

Realty Check

January 05, 2012

REAL FINANCING - ONSHORE AND OFFSHORE DEBT FUNDING REALTY IN INDIA

An increased number of realty funds that have approached us have shown an inclination to make debt investments, at times with expectation of a structure that could fetch equity upsides, yet protect the downside.

'Real Estate' and 'Debt', however, happen to be areas that the Indian regulators have always treaded on with caution. With external commercial borrowings prohibited for the sector, restrictions on foreign direct investment in real estate coupled with aggressive regulatory overhang actions to discourage standard investor exit rights as '*put options*', offshore realty funds have been struggling, for a while now, to explore avenues to fund the sector while maintaining standard investor protections and exit rights amidst the fluid regulatory environment.

The lucrative Indian real estate sector, however, continues to attract foreign investment and foreign debt has found its way into the sector. Whether it is non-convertible debentures being purchased by foreign institutional investors on the floor of stock exchange under the FII route, or the more simplistic compulsorily convertible debentures being subscribed to by any foreign investor under the FDI route, or the foreign investor lending/investing through its own non-banking finance company, each route has its own set of challenges and apprehensions, both legal and perceptual.

As it happens, in the Indian context, with an aggressive regulator hostile to foreign debt, sometimes the perceptual issues outweigh the legal issues and we felt the need to analyze few issues under each of these routes and bring to the fore the benefits and challenges of each route, not just as they are reflected in the policy documents, but as we have seen them in our experience.

This Realty Check analyses, from a legal, tax and regulatory perspective, each of the avenues that could be explored by offshore realty funds to infuse debt in the real estate sector and attendant challenges that each such route may be subjected to.

Realty Check is our initiative to provide an in-depth insight into the legal, tax and regulatory framework for funding real estate projects in India addressing critical issues and challenges faced by foreign investors in making such investments.

Please [click here](#) to view our paper on *Real Financing: Onshore and Offshore Debt Funding Realty in India* authored by Ashish Kabra, Ruchir Sinha and Siddharth Shah.

Please [click here](#) to view our previous Realty Check on - "*Funding Real Estate Projects - Exit Challenges*", which includes our white paper on Real Estate investments written in collaboration with US India Business Council.

- Ashish Kabra, Ruchir Sinha & Siddharth Shah

You can direct your queries or comments to the authors

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