 29, 2016 had provided for enhancement in investment limit by Foreign Portfolio Investor ("**FPI")** in government securities.
2. SEBI stated that RBI in its fourth bi-monthly policy statement for the year 2015-16 dated September 29, 2015 had announced Medium Term framework ("**MTF**") for FPI Limits in Government Securities in consultation with Government of India. Accordingly SEBI had also issued circular dated October 06, 2015 for allocation and monitoring of FPI debt investment in Government securities and in modification to the said SEBI circular has enhanced the limit for investment by FPIs in Government Securities, for next half-year as follows:-

Type of Instrument	**Present Upper Cap**	**Revised Upper cap with effect from April 04, 2016 (INR cr)**	**Revised Upper Cap with effect from July 05,2016 (INR cr)**
Government Debt	135,400	140,000	144,000
Government Debt- Long term	44,100	50,000	56,000
State Development Loans	7,000	10,500	14,000
Total	186,500	200,500	214,000

3. The free limit of Rs. 1,35,400 crores with the debt limit of Rs. 4,600 crores as on April 03, 2016 shall be auctioned on April 04, 2016 and shall a special auction for allocation of additional limits, and unutilised limits from the auction on March 28, 2016 and April 04, 2016 with any additional limits freed up by the sale/redemption of securities by FPIs shall be auctioned on April 25, 2016.
4. The incremental limits of Rs.5,900 crores and Rs.6,000 crores for long term FPIs shall be available for investment on tap from April 04, 2016 and July 05,2016 respectively and the limits of Rs.3,500 crores each for investment by FPIs in SDLs shall be available investment tap from April 04,2016 and July 05, 2016, respectively.
5. Further from October 01, 2016 in case of any unutilised limit with the Government debt limit for long term FPIs, at the end of half-year shall be made available for investment as additional limit to all categories of FPIs for the subsequent half-year.

Investments by FPIs in REITs, InvIts, AIFs and corporate bonds under default

SEBI vide its circular CIR/IMD/FPIC/39/2016 dated March 15, 2016 issued in exercise of powers conferred by section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. The circular deals with investments by Foreign Portfolio Investment (**"FPIs"**), InvIts, AIFs and corporate bonds under default.

1. REITs, InvIts and AIFs:

   - RBI had vide notification No. FEMA.355/2015-RB dated November 16, 2015 carried out necessary amendments in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Eleventh Amendment) Regulations, 2015 for permitting investment by FPIs in the units of REITs, InvIts and AIFs.
   - Accordingly, it has been decided to permit FPIs to invest in units of REITs, InvIts and Category III AIFs in terms of Regulation 21(1)(n) of Securities Exchange Board of India (Foreign Portfolio Investment) Regulations, 2014 subject to such other terms and conditions as may be prescribed by SEBI from time to time.
   - A FPI shall not hold more than 25 % (twenty five percent) stake in a category III AIF.

1. Corporate Bonds under default:

   - RBI, vide circular RBI/2015-16/253 dated November 26, 2015 has permitted FPIs to acquire NCDs/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal installment in the case of amortizing bond.

- In partial modification of Para 2 of the SEBI circular CIR/IMD/FIIC/1/2015 dated February 3, 2015, FPIs shall be permitted to acquire NCDs/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of an amortizing bond. FPIs shall be guided by RBI's definition of an amortizing bond in this regard.
- Such NCDs/bonds restructured based on negotiations with the issuing Indian company, shall have a minimum revised maturity period of 3 (three) years.
- The FPIs shall disclose to the Debenture Trustees, the terms of their offer to the existing debenture holders/beneficial owners of such NCDs/bonds under default, from whom they propose to acquire.
- All investments by FPIs in such bonds shall be reckoned against the extant corporate debt limit of Rs.2,44,323/- (Rupees Two Lakh Forty Four Thousand Three Hundred and Twenty Three Only). All other terms and conditions pertaining to FPI investments in corporate debt securities shall continue to apply.

SHAREPRO SERVICES (I) PRIVATE LIMITED CASE SUMMARY

Securities and Exchange Board of India ("SEBI") vide its notification no. WTM/RKA/MIRSD2/41/2016, in exercise of powers conferred under Section 11, 11B and 11 D of the SEBI passed the following Order in the below mentioned case.

