# ORBIT'S

# LEGAL PULSE

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# Policy Insights

## Digital Personal Data Protection (DPDP) Rules, 2025

The Ministry of Electronics and Information Technology (MeitY) recently notified Digital Personal Data Protection Rules, 2025 ("Rules"), which will operationalise the provisions of the Digital Personal Data Protection Act, 2023 ("Act"), for protecting privacy in a gradually increasing digital world. These Rules strengthen India's evolving privacy space by protecting individuals' data rights and the obligations of organisations that handle such personal data. The objective is to *prevent misuse of personal information, minimise digital risks, and support an environment where innovation can grow safely.* Together, this will enhance India's digital ecosystem and contribute to a strong and secure digital economy.

The Rules represent a major and an innovative step towards building a comprehensive and modern digital data privacy framework in India. The Rules provide the operational guidelines for the application of the Act and will encourage a greater clarity, accountability and security in personal data processing.

The Rules strike a balance between safeguarding individuals' right to digital data and ensuring that organizations can comply without operation hardship. They also regulate how personal data may be collected, processed, stored, and to be shared by the private entities or government authorities, or any other institutions; and response and addresses to the complex challenges emerging in India's fast growing digital environment.

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The major development under the Rules includes with data transfers, data erasure, *mechanisms for the nomination of individuals, and safeguards to protect data principals' rights and interests.* This introduction marks another major step in the Government's efforts to build a forward-looking, resilient, and globally aligned data protection regime.

**Applicability:**
These Rules apply to:
·Entities operating within India irrespective of size or structure; and
·Entities located outside India, if they supply goods or services to an individual resident in India.

**Commencement:**
The Rules come into force upon notification in the Official Gazette. However, in terms of obligations more specific to the compliance, such as formats for notices or timelines to report personal data breaches, will be notified by the Central Government on a later stage.

**Key Provisions**
**a.Notice Requirements for Data Fiduciaries (Rule 3):**
Data fiduciaries shall provide clear notices to data principals regarding data processing, including notices on previously collected and newly collected consent-based data. The notices shall include all prescribed details which are:

1. Types of personal data being collected.
2. Purpose of processing, along with details of the goods, services, or benefits that it supports.
3. Instructions and guidelines for withdrawing consent and exercising individuals' rights..
4. Easy accessible communication channels and simple mechanisms for addressing grievance redressal system.

**b. Registration and Responsibilities of Consent Manager (Rule 4):**

Consent managers shall be the platforms that assist data principals in managing and exercising consent. They have to register themselves with the Data Protection Board and thereafter undertake certain obligations under the Rules for transparency and reliability.

1. Allow Data Principals to provide, refuse, or withdraw consent for the processing of their personal data by Data Fiduciaries through the platform.
2. Keep detailed records of all consents, notices, and data-sharing actions, make these available to Data Principals in a machine-readable format, and preserve them for a minimum of seven years.
3. Offer a dedicated website or mobile application as the main interface for Data Principals to access services and manage their consent preferences.
4. Refrain from subcontracting or transferring any responsibilities assigned under the Act or the Rules.
5. Put in place appropriate security measures to prevent personal data breaches.
6. Operate with a fiduciary duty towards Data Principals and ensure there are no conflicts of interest with Data Fiduciaries, including within its management structure.
7. Disclose details about its leadership, major shareholders, and related entities on its website or app to promote transparency.
8. A robust audit system to be set up to overlook the compliances which requires technical support, registration conditions, and statutory obligations.
9. Secure prior approval from its Board before undertaking any change in control, whether through sale, merger, or any similar arrangement.

**c.Reasonable Security Safeguards (Rule 6):**

To protect the personal data, the data fiduciaries must implement suitable security measures. All the contracts with the data processor must include mandatory provisions which ensure appropriate security safeguards

**d.Data Breach Intimation (Rule 7):**

In the event of a personal data breach, data fiduciaries take the following steps:

1. Promptly notify any affected parties with a description of the breach incident, its impact, and mitigation measures.
2. Inform the Data Protection Board within 72 hours from discovering the breach-or within an extended timeline if allowed-backed by a full incident report.

