



Fund Raising for Real Estate Projects

A Ready Reference Guide

All Vidarbha Conclave on “Intricacies of Real Estate Transactions”

Nagpur, 6 December, 2025

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What will be covering today

Grow

- Real Estate Funding: Practical Aspects

Practice

- Professional Opportunities in Real Estate Funding

Learn

- Regulatory Framework of Real Estate Funding
 - RBI Guidelines
 - ECB Guidelines
 - FDI Guidelines

PROFESSIONAL OPPORTUNITIES IN REAL ESTATE FUNDING

Assessing Fund Requirements:

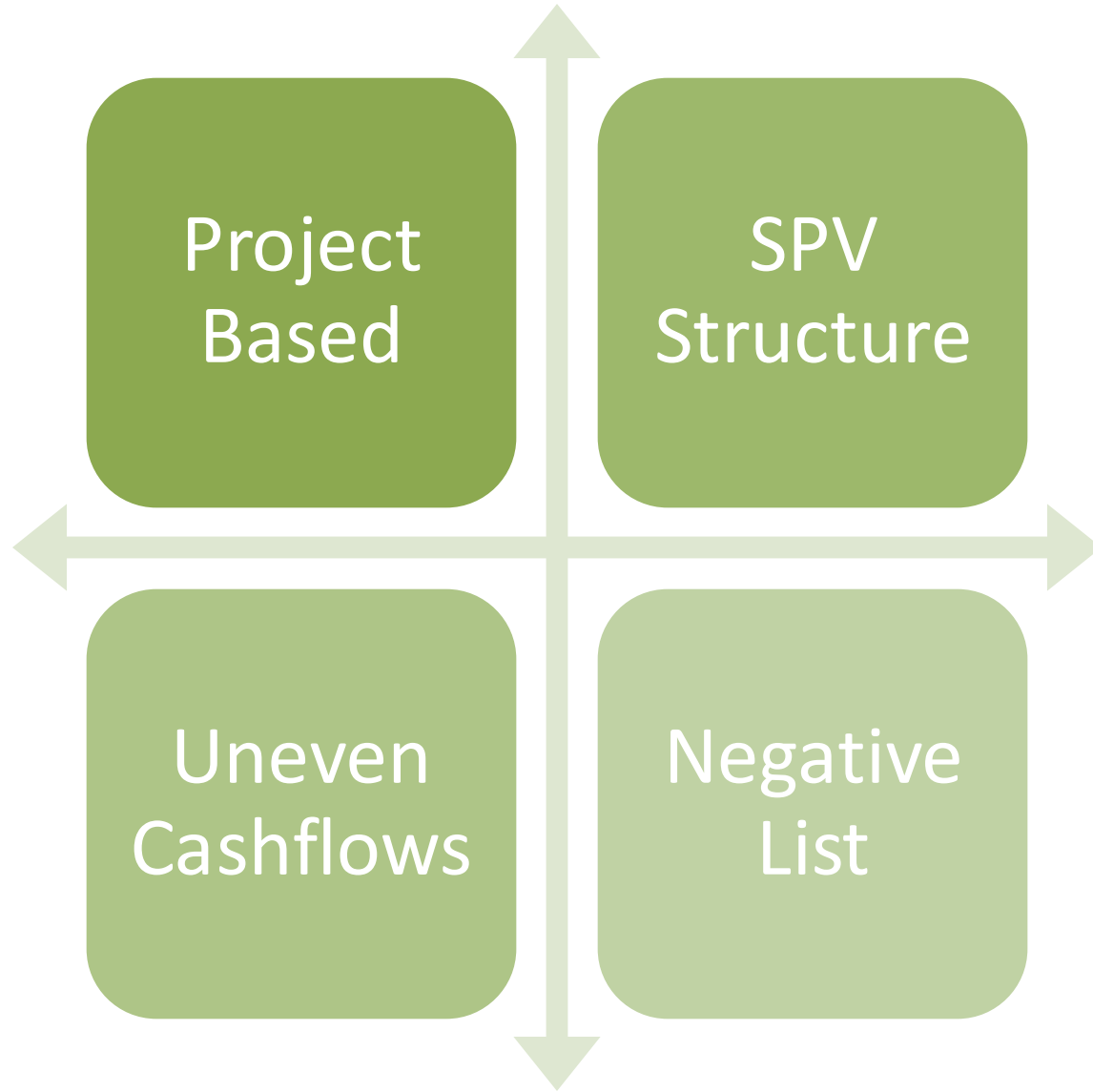
Why & When would a Developer need money?



Indian Real Estate Sector - Overview

- **Robust demand:** India's housing market is shifting as more buyers seek larger, premium homes. The Anarock H1 2025 survey shows 36% now prefer properties priced between Rs. 90 lakh-1.5 crore (US\$ 1,02,052-1,70,087), up from 18% before Covid-19.
- **Increasing Investments:** Construction is one of the largest sector in terms of FDI inflow. FDI in the sector Construction Activities stood at Rs. 323,987 crore (US\$ 36.85 billion) and Construction Development stood at Rs. 239,261 crore (US\$ 27.21 billion) from April 2000-June 2025.
- **Policy support:** The National Real Estate Policy 2025 introduced a major reform with a unified single-window clearance system for real estate projects, aimed at streamlining approvals and reducing project delays by up to 40%. The policy also incentivizes green-certified developments with tax benefits and subsidies to promote sustainable construction.
- **Attractive opportunities:** The real estate sector shows promise with a projected 9.2% CAGR from 2023 to 2028. Private market investor, Blackstone, which has significantly invested in the Indian real estate sector worth Rs. 3.8 lakh crore (US\$ 50 billion), is seeking to invest an additional Rs. 1.7 lakh crore (US\$ 22 billion) by 2030. ICRA expects new project launches across the top seven cities to rise by 6-9% in FY26. The Reserve Bank of India cut the repo rate by 50 basis points in June 2025, significantly reducing home loan EMIs and boosting real estate demand and buyer confidence.

What's Different About Fund Raising for Real Estate



Why do you need money?

Land Stage

- Token
- JV Deposit
- Buying Land
- To get plan sanctioned

Commencement of Project

- For initiation of work
- For advances to creditors
- For Construction

- Many a times the company lets go of several

It is important not just to get the money, but to get it at the right time!

or liquidity or
Growth Capital.

Assessing Funding Options:

Pros and cons of various sources of funds available to developers



Fund Raising Options for a Developer

Debt	Equity
Construction Finance <ul style="list-style-type: none">•Working Capital requirement•Term Loan	Funding at Land Acquisition Stage
Post Construction Finance <ul style="list-style-type: none">• Loan against property•Lease Rental Discounting	Cash Out (after acquisition of land)
	Equity Funding at Project Level from Venture Capital Fund
	Equity Funding at Company Level from Venture Capital Fund
	Initial Public Offering (IPO)

Developers need funds for acquisition of land. As per RBI guidelines, Banks cannot provide loan for Land buying.

