

VINOD KOTHARI & COMPANY

VINOD KOTHARI CONSULTANTS PRIVATE LIMITED

September, 2022

CORPORATE  
AND  
SECURITIES  
LAWS

FINANCIAL  
SERVICES

RESOLUTION  
AND  
INSOLVENCY  
LAWS

# SAMAGRATA

COLLECTION OF REGULATORY UPDATES AND NEWS

## WHAT'S INSIDE?

We are always on our forefront to apprise our clients, associates as well as those seeking knowledge with recent updates on various laws and regulations. We have consolidated various regulatory announcements and amendments by respective regulators, along with our analysis, for the month of September, 2022. This is supported with reference materials and our write ups on the same.

This issue also covers articles on other contemporary and relevant areas of corporate interest.

We have further added a new section, for all that's recently happening in the real corporate environment and relevant to our readers.

## Help us improve!

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## Section 1: Corporate and Securities Law

### Framework for Social Stock Exchanges

- Notification can be viewed [here](#)

Applicability	Amendment	Our resource
<p>Companies eligible to be listed on Social Stock Exchange</p>	<p>A detailed framework on SSE is specified by SEBI through its circular dated 19<sup>th</sup> September 2022. Under the framework, SSE will be a separate segment of the existing stock exchanges. Social enterprises eligible to participate in the SSE will be NPOs and for-profit social enterprises having social intent and impact as their primary goal.</p> <p>The key takeaways of the framework are as follows:</p> <ol style="list-style-type: none"> <li>1. SEBI specified minimum requirements to be met by a NPO for registration with SSE, disclosure requirements for NPOs raising funds through the issuance of zero-coupon zero principal instruments and annual disclosure requirements that need to be made by NPOs.</li> <li>2. It also specified that NPO needs to be (a) registered as a charitable trust, (b) registered for at least three years (c) must have spent at least Rs 50 lakh annually in the past financial year and (d) should have received a funding of at least Rs 10 lakh in the past financial year.</li> <li>3. Disclosure of vision, target segment and approach to accomplish the planned activities, details of governing body, composition, dates of board meetings held, and details of key managerial staff.</li> <li>4. Disclosure of financial statements for last three financial years, details of past social impact and risks that they see to its work and how it proposes to mitigate these.</li> <li>5. Listed NPO will have to submit a statement of utilisation of funds to SSE within 45 days from the end of quarter.</li> <li>6. Disclosure of Annual Impact Report (AIR) within 90 days from the end of financial year, capturing the qualitative and quantitative aspects of the social impact generated by the entity and where applicable, the impact that is generated by the project or solution for which funds have been raised on SSE.</li> </ol>	<p>Our article on the topic can be viewed <a href="#">here</a></p>

## Guidelines for issuance and listing of commercial papers by listed REITs and InvITs

- Notification can be viewed here for [REITs](#) and [InvITs](#)

Applicability	Amendment	Actionables and timelines, if any
All listed REITs and InvITs	<p>SEBI vide its circulars dated September 22, 2022, has issued guidelines for the issuance and listing of commercial papers by listed REITs and InvITs. Following are the key takeaways from the circulars:</p> <p>A listed REIT or a listed InvIT having a net worth of Rs. 100 crores or more, in terms of <a href="#">Reserve Bank Commercial Paper Directions 2017</a>, is eligible to issue listed commercial paper subject to the conditions that it shall comply with the following:</p> <ol style="list-style-type: none"> <li>1. Reserve Bank Commercial Paper Directions 2017;</li> <li>2. Listing norms as prescribed under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and circulars issued thereunder;</li> <li>3. Overall debt limit as permitted under SEBI (Real Estate Investment Trusts) Regulations, 2014 or SEBI (Infrastructure Investment Trusts) Regulations, 2014, as the case may be.</li> </ol>	All REITs and InvITs, coming out with issuance of commercial papers shall comply with the revised guidelines.

## Amendment in Companies (Specification of definition details) Rules, 2014

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
All companies registered under the Companies Act, 2013	<p>MCA vide its notification dated September 15, 2022, has amended rule 2(1)(t) of the Companies (Specification of definition details) Rules, 2022, wherein the definition of the small company has been amended.</p> <p>Pursuant to the amendment, the paid-up share capital and turnover of the small company shall not exceed Rs. 4 crore and Rs. 40 crores respectively. Earlier, the maximum limit for the paid-up share capital and turnover of the small company was Rs. 2 crore and Rs. 20 crores respectively.</p>	<p>Identification of companies that become small companies now.</p> <p>Our snippet on the same can be viewed <a href="#">here</a>:</p> <p><a href="https://vinodkothari.com/2022/09/definition-of-small-company-evolution-over-time/">https://vinodkothari.com/2022/09/definition-of-small-company-evolution-over-time/</a></p>

## Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
<p>All companies registered under the Companies Act, 2013</p>	<p>MCA has vide the present amendment rules amended rules 3, 4, 8 and annexure –II of the Companies (Corporate Social Responsibility Policy) Rules, 2014. The highlights of the amendment are summarized below:</p> <ol style="list-style-type: none"> <li><b>1. Formation of CSR committee by companies having unspent CSR a/c:</b> A company having any amount in is 'Unspent CSR a/c' u/s 135(6) of the Companies Act, 2013 ('the Act') will be required to constitute a CSR committee and comply with the provision of section 135 (2) – (6) disclosure of composition of CSR committee, formulation of CSR policy, CSR spending etc.</li> <li><b>2. Omission of rule 3(2):</b> Prior to the amendment, companies which would cease to be covered under s. 135 of the act were also required to continue compliance with the provisions of the section i.e., incurring CSR expenditure, constituting committee etc., for up to three financial years. This requirement provided has now been omitted.</li> <li><b>3. Widening of the category of entities that can be appointed as implementation agency:</b> A registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 of the Income Tax Act, 1961 can now act as on implementing agency for CSR. Further it has been clarified that the term 'entity' shall mean a statutory body constituted under an Act of Parliament or State legislature to undertake activities covered in Schedule VII of the Act.</li> <li><b>4. Revision in the limits to book expenditure towards impact assessment:</b> Earlier the limits to book expenditure towards impact assessment was 5% of the total CSR expenditure for the financial year or fifty lakh rupees whichever is lower. The same has now been amended to 2% of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher.</li> <li><b>5. Rationalization of the format of annual report on CSR:</b> The template of annual report on CSR was made quite elaborative vide the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. The same has now been rationalized by omitting the</li> </ol>	<p>Companies to take note of the amendments, specifically:</p> <ul style="list-style-type: none"> <li>• The revision in the limits of book expenditure towards impact assessment</li> <li>• Changes in the format of the annual report of CSR.</li> </ul> <p>Our write up on the topic can be accessed <a href="#">here</a>: <a href="https://vinodkothari.com/2022/09/highlights-of-csr-amendment-rules-2022/">https://vinodkothari.com/2022/09/highlights-of-csr-amendment-rules-2022/</a></p>

	requirement of mentioning the details of each project (on-going and others). There are a few more rejigs done in sequencing of the information.	
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## Extension in due date for filing e-Form DIR-3-KYC and web-form DIR-3-KYC-WEB

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
All stakeholders having a valid DIN	MCA vide its circular dated September 28, 2022 has extended the due date to file e-Form DIR-3-KYC and web-form DIR-3-KYC-WEB, without paying late fees, up to October 15, 2022.	Stakeholders required to file e-form DIR-3-KYC and DIR-3-KYC-WEB to take note of the extended timeline.

## Submission of information pertaining to 'Unclaimed Non-convertible Securities'

- Notifications can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Entities satisfying the conditions specified in the notice	Stock Exchanges have under the instructions of SEBI issued a public notice that all entities that: <ol style="list-style-type: none"> <li>1. Do not fall under the definition of 'Company' under the Companies Act, 2013, <b>and</b></li> <li>2. Have listed non-convertible securities <b>and</b></li> <li>3. Have unclaimed interest or dividend or principle or redemption on such non- convertible instruments as on August 31, 2022,</li> </ol> will be required to submit to SEBI information as mentioned in the said public notice.	Entities covered, shall submit the required information in the format prescribed to SEBI.

## Guidance note on use of DSC for announcement submitted by listed companies

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
All listed companies	BSE vide its <a href="#">circular</a> dated August 01, 2022 and NSE vide <a href="#">circular</a> dated August 02, 2022 titled ' <u>Use of digital signature certificate for announcements submitted by listed companies</u> ' had mandated that listed entities to	Companies to take note of the guidance note issued by the SEs and ensure compliance with

	<p>make use of DSC only to file announcements under various SEBI Regulations, except for certain specific documents.</p> <p>In furtherance of the same, <a href="#">BSE</a> and <a href="#">NSE</a> have issued a guidance note providing clarity on the use of DSC for authentication of documents. The highlights of the guidance note is as stated below:</p> <ol style="list-style-type: none"> <li>1. The circulars dated August 01, 2022 and August 02, 2022 are applicable to all entities listed on BSE and NSE respectively.</li> <li>2. Presently, listed companies to submit all corporate announcements using DSC except for those mentioned in the circulars dated August 01, 2022 and August 02, 2022</li> <li>3. Non-admissible signatures include but are not limited to physical signature, image pasted of signature, signature in Sd/- format, copy pasted signature, etc.</li> <li>4. Listed companies can file scanned documents/ disclosures in compliance with BSE circular dated January 16, 2018 and NSE circulars dated January 16, 2018, and January 17, 2018 wherein listed companies are required to submit all corporate announcements (full set of documents) in machine readable and searchable form. Secondly, such document/ disclosure shall be authenticated using a DSC.</li> <li>5. The documents/ disclosures submitted to the SEs shall be in machine readable format having a detectable DSC</li> <li>6. A machine-readable format is when the document/ disclosure is fully searchable. If the documents are scanned then the images of typed, handwritten or printed text to be converted to machine-encoded text (optical character recognition).</li> </ol> <p>Disclosures submitted in contravention to the requirements of the SEs shall be treated as non-compliance and the listed entity will be required to re-submit the said announcement adhering to the aforementioned requirements on immediate basis.</p>	<p>the requirements mentioned therein.</p>
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## Revision in Standard Operating Procedure (SOP) for filing application under Regulation 37 of Listing Regulation, 2015