**e. Accountability, Compliance, and Retention Requirements (Rule 8):**

1. Personal information must be processed only for specified, legitimate, and necessary purposes.
2. Platforms should maintain easily accessible grievance-redressal mechanisms.
3. E-commerce platforms, online gaming intermediaries, and social media platforms must delete user data after three years of inactivity unless the user continues to maintain the account.
4. The users should be informed 48 hours in advance of such deletion and given an opportunity to preserve their data.

**f. Consent for Processing Children's and Persons with Disabilities' Data (Rule 10):**

1. Data fiduciaries should implement technical and organizational measures to verify parental consent in the processing of children's data.
2. Consent providers shall be verified as identifiable adults.
3. For individuals with disabilities, the fiduciary must ensure that the consent is given through the legally recognized guardian.

**g. Obligations of Significant Data Fiduciaries (any entity, company and organization) (SDFs) (Rule 12):**

1. Significant Data Fiduciaries are required to carry out a Data Protection Impact Assessment (DPIA) every year to identify potential risks in their data-processing operations and put in place measures to reduce those risks.
2. They must also ensure that any algorithmic tools used for hosting, displaying, uploading, modifying, publishing, transmitting, storing, updating, or sharing personal data do not infringe upon the rights of Data Principals.
3. They must implement safeguards to ensure that categories of personal data specified by the Central Government are processed only under the prescribed restrictions, including ensuring that such data—and any related traffic data—are not transferred outside India.

**h. Processing of Personal Data Outside India (Rule 14):**

Data Fiduciaries that process personal data within India, or process data while offering goods or services to individuals in India from outside the country, must comply with any conditions issued by the Central Government regarding the sharing of such personal data with foreign governments or foreign entities.

**i. Exemptions (Rule 15):**

Rights such as withdrawal of consent or erasure may not be applicable for activities such as research, archiving in the public interest, or statistical work if the information is

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anonymized or used in non-identifiable form, provided strong security measures are maintained.

**j. Protection of Children's Data & Parental Consent :**

The regulations strengthen protections for minors-those under 18 years-who cannot be profiled, their behaviour tracked, or monitored, especially targeting children, except with verified parental consent. However, there are narrow exemptions for sites like educational institutions or certain medical bodies.

**l. Cross-Border Data Transfers & Localization**

The Rules enable the Central Government to issue directions with respect to cross-border transfers of personal data: for Significant Data Fiduciaries, certain categories of data have to be kept in India and any permitted transfer has to be in accordance with government-approved safeguards.

**m.Data Classification & Retention Limits:**

While the Act does not define *"sensitive personal data,"* the draft Rules indicate that information related to children, financial information, health data, and biometric and other similar categories should be accorded a higher level of precaution.

The Rules mandate the deletion of personal data once the purpose of processing is achieved. The significant data fiduciary, who has crossed two crore users, shall start deleting data if the user remains inactive for three consecutive years.

**n.Exemptions for State Agencies and Special Processing:**

Section 17 of the Act grants the Central Government the right to exempt certain activities performed either by a State or its instrumentalities. The 2025 Rules bring in operational clarity regarding the way invocation of and application of any such exemptions may be made.

**Conclusion:**

The Rule outlines an organized and structured approach to personal data management in India. by emphasising on the responsibilities of organizations and increased protection for individuals, it promotes secure, transparent, and rights-based data ecosystem. From time-bound deletion of data and notifications to users on any change in the privacy policy, to very strict security requirements, to additional duties placed on large platforms, these Rules support innovation while ensuring strong protections for privacy.

This marks an important step in the journey of India toward a trustworthy and modern digital governance system aligned with the digital governance system.

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## New Rent Control Rules 2025

In India tenancy market was governed by the rent-control laws enacted by each state. At the national level, the Government of India approved a **Model Tenancy Act (MTA) in 2021** as a template to enhance the rental regulations for keeping pace with change in technology. However, as housing falls under the State List, the Model Tenancy Act had no force of law until states adopted it which is provided under section 1 clause 3 of the Act. Since the enactment of the act only four states have revised their tenancy laws in accordance with the said Act. For example, Maharashtra's rentals have been regulated by the Maharashtra Rent Control Act, 1999. (which consolidated older laws like the Bombay Rent Act, 1947). The earlier acts have various provisions that gave tenants very strong tenure that often led to disputes, legal battles that eventually discouraged landlords from leasing out housing. The new 2025 rules is proposed to update and replace these outdated frameworks, shifting the system toward clear, mutually agreed leases.