Evaluating your funding options:

Comparing the impact of various avenues of funding in the light of distinct parameters



Comparison of Fund Raising Options

Parameters	Loan – Bank Finance	Loan - NBFC Finance	Private Equity (Project level)
Cost of finance	10 – 15% per annum	13 – 18% per annum	24% + per annum
Principal and Interest	Interest - Monthly Principal – Moratorium	Interest – Can be Monthly/Quarterly Principal - Moratorium	Yes
Term	Short Term 2-3 years	Short Term 2-4 years	Medium Term 4-5 years
Advantages	Reasonable debt create good market perception	Finance as per requirement including some for land buying	Project Risk is shared with the Investor

Bank Loan – Positives & Negatives

■ Positives

- Can be secured by providing security and sufficient collateral
- Relatively lower cost than equity funding
- No need to share profits with the Lender

■ Negatives

- Limitation on the amount which can be raised
- In case of slowdown, repayment of principal and interest becomes a burden
- Bank does not share Project risk

Venture Capital/Private Equity – Positives & Negatives

■ Positives

- Investor shares the risk of the Project
- Enables Company to raise additional Debt Funding
- Market perception of companies having equity financing is generally better

■ Negatives

- Relatively high cost of capital over a long period of time.
- Private equity needs exit avenues over a period of time.
- Additional compliance requirements and public scrutiny of companies accessing public markets.
- Would want to get involved in some key management decisions.

Getting familiar with the concept of IRR:

You should take decisions whether to accept a project on this basis.



What is Internal Rate of Return (IRR)

The concept of IRR is based on the fact that the cash that you receive today is more valuable than the cash you receive two years down the line or anytime in the future.

- **Suppose an investor invests Rs. 150 Cr in your project.**
- The Table below indicates the amount that has to be paid back to the Investor in addition to the principal of Rs. 150 Cr.
- If we agree on 22% IRR and return the money after 4 Years, then we have to give a Pay Out of **Rs 239 Crs** (including Dividend Tax) **in addition to** the Principal.

Amount (in Rs. Cr.)

Period of Investment (Years)	Internal Rate of Return (IRR)				
	10%	15%	18%	22%	25%
3	84	117	138	169	193
4	107	157	190	239	278
5	133	203	252	324	386

Why Cash Flows matter & Why is IRR so important?

- More than Profits, it is the IRR that attracts funds! The reason is that IRRs are based on the **cash flows** of the project and hence take into consideration the **time value of money**.
- **Let's take an illustration to see the importance of IRR.** You are presented with the following two options to invest your money in – which project will you choose?

Time Period	Project A	Project B
0	(1,000,000)	(1,000,000)
1	450,000	250,000
2	400,000	300,000
3	350,000	450,000
4	300,000	450,000
5	250,000	450,000
Net Cash Flow	7,50,000	9,00,000
IRR	25%	23%



Investment
made

Although the cash flows from Project B exceed that of Project A, IRR of Project A is 25% while the other has an IRR of 23%.

What do Financial Institutions look at before investing?

Understanding various assessment parameters that Private Equity investors use.
This needs a few answers from you...



1. Company background / History

- How long have you been into existence?
- Do you have a established a track record?
- What projects do you have to showcase?
- How quality conscious are you?

2. Financials

- Do you have timely debt repayments ? Your creditors matter a lot!
- How strong is your balance sheet ?

3. Management & Execution

- How strong is your management team and your organizational structure?
- How disciplined a company you are in managing your day to day records?
- Can you prove your project execution capability?
- How time bound and cost effective are you in your construction?

4. Promoters

- How efficient and visionary are the promoters?
- How flexible and open to ideas are they?
- How comfortable are the promoters towards partnering with someone and sharing data on a regular basis?
- Would the promoters be willing to be disciplined in simple things like board meetings and regularly tracking the projects?
- Would the promoter be fine with justifying delays in timelines or cost to a partner?

Funding is not just flow of funds but a meeting of minds.

5. Project

For a Real Estate Company , ultimately it boils down to the project!

Location

Cash Flow visibility

Returns / IRR

What is a Special Purpose Vehicle (SPV)

- A Special Purpose Vehicle (SPV) is a new Private Limited Company formed for the purpose of a specific Project.
- The SPV can also be a Partnership or a Limited Liability Partnership (LLP). However Foreign Direct Investment (FDI) is not allowed in such case.
- In this case usages of funds given by an investor is for the specific project.
- Based on the valuation of the project, the equity in the SPV will be given to the investor so as to generate a minimum of the required IRR
- Post completion of the project, the profits will be distributed between the equity investors as agreed and the Company will be closed.

