

VINOD KOTHARI & COMPANY

VINOD KOTHARI CONSULTANTS PRIVATE LIMITED

October, 2022

CORPORATE
AND
SECURITIES
LAWS

FINANCIAL
SERVICES

RESOLUTION
AND
INSOLVENCY
LAWS

SAMAGRATA

COLLECTION OF REGULATORY UPDATES

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 October, 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.

Help us improve!

Feedback/suggestions invited: Feel free to drop a mail to neha.malu@vinodkothari.com

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Section 1: Corporate and Securities Law

Extension of timeline for entering the details of the existing outstanding non-convertible securities in the 'Security and Covenant Monitoring' system hosted by Depositories

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Issuers who have listed/ propose to list NCS, CPs, Securitised Debt Instrument, Municipal Debt Securities, Security Receipts	<p>SEBI <i>vide</i> circular no. SEBI/HO/MIRSD/MIRSD CRADT/CIR/P/2021/618 dated August 13, 2021, has specified the manner of recording of charges by issuers of Non-Convertible Securities ('NCS') and manner of monitoring by Debenture Trustees ('DTs') for 'Security and Covenant Monitoring' using Distributed Ledger Technology (DLT).</p> <p>Further, SEBI <i>vide</i> circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2022/38 dated March 29, 2022, had issued the Operating Guidelines of the said system using DLT.</p> <p>Para 8 of circular dated March 29, 2022, provided that in case of existing outstanding NCS, companies will be required to enter the details into the DLT system on or before September 30, 2022 and DTs shall verify the same by November 30, 2022.</p> <p>Thus, by the way of present circular SEBI has extended the timeline by one month. Entities having existing outstanding NCS, will now be required to enter the details into the DLT system on or before October 31, 2022 and DTs shall verify the same by December 31, 2022.</p>	<p>Companies to take note of extension in timeline granted by SEBI.</p> <p>Companies having outstanding NCS to ensure that the relevant details are entered by it in the DLT system on or before October 31, 2022.</p> <p>Further, SEBI registered DT to ensure it verifies the data entered by the issuers of NCS (for which it acts as DT) on or before December 31, 2022.</p>

Review of provisions pertaining to Electronic Book Provider platform – Replacement of Chapter VI to Operational Circular dated August 10, 2021

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Listed companies	<p>SEBI vide its circular has revisited the provisions of 'Chapter VI - Electronic Book Provider Platform' of the Operational Circular issued as on August 10, 2021.</p> <p>SEBI revisited the existing norms basis various representations received from the market participants on issues viz. 'fastest finger first' (i.e. allotment based on time priority in bidding for issuances with fixed parameters), high ratio of green shoe to base issue size, limits on arrangers placing bids on behalf of clients, etc.</p> <p>Effective from January 01, 2023, the revised norms bring in changes like decreasing the mandatory threshold amount for issue on EBP, introducing the concept of Anchor Investor, amending the Bidding process, and much more.</p> <p>For detailed analysis of the said changes please refer our snippet on the said topic here: https://vinodkothari.com/2022/10/sebi-rationalizes-issuances-on-electronic-book-platform/</p>	<p>Company to review the provisions pertaining to Electronic Book Provider platform – Replacement of Chapter VI to Operational Circular dated August 10, 2021.</p> <p>Further, Companies to go through the revised chapter VI as provided in Annex-A of the said circular.</p>

RFQ Platform for Execution of Trade Execution and Settlement of Trades

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Companies who have listed Non-convertible Securities, Securitised Debt Instrument, Municipal Debt	The framework for a dedicated debt segment was introduced by SEBI vide circular no. CIR/MRD/DP/03/2013 dated January 24, 2013, permitting the stock exchanges to offer electronic, screen-based trading providing for order matching, request for quote, negotiated trades etc. RFQ is an electronic platform to enable sophisticated, multi-lateral	Companies to take note of the same.