1. Sharepro Services (I) Private Limited ("**Sharepro**") is a SEBI Registered Category I Registrars to Issues and Securities and Transfer Agent which is in the share registry business. The promoters of Sharepro are Mr. Govind Raj Rao and Mrs. Bhagyalaxmi Rao. Mr. G.R. Rao is also the Managing Director ("**MD**")

2. On October 20, 2015 SEBI received a complaint relating to a list of unfair practises being performed by Sharepro such as Sharepro's Vice-President transferring unclaimed dividends to her relatives instead of transferring it to Investor Education and Protection Fund; transferring shares of a deceased client to a non-shareholder and not maintaining a proper regulatory audit for their transactions, etc.

3. Thereafter, SEBI directed that there were non genuine and deceptive transactions which are covered under the definition of fraud. The dealings by Sharepro and its officials are fraudulent under regulation 2(1)(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**") and prohibited the directors from making any further transactions as per the provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992 and regulations 3(b), (c) and (d) and 4(1) and 4(2)(m) and (p) of the PFUTP Regulations.

4. Therefore Shrarepro have contravened the provision of Section 12 A of SEBI Act, 1992 and Section 3 and 4 of PFUTP Regulations.

5. Sharepro failed to comply with gelation 9A (f), regulations 13 read with Code of Conduct specified in Schedule III thereof ad regulation 14(3) (b) and (c) of Securities and Exchange Board of India (Registrar to an Issue and Share Transfer Agents) Regulations, 1993.

6. SEBI pronounced an ad interim ex parte order directing the members within Sharepro from buying, selling or dealing in the securities market or associating themselves with the Securities market till the end of the investigation.

7. Clients of Sharepro were directed to conduct a thorough audit of records and system of Sharepro with respect to dividends paid and transfer of securities to determine whether dividends have been paid to actual/beneficial holders and whether securities have been transferred as per the provisions of law.

8. The audit can cover all transactions of Sharepro within the last ten (10) years and to be completed within three (3) months of the order with a complete report. Sharepro will then have to take appropriate directions in accordance with the provisions of law and inform SEBI accordingly.

9. Clients of Sharepro are advised to carry their activities related the registrar to an issue and share transfer agent. Sharepro was ordered to provide requisite co-operation these companies for the purpose.

MINISTRY OF CORPORATE AFFAIRS

Amendment to the Companies (Share Capital and Debentures) Rules, 2014

The Central Government through the Notification G.S.R (E) dated March 10, 2016, in exercise of the powers conferred by sub-section (1) and sub-section (2) of Section 469 of the Companies Act, 2013 (18 of 2013) made the following rules to amend the Companies (Share Capital and Debentures) Rules, 2014 and will be called the Companies (Share Capital and Debentures) Amendment Rules, 2016. They shall come into force on the date of their publication in the Official Gazette.
In the Companies (Share Capital and Debentures) Rules, 2014, in Rule 17, in sub-rule (1), in clause (n), after sub-clause (iii), the following proviso shall be inserted, namely;

In the Companies (Share Capital and Debentures) Rules, 2014, in Rule 17, in sub-rule (1), in clause (n), after sub-clause (iii), the following proviso shall be inserted, namely;

> *"Provided that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company."*

RESERVE BANK OF INDIA

Master circular—Basel III Capital Regulations—Revision

The Reserve Bank of India ("**RBI**") vide this notification RBI/2015-16/331, DBR.No.BP.BC.83/21.06.2015/16 dated March 1, 2016 has made certain reservations referring to Master Circular DBR.No.BP.BC.1/21.06.201/2015-16 dated July 1, 2015 ("**Master Circular**") on 'Basel III Capital Regulations.

This notification is being passed considering that the treatment of the balance sheets as per the regulations on bank's capital is not in consonance with that being prescribed by the Basel Committee on Banking Supervision ("**BCBS**").

As per the RBI, the current framework in place forces the Banks in India to raise more capital than what would have been required if the Basel rules apply as they are.

Thus, the RBI intends to align the current regulations on the treatment of the balance sheet with the BCBS guidelines, the following has been released:

- 2.1 Treatment of revaluation reserves:
- 2.2 Treatment of foreign currency translation reserve ("**FCTR**")
- Treatment of Deferred Tax Association ("**DTAs**")

Grant of EDF Waiver for Export of Goods Free of Cost

The RBI under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) vide Circular No. RBI/2015-16/332 dated March 3, 2016 provides grant of EDF waiver for export of goods free of cost.

In RBI's earlier Circular dated April 26, 2003, in which the attention of the Authorised Dealers is invited to the GR waiver to exporters for export of goods free of cost had been enabled. The facility had been extended to the Status Holders vide para 2.52.1 of Handbook of Procedures - Volume-I of Foreign Trade Policy 2004-2009, in terms of which Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs 10 lakh or 2% of average annual export realization during preceding three licensing years, whichever is higher.