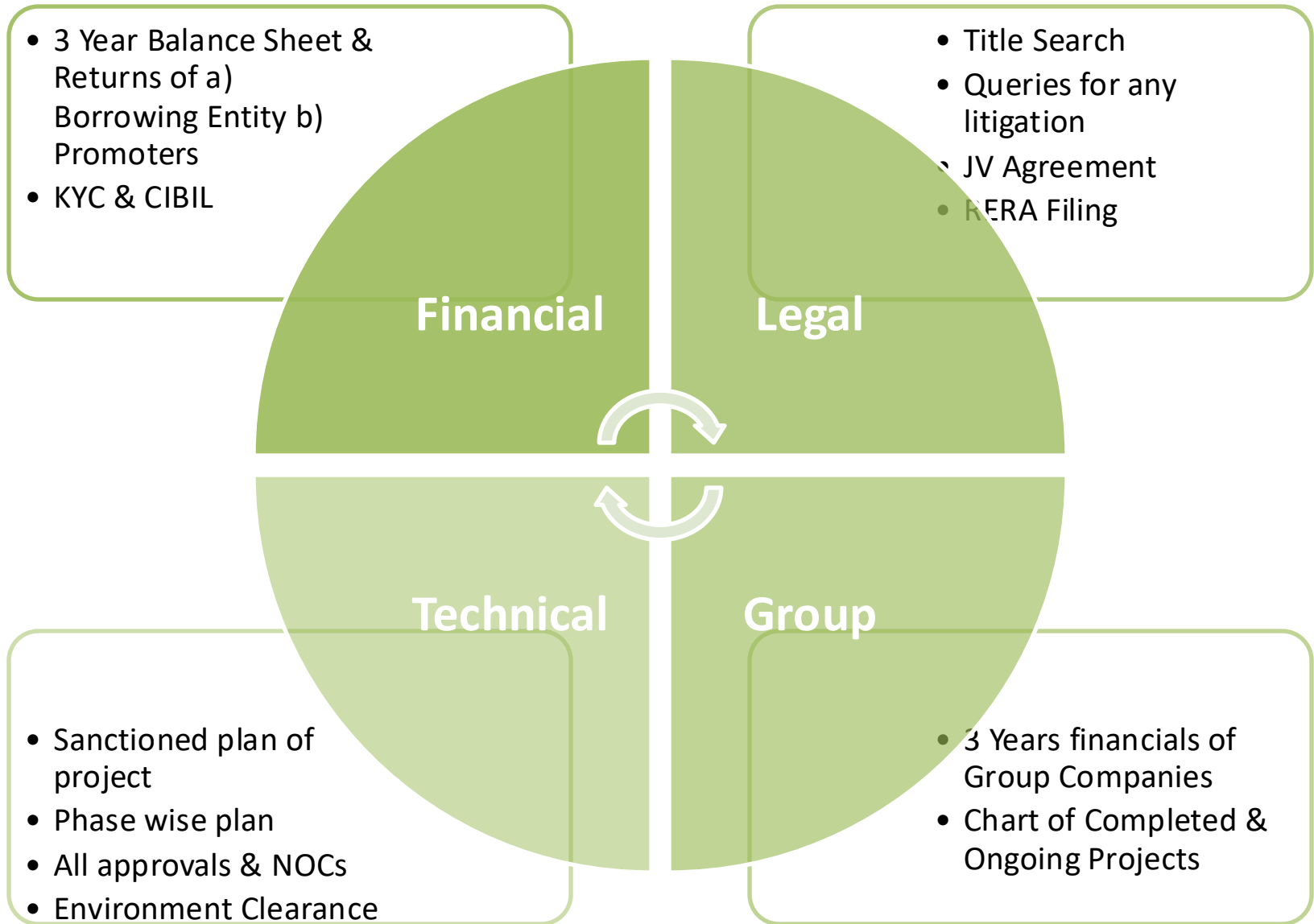
PROFESSIONAL OPPORTUNITIES IN REAL ESTATE FUNDING

Getting ready for funding

Partnering with a Financial Institution is about taking your organization through a change



Documentation



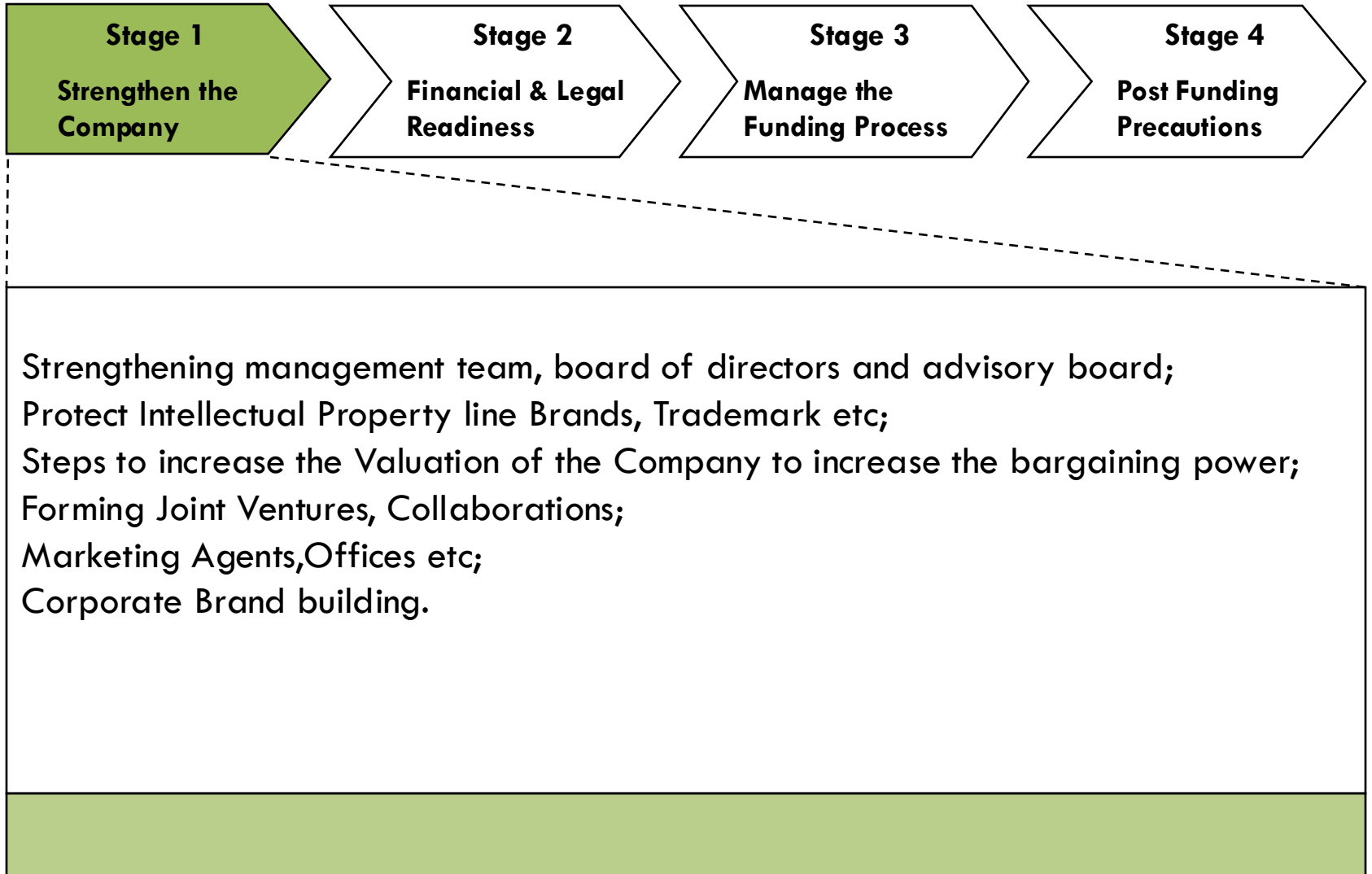
Need For Readiness

- Several Entities like Regulators, Advisors, Auditors etc. are involved;
- Time-bound steps are to be taken;
- Company's Operations and Records become transparent;
- Financial and Intangible Penalties.