Securities and Commercial Paper, Stock Brokers and Depository Participants	<p>negotiations to take place on a centralized online trading platform with straight-through-processing of clearing and settlement to complete a trade.</p> <p>The following securities are eligible for being traded on the RFQ platform:</p> <ul style="list-style-type: none"> (i) Non-convertible Securities (ii) Securitised debt Instruments (iii) Municipal Debt Securities (iv) Commercial Paper (v) Certificate of Deposit (vi) Government Securities (vii) State Development Loans (viii) Treasury Bills <p>In February 2020, the RFQ platform was introduced as a 'participant-based' model wherein all regulated entities, listed bodies corporate, institutional investors and all India financial institutions were eligible to register, access and transact. Further, SEBI <i>vide</i> Circulars dated October 6, 2021 and December 9, 2021, mandated registered Mutual Funds and Portfolio Management Services, to undertake a specified percentage of their total secondary market trades in Corporate Bonds through RFQ platform of stock exchanges.</p> <p>SEBI has now <i>vide</i> the present Circular allowed stock brokers registered under the debt segment of the Stock Exchange(s) to place/ seek bids on the RFQ platform on behalf of client(s), in addition to the existing option of placing bids in a proprietary capacity.</p>	
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Reduction in Denomination for Debt Securities and Non-convertible Securities (Revision in Chapter V)

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Issuers who have listed and/ or propose to list NCS.	Chapter V of the operational circular no. SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021 on ' <i>issue and listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper</i> ' mandated the face value of debt security or non-convertible redeemable preference shares which are issued on private placement should be Rs. 10 lakhs and the trading lot should be equal to the face value of the securities.	Companies to take note of the amendments in the operational circular.

	<p>SEBI has by way of the present circular, amended that said operational circular to provide the following:</p> <ol style="list-style-type: none"> 1. The face value of each debt security or non-convertible redeemable preference share issued on private placement basis shall be Rs. 1 lakh. 2. The face value of the listed debt security and non-convertible redeemable preference share issued on private placement basis traded on a stock exchange or OTC basis shall be Rs. 1 lakh. <p>Where a shelf placement memorandum is valid as on January 01, 2023, at the time of raising funds through tranche placement memorandum, the issuer has the option to choose either to keep the face value at Rs. 10 lakhs or Rs. 1 lakh.</p>	
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Frequently asked questions (FAQs) on Corporate Governance

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Listed companies	<p>BSE <i>vide</i> the present circular has provided issued FAQs for submitting Corporate Governance report in XBRL utility with the SEs.</p> <p>The said FAQs have clarified the following:</p> <ol style="list-style-type: none"> 1. Under the heading 'Total Number of Directors as on date of the meeting' listed entity must provide the Total Number of Directors forming part of the Board as on the date of meeting. 2. In case of committee meetings: <ol style="list-style-type: none"> a. Under the heading 'Total Number of Directors as on date of the meeting' listed entity to provide total number of directors forming part of Committee as on the date of meeting. b. Under the heading 'Number of Directors (All directors including Independent Directors)' listed entity to provide total number of directors forming part of the committee as on the date of meeting and were present in the meeting. c. Details in the field of 'Number of Members attending the Meeting (Other than Board of Directors)' are required to be provided for Risk Management Committee only. For other Committees (i.e Audit committee / Stakeholders relationship committee / 	Companies to take note of the same and ensure that the Corporate Governance report from September 30, 2022 onwards is filed likewise.

