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MNA TIMES

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MNA Capital Advisors LLP

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PREFACE

Dear Clients & Friends,

To set the context to this issue - Jeff Bezos, founder of Amazon, has become the richest man in the world as per Forbes 2018; Amazon has now a market capitalisation of over USD 750 billion; whereas the once largest retail giant, Walmart, has a market cap of just over USD 250 billion. Clearly, Walmart is seeking to invest in free emerging markets like India and thus eyeing etailers like Flipkart*. On the other hand, Amazon has closed 10 acquisitions in the year 2017 and experts are expecting more from them this year. Given the competition and disruptions, M&A is becoming an important part of the business plan of a Company.

In India, we have seen limited M&A transactions in the month of February- the key highlight being Reliance Industry's acquisitions into media space to presumably support its telecom content library. This space is becoming interesting as Amazon and Netflix are adding more local content to their portfolio as well.

1. On the technology front, we have covered the following two important aspects:
   - **Blockchain** – While we have included an article on how financial services will benefit from blockchains, another article points out how the same is being tested for areas beyond in India.
   - **General Data Protection Regulations (GDPR) –** The European Union (EU) has come out with GDPR regulations becoming applicable from the end of **May 2018.** Compliance and registrations will be required by Indian Companies dealing with personal data of EU residents. Unfortunately, there is no threshold, so the subjectivity will be important. Indian companies making acquisitions should also keep this regulations is mind.
2. RBI has come with revised framework for resolving stressed assets. In view of the enactment of the Bankruptcy code, RBI has decided to substitute the existing guidelines with a harmonised and simplified generic framework for the resolution of stressed assets.
3. We have highlighted the following articles which we thought would be relevant to share
   - **Benami Act** – The crackdown on financial irregularities along with black money / money laundering can get more active in India with the strong provisions of Benami Act.
   - SEBI has eased the access norms for investment by foreign portfolio investors (FPIs)
   - SEBI relaxation norms for Scheme of Arrangement by Listed Entitities
4. We have started a new corner featuring publicly available insightful business reports from this issue onwards.

We hope you enjoy reading this issue. We will be delighted to hear from you on any suggestions.

- Team MNA

* (https://www.bloombergquint.com/technology/2018/03/16/this-may-help-flipkart-demand-20-billion-valuation-from walmart?utm_source=whatsapp&utm_medium=social&utm_campaign=whatsapp_feed).

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MERGERS AND ACQUISITIONS

DEALS REPORTED IN FEBRUARY 2018

Source : Vccedge

Date	Target	Buyer	M&A Type	Deal Value ($ mn)	Industry	Company Type	Sector	Transaction Status	Percentage Sought (%)	Price / EPS	EqV / Book Value	EV / Total Income	EV / EBITDA	EV / EBIT	EV / Total Assets	EV / Profit Before Tax	EV / Profit After Tax
2-Feb-18	GMR Hyderabad International Airport Ltd.	GMR Airports Ltd.	Domestic	76	Aviation	Private Company	Industrials	Announced	11								
5-Feb-18	Bharti Telecom Ltd.	Singapore Telecommunications Ltd.	Inbound	411.34	Electronics	Private Company	Information Technology	Announced									
14-Feb-18	MT Educare Ltd.	Zee Learn Ltd.	Domestic	52.17	Education	Public Company	Consumer Discretionary	Announced	70.53								
16-Feb-18	The Indian Film Combine Pvt. Ltd.	Reliance Industrial Investments and Holdings Ltd.	Domestic	52.96	Real Estate	Private Company	Financials	Announced	20		4.39	NM	NM	NM	1.72	NM	NM
20-Feb-18	Eros International Plc	Reliance Industries Ltd.	Outbound	48.75	Media & Entertainment	Public Company	Consumer Discretionary	Announced	5								

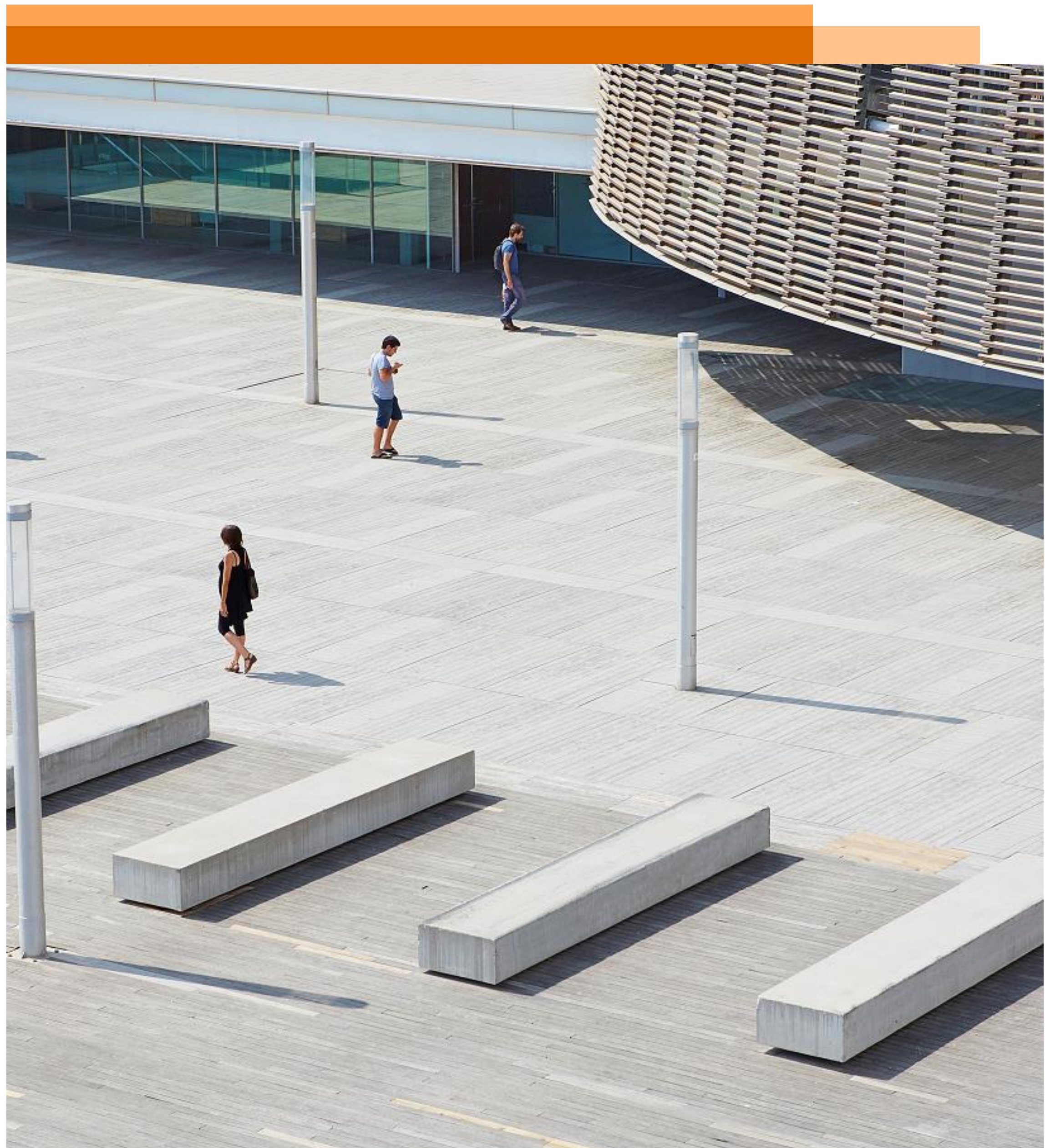
HOW FINANCIAL SERVICES CAN CREATE TRUST IN BLOCKCHAIN

Source : PWC

www.pwc.com/fsi

Building blocks: How financial services can create trust in blockchain

Blockchain can help financial institutions, but will Internal Audit accept it? Blockchain assurance may be the solution.



pwc

The heart of the matter

Blockchain is an exciting emerging technology in the financial services industry. It could offer a more effective way to handle a wide range of financial transactions. That seems helpful, but can you rely on it? Can your Internal Audit team trust it? We say yes. It is possible to have sufficient assurance over blockchain, and it's time to turn those proof-of-concepts into a reality by gaining wider acceptance of blockchain at your financial institution.

Choose one:
- A group of banks
- A government agency
- A team of researchers
- A trading network

proposed to put…

Choose one:
- Transaction data
- Ownership records
- Payment history
- Identity information

on a blockchain to…

Choose one:
- Speed up settlement
- Become more transparent
- Improve accuracy
- Lower processing costs

It seemed like the perfect application. After a successful proof-of-concept test, participants started thinking about a broader rollout. And then, without warning, they saw the email from their (Internal Audit)(legal)(compliance)(other risk management) team. "No, you can't do that."

This has probably happened dozens of times within the past year across many industries: financial, health, and more. Projects stall, or die, because internal control teams demand, appropriately, "how can we rely on it?" Testing and confirmation is Internal Audit's (IA's) job. It's a basic requirement of any modern business. And regardless of how revolutionary the technology is, there are other factors that shape success.

"Companies are smarter about technology than they used to be, but the challenges of integrating new technology into the enterprise have gotten more difficult," observes Chris Curran, chief technology officer in PwC's New Ventures business. "With blockchain, one of the most significant issues has nothing to do with functional capabilities. Rather, it's about helping business leaders, CIOs and CTOs, product designers, and innovation teams reassure stakeholders outside of IT—audit, legal, compliance, even regulators—in terms they can accept."

This balancing act isn't new. Every significant innovation over the past several decades has faced it. This time, though, it goes beyond a clash of cultures and priorities. There is a solution, and it offers insight into the future of assurance itself.

An in-depth discussion

Why we care: blockchain and the financial industry

There's no doubt the blockchain concept has attracted a lot of attention from financial institutions, governments, companies, and more. Let's start with a review of what blockchains actually are, why they're important, and how they might be used.

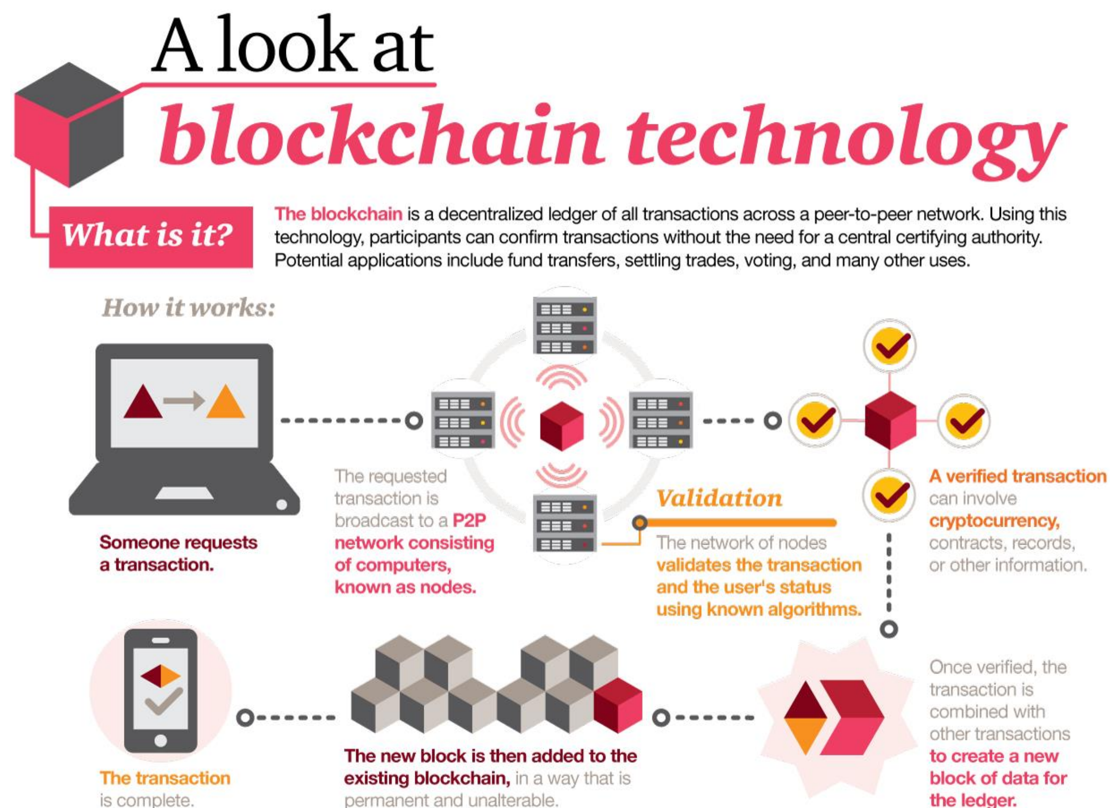
What blockchains are:

A blockchain is a decentralized ledger of transactions across a peer-to-peer network. Let's break this definition down. A transaction **ledger** is just a place where something can be recorded. We say blockchains are **decentralized** ledgers because everyone on the network has their own synchronized copy. They can all see and confirm that a transaction has occurred and has been recorded, all at the same time. This occurs on a **peer-to-peer** computer network. So, instead of connecting to a central authority through a hub-and-spoke model, every participant has a computer linked to other participants. See Figure 1 below.

What makes these ledgers so special?

It goes back to the technology, which is based on applied cryptography. Imagine a party that wants to add an item to the ledger, such as when ownership in an asset is transferred. This proposed transaction is encoded using known algorithms, and all members of the network are notified. Each blockchain has its own "consensus mechanism." Everyone uses the same, defined process to confirm that transactions

Figure 1: A blockchain lets multiple parties confirm transactions and record them on a decentralized, tamper-proof ledger.



are valid. Once they agree, the information is added to the permanent record. The new ledger entry has become one more block of data in a chain of related transactions. Because everyone is working from the same data, the transaction record can't be challenged, and it can't be changed.