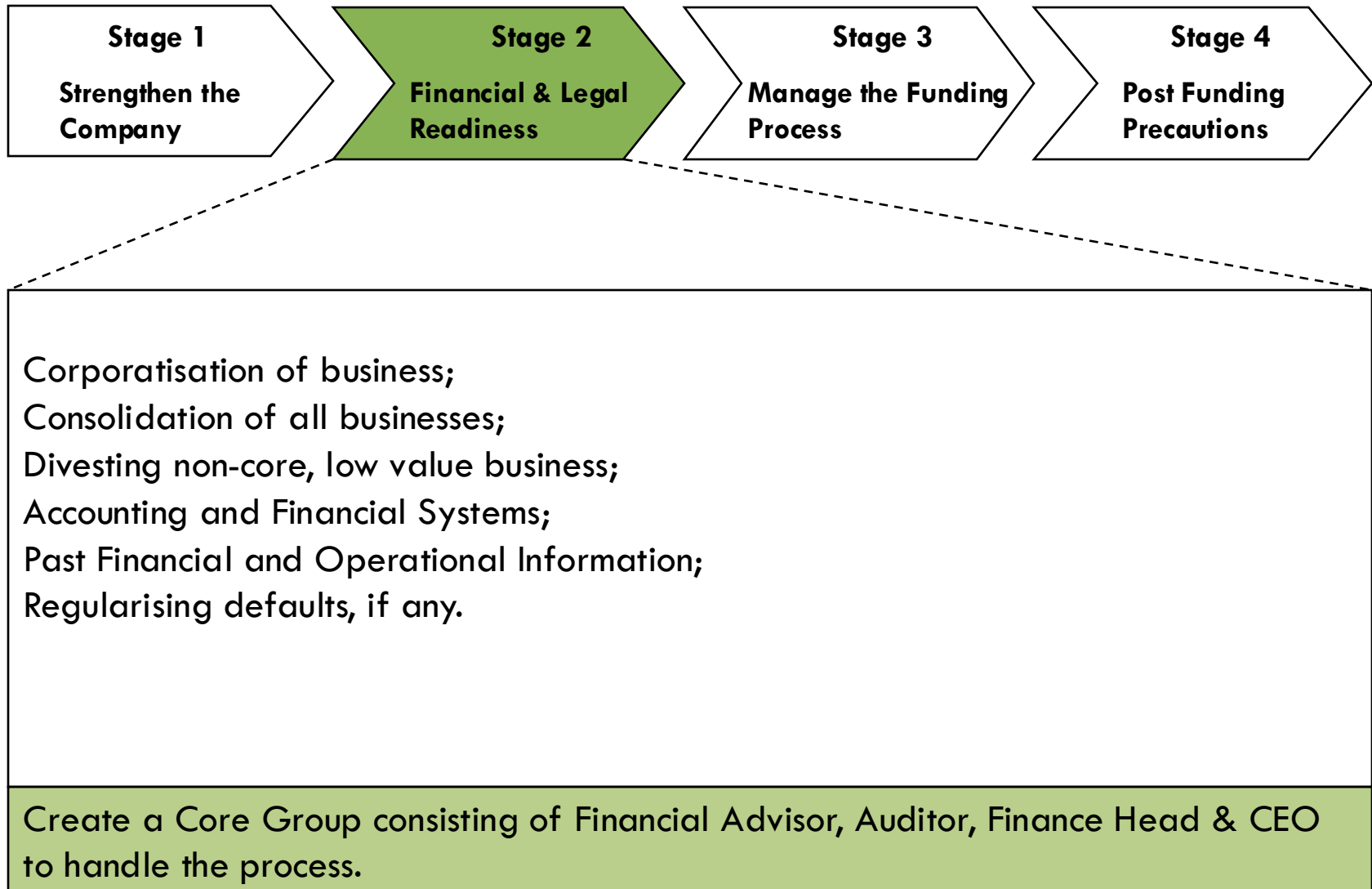


Company has to be fully ready and prepared to face the outside World.

