

INFORM: Infrastructure Projects & Finance

JANUARY 2024

We bring you the latest updates on the dynamic intersection of infrastructure projects with banking and finance. Join us to navigate the evolving landscape of infrastructure curated to empower you with strategic intelligence.

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1. Court Not to Re-examine Contract Under Section 34 of the Arbitration Act Unless Patent Illegality
2. Termination of Letter of Acceptance Without Providing Party with Sufficient Hearing may be Deemed Invalid
3. Arbitration Clauses in Unstamped Agreements are Valid and Enforceable

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1. Review of National Development Banks: Basel III Framework on Liquidity Standards - Net Stable Funding Ratio (NSFR)
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2. RBI Allows Lending and Borrowing in Government Securities

CASE LAWS



Court Not to Re-examine Contract Unless Patent Illegality

The Delhi High Court, in the case of National Highway Authority of India v. GVK Jaipur Expressway Pvt. Ltd. [O.M.P. (COMM) 540/2020, I.A. 10478/2020, I.A. 10479/2020 and I.A. 10480/2020] held on December 11, 2023, that an arbitral tribunal has the higher degree of autonomy in the interpretation of a contract and that a court does not have the scope of re-examining the provisions of the contract under Section 34 of the Arbitration and Conciliation Act, 1996.

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Termination of Letter of Acceptance Without Providing Sufficient Hearing May be Deemed Invalid

The Bombay High Court, in the case of Proactive In & Out Advertising Pvt. Ltd. v. The Union of India and Ors. [Writ Petition No. 2261 of 2023] held that before terminating a letter of acceptance, the concerned authority must provide the party with an opportunity for a hearing and furnish the material based on which the termination decision is made. Failure to do so may result in the termination being deemed invalid.

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Arbitration Clauses in Unstamped Agreements are Valid and Enforceable

A 7-judge bench of the Supreme court of India, in the case of In re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act, 1899. [2023 INSC 1066] upheld the validity of an unstamped arbitration agreement. Although an unstamped arbitration was inadmissible as evidence under the Indian Stamp Act, 1899 it could not be rendered void ab initio.

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>>> NOTIFICATIONS/CIRCULARS



AIFIs – EXIM Bank and NaBFID Now Considered NDBs for NSFR Calculation

RBI has recently issued a circular bearing reference number:RBI/2023.24/103DOR.LRG.REC.62/03.10.001/2023-24 dated 29 December 2023 wherein it stated that the other All India Financial Institutions (AIFIs), namely EXIM Bank and NaBFID, shall also be regarded as NDBs for NSFR calculation.

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Extension of Timeline for Implementation of Instructions on Fair Lending Practice - Penal Charges in Loan Accounts

RBI had issued a circular dated 18 August, 2023 on Fair Lending Practice - Penal Charges in Loan Accounts. These instructions were to come into effect from January 1, 2024. The implementation has been extended by three months.

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Reporting in Form 'A' Return: Reverse Repo Transactions

The Reserve Bank of India (RBI) had issued a circular bearing reference number RBI/2023-24/68 DoR.RET.REC.43/12.01.001/2023-24, on October 16, 2023. The circular provided instructions to ensure consistent reporting of Reverse Repo transactions in the Form A Return by various banks.

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Exemption for Transfer of Receivables under MHP

To promote the development of secondary market operations for receivables acquired through factoring business, as defined under the Factoring Regulation Act, 2011, the RBI has stated in a circular dated December 28, 2023, that the transfer of these receivables by eligible transferors will be exempt from the Minimum Holding Period (MHP) requirement.

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New Policy Guidelines for Inert Material Use in National Highway Construction

Due to the successful utilisation of inert material in the construction of embankments, the MoRTH has decided to explore alternative uses for this solid waste in highway road projects. Consequently, MoRTH has issued guidelines on use of Inert Material in National Highway Construction vide circular dated 27 December, 2023.

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Workmen in Highway Construction Sector: Focus on Skill Development

The Ministry of Road, Transport, and Highways has recently issued a circular dated 26 December, 2023, providing comprehensive guidelines for the skill development of workmen involved in highway construction.

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>>> QUICK READS



TOT Bundles 13 and 14 Awarded by NHAI For Rs 9,384 Crore

Toll, operate, and transfer (TOT) bundles 13 and 14 with a combined length of 273 km have been awarded by the National Highways Authority of India for Rs 9,384 crore, bringing the total TOT bundles issued in FY 2023-24 to Rs 15,968 crore. This is greater than the Rs 10,000 crore monetization target set by the Ministry of Road Transport and Highways for the current fiscal year.

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RBI Allows Lending and Borrowing in Government Securities

The Reserve Bank of India issued guidelines on 27 December, 2023 to enhance the bond market by facilitating lending and borrowing in government securities. According to the notification, the central bank has finalized the RBI (Government Securities Lending) Directions, 2023 after considering the comments received on the draft that was released in February, 2023.

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