**Main Features of The New Rent Rules 2025**

The **"New Rent Rules 2025"** are built directly on the Model Tenancy Act with a purpose of making renting homes in India simpler, transparent and organized.

**Key Changes Under the New Rules.**

1.**Mandatory digital agreements:** All new rental agreements must now be digitally stamped and registered online within two months of signing the agreement. If the agreement is not registered, the parties can be fined with a penalty of Rs 5000. This is to ensures that every lease is recorded officially, preventing fraud and unwritten deals.

2. **Limited security deposit:** the new rules caps security deposits that is for residential houses, a landlord can only take two months rent as deposits and not more than that. For commercial spaces the limit is set to six months rent.
3. **Rent Increase:** The landlord can increase rent once every 12 months only and for that purpose the landlord must give a written notice 90 days before the rent hike.
4. **Eviction of Tennent:** According to the new rules a landlord must obtain an official eviction letter from the rent tribunal. Further for inspection of the house by the landlord, a written notice must be given at least 24 hours before entering or inspecting.
5. **Mandatory Clauses for agreements:** A valid rent agreement must mention, Monthly rent, security deposit amount, rent revision rules, duration of tenancy, notice period, repair & maintenance responsibilities, refund process for deposits, late payments conditions, eviction procedure and utility sharing.
6. **Access to Essential Services:** Water, Electricity and Sanitation cannot be withheld even during disputes by the landlord, the tenants can report violations to the rent control authority.
7. **Dispute Resolution:** All the states must establish Rent Courts/Tribunals for adjudication of matters of tenancy. The rent Court/Tribunal must resolve the dispute within 60 days. Under the framework states like Maharashtra, Uttar Pradesh and Karnataka are implementing and aligning it with the new rules 2025.

### Implementation And State Adoption

The rules are introduced by the Union Ministry of Housing, but these rules do not automatically override the state's specific laws. Each state has to enact or amend their own legislation to give them effect. The central government has urged all states to upgrade their online property-registration systems to handle digital leases. The Karnataka and Maharashtra governments have adopted these rules in the city of Bengaluru and Mumbai region.

The Maharashtra government drafted a 2025 Amendment Bill, to the Maharashtra Rent Control Act to incorporate these changes (extending digital registration, notice periods, etc.). Recently the government has mandated online registration for all rental agreements in Mumbai and surrounding regions. Further it capped residential deposits at three months' rent and commercial deposits at six months' rent.

Further to qualify for registration every agreement must have a minimum term of 11 months had already aligned their tenancy laws with the new Model framework. For e-registration, document such as Aadhaar card, PAN card and property details have to be uploaded to the government's official portal and after verification an e-agreement will be generated, having same legal status as a traditional document.

### Benefits For Tenants And Landlords

The reforms bring advantages for both the parties.

**Benefit for the Tenants:**

1. The burden of security deposit is reduced, as deposit is capped at two months rent for residential and six months for commercial (Maharashtra has three months for residential).
2. The tenants are protected from arbitrary rent hikes and the eviction process will be done through a court/tribunal eviction order.
3. Greater clarity and security are assured with standardized agreement, renters know exactly how much they will pay and when rent can rise.

**Benefit for Landlords:**

1. Registered agreement lowers the chances of default by tenants and clearer legal recourse is available when disputes occur.
2. The duration and threat to possession for an unlimited period and unlawful transfers or assignments etc. are curbed.
3. The rules also propose to improve tax benefit, for example, the threshold limit for TDS on rental income has been raised from ₹2.4 lakh to ₹6 lakh per year.
4. The chances of fraudulent agreement is been reduced.