	<p>Nomination and Remuneration Committee), the same is to be stated as "0".</p> <p>Apart from the above few new columns are introduced in the format in Annexure I for submission from Number of Members attending the Meeting (Other than Board of Directors) – Mandatory for Risk Management Committee only.</p>	
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Standard operating process under PIT Regulations for ensuring compliance with 'Structured Digital Database'

- Notifications can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Listed entities	<p>As per regs. 3(5) and 3(6) of SEBI (PIT) Regulations, 2015 listed entities (both equity and debt listed) are required to maintain a Structured Digital Database ('SDD').</p> <p>In this regard, listed entities are required to submit a quarterly compliance certificate certified by either the compliance officer or a Practicing Company Secretary ('PCS'). The revised format of the said certificate has been provided as Annexure A of the present circular.</p> <p>In the said certificate, the compliance officer/ PCS is required to certify that:</p> <ol style="list-style-type: none"> 1. the Company has a SDD in place 2. control exists as to who can access the SDD 3. all the UPSI disseminated in the previous quarter have been captured in the Database 4. the system has captured nature of UPSI along with date and time 5. the database has been maintained internally and an audit trail is maintained 6. the database is non-tamperable and has the capability to maintain the records for 8 years. <p>The said certificate is required to be submitted on a quarterly basis as follows:</p> <ol style="list-style-type: none"> a. For quarter ended September 2022 – on or before November 18, 2022 b. For quarter ended December 2022 – on or before January 21, 2023 <p>The certificate has to be submitted in the following</p>	<p>Companies to ensure that the Compliance Certificate duly certified by its Compliance Officer/ PCS is submitted to the stock exchanges:</p> <ol style="list-style-type: none"> a. For quarter ended September 2022 – on or before November 18, 2022 b. For quarter ended December 2022 – on or before January 21, 2023 <p>Our snippet on the same can be accessed at:</p> <p>https://vinodkothari.com/2022/10/bse-simplifies-compliance-certificate-format-for-sdd/</p>

manner:

1. For BSE: BSE Listing Centre > Listing Compliance > Compliance Module > Structured Digital Database (SDD) Compliance Certificate.
2. For NSE: to be e-mailed on sdd_pit@nse.co.in
3. If the company had already submitted the certificate in old format it will be required to submit the same again in the format provided in the circular.

Further, the Stock Exchanges have the power to inspect the SDD system maintained by the Company after providing one working day notice. On inspection if it is observed that the company is non-compliant with respect to SDD, appropriate action shall be initiated by the Exchanges.

The Exchanges have also issued revised FAQs on SDD, the same have provided as Annexure B of the present circular. The summary of the FAQs is as follows:

1. SDD to be maintained by every entity with securities, as defined in SCRA, listed or proposed to be listed;
2. SDD to be maintained by Intermediaries / Fiduciaries for recording the UPSI shared and persons who have shared and with whom such UPSI is shared.
3. Trigger point for recording in SDD shall be sharing of UPSI whether internally or externally.
4. UPSI to be determined by evaluating the following:
 - a. The information is not publicly available;
 - b. Irrespective of magnitude of the contract/ transaction/ information, if the information on becoming publicly available is likely to materially affect the price of the securities
5. Information will become UPSI where the probability of going ahead with the information/concerned event is higher than not going ahead and such information is likely to “materially” affect the prices of the securities of the company.
6. Any alteration of entries made already is not allowed unless a separate entry citing reference to the previous one is made with full corrected details and reasons for correction;
7. Board or the head(s) of the organisation of every person required to handle unpublished price sensitive information should determine who is to be given access to SDD;
8. Every company to maintain an independent SDD.
9. PAN and in case PAN not available, any other

	<p>identifier to be captured in SDD.</p> <p>10. External software can be used to maintain SDD, provided the same is maintained internally.</p> <p>Companies under CIRP also required to maintain SDD.</p>	
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Our articles of corporate interest

The essence of *mens rea* in insider trading

- By Aisha Begum Ansari, Manager

A pertinent and often debated question in the context of insider trading is whether the 'intent' of the insider is actually a relevant factor in determining the existence of insider trading and thus, treating the same as a wrongful act in terms of prohibitive rules/ regulations. This may be mainly because SEBI has not defined insider trading, unlike in SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, wherein SEBI has linked fraud with the intent. There have been an array of rulings and authoritative commentaries and committee deliberations around the subject matter, however, there does not seem to be any concluded view on the same. The ruling of the Hon'ble Supreme Court in the matter of *SEBI v. Abhijit Rajan* has reignited the debate around it. The author, in this article, has attempted to delve into this question in the light of existing jurisprudence, deliberations by various expert committees, and international perspective as well, and tries to find an answer.