Potential uses:

Financial services firms rely on accurate records of who owns a given asset. To make sure all parties agree on ownership rights, they typically look to a trusted intermediary, such as a government, a bank, a clearinghouse, or an exchange. There is an overlay of functions like custody, clearing, and corporate trust. There are also reconciliations, confirmations, identity management, and other steps to create a paper trail of what happened. All of this adds friction, in the form of time, money, etc. Blockchain could offer a more effective way to handle a whole range of financial transactions, with use cases in payments, derivatives, settlement, securities, syndicated lending, and trade finance.[1]

These broad applications explain why there have been so many proof-of-concept projects. At the same time, technologists keep running into a brick wall because none of the potential benefits address IA's concerns. Let's look at blockchain from their perspective.

The role of Internal Audit

Economies rely on capital flows from those who would invest and lend to those who borrow and build. Investors and lenders need a way to detect fraud and promote accountability. This is Internal Audit's role: offering independent assurance to a board or other external stakeholders that management is executing its role in accordance with established policies and risk appetite.

The process works like this: Management creates a set of processes and controls to provide comfort that the records are accurate. IA then tests to see if the systems work and that the data confirms what was recorded. Additionally, the auditors work with management to help improve processes and controls. Finally, the company undergoes an external audit. Once this is done, stakeholders have reasonable assurance that the reporting can be relied upon.

What keeps internal auditors up at night

There are a number of logical reasons why IA may have difficulty adapting to blockchain applications. By understanding and then addressing those concerns, the technology can gain wider acceptance. For example:

- Blockchain is relatively new. The first implementation is less than a decade old, and most applications are far younger than that. In contrast, the systems that management currently relies on have gone through testing for decades and have specific guidance and principles to allow IA teams to gain comfort with them. Audit teams may not yet have the expertise or guidance to be comfortable with a system that puts trust in cryptographic algorithms. Learning takes time.
- These controls are different. Because the technology is new, it requires a new way of thinking about controls. Auditors might welcome the change, but it's their job to ask the difficult questions: Who controls the blockchain? Who gets access? Where are the servers? What physical and digital controls exist? Who monitors activity?[2]

[1] In Making sense of bitcoin, cryptocurrency, and blockchain, we provide additional information on how the technology works and how it might be used.
[2] To illustrate the complexity of their concerns, auditors would want to understand if any of their company's internal control systems have been replaced by infrastructure controls from the blockchain network. If so, they might ask, which controls should be relied upon? How might this change the supervision process?

- Technical expertise is rare. In a recent survey, 86% of the financial services executives asked said that their organizations haven't yet developed necessary blockchain skills.[3] Few IT departments have the relevant experience, and even fewer companies have IA teams with enough expertise to provide any sort of assurance around the technology and the associated work. Most IA teams are always looking for technical expertise, but getting the resources can be tough.
- It got a rough start. While the first blockchain evolved with bitcoin, the two technologies have rapidly diverged. To those who haven't paid close attention, the whole topic may seem dicey, given some early issues with digital currency. But ledgers are just recording tools.[4] Some IA teams may understand that blockchains now have uses as mainstream as electronic voting, tracking intellectual property, and land registry, but that knowledge may not have spread to their controlling boards.

[3] PwC, "2017 Global Digital IQ Survey," Base: 322 FS business and IT execs, www.pwc.com/digitaliqsurvey.
[4] In PwC's 2016 paper Money is no object, we looked at the connection between blockchain and cryptocurrencies like bitcoin.

Our recommendations

Assuring a blockchain

If a technology is to gain wide acceptance in the business community, promoters should acknowledge and address the skeptics. Blockchain is new, but it has matured rapidly. The controls are different, but they can be designed and managed. Technical expertise is rare, but it can be found, especially in those organizations that have made a commitment to the technology. And, despite some bad press at the start, blockchain is now being firmly embraced by many of the most respected institutions in the world. A. Michael Smith, the PwC partner in charge of Internal Technology Audit Solutions for Financial Services, notes that all of these concerns can be addressed today: "What will get blockchain to gain broader acceptance is a clear way to show that IA's concerns have been addressed. I think we're now at that tipping point. There's a real, practical, cost-effective solution for blockchain assurance."

We expect that blockchain assurance will include the following steps:

- Evaluating the business use case and the needs of all stakeholders.
- Assessing the underlying cryptography, including how private keys are managed and how blockchain engine security is maintained. This would include reviewing the consensus mechanism being used to be clear about when a new record should be added.
- Examining *how* the *specific* network has been set up, how that system's reports are being generated, and the controls that guide *that* network's operation. Keep in mind that there is no such thing as a standard blockchain. There are many blockchain systems, and each implementation is unique.
- Performing ongoing reviews to assess the effects of any systemic changes.

Using the approach described here, defusing concerns about distributed ledgers is now within reach.

Case study: Internal Audit of a blockchain-based trading platform

To illustrate the point, let's look at a particular, real-life implementation of blockchain assurance in the capital markets industry.

One company, which we'll call a blockchain service provider (BSP), has been engaged in distributed ledger projects for several years. Two years ago, it launched a blockchain-based trading platform that enables companies to issue shares, transfer those shares to investors, and then support secondary market trading, all without direct intervention from an intermediary. This platform is now live, addressing a real business issue with commercialization potential.

Using a distributed ledger to record capitalization tables is a classic blockchain use case, but the assurance issue carries a twist. The BSP's Internal Audit team is fully on board, but it knows that it must also persuade would-be listers and *their* external auditors, *their* legal and compliance teams, as well as regulators. After all, if there is any doubt about who owns an asset at the moment when it is sold, the transaction may fail. The company operates exchanges for the electronic trading of stocks and options, and it also offers market infrastructure to exchanges, clearinghouses, central securities depositories, and regulators around the world. Given the broader reputational risk, transaction failure is not an option.

To address potential concerns, the BSP's internal auditors worked with an independent neutral third party—a blockchain assurance provider (BAP). The BAP was asked to assess if the exchange had set up its platform in a way that traders can rely upon the integrity and finality of each transaction. In the planning and risk assessment phases, the BAP took steps to confirm its independence and evaluated potential risks.

To do this, the BAP drew on its knowledge of the industry, the technology, client expectations, regulations, and so on. Then it helped design a testing approach and gathered data. The BAP evaluated the technology and examined how it had been connected to adjacent technology platforms. The BAP also looked at the controls environment: how data and access is secured, what protection exists against tampering, and so on. Finally, the BAP joined the network as an observing (non-transacting) member, allowing it to review and confirm the validity of transactions in real time. Reviewing what happens in real time, rather than testing selectively after the fact, is a dramatic departure from current audit techniques.

What this means for your business

The road ahead

The modern financial services industry has evolved to include a range of complex network of participants and processes. Technology shifts are now making it possible to rethink which relationships make sense, and whether they are still necessary.

Traditionally, firms on each side of a transaction depend on an overlay of controls to be sure that everything is done right. There is also selective, after-the-fact testing to be sure that controls have worked as intended. Blockchains could change all this by reducing the friction of the intermediate processes and by testing everything in real time rather than testing some things later.

"We're convinced that distributed ledger technology will bring an array of benefits to companies, intermediaries, regulators, and investors," said Grainne McNamara, a principal in PwC's Capital Markets Advisory practice. "But this will only happen once stakeholders can be assured that blockchains have been set up effectively with appropriate reviews and controls, just as with any other new technology. As such, it is in all of our interest to build blockchain systems with reliable governance protocols that can be evidenced and examined."

The BAP review of the exchange provider's platform, described above, offers a convincing example of how this can be done. We expect that acceptance of blockchain assurance by Internal Audit will play a key part in helping the technology transition from casual experimentation to broad acceptance. As for the "once upon a time" blockchain stories, perhaps they will soon end with "happily ever after."

INDIA'S BLOCKCHAIN REVOLUTION GOES BEYOND BANKS INTO LAND RECORDS AND PRIVATE FIRMS

Source : Forbes.com

Forbes / Asia / #NewTech
DEC 28, 2017 @ 01:00 PM 17,284

India's Blockchain Revolution Goes Beyond Banks Into Land Records And Private Firms

Sindhuja Balaji, CONTRIBUTOR
FULL BIO

Opinions expressed by Forbes Contributors are their own.

Legal experts in India believe the country's real estate industry could radically transform if blockchain was used to [+]

With digital adoption gaining traction in India, blockchain technology has caught the fancy of many. While blockchain technology continues to see sustained support from Indian banks, state governments and private companies are increasingly exploring blockchain for improved governance, enhancing efficiency of business processes, and ensuring transparency.

Blockchain technology began gaining prominence in the country following the emergence of bitcoin. While the legality and veracity of cryptocurrencies is being

debated in India, technology companies have begun shifting focus to the utility of blockchain technology. Specifically, Indian banks have been experimenting with blockchain technology by developing in-house Proof-of-Concept projects. According to a PwC report, 56% of Indian businesses are inclined to make blockchain a part of their core business, and three key areas that the technology will impact are payments and funds transfer infrastructure, digital identity management and post-trade settlements.

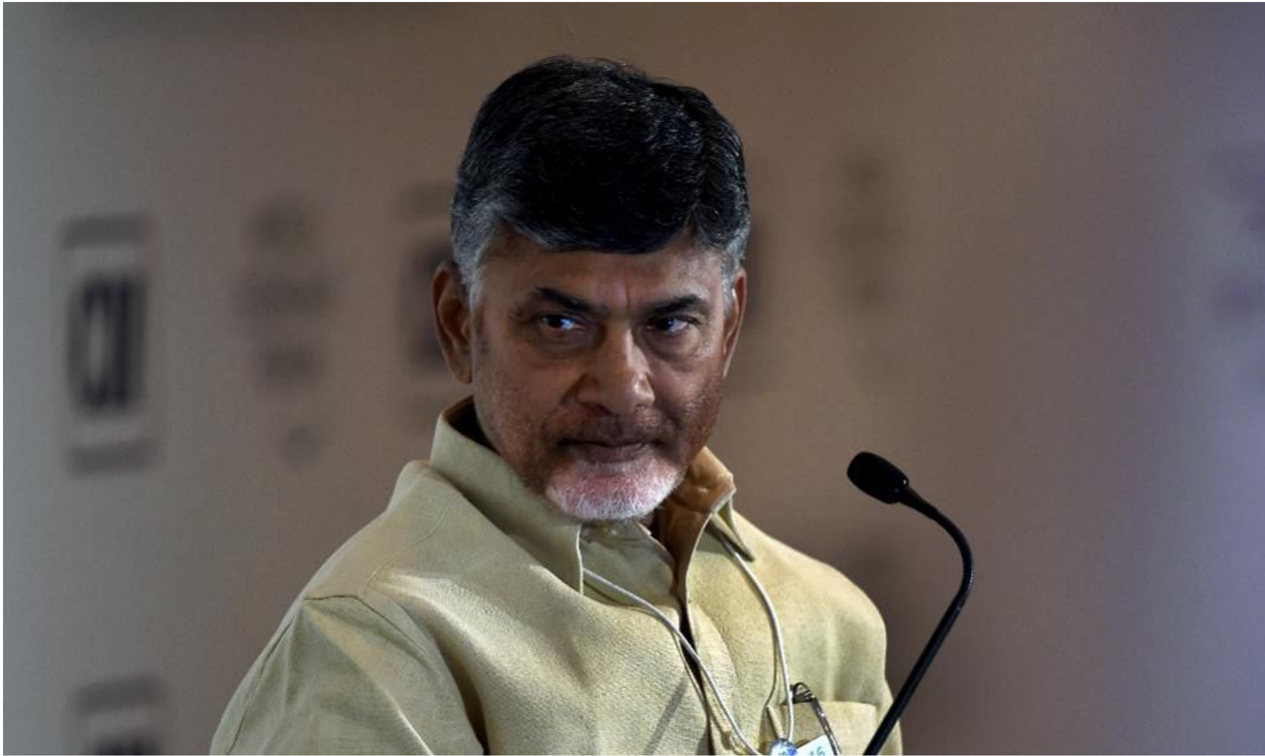
Not just for banks

However, the allure of a distributed ledger system is extending well beyond the financial services sector. Specifically, the implementation of blockchain in property transactions would be revolutionary in India. Land titles in India do not guarantee an owner his complete rights. Moreover, property transactions are done on paper and not updated very often, leading to innumerable property disputes. According to a paper published by PRS Legislative Research, the pace of bringing land records online has been slow, and a move towards conclusive land titling has been proposed, which involves migrating to an organized, perhaps digitized method, of chronicling land records in India.

This is where blockchain technology could play a definitive role, legal experts believe. Rahul Matthan, partner at Trilegal, one of India's largest law firms that services multiple industries including banking and real estate, says, “Land records, like any other registry in India, are centralized and maintained in the office of the sub-registrar. It is possible that the contents of these papers could be altered or tampered. If land documents are stored on a distributed ledger, it will be impossible to tamper with them.”

While the Indian government has renewed its interest in digitizing land records through the Digital India Land Records Modernization Programme (DILRMP), the implementation of a distributed ledger first to digitize existing land records and set the precedent for future transactions ensures a legitimate, government-approved record of transactions.

Matthan says, “The opportunity to build a layer of technology on top of an existing registry is immense. It allows one to perform tasks like audits with ease and speed. Since personal data can be encrypted, the identity of the buyer or the seller can be kept confidential. The future of property transactions lies in smart contracts, which are automated and don’t require an intermediary.”