Government of India vide amendment Notification No. 9/2015-2020 dated June 4, 2015, has notified that the Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs 10 lakh or 2% of average annual export realization during preceding three licensing years whichever is lower. AD Category – I banks therefore may consider requests from Status Holder exporters for grant of Export Declaration Form (EDF) waiver, for export of goods free of cost based on the revised norm.

Liquidity Risk Management & Basel III Framework on Liquidity Standards – Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards

RBI vide its Circular No. DBR.BP.BC.No.86/21.04.098/2015-16 dated March 23, 2016 stated that issuance of the circulars mentioned below it was decided to amend certain provisions of these guidelines:

A. DBOD.BP.No.56/21.04.098/ 2012-13 dated November 7, 2012 on "Liquidity Risk Management by Banks."

B. DBOD.BP.BC.No.120/21.04.098/2013-14 dated June 9, 2014 and DBR.BP.BC.No.52/21.04.098/2014-15 dated November 28, 2014 on "Basel III Framework on Liquidity Standards – Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards."

C. DBR.No.BP.BC.80/21.06.201/2014-15 dated March 31, 2015 on "Prudential Guidelines on Capital Adequacy and Liquidity Standards – Amendments."

The amendments in the above mentioned Circulars are as follows:

1. The issue regarding the Align time buckets in SLS statement with LCR monitoring requirement in Statements of Structural Liquidity as prescribed in Appendix II to circular DBOD.BP.No.56/21.04.098/2012-13 dated November 7, 2012 on "Liquidity Risk Management by Banks";
2. The issue in Align time buckets in Dynamic Liquidity statement with LCR monitoring requirement in Statement of Short-term Dynamic Liquidity as prescribed in Appendix III to circular DBOD.BP.No.56/21.04.098/2012-13 dated November 7, 2012 on "Liquidity Risk Management by Banks" ;
3. Level 2 B Assets as prescribed under paragraph 5.5 of circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014 on "Basel III Framework on Liquidity Standards – Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards.";

4. Run-off factor for Retail Term Deposits as prescribed in Explanatory Note (i) to BLR-1 in circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014 and amendment thereto vide Sr No.7 of Part D of circular dated March 31, 2015;
5. Outflow factor for contingent funding liabilities like Guarantees, Letters of credit and Trade finance as prescribed in APPENDIX 1 – Basel III Liquidity Returns (BLR 1 – Panel II - Sr No. A – 4 - (x) (a)) to circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014;
6. LCR by Significant Currency – Prescribed vide para 7.1 (d) of circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014;
7. Explanation on 'Use of a Pool of Collateral' – Explanatory Note to Circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014;
8. Principles for determining Cash flow under Secured Funding Transactions (SFTs) secured with a Pool of Collateral' – Explanatory Note to Circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014 and amendment thereto vide Sr No.11 of Part D of circular dated March 31, 2015.
9. Outflow factor for "Deposits against which a loan has been allowed" – BLR-1 Statement under Appendix 1 Circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014 and Explanatory Note thereto.
10. Outflow factor for "Funding from other legal entity customers" BLR-1, Panel II - Cash outflows 2 (iv) -Statement under Appendix 1 Circular DBOD.BP.BC.No.120 / 21.04.098/2013-14 dated June 9, 2014.

RBI - Investment by Foreign Portfolio Investors (FPI) in Government Securities

RBI vide Circular No. 55 dated March 29, 2016 provided for investment by Foreign Portfolio Investors ("**FPIs**") in Government securities.

RBI states that the limit for investment by FPIs in Government securities were last increased in terms of the Medium Term Framework ("**MTF**") which was announced vide earlier circular no. 19 of RBI dated October 06, 2015.

RBI states that as per the terms of the MTF, the limits for investment by FPIs in Central Government Securities are proposed to be increased in two tranches i.e. Rs. 105 billion from April 4, 2016 and by Rs.100 billion from July 5, 2016 respectively and the limits for State Development Loans ("**SDL**") are similarly proposed to be increased in two tranches, each of Rs.35 billion, from April 4, 2016 and July 5, 2016 respectively.

The Operational aspects have been provided by Security Exchange Board of India and which is also referred hereinabove.