### Conclusion

In summary, the New Rent Rules 2025 modernize India's leasing system by bringing in reform in old state rent-control acts with a simpler, digital framework. The rules mandate a formal written agreement that is to be registered online with e-stamps, cap on deposits, fix rent hike rules, and to constitute fast, and fair tribunals. The Implementation of the new rules depends on state laws. The Maharashtra government is in the process of amending its 1999 Rent Control Act to align with these norms. Overall, the reforms promise smoother and transparent mechanism for rents and tend to lower the disputes. It benefits both the parties as tenants get lower deposits, legal protections and quicker grievance redressal on the other side the landlords get stronger agreements, easier tax compliance and transparent documentation.

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# Emerging Trends

## India's Labour Law Reform

On November 21, 2025, India experienced the most transformative shifts in the Indian Labour Law reforms. With the consolidation of 29 existing laws into four major comprehensive code namely- **The Code on Wages, 2019 ; The Occupational Safety, Health, and Working Conditions Code, 2020 ; The Industrial Relations Code, 2020 ; and the The Code on Social Security, 2020** which aims to simplify the compliance, increase workforce flexibility, promote worker welfare, and enhance ease of doing business.

The new labour reforms included major developments including but not limited to standard minimum wages; digital payment of wages; retrenchment threshold; fixed term employment benefits; and extensive social security coverage including gratuity and protection of gig workers, all these changes will modernise the industrial practices. Further the reforms also ensure safeguards for employees' wellbeing; mandatory health checkups; provision for women and inter-state migrant workers. Addition to this the introduction of stricter penalties for non-compliance further necessitates timely and accurate compliance processes.

With the introduction to new reforms, the employers need to adopt proactive measures to have a seamless transition. The companies/employers should immediately begin revisiting their existing employment contracts and policies; working condition standards; and social security systems to ensure alignment with the new codes. Further investments in digitalisation, employee and management training, and internal compliance audits will help employers to have a smooth transition to the new regulatory environment. Engagement with labour authorities, trade unions, and industry associations will further mitigate risks and support seamless implementation.

Though the transition will require some strategic and financial efforts; however, post that it will definitely yield some long-term benefits, optimisation of workforce, and improved industrial relations. Successful implementation and adoption will make India's position as a more attractive global destination and offer a strong opportunity for employers willing to adapt early.

Please read the detailed article at:
*Employment Law Reimagined: Decoding India"s New Labour Codes*

## REITs in India: Governance, Compliance, and the New SM REITs

In India, Real Estate Investment trusts (REITs), have paved the way and allow investments in the Real Estate Sector with some expected returns. As per the mechanism of REITs, investors instead purchasing directly an immovable asset and expecting some return later, virtually allow investors to purchase units in a REIT and benefit from both capital growth and rental income.

However, REITs are more than just "real estate funds"; they are highly regulated investment vehicles, particularly when it comes to The Securities and Exchange Board of India (SEBI)'s scrutiny. SEBI is at the core of this regulation and makes sure that REITs run responsibly, transparently, and securely for the investors. Today, let's examine SEBI's “fit and proper” requirement, a crucial component of REIT governance, as well as some actual cases and a recent regulatory development: the introduction of SM REITs.

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**Who Can Run a REIT? The Fit & Proper Test**

Key members of a REIT, such as the Sponsor, Investment Manager, or Trustee, are required by SEBI to meet the **"fit and proper"** standard (Chapter II Clause 4 of the SEBI (Real Estate Investment Trusts) Regulations, 2014). This implies more than just financial strength; SEBI considers their integrity, regulatory history, and professional conduct. This measure lowers governance risk for unitholders[1] by ensuring that those in charge of investor capital are trustworthy and accountable.

**When Rules Get Tested: The Embassy REIT Case**

In response to the "fit and proper" requirement, SEBI took decisive action in November 2024, ordering Aravind Maiya, the CEO of Embassy Office Parks REIT, to resign after concluding that he was not found fit for the requirements for the role[2]. SEBI's decision was particularly striking because it was based on professional conduct and past regulatory scrutiny, not just business performance. Maiya's prior association as an auditor in a company scrutinized by National Financial Reporting Authority (NFRA) became a part of SEBI's assessment.

**Financial Compliance Matters: The K Raheja REIT Case**

Financial reporting and cash-flow integrity are also subject to regulatory oversight. The manager of Mindspace Business Parks REIT, K Raheja Investment Managers LLP is a well-known example. In a show-cause notice, SEBI claimed that:

1. The Net Distributable Cash Flows (NDCF) reported at the SPV level were computed incorrectly.
2. The half-yearly and annual reports[3] failed to appropriately disclose these errors.
3. Distributions were made to the REIT and eventually to unitholders by borrowing money, even though the SPV had "negative" cash balances.