Andhra Pradesh chief minister Chandrababu Naidu is spearheading blockchain trials in his state and has already [+]

The use of blockchain for land dealings ties into the larger mandate of e-governance in India. While many state governments are exploring the usage of the technology, Andhra Pradesh is leading the way by conducting trials within its departments. The state is working with startups such as Snapper Technologies and SimplyFy to implement blockchain across administrative processes. Earlier this year, Swiss startup WISEKey collaborated with the government of Andhra Pradesh to explore blockchain Proof of Concepts. The state has already implemented blockchain pilot projects in the departments of land records and transport. J A Chaudhry, advisor of information technology to the state of Andhra Pradesh said, “Cybersecurity is a top priority, especially since the government is adopting digital platforms rapidly. Blockchain technology is the only trust protocol that guarantees safety of all digital and financial assets. By implementing blockchain across the government, we can secure the integrity of Prime Minister Modi's Digital India initiative.”

Chaudhry added that the Andhra Pradesh government is working towards integrating its own e-governance program and securing its assets on blockchain by the end of 2019.

Spreading like wildfire

Meanwhile, the blockchain bug has bitten private major Indian companies as well, which are experimenting with PoCs that can replace outdated business processes, save time and operational costs.

Indian conglomerate Mahindra Group and IBM developed a blockchain solution in 2016 to reinvent supply chain finance across the Mahindra chain in India. At a conference, Sankarson Banerjee, chief technology officer of India's National Stock Exchange, said that the organization was seeing immense value in using distributed ledger technologies to lower operational costs. YES Bank, one of the country's largest private sector banks, said that they have implemented a multi-nodal blockchain transaction to digitize vendor financing for Bajaj Electricals, based on a smart contract written by fintech startup Cateina Technologies. Shekhar Bajaj, CMD of Bajaj Electricals, said, "The blockchain solution by YES BANK enables us to do timely processing of the vendor payment through vendor financing from the bank without physical documents and manual intervention. It also enables us and our vendor to track the status of the transactions in real time."

One of the biggest hurdles in development of blockchain is scalability, according to Karthik Iyer, founder of Blockchain Monk, which provides solutions and training for senior management and developers on blockchain. "Blockchain has moved from being a hyped-up technology concept to a value-add in business. Moreover, blockchain can help India attract foreign capital too. The technology development is still in its nascent stages in India, but it can be scaled to suit the needs of large businesses and government processes."

The recent launch of the Blockchain Foundation of India (BFI) reiterates the belief that blockchain is here to stay. BFI aims to promote blockchain initiatives in India, build a community and promote startups to scale the technology for different businesses.

The country's penchant for a digital revolution has permeated to the core of the economy. With the government throwing its weight behind such experimental technology, there is scope for it to become mainstream very soon.

IMPACT OF GDPR ON INDIAN DATA PROCESSING COMPANIES

Source : Khaitan & Co

The Impact of General Data Protection Regulations on Indian Data Processing Companies

By: Harsh Walia (Associate Partner) and Shobhit Chandra (Senior Associate) Khaitan&Co.

While European Parliament's General Data Protection Regulation (GDPR) is slated to have global and far-reaching ramifications, a degree of uncertainty looms amongst Indian companies, especially those which are engaged in outsourced data processing activities (whether captive or otherwise) and consequently deal with personal data of data subjects in the European Union (EU). This uncertainty is mainly with respect to the applicability of GDPR and its implications on their businesses. The penalty scheme prescribed under the GDPR is also a cause of concern for such companies since GDPR permits enforceability against a data processor directly.

With a little over six months remaining before GDPR comes into force on 25 May 2018, this is an opportune moment for several companies to revisit their policies and procedures with respect to data privacy and protection and ensure preparedness ahead of time.

Are Indian data processing companies subject to GDPR?

The definition of data processor under GDPR has a very wide connotation. It means any operation performed on personal data such as collecting, recording, structuring, storing, using, disclosing by transmission and even includes erasing and destroying. Article 3 (Territorial scope) of GDPR makes it clear that it will be applicable regardless of whether the processing takes place in EU or not.

Therefore, an Indian company processing personal data in context of activities of an establishment of a controller or processer in EU, in all likelihood will fall within the ambit of GDPR.

What can Indian data processing companies expect?

Prior to undertaking any processing activity, Indian companies will be required to enter into a contract with their customer (generally, a data controller). Such contract will, *inter alia*, stipulate the subject-matter and duration of processing activity, its nature and purpose and the type of personal data and categories of data subjects.

By way of such contract, a customer (the data controller) will seek from an Indian company a flow down of the following obligations:

- Implementation of appropriate organisational measures to ensure (i) pseudonymisation and encryption of personal data; (ii) confidentiality and integrity of processing systems; (iii) restoration of availability and access to personal data after a physical or technical incident; and (iv) regular testing and evaluation of such measures;
- In the event of a personal data breach, the same must be notified to the customer without undue delay after it becomes aware of such personal data breach; and
- Carry out a data protection impact assessment prior to commencement of the processing activity.

Many may feel that this does not change anything substantially as such Indian companies even today have contracts with their customers. It must be noted that GDPR mandates that the contract between data controller and processor will necessarily comprise of the obligations stated above. In addition to the foregoing, an Indian company carrying out data processing will also be obligated to allow the customer to conduct an audit and inspection of its systems to demonstrate compliance with the above. Further, the right of a data processor to subcontract their obligations has been curtailed and made conditional to the data controller's approval. Therefore, the ability of an Indian process outsourcing company to refuse flow-down of contractual obligations has been severely impacted.

Adequacy requirements

A keystone of GDPR is the stipulation of 'adequacy requirements' which restrict the transfer of personal data to any third country or international organisation that does not "ensure an adequate level of protection." In doing so, the European Commission will consider whether the legal framework prevalent in the country to which the personal data is sought to be transferred, affords adequate protection to data subjects in respect of privacy and protection of their data.

In India, the current legal framework pertaining to data privacy and protection is far from lucid. The recent judgment of the Hon'ble Supreme Court declaring the right to privacy as a fundamental right(Privacy Judgment) has provided much-needed impetus to introducing a long-awaited, all-encompassing data protection legislation in India (Forthcoming Legislation). It will be interesting to see how the Forthcoming Legislation shapes up and whether it will satisfy the criteria laid down under GDPR.

Khaitan Comment

In this era of globalisation and integrated product offerings, the generation, use and flow of personal data has amplified considerably. In the process, both private as well as public entities have acquired access to personal data of individuals, giving rise to concerns with respect to collection, processing,

use, storage of such personal data. With the advent of GDPR, many of these concerns in respect of EU citizens will be dispelled to a considerable extent.

Most multinational companies find themselves increasingly dealing with personal data of EU citizens. Indian companies that engage in data processing also gain access to such information as a part of their day to day operations, bringing them within the ambit of GDPR. Simultaneously, GDPR casts some onerous obligations on a data processor. Many of these will entail significant time and capital investment to comply with. Further, data controllers now have a statutory basis for claiming contractual protection from data processors. Earlier, such flow-downs were a subject of commercial negotiation between the parties and could be subverted on that ground. Undoubtedly, this will place such Indian companies in a precarious position in comparison to their standing in the period preceding the enforcement of GDPR.

To add to this, whether or not India will meet the 'adequacy requirements' will be discerned by the manner and profundity with which the Forthcoming Legislation deals with these 'adequacy requirements'. While Privacy Judgment has presented several anecdotes for the legislature to consider while framing this legislation, it will be interesting to see to what extent they are adopted. Many experts anticipate that the Forthcoming Legislation will be on the lines of GDPR and this may aid its acceptance by the European Commission.

Notwithstanding, we feel that this presents a golden opportunity to Indian data processing companies to revisit their data protection, information security and confidentiality policies and make them compliant with global standards. This pre-emptive step will not only help them in sustaining their businesses, but also in securing compliance with GDPR, Forthcoming Legislation and other global best practices.

Posted by: **DQINDIA Online**

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NETGEAR Drives Innovation with New 5-Speed Switches Featuring Multi-Gigabit Technol

THE BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016

NEW PERSPECTIVE POST AMENDMENT

Source : The Institute of Chartered Accountants of India Journal, February 2018

The Benami Transactions (Prohibition) Amendment Act, 2016 - New Perspective Post Amendment

Benami Transactions (Prohibition) Act, 1988 has been amended and renamed as Prohibition of Benami Property Transactions Act, 1988 (PBPT Act). Benami Act mainly focuses on finding real names behind nameless real estate transactions. The amended act clearly defines the benami transactions, establishes adjudicating authorities and an Appellate Tribunal to deal with benami transactions, and specifies the penalty for entering into benami transactions. Read on to know more….

CA. Subhashini Giridhar

(The author is a member of the Institute. She can be reached at subhagiri27@gmail.com.)

Introduction and terms used

A property purchased by an individual not under his or her name is known as Benami property. Benamidar is the person in whose name the benami property is held or transferred. Thus, the property is Benami and the person Benamidar. A Beneficial owner is

the person for whose benefit the property is being held by the benamidar and the person who finances the deal is the Real owner. Benami Act is aimed to check tax evaders and to give transparency to the financial transactions and improve transparency in the economy.

Our CA Motto in the verse '*Ya esa supteshu Jagarthi*,' precisely emphasises the importance of Transparency– *"Tadeva shukram tad Brahma". 'Shukram'*- means that which is pure. When a substance or a thing is pure, it is transparent, hence clearly visible and that is Brahman. In the same way, transaction and its audit trail should be transparent.

The Act Renamed

The 28-year-old original Benami Transactions (Prohibition) Act, 1988 has been amended and modified into The Benami Transactions (Prohibition) Amendment Act, 2016. The Income Tax department has notified that this is renamed as Prohibition of Benami Property Transactions Act, 1988 (PBPT Act) and has come into force from 1st November, 2016.

Benami Act–Reasons for an Amendment

The most important reason for an amendment was that the primary act was not comprehensive and there was lack of proper implementation mechanism. The other reasons were - absence of appellate authority and lack of provisions for vesting of the confiscated property with the Central government. In addition to these, there were loopholes in the Act and the definition lent itself to ambiguities in its interpretation.

The justification for bringing an Amendment Act instead of a new Act

If a new Benami Act had come into force, in place of the old one, then the penal provisions, which are there in the primary act, could not be applied retrospectively. This would mean giving immunity to black money transactions of 28 years and who acquired benami properties before 2016, from the penal provisions.

Whether the amendment has retrospective effect?

Any property held benami is not limited to any particular time, date or duration. It is applicable to past transactions as well. Section 4(1) will apply at whatever stage the litigation might be pending in the hierarchy of the proceedings. Necessarily, by implication, it would apply to all pending proceedings wherein right to property allegedly held benami is in dispute between the parties.

The most important reason for an amendment was that the primary act was not comprehensive and there was lack of proper implementation mechanism. The other reasons were - absence of appellate authority and lack of provisions for vesting of the confiscated property with the Central government.

What is a Benami Property?

As per Section 2(8) of Prohibition of Benami Property Transaction Act, 'Benami' property is any asset (also includes proceeds from such property), that is not held in the name of the person or people who may have actually paid to acquire it.

It also includes assets held in the names of family members, associates, friends, and employees. But the person on whose name such a property is held may not have any means of establishing a trail of income using which it was paid for.

'Property' in Benami Transaction includes

Any asset having an intrinsic value, movable, immovable, tangible, intangible, any right or interest, or legal documents, real estate, jewellery, financial securities, gold or silver artifacts, cash deposits into bank etc.

Instance of new Benami transactions– cash deposits (Post Demonetisation)

Arrangements, where a person (beneficial owner) deposited demonetised currency in the bank account of another person (benamidar) with an understanding that the account holder shall return his money in new currency are being treated as benami transaction under the law.

Tests- whether a transaction is Benami or not?

Who paid the price for acquiring the asset? And what is the 'Source' of the money used? Who has the possession of the property after the purchase? i.e. the nature of possession of the property. What is the motive/intention and surrounding circumstances of the transaction? What is the relationship between the parties i.e., whether the real owner and the

ostensible owner were related to each other or were strangers or friends? Who has the control over the property? i.e. the conduct of the parties in dealing with the property. Who has the custody of the title deeds after the sale? While filing income tax return, is there any disclosure of the income from the property?

Definition

Section 2(9) of the Benami Transactions (Prohibition) Amendment Act, 2016 defines "Benami Transaction" to mean:-

A) *A transaction or an *arrangement-*
   - *(a) Where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by another person; and*
   - *(b) The property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration OR*

B) *A Transaction or an arrangement, in respect of the property is carried out or made in a fictitious name; or*

C) *A Transaction or an arrangement, in respect of the property where the owner of such property is unaware of or denies having knowledge of such ownership;*

D) *A Transaction or an arrangement, where the person providing consideration is not traceable or is fictitious.*

Kinds of Benami Transactions – two types

<u>Type I)-</u> A person, purchases a property, with his own money but in the name of another person without any intention to benefit such other person. The transferee holds the property for the immediate/future/direct/indirect benefit of the person who has contributed the purchase money, then the purchaser/financier is the real owner.

<u>Type II)-</u> A person holds the real ownership rights while transferring the ownership for namesake to someone else or the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder Or the real owner would typically keep the original papers of the property in his or her possession, and execute a power of attorney, which will allow the sale of property whenever required. Again, the new owner would keep holding the property by way of a power of attorney, while in records the owner remains the same as before.

The common feature, however, in both these cases is that the real title is divorced from the ostensible title and they are vested in different persons.

Note- Post Amendment – In place of words "Known sources of Income" the word 'Income' has been omitted and only "Known sources" has been retained

Exceptions to Benami Transactions under Section 2(9) – Legitimate relaxations -

Property held by:-

i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual.

iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual.

This means, by law, if one buys a property in name of their parents, that too, can be declared as benami.

Further exceptions to Benami Transactions are:-

v) The Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act.

vi) The properties in tribal areas can be exempted from the purview of the law by the Governor of the respective state.