ELECTRICITY ACT

Madhya Pradesh Electricity Regulatory Commission Tariff Order for procurement of power from Wind Electric Generators dated March 17, 2016

A Public meeting was held on December 15, 2015, where the comments/ suggestions/objections from various stakeholders were heard in brief by the Hon'ble Madhya Pradesh Electricity Regulatory Commission ("the **Commission"/ "MPERC**").

The Hon'ble Commission vide its Tariff Order for procurement of power from Wind Electric Generators dated March 17, 2016 ("**Tariff Order**") which was uploaded on the website on March 31, 2016 stated a as follows:

1. The control period to which this Tariff Order shall apply shall start from April 01, 2016 and will end on March 31, 2019 (i.e. end of FY 2018-19). The tariff decided in this Tariff Order shall apply to all projects which come up during the above mentioned control period and the tariff determined shall remain valid for the project life of 25 years.
2. The following is comparison of present Tariff Order with earlier order for control period ending March 31, 2016:

Element of the norm	MPERC Regulation (FY13 -FY16)	MPERC Tariff Order, 2016
Control Period	3 years (ending on 31-03 -2016)	3 years (upto 31-03-2019)
Capital Cost	5.96 Cr/MW (inclusive of evacuation cost)	5.75 Cr/ MW (inclusive of cost of power evacuation)

Plant Life	25 years	25 years
CUF	20%	23%
Return on Equity	20% Pre Tax	20% Pre Tax
O&M Expenses	1% of the capital cost in the 1st year and thereafter a simple escalation of 5.72% per annum	1% of the capital cost in the first (1st) year and thereafter a simple escalation of 5.72% for each year thereafter
Interest on working capital	13.25% O&M expense for 1 month + Receivables equivalent to month energy charges + Maintenance spare @15% of O&M expenses	12.50% O&M expense for one (1) month + Receivables equivalent to two (2) months energy charges on normative CUF + Maintenance spare @15% of O&M expenses
Interest on loan/ Debt	12.75%	12.00% per annum
Discounting factor	10.20%	10.20%
Debt Equity Ratio		70:30
Depreciation	7% per annum for the 1st 10 years and remaining 20% spread over remaining useful plant life	7% per annum for the first ten (10) years and remaining 20% in next fifteen (15) years

3. The Hon'ble Commission for the FY 13- FY 16 set levelized tariff @ Rs. 5.92 per unit for generation from new wind energy projects to be commissioned after issue of this order for its project life of 25 years.
4. Now, the Hon'ble Commission has set the levelized tariff @ Rs. 4.78 per unit for the FY 16- FY 19 for generation from new wind energy projects to be commissioned after issue of this order for its project life of 25 years.
5. The other terms and conditions have been mentioned in the said Tariff Order, 2016.

Maharashtra Electricity Regulatory Commission

1. Maharashtra Electricity Regulatory Commission ("**MERC**") on March 30, 2016 notified the new MERC (Distribution Open Access) Regulations, 2016 (Gazette Notification Dated 30 March, 2016). The same has been detailed in our Article section 'Note on New Open Access Regulations'

2. Maharashtra Electricity Regulatory Commission ("**MERC**") on March 30, 2016 issued the new MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016 (Gazette Notification Dated 30 March, 2016).The same has been detailed in our Article section 'Note on Maharashtra's New RPO Regulations'

3. Maharashtra Electricity Regulatory Commission ("**MERC**") on March 30, 2016 issued the new MERC (Transmission Open Access) Regulations, 2016 (Gazette Notification Dated 30 March, 2016).

THE REAL ESTATE ACT

The Real Estate Act, 2016

The Ministry of Law and Justice introduced The Real Estate (Regulation and Development) Act, 2016 NO. 16 of 2016 dated March 25, 2016 (the "**Real Estate Act, 2016"/ "Act"**). The said Act was passed by the Rajya Sabha on March 10, 2016.

The main Objective of the Act are as follows:

1. The Real Estate Act, 2016 was established for the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.
2. The said Act extends to the whole of India except the State of Jammu and Kashmir.
3. The salient features of the Act are as follows:

   α) **Real Estate Regulatory Authority**

   The 'Real Estate Regulatory Authority' ("**Regulatory Authority**") will be set up within one year from the date of notification i.e. March 25, 2016. In the interim, the appropriate Government (i.e., the Central or State Government) shall designate any other regulatory authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority.

b. Registration with the Regulatory Authority

i. The promoter/developer is required to register their project (residential as well as commercial) with the Regulatory Authority before booking, selling or offering apartments for sale in such projects. In case a project is to be promoted in phases, then each phase shall be considered as a standalone project, and the promoter shall obtain registration for each phase.