Expanding the ambit of IT Act in a bid for increased digitalisation

- By Neha Sinha, Assistant Legal Advisor

The Information Technology Act, 2000 allows digital execution of documents by way of electronic and digital signatures. While the reach of IT Act is wide, certain contracts and transactions were excluded from its ambit. The First Schedule of IT Act enumerates the documents or transactions to which IT Act is not applicable and such documents or transactions cannot be signed digitally. Recently, the Ministry of Electronics and Information Technology has released a notification dated October 04, 2022, amending the First Schedule of the IT Act. In this write up, the author has discussed at length the said amendments.

FAQs on half-yearly disclosure of RPTs to the stock exchanges

- By Team Corplaw

SEBI, *vide* its Notification dated November 09, 2021 amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 carrying out radical changes in the regulatory framework for the Related Party Transactions, including but not limited to the definition of Related Party, RPTs, its approval mechanism and disclosure requirements to the stock exchange. The amended provisions have been effective from April 01, 2022, except for the few provisions which will be applicable w.e.f. April 01, 2023. Information to be placed before the Audit Committee and shareholders (in case of material RPT) and the format of disclosure of RPTs to be filed with the Stock Exchanges has been separately prescribed *vide* SEBI Circular dated November 22, 2021. The circular was also made applicable to High Value Debt Listed Entities *vide* SEBI Circular dated January 7, 2022.

Now, as over 6 months have elapsed subsequent to the revised RPT framework coming into effect, the listed entities, including HVDLEs are now required to report the RPTs to the SEs for the half year ended September 30, 2022 pursuant to provisions of Reg. 23 (9) of the Listing Regulations. In this FAQs, we have analyzed and responded to several possible queries that are likely to arise in this regard.

FAQs on preferential issue of equity shares and convertible securities under SEBI ICDR

- By Team Corplaw

Preferential issue of securities is governed by section 62(1)(c) of the Companies Act, 2013 r/w Rule 13 of Companies (Share Capital and Debenture) Rules, 2014 and section 42 of the Act r/w Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014. This apart, the provisions of sections 55 and 71 of the Act are applicable in case of issue of preference shares and debentures, respectively. For issue of specified securities (equity shares and convertible security) in case of listed companies, along with the above provisions of the Act, Chapter V of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 r/w SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 also becomes applicable. In case of issue of non-convertible securities, which are to be listed, provisions of SEBI (Issue and Listing of Non-Convertible Securities), 2021 also need to be complied. In these FAQs, we intend to cover preferential issue of equity shares and securities.

Section 2: Financial Sector Updates

Multiple NBFCs in a Group: Classification in Middle Layer

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
NBFCs which are a part of corporate group or floated by common promoters	<p>Para 16 of the RBI- Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 ('NDSI master directions') states that the NBFCs which are a part of corporate group or floated by common promoters shall not be viewed on a standalone basis.</p> <p>RBI vide notification dated October 11, 2022, has clarified that the assets of NBFCs forming part of a group will be aggregated for determination of the "middle layer" status of NBFCs. The circular is applicable with retrospective effect, from the date of applicability of the SBR Framework, i.e., October 01, 2022. Therefore, as on the effective date of the SBR framework, NBFCs which, on a consolidated basis, have assets of Rs 1000 crores or above, will have to start adhering to the SBR framework as applicable to NBFC-ML.</p> <p>Further the statutory auditors of the NBFCs are required to certify the asset size as on March 31st every year, of all the NBFCs in the group. The said certificate shall also be furnished to Department of Supervision of the Reserve Bank under whose jurisdiction the NBFCs are registered. As for the format of the certificate, it is currently given under DNBS-10 i.e. the Statutory Auditor Certificate ('SAC').</p> <p>It is to be noted that the provisions of this circular shall not be applicable to Upper layer NBFCs.</p>	<p>Companies to take note of the said notification and ensure compliance by obtaining the said certificate in DNBS-10 i.e. Statutory Auditor Certificate ('SAC') unless RBI prescribes a new format.</p> <p>Our article on the amendment can be read here</p>

