

VINOD KOTHARI & COMPANY

VINOD KOTHARI CONSULTANTS PRIVATE LIMITED

April 2023

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 January, 2023. 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!

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

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Section 1: Corporate and Securities Law

Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023

Circular can be viewed [here](#)

Applicability	Amendment	Actionable and timelines, if any
All Companies	<p>MCA has issued Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 with the objective to facilitate and speed up the removal of the names of companies from the Register of Companies.</p> <p>The highlights of the amendments are as follows:</p> <ol style="list-style-type: none"> 1. The Registrar, Centre for Processing Accelerated Corporate Exit will be responsible for processing and disposing applications being made for the removal of names of companies (through form STK-2) under section 248 of the Companies Act. 2. The registrar will have territorial jurisdiction all over India. As per the erstwhile provisions, the same was dealt by the RoCs of the respective states where the companies' registered offices were situated. 3. Forms STK 2, STK 6 and STK 7 have been amended to give effect to the above amendments. 4. The requirement of attaching in form STK-2 the CTC of the special resolution or consent given by the company's shareholders for removal of name is dispensed with. Instead, such resolution or consent must be filed in form MGT-14 and the SRN of the same needs to be mentioned in form STK-2 <p>The revised Form STK-2 allows selecting the relevant ground under Section 248(1) and (2) of the Companies Act for filing closure application and an additional field in regard to the date of receipt of approval from the concerned sectoral regulator.</p>	No immediate actionable. Entity to take note of the notification issued.

Contribution by eligible issuers of debt securities to the settlement guarantee fund of the limited purpose clearing corporation

Circular can be viewed [here](#)

Applicability	Amendment	Actionables and
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		timelines, if any
Eligible Issuers of debt	<p>SEBI at its Board Meeting held on September 29, 2020 permitted:</p> <p>a. setting up a Limited Purpose Clearing Corporation ('LPCC') for clearing and settling repo transactions in debt securities and</p> <p>b. collection of a designated amount to build the Settlement Fund of the LPCC.</p> <p>AMC Repo Clearing Limited ('ARCL') has been granted recognition as LPCC by SEBI. By way of present circular SEBI has laid down the below mentioned framework to be employed for the upfront collection of charges for the building the Settlement Fund of the LPCC.</p> <ul style="list-style-type: none"> ➤ Eligible issuers will be notified by LPCC as per its risk management policy; ➤ Stock Exchange will collect an amount of 0.5 basis points of the issuance value of debt securities, issued publicly or on a private placement basis, per annum from the eligible entity and place the same in an escrow account prior to the allotment of debt securities. ➤ The amounts so collected are to be transferred to the bank account of LPCC within one working day of receipt of the same. ➤ SEs will be required to disclose the details of the amount so collected on its website. <p>1. <i>Refer sr. no. 5 and 6 below for list of eligible issuers.</i></p>	No immediate actionable.

Framework on contribution by eligible Issuers of debt securities to settlement guarantee fund

Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Notified listed entities	<p>SEBI had <i>vide</i> circular dated April 13, 2023 notified that AMC Repo Clearing Limited ('ARCL') has been granted recognition as Limited Purpose Clearing Corporation ('LPCC') for clearing and settling repo transactions in debt securities.</p> <p>NSE has by way of the present circular notified the following:</p> <p>1. Eligible issuers of non-convertible debt securities</p>	If the Company has been identified as eligible issued by the LPCC then it will be required to make the requisite contribution to the SGF of the LPPC for all issue of debt securities made by it on

with a fixed maturity period in terms of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 will be required to comply with the requirement of making contribution to the Core Settlement Guarantee Fund ('Core SGF') of the LPCC. *The list of the eligible issuers that have been notified by ARCL has been attached separately.*

2. The said requirement will be applicable to all issues opening on or after May 1, 2023 for private placement of debt securities and offer documents filed on or after May 1, 2023, in case of public issue of debt securities, by eligible issuers specified by the LPCC.
3. Eligible Issuers are required to deposit the requisite amount towards SGF in any of the below mentioned accounts being maintained by ARCL:

