

# Real Estate Update

December 15, 2016

## REALTY REFORMS TO BOOST OFFSHORE FUNDS' OPTIMISM

While clouds of uncertainty shroud the real estate sector, our discussions with offshore real estate funds present a rather optimistic picture, even as they remain in wait and watch mode for the next quarter or two. We believe the optimism is based on broadly the following three drivers.

First, the routes for foreign investment in real estate companies have been substantially liberalised. On the one hand, almost all sectoral restrictions for foreign direct investments have been relaxed. On the other hand, substantial relaxations for raising foreign debt have also been provided for. Indian real estate companies that hesitated listing their securities can now raise foreign debt by issuing unlisted debentures to foreign portfolio investors. Offshore funds get tax optimised redeemable instruments with security interests without any coupon restrictions.

Second, SARFAESI benefit which was hitherto available only to banks and financial institutions has now been extended to even offshore funds through the local debenture trustees. This is a huge give away by the government, which affords significant leverage in terms of enforcement of security interests, which has otherwise been criticised as a toothless protection.

Third, the Real Estate Regulation Act, which is scheduled to be effective in most states from March 2017. With 70% of the revenues escrowed for development costs and the requirement to complete the construction in a time bound manner, there is assurance on usage of proceeds and timely delivery. Though standard investor protections like step in rights and enforcement of security interests could now be called into question (since any change in the 'promoter' or developer will require prior approval of 2/3 allottees and the regulator), offshore funds tend to respect the discipline that RERA seeks to bring in.

These regulatory changes are likely to imbibe ethical behaviour and streamline the market to large and serious players - an environment most conducive to offshore funds. It's wait and watch for the next few months, but India is slowly climbing up the ladder of priority in the list of global private equity funds.

This article was published in Expert Blog, ET Realty dated December 12, 2016. The same can be accessed from the [link](#).

Ruchir Sinha

## DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### New Age of Franchising

June 20, 2025

### Life Sciences 2025

June 11, 2025

### The Tour d'Horizon of Data Law Implications of Digital Twins

May 29, 2025

## Research Articles

### 2025 Watchlist: Life Sciences Sector India

April 04, 2025

### Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

### INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

## Audio

### CCI's Deal Value Test

February 22, 2025

### Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

[Click here to view Hotline archives.](#)

## Video

### Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

**SIAC 2025 Rules: Key changes &  
Implications**

February 18, 2025