- Notification can be viewed here for [NSE](#) and [BSE](#)

Applicability	Amendment	Actionables and timelines, if any
All listed	NSE/BSE <i>vide</i> their circular dated September 28, 2022,	No actionable.



companies	<p>have revised the Standard Operating Procedure (SOP) for filing an application with the Stock Exchange under Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the scheme of arrangements.</p> <p>Pursuant to the said revision, the time limit to rectify any defect/ inadequacy in the application, as observed by the Stock Exchange, has been increased to 7 days from the date of communication of such defect/ inadequacy to the company.</p> <p>Earlier, the limit to rectify the same was 5 days from the date of communication to the company.</p>	
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## Appointment or Continuation of Common Director(s) u/s 48A of Insurance Act, 1938

- Guidance note can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Insurance agents, Intermediaries and Insurance intermediaries	<p>Vide this abovementioned circular, IRDA has prescribed the following conditions for appointment or continuation of common director representing insurance agent, intermediary or insurance intermediary on the board of insurance company:</p> <ol style="list-style-type: none"> <li>1. The proposed director shall not be working in the capacity of the Chief Insurance Executive or any other officer responsible for soliciting insurance business for or on behalf of the insurance agent, intermediary or insurance intermediary while holding the position of director in the insurance company.</li> <li>2. There should be no conflict of interest against the interest of the policyholders as a result of such appointment.</li> <li>3. Insurer shall not pay any remuneration apart from sitting fees to Non-Executive-Directors without prior approval of the Authority.</li> <li>4. The disclosure requirement as laid down under the CG Guidelines, IRDA (Preparation of Financial Statement and Auditor's Report of Insurance Companies) Regulations, 2002 and any other extant applicable laws shall be complied with.</li> <li>5. A resolution is passed approving such appointment by the Board of insurance company/agent/intermediary/insurance intermediary.</li> </ol>	Companies to take note of the additional conditions which will be required to be complied with.

	<p>6. Common director shall recuse himself/herself from the discussion and voting on any matter/discussion pertaining to:</p> <ol style="list-style-type: none"> <li>Any area having potential conflict of interest;</li> <li>Insurer/Agent/Intermediary/Insurance intermediary where she/he is holding common directorship.</li> </ol> <p>7. Number of directorships shall not exceed the maximum directorship as provided under the Companies Act, 2013.</p> <p>8. The Insurer/Agent/Intermediary/Insurance intermediary shall comply with all other applicable laws.</p> <p>Further, an individual, already acting or proposed to act as Executive Director / Whole Time Director on the Board of the Insurer/Agent/Intermediary/Insurance intermediary, shall not be appointed as nominee/common director. However, a common director may be appointed as Chairperson on the Board of the insurance company / agent / intermediary / insurance intermediary subject to necessary safeguards, to be put in place at all the times, to protect the interest of policyholders and to avoid the conflict of interest as may arise due to such appointment.</p> <p>Further, the Insurers shall file a certificate on an annual basis, duly certified by the CEO, confirming compliance with the above-mentioned provisions on a financial year basis with Authority not later than 30th April of the succeeding financial year.</p>	
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## Clarification on circular on Appointment or Continuation of the Director

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Insurance companies	<p>IRDA <i>vide</i> circular dated September 02, 2022 provided the framework for the appointment of Directors under section 48A of Insurance Act, 1938. This circular has been issued as a clarification pursuant to the above circular and provides that:</p> <ol style="list-style-type: none"> <li>The Directors appointed under section 48A of the Insurance Act, 1938 after obtaining the requisite approvals shall continue to hold directorship till the completion of tenure of appointment.</li> <li>Provision of clause 3(b) of the circular dated 02</li> </ol>	No immediate actionable.

	<p>September,2022 provides that an individual already appointed or proposed to be appointed as a Whole-time Director or Executive Director on the board of the Insurer, Intermediary, Agent shall not be appointed as the Nominee or Common Director. However, the present circular clarifies that the stated provision shall not be applicable if such director is appointed or proposed to be appointed as nominee of the promoter of the issuer.</p>	
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## Our articles of corporate interest

### Debenture holder's rights in Inter-creditor agreements

- **By Sikha Bansal, Partner**

An important element in ensuring smooth functioning of the bond market is to ensure that there is sufficient clarity on the options, remedies, and rights which the debentureholders have or may have in a given scenario. One such aspect has been dealt with by the Supreme Court (SC) in the recent ruling *Securities and Exchange Board of India v. Rajkumar Nagpal and Others* ('SC ruling'). The author has deliberated on the key takeaways from the SC ruling.

### Regulatory framework for Overseas Investments

- **By Vinita Nair, Senior partner**

A presentation on new regime on Overseas Investments notified by Reserve Bank of India. RBI, with effect from August 22, 2022 has combined erstwhile FEMA (Transfer or Issue of Foreign Security) Regulations, 2004 ('erstwhile ODI regulations') and FEMA (Acquisition and Transfer of immovable property outside India) Regulations, 2015 into FEMA (Overseas Investment) Rules, 2022 ('OI Rules') and FEMA (Overseas Investment) Regulations, 2022[5] ('OI Regulations') and the erstwhile regulations stand superseded.