An exception to exceptions

There are 4 exceptions to clause (A) of Section 2(9) of BTP Act. One can notice that in all the four exceptions except (ii), the requirement is that the owner should have paid for the property out of "known sources". Hence, if a person is holding a property which is purchased out of unknown source of funds by the person for whom he stands in a fiduciary capacity, then the said transaction will not be considered as benami transaction. The way clause (ii) is drafted does give room for persons in fiduciary capacity to escape the provisions of BTP Act.

Following are not a Benami Property

If a property has been transferred and the contract has been executed partly, under the Transfer of Property Act 1882, subject to the fulfillment of few conditions, namely stamp duty on such a transaction has been paid, and the contract has been registered or if the eligible benami property has been declared under the Income Declaration Scheme or if the property transaction is done based on General Power of Attorney (GPA), through a registered contract and even stamp duty is paid, such property is not considered as benami property.

The prohibitions under Benami Property Act

No person shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf. It prohibits recovery of the property held benami from benamidar by the real owner. Where any property is re-transferred in contravention of above provision, the transaction of such property shall be deemed to be null and void.

If a person is holding a property which is purchased out of unknown source of funds by the person for whom he stands in a fiduciary capacity, then the said transaction will not be considered as benami transaction.

As per the Act, no person shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf. It prohibits recovery of the property held benami from benamidar by the real owner.

Prohibition of the right to recover property held - Section 4

Prohibition of the right to recover property held benami.—

No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

What will happen to the Benami Property?

Procedure

An Initiating Officer may issue a notice to show cause why the property should not be treated as benami property. If any person, attempts to alienate that property, after receiving a show cause notice, such a transaction will be held null and void. The Initiating Officer, may attach provisionally the property (and hold the property for 90 days, subject to permission from the Approving Authority) in the manner as may be prescribed. At the end of the notice period,

the Initiating Officer may, within fifteen days refer it to the Adjudicating Authority. The Adjudicating Authority may pass an order either revoking or confirming the order of Attachment, within a period of 30 days. The Administrator will receive and manage the property in a manner and subject to conditions as prescribed. An Appellate Tribunal shall hear appeals against any orders passed by the Adjudicating Authority, within 45 days of the date of such order.

What are the Penalties under this Act?

Penalty: The offences are non-cognisable and non-bailable.

Offence	Fine	Imprisonment
For guilty of offence of a benami transaction	Upto 25% of the Fair Market Value	Minimum 1 year upto 7 years
For providing false information	Upto 10% of the Fair Market Value	Minimum 6 months upto 5 years

Those facilitating a benami deal are also to be punished.

Power to make rules (Section 8)

Central Government may by notification in the official gazette, make rules for carrying out this act.

Following are the sources of data for tracking a benami transaction

Aadhaar seeding of revenue data of agricultural lands, property tax data of buildings, vacant land tax of open plots which will help identify original owners of properties, a search for high-value transactions, information sent by banks, mutual funds and other such institutions in the form of Annual Information Reports, transactions that attract tax collected at source (TCS) and tax deducted at source (TDS) and the transactions that require the PAN to be quoted.

Declaration of Benami Properties

The beneficiary had to declare the Benami transactions before March 31, 2017. The money from these illegal transactions must be declared and deposited under the Prime Minister Garib Kalyan Yojana, 2016.

Post Demonetisation/post Amendment

It is aimed at increasing transparency and professionalism in the industry.

The Act seeks to give the Government powers to confiscate benami properties-assets held in the name of another person or under a fictitious name to avoid taxation and conceal unaccounted- for wealth.

Important points in summary

Right to property was a fundamental right but now it is a creation of statute. According to the amended Act, property can be bought only in the name of spouse or children's name without being a joint holder.

Conclusion

Prohibition of Benami Property Transactions Act, 1988 (PBPT Act) aims to curb the corruption, black money, money laundering, tax evasion and acquisition of land resulting in land concentration.

The practice of including the correct name in property transactions will bring transparency in the real estate market. With increased transparency, title risks would be minimised and buyer confidence in residential property transactions will be enhanced. The Government directly or indirectly has led the nation towards a cashless (transactions) society.

To sum it up, we may conclude, 'Transparency' of the transactions is the key word. Thus, we Chartered Accountants, as "Partners in Nation building" as said in our CA Motto - *"Kaamam kaamam purushor nirmimaanaha"*, have a vital role in this regard. Our role as CAs is in emphasising the Transparency of transactions - (quoting our CA Motto - *"Tadeva shukram tad brahma"*) so that there is no transaction which is without a valid name. Every transaction shall have an audit trail and shall have the transparency of the transactions. ■

Without continual growth and progress, such words as improvement, achievement, and success have no meaning. - Benjamin Franklin

RBI'S REVISED FRAMEWORK FOR RESOLVING STRESSED ASSETS

Source : PWC

RBI's revised framework for resolving stressed assets: Building transparency and accuracy

Introduction

Non-performing assets (NPAs) have become a major challenge for both public and private sector banks in India. In the exuberant milieu that started way back in 2004–05 and continued for three years until the global financial crisis of 2008, large corporations conceived major project proposals in capital-intensive sectors such as power, ports, airports, housing and highway construction. Banks were only too keen to lend, often without sufficient evaluation of risks and returns. Things started worsening with the policy paralysis brought about by the spectrum and coal mining scandals. Soon, most projects were getting stuck, especially in power and highways. Banks found their loans going sour, which led to the whole situation of NPAs. Initially, the extent of NPA was hidden by 'ever-greening'. It was revealed later as the Reserve Bank of India (RBI) tightened the norms.

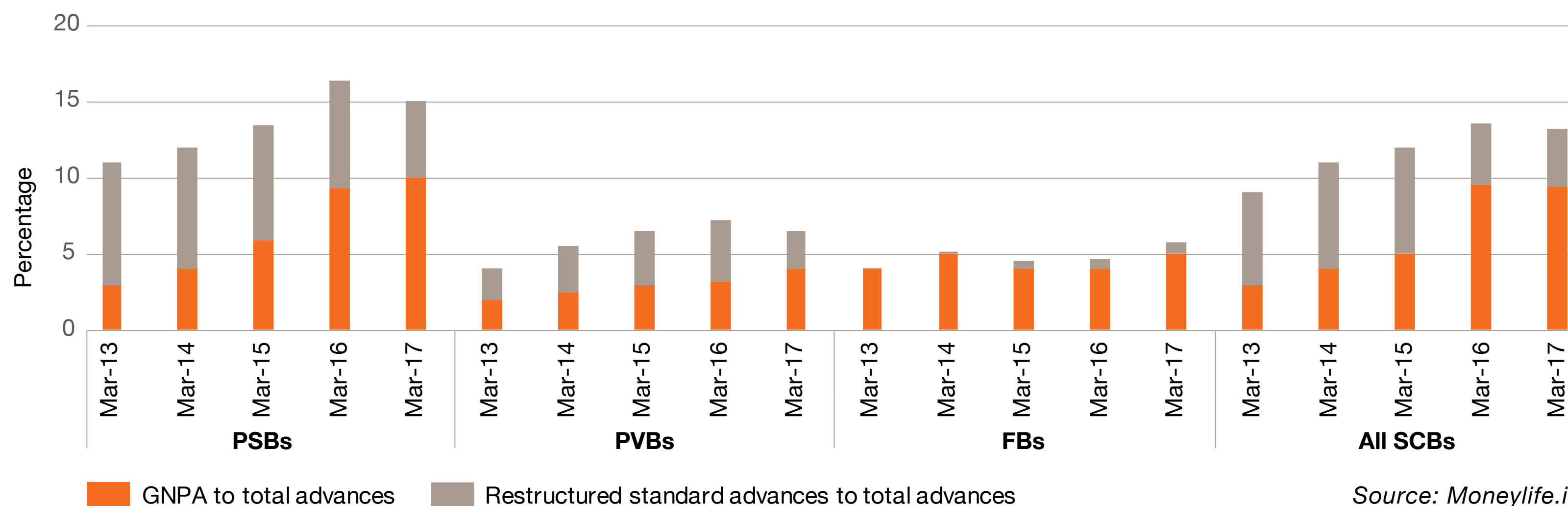
In the recent past too, Indian banks have been saddled with increasing levels of stressed assets and NPAs. Indian banks' gross NPAs stood at 8.40 lakh crore INR as on 30 September 2017. The ratio of NPAs was particularly disturbing when it came to public sector banks (PSBs):

	Gross NPAs (in lakh crore INR)															
	Dec-13	Mar-14	Jun-14	Sep-14	Dec-14	Mar-15	Jun-15	Sep-15	Dec-15	Mar-16	Jun-16	Sep-16	Dec-16	Mar-17	Jun-17	Sep-17
Public sector banks	2.28	2.27	2.35	2.51	2.73	2.78	2.96	3.14	4.95	5.40	5.92	6.30	6.46	6.19	7.33	7.34
Private banks	0.24	0.23	0.26	0.27	0.30	0.32	0.35	0.37	0.46	0.56	0.62	0.75	0.87	0.92	0.96	1.06
Total	**2.52**	**2.51**	**2.61**	**2.78**	**3.03**	**3.11**	**3.31**	**3.51**	**5.41**	**5.96**	**6.54**	**7.06**	**7.33**	**7.11**	**8.29**	**8.40**

In this context, the RBI and the government are proactively taking steps to resolve NPA challenges in the banking sector. The government has empowered the RBI to chalk out plans for addressing the bad loans problem, with a focus on large stressed accounts that have been classified partly or wholly as non-performing from amongst the top 500 exposures in the banking system, and mandated that a dozen such accounts be taken to the bankruptcy courts (Insolvency and Bankruptcy Code [IBC], 2016).

During 2016–17, while deposit growth of scheduled commercial banks (SCBs) picked up, credit growth remained sluggish, putting pressure on net interest income (NII), particularly of PSBs, and they also continued to show a negative return on assets (RoA). The gross non-performing advances (GNPAs) of the banking sector rose along with the worsening of the banking stability indicator (BSI) between September 2016 and March 2017 due to deterioration in asset quality and profitability. The macro stress test[1] indicates that under the baseline scenario, GNPAs of SCBs may rise from 9.6% in March 2017 (as shown in the chart below) to 10.2% by March 2018.

Stressed assets



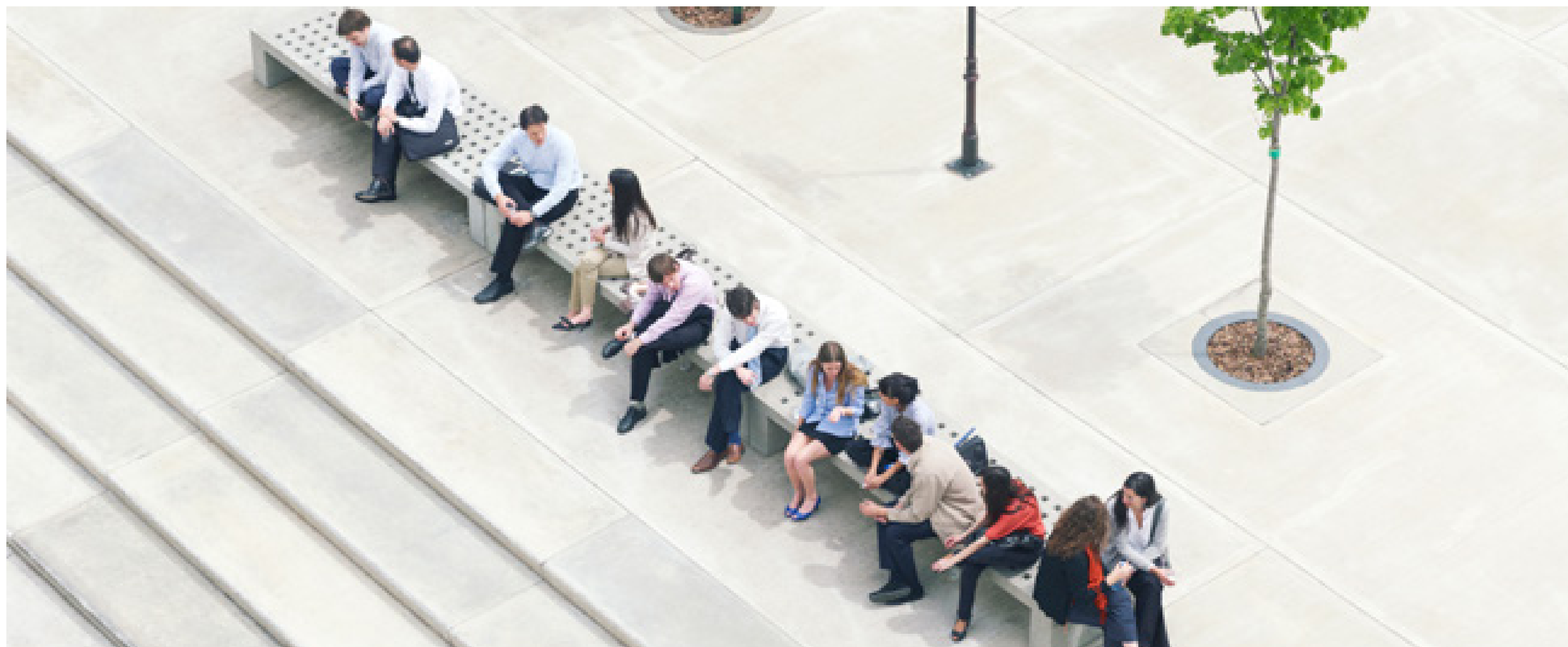
Source: Moneylife.in

1. Financial Stability Report, RBI, June 2017

The RBI also reinforced its supervisory and enforcement frameworks by revising the prompt corrective action (PCA) framework and establishing an Enforcement Department. Once PCA is triggered by the regulator, the bank faces restrictions on spending money on opening branches, recruiting staff and giving increments to employees. Further, the bank can disburse loans only to those companies whose borrowing is above investment grades.