K Raheja chose to pay SEBI ₹68.73 lakh[3] as part of a settlement rather than challenge the issue in court. This case makes it abundantly evident that SEBI requires complete transparency regarding cash-flow calculations in REITs and that any error, no matter how minor, has serious repercussions.

**A New Chapter: SM REITs (2024)**

With its 2024 Amendment to the REIT Regulations, SEBI made a historic step by introducing Small and Medium REITs (SM REITs) (SEBI (Real Estate Investment Trusts) Amendment Regulations, 2024 – Small and Medium REITs (SM REITs)). By reducing the barrier to entry for issuers and investors alike, these aim to democratize real estate investing.

SM REITs' salient characteristics include:

- A scheme must have at least 200 unitholders (not including the manager and its associates); the minimum asset size is ₹50 crore, but not more than ₹500 crore.
- SM REITs must invest 95% of their assets in completed, income-generating properties, which is a higher standard than regular REITs.
- The Investment Manager must have a minimum net worth of ₹20 crore and at least two years of experience in real estate or fund management.

In its frequently asked questions (FAQ), SEBI has made it clear that these schemes must consistently maintain an asset size of at least ₹50 crore; if it drops below that amount, delisting may begin. These regulations represent SEBI's delicate balancing act, which aims to increase REIT accessibility without sacrificing investor protection and governance.

What This Means for Investors and Sponsors

- SEBI's cash-flow transparency requirements and "fit and proper" tests provide additional reassurance to investors. You're investing in integrity and governance, not just buildings.
- Compliance is a must for sponsors and managers of REITs. SEBI is seriously investigating the REIT's leadership and cash flow calculations.
- SM REITs are a significant advancement for the market since they allow new players to enter the market. However, SEBI has not loosened its standards; even smaller trusts are subject to the same discipline.

**Conclusion**

SEBI's REIT policy is developing. It guarantees that important players in REITs are held to the highest moral and professional standards by implementing ***"fit and proper"*** criteria. SEBI takes financial accuracy very seriously, as the K Raheja case shows. Additionally, SEBI's goal to increase accessibility to real estate investing while maintaining strict regulatory controls is indicated by the 2024 SM REIT amendment.

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# Judicial Precedents

## SBI's Fraud Classification of Reliance Communications: A Defining Moment in India's Banking Accountability

**Background:**

Reliance Communications Limited, which was a part of the Reliance ADA Group, defaulted on certain loan obligations. Once the forensic audits by banks were conducted, SBI and a consortium of lenders decided to declare RCom and RITL as fraudulent borrowers in line with the **Reserve Bank of India's (RBI) Master Directions on Fraud Classification and Reporting** ("Master Direction").

As a result, Anil Ambani being the Chairman of the group, approached the Bombay High Court contending that the classification was arbitrary, violated the principles of natural justice, and would cause irreparable reputational harm and financial loss. He sought to quash SBI's declaration, contending that the bank failed to give adequate opportunity for representation before arriving at its decision.
Mr. Anil Ambani moved the Supreme Court against the decision of the High Court.

**Court's Observations and Ruling**

The court was of the opinion that the action taken by the lenders was valid and in accordance with the laws; and the lenders have a right under the Master Direction to classify the accounts as fraud basis the credible evidence, which includes forensic audits as well. Further the Court reiterated that the process involved internal deliberation and collective assessment by lenders and was not a unilateral act by a single institution.

The Court also observed that the borrowers are entitled to be heard before such classification, though the procedural fairness cannot abrogate the public interest in maintaining the financial discipline. However, the Court found that there was no procedural irregularity or mala fide intention on part of the lenders while concluding that the petition was an attempt to delay the inevitable consequences of regulatory compliance.

**Legal and Regulatory Significance**

A similar opinion was observed by the Hon'ble Supreme Court of India in the case of State Bank of India v. Rajesh Agarwal (MANU/SC/0308/2023), where the Supreme Court held that

***"the borrowers have a right to be heard before being declared as fraud, however the importance of the regulatory process should be taken care of".*** The opinion is based on the legal jurisprudence that there should be balance between the due process while maintaining the standard and integrity of the financial sector.