Beneficiary Account Name	A/c no. in which amt. is to be deposited	IFSC Code
AMC Repo Clearing Limited - Core Settlement Guarantee Fund Account	923020021156867	UTIB000004
AMC Repo Clearing Limited Core SGF A/C	57500000866187	HDFC000060
AMC Repo Clearing Limited-Core Settlement Guarantee Fund Account	000405132382	ICICI000004

4. The said payment is required to be made by the

	<p>eligible issuers prior to allotment/listing of debt securities.</p> <p>Details of the payment alongwith UTR number, bank details, date of payment etc. and the acknowledgement of receipt of funds by ARCL to the Issuer must be submitted at the time of seeking final listing of debt securities to the exchange, where non-convertible debt securities are proposed to be listed.</p>	
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Contribution by issuers to Core SGF of ARCL

Circular can be viewed [here](#)

Applicability	Amendment	Actionable and timelines, if any
Notified listed entities	<p>As stated above, eligible issuers of non-convertible debt securities will be required to comply with the requirement of making contribution to the Core SGF of the LPCC. In this regard, ARCL has issued the present operational circular specifying the following:</p> <ol style="list-style-type: none"> 1. Identification of eligible issuers: Issuers of listed debt securities will be identified as per the following criteria: <ol style="list-style-type: none"> a. Positive net worth as per the latest audited financial statements b. Profit making as per the latest audited financial statements. c. Equity of the entity shall be listed on one or more stock exchanges. d. PSUs fulfilling only the first two conditions are also eligible. e. Long term debt rating of the eligible securities shall be AAA, AA+, AA and AA- (excluding AA- with negative outlook). In case of multiple long-term ratings for the issuer, the lowest long-term rating from the rating agencies will be considered. 2. Annual identification: <ol style="list-style-type: none"> a) ARCL will carry out the exercise of identification of eligible issuers annually during the first quarter of the financial year and the list of eligible issuers will be notified in the second quarter and the same will be effective from October 01 of the year. b) The current list of eligible issuers (annexed as Annexure 1 of the circular) is prepared based on 	<p>If the Company has been identified as eligible issued by the LPCC then it will be required to make the requisite contribution to the SGF of the LPCC for all issue of debt securities made by it on or after May 01, 2023.</p> <p>The circular issued by ARCL and annexures thereto are attached herewith.</p>

	<p>the audited financial statements as at the end of March 31, 2022.</p> <p>c) The contribution to Core SGF for all their new issuances will be effective from May 01 2023.</p> <ol style="list-style-type: none"> 1. Stock exchanges will notify ARCL, if any new issuer becomes eligible to contribute to the Core SGF anytime during the year. 2. ARCL will specify the types of securities / instruments to be included in the eligible list along with the list of eligible issuers every year. 3. Eligible issuers will be required to contribute to Core SGF for all new issues as per the eligible list issued on or after October 01 till September 30 of the subsequent year. The types of eligible debt instruments and exclusions are given in Annexure-2 of the circular. 4. Contribution to Core SGF will be collected only for the new issuances and not on the existing outstanding eligible securities of the eligible issuers. 5. Calculator for computation of issuer contribution towards Core SGF has been placed under the download section on www.arclindia.com. <p>ARCL may make securities ineligible during the financial year due to adverse issuer/ issue specific news, credit event, rating downgrade etc. The contribution to Core SGF and any income accrual on such contribution will not be returned or distributed to the issuers under any circumstances without prior approval of SEBI.</p>	
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Bank guarantees created out of client's funds

Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
SEBI registered stock brokers	<p>Currently, Stock Brokers ('SBs')/ Clearing Members ('CMs') pledge their client's funds with Banks who in turn issue Bank Guarantees ('BGs') to clearing corporations for higher amounts. This implicit leverage exposes the market and especially the client's funds to risks.</p> <p>Hence SEBI has issued the following directions:</p> <ol style="list-style-type: none"> 1. <u>No creation of BGs from client fund:</u> <ol style="list-style-type: none"> a. Starting May 01, 2023, no new BGs can be created out of client funds by SBs/CMs. b. Existing BGs created out of clients' funds are to be wound down by September 30, 2023 	<p>The Companies being a SEBI registered Stock Brokers to ensure the following:</p> <ol style="list-style-type: none"> 1. No new BGs can be created out of client funds; 2. Existing BGs created out of clients' funds are wound down by September 30,

	<p>2. <u>Monitoring and reporting:</u></p> <p>a. Stock exchanges and clearing corporations are required to:</p> <ol style="list-style-type: none"> i. take stock of the current position of the BGs issued out of clients' funds by SBs/CMs and monitor that the wind down takes place without any disruption of services to clients; ii. put in place periodic reporting mechanisms for SBs/CMs; iii. submit the following data to SEBI on fortnightly basis (starting from June 01, 2023): <table border="1" data-bbox="467 741 1141 1126"> <thead> <tr> <th colspan="4">Collateral data as on <Date>at <Name of the clearing</th> </tr> <tr> <th>Name of the SB/CM</th> <th>Nature of the entity (SB/CM/SCM)</th> <th>Total BG Amount as collateral</th> <th>Total BG amount (out client's collateral)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <ol style="list-style-type: none"> iv. verify the compliance of the provisions of the circular in their periodic inspections/reporting; v. evolve adequate mechanisms to address cases of SBs/CMs who do not comply with the provisions of the circular by the stipulated dates. <p>SBs/CMs will be required to provide a certificate, by its statutory auditor confirming the implementation of this circular by October 16, 2023.</p>	Collateral data as on <Date>at <Name of the clearing				Name of the SB/CM	Nature of the entity (SB/CM/SCM)	Total BG Amount as collateral	Total BG amount (out client's collateral)					<p>2023 without any disruption to client services;</p> <p>provide a certificate, by its statutory auditor by October 16, 2023, confirming the implementation of this circular.</p>
Collateral data as on <Date>at <Name of the clearing														
Name of the SB/CM	Nature of the entity (SB/CM/SCM)	Total BG Amount as collateral	Total BG amount (out client's collateral)											

Implementation under section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005
Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
All SEBI registered intermediaries	<p>This circular is issued in light of the Ministry of Finance Order dated January 30, 2023 prescribing the following procedure to be implemented by all SEBI registered intermediaries under Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (“WMD Act”):</p> <ol style="list-style-type: none"> The stock exchanges and the registered intermediaries (“reporting entities”) have to maintain a list of the individuals or entities (“Designated List”) which shall be reviewed and updated periodically. Before carrying out any transaction, or onboarding any new customer and on a periodic basis, the reporting entities shall be required to verify the details of the parties to the transaction and to prevent the financial transaction in case their identity matched with that of the designated list and immediately inform the Chief Nodal Officer(“CNO”) of the FIU-IND of all the transaction details. The details of CNO are as follows: The Director, FIU-INDIA Tel. No.: 011-23314458, 011-23314459 (FAX) Email: dir@fiuindia.gov.in Further the reporting entities shall also send the communication made to the CNO, simultaneously to the nodal officer of SEBI, by way of post and e-mail: Email id: sebi_uapa@sebi.gov.in Nodal Officer of SEBI, Deputy General Manager, Division of FATF, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai 400 051 It shall be the duty of the reporting entities to ensure prevention of any financial transaction being carried out by such persons as forming a part of the designated list and shall also be required to immediately file a Suspicious Transaction Report (STR) with the FIU-IND in this regard. <p>The reporting entities shall also be required to comply with the provisions relating to exemption from the orders of the CNO and the inadvertent freezing of accounts.</p>	<p>The Companies, being a SEBI registered intermediary should ensure that:</p> <ul style="list-style-type: none"> it maintains a Designated List of individuals / entities verify the details of its customers before entering into any transaction to check whether the customer is included in the Designated List <p>report to the FIU-IND and SEBI in case the customer is included in the Designated List and file STR</p>

