



31<sup>st</sup> March, 2017

To,  
Shri Upender Gupta  
Commissioner  
Goods & Service Tax Policy Wing,  
Department of Revenue,  
Central Board of Excise & Customs,  
Government of India,  
North Block  
New Delhi – 110 001

**Sub: Representation on concern of taxation of assignment of receivables other than actionable claims under GST regime.**

Dear Sir,

On behalf of the Indian Securitisation Foundation (ISF), which is a not-for-profit entity representing the securitisation industry in India, we hereby submit our representation requesting exclusion of actionable claims from taxation as sale of goods under the GST regime, to help protect the agenda of promoting of assignment of receivables transaction in India.

ISF performs a pivotal role in promoting and representing the industry to government, regulators, the public, investors and others who have an interest or potential interest both in India and overseas, regarding the benefits of securitisation in India and aspects of the securitisation industry. Our members include banks, NBFCs, microfinance institutions. A detailed profile of ISF forms a part of the enclosures as **Annexure II**.

This representation is based on the ambiguity under Central Goods and Services Tax Bill, 2017, (CGST) passed on 29<sup>th</sup> March, 2017, by the Lok Sabha, regarding taxation of assignment of receivables other than actionable claims.

Our representation on the matter has been enclosed with this letter as **Annexure I**.

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Should you need any further clarification, we would be glad to provide the same. In case there is a discussion required on the matter, we will be happy to come down to your office.

Kindly look into the matter and oblige.

Thanking You,

For Indian Securitisation Foundation

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(Director)

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## **Annexure I: Representation**

### **Abstract**

The new CGST Bill exempts actionable claims from GST. However, assignment of all types of receivables does not qualify as assignment of actionable claim as per the Transfer of Property Act, 1882. Since, the definition meaning of actionable claims under the CGST Bill has been derived from the Transfer of Property Act, 1882; this will have an adverse impact on the market and the ability of banks and financial institutions to refinance themselves or transfer non-performing assets to the asset reconstruction companies. Hence, assignment of receivables should also be included in the list of exclusions to what is treated as a supply of goods or supply of services.

### **Background**

Assignments of receivables or actionable claims are used widely in India for the purpose of factoring, securitisation and asset reconstruction. While, securitisation and factoring are believed to have very strong potential to act as a refinancing measure for banks and financial institutions in India, reconstruction of financial assets are believed to be an effective tool for dealing with non-performing assets by banks and financial institutions.

Lately, there have been several reforms initiated by the Government of India through Reserve Bank of India or Securities and Exchange Board of India or Central Board of Direct Taxes, to create an enabling environment for carrying out securitisation transactions in India. Further, during a speech<sup>1</sup>, Dr. Viral V Acharya, Deputy Governor, Reserve Bank of India indicated the importance of asset reconstruction for dealing with growing NPAs in the economy.

The figure below shows the volume of securitisation and factoring transactions in India during the past few years; this would give an indicative idea about the volume of receivables assigned during each year.

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<sup>1</sup> [https://www.rbi.org.in/Scripts/BS\\_SpeechesView.aspx?Id=1035](https://www.rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=1035)