### Corporate climate change litigation: Increasing heat on boardrooms?

- **By Payal Agrawal, Senior executive and Neha Sinha, Executive**

In this article, the authors try to look at the kinds of litigation in the field of climate change where corporations have been held accountable and identify the potential of litigation risks and the extent to which the directors of a company can be held liable for the climate change actions.

### FAQs on share based employee benefits

- **By Team Corplaw**

The use of Employee Stock Option Plans ('ESOPs') and Share-Based Employee Benefit Schemes ('SBEBS') continues to be more popular. However, these schemes entail a complex web of corporate laws, securities laws (in case of listed entities), taxation rules, accounting considerations, etc. This comprehensive set of FAQs will give you an in-depth knowledge of ESOPs and other forms of SBEBS – how it works, primarily from corporate laws perspective, but with added perspectives on taxation and accounting too.

### Maintenance of security cover for secured debt made transparent by SEBI

- **By Vinita Nair, Senior Partner**

Securities and Exchange Board of India ('SEBI') is carrying out radical changes in relation to monitoring the security cover and covenants with respect to listed debt securities. Recently, SEBI amended SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations') and SEBI (Debenture Trustees) Regulations, 1993 ('DT Regulations') and SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('NCS Regulations') in order to substitute the concept of 'asset cover' with 'security cover' and accordingly, prescribed the requirement of maintenance and reporting of the security cover in case of listed secured debentures.

## Section 2: Financial Sector Updates

### Guidelines on Digital Lending

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
All regulated entities	<p>RBI has issued Guidelines on Digital Lending and has reiterated that outsourcing arrangements entered by Regulated Entities ('REs') with a Lending Service Provider ('LSP')/ Digital Lending App ('DLA') does not diminish the REs' obligations and they shall continue to conform to the extant guidelines on outsourcing.</p> <p>Furthermore, REs are advised to ensure that the LSPs engaged by them and the DLAs comply with the digital lending guidelines issued by RBI.</p> <p>The major provisions of the guidelines have been summarized below:</p> <ol style="list-style-type: none"> <li>1. Applicability:               <ol style="list-style-type: none"> <li>a. Applicable to 'existing customers availing fresh loans' and to 'new customers getting onboarded', from the date of this circular i.e., September 02, 2022</li> <li>b. REs have been given time till November 30, 2022, to put in place adequate systems and processes to ensure that 'existing digital loans' (sanctioned as on September 02, 2022) are also in compliance with these guidelines in both letter and spirit.</li> </ol> </li> <li>2. Loan Disbursal, Servicing and Repayment: All the lending and servicing transactions shall take place only between the RE and borrowers' account.</li> <li>3. Collection of fees, charges, etc.: Payment of fees and charges shall not be directly made to the LSP by the borrower and must be only through regulated entities. Any penalty levied shall be only on the outstanding amount of loan.</li> <li>4. Disclosures to borrowers: REs are required to provide to their customers with a Key Fact Statements ('KFS') containing all the necessary information including the Annual Percentage Rate and any charges/ fees before the execution of contract. A format of the KFS is provided in <a href="#">Annex –II</a> of the guidelines.</li> </ol>	<p>Regulated entities to ensure compliance of the said guidelines issued. New digital loans shall be issued in compliance of these guidelines.</p> <p>For smooth transition RBI has provided time till November 30, 2022 to REs to ensure existing digital loans are in brought in compliance with these guidelines.</p> <p>See our FAQs on Digital Lending Guidelines here- <a href="https://vinodkothari.com/2022/08/faqs-on-digital-lending-regulations/">https://vinodkothari.com/2022/08/faqs-on-digital-lending-regulations/</a></p>

5. Grievance Redressal: REs to ensure that they and the LSPs engaged by them shall have a suitable nodal grievance redressal officer to deal with FinTech/digital lending related complaints/ issues raised by the borrowers.
6. Assessing the borrower's creditworthiness: REs to scrutinize and collate the data relating to the economic profile of the borrower including other information to determine the creditworthiness of the borrower. Automatic increase in the credit limit shall not be made without obtaining the consent of the borrower.
7. Cooling off/look-up period: Borrowers shall be provided with cooling period and during the same the borrower shall be given an option to exit the loan by paying the principal and APR. This period shall be determined by the RE which shall not be less than three days for loans having tenor of seven days or more and one day for loans having tenor of less than seven days.
8. Due diligence and other requirements with respect to LSPs: REs to conduct enhanced due diligence before entering into a partnership with a LSP for digital lending and also carry out periodic review of the conduct of the LSPs engaged by them.
9. Collection, usage and sharing of data with third parties: REs shall ensure that any collection of data by their DLAs and DLAs of their LSPs is need-based and with prior and explicit consent of the borrower having audit trail. The borrower shall be provided with an option to give or deny consent for use of specific data, restrict disclosure to third parties, data retention, revoke consent already granted to collect personal data and if required, make the app delete/forget the data.  
Explicit consent of the borrower to be taken before sharing personal information with any third party, except for cases where such sharing is required as per statutory or regulatory requirement.
10. Storage of data: REs shall ensure that LSPs/DLAs engaged by them do not store personal information of borrowers except some basic minimal data (viz., name, address, contact details of the customer, etc.) that may be required to carry out their operations. Responsibility regarding data privacy and security of the customer's personal information will be that of the RE.
11. Comprehensive privacy policy: REs shall ensure that their DLAs and LSPs engaged by them have a