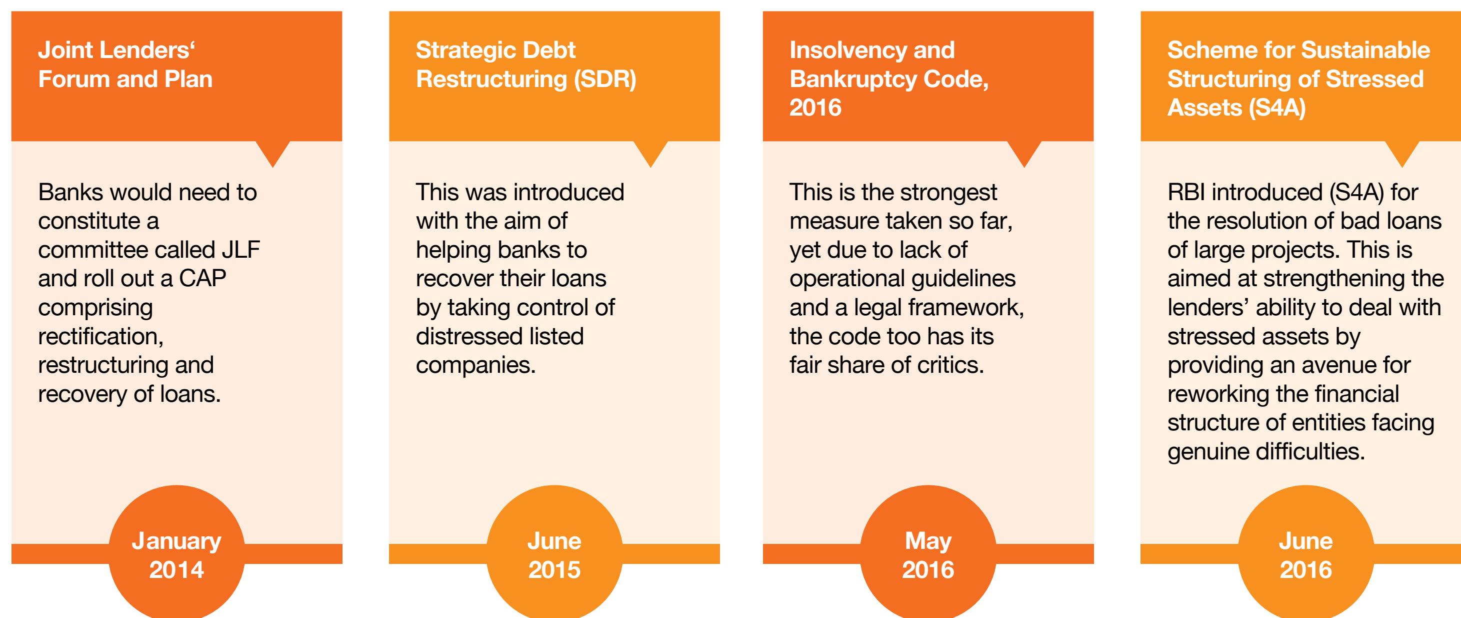
The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) Act, 2002, was amended in 2016 as it took banks years to recover the assets.

Experts have pointed out that the NPA problem has to be tackled before the time a company starts defaulting. This needed risk assessment by the lenders and red-flagging of the early signs of a possible default.



Why did the existing schemes fail?

The NPA story is not new in India and several steps have been taken by the government on legal, financial and policy-level reforms. Taking note of the existing stressed assets and NPA situation, the RBI introduced a host of schemes and frameworks with the aim of curtailing the growing NPAs. These are tabled as under:



However, these measures have been riddled with their own set of problems:

1. As NPAs kept on increasing, the RBI rolled out quite a few measures to improve the asset quality of banks. The RBI had strong notions that some of the banks are underreporting their NPAs. Asset classification practices were not as per the set standards and several banks resorted to ever-greening of accounts. Here, banks were postponing bad-loan classification while depicting accounts as performing. To resolve this, during 2015, the RBI had conducted an inspection of selected banks' balance sheets at random and released an Asset Quality Review (AQR) report. This report revealed a higher level of asset quality deterioration or NPAs with the inspected banks. As per the review, almost all PSBs had higher NPAs than reported. In the case of private sector banks, the impact was limited to big lenders in the industry.

2. The so-called Joint Lenders' Forums (JLFs) mandated that banks adopt measures for early identification to tackle stressed loans, which gave them a jumpstart, especially in large and complex cases of corporate debt, because of differences among creditors on how best to resolve them. As per the JLF framework, at least 75% of creditors by value of the loan and 60% by number of lenders in the JLF were needed to agree to the restructuring plan. Obtaining consensus of creditors was a major bone of contention for the JLF, which in turn reduced the effectiveness of the forum.

3. The Strategic Debt Restructuring (SDR) mechanism introduced soon after was also not lucrative for lenders. While the scheme seemed interesting to begin with, it was soon evident that there were no buyers in cases where it was being invoked.

4. Soon after, the RBI introduced the S4A Scheme. This scheme, however, only covered projects that had already started commercial production. Further, the scheme was also silent about unsecured creditors, who could always approach a court of law and play spoilsport. Ultimately, by being unsecured creditors, they would not get their dues, but they could certainly delay the process; the banks would then lose time, precious for the revival of a company.

The revised framework

The RBI has issued various instructions aimed at the resolution of stressed assets in the economy, including the introduction of certain schemes at different points of time. In view of the enactment of the IBC, it has been decided to substitute the existing guidelines with a harmonised and simplified generic framework for the resolution of stressed assets.

What's in store for lenders under the revised framework?

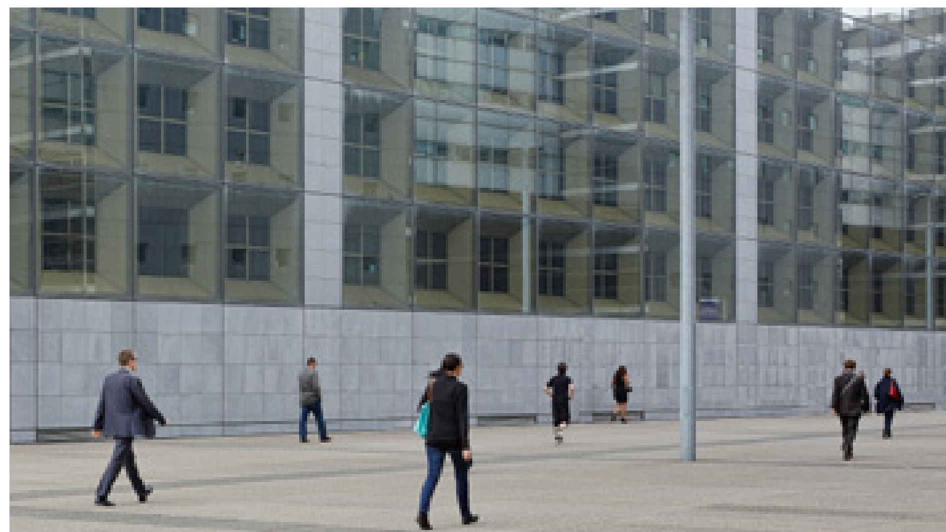
- As per the Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP), banks were required to identify incipient stress in the account by creating three sub-categories under the Special Mention Account (SMA), before a loan turned into an NPA, as stated in the table below:

SMA sub-categories	Basis for classification – principal or interest payment or any other amount wholly or partly overdue between
SMA-0	1–30 days
SMA-1	31–60 days
SMA-2	61–90 days

The revised framework, however, requires banks to identify signs of incipient stress in loan accounts and classify stressed assets as SMAs, *immediately on default*.

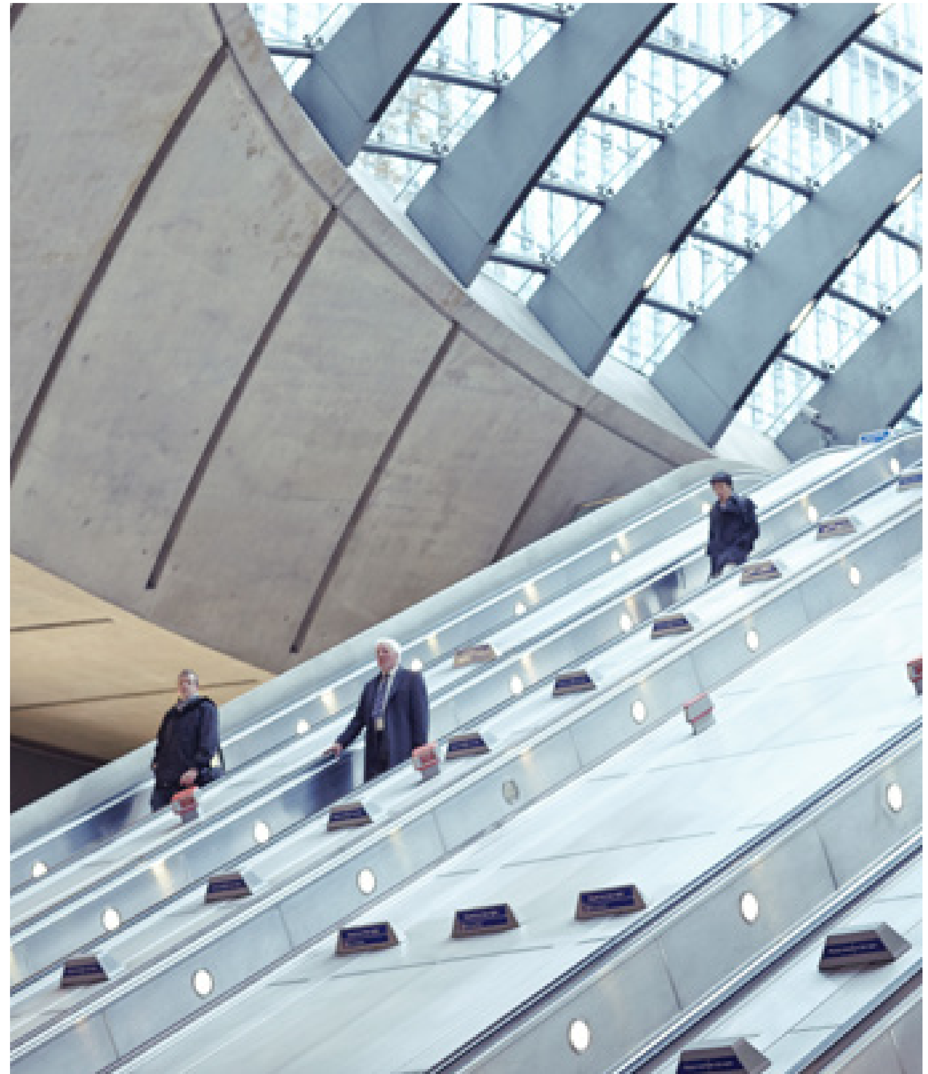
- Further, banks would also have to incorporate changes in their reporting process to include the following:
  - The CRILC Main report will now be sent monthly, as against the quarterly frequency.
  - Banks will also need to submit a weekly report on all borrower entities in default with an exposure of 50 million INR and above. The first such weekly report shall be submitted for the week ending 23 February 2018. This will ensure early identification and reporting of stressed assets by banks.
- Formation and implementation of resolution plans (RPs) by lenders
  - Under the revised framework, all lenders must put in place board-approved policies for the resolution of stressed assets, including the timelines for resolution. As soon as there is a default in the borrower entity's account with any lender, all lenders — singly or jointly — shall initiate steps to cure the default. This means that the revised clause eliminates chances of banks interpreting assets. Currently, while one bank classified an account as stressed, or NPA, others continued to show them as standard. This required the RBI auditors to force show them as divergence in NPA reporting.

- RPs framed by banks against defaulting entities shall be deemed to have been implemented only on satisfaction of conditions laid down by the RBI. This involves ensuring that the borrower is no longer in default. In case the RP involves restructuring, banks will also need to ensure that all related documentation has been completed by all lenders and the new capital structure and/or terms and conditions post-restructuring are duly reflected in the books of accounts. Banks will need to disclose the implementation of RPs in their notes to accounts.
- In case of RPs involving restructuring, banks will need to engage with a CRA for an independent credit evaluation of the residual debt. Additionally, where the exposure is 5 billion INR and above, banks will need to obtain 2 such independent credit evaluations (ICEs). Further, banks need to ensure that RPs with a credit opinion of RP4 or better only are taken up for implementation.
- The new framework puts down strict timelines over which insolvency proceedings must be initiated. These timelines come into effect starting 1 March 2018.
  - For accounts with an exposure of 2,000 crore INR or more, banks will have to ensure that a resolution plan is in place within 180 days after a 'default'.
  - If the resolution plan is not implemented within 180 days, the account must be referred to the IBC within 15 days.
  - For large accounts where a resolution plan is being implemented, the account should not be in default at any point during the specified period.
  - If there is a default within the specified period, the lenders should file an insolvency application.
  - For accounts with exposure of 100 crore INR to 2,000 crore INR, a timeline for resolution will be announced over a two-year period.
  - These timelines will lead to speedy recovery of the loan from the borrower.



- The revised framework lays down additional requirements for upgrading large accounts, post NPA classification. Banks will need to ensure that, in addition to demonstrating satisfactory performance, the credit facilities of the borrowers shall also be rated as investment grade (BBB or better) by CRAs at the end of the specified period.
- The new framework will subsume almost all stressed asset schemes. This includes:
  - Corporate Debt Restructuring Scheme
  - Flexible structuring of existing long-term project loans
  - Strategic Debt Restructuring (SDR) Scheme
  - Change in ownership outside SDR
  - Scheme for Sustainable Structuring of Stressed Assets (S4A)

  The JLF which was overseeing stressed asset negotiations in the case of large consortium loans also stands disbanded.