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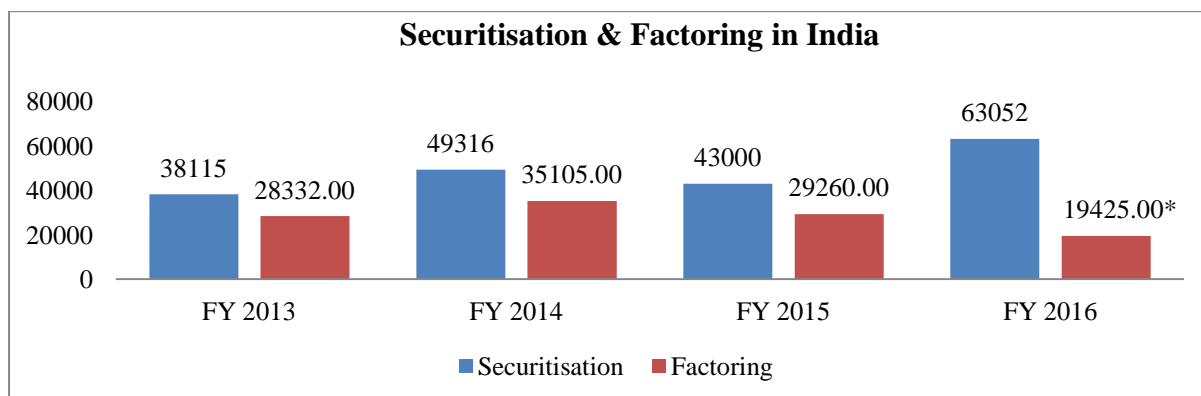
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Source: Care Rating<sup>2</sup>; FCI Annual Review, 2016<sup>3</sup>, VKC Estimates [Figures in INR crores]

[\* Figures till December 2015]

The CGST Bill provides for the exemption to “actionable claims”, however the definition of “actionable claims” creates an anomaly with respect to assignment of receivables details of which have been discussed below.

### Issues under the CGST Bill, 2017

Under the Central Goods and Service Tax Bill, 2017, “actionable claims” have been included in the list of activities or transactions which shall be treated neither as supply of goods nor as supply of services. Relevant extracts of the Bill have been reproduced below:

#### *SCHEDULE III*

#### *[Section 7]*

*ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES*

<sup>2</sup><http://vinodkothari.com/regulatory-worries-asset-quality-worries-continues-indian-securitisation-market/>

<sup>3</sup><https://fci.nl/downloads/annual-review-2016.pdf>

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6. **Actionable claims**, other than lottery, betting and gambling.

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The term "*actionable claims*" has been defined in the CGST Bill in the following manner:

2. *In this Act, unless the context otherwise requires, –*

(1) "*actionable claim*" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;

Section 3 of the Transfer of Property Act, 1882 defines "*actionable claims*" in the following manner –

*"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;*

Therefore, from the above definition of actionable claims it is clear that claims that have been secured by mortgage on any immovable property, or by hypothecation or pledge of movable property, are not actionable claims. This means claims that are backed by a security are not actionable claims for the purpose of the Transfer of Property Act, 1881 and consequently, for the purpose of Central Goods and Services Tax Bill, 2017. Therefore, under current state of law, any assignment of receivables will be subject to GST henceforth.

In India most of the financial transactions are backed by mortgage and hypothecation of immovable and moveable respectively and therefore, most of the receivables that are assigned are secured in nature and do not qualify to be actionable claims.

If the CGST Bill is implemented as is, it will affect the state of securitisation and factoring in India adversely as every transaction of assignment of secured receivables will be subject to GST. This will in turn increase the cost of refinancing transactions for banks and financial institutions and will therefore; de-motivate them to undertake securitisation or factoring transactions.



### **Our representation**

Based on the above rationale, we humbly submit to the Central Board of Excise and Customs to **include sale of financial assets in the list of activities or transactions which shall neither be treated as supply of goods nor as supply of services as provided under Schedule III of the CGST Bill.**

For this purpose, the meaning of the financial asset may be obtained from section 2(l) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002.

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## Annexure II: About Indian Securitisation Foundation

Indian Securitisation Foundation (ISF) is a not-for-profit organisation incorporated under section 25 of the Companies Act, 1956, a representative body of the securitisation industry in India. ISF is formed with the objective of developing, promoting and protecting the securitisation, structured finance markets in India in particular, and market for fixed income securities in general.

Securitisation in India is not just a fixed income investing instrument, but essential for the idea of financial inclusion, in form of priority sector lending. Banks meet their priority sector targets partly through portfolio acquisitions and securitisation, thereby putting securitisation at par with the banking book.

Infrastructure sector also depends substantially on securitisation for equity extraction.