	<p>comprehensive privacy policy compliant with applicable laws, associated regulations and RBI guidelines. For access and collection of personal information of borrowers, DLAs of REs/LSPs should make the comprehensive privacy policy available publicly.</p> <p>12. Technology standards: REs shall ensure that they and the LSPs engaged by them comply with various technology standards/ requirements on cybersecurity stipulated by RBI and other agencies, or as may be specified from time to time, for undertaking digital lending.</p> <p>13. Reporting to Credit Information Companies (CICs): REs to ensure that any lending done through their DLAs or LSPs is reported to CICs irrespective of its nature/ tenure. Also, any extension of structured lending products over merchant platforms involving short term/ unsecured credits shall be reported to Credit information companies.</p> <p>14. Loss sharing arrangement in case of default: REs to adhere to the provisions of the <a href="#">Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021</a> dated September 24, 2021, especially, synthetic securitisation contained in Para (6)(c) at the time of offering financial products involving contractual agreements such as First Loss Default Guarantee (FLDG) in which a third party guarantees to compensate up to a certain percentage of default in a loan portfolio of the RE.</p>	
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## Review of Prudential Norms – Risk Weights for Exposures guaranteed by Credit Guarantee Schemes (CGS)

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
All Scheduled Commercial Banks, NBFCs, Co-operative Banks, All India Financial Institutions	<p>In terms of para. 5.2 of the <a href="#">Master Circular on Basel III Capital Regulations</a> dated April 1, 2022 banks are permitted to apply zero percent risk weights in respect of claims on Credit Guarantee Fund Trust for Micro and Small Enterprises ('CGTMSE'), Credit Risk Guarantee Fund Trust for Low Income Housing ('CRGFTLIH') and individual schemes under National Credit Guarantee Trustee Company Ltd (NCGTC).</p> <p>In order to have a consistent approach with regard to risk weights for exposures guaranteed by such Trust Funds, RBI has advised that the risk weight of zero percent shall</p>	<p>No immediate actionable.</p> <p>Company to ensure that the provisions of the circular are complied with, in respect of applying risk weights for exposures guaranteed under existing or future</p>

	<p>be applicable in respect of exposures guaranteed under any existing or future schemes launched by CGTMSE, CRGFTLIH and NCGTC upon satisfaction of the conditions as specified in the circular.</p> <p>Any future scheme launched under any of the aforementioned Trust Funds, in order to be eligible for zero percent risk weight, shall provide for settlement of the eligible guaranteed claims within thirty days from the date of lodgement, and the lodgement shall be permitted within sixty days from the date of default.</p> <p>Some illustrative examples of risk weights applicable on claims guaranteed under specific existing schemes are given in the <a href="#">Annex</a> of the circular.</p>	<p>schemes launched by the trust funds noted in the circular.</p>
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## RBI releases list of NBFCs in the Upper Layer Scale Based Regulations for NBFCs

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
NBFC-UL	<p>RBI vide this circular has identified 16 NBFCs as Upper layer ('NBFC-UL') under the Scale Based Regulations ('SBR') Framework. The list of 16 entities includes 5 housing finance companies, 10 investment and credit companies, and 1 CIC. These entities will now have to migrate to a bank-like regulatory system.</p> <p>Upon identification these NBFCs will have to first put in place a board approved policy for the adoption of the enhanced regulatory framework. These entities will have to create a glide path for the compliance within three months from this circular and the path shall be of 2 years.</p> <p>Apart from the regulations already applicable to Middle layer and Base layer NBFCs, the Upper Layer NBFCs shall have to adhere to the following enhanced regulations comprise of:</p> <ol style="list-style-type: none"> <li>1. Maintenance of Common equity tier 1 capital</li> <li>2. Leverage Restrictions</li> <li>3. Differential standard asset provisioning</li> <li>4. Large Exposure framework</li> <li>5. Internal exposure limits</li> <li>6. Qualification of Board members</li> <li>7. Listing and Disclosures</li> <li>8. Removal of Independent Directors</li> </ol>	<p>No actionable since the Company is not included in the list of NBFC-UL.</p> <p>Our write-up on the topics is available here: <a href="https://vinodkothari.com/2022/10/16-nbfc-identified-as-upper-layer-entities-for-bank-like-compliances/">https://vinodkothari.com/2022/10/16-nbfc-identified-as-upper-layer-entities-for-bank-like-compliances/</a></p>



## Our articles of financial interest

### Digital lending: Footnote prescriptions heavier than the headlines

- By Anita Baid, Vice President

The August 10, 2022 Press Release of the RBI on implementation of the recommendations of the Working group on Digital Lending was a major setback for the existing business model of several fintech entities and digital lenders. Through the Press Release, RBI had sought to implement the recommendations and suggestions of the WG on digital lending.

