

## 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

### 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

### India's Oil & Gas Sector— at a Glance?

March 27, 2025

### Artificial Intelligence in Healthcare

March 27, 2025

### Real Estate Tokenisation

March 27, 2025

## Research Articles

### 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

### Key changes to Model Concession Agreements in the Road Sector

January 03, 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

### Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

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

February 18, 2025

**How Cross Border M&A Will Shape the AI Age**

February 13, 2025