In essence, the significance of securitisation to India's financial sector cannot be underestimated.

Over time, credit default swaps are also expected to be prevalent as ways of synthetically replicating credit risk.

It is a clear policy choice to have a strong market for fixed income securities in India: structured finance securities are an essential part of that market, to provide variety, choice and alignment to investor needs.

In this background, ISF was conceptualised to provide direction, leadership, advocacy and support to the securitisation and structured finance industry.

Some of the functions of the Foundation include:

- a. **Advocacy** – making representation to various authorities from time to time on matters as may concern securitisation and similar capital market instruments.
- b. **Industry forums and networking** - holding periodic conventions and educational courses.
- c. **Development of industry standards** - framing self-regulatory standards on disclosures, reporting, servicing reporting, DOs and DONTs for securitisation and direct assignment transactions, etc. Development of standards such as standard assignment agreements, assignment procedures, notification procedures, etc. on

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the lines of ISDA agreements and encouraging members over period to start using such standard templates.

- d. **Information exchange** – on matters of common interest, collateral performance, etc.

### Advisory Committee

#### Mr. M.R Umarji

Mr. Madhukar R Umarji, Chief Advisor - Legal of the Indian Banks' Association is acknowledged as an authority on Secured Transactions Law in India. He began his career as a Legal Assistant for the state government simultaneously pursuing his Masters in law. Following his Masters, he shifted to being a Legal Advisor in commercial banks and completed his transition to a commercial banker by becoming Executive Director of a public sector bank. Later he was taken on deputation at Reserve Bank of India as Executive Director in charge of Department of Non-Banking Supervision. He has been a part of several Expert Committees set up by the Government and Working Groups concerned with Banking Sector Reforms in India. His pivotal role in the drafting of secured transactions legislation in India shaped the way for a path-breaking reform for the Indian banking industry. Presently, he is actively involved with Working Group VI of UNCITRAL on Secured Transactions as an expert from India.

#### Mr. Sanjay Chamria

Mr. Chamria founded Magma in 1988, along with Mr. Mayank Poddar. As the Vice Chairman and Managing Director of Magma, he anchors policy formation, strategy planning and execution. He was born and educated in Kolkata, and graduated as one of the country's youngest chartered accountants in 1985 with national ranking. For the past 23 years, he has steered the organization from a three-employee, one-office set up to a company with 225+ branch offices and more than 6000 employees.

Mr. Chamria uses his position as one of the foremost leaders in India's asset financing industry to articulate his views on critical issues facing the industry and its future. He has represented the BFSI and NBFC industry at various forums, including RBI, and before the finance ministry and other government bodies. He has also chaired

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committees at the FICCI, the Hire Purchase & Lease Association of India, the CII, the Finance Industry Development Council (FIDC) and the Indian Merchants Chamber in Mumbai.

**Mr. D.K. Vyas, CEO, SREI BNP**

Mr. D K Vyas, CEO of Srei BNP, has catapulted Srei BNP Paribas to a dominant leadership position in the infrastructure and construction equipment finance business, with over 33% market share, leading a team of over 1,000 professionals, and with distribution across the country. Demonstrating a judicious balance between growth and prudence in lending, the company under his leadership has registered a CAGR of over 35% over the past five years, disbursed over Rs. 10,010 crore in FY 11 and has one of the lowest NPA's in the industry.

**Mr. V. S Rangan**

Mr. V. Srinivasa Rangan is Executive Director at Housing Development Finance Corporation Limited (HDFC Ltd). He has been associated with the company since 1986. Mr. Rangan is a Graduate in Commerce, CWA and an Associate member of the Institute of Chartered Accountants of India with national ranking.

Mr Rangan has worked on international consulting assignments in housing finance in countries such as Ghana and the Maldives. He has also been a member of various committees constituted by the regulators in the areas of development of Mortgage Backed Securitisation and Secondary Mortgage Markets which includes RBI's Committee on Asset Securitisation and Mortgage Backed Securitisation and Technical Group formed by National Housing Bank for setting up of a Secondary Mortgage market institution in India.