### Structured default guarantees

- By Qasim Saif, Senior Manager

The term that has been grabbing limelight in the world of finance, specifically for non-banking finance would be First Loss Default Guarantees (FLDGs). The growth of the fintech sector in India may be chiefly credited for making FLDGs as the latest buzzword. However, guarantees are not a new innovation; it has been commonly used in the finance sector since ages.

### Financial leases getting a new lease of life?

- By Kanakprabha Jethani, Senior Manager

In financial year 2021-22, the volume of financial leasing reached to around 7% of the total leasing volumes in the country, compared to 20% in the financial year 16-17. Considering the legal and regulatory construct in India, the reducing volumes of financial leasing make complete sense. However, the recent rulings on taxation of leases may reverse the long known reasons for not doing financial leases. In this article, the author discusses the reasons why financial leases do not appeal to lessors and lessees and how the recent developments on the taxation aspects of leasing may seem to be bringing financial leases back to life.

### Stressed for reform: RBI proposes stressed assets securitization and loss provisioning

- By Team Finserv

The RBI's monetary policy, September, 2022, as expected, has announced an interest rate hike of 50 bps in the policy rates. While this was expected, the RBI has also proposed at least 2 significant measures to prepare the financial sector for the stressful period into which the financial sector is clearly entering. One pertains to securitisation of stressed assets, and the other, moving from regulatory provisions to expected credit losses, in line with global accounting standards.

## Section 3: Resolution Updates

### IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022

- Notification can be read [here](#)

Applicability	Amendment	Our resources
Companies under CIRP	<p>IBBI vide its Notification dated September 13, 2022 has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022 pursuant to which the following has been notified in the principal regulations:</p> <ol style="list-style-type: none"> <li>1. Regulation 34B has been inserted in the principal regulations which prescribes the minimum fee to be paid to the interim resolution professional and resolution professionals;</li> <li>2. Schedule II has been inserted which provides for minimum fixed fee, period for minimum fixed fee, performance-linked incentive fee for timely resolution and value maximization to be paid to the resolution professional.</li> </ol>	<p>Our presentation on the same can be viewed <a href="#">here</a>.</p> <p>Session taken by Mr. Vinod Kothari and Ms. Sikha Bansal on the recent amendments in IBBI Regulations can be viewed <a href="#">here</a>.</p>

### IBBI (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022

- Notification can be read [here](#)

Applicability	Amendment	Actionables and timelines, if any
Companies going for voluntary liquidation	<p>IBBI vide its Notification dated September 16, 2022 has notified the IBBI (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022 pursuant to which the following has been notified in the principal regulations:</p> <ol style="list-style-type: none"> <li>1. Regulation 3(5) has been inserted in the principal regulation pursuant to which in addition to declaration of solvency, declaration for preservation of records is also to be provided by the directors;</li> <li>2. Regulation 41 of the principal regulations has been amended to provide the list of documents to be preserved and manner of preservation of such documents by the liquidator.</li> </ol>	<p>For a detailed discussion on the amendment refer to the presentation and session linked in update no. 12</p>

## IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Companies under CIRP	<p>IBBI vide its Notification dated September 16, 2022 has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 pursuant to which the following has been notified in the principal regulations:</p> <ol style="list-style-type: none"> <li>1. Regulation 4C has been inserted which provides that the interim resolution professional to open a separate email account for communicating with stakeholders. Subsequently, the credentials of which shall be handed over to resolution professional or liquidator, as the case may be;</li> <li>2. Regulation 6A has been inserted pursuant to which interim resolution professional to send communication regarding appointment along with public announcement to all the creditors as per last available books of accounts of corporate debtor;</li> <li>3. Explanation to regulation 18(2) has been inserted pursuant to which CoC can request the resolution professional to call a meeting till the resolution plan is approved or liquidation order is passed only to decide on matters which do not affect resolution plan submitted to adjudicating authority;</li> <li>4. Regulation 35A(3) has been amended pursuant to which the time limit for making application to adjudicating authority for appropriate relief w.r.t. vulnerable transaction has been reduced to 130 days from 135 days;</li> <li>5. Regulation 35A(3A) has been inserted pursuant to which a copy of application filed with the adjudicating authority for seeking appropriate relief for vulnerable transactions is to be forwarded to the prospective resolution applicants as well;</li> <li>6. Regulation 36(1) has been amended to increase the time limit for submission of information memorandum to CoC to 95 days (Earlier it was 2 weeks from appointment, but not later than 54 days);</li> <li>7. Regulation 36(2) has been amended pursuant to which now the information memorandum to also highlight the key selling propositions and contain all relevant information;</li> <li>8. Regulation 36A(1) has been amended pursuant to</li> </ol>	For a detailed discussion on the amendment refer to the presentation and session linked in update no. 12