Designation of 10 individuals as 'Terrorists' under Section 35 (1) (a) of UAPA, 1967

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Banks and NBFC	<p>Pursuant to para 53 of Master Direction - Know Your Customer (KYC) Direction, 2016, the procedure laid down in UAPA requires reporting of details of accounts resembling any of the individuals/entities in the lists to FIU-IND apart from advising Ministry of Home Affairs as required under UAPA notification dated February 2, 2021.</p> <p>In this regard, Gazette notifications dated October 4, 2022, of the MHA in respect of ten individuals who have been declared as 'Terrorists' and have been listed in Schedule IV of the UAPA 1967.</p>	Companies to take note of the said addition in the list of Individuals declared as Terrorists.

Guidelines in respect of Conflict of Interest and Common Directorship among Intermediary or Insurance intermediary

- Guideline can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Insurance intermediaries	<p>The said Guidelines have been issued pursuant to Sec. 14 (2) (e) of IRDA Act and reg. 32 of IRDA (Registration of Corporate Agents) Regulations, 2015.</p> <p>Insurance intermediaries includes insurance brokers, reinsurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time. It is common for entities within a group to hold various IRDA registrations and have common directors.</p> <p>The provisions of the guidelines along with changes prescribed are summaries below:</p> <p>1. Limit on Common Directorship</p> <p>a. Maximum number of directorship as prescribed under Section 165 of Companies Act, 2013 ('CA, 2013') i.e. 20 companies in total out of which public companies – 10. Directorship in private companies that are either holding or subsidiary company of a public company shall be included.</p> <ul style="list-style-type: none"> • Earlier requirement – not more than 3 	Companies to ensure compliance with the given Guidelines.

	<p>insurance intermediaries.</p> <p>b. No overall limit for the Board of Directors</p> <ul style="list-style-type: none"> • Earlier requirement – maximum 1/3rd of the board could be common amongst insurance intermediaries. <p>c. Holding position as NED permitted</p> <p>d. Directors can hold position of KMP/CEO/Principal Officer/WTD with one insurance intermediary.</p> <p>2. Disclosure requirements</p> <p>a. On the insurance intermediary:</p> <ol style="list-style-type: none"> i. Intimate IRDA about appointment of common director within 30 days of appointment. ii. Submit undertaking in the format prescribed in the circular along with Board approved policy to deal with Related Party Transactions ('RPTs'). <ul style="list-style-type: none"> • Timeline not prescribed. Seems to be submitted upon every appointment iii. Intimate other insurance intermediaries regarding the same. <p>b. On the director</p> <ol style="list-style-type: none"> i. Submit disclosure in terms of Section 184 of CA, 2013 The same is to be placed before the Board and recorded in Register of Directors. <ul style="list-style-type: none"> • Earlier requirement - annual audit confirming compliance of these requirements shall be undertaken. ii. Abstain from voting and discussion where contracts or arrangements between related insurance intermediaries proposed. <p>3. Compensation to Common Directors</p> <p>a. Compensation can be paid in accordance with CA, 2013</p> <ul style="list-style-type: none"> • Earlier requirement - only one intermediary could pay compensation to the common director <p>4. Related Party Transactions ('RPTs')</p> <ol style="list-style-type: none"> a. RPT policy to be framed and approved by the Board to deal with RPs under Section 2 (76) of CA, 2013; b. All RPTs among insurance intermediary to comply with Section 188 of CA, 2013 and applicable accounting standard. c. Annual Certification by Statutory Auditor on compliance of requirement under Section 188 	
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	<p>of CA, 2013 to be submitted to IRDA by September 30 of the subsequent financial year</p> <ul style="list-style-type: none">• Earlier requirement – independent review by the statutory auditors on quarterly basis and disclosure in the financial statement. <p>d. All RPTs to be placed before the intermediary's board as per the CA, 2013.</p> <ul style="list-style-type: none">• Earlier requirement: All RPTs to be placed before Audit Committee and Board on quarterly basis• RPTs not in OC or not on arm's length to be approved by shareholders.• Audit Committee to act as Compliance Committee.	
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Our articles of financial interest