ii. Further, in case of ongoing projects which have not received a completion certificate, the promoter/developer of such project shall make an application to the Regulatory Authority for registration of their project within a period of three (3) months of commencement of the said Act.

iii. The Act provides exemption to certain kinds of project from seeking registration such as follows:

- Where the area of land proposed to be developed does not exceed 500 (five hundred) square meters or the number of apartments to be constructed in the project does not exceed 8 (eight) apartments.;
- Projects where the completion certificate has been received prior to the commencement of the Act;
- Projects for the purpose of renovation or repair or re-development which does not involve marketing, advertising, selling and new allotment of any apartment plot or building.

iv. The application for registration requires disclosure of lot of information pertaining to the promoter, its entity, details of projects developed by promoter, copies of commencement certificate, sanctioned plan, proforma of allotment letter, details of encumbrances by way of declaration etc.

v. In addition, the promoter is also required to specify the time period within which he undertakes to complete the project or the phase.

c. Carpet Area

Under the Act, the developers can sell units only on carpet area, which means the net usable floor area of an apartment. This excludes the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

d. 70% of realisation from allottees in a separate bank account

i. The Act mandates that a promoter shall deposit 70% of the amount realised from the allottees, from time to time, in a separate account to be maintained in a scheduled bank. This is intended to cover the cost of construction and the land cost and the amount deposited shall be used only for the concerned project.

ii. The promoter shall be entitled to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. However, such withdrawal can only be made after it is certified by an engineer, an architect and chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

iii. The promoter is also required to get his accounts audited within 6 (six) months after the end of every financial year by a practicing chartered accountant. Further, the promoter is also required to produce a statement of accounts duly certified and signed by such chartered accountant regarding amounts collected and withdrawn.

e. Acceptance or refusal of registration

i. Upon receipt of an application by the promoter, the Regulator Authority shall within a period of 30 (thirty) days, grant or reject the registration.

ii. Upon granting a registration, the promoter will be provided with a registration number, including a login Id and password for accessing the website of the Regulatory Authority and to create his web page and to fill in the details of the proposed project.

iii. If the Regulatory Authority fails to grant or reject the application of the promoter within the period of 30 (thirty) days, then the project shall be deemed to have been registered.

iv. The registration, if granted, will be valid until the period of completion of the project as committed by the promoter to the Regulatory Authority. This period shall be extended by the Regulatory Authority for a period not exceeding 1 (one) year in aggregate, only due to force majeure and on payment of such fee as may be specified by regulations made by the Regulatory Authority.

f. Revocation or lapse of registration

i. The Regulatory Authority may revoke the registration granted on receipt of a complaint or suo moto or on the recommendation of the competent authority in case (i) the promoter makes a default in doing anything required under the Act or the rules or regulations made thereunder; (ii) the promoter violates any terms of the approvals granted for the project; and (iii) the promoter is involved in any kind of unfair practice of irregularities.

ii. In the event the registration is revoked by the Regulatory Authority or it lapses, the Regulatory Authority is empowered to debar the promoter, direct freezing of account, etc

g. Advertisement or prospectus issued by the promoter

i. The advertisement or prospectus issued or published by the promoter should prominently mention the website address of the Regulatory Authority, where all details of the registered project have been entered and include the registration number obtained from the Regulatory Authority and other similar details.

ii. Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus and sustains any loss or damage because of any incorrect, false statement included in these, he shall be compensated by the promoter in the

manner as provided under the Act. Also, if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, intends to withdraw from the proposed project, his entire investment (along with interest at such rate as may be prescribed and compensation in the manner provided under the Act), will be returned to him.

h. Advertisement or prospectus issued by the promoter

i. The advertisement or prospectus issued or published by the promoter should prominently mention the website address of the Regulatory Authority, where all details of the registered project have been entered and include the registration number obtained from the Regulatory Authority and other similar details.

ii. Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus and sustains any loss or damage because of any incorrect, false statement included in these, he shall be compensated by the promoter in the manner as provided under the Act. Also, if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, intends to withdraw from the proposed project, his entire investment (along with interest at such rate as may be prescribed and compensation in the manner provided under the Act), will be returned to him.

i. Limit on receipt of advance payment

A promoter shall not accept a sum more than 10% percent of the cost of the apartment, plot, or building, as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement of sale with such person and register the said agreement of sale, under any law for the time being in force.