Conclusion

With the new framework in place, the RBI aims at a harmonised and simplified generic mechanism for the resolution of stressed assets. This framework has been introduced keeping in mind the regulator's stance on ensuring speedy resolution of bad loans in the future. A predominant theme of the new framework is reliance on the IBC to resolve stressed assets while doing away with a number of interim schemes introduced before India adopted a bankruptcy code in 2016.

In the long run, the new reforms will bring a good structural change that can strengthen the banking system in future. The new rules will instil a sense of transparency and more investor confidence in the financials of banks and change the way banks do business. There will be greater prudence in lending. Cowboy lending, especially towards larger projects where banks lack the capacity to conduct proper appraisals, could be on its way out. Chief financial officers will read loan covenants more carefully because the tolerance for defaults is being lowered considerably. They will need to ensure loan repayment terms are more realistic.

The entire process should involve a high degree of transparency and precision. With the intensity of frauds and scams increasing in the banking sector, it is essential to ensure the accuracy and integrity of reporting. There must be a strong audit framework in place to ensure that banks

accurately report the required information to the RBI as well as integrate regulatory submissions like risk-based supervision (RBS) and Central Repository of Information on Large Credits (CRILC) reporting. Strengthening this would ensure early and accurate identification of bad loans and NPAs and subsequent remedial action by the RBI and the government.

While bank books might get worse over the next 12 months, in the long term, the new NPA rules will ensure that the books reflect the actual underlying asset quality.

REGULATORY DEVELOPMENTS

RELAXATION OF ACCESS NORMS FOR FPIS BY SEBI

Source : PWC

Relaxation of access norms for FPIs by SEBI

What has changed?

The Securities and Exchange Board of India (SEBI) has eased the access norms for investment by foreign portfolio investors (FPIs) by introducing the following changes in the extant regulatory provisions.

1. Discontinuance of requirements for seeking prior approval from SEBI in case of changes in local custodian/designated depository participant (DDP)

An FPI or its appointed global custodian (GC) enters into an agreement with a DDP engaged by it to act as a local/sub-custodian of securities in India before making any investment under the SEBI (Foreign Portfolio Investors) Regulations, 2014. The GC represents its FPI clients and liaises with the local custodian on behalf of its clients regarding custodial services in India.

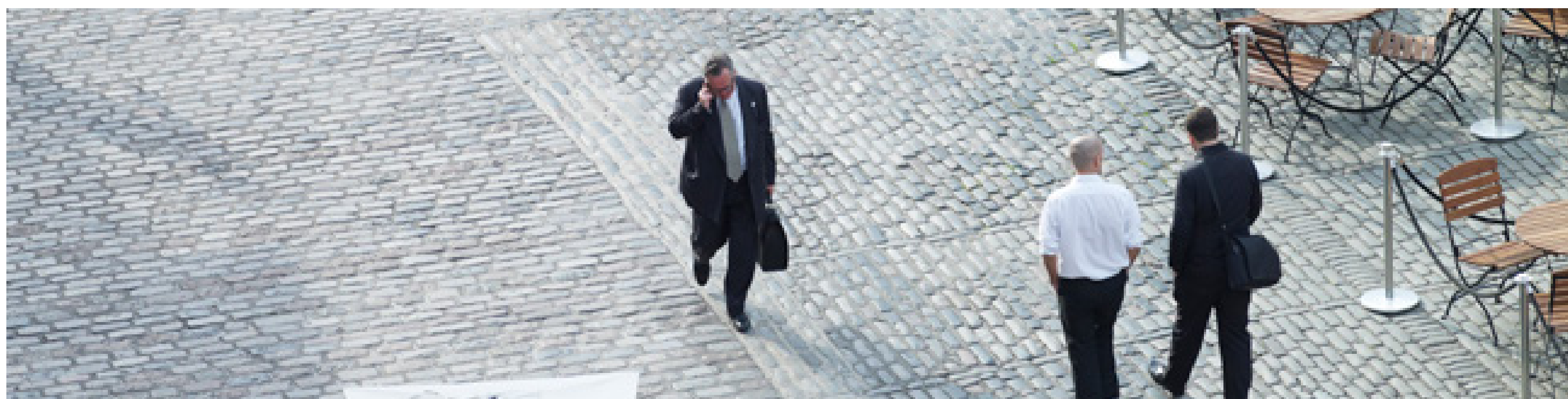
Erstwhile:

In case the FPI wishes to change the DDP/custodian, the request for change shall be intimated to SEBI through the concerned DDP/custodian. On receipt of a no objection certificate (NOC) from the existing transferor DDP/custodian and acceptance from the proposed transferee DDP/custodian, approval from SEBI shall be sought by the concerned FPI.

Changes:

Generally, these GCs manage a large number of FPI accounts and at times shift these accounts from one local custodian to another. Taking a specific request letter from each FPI regarding the change of the local custodian may create operational and logistical challenges. With a view to eliminate these challenges, SEBI has made the following changes to Clause 5.4 – change in DDP/custodian, in its operational guidelines for DDPs:

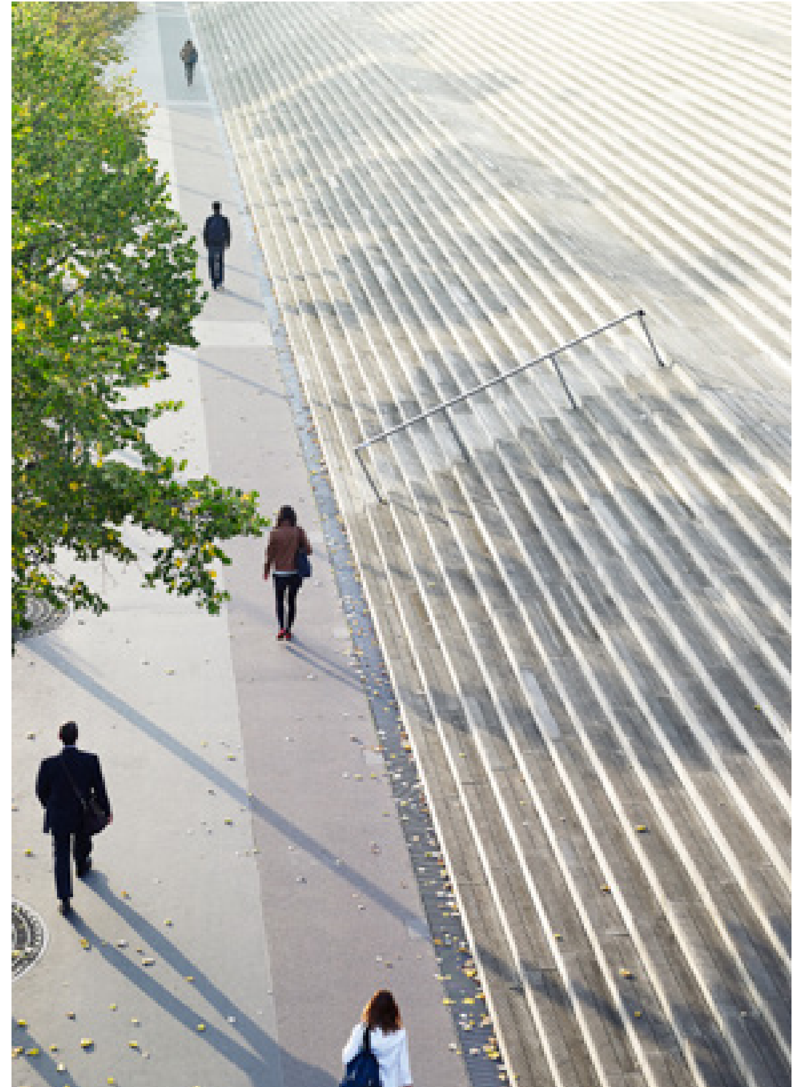
1. The FPI or its GC (with explicit authorisation from its FPI to make such a change) can change its local custodian/DDP without prior approval from SEBI.
2. The new custodian/DDP can rely on the letter from the GC and an NOC from the former local custodian/DDP regarding the change in local custodian.
3. The new custodian shall intimate SEBI about the change in the FPI's custodian and also inform the compliance officer of the concerned FPI regarding such change in cases where the change in custodian was initiated by the FPI's GC.



1. Discontinuance of requirements for seeking prior approval from SEBI in case of changes in local custodian/designated depository participant (DDP)

Impact:

1. In light of the revised guidelines, there would be certain operational changes in the process of on-boarding a new FPI in case of change in the local custodian.
2. The new local custodian/DDP will have to obtain the following documents and incorporate the following checks in the process –
    - A document authorising the GC to change the FPI's local custodian/DDP.
    - A letter from the GC appointing it as the new local custodian/DDP.
    - An NOC from the old local custodian/DDP. Also, a due diligence report performed by the old local custodian before providing a registration certificate to the FPI may be obtained in order for the new custodian/DDP to place reliance on the due diligence performed at the time of FPI registration.
    - After reviewing the adequacy of the documents, the new custodian shall intimate SEBI about the change in the custodian of the FPI.
    - An intimation of change in the local custodian/DDP shall be intimated to the FPIs where the GC initiated such change.
3. The old local custodian/DDP will no longer have to obtain an NOC from SEBI since the same has been done away with as per the revised SEBI circular. They will have to issue an NOC after reviewing any pending dues from the FPI and conducting other internal checks.



2. *Rationalisation of procedure for submission of PCC/MCV declarations and undertakings (D&U) and investor grouping requirement at the time of continuance of registration of FPIs*

Erstwhile:

As per the SEBI (Foreign Portfolio Investors) Regulations, 2014, registration granted by a DDP to an FPI applicant shall be permanent unless suspended or cancelled by SEBI or surrendered by an FPI. For this purpose, an FPI is required to pay the applicable registration fees for every block of three years till the validity of its registration. At the time of payment of registration fee for continuance of its registration, the FPIs were required to re-submit the following –

i. D&Us to the effect that it is not protected cell company (PCC)/multi-class vehicle (MCV), and

ii. Information regarding FPI investor groups.

Changes:

Considering that PCC/MCV D&U and information regarding FPI investor groups is provided by the FPIs at the time of registration/conversion and the details of the same are recorded by the respective DDPs on the National Securities Depository Limited (NSDL) portal. In case there is no change in the information already submitted, the requirement to re-submit PCC/MCV D&U and information regarding FPI investor groups at the time of continuance has been dispensed. Accordingly:

1. Where the following information submitted by FPIs at the time of registration has not undergone any change, the FPIs are not required to re-submit this information at the time of payment of registration fee for continuance of their registration:
   a. D&U submitted by the FPIs vide CIR/IMD/FIIC/1/ 2010 dated 15 April 2010,
   b. Information regarding FPI investor groups.
2. DDPs/custodians will continue to ensure compliance with the KYC due diligence requirement in terms of the extant regulatory requirements.

Impact:

1. The local custodian, as part of their process of obtaining registration fees after every three years from the date of registration of FPIs, need not collect the PCC/MCV D&U and information regarding FPI investor groups; instead, they need to obtain a declaration from the FPI that there is no change in the information provided by them earlier at the time of registration.
2. The local custodian/DDP shall obtain a declaration from the FPI confirming that the KYC details provided at the time of registration have not changed.

3. *Placing reliance on due diligence carried out by erstwhile DDP at the time of change of custodian/DDP of FPIs*

Erstwhile:

When an FPI changes its local custodian/DDP, the new local custodian/DDP is required to carry out adequate due diligence to ascertain the eligibility of the FPI. This practice results in increased documentation and delay in transition of the local custodian/DDP.

Changes:

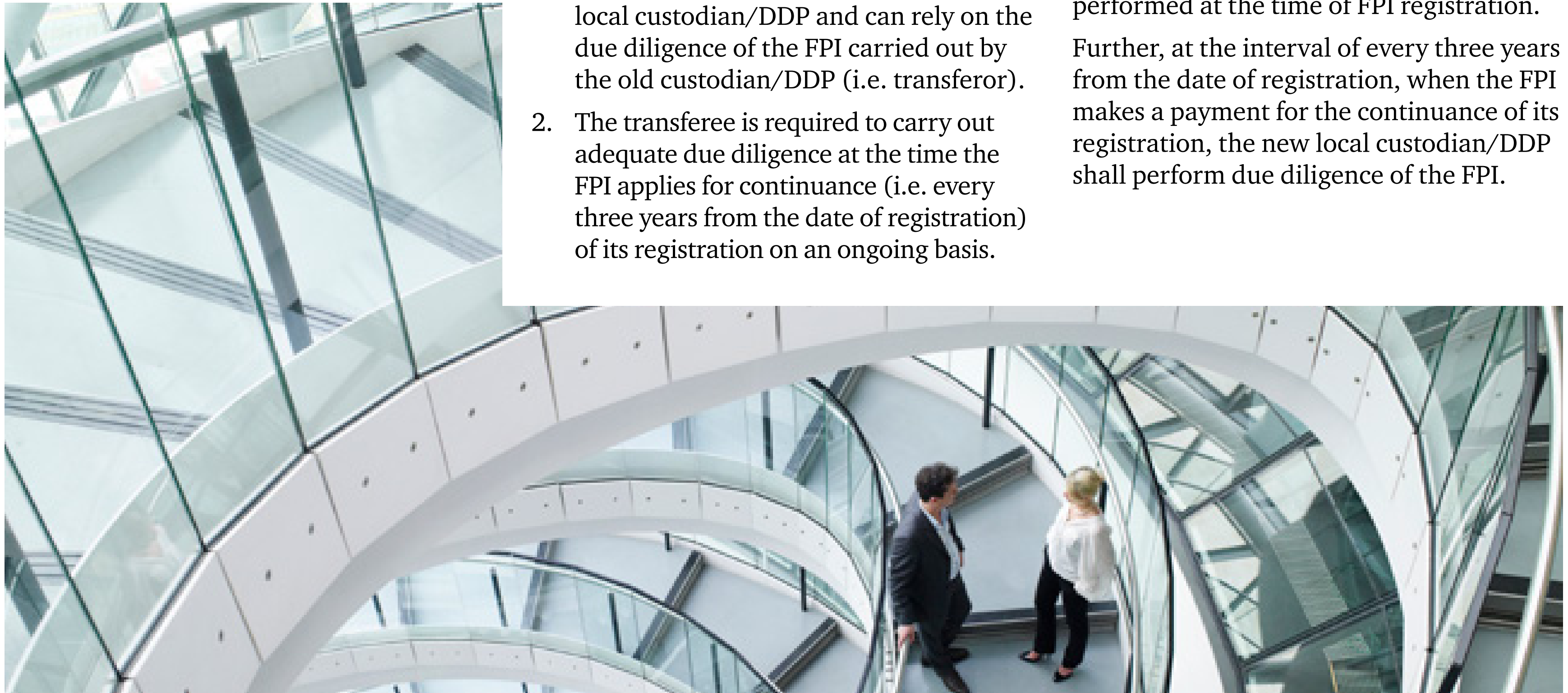
With a view to eliminate the challenges faced on account of the practice of conducting due diligence of an already registered FPI (by the old local custodian/DDP), SEBI has made the following changes –

1. The new local custodian/DDP (i.e. transferee) need not conduct due diligence at the time of transition of local custodian/DDP and can rely on the due diligence of the FPI carried out by the old custodian/DDP (i.e. transferor).
2. The transferee is required to carry out adequate due diligence at the time the FPI applies for continuance (i.e. every three years from the date of registration) of its registration on an ongoing basis.