**Implications for Borrowers and Banks**

This decision will serve as a precedent for large corporate borrowers and its directors. The company being declared as fraud will not only result in reputational harm but it will put the directors; promoters; and other related entities under a restriction from availing loans, accessing capital markets, or holding positions under various regulatory frameworks. On the other hand, it will back the lenders for initiating actions as permitted under the RBI's directions, provided that in due course the procedural fairness is maintained. Further it will encourage the lenders to act in a diligent manner against the defaulting accounts, more particularly in cases where high stake cases and complex debt restructuring or insolvency proceedings are involved wherein misfeasance of the directors is perceived on the basis of the forensic audit etc.

**Conclusion**

The court's dismissal of the plea affirmed the standard of India's financial regulatory system. The court's intention while upholding the sanctity of the Indian banking process was that for both the lender and borrower, corporate accountability and financial transparency should never be optional. The move is expected to reinforce the trust and confidence among the regulators, lenders and the financial system and it will make a way for a more responsible, diligent and complaint lending.

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# The Insolvency Insider

## The Insolvency and Bankruptcy Code (IBC) calls for certain safeguards or amendments – Our take

The recent judgment of the Hon'ble Supreme Court (September 2025), delivered upon JSW Steel's review petition, has reaffirmed several foundational principles of the Insolvency and Bankruptcy Code (IBC)—particularly the finality of approved resolution plans and the primacy of the Committee of Creditors' (CoC) commercial wisdom during and after plan implementation.

This decision reversed the Court's earlier ruling of May 2025, which had set aside JSW Steel's resolution plan for Bhushan Power & Steel Limited (BPSL) and directed liquidation on the ground that the statutory 330-day timeline had been breached. In its final judgment, the Supreme Court:

- recognised that delays attributable to external factors—such as Enforcement Directorate attachments—cannot be used to penalise a resolution applicant or undo an implemented resolution plan;
- reaffirmed that judicial interference must remain minimal once the CoC has exercised its commercial judgment;
- emphasised that the objective of the IBC would be severely undermined if resolution plans, once implemented and operationalised, could be reopened or invalidated; and
- acknowledged that JSW Steel's revival of BPSL preserved economic value, protected employment, and restored the company's operational viability.

This Judgment has rightly strengthened stakeholder confidence by underscoring that the IBC framework aims at value maximisation and that successful resolution applicants must not be exposed to post-implementation instability.

**Emerging Concern: Potential Windfall Gains to Resolution Applicants**

Notwithstanding the above, credible reports in media indicate that JSW Steel is considering divesting up to 50% of its stake in BPSL at a substantial profit. While such commercial decisions are not inherently objectionable, they highlight a structural issue within the current IBC framework. That the secured financial creditors, who suffer deep haircuts to enable resolution (in many cases, as high as 70%) have no statutory entitlement to share a pie in extraordinary profits or windfalls generated soon after revival.

This was anticipated no sooner than the first few resolution plans were approved and a legislative solution designed to align long-term value outcomes with the objectives of the IBC has been under discussion in closed circles.

**Our Recommendation: Statutory Recompense Mechanism for Excess Returns**

To address the asymmetry between creditor losses and post-resolution windfalls, it is recommended to introduce a recompense or value-sharing mechanism into the IBC. **Key features are summarised below:**

**1. Trigger Based on Excess Return on Investment**

A statutory requirement may be introduced mandating that where the Resolution Applicant realises a return exceeding a prescribed threshold (e.g., 18% per annum, or the return originally projected in the resolution plan), measured over a defined period (e.g., 3 to 5 financial years), the excess value should be shared with secured Financial Creditors.

**2. Sunset Based Framework**

The mechanism should operate for a limited period post-implementation so as not to discourage investment or impair the applicant's operational autonomy. This mechanism should also be considered in cases where the Corporate Debtor drives the resolution plan through backdoor. However, there have to be means to detect the role of the Corporate Debtor.