	<p>which the time limit for publishing invitation for submission of expression of interest has been reduced to 60 days from 75 days;</p> <p>9. Regulation 36B (6A) has been inserted pursuant to which if no response is received on the resolution plan, with the approval of CoC, resolution plan for sale of one or more of assets of the corporate debtor may be issued;</p> <p>10. Regulation 36C has been inserted pursuant to which a strategy for marketing of the assets of the corporate debtor is to be made in consultation with the CoC where total assets as per the last available financial statements exceed 100 Cr. the same is voluntary in other cases;</p> <p>11. Regulation 37(m) has been inserted pursuant to which contents of resolution plan to also include sale of one or more assets of the corporate debtor to one or more resolution applicants and manner of dealing with remaining assets;</p> <p>12. Regulation 39BA has been inserted pursuant to which while deciding to liquidate the corporate debtor, the CoC shall also examine whether to explore compromise or arrangement;</p> <p>13. Regulation 40D has been inserted pursuant to which a list of factors to be considered by CoC while taking decision for liquidation to be submitted along with liquidation application;</p>	
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## IBBI (Liquidation Process) (Second Amendment) Regulations, 2022

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Companies under liquidation	<p>IBBI vide its Notification dated September 16, 2022 has notified the IBBI (Liquidation Process) (Second Amendment) Regulations, 2022 pursuant to which the following has been notified in the principal regulations:</p> <ol style="list-style-type: none"> <li>1. 2<sup>nd</sup> proviso has been inserted in regulation 2B pursuant to which where it is recommended to explore compromise and arrangement by CoC, the liquidator shall file the proposal within 30 days of the order of liquidation;</li> <li>2. Regulation 4(1A) has been inserted pursuant to which if fee of liquidator is not fixed by CoC, the same may be filed by Stakeholder Consultation Committee (SCC) in its 1st meeting to be conducted within 7 days;</li> <li>3. Regulation 12(2)9c) has been inserted pursuant to</li> </ol>	For a detailed discussion on the amendment refer to the presentation and session linked in update no. 12.

- which the liquidator to also consider claims submitted during the CIRP period if not separately submitted during liquidation;
4. Regulation 12A has been inserted pursuant to which liquidator is to operate the email account handed over to him by the resolution professional;
  5. Regulation 15(1) has been amended pursuant to which the Progress Reports, in the format stipulated by the IBBI is also to be submitted to IBBI in addition to the adjudicating authority;
  6. Proviso to regulation 15(4) has been omitted which provided the restriction on sharing the statement on expected realization of assets;
  7. Proviso has been inserted in regulation 30 pursuant to which liquidator to also verify the claims submitted during CIRP but not submitted during liquidation;
  8. Regulation 31A has been amended to enlarge the role of SCC in the liquidation process. Also, provisions w.r.t. replacement of the liquidator has been included;
  9. Regulation 32A(4) has been amended pursuant to which the liquidator may sell the assets of the corporate debtor as going concern exclusively only at the first auction;
  10. Regulation 32B has been inserted pursuant to which the provisions w.r.t. meetings of CoC shall mutatis mutandis apply to the meetings of SCC;
  11. Regulation 34(1) has been amended pursuant to which the time limit for preparation of the asset memorandum has been reduced to 30 days where fresh valuation is not required;
  12. Regulation 34(5) has been amended pursuant to which the asset memorandum shall be shared with IBBI and members of SCC having voting rights after receiving undertaking of confidentiality;
  13. Proviso to regulation 44(1) which provided an additional period up to 90 days in going concern sale is omitted;
  14. Regulation 44A has been inserted pursuant to which liquidator to provide for the treatment of avoidance transactions, proceedings thereto and manner of distribution of realization if any in final report based on the advice of SCC;
  15. Regulation 45A has been inserted which prescribes a list of documents which the liquidator is required to preserve. Further, the manner and duration for which the same is to be preserved is also prescribed;
  16. In Schedule I, a timeline for specific events in case of auction sale has been prescribed. Further, now assets of the corporate debtor can be sold only through electronic auction platform empanelled by IBBI;

	17. Format of Form AA has been provided. Written consent to act as liquidator is required to be given in Form AA	
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## IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Companies under CIRP	<p>IBBI vide its Notification dated September 20, 2022 has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022 pursuant to which the following has been notified.</p> <p>Regulation 31A has been inserted pursuant to which additional fee in the name of regulatory fee is to be paid to IBBI on the basis of realisable value in CIRP in cases where realisable value is more than the liquidation value and the resolution plan is approved on or after October 01, 2022, and also on the basis of cost incurred on professionals and services</p>	For a detailed discussion on the amendment refer to the presentation and session linked in update no. 12.

## Our articles on dispute resolution

### Tax dues subservient to dues of secured creditors under SARFAESI Act and RDDB Act

- **By Neha Sinha, Executive**

In the case of *Jalgaon Janta Sahakari v. Joint Commissioner of Sales*, The Division Bench of the Bombay High Court decided on the issue of the conflict between SARFAESI Act and RDDB Act, and State tax statutes, in respect of priority of claims. The primary issue that arose in this case was whether State tax authorities can claim priority, by virtue of first charge created under State tax statutes, over a secured creditor for liquidation of their respective dues. The key takeaways from the judgement in respect of this issue are as follows

### Supreme Court ruling revives quandary, holds tax authorities to be secured creditors

- **By Sikha Bansal, Partner and Neha Sinha, Executive**

In the recent case of *State Tax Officer v. Rainbow Papers Limited*, the Hon'ble Supreme Court ('SC') dealt with the question as to whether the provisions of the Insolvency and Bankruptcy Code, 2016 ('IBC'), specially section 53, overrides section 48 of the Gujarat Value Added Tax Act, 2003 ('GVAT'). The authors thus, analyse the SC ruling in light of the construct of the IBC, intent of the lawmakers and policymakers, and various past precedents and offer their views as to how this ruling has actually reopened a can of worms and how it may impact success of ongoing and future resolution processes.