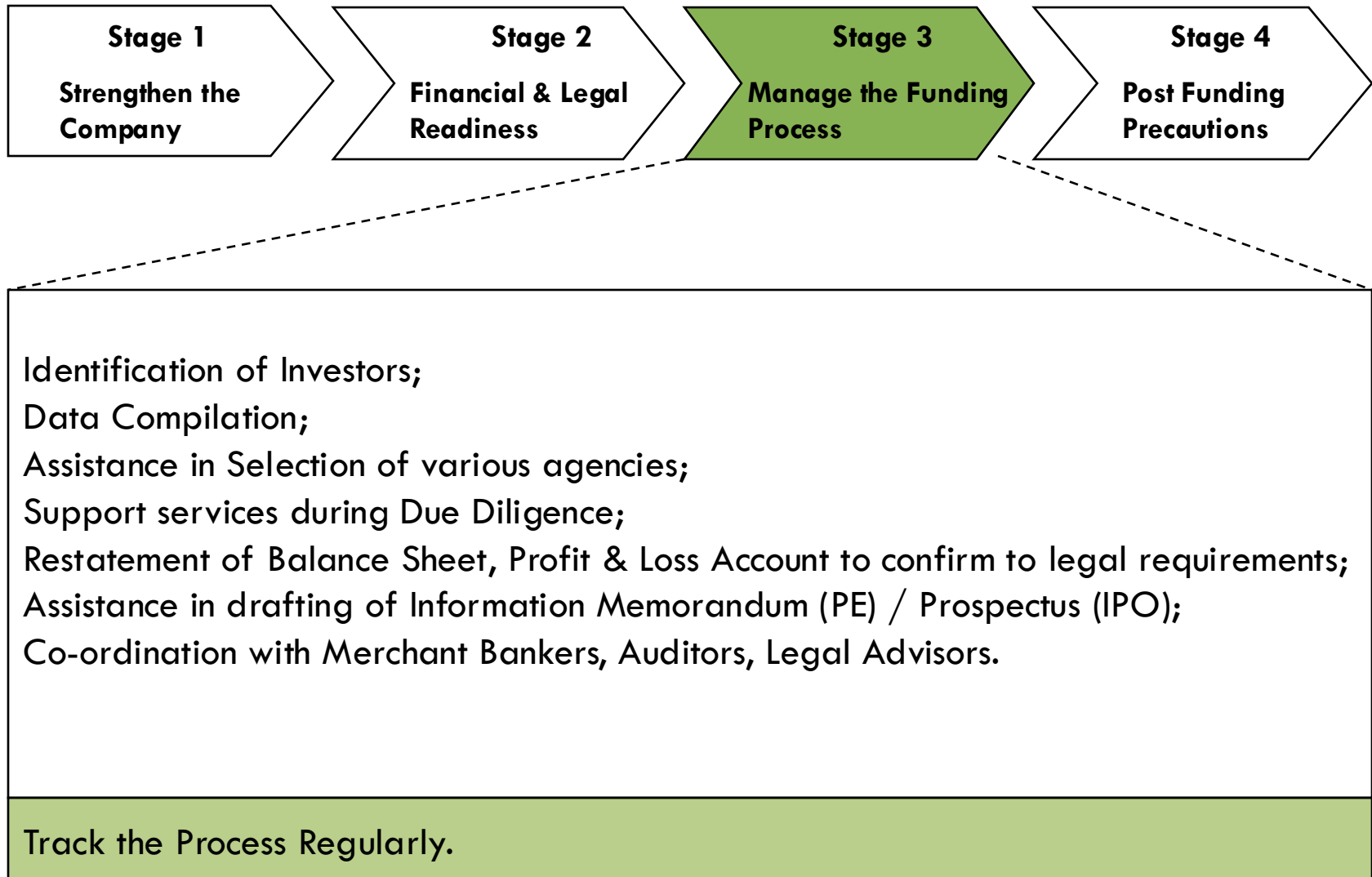
Strengthen the Company



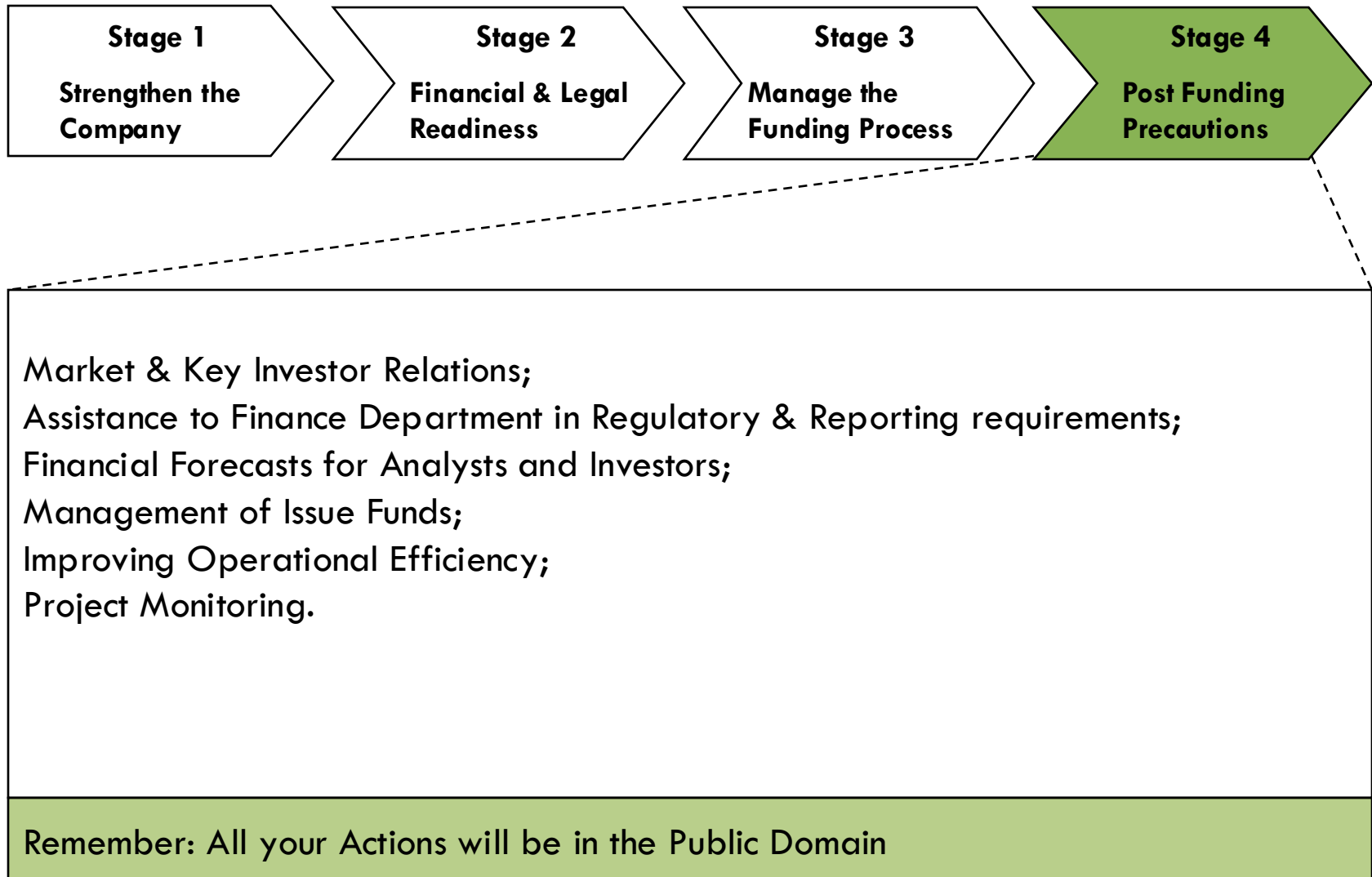
Financial & Legal Readiness



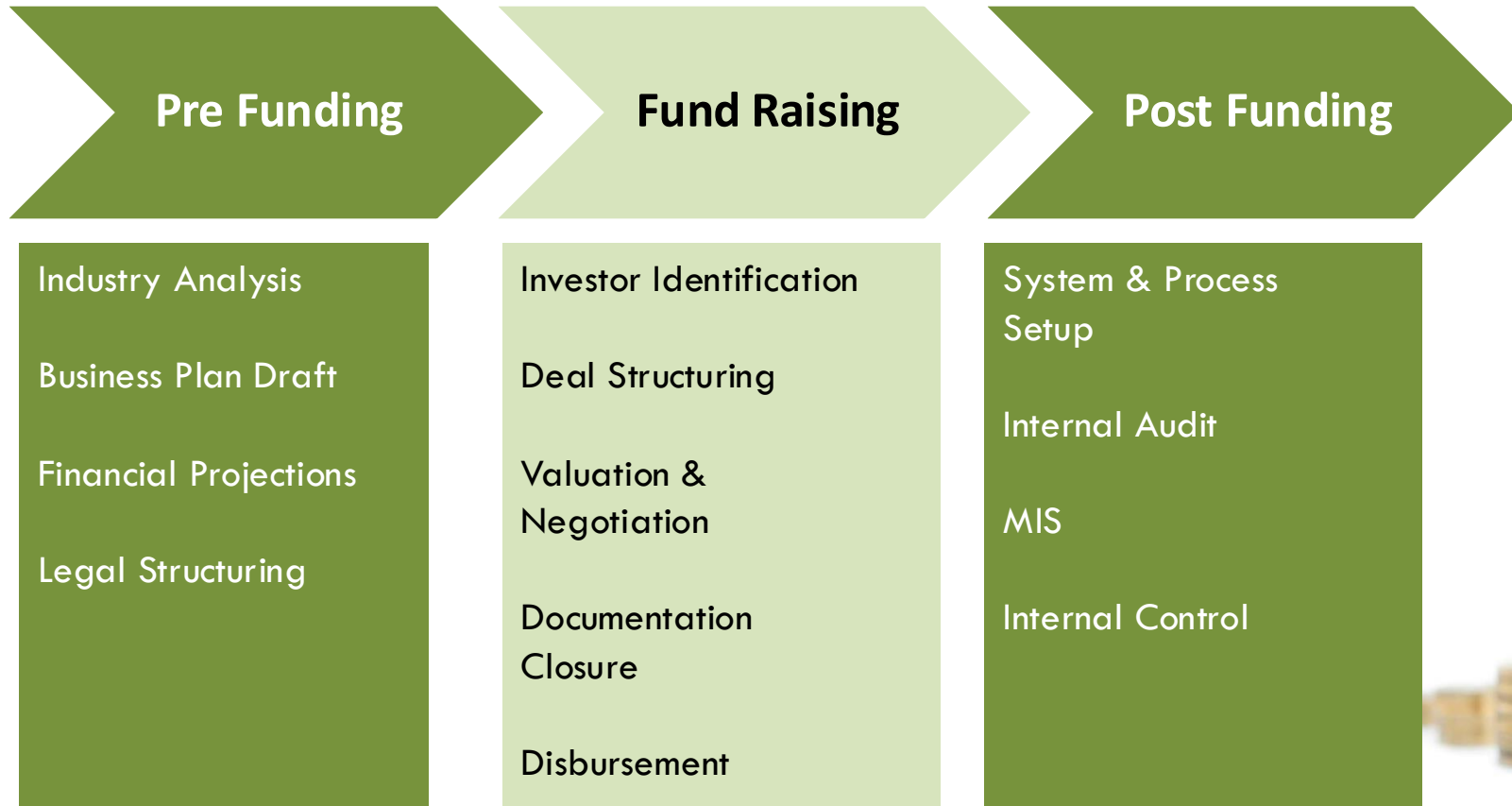
Managing the Funding Process



Post Funding Precautions



The Investment Process



REGULATORY FRAMEWORK OF REAL ESTATE FUNDING

A: RBI Guidelines

REGULATORY FRAMEWORK OF REAL ESTATE FUNDING

Definition

- Real Estate is generally defined as an immovable asset - land (earth space) and the permanently attached improvements to it.
- "Income-producing real estate (IPRE) refers to a method of providing funding to real estate (such as, office buildings to let, retail space, multifamily residential buildings, industrial or warehouse space, and hotels) where the prospects for repayment and recovery on the exposure depend primarily on the cash flows generated by the asset. The primary source of these cash flows would generally be lease or rental payments or the sale of the asset.
- The borrower may be, but is not required to be, an SPE (Special Purpose Entity), an operating company focused on real estate construction or holdings, or an operating company with sources of revenue other than real estate.
- The distinguishing characteristic of IPRE versus other corporate exposures that are collateralised by real estate is the strong positive correlation between the prospects for repayment of the exposure and the prospects for recovery in the event of default, with both depending primarily on the cash flows generated by a property.
- The primary source of cash flow (i.e., more than 50 per cent of cash flows) for repayment would generally be lease or rental payments or the sale of the assets as also for recovery in the event of default where such asset is taken as security.

Categories in Real Estate & Their Impact

	Income Producing Real Estate – IPRE	Commercial Real Estate - Residential (CRE)	Commercial Real Estate non-IPRE
Definition	All loans where the main source of repayment is from the Real Estate project.	Upto 2 Residential houses (even when the 2 nd one is given on rental)	Loan for Real Estate asset but the repayment is not from that sale/lease of that asset
Source of repayment	Lease or rental payments or the sale of the asset.	Any income other than that from sale or lease of asset	Repayment is from Operating profit from business operations
Examples	Residential buildings, Office buildings, Retail space Industrial or Warehouse space	Residential house, Plot purchased for construction house, upgrade, repairs, redevelopment of own property etc.	Property for own usage, Own office, Hospital, Hotel, Theme Park etc.
Risk Weight & Asset Provisioning	Risk weight of 100% & standard asset provisioning of 1.00%	Lower risk weight of 75% & standard asset provisioning of 0.75%	As per Commercial lending norms

Inclusions & Exclusions in Real Estate Definition

These guidelines shall also apply in cases where the exposure may not be directly linked to the creation or acquisition of CRE, but where the repayment is primarily dependent on cash flows generated by CRE.

Examples include:

Exposures taken against existing CRE assets, whose repayments primarily depend on rental / sale proceeds.

- (ii) Guarantees extended on behalf of companies engaged in CRE activities.
- (iii) Exposures on account of derivative transactions with real estate companies.
- (iv) Corporate loans to real estate companies.
- (v) Investments in equity or debt instruments of real estate companies.

(4) As follows from sub-paragraphs (2) and (3) above, if the repayment primarily depends on other factors such as operating profit from business operations, quality of goods and services, tourist arrivals etc., the exposure shall not be counted as CRE.

Loans for Housing Units – not CRE

- Loans for multiple houses intended to be rented out
- The housing loans extended in cases where houses are rented out need to be treated differently. As per Basel 2 Framework, loans secured by a single or small number of condominium or co-operative residential housing units in a single building or complex also fall within the scope of the residential mortgage category and national supervisors may set limits on the maximum number of housing units per exposure.
- Therefore, such loans need not necessarily be classified as CRE Exposures. **However, if the total number of such units is more than two, the exposure for the third unit onwards may be treated as CRE Exposure** as the borrower may be renting these housing units and the rental income would be the primary source of repayment.
- The bank's exposures to third dwelling unit onwards to an individual will also be treated as CRE exposures, as indicated in paragraph 130(1)(ii) of these Directions.

Exposures which shall not be classified as CRE

