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Alliance School of Law



ACCL

ALLIANCE CENTRE FOR CORPORATE AND COMMERCIAL LAW

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CORPORATE AND COMMERCIAL LAW UPDATES

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ABOUT ALLIANCE CENTRE FOR CORPORATE AND COMMERCIAL LAW - ACCL

Alliance School of Law has set up an exclusive Centre for **Corporate and Commercial Law**, named as the **Alliance Centre for Corporate and Commercial Law (ACCL)**, which offers a unique and powerful approach to prepare students to become transactional lawyers representing businesses and investors. After graduating, a student who has participated in the corporate concentration should have a theoretical and substantive foundation for corporate law fundamentals, including business associations, mergers and acquisitions and securities regulation. **ACCL** promotes advanced research and outreach activities among faculty and students in Corporate and Commercial law.

The vision of the Centre is to make Alliance School of Law a center for discussion, debate, and research in Corporate Law. ACCL solidifies its commitment to prepare students for successful careers in corporate law and attract top legal scholars, regulators, practitioners, faculties, and students to the Alliance school of Law.

The Centre's mission is to promote quality research and learning among faculties and students in the various segments of Corporate and Commercial law. The activities of the Centre include undertaking publications of research papers in areas related to corporate law, offering online courses, organizing conferences, seminars, and lectures, and conducting awareness programs on various areas of Corporate and Commercial law.

MESSAGE FROM THE DEAN



Dr. Kiran Dennis Gardner

Professor & Dean,
Alliance School of Law

Alliance School of Law takes pride in introducing the maiden issue of the newsletter “Corporate and Commercial Law Updates”, compiled and edited by Alliance Centre for Corporate and Commercial Laws. Alliance University has taken great strides in redefining Universities’ role in the country. In furtherance of its motto “experience, the difference”, Alliance School of Law has been proactively involved in knowledge creation and dissemination. The present newsletter is our efforts to keep society informed about the developments in the relevant spheres of Corporate and Commercial law. I am sure that ACCL will continue this task for updating the students, professionals, and society at large on contemporary issues and challenges. I

firmly believe that these efforts will benefit the readers and aid further research in corporate and commercial laws.

Corporate and commercial laws have seen significant challenges over the past few years. From the rapidly evolving new laws such as Insolvency and Indirect taxation which introduce new uncertainties with every step forward to challenges in securities markets and banks where laws are facing challenges to uphold the trust of the investors; the laws have seen swift transitions. The need to keep pace with such laws, therefore, is eminent and indispensable.

This newsletter, I believe, will help in fulfilling the information gap in this dynamic area of law.

MESSAGE FROM THE EXPERT



Mr. Prakash Yadav

In-House Legal Counsel,

Mastercard, Pune

Making a career in Corporate and Commercial Laws has become significant due to the latest development in laws keeping up with the market and the business model of the new age. There are various practice areas in corporate law such as Insolvency, Mergers & Acquisitions, Regulatory, Compliance, Privacy, Taxation, etc., and it is essential to identify the specific area an individual would like to focus on. The areas are quite extensive, and the rapid evolution has introduced elements of uncertainty and various risk factors. This mandates the sharp skills and keenness of a Corporate Lawyer. For example, the country's securities market has been adapting to the growth and changes taking place both domestically and globally, and the professional participants and parties' part of the transaction needs to adapt accordingly. A career in Corporate and Commercial Law offers flexibility to individuals where they can work as an associate in a firm, or as an in-house counsel for a corporation, or as an independent consultant, or practice commercial litigation. In my belief, the growing demand for such lawyers paints the current world scenario to be highly competitive due to globalization. Therefore, it has become quintessential for students to gain knowledge and experience through internships, newsletters, and attending workshops/conferences designed for the same.

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GOVERNMENT'S TAXATION POLICY ON VIRTUAL DIGITAL ASSETS (VDA)

-Mr. Chirag R. and Mr. Varun Nair

B.B.A. LL.B (Hons.)