Mr Rangan was recently conferred the "Best CFO in the Financial Sector for 2010" by "The Institute of Chartered Accountants of India" (ICAI) for exceptional performance and achievements as CFO in the Financial Sector for the year 2010 .

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### **Mr. T.T Srinivasraghavan**

Mr. T. T. Srinivasaraghavan is the Managing Director at Sundaram Finance Ltd. He served as Joint Managing Director of Sundaram Finance Ltd. Mr. Srinivasaraghavan serves as Chairman of Infreight Logistics Solutions Ltd. He serves as an Executive Director of Sundaram Finance Ltd, and Director of Sundaram BNP Paribas Home Finance Limited and Sundaram BNP Paribas Asset Management Co. Ltd. Mr. Srinivasaraghavan has a vast experience in the Banking and Finance sectors. He serves as President of International Finance & Leasing Association, United Kingdom. Mr. Srinivasaraghavan holds an M.B.A. in Finance Degree.

### **Executive Committee**

Executive functions of the ISF are currently being discharged by team of Vinod Kothari Consultants P. Ltd. The team is led by Vinod Kothari and Nidhi Bothra.

### **Mr. Vinod Kothari**

Mr. Kothari is a noted scholar on securitisation and has lectured all over the World on securitisation. Vinod Kothari has been consulted by regulators in various countries, and has structured transactions in several markets. Vinod Kothari is the author of several books on the subject including Securitisation: Financial Instruments of Future, Introduction to Securitization (co-author with Frank Fabozzi), Credit Derivatives, Structured Credit Trading and Guide to Structured Finance etc. For detailed profile of Vinod Kothari, see [www.vinodkothari.com/profile](http://www.vinodkothari.com/profile)

### **Ms. Nidhi Bothra**

Ms. Bothra is a consultant on securitisation, structured finance and corporate finance and is Executive Vice President in Vinod Kothari Consultants P Ltd. Nidhi has conducted training workshops on securitisation in India and outside India, and has handled several consulting assignments on structured finance in different markets. See profile at <http://vinodkothari.com/nidhi-bothra-profile/>

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## Representations

<b>Date</b>	<b>Representation</b>	<b>Made to</b>
29/03/2017	Representation - Clarification on factoring business	RBI
11/07/2016	Representation on need to amend Regulation 54 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015	IMD - SEBI
05/07/2016	Comments on the Insolvency and Bankruptcy Code 2016	BLRC
05/06/2016	Representation on exemption from applicability of Tax Deduction at Source (TDS) in Securitisation Transactions	CBDT
2016	Representation on the Insolvency and Bankruptcy Code	JPC
15/01/2016	Representation to SEBI with respect to Public Issue of REITs	SEBI
01/01/2016	Representation to SEBI with respect to Public Issue of InvITs	SEBI
23/11/2015	Comments / Recommendations on the Report of the BLRC and the Draft Bankruptcy Bill to Ministry of Finance, Department of Economic Affairs	Ministry of Finance
17/11/2015	Representation on Legislative and other Changes for Bond Market in India	RBI
20/11/2015	Representation on needed reforms for securitisation	RBI
5/07/2014	Representation for permitting Foreign Institutional Investors under the SEBI (Foreign Portfolio Investments) Regulations, 2014 to invest in asset backed securities	SEBI
15/11/2013	Representation to IRDA for permitting insurance companies to invest in ABS with underlying other than housing loan / infrastructure loans	IRDA
2013	Representation to CDBT on amendments proposed in the Finance Bill, 2013 relating to securitisation transactions.	CBDT
11/11/2013	Representation for permitting Foreign Institutional Investors to invest in asset backed securities	FII
04/04/2013	Representation to RBI to Clarify Position of NBFCs Carrying Factoring as a Non- principal Business	RBI

Further details can be viewed at: <http://www.indiansecuritisation.com/>

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