Exposures to entrepreneurs for acquiring real estate for the purpose of their carrying on business activities, which shall be serviced out of the cash flows generated by those business activities. The exposure could be secured by the real estate where the activity is carried out, as would generally be the case, or could even be unsecured.

- (a) Loans extended for construction of a cinema theatre, establishment of an amusement park, hotels and hospitals, cold storages, warehouses, educational institutions, running haircutting saloons and beauty parlors, restaurant, gymnasium etc. to those entrepreneurs who themselves run these ventures shall fall in this category. Such loans would generally be secured by these properties. For instance, in the case of hotels and hospitals, the source of repayment in normal course would be the cash flows generated by the services rendered by the hotel and hospital. In the case of a hotel, the cash flows would be mainly sensitive to the factors influencing the flow of tourism, not directly to the fluctuations in the real estate prices.
- (b) The above principle shall also be applicable in the cases where the developers / owners of the real estate assets (hotels, hospitals, warehouses, etc.) lease out the assets on revenue sharing or profit sharing arrangement and the repayment of exposure depends upon the cash flows generated by the services rendered, instead of fixed lease rentals.
- (c) Loans extended to entrepreneurs, for setting up industrial units shall also fall in this category. In such cases, the repayment would be made from the cash flows generated by the industrial unit from sale of the material produced which would mainly depend upon demand and supply factors. The recovery in case of default may partly depend upon the sale of land and building if secured by these assets. Thus, it shall be seen that in these cases the real estate prices do not affect repayment though recovery of the loan could partly be from sale of real estate.

Loans extended against the security of future rent receivables

- A few banks have formulated schemes where the owners of existing real estate such as shopping malls, office premises, etc. have been offered finance to be repaid out of the rentals generated by these properties.
- Even though such exposures do not result in funding / acquisition of CRE, the repayment might be sensitive to fall in real estate rentals and as such generally such exposures shall be classified as CRE. However, if there are certain in-built safety conditions which have the effect of delinking the repayments from real estate price volatility like, the lease rental agreement between the lessor and lessee has a lock in period which is not shorter than the tenor of loan and there is no clause which allows a downward revision in the rentals during the period covered by the loan, the bank shall classify such exposures as non CRE.
- The bank shall, however, record a reasoned note in all such cases.

Credit facilities provided to construction companies which work as contractors

- The working capital facilities extended to construction companies working as contractors, rather than builders, shall not be treated as CRE exposures because the repayment would depend upon the contractual payments received in accordance with the progress in completion of work.

Financing of acquisition / renovation of self-owned office / company premises

- Such exposures shall not be treated as CRE exposure because the repayment will come from company revenues.

Loans and Advances to Commercial Real Estate - Residential Housing

- Commercial Real Estate – Residential Housing (CRE-RH), has been carved out as a separate sub-sector from the broader CRE sector, in view of the lower risk and volatility associated with residential housing projects, as compared to CRE Sector taken as a whole.
- CRE-RH includes loans to builders / developers for residential housing projects (except for captive consumption) under CRE segment. Such projects shall generally not include non-residential commercial real estate.
- However, integrated housing projects comprising of some commercial space (e.g. shopping complex, school, etc.) may qualify as CRE-RH, provided that the commercial area in the residential housing project does not exceed 10% of the total Floor Space Index (FSI) of the project. In case the FSI of the commercial area in the predominantly residential housing complex exceeds the ceiling of 10%, the project loans shall be classified as CRE and not CRE-RH.
- The CRE-RH segment shall attract a lower risk weight of 75% and lower standard asset provisioning of 0.75% as against 100% and 1.00%, respectively for the CRE segment or as updated from time to time

Declarations Regarding Unauthorized Constructions (Para 92)

(1) In cases where the applicant owns a plot / land and approaches the bank for a credit facility to construct a house, a copy of the sanctioned plan by competent authority in the name of a person applying for such credit facility shall be obtained by the bank before sanctioning the home loan.