Impact:

As a result of operational changes effected from the revised SEBI circular on FPIs, the new local custodian/DDP need not conduct due diligence on the FPI to determine its eligibility. The new custodian/DDP may obtain a due diligence report from the old custodian/DDP to place reliance on the due diligence performed at the time of FPI registration.

Further, at the interval of every three years from the date of registration, when the FPI makes a payment for the continuance of its registration, the new local custodian/DDP shall perform due diligence of the FPI.



4. *Exemption to FPIs having multiple investment manager (MIM) structure from seeking prior approval from SEBI in case of free of cost (FOC) transfer of assets*

Erstwhile:

FOC transfer of assets is permitted wherein the transferor and transferee FPIs have exactly the same beneficial owners. As per SEBI (Foreign Portfolio Investors) Regulations, 2014, any requests for FOC by the FPI along with the list of securities intended to be transferred are forwarded by DDPs to SEBI for consideration.

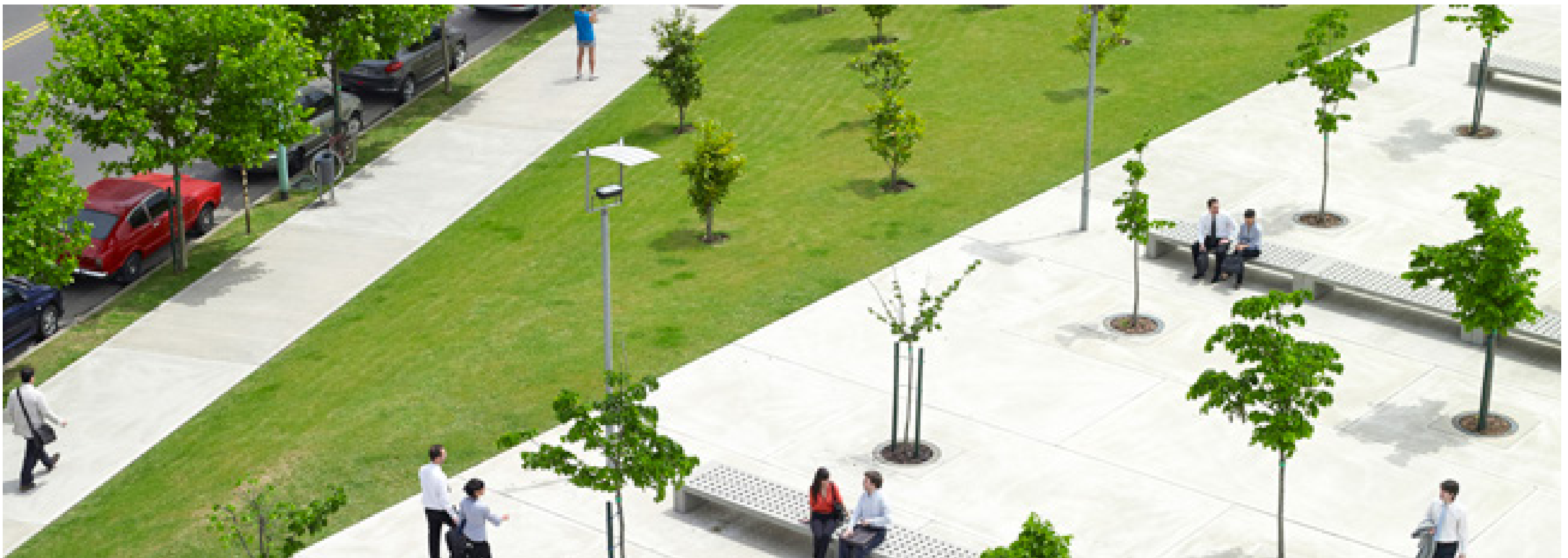
Changes:

With a view to streamline the FOC transfer of assets by the FPI with other miscellaneous cases, SEBI has made the following changes –

1. The requests for FOC transfer of assets between FPIs operating under the MIM structure (having same the PAN and also registered with SEBI) can be processed by DDPs at their end instead of forwarding them to SEBI for consideration.
2. DDPs for non-MIM FPIs shall continue to forward the request for FOC transfer of assets to SEBI for consideration.

Impact:

With the requirement of obtaining approval from SEBI discarded under the revised guideline, the FPIs under the MIM structure can now transfer assets FOC through their DDPs to other FPIs under the MIM structure having the same PAN.



5. Simplification of process for addition of share class

Erstwhile:

Every fund sub-fund/share class needs to separately fulfil broad-based criteria, where a segregated portfolio is maintained. In case of the addition of share classes, the FPIs are required to obtain prior approval from SEBI/DDPs. Where a common portfolio is maintained, the approval for the launch of share class/variant shall be taken prior to its launch. For the granting of such prior approval, DDPs obtain the following documents from the FPI applicant:

a. A D&U with respect to PCC/MCV status, as specified in SEBI circular ref. no. CIR/IMD/FIIC/1/ 2010 dated 15 April 2010.

b. In cases where segregated portfolios are maintained, where the newly added share class is already broad based, the FPI will continue to be considered as being broad based.

   i. Where the newly added share class is not broad based, an undertaking is to be obtained by the DDP that the newly added share class will become broad based within 90 days from the date of the DDP approval letter.

   ii. In case of a simultaneous addition of more than one share class, which are not broad based, an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of the DDP approval letter.

Changes:

Since the share classes are generally launched in the home jurisdiction of the FPI, the requirement of seeking prior approval sometimes impedes the launch of the new share class and thus impacts the fund and its investors. SEBI has made the following changes –

1. Prior approval from the DDP is not required where a common portfolio of Indian securities is maintained across all classes of shares/funds/sub-funds and broad-based criteria are fulfilled at the portfolio-level after the addition of share class.
2. In case of a segregated portfolio in India, every fund/sub-fund/share class needs to separately fulfil the broad-based criteria.
3. In case of the addition of classes of shares for segregated portfolio, the FPI shall be required to obtain prior approval from the DDP.
4. For the deletion of share classes of shares of segregated portfolios, an intimation should be provided to the DDP forthwith.
5. For granting such prior approval, the DDP shall obtain a D&U with respect to PCC/MCV status.
6. In case of the addition of one or more than one share class, which are not broad based, the DDP shall obtain an undertaking that all the newly added share classes shall attain broad-based status within 180 days from the date of approval issued by the DDP.

5. *Simplification of process for addition of share class*

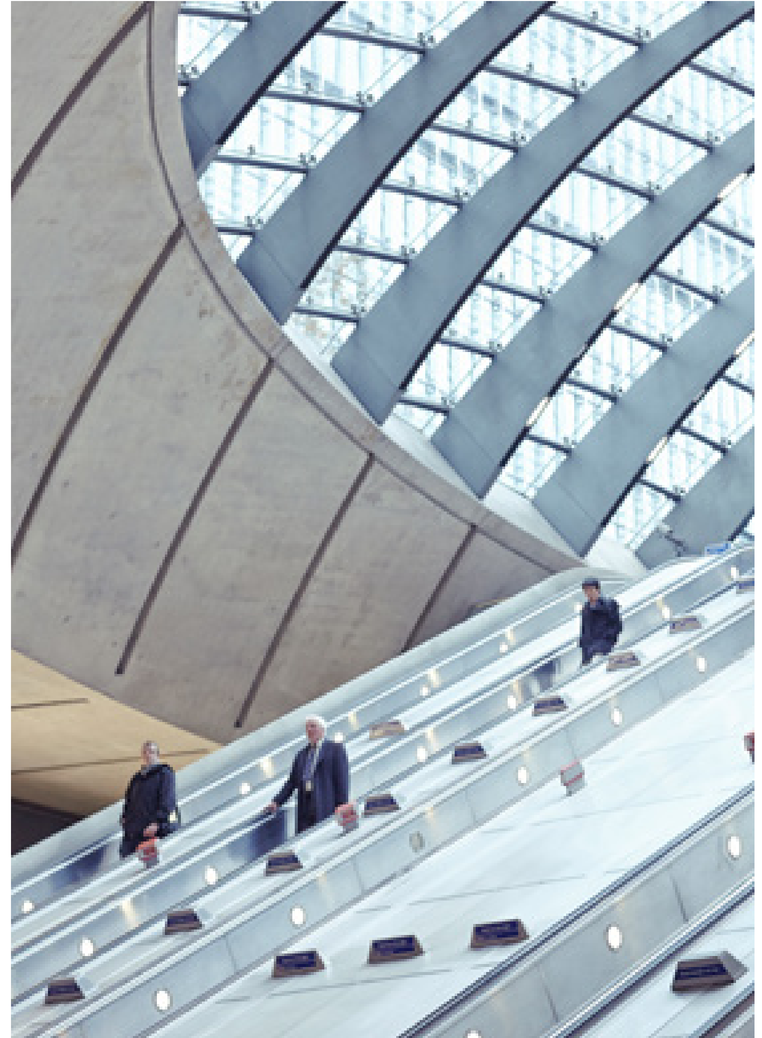
Impact:

For FPIs

1. FPIs are no longer required to obtain prior approval from their DDPs if they meet the broad-based criteria at the portfolio level after the addition of share class and common portfolio of Indian securities is maintained across all classes of shares/funds/sub-funds.
2. For a segregated portfolio in India, every fund/sub-fund/share class needs to separately fulfil the broad-based criteria and prior approval from DDPs will have to be obtained by FPIs in case of addition of classes of shares for segregated portfolio.
3. The FPIs need to intimate their DDPs without any delay regarding the deletion of share classes of shares of a segregated portfolio.

For DDPs

1. For granting approval to FPIs:
    a. In case of addition of classes of shares for segregated portfolio, DDPs should obtain a PCC/MCV D&U.
    b. In case of addition of one or more than one share class, which are not broad based, DDPs should obtain an undertaking that all the newly added share classes shall attain broad-based status within 180 days from the date of approval issued by DDPs.



6. *Permitting FPIs operating under multiple investment managers (MIM) structure to appoint multiple custodians*

Erstwhile:

Wherever an entity engages MIMs, it can obtain multiple FPI registrations with SEBI. These applicants are required to appoint the same local custodian and investments made under such multiple registrations are clubbed for the purpose of monitoring of investment limits as per the extant regulatory requirement.

Changes:

As per the changes made by SEBI, FPIs operating under the MIM structure can appoint different local custodians/DDPs.

Impact:

FPIs operating under the MIM structure can now appoint different local custodians/DDPs.

7. *Permitting appropriately regulated private bank/merchant bank to invest on their behalf and also on behalf of their clients*

Erstwhile:

Private banks and merchant banks that are regulated by an 'appropriate regulator' may be classified as Category II. Further, such entities shall be allowed to undertake only proprietary investments.

Changes:

As per the changes made by SEBI, private banks and merchant banks that may be classified as Category II FPIs will be permitted to undertake investments on behalf of their investors provided that private banks/ merchant banks submit a declaration where:

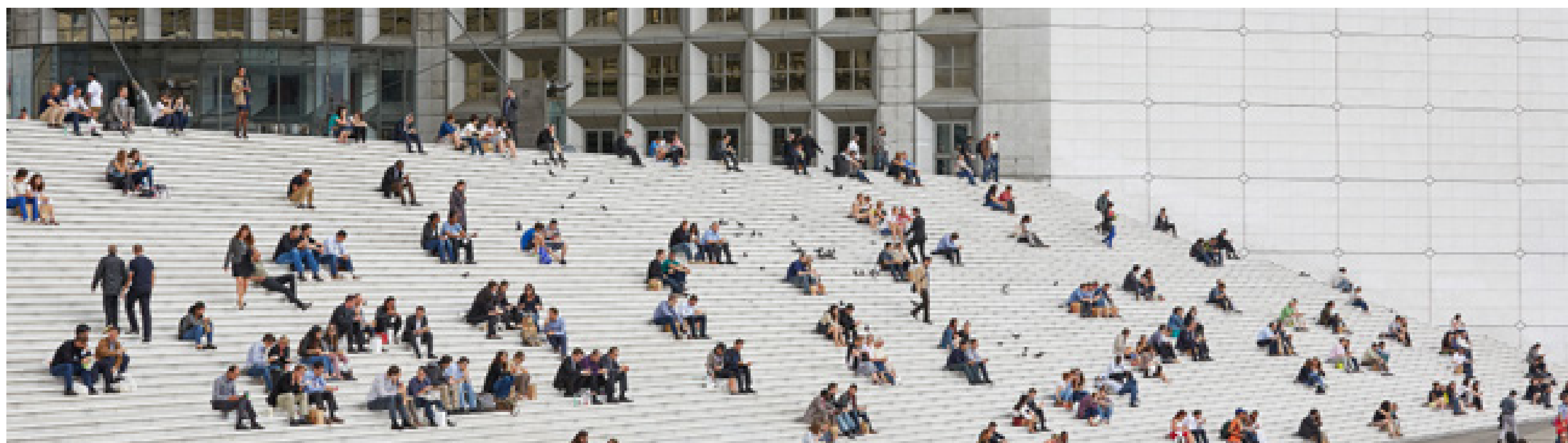
i. Details of beneficial owners are available and will be provided as and when required by the regulators;

ii. Banks do not have any secrecy arrangement with the investors and all required legal/regulatory arrangements have been put in place in order to ensure that any secrecy laws or confidentiality clauses do not impede disclosure of beneficial owner details as and when required by Indian regulators; and

iii. In addition to (i) and (ii), private banks and merchant banks shall also be allowed to undertake proprietary investment by registering separately with SEBI.