RBI introduces corporate governance norms for Asset Reconstruction Companies

- By Timothy Lopes, Manager

The RBI has, on October 11, 2022, issued a Circular, amending the extant regulatory framework for Asset Reconstruction Companies and introducing corporate governance norms and other aspects through this Circular. This circular is in addition to the extant regulatory framework governing Asset Reconstruction Companies and come into effect immediately or as otherwise indicated specifically therein. This article aims to summarise and analyse the major amendments brought in through the RBI circular dated October 11, 2022.

Lending Service Providers for digital lenders: Distinguishing agency contracts and principal-to-principal contracts

- By Neha Sinha, Assistant Legal Advisor

Lending Service Providers (LSPs) are engaged by the Regulated Entities (REs) (banks or NBFCs) to carry out some functions of RE in connection with lenders' functions on digital platforms. These LSPs may be engaged in customer acquisition, underwriting support, recovery of loan, etc. As the LSPs are acting in association with REs and on behalf of REs, the question arises if LSPs are engaged as "agents" of REs or the arrangement between RE and LSP is that of on a principal to principal basis. In this article, the defining features of agency contracts, in light of whether the role of LSPs is either a principal or an agent has been discussed, on the basis of the provisions of the contract law and jurisprudence thereunder.

Outsourcing (Direct Selling Agent) v. Business Correspondent route

- By Aanchal Kaur Nagpal, Manager

If everything's a priority, then nothing's a priority. Focusing on core activities while leaving non-core functions sub-contracted to specialized experts has been one of the key modus operandi to achieve efficiency. Banks and other financial institutions are increasingly outsourcing various financial activities ranging from onboarding customers to payment recovery. Since these outsourcing agents perform the activities that a Bank is originally supposed to do, they too, come with a set of regulations from RBI, with Banks being ultimately responsible for activities of their outsourcing agents. Based on the scope of the outsourcing function and the responsibility dawned upon such agents, RBI identifies two outsourcing modes – Business Correspondence and Direct Selling/Marketing Agents ('DSA/DMA'), with separate guidelines for each of the two. In this article, the author has attempted to delve into the differences and commonalities between outsourcing of financial services by Banks to business correspondents and DSAs/DMA's.

Section 4: Special Mentions



Ms. Vinita Nair
Senior Partner

- Session on the topic 'New Guidelines For Overseas Investments'. It was organized by the Compliance Calendar LLP.



Ms. Pammy Jaiswal
Partner

- Session on the topic 'Social Stock Exchange in India: The Next Inclusive Growth Trajectory'. It was organized by the Associated Chambers of Commerce and Industry of India.



Ms. Nitu Poddar
Partner

- Session on the topic 'Legal Skills -4 various regulators related to CS Profession NCLT, NCLAT, SEBI, SAT, Stock Exchanges, Depository, RBI, CCI, IBBI, TRAI, IRDA etc.' It was organized by ICSI-EIRC.



Ms. Sikha Bansal
Partner



Mr. Timothy Lopes
Manager

- Article on "Resolution Regime for Systemic Financial Firms: The IBC Way or the Other Way?" published in the IBBI's Annual Publication and can be read [here](#)

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Our Credo

“Focus on capabilities, opportunities follow”