Usage of brand name/trade name by Investment Advisers and Research Analysts

Circular can be viewed [here](#)

Applicability	Amendment	Actionables and
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		timelines, if any
SEBI registered Investment Advisers and Research Analysts	<p>By way of this circular, SEBI has issued guidelines for Investment Advisers (IA) and Research Analysts (RA) regarding the usage of brand names, trade names, and logos in their marketing materials and communications:</p> <p>1. Display Registered Information Prominently: All IAs and RAs must prominently display their registered name, logo, registration number, and complete address & telephone no. on the portal/website, notice boards, display boards, advertisements, publications, Know Your Client (KYC) forms, and client agreements.</p> <p>2. Provide Compliance and Grievance Officer Information In addition to the registered information, IAs and RAs must also prominently display the name, telephone number, and email address of their compliance officer and grievance officer or grievance redressal cell in all statements, reports, or any other form of correspondence with clients.</p> <p>3. Include a Disclaimer A disclaimer stating, “<i>Registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM in no way guarantee the performance of the intermediary or provide any assurance of returns to investors</i>” must be mentioned on portal/website, notice boards, display boards, advertisements, publications, Know Your Client (KYC) forms, and client agreements.</p> <p>4. Prohibition of SEBI Logo Use The circular explicitly prohibits the use of the SEBI logo by IA/RA in any of their materials or communications.</p>	Companies to take note of the same and align their advertisement practices with the guidelines issued.

Guidelines with respect to excusing or excluding an investor from an investment of AIF

Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
AIFs	<p>SEBI, by way of this circular, has issued guidelines w.r.t. “<i>Excuse and Exclusion</i>” clause in Private Placement Memorandum (PPM) for AIFs.</p> <p>An AIF may excuse its investor from participating in a particular investment in the following circumstances:</p> <p>a. If a legal professional/legal advisor provides an opinion that confirms an investor’s participation in the investment opportunity would be in violation of an applicable law or regulation, the investor should refrain</p>	The PPM of AIF schemes should be suitably amended to capture the said conditions for excusing / excluding an investor from an investment of AIF.

	<p>from participating; or</p> <p>b. If the investor has disclosed to the manager that, participation in such investment opportunity would be in contravention to the internal policy of the investor, as part of contribution agreement or any other agreement signed with the AIF. The agreement should contain a clause for reporting of change in disclosed internal policy of the investor to the AIF within 15 days of such change.</p> <p>An AIF may exclude an investor from participating in a particular investment opportunity, if the manager of the AIF is satisfied that the participation of investor in the investment opportunity would lead to</p> <p>a. the scheme of the AIF being in violation of applicable law or regulation or</p> <p>b. would result in material adverse effect on the scheme of the AIF.</p> <p>If an investor is also an AIF or other investment vehicle, it may be partially excluded from participating in an investment opportunity, to the extent of the contribution made by excused or excluded underlying investors.</p>	
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Guidelines on Direct Plan for AIF schemes and distribution of commission Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
AIF	<p>By way of this circular, SEBI has issued guidelines w.r.t Direct Plan for AIF schemes and mode of distribution of commission.</p> <p>A. Direct Plan for schemes of AIFs</p> <ul style="list-style-type: none"> • AIF schemes shall include Direct Plan option which shall not entail any distribution or placement fee. • Investors who approach the AIF through a SEBI registered intermediary shall be on-boarded by way of Direct Plan only. <p>B. Trail Model for distribution commission in AIFs</p> <ul style="list-style-type: none"> • AIFs shall disclose distribution fee/placement fee to the investors of AIF/scheme of AIF at the time of on-boarding. • Category III AIFs shall charge distribution fee/placement fee, to investors only on equal trail basis i.e., no up-front distribution fee/ placement fee shall be charged by Category III AIFs directly or indirectly to their investors. Further, distribution fee shall be paid only from the management fee received 	<p>It should be ensured that a Direct Plan option is provided in the AIF scheme which shall not include any distribution fee or placement fee.</p> <p>Further, Cat III AIF shall charge commission only out of management fee of the manager of the AIF. It shall not be charged upfront. Cat I and II AIF may pay 1/3rd of total distribution fee upfront.</p>

