LEGAL DOCUMENTATION IN DEBT AND EQUITY REAL ESTATE TRANSACTIONS

–

IMPORTANT CONSIDERATIONS

PRADEEP JOY

REGULATORY FRAME WORK

- Indian Transfer of Property Act

- Law of Succession (Personal laws)

- Indian Registration Act

- Stamp Act

DUE DILIGENCE

- Title of property - key factor for real estate transactions

- The buyers look for properties which are unencumbered with "good" or "marketable" title i.e., free from all sorts of defects and litigations;

- Title diligence ensures that the person who sells the property has the authority to perform such acts

- It helps understand the legal risk while buying

Conveyance Documents - Legalities

- Conveyance of an immoveable property:

  ◦ required to be effected by a duly registered and attested written document

- Applicable registration charges and the stamp duty:

  ◦ required to be paid in connection with the execution of the document

- Conveyance documents attract ad valorem stamp duty, which varies from state to state

- Payment of stamp duty and registration charges may be contractually provided by the parties. Otherwise, the onus is on the purchaser
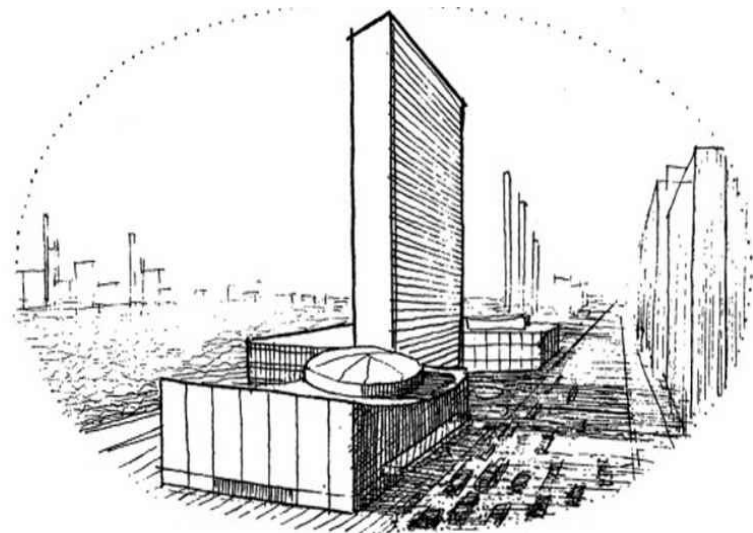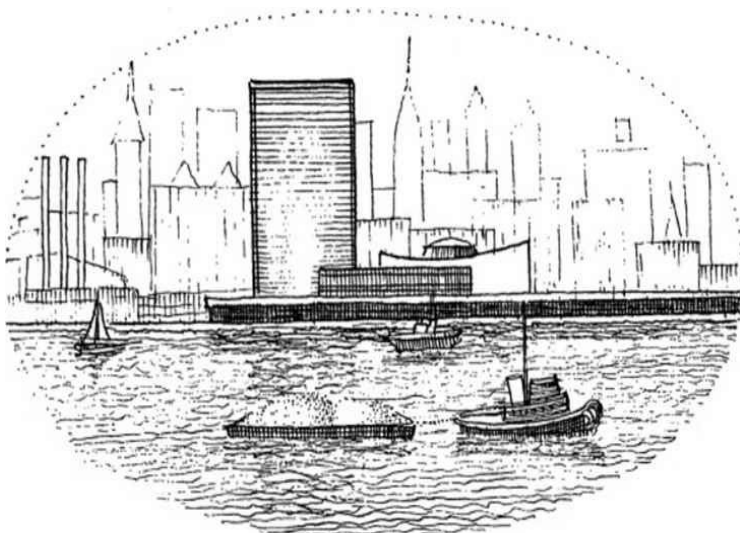
REAL ESTATE REGULATORY – FDI ANGLE

FDI – PERMITTED IN REAL ESTATE CONSTRUCTION

Definition of Real Estate Business

"dealing in land and immoveable property with a view to earn profit or earn income and does not include construction activities such as development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships"

[Ref: FEMA Notification No. 1/2000-RB dated May 03, 2000 read with RBI Master Circular]

LEGAL CONSIDERATION FOR FINANCING

TYPE	STAGES	
Loan against property (LAP)	· Original loan · Follow-on · Take over · Refinancing	· Valuation · Title verification · Security documentation · Valuation
Housing and Commercial real estate financing	· Original loan · Follow-on · Take over · Refinancing	· Project approvals · Title verification · Security documentation · Stamp Duty