Impact:

Earlier, private/merchant banks were allowed to only conduct proprietary trade; however, with the new revisions to FPI access norms by SEBI, private/ merchant banks can now invest in domestic securities on behalf of their clients. The private/merchant banks will however have to provide certain information specified in the revised circular to be able to invest on behalf of their clients.



8. Other clarifications on conditional registration

Erstwhile:

As per Clause 2.5 of the operational guidelines mandated in Circular No. CIR/IMD/FIIC/02/2014 dated 8 January 2014, conditional registration facility is available only to 'newly established' India-dedicated funds.

Changes:

As per the changes made by SEBI, the facility of granting conditional registration shall also be extended to existing funds proposing to convert as India-dedicated funds. However, existing India-dedicated funds will be given 90 days to achieve broad-based status.

Impact:

With the revision in access norms for FPIs, the exiting funds proposing to convert as India-dedicated funds can now be given conditional registration by DDP and the exiting India-dedicated funds will be given 90 days to achieve broad-based status.

RELAXATION OF NORMS FOR SCHEME OF ARRANGEMENT FOR LISTED ENTITIES

Source : KPMG

KPMG

First Notes

SEBI relaxes norms governing schemes of arrangements by listed entities

18 January 2018

First Notes on

Financial reporting

Corporate law updates

Regulatory and other information

Disclosures

Sector

All

Banking and insurance

Information, communication, entertainment

Consumer and industrial markets

Infrastructure and government

Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

Background

The listed entities that desire to undertake a scheme of arrangement or are involved in a scheme of arrangement need to follow the regulations laid down by the Securities and Exchange Board of India (SEBI). On 10 March 2017, SEBI issued a circular number CFD/DIL3/CIR/2017/21 which laid down a revised regulatory framework for schemes of arrangements by listed entities and relaxation under Rule 19(7) of the Securities Contract (Regulation) Rules, 1957.

New development

The SEBI received representations to improve the existing framework governing schemes of arrangements. Additionally, SEBI wanted to expedite the processing of draft schemes and prevent misuse of schemes to bypass regulatory requirements. Therefore, on 3 January 2018, SEBI issued a circular number CFD/DIL3/CIR/2018/2 (the circular) to make certain amendments to the circular dated 10 March 2017.

The recent circular is applicable from the date of its issue i.e. 3 January 2018. Some of the key relaxations provided in the circular relate to the following topics:

- Submission of documents to stock exchanges
- Relaxations with respect to locked-in promoter's shares
- Extended time period for listing of specified securities.

In this issue of First Notes, we have provided an overview of the key amendments/ relaxations given in the circular.

Overview of the circular

Following are the key amendments/relaxations made in the circular dated 3 January 2018:

- **Applicability of the circulars:** These circulars (3 January 2018 and 10 March 2017) would not apply to schemes which solely provide merger of a wholly-owned subsidiary or its division with the parent company. However, for disclosure purposes, draft schemes should be filed with the stock exchanges and stock exchanges should host the same on their websites. (Earlier, the 10 March 2017 circular did not scope out merger of a division of a wholly-owned subsidiary with the parent company).
- **Submission of documents:** For any scheme of arrangement, amalgamation, merger, reconstruction, reduction of capital, etc. certain documents have to be submitted to a stock exchange. These documents include the following:
  - Draft scheme of arrangement, amalgamation, merger, reconstruction, reduction of capital, etc.
  - A valuation report
  - Fairness opinion by a SEBI registered merchant banker on valuation of assets/ shares done by the valuer for the listed entity and unlisted entity

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- Report from the audit committee recommending the draft scheme
- Pre and post amalgamation shareholding pattern of unlisted entity
- An auditor's certificate
- Detailed compliance report as per the specified format.

The 3 January 2018 circular clarifies that the valuation report and the fairness opinion should be provided by an *independent* Chartered Accountant (CA) and *independent* SEBI registered merchant banker respectively.

It is further clarified that the CA and SEBI registered merchant banker would not be treated as independent in case of existence of any material conflict of interest among themselves or with the company, including that of common directorships or partnerships.

- **Conditions for scheme of arrangement involving unlisted entity**: When there is a scheme of arrangement between listed and unlisted entities, the 10 March 2017 circular required certain conditions to be fulfilled. Those condition are as follows:
  - *Information as per abridged prospectus*: The listed entity should include the applicable information pertaining to the unlisted entity involved in the scheme in the format specified for abridged prospectus (as provided in Part D of Schedule VIII of the ICDR Regulations), in the explanatory statement or notice or proposal accompanying resolution to be passed sent to the shareholders while seeking an approval of the scheme.
  - *Certificate from a SEBI registered merchant banker*: The accuracy and adequacy of the above disclosures as per the abridged prospectus would be required to be certified by a SEBI registered merchant banker (after following the due diligence process).
  - *Disclosures to be submitted to the stock exchanges*: Such disclosures should also be submitted to the stock exchanges for uploading on their websites.
  - *Shareholding pattern of public shareholders and Qualified Institutional Buyers (QIBs) in the merged entity*: The percentage of shareholding of pre-scheme public shareholders of the listed entity and the QIBs of the unlisted entity, in the post scheme shareholding pattern of the 'merged' entity should not be less than 25 per cent.
  - *Stock exchange with nationwide trading terminals*: Unlisted entities can be merged with a listed entity only if the listed entity is listed on a stock exchange having nationwide trading terminals.

The 3 January 2018 circular clarifies that:

- The percentage of the shareholding of pre-scheme public shareholders of the listed entity and the QIBs of the unlisted entity, in the post scheme shareholding pattern of the 'merged' company on a on *a fully diluted basis* should not be less than 25 per cent. All other conditions remain unchanged.

- **Lock-in requirements for a scheme for hiving-off of a division from a listed entity to an unlisted entity**: In such a case, the 10 March 2017 circular provided that the pre-scheme share capital of the unlisted issuer would be locked-in in the following manner:
  - Shares held by promoters up to the extent of 20 per cent of the post-merger paid-up capital of the unlisted issuer, should be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.
  - The remaining shares should be locked-in for a period of one year from the date of listing of the shares of the unlisted issuer.
  - No additional lock-in should be applicable if the post scheme shareholding pattern of the unlisted entity is exactly similar to the shareholding pattern of the listed entity.

  The 3 January 2018 circular has amended this clause. In case of a scheme involving *merger of a listed company or its division* into an unlisted entity, the entire pre-scheme share capital of the unlisted issuer seeking listing should be locked-in as follows:
  - Shares held by promoters up to the extent of 20 per cent of the post-merger paid-up capital of the unlisted issuer, should be locked-in for a period of three years from the date of listing of the shares of the unlisted issuer.
  - The remaining shares should be locked-in for a period of one year from the date of listing of the shares of the unlisted issuer.
  - No additional lock-in should be applicable if the post scheme shareholding pattern of the unlisted entity is exactly similar to the shareholding pattern of the listed entity.

  The SEBI has allowed that the shares locked-in under this clause can be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if pledge of shares is one of the terms of sanction of the loan.

  Additionally, the shares locked-in under this clause can be transferred 'inter-se' among promoters in accordance with the conditions specified in Regulation 40 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

  Shares presently under lock-in as per the provisions of earlier circulars would also be governed by the provisions of this clause.

- **Requirement for submission of documents after the scheme is sanctioned by NCLT**: The circular dated 10 March 2017 required listed entities to submit certain documents to stock exchanges post sanction of scheme of arrangement by High Court (HC) or National Company Law Tribunal (NCLT). Such documents include:
  - A copy of the HC/NCLT approved scheme
  - Result of voting by shareholders for approving the scheme

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- Statement explaining changes, if any, and reasons for such changes carried out in the approved scheme versus the draft scheme arrangement
- Status of compliance with the observation letter or no objection letter of the stock exchange
- The application seeking exemption from Rule 19(2)(b) of SCRR, 1957, wherever applicable, and
- Report on complaints in the prescribed manner.

The 3 January 2018 circular does not require submission of the above documents to HC/NCLT. This requirement has been repealed.

- **Time period for completion of formalities for listing of specified securities**: The circular dated 10 March 2017 provided that:
  - The listed entity and/or transferee entity (unlisted entity), as applicable, should ensure that it has completed steps for listing of its specified securities within 30 days of receiving the order of the HC/NCLT sanctioning the scheme, simultaneously on all the stock exchanges where the equity shares of the listed entity (or transferor entity) are/were listed.
  - Trading in securities commences within 45 days of the order of the HC/NCLT.
  - Before commencement of trading, the transferee entity should give an advertisement in one English and one Hindi newspaper having nationwide circulation and one regional newspaper in the manner prescribed giving details such as name and address of registered office, details of change of name and/or subject clause, capital structure, shareholding pattern, etc.

The 3 January 2018 circular has amended this clause. The new requirements are as follows:

- Steps for listing of specified securities are completed and trading in securities should commence within *60 days* of receiving the order of the HC/NCLT simultaneously on all the stock exchanges where the equity shares of the listed entity (or transferor entity) are/were listed.
- Before commencement of trading, the transferee entity should give an advertisement in one English and one Hindi newspaper having nationwide circulation and one regional newspaper in the manner prescribed giving details such as name and address of registered office, details of change of name and/or subject clause, capital structure, shareholding pattern, etc.

Our comments

The SEBI in its circular dated 3 January 2018 has widened its scope of relaxations. Some of the key relaxations are as follows:

- Schemes which solely provide merger of a wholly-owned subsidiary or its division with the parent company are exempt from the provisions of these circulars
- Promoters can now pledge their locked-in shares with any scheduled commercial bank or public financial institution as collateral securities and such shares can inter-se be transferred amongst promoters
- Extension of time period for listing of specified securities from 30 days to 60 days
- Listed entities are no longer required to submit certain documents to stock exchanges post sanction of scheme of arrangement by High Court/NCLT.

The relaxations are expected to expedite the processing of draft schemes of arrangements. However, there is a change in one of the conditions for the schemes of arrangements between listed and unlisted entities. The SEBI now requires the post scheme shareholding pattern of the 'merged' company on a 'fully diluted basis' to be not less than 25 per cent. This particular condition would require a closer evaluation especially when promoters would be issued convertible instruments as part of the scheme of arrangement.

The bottom line

The amendments are expected to make the regulatory framework relating to the schemes of arrangements by listed companies more robust and are likely to help in ease of doing business in India.

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REPORT CORNER

- Re- Imagining India's Media & Entertainment (M&E) Sector

  The Indian economy is growing and the M&E sector is a reflection of this. Favourable demographics, a rise in consumer income and a huge demand for knowledge, sports and news aided the growth of the M&E sector in the country. The print and radio segments continued to grow, as well as build their digital presence. Indian films – both Hindi and regional - grew their international appeal with several doing well at the global box office. Increase in the demand for global content has resulted in growth of the animation, VFX and post production segment, where India has become known for its high quality and efficient capabilities. These changes will grow digital content consumption significantly, and this presents M&E companies, both foreign and domestic, with an exciting opportunity to develop businesses and cater to the new generation of Indian digital consumers. This report showcases this fast growing sector.

  Read the full report here : http://ficci.in/spdocument/22949/FICCI-study1-frames-2018.pdf

- Intellectual Property Law in India : Legal, Regulatory and Tax

  With the advent of the knowledge and information technology era, Intellectual Property ("IP") and rights attached thereto have become precious commodities and are being fiercely protected. In recent years, especially during the last decade, the world has witnessed an increasing number of cross-border transactions. Companies are carrying on business in several countries and selling their goods and services to entities in multiple locations across the world. Since Intellectual Property Rights ("IPRs") are country-specific, it is imperative, in a global economy, to ascertain and analyze the nature of protection afforded to IPRs in each jurisdiction. This report deals with IP law regime in India and protections provided thereunder.

  Read the full report here:

  http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Intellectual_Property-Law_in_India-Web.pdf

- Redefining Insurance Sector : The future ahead

  Insurance industry in our country plays a vital role in the growth of its economy. It greatly increases the opportunities for savings, forming an enormous pool of funds, which contributes significantly towards the capital markets. India's insurance sector has been continuously evolving since its inception in 1818. The last decade witnessed a major growth with the introduction of advanced products. Fast paced adoption of digitization with a huge push from the Government aided the growth. This industry is one of the most booming sectors of the economy and is growing at the rate of 15-20 percent per annum. The Indian insurance market positions itself 5th in Asia, after Japan, South Korea china and Taiwan and is 19th largest globally. This report will help understand the changing landscape of Insurance sector.

  Read the full report here :

  https://www.mycii.in/KmResourceApplication/58782.CIIDeloitteReportStructureFinal2.pdf