(2) An affidavit-cum-undertaking shall be obtained from the persons applying for such credit facility that they shall not violate the sanctioned plan, construction shall be strictly as per the sanctioned plan and it shall be the sole responsibility of the executants to obtain completion certificate within 3 months of completion of construction, failing which the bank shall have the power and the authority to recall the entire loan with interest, costs and other usual bank charges.

(3) An Architect appointed / empanelled by the bank shall also certify at various stages of construction of building that the construction of the building is strictly as per sanctioned plan and shall also certify at a particular point of time that the completion certificate of the building issued by the competent authority has been obtained.

Declarations Regarding Unauthorized Constructions (Para 92)

(4) In cases where the applicant approaches the bank for a credit facility to purchase a built-up house / flat, it shall be mandatory for them to declare by way of an affidavit-cum-undertaking that the built up property has been constructed as per the sanctioned plan and /or building bye-laws and as far as possible has a completion certificate also.

(5) An Architect appointed / empanelled by the bank shall also certify before disbursement of the loan that the built-up property is strictly as per sanctioned plan and / or building byelaws.

(6) No loan should be given in respect of those properties which fall in the category of unauthorized colonies unless and until they have been regularized and development and other charges paid.

(7) No loan should also be given in respect of properties meant for residential use but which the applicant intends to use for commercial purposes and declares so while applying for loan.

Upfront Disbursal (80/20 Scheme)

- It has been observed that some banks have introduced certain innovative Housing Loan Schemes in association with developers / builders, e.g., upfront 51 disbursal of sanctioned individual housing loans to the builders without linking the disbursals to various stages of construction of housing project, Interest / EMI on the housing loan availed of by the individual borrower being serviced by the builders during the construction period / specified period, etc.
- Disbursal of housing loans sanctioned to individuals shall be closely linked to the stages of construction of the housing project / houses and upfront disbursal shall not be made in cases of incomplete / under-construction / green field housing projects.
- It is emphasized that the bank while introducing any kind of product shall take into account the customer suitability and appropriateness and also ensure that the borrowers / customers are made fully aware of the risks and liabilities under such products.

Disclosure Requirements

In view of the observations of Hon'ble High Court of Judicature at Bombay, while granting finance to specific housing / development projects, the bank shall stipulate as a part of the terms and conditions that:

- (1) the builder / developer / company shall disclose in the Pamphlets / Brochures etc., the name(s) of the bank(s) to which the property is mortgaged.
- (2) the builder / developer / company shall append the information relating to mortgage while publishing advertisement of a particular scheme in newspapers / magazines etc.
- (3) the builder / developer / company shall indicate in their pamphlets / brochures, that they shall provide No Objection Certificate (NOC) / permission of the mortgagee bank for sale of flats / property, if required.
- (4) The bank shall ensure compliance of the above terms and conditions and funds shall not be released unless the builder / developer / company fulfils the above requirements.
- (5) The above-mentioned provisions will be mutatis-mutandis, applicable to Commercial Real Estate also.

Approvals from Statutory / Regulatory Authorities

- While appraising loan proposals involving real estate, the bank shall ensure that the borrowers obtain prior permission from government / local governments / other statutory authorities for the project, wherever required.
- In order that the loan approval process is not hampered on account of this, while the proposals could be sanctioned in normal course, the disbursements shall be made only after the borrower has obtained requisite clearances from the government authorities.

National Building Code (NBC)

- The Bank shall adhere to the National Building Code (NBC) formulated by the Bureau of Indian Standards (BIS), considering the importance of safety of buildings 53 especially against natural disasters.
- The bank may consider incorporating this aspect in their loan policy.
- The bank may also adopt the guidelines issued by the National Disaster Management Authority (NDMA) and suitably incorporate them into their loan policy, procedures and documentation.

B: ECB (FEMA) Guidelines

REGULATORY FRAMEWORK OF REAL ESTATE FUNDING

What is ECB

- External Commercial Borrowings are:
 - commercial loans
 - raised by eligible resident entities
 - from recognised non-resident entities
 - and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

- ECB can be raised either in a recognised foreign currency (FCY ECB) or even in Indian rupees from foreign entities (INR ECB).

Eligible Borrowers

- All entities eligible to receive FDI. Further, the following entities are also eligible to raise FCY ECB:
 - i. Port Trusts;
 - ii. Units in SEZ;
 - iii. SIDBI; and
 - iv. EXIM Bank of India.

- **In addition, for ECB in Indian Rupees following are also eligible:** Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.

Proposed Change: Any entity regulated by Central or State Laws

Eligible Lenders

- **The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However,**
- a) **Multilateral and Regional Financial Institutions** where India is a member country will also be considered as recognised lenders;
- b) **Individuals** as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
- c) **Foreign branches / subsidiaries of Indian banks** are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). *Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.*

Minimum Average Maturity Period (MAMP)

- **MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. For the specific categories mentioned below, the MAMP will be:**
 - ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year - **1 Year**
 - ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans - **5 years**
 - ECB raised for repayment of Rupee loans availed domestically for capital expenditure – **7 Years**
 - ECB raised for repayment of Rupee loans availed domestically for purposes other than capital expenditure – **10 Years**
 - ECB raised for working capital purposes or general corporate purposes - **10 Years**

Interest Rate

- All-in-cost ceiling per annum
- **For Foreign Currency ECB**
 - **For existing ECBs** linked to LIBOR whose benchmarks are changed to ARR: Benchmark Rate plus 550 bps spread
 - **For new ECBs:** Benchmark rate plus 500 bps spread
- **For Rupee ECB**
 - Benchmark rate plus 450 bps spread.
- Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.

Proposed Change: For ECB above 3 years, the cap of interest rate to be removed

Negative List of Funds Usage

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- a) Real estate activities.
- b) Investment in capital market.
- c) Equity investment.
- d) Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above.
- e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above.
- f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above.
- g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.

Proposed Change: End use to be allowed subject to conditions for a) Mergers & Amalgamations b) Companies in NCLT c) Companies/Promoters under investigation d) On-lending to group companies

Parking of ECB Proceeds

- **Parking of ECB proceeds abroad:** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.
- **Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

Procedure of Raising ECB

- All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework.
- For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals.
- **Procedure in Short: Loan Agreement with Lender-> File ECB -> Get LRN ->Create Security ->File ECB2 for Disbursement -> Get Disbursement -> Keep filing ECB 2 for further disbursements**

B: FDI (FEMA) Guidelines

REGULATORY FRAMEWORK OF REAL ESTATE FUNDING

Definition of Foreign Investment

- **'Foreign Investment'** is any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of an LLP.
- **'Foreign Direct Investment' (FDI)** is the investment through equity instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.
- **'Non-Resident Indian (NRI)'** is an individual resident outside India who is citizen of India.