FOREIGN INVESTMENT ENTRY OPTION

1. Foreign Direct Investment ("**FDI**")

2. Alternate Investment Funds ("**AIF**")

3. Foreign Portfolio Investor regime for investments made by SEBI registered Foreign Portfolio investor ("**FPI**")

4. Non Resident Indian regime, for investments made by non-resident Indians and persons of Indian origin ("**NRI**")
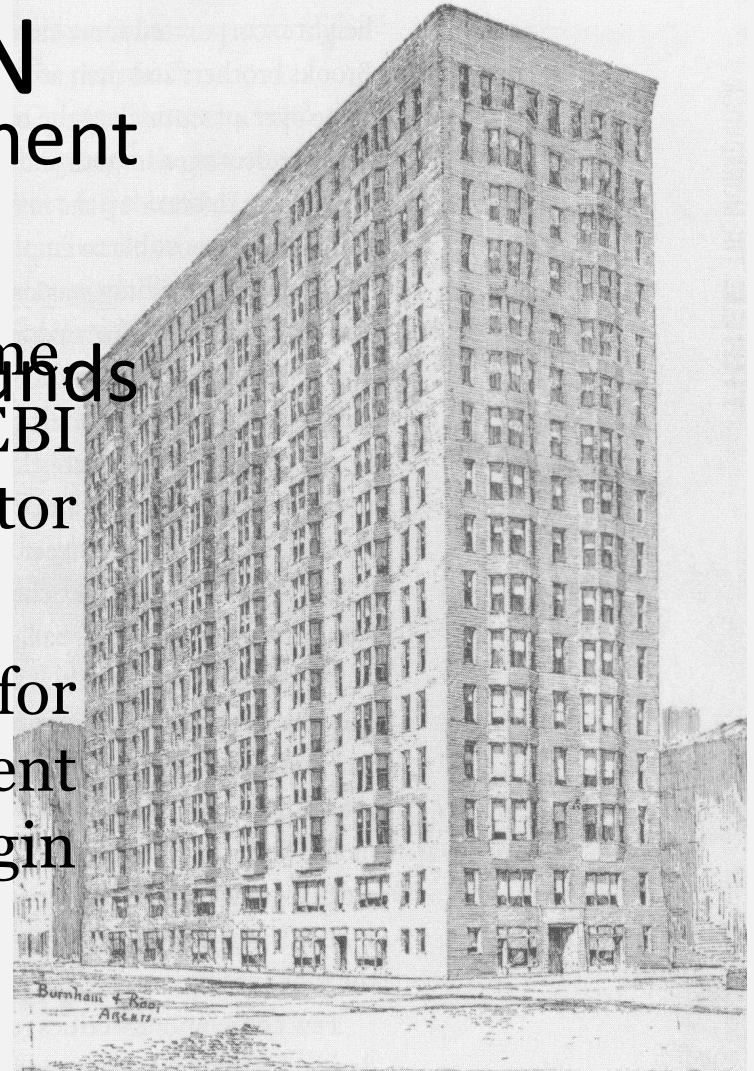
INSTRUMENTS FOR FDI

- FDI can be routed into Indian investee companies by using
  - equity shares
  - fully, and mandatorily/Compulsorily Convertible Debentures ("**CCDs**")
  - fully Compulsorily Convertible Preference Shares ("**CCPS**")

ECB FOR LOW COST AFFORDABLE HOUSING

- Low cost affordable housing project - a low cost affordable housing project is as defined in the extant foreign direct investment policy

- Projects using at least 60 percent of the FAR/FSI for dwelling units of Carpet Area not more than 60 sqm. will be considered as Affordable Housing Projects

- ECB proceeds shall not be utilized for acquisition of land

ECB COST STRUCTURE

COST

All in cost

Three years and up to five years   350 basis points

More than five years   500 basis points

ECB IN AFFORDABLE HOUSING

- The Builders/Developers should possess
  - Good track record
  - Necessary permits and registration
  - Not be subject of litigation
- Builders/Developers apply to the National H

- Role of NHB:
  - Advise builder/developer to approach RBI to avail ECB
  - Not permitted to raised Foreign Currency Convertible Bonds (FCCBs)
  - Aggregate limit of ECB for 1 year: USD 1 billion

SNG & PARTNERS
Advocates & Solicitors

FOREIGN PORTFOLIO INVESTMENT ROUTE (FPI ROUTE)

- Norms are governed by SEBI FPI Regulation 2014

- Permitted securities – broadly "equity" and "debt instruments"

- 〜〜〜 e listed instruments

NON-RESIDENT INDIAN ROUTE

- The purchase price payment only by:

  – Funds received in India or

  – Funds held in any non-resident account

  – NRIs/ PIOs are allowed to freely repatriate the sale proceeds subject to Chargeability of capital gains tax

FDI IN CONSTRUCTION/DEVELOPMENT SECTOR

- FDI up to 100% under automatic route permitted in the construction sector

- Construction development projects include:

	ROUTE
	- 100 percent permitted under automatic route
Hotels, Tourism and Hospitals	- Hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/or catering and food facilities to tourists
Industrial Parks	- 100 percent permitted as per the Industrial Parks Scheme, 2002
SEZs	- 100 percent permitted as per PARTICULARS the SEZ policy

Thank you