j. Restriction on addition and alteration in the plans

i. The promoter cannot make any addition or alteration in the approved and sanctioned plans, structural designs, specifications and amenities of the apartment, plot or building without the previous consent of the allottee.

ii. The promoter also cannot make any other addition or alteration in the approved and sanctioned plans, structural designs and specifications of the building and common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such a building.

k. Structural defect

In case any structural defect or any other defect in the workmanship, the promoter is required to rectify such defect without any further charge, within 30 (thirty) days. If the promoter fails to rectify such defect within such time, the aggrieved allottee shall be entitled to receive appropriate compensation in the manner as provided in the Act.

l. **Restriction on transfer and assignment**

The promoter shall not transfer or assign his majority rights and liabilities in respect of a project to a third party without obtaining prior written consent from two-thirds of the allottees, except the promoter, and without the prior written approval of the Regulatory Authority.

m. Refund of amount in case of delay in handing over possession

i. In case of delay in handing over possession of the apartment, then the promoter shall be liable, on demand being made by the allottee, to return the amount received by the promoter from the allottee with interest and compensation at the rate and manner as provided under the Act. This relief will be available without prejudice to any other remedy available to the allottee.

ii. However, where an allottee does not intend to withdraw from the project, the allottee shall be paid interest by the promoter for every month of delay, till the handing over of the possession, at a prescribed rate.

n. Other relevant provisions

i. The same rate of interest will be payable by the allottee and the promoter in the event of their respective defaults.

ii. In the absence of any local laws, an association or society or cooperative society, as the case may be, of the allottees, shall be formed within a period of 3 (three) months of the majority of allottees who have booked their plot or apartment or building, as the case may be, in the project.

iii. After the promoter executes an agreement for sale for any apartment, plot or building, no mortgage or charge can be created by the promoter on such apartment, plot or building.

iv. The promoter may cancel the allotment only in terms of the agreement for sale. However, the allottee may approach the Regulatory Authority for relief, if he is aggrieved by such cancellation.

v. The promoter shall obtain insurance as may be notified by the appropriate Government, including but not limited to the title of the land and building and construction of the project. The promoter shall also be liable to pay the premium and charges in respect of the insurance.

vi. The promoter shall execute a registered conveyance deed hand over possession of the same within the period as specified under the local laws. In the absence of any local law, such conveyance deed shall be carried out by the promoter within three months from date of issue of the occupancy certificate.

vii. The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land in the manner as provided under the Act, and such claim for compensation shall not be barred by limitation provided under any law for the time being in force.

viii. Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or buildings.

ix. The Regulatory Authority shall make a recommendation to the appropriate Government on (i) creation of a single window system for ensuring time-bound project approvals and clearances for timely completion of the project; and (ii) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials.

o. Offences and Penalty

i. The Act prescribes stringent penal provisions under the Act against the promoter in case of any contravention or non-compliance of the provisions of the Act or the orders, decisions or directions of the Regulatory Authority or the Appellate Tribunal which are the following:

ii. If promoter does not register its project with the Regulatory Authority – the penalty may be up to 10% (ten percent) of the estimated cost of the project as determined by the Regulatory Authority;

iii. If promoter does not comply with the aforesaid order of the Regulatory Authority - imprisonment of up to 3 (three) years and a further penalty of up to 10% (ten percent) of the estimated cost, or both; and

iv. In case the promoter provides any false information while making an application to the Regulatory Authority or contravenes any other provision of the Act – the penalty may be up to 5% (five percent) of the estimated cost of the project or construction.

v. These penal provisions have also been prescribed for any contravention or violation committed by the real estate agent or the allottee.

vi. If any allottee fails to comply with, or contravenes any of the orders, decisions or directions of the Regularity Authority, there may be a penalty for the period during which such default continues, which may cumulatively extend up to 5% (five percent) of the cost of the plot,

apartment or building, as the case may be, as determined by the Regulatory Authority. Further, if any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, this may entail imprisonment up to one year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the cost of the plot, apartment or building, as the case may be, or with both.

vii. In addition, the Act also has the provision for establishment of a Real Estate Appellate Tribunal (Appellate Tribunal) and adjudication officer for holding an inquiry adjudicating compensation to the promoter in accordance with the Act.

p. Overriding effect

The provisions of this Act shall have an overriding effect in case there is any inconsistency between the provisions contained in this Act and in any other law (including a state law) for the time being in force.

The Maharashtra Housing (Regulation and Development) Act 2012 has been repealed by the Central Government.

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Warm Regards,

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