Residential Status

- **'Non-Resident Indian (NRI)'** is an individual resident outside India who is citizen of India.
- **'Overseas Citizen of India (OCI)'** is an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.
- **'Resident Indian citizen'** is an individual who is a person resident in India and is citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Prohibited Sectors

- **Investment by a person resident outside India is prohibited in the following sectors:**

(1) Lottery Business including Government/ private lottery, online lotteries. (2) Gambling and betting including casinos.

(3) Chit funds

(4) Nidhi company

(5) Trading in Transferable Development Rights (TDRs).

(6) Real Estate Business or Construction of farm houses.

(7) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

(8) Activities/sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations

(9) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

Types of Instruments

- An Indian company is permitted to receive foreign investment by issuing equity instruments to the investor. The equity instruments are equity shares, convertible debentures, preference shares and share warrants issued by the Indian company.
- **Equity shares:** Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include equity shares that have been partly paid.
- **Share Warrants:** are those issued by an Indian Company in accordance with the Regulations issued by the SEBI in this regard.
- **Debentures:** Debentures which are fully, compulsorily and mandatorily convertible are treated as equity instruments.
- **Preference shares:** Preference shares are fully, compulsorily and mandatorily convertible preference shares.

Entry Routes

Foreign investment in the equity instruments of an Indian company can be made through two routes:

- **Automatic Route:** is the entry route in which investment by a person resident outside India does not require the prior approval from the Central Government.
- **Government Route:** is the entry route in which investment by a person resident outside India requires prior Government approval. Foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

FDI in Real Estate - Overview

- In the construction development sector, 100% FDI is allowed under the automatic route. Investors are permitted to exit on completion of the project or after the development of trunk infrastructure (i.e. roads, water supply, street lighting, drainage and sewerage).
- While each phase of a project is considered a separate project, the investor is also permitted to exit and repatriate the foreign investment before completion of the project, subject to a lock-in period of three years, calculated with reference to each tranche of the FDI.
- These exit restrictions are not applicable to investment in sectors such as hotels, tourist resorts, hospitals, special economic zones, educational institutions and industrial parks (which have been specifically defined for FDI purposes).
- The transfer of a stake by one non-resident or foreign investor to another without repatriation of the investment is allowed, subject to neither any lock-in period nor any government approval.
- No FDI is permitted in an Indian company engaged in the construction of farmhouses, trading in transferable development rights, or the real estate business. The term “real estate business” includes dealing in land and immovable property with a view to earning profit.

FDI in Real Estate – What is not Real Estate as per FEMA

- **Real Estate does not include the development of:**
 - townships;
 - construction of residential or commercial premises;
 - roads or bridges;
 - REITs;
 - educational institutions;
 - recreational facilities; and
 - city and regional-level infrastructure. Further, earnings from rent or income on the lease of a property, not amounting to a transfer, are exempted from the definition of “real estate business”.

- The 100% FDI under the automatic route is also permitted in “completed projects” for the operation and management of townships, malls and shopping complexes, and business centres. However, there is a lock-in period of three years, calculated with reference to each tranche of investment, and transfer of immovable property or part thereof is not permitted during this period. The regulations also allow 100% FDI under the automatic route in real estate broking services.

Sectoral Caps

- Foreign investment is permitted up to 100% on the automatic route, subject to applicable laws/rules/regulations, security and other conditionalities, in sectors/ activities:
 - i) not listed in Schedule I of the NDI Rules and
 - ii) not prohibited under Para (2) of Schedule I of the NDI Rules.
- This condition is not applicable for activities in financial services.

- Foreign investment in financial services other than those indicated under serial number “F” of table under Para (3)(b) of Schedule I of the NDI Rules would require prior Government approval.

Pricing of Shares

- **Listed Company:** The price worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company or in case of a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009; or
- **Unlisted Company:** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.
- 8.1.2 In case of convertible equity instruments, the price/ conversion formula of the instrument is required to be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA rules.

Non-repatriable Investment

- Non-resident Indian (NRI) or an Overseas Citizen of India (OCI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, is permitted to purchase/ contribute to the following on a non-repatriation basis:
- (a) Any capital instrument issued by a company without any limit either on the stock exchange or outside it.
- (b) Units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
- (c) The capital of a Limited Liability Partnership without any limit.
- (d) Convertible notes issued by a startup company in accordance with NDI Rules.
- *The investment detailed at 1.1 above will be deemed to be domestic investment at par with the investment made by residents.*

Investment in a Proprietorship/Partnership Firm

- An NRI or an OCI is permitted to invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India.
- *The investee firm or proprietary concern should not be engaged in any agricultural/ plantation activity or print media or real estate business i.e., dealing in land and immovable property with a view to earning profit or earning income therefrom.*
- The amount of consideration should be received from abroad through banking channels or paid out of funds held in NRE/ FCNR(B)/ NRO accounts. The disinvestment proceeds should be credited only to the NRO account of the person concerned, irrespective of the type of account from which the consideration was paid.
- The amount invested for contribution to the capital of a firm or a proprietary concern and the capital appreciation thereon cannot be repatriated abroad.

Investment in LLP

- A person resident is permitted to contribute to the capital of an LLP operating in sectors/activities where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions
- An LLP having foreign investment, engaged in a sector where foreign investment up to 100 percent is permitted under the automatic route and there are no FDI linked performance conditions, can be converted into a company under the automatic route and vice-versa a Company can be converted into a LLP.
- The disinvestment proceeds can be remitted outside India or may be credited to NRE or FCNR(B) account of the person concerned.

FDI in LLP – Practical Issues

- Some of the sectors such as non-banking financial companies (NBFCs), Construction Development (including Townships, Housing, Built-Up infrastructure), Industrial Parks, Pharmaceutical in brownfield, Retail Trading impose clear FDI performance-based conditions such as minimum capitalization, minimum area to be developed, local sourcing, lock-in periods. These conditions relate directly to how the foreign investment is utilized and are therefore considered performance linked.
- The existing ambiguity in the definition of *FDI-linked performance conditions* which is creating confusion and resulting in erroneous treatment of sectors with mere procedural and compliance-based conditions as the sector having FDI-linked performance conditions has a significant impact on the ability of LLPs (and companies in few cases) to receive FDI in several high-potential sectors. Sectors such as wholesale trading, manufacturing, agriculture and allied activities, pharmaceuticals (particularly greenfield projects), and regulated financial services often fall into this grey area. As a result, only a limited number of sectors such as software development and business consultancy services, which have no sectoral conditions, remain fully open for LLPs and non-operational companies to attract foreign investment.
- This misinterpretation causes additional scrutiny by AD Banks and unnecessary referrals to DPIIT which, in turn, slows down the investment timelines and increase compliance costs.

Source: Nishith Desai & Associates <https://nishithdesai.com/default.aspx?id=15405>

THANK YOU!

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