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**3. Rationale**

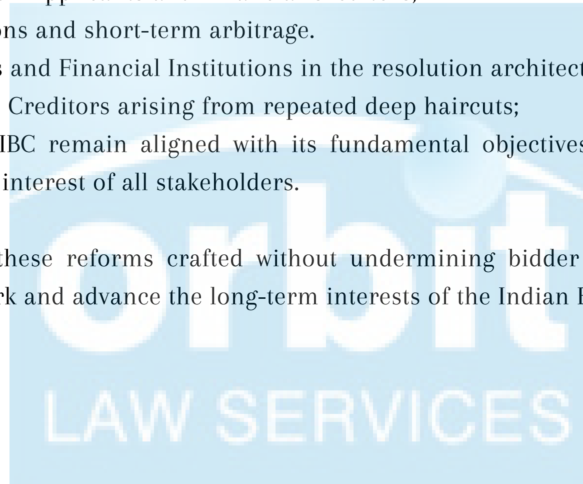
- Corporate debtor assets are typically and majorly created using secured creditors' funds.
- Resolution applicants acquire these assets at values (based on valuation reports) significantly below market owing to creditor haircuts.
- Where a Resolution Applicant derives extraordinary profits from these assets shortly after acquisition—whether through stake sale, asset disposal, or operational windfall—principles of equity and fairness justify proportional sharing. (The valuation dramatically increases after the approval of the resolution plan.)

**Concluding Views**

Incorporating a carefully designed excess-value sharing mechanism will:

- enhance fairness between Resolution Applicants and Financial Creditors;
- discourage opportunistic acquisitions and short-term arbitrage.
- strengthen the confidence of Banks and Financial Institutions in the resolution architecture.
- reduce systemic losses of Financial Creditors arising from repeated deep haircuts;
- ensure that outcomes under the IBC remain aligned with its fundamental objectives of maximisation of value of assets, availability of credit, balancing the interest of all stakeholders.

We are of the considered view that these reforms crafted without undermining bidder interest or resolution efficiency will materially strengthen the IBC framework and advance the long-term interests of the Indian Banking System and broader economy.



## Know Your Laws

## MORTGAGE OF LEASED LAND AND LICENSED LAND IN INDIA

In India, the legal framework governing the mortgage of immovable property is well established; however, when the property in question is leased land or land held under a license, the position becomes more nuanced. The ability to create a mortgage over such property depends on the nature of the interest granted and the rights recognized under relevant statutes, contractual arrangements, and judicial precedents.

A lease creates an interest in the property under **Section 105 of the Transfer of Property Act, 1882 (TPA),** granting the lessee the right to enjoy the property for a specified period in return for consideration. Since a lessee holds a definable, transferable interest, this leasehold right can be mortgaged, unless the lease explicitly restricts such transfers. In practice, lenders often accept leasehold rights as security, particularly when the lease term is long and the lessor is a government or a development authority. Courts have consistently held that leasehold rights constitute immovable property and, therefore, can be mortgaged under **Section 58 of the TPA.**

Whereas, a license under **Section 52 of the Indian Easements Act, 1882,** does not create any proprietary interest. A licence merely allows the licensee to perform certain acts on the property without being considered a trespasser. This right is purely personal, non-transferable, and revocable unless the grant states otherwise. Consequently, a licensee cannot mortgage licensed land, as there is no transferable interest that can form the basis of a valid security. Financial institutions, therefore, do not treat license rights as acceptable collateral.

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Certain contractual limitations commonly appear in government leases, industrial development leases, and special economic zone allotments, where prior consent of the lessor is essential for creating any encumbrance. In many cases, lenders require a tripartite agreement among the borrower, lender, and lessor to ensure enforceability and clarity on rights in case of default.

From a practical point of view, the mortgage of leased land is widely recognized and frequently used in project financing, real estate development, and infrastructure projects, provided adequate due diligence is conducted on lease terms, tenure, and transferability. In contrast, licensed land poses legal limitations, making mortgages infeasible and relying instead on alternative forms of security.

Overall, a comprehensive understanding of the legal distinctions, enforceability issues, and practical considerations associated with mortgaging leasehold versus licensed land in India is required.

Please read the detailed article at:
*Mortgage of Leased Land and Licensed Land in India*

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