### Partial sales, SCC in new avatar and other crucial IBC amendments

- **By Team Resolution**

A comprehensive presentation on recent amendments in IBC Regulations with respect to minimum fees to be paid to IRP/ RP, improvisation in the contents and timelines of the information memorandum, compromise/ arrangements during resolution phase, possibility of early liquidation, various aspects related to Stakeholders Consultation Committee ('SCC') in liquidation process, increase/ additional regulatory fees to IBBI etc.

## Section 4: Special Mentions



**Mr. Vinod Kothari,**  
Managing Partner  
Vinod Kothari & Company

- Vinod Kothari Consultants organized three days workshop on 'Emerging Regulatory Framework For NBFCs and digital lending' on September 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup>, 2022. Mr. Vinod Kothari deliberated on various topics in the workshop.
- Discussed recent amendments in IBBI Regulations in a webinar organized by ICSI Institute of Insolvency Professionals on September 26<sup>th</sup>, 2022.



**Ms. Vinita Nair**  
Senior Partner  
Vinod Kothari & Company

- Vinod Kothari & Company, Practising Company Secretaries, organized a discussion on the new regime on Overseas Investment on September 9<sup>th</sup>, 2022.
- Ms. Vinita Nair deliberated and briefed on new rules, regulations and directions on overseas investment.
- Session on recent amendments in PIT Regulations and SDD at Mahindra Study Circle and SIRC-ICSI at Chennai.



**Ms. Anita Baid**  
Vice President  
Vinod Kothari Consultants

- Ms. Anita Baid deliberated on various topics related to NBFCs and digital lending in three days workshop on 'Emerging Regulatory Framework For NBFCs and digital lending' organized by Vinod Kothari Consultants.





**Ms. Sikha Bansal**  
**Senior Partner**  
**Vinod Kothari & Company**

- Ms. Sikha Bansal, discussed some critical amendments in IBBI Regulations in webinar organized by ICSI Institute of Insolvency Professionals on 'Recent Amendments in IBBI Regulations' on September 26<sup>th</sup>, 2022.



**Ms. Pammy Jaiswal**  
**Partner**  
**Vinod Kothari & Company**

- Ms. Pammy Jaiswal, was invited by The Bhawanipur Education Society College to take a brief session on the topic 'Financing of Companies'.

## Section 5: Press Room

### [Hon'ble Supreme Court to hear plea challenging ICAI Rule limiting number of tax audits by chartered accountants per year](#)

Division Bench of the Hon'ble Supreme Court of India on September 22 continued hearing the challenge against a rule issued by the Institute of Chartered Accountants of India (ICAI) bearing members from accepting more than the "specified number of tax audit assignments" (at present, the upper limit is set at 60) in a financial year. This matter is now under adjudication.

### [NCLAT holds applicability of section 203 of Companies Act in appointment of CFO of a private company](#)

While setting aside the order of NCLT (national company law tribunal) on the appointment of CFO (chief finance officer) in Rattan India Finance Private Limited (RFPL), the principal bench of NCLAT (national company law appellate tribunal), in the appeal filed by Hamlin Trust and others (50% shareholders of RFPL), held that even in the case of appointment of CFO in a private company which otherwise is exempt from appointing a CFO but chooses to appoint a CFO, the provisions of Section 203 of Companies Act, 2013 are required to be followed.

### [Hon'ble Supreme Court decides to begin live streaming of constitution bench hearings from September 27](#)

The Supreme Court has started the live streaming of all Constitutional Bench hearings from September 27 on its website, which means anyone can watch the proceedings in cases such as challenges to the Citizenship Amendment Act and the revocation of special status under Article 370 to Jammu and Kashmir. This is also among major decisions since the new Chief Justice of India (CJI), Uday Umesh Lalit, took office. He recently presided over a full court meeting where judges unanimously decided that livestreaming should begin with constitutional cases, and could later cover all proceedings.

### [For "Insider Trading", mere possession of sensitive information not enough, actual profit motive essential : Hon'ble Supreme Court](#)

The Supreme Court has held that merely because a person was in possession of unpublished price sensitive information at the time go trading in securities, it cannot be held that the transaction becomes the mischief of "insider trading", unless it is established that there was an intention to take advantage of the information.

### [For "Insider Trading", Mere Possession Of Sensitive Information Not Enough, Actual Profit Motive Essential : Supreme Court](#)

The Supreme Court has held that merely because a person was in possession of unpublished price sensitive information at the time go trading in securities, it cannot be held that the transaction becomes the mischief of "insider trading", unless it is established that there was an intention to take advantage of the information.

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*Our Credo*

*“Focus on capabilities, opportunities follow”*