Batch: 2018-23

A digital representation of an item with value in a particular setting is called a virtual asset. This form of money or asset can be transferred, exchanged, paid for, or invested in digitally. The Indian government really hasn't awarded any legal currency status regarding the same.

By issuing a circular in 2018, the Reserve Bank of India (RBI) prohibited the use of cryptocurrency as legal tender in India. (<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11243>) However, the Indian Supreme Court, in a landmark case, overturned this decision in March 2020, allowing banks to handle cryptocurrency transactions from traders and exchanges, following which the government mandated companies dealing in virtual currencies to disclose their profit or loss on crypto transactions, as well as amount of cryptocurrency held in their balance sheet.

(https://main.sci.gov.in/supremecourt/2018/19230/19230_2018_4_1501_21151_Judgment_04-Mar-2020.pdf)

Further, the ministry intends to delete the term "other" from the clause pertaining to the set-off of losses from gains in virtual digital assets, according to amendments to the Finance Bill, 2022 distributed among Lok Sabha members. For tax purposes, cryptocurrencies are classed as a capital asset, and so income under the title "capital gain" will occur on transaction of the same.

From April 1, such transactions will be subject to a 30% Income Tax plus cess and surcharges, in the same way as profits from horse racing or other risky investments are. Furthermore, no deduction for any expenditure (other than the cost of acquisition) or allowance will be permitted when calculating the revenue from the transfer of Virtual Digital Asset.

A new section 194-S regulating Tax Deducted at Source (TDS) is planned to be included into the Income Tax Act, 1961, with effect from July 1, 2022. The Budget 2022-23 suggested a 1% Tax Deducted at Source on virtual currency transfers exceeding Rs 10,000 per year, as well as taxation on such presents in the hands of the receiver.

The TDS threshold limit will be Rs 50,000 per year for designated persons, which will include individuals and Hindu Undivided Families (HUFs) required to have their accounts audited under the Income Tax Act.

(Quick Note- Virtual Digital Asset and Its Effectualness in the Corporate Sector)

RESERVE BANK OF INDIA (RBI) AUCTIONING STATE GOVERNMENT SECURITIES

(Vide Circular Dated: May 12, 2022)

-Mr. Naman Jain
B.B.A. LL.B (Hons.)
Batch: 2018-2023

RBI to auction State Development Loans (SDLs) for Statutory Liquidity Ratio (SLR)
(https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=53697)

United States Federal Reserve has signaled a more aggressive path for an interest rate hike than was envisaged, exerting pressure on the Indian central bank to normalize policy and the domestic government has announced its highest ever borrowing programs for the financial year 2022-2023. There is no liquidity in the secondary market for small investors who would want to trade in small size. To encourage wider participation and retail holdings of government securities (G-Sec) participation of eligible individuals and institutions is allowed on a non-competitive basis in the auctioning of State Development Loans (SDLs).

The investment in the State government stocks will be reckoned as an eligible investment in the government securities (G-Sec) by banks for Statutory Liquidity Ratio. These stocks will be qualified for the ready-forward facility. As government sells State securities, they reduce the amount of money in the economy and push interest upwards. Bidders would be able to participate in the auction of dated government securities (G-Sec) without having to quote the yield on the price of the bid. Individuals can place bids via RBI's E-Kuber app.

The process of trading government securities will become easier for small investors, resulting in more retail involvement in G-Secs and enhanced ease of access. This policy, together with an easing of required Hold to Maturity (securities acquired to be held until maturity) rules, will let the government finish its borrowing program smoothly.

(Quick Note-Trading of government securities will become easier for small investors)

**OPERATIONAL INSTRUCTIONS FOR TRANSACTIONS IN
CREDIT DEFAULT SWAPS (CDS) BY FOREIGN PORTFOLIO
INVESTORS (FPI) -ISSUED BY RESERVE BANK OF INDIA –
(FEBRUARY 10)**

**-Mr. Atul Balasubramaniyam
B.B.A. LL.B (Hons.)
Batch: 2019-2024**

Credit Default Swap or CDS is a financial swap agreement whereby the seller of CDS will compensate the buyer in the event of a debt default or other credit event. Foreign Portfolio Investors are foreign individuals who invest in securities overseas as a passive holding. With this notification, the RBI informed that the foreign portfolio investors can now buy CDS to reduce their risk or to cover their losses.

Foreign Portfolio Investors (FPIs) are eligible to be categorized as non-retail users and have been allowed to buy and sell Credit Default Swaps (CDS) protection under the Credit Derivatives Direction. RBI has issued the following directions, under sections 10(4) and 11(1) of FEMA 1999, for authorized people eligible to deal with FPIs:

- The aggregate Limit of the notional amount of CDS sold by FPI shall be 5% of the outstanding stock of corporate bonds
- FPIs shall not sell CDS once the aggregate limit is utilized.
- Debt instruments both which are received as a deliverable obligation and purchased to meet deliverable obligation shall be reckoned under the investment limits for corporate bonds as specified in A.P. (DIR Series) Circular No. 05 dated May 31, 2021, as amended from time to time.

These directions came into force on May 09, 2022.
(<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12227&Mode>)

RBI Cautions citizens against the use of unauthorized Electronic Trading Platforms (ETP) (February 3)

Electronic trading platforms are software designed to help people research, monitor, and trade in securities. Since there were a lot of cases being reported as to frauds in the said platforms the RBI issued a notification in favour of the citizen asking them to undertake foreign exchange transactions through an authorized person only.

RBI has clarified that resident persons can undertake foreign exchange transactions only with authorized persons and for permitted purposes regarding FEMA 1999. Even though the foreign exchange transactions can be executed electronically, they should be done by the ETPs authorized by RBI or on recognized Stock exchanges. This clarification has been given by the RBI after it took cognizance of the Forex transaction frauds taking place in the country.

Source:

<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR1660566185F9F1784E95B932ED4CC6EDD0FA.PDF>

(Quick Note- Directions RBI for authorized people eligible to deal with Foreign Portfolio Investors)

REPORT ON VOLUNTARY RETENTION ROUTE (VRR) FOR FOREIGN PORTFOLIO INVESTORS (FPIs) INVESTMENT IN DEBT.

-Mr. Yash Mahmia
B.A. LL.B (Hons.)
Batch: 2019-2024

To allow FPIs to engage in India's debt markets, the Reserve Bank, in collaboration with the Government of India and the Securities and Exchange Board of India (SEBI), proposes a different route known as the "Voluntary Retention Route" (VRR). If FPIs agree to voluntarily commit to keeping a specified minimum percentage of their assets in India for a period, investments made through the Route will generally be exempt from the macro-prudential and other regulatory rules applicable to FPI investments in debt markets. The use of this Route will only be done at the participant's discretion which is explained below in this report.

The enhanced investment limits will be available for allotment from **April 1, 2022**, as follows: (https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=12228&fn=5&Mode=0)

- The VRR investment ceiling has been raised to Rs.2,50,000 crore.
- As a result, the investment maximum available for a new assignment would be Rs.1,04,800 crore (net of existing allotments and revisions), and it will be granted under the VRR–Combined category.
- Three years is the minimum retention term.
- Investment limitations will be 'on tap' and distributed on a first-come, first-served basis.
- The 'tap' will remain open until the limit has been reached.
- FPIs can apply for investment limits online through their custodians to the Clearing Corporation of India Ltd. (CCIL).
- The operational details of the application procedure and allotment will be communicated separately by CCIL.

(Quick Note -Voluntary Retention Route for Investment by Foreign Portfolio Investors)

ROLE OF SEBI IN COMBATTING MONEY LAUNDERING IN INDIA

-Mr. Timur Abdusamatov

B.B.A. LL.B (Hons.)

Batch: 2018-2023

To reduce the risk of financial fraud and money laundering, SEBI had requested mutual fund houses to ensure that no mutual fund distributor, online platform, investment advisor, or stockbroker pools accounts and transfers them to the fund house for purchasing units of schemes for those investors. New Fund Offers (NFOs) are the primary step in launching a mutual fund, SEBI has restricted the mutual fund industry from issuing new NFOs until they comply with the new norms. Furthermore, SEBI informed mutual funds to hold off on sending any new fund offerings based on crypto assets until India's crypto laws are in place.

No new schemes can be launched by fund houses unless they comply with the SEBI guidelines. Circulars were issued by SEBI to the Association of Mutual Funds in India (AMFI) to implement its related circulars on two-factor authentication for verification of source accounts when mutual fund investments are made and for the redemption of mutual funds. A two-factor authentication process, such as an additional OTP, will also be necessary for the customer to redeem their mutual fund. Such additional verification is aimed at eliminating the risk of fraud in the industry as well as curbing money laundering assets in mutual fund investments. (https://www.sebi.gov.in/sebi_data/attachdocs/1337083696184.pdf)

The compliance remains pending despite the circulars being issued on October 4th, 2021, and again on March 15th of 2022. After seeking a request for an extension of the deadline, SEBI extended the deadline for AMFI till July 1st, 2022. (https://www.business-standard.com/article/markets/fund-houses-ready-nfos-as-ban-nears-end-say-will-comply-with-new-norms-122061701022_1.html)

Debenture Trustees were also advised by SEBI to dissociate themselves from carrying out activities related to unregulated products such as acting as a trustee for digital gold. SEBI states that the mentioned undertaking was not in accordance with section 12(1) of the SEBI Act 1992, read with the SEBI (Debenture Trustees) Regulations 1993.

(Quick Note- No new schemes can be launched by fund houses unless they comply with the SEBI guidelines)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(IBBI)s VOLUNTARY
LIQUIDATION (AMENDMENT) REGULATION, 2022

(Vide IBBI Notification No. IBBI/ 2022-23/ GN/ REG.081)

-Mr. Rachit Rohit Manuja
B.B.A. LL.B (Hons.)
Batch: 2018-2023

Budget 2022 stated the intention to expedite the voluntary liquidation procedure to give greater flexibility to businesses seeking to depart the business. In February 2022, the Insolvency and Bankruptcy Board of India issued a discussion paper along with proposed regulations for public consultation. Following that, the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Amendment Regulations 2022 were published.

Section 59 of the IBC provides for the method of voluntary liquidation. This section read along with IBBI (Voluntary Liquidation Process) Regulations, 2017 ('Voluntary Liquidation Regulations') (<https://ibclaw.in/ibbi-voluntary-liquidation-process-regulations-2017/>) provides that a corporate person may initiate voluntary liquidation proceedings.

However, there were certain issues with this which are:

The Code does not provide for a deadline for completing the voluntary liquidation procedure, considering the rapid depreciation in the value of assets over time.

- According to the latest information available with the IBBI, more than 50% of the voluntary liquidation processes are still ongoing, having exceeded one year.
- Another reason for the prolonged liquidation process is regarding seeking a No-Objection Certificate (NOC) from the tax departments, even though the code and the liquidation regulations do not mandate it.

Key Amendments Brought in through Voluntary Liquidation (Amendment) Regulation, 2022:

-As per the amendment in Regulation 10(2)(r), the word “corporate debtor” is substituted with “corporate person”

-As per amendment regulation 30(2), if no claim from creditors has been received, the liquidator must provide a list of stakeholders within 15 days of the final deadline for receipt of claims.

-Regulation 35(1) has been changed to lower the time limit for distributing profits from realization to stakeholders from six months to 30 days from the date of receipt of the funds.

-Regulation 37 (1) talks about the time limit for completing the voluntary liquidation procedure and submitting the final report has been reduced from one year to:

- 270 days from the date of the process's start — in situations where creditors' claims have been received.
- If no creditor has filed a claim, the time limit is 90 days.
 - × As per Regulation 38(3), the liquidator shall submit the final report and the compliance certificate in Form-H.
 - × Regulation 5(2) has been changed to raise the time limit for notifying the IBBI of an insolvency professional's appointment as a liquidator from three days to seven days.

Source: <https://ibclaw.in/ibbi-voluntary-liquidation-process-amendment-regulations-2022/>

Quick Note-Initiation of voluntary liquidation proceedings by a corporate person because of IBBI's Voluntary Regulation (Amendment) Regulation Bill, 2022)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(INSOLVENCY RESOLUTION PROCESS FOR CORPORATE
PERSONS) (AMENDMENT) REGULATIONS, 2022

- Ms. Muskaan Jain
B.B.A. LL.B (Hons.)
Batch: 2019-2024

This article is a summary of the amendments made in the Insolvency Resolution Process for Corporate Persons. The new changes and requirements as per the regulations are given below.

The Resolution Professional (RP) has been given more freedom in convening Committee of Creditors (CoC) meetings and presenting proposals. Furthermore, while the CIRP Regulations required the Interim Resolution Professional (IRP) or the RP to preserve records relating to the Corporate Insolvency Resolution Process (CIRP), the Amended CIRP Regulations expand the scope of documents that must be preserved by the IRP or RP, including specific timelines for both physical and electronic records. The Amended CIRP Regulations include the following:

1. If the RP deems it necessary, he may place a proposal received from CoC members, and he must place such a proposal if it is proposed by CoC members representing at least 33% of the voting rights.
2. To give a thorough account of CIRP, the IRP or RP must keep an electronic copy of all records for at least 8 years and a physical copy for at least 3 years from the date of completion of CIRP or the conclusion of any proceeding connected to CIRP, whichever is later
3. The IRP or RP must keep copies of records relating to or constituting the basis of his appointment, terms of appointment, claims, CoC meetings, public announcements, information memorandum, statutory filings, cost, and Adjudicating Authority and Appellate Authority orders, among other things.

4. The IRP or RP must keep the records in a secure location and must be able to furnish them as and when requested.
5. The IRP or RP is expected to keep documents relating to the time of CIRP during which he was engaged to function as an IRP or RP, even if he did not take up the assignment from the commencement or conclude it.

Source:

<https://ibbi.gov.in/uploads/legalframework/dbe9d181c132daf2d18090d873b1adbc.pdf>

(Quick Note -Insolvency and Bankruptcy Board of India announces its new regulations in 2022)

COMPETITION COMMISSION OF INDIA REVISES REPORTING REQUIREMENTS

-Ms. Kiran Patel
B.B.A. LL.B (Hons.)
Batch: 2018-2023

The competition regime in India is mandatory and the approval of the Competition Commission of India is necessary to approve a transaction structured as a merger or acquisition. The merger filing procedure by the CCI has been amended to make it more time efficient and less cumbersome.

The Competition Commission of India has revised the reporting requirement for companies planning for mergers and acquisitions, and the same came into effect on 1st May 2022. Currently, CCI seeks one-year information from entities about their market share, market size, and competitors along with the customers. Although the entities will now have to provide the relevant data of the past five years and disclose “complimentary linkage” between them and their impact on the market. Form II has been amended which requires stricter examination of significant deals. CCI has revised the content and format of the information needed to be filed under Section 6(2) where the post-combination market share exceeds 15% in horizontal overlap and 25% in the vertical interface. The same will encourage compliance by the entities. [The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2022- <https://www.cci.gov.in/combination/legal-framework/regulations/details/11/01>] Targets that had an asset size of fewer than ₹350 crores or a turnover of less than ₹1,000 crores have been exempted from merger control norms for five more years (previous exemption notification in 2017 for five years - https://www.mca.gov.in/Ministry/pdf/Notification_30032017.pdf). These less significant mergers and acquisitions deals are not necessary to be notified to the CCI till March 2027. Mergers and acquisitions are included in the scope of the small target exemption. Where there is a merger or acquisition of a business, division, or assets, the assets, and turnover values of the actual business, division or asset will be taken into consideration while calculating the small target exemption, or the threshold mentioned under Section 5 of the Competition Act, 2002. [<https://egazette.nic.in/WriteReadData/2022/234300.pdf>]

((Quick Note- Mergers and Acquisitions or combinations beyond a certain threshold require approval from the CCI))

MINISTRY OF CORPORATE AFFAIRS 21 (MCA21) PORTAL
RELEASED BY
THE MINISTRY OF CORPORATE AFFAIRS, 2022

-Ms. Oleina B
B.A. LL.B (Hons.)
Batch: 2018-2023

Starting with the LLP module, the Ministry of Corporate Affairs (MCA) deployed the third version of the MCA21 platform in **March 2022**. Analytics, artificial intelligence, and machine learning will be used in the third iteration of the site, which is a major platform for submitting needed documents and filings under the business law and the Limited Liability Partnership Act. The third edition of MCA21 is set to be released in March, with the LLP module being the first to be released. The third iteration of the portal is being developed by L&T Infotech. The ministry has informed stakeholders that it will provide a new method of e-filing for LLPs on the platform and that all LLP filings will be done online in the future. As part of the third iteration of MCA21, there are also plans to set up an MCA lab to improve data analytics.

"Version 3 of MCA21 is proposed to be launched and deployed in phases," Minister of State for Corporate Affairs Rao Inderjit Singh stated during last year's winter parliamentary session.

It will include company and LLP modules, e-adjudication, e-consultation, e-book, Learning Management, and Compliance Management systems driven by data analytics, Artificial Intelligence, and Machine Learning. Users can utilize the Sectional Search to find the document they're looking for quickly. It just searches the documents in a certain section of the website, whereas a Website search searches the entire site. The e-Book platform has been updated to include e-books for all of MCA's Acts. Additional features such as filtering, sorting, and timelines have also been added. E-Consultation is a new addition to the online platform where stakeholders/users can provide comments and recommendations on MCA's proposed amendments/draft law. (<https://www.mca.gov.in/mcafoportal/login.do>)

Quick Note-The benefits of M2A21 Portal

CENTRAL GOVERNMENT'S STANCE ON FOREIGN INVESTMENT IN THE REAL ESTATE SECTOR

-Ms. Deepanshi Kapoor and Mr. Sambhav Purohit

B.A. LL.B (Hons.)

Batch: 2019-2024 and 2020-2025

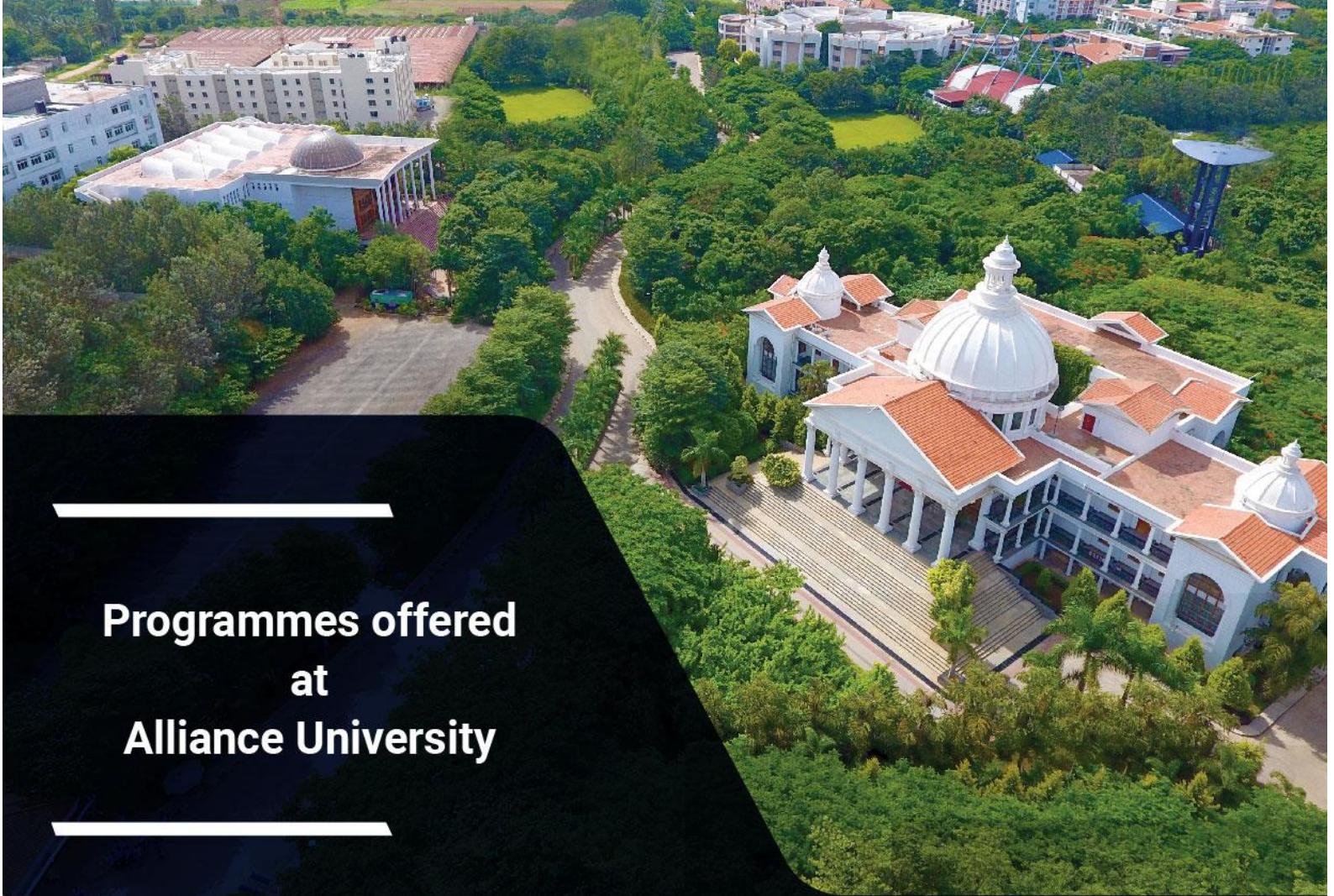
Real estate is a significant industry in the Indian economy, and it is estimated to be the second largest source of employment after agriculture. The government has selectively relaxed the Foreign Direct Investment (FDI) regulations during the previous decade and a half, allowing for increased investment and growth. To make the real estate sector's foreign direct investment (FDI) policy more transparent, the Union government modified and aligned what falls within the present definition of 'real estate business.

According to a recent Press Note No.1 (2022 series), issued on March 14, 2022, by the entities involved or seeking to participate in the real estate business, farmhouse constructions, or trading in transferable development rights. It further said that rent earned/income on lease of a property that does not equate to transfer would not be considered real estate business. Department for Promotion of Industry and Internal Trade (DPIIT), FDI is not allowed in (https://dpiit.gov.in/sites/default/files/Press_Note_1_2022_14March2022.pdf)

According to the note, the term "real estate business" has been defined as businesses that deal in land and immovable property for profit, excluding township development, residential/commercial premises construction, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships, and foreign investments in Real Estate Investment Trusts (REITs) which are registered and regulated under the SEBI (REITs) Regulations 2014.

Furthermore, paragraph 4 of annexure 3 to the FDI Policy has been amended to allow for the issuance of “Capital Instruments” in connection with the restructuring of an Indian company through a scheme of compromise or arrangement, merger, or amalgamation of two or more Indian companies, or reconstruction through demerger or transfer of one or more undertakings approved by the NCLT or other competent authority to do so by law.

(Quick Note- Helps in improving the financial condition of the people by accelerating growth of the economy)



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