	<p>by the managers of such AIFs.</p> <p>Category I AIFs and Category II AIFs may pay upto one-third of the total distribution fee/placement fee to the distributors on upfront basis, and the remaining distribution fee/ placement fee shall be paid to the distributors on equal trail basis over the tenure of the fund.</p>	
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Changes in additional affirmations to be made in annual secretarial compliance report of a listed entity

Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Equity listed entities and HVDLE	<p>Stock Exchanges (SEs), vide circular dated March 16, 2023 have prescribed certain additional affirmations that a PCS will be required to include in the Annual Secretarial Compliance Report ('ASCR') of listed entities.</p> <p>One of the requirements was to affirm '<i>Compliance by the listed entity with the Auditing Standards issued by the ICSI-CSAS-1 and CSAS-3</i>'.</p> <p>SEs have by way of the present circular replaced the above-mentioned clause with the following:</p> <p><i>'The compliances of the listed entity are in accordance with the applicable Secretarial Standards ('SS') issued by the Institute of Company Secretaries India ('ICSI')</i></p>	<p>No immediate actionable.</p> <p>Companies to take note of the same.</p>

Introduction of issue summary document for buy-back on NEAPS platform.

Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Equity listed entities	<p>SEBI had <i>vide</i> circular dated February 15, 2023 introduced filing of Issue Summary Document ('ISD') for buy-back of equity shares through tender offer and buy-back of equity shares from the open market in XBRL format with effect from May 02, 2023.</p> <p>NSE has by way of the given circular introduced the XBRL utility on the NEAPS portal for the same.</p> <p>Listed Entities will have to follow the below mentioned steps for submitting the ISD:</p>	<p>No immediate actionable.</p> <p>Companies to take note of the same and ensure that in case any buy-backs after May 02, 2023 it will be required to file the ISD in XBRL with the stock exchanges.</p> <p>In case of any queries, the Bank can please reach out</p>

	<ol style="list-style-type: none"> 1. Post logging in the NEAPS portal – click on COMPLIANCE >> Common XBRL upload; 2. Select ISD for Buyback from the drop down in the Module Tab on the Common XBRL Upload page; 3. Then select the relevant subject of the announcement from the drop down; 4. Post selection of the relevant subject, download the XBRL utility for the said subject fill in details in the utility and then generate the XML file; <ul style="list-style-type: none"> • Once the XML file is generated from the utility, fill-in the required details on the portal and click on the Upload XBRL file to make the submission. 	to the announcements team at takeover@nse.co.in or on the contact details given on NEAPS platform.
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FAQs on Corporate Governance

Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Equity listed entities and HVDLEs	<p>SEs have by way of the present circular compiled all previous FAQs issued submission of corporate governance report and issued comprehensive FAQs on the said subject.</p> <p>The FAQs have divided into 5 parts:</p> <ul style="list-style-type: none"> ➤ Composition of Board of Directors ➤ Composition of Committees ➤ Meeting of Board of Directors ➤ Meeting of Committees ➤ Others <p>a. The FAQs provide clarity on various aspects such as the manner of submission of the name of director in the CG report, category to be selected when chairperson is not related to promoters etc.</p>	Companies to take note of the FAQs issued by the SEs.

Our Articles of Corporate Interest

Bond market needs a friend, not parent

- Vinita Nair, Senior Partner

The need to promote bond markets is almost clichéd, and does not require elaboration. However, when one observes the regulatory and fiscal developments concerning bond markets in recent times, one wonders whether there is a clear and unified sense of direction. The role of policymaker may be supporting, reformative, protective, promotional, etc. Sometimes, protective regulation may also be intended to play a promotional role – for example, if investors' interest is better protected, it may promote investor confidence and hence, appetite. However, it is hard to see a clear theme in the spate of changes concerning bond markets in the recent past.

This article aims to elaborate on the impact of such changes.

A sigh of relief for the HVDLEs, not shy from compliance

- Nitu Poddar, Partner

SEBI in its board meeting dated March 29, 2023 decided to extend the timeline for “comply or explain” period for the High Value Debt Listed Entity (HVDLE) for compliance of corporate governance norms (i.e. regulation 16 to 27 of LODR Regulations) till March 31, 2024. A HVDLE is a company having listed debt and an outstanding value of such listed debt of Rupees 500 crore and above. It is to be noted that the HVDLEs were given a timeline of two financial years^[1] (FY 21-22 and 22-23) to comply with the corporate governance norms or explain the reason for non-compliance in the quarterly corporate governance report to be filed with the stock exchange(s). Given this extension of mandatory compliance of the said norms – can the HVDLEs just sit back and relax till March 31, 2024? No, they will still have to endeavor to comply. Any short compliance requires reporting to the exchanges on a quarterly basis.

In this article, we discuss the obligations of HVDLEs during the period of “comply or explain”

Corporate succession events: Treatment of unspent or overspent CSR obligations

- CS Aisha Begum Ansari, Manager & Payal Agarwal, Deputy Manager

The identity of a corporate entity may undergo various restructurings, either in the form of merger, demerger, sale of one or more divisions or undertakings. conversion of a company into LLP etc. Let us, for the sake of convenience, call them a “corporate succession” event, implying a situation where a corporate entity is succeeded by another entity, or its business, operations or undertaking shifts to another entity. In some cases, say, amalgamation, the erstwhile corporate entity gets dissolved. In case of a demerger, the transferor entity continues. In case of conversion into LLP or vice versa, a company gets transformed into an LLP or other way round. Usually, in corporate succession events, the assets and liabilities forming part of an undertaking are shifted to another undertaking, say, the successor entity. The assets and liabilities that are comprised in an undertaking are mostly defined to include all liabilities existing on pertaining to a certain date, let us call it “appointed date”. One of the perplexing aspects of this process of transfer of assets and liabilities may be the treatment of the unspent CSR obligations, or excess spending, by the corporate entity which is undergoing a change in its identity. The question becomes increasingly significant in the present day regulatory environment due to the shift in CSR from COPEX (Comply or Explain) to COPP (Comply or Pay Penalty).

In the present write-up, we discuss the treatment of CSR obligations as a result of the following actions resulting into a change in the identity of a corporate – Merger Demerger Sale of a division/ undertaking (“Slump sale”) Conversion of a company into LLP.

Regulating ESG Rating Providers in India

- Payal Agarwal, Deputy Manager

As ESG and climate change concerns assume global priority, there is a growing interest among businesses to claim their offerings, products or structures to be green. This growing interest of a variety of stakeholders has led to the emergence of ESG Rating Providers (“ERPs”) for ranking an entity’s ESG profile, providing “green” or other coloured labels, or giving other affirmations as sustainability or sustainable-linkage. Recently, on 29th March 2023, SEBI has approved to bring a regulatory framework for ERPs in India, by inserting a new chapter to the existing SEBI (Credit Rating Agencies) Regulations, 1999 (“CRA Regulations”).

Let us dive deeper into the changes brought about and their impact on issuers by way of this article.

RBI Framework for Green Deposits

- Team Finserv

Climate change is clearly one of the most pertinent regulatory themes in recent times, as the move to sustainable business practices and energy efficient technologies need massive funding. The availability of finance for move to sustainability has an important role to play in mitigating climate change. To this effect, RBI also conducted a survey in January 2022 to assess the status of climate risk and sustainable finance in leading scheduled commercial banks, and observed a need for concerted effort and further action in this regard. Following the same, RBI conducted a discussion, and released a press release indicating its intention to release a framework for acceptance of green deposits in India. On 11th April, 2023, RBI released the Framework for Acceptance of Green Deposits (“Framework”) for banks and deposit-taking NBFCs/HFCs, to be applicable from 1st June, 2023.

As the green deposits formally mark its presence in the Indian financial markets, one may be inquisitive on various aspects related to it. We have tried to analyze and put our views on the same in this write-up.

Our video lecture on the topic is available here: <https://youtu.be/7rRhVYR-zT0>

Section 2: Financial Sector Updates

Master direction on outsourcing of information technology services Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
<p>NBFC-ML, NBFC-UL, NBFC-TL, Credit Information Companies, AIFIs, Banking Companies</p>	<p>In order to ensure the effective management of the risks that arise pursuant outsourcing of Information Technology ('IT') and IT enabled services, RBI has introduced comprehensive master directions on the same. The underlying principle of these Directions is to ensure that outsourcing arrangements diminish the ability of the entities neither fulfil their obligations to customers nor impede effective supervision by the RBI.</p> <p>The said master directions have been divided into 10 chapters dealing with various aspects, namely:</p> <ul style="list-style-type: none"> ➤ Chapter I: Preliminary - containing definitions. ➤ Chapter II: Role of the regulated entity – dealing with regulatory and supervisory requirements, comprehensive assessment of need for outsourcing and attendant risks, compliance with all applicable statutory and regulatory requirements, grievance redressal mechanism and inventory of outsourced services ➤ Chapter – III: Governance framework – containing requirements such as framing of board approved IT outsourcing policy; role of the board, senior management and IT function ➤ Chapter – IV: Evaluation and engagement of service providers - dealing with due diligence on service providers and aspects to be considered for the same. ➤ Chapter – V: Outsourcing agreement – dealing with entering into legally binding agreement with service providers and aspects to be included in the said agreement ➤ Chapter – VI: Risk management - dealing with putting in place a risk management framework, a business continuity plan and disaster recovery plan ➤ Chapter – VII: Monitoring and control of outsourced activities – dealing with putting in place a management structure to monitor and control its outsourced IT activities and conducting regular audits. ➤ Chapter – VIII: Outsourcing within a group / conglomerate – dealing with aspect us such as having a 	<p>With respect to existing outsourcing arrangements that are already in force as on the date of issuance of this master direction, the Company to ensure that:</p> <ol style="list-style-type: none"> i. The agreements that are due for renewal before October 1, 2023 comply with the provisions of these Directions as on the renewal date (preferably), but not later than 12 months from the date of issuance of this master direction. ii. The agreements that are due for renewal on or after October 1, 2023 shall comply with the provisions of these Directions as on the renewal date or 36 months from the date of issuance of this Master Direction whichever is earlier. <p>With respect to new outsourcing arrangements, the Company to shall ensure that:</p> <ol style="list-style-type: none"> i. The agreements that come into force before October 1, 2023, shall comply with the provisions of these

	<p>board-approved policy for the same and having in place appropriate service level arrangements/ agreements.</p> <p>➤ Chapter – IX: Cross-border outsourcing – containing additional requirements for cross-border outsourcing</p> <p>Chapter – X: Exit strategy – which provides that the outsourcing of it services policy must contain a clear exit strategy with regard to outsourced IT activities/ IT enabled services, while ensuring business continuity during and after exit.</p>	<p>Directions as on the agreement date (preferably) but not later than 12 months from the date of issuance of this Master Direction.</p> <p>ii. The agreements that come into force on or after October 1, 2023, shall comply with the provisions of these Directions from the date of agreement itself.</p> <p>Our write up on the same can be accessed at:</p> <p>https://vinodkothari.com/2023/04/rbi-regulates-outsourcing-of-it-services-by-financial-entities/</p>
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Amendment to the Master Direction on KYC

Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
<p>All Regulated Entities – banks, UCB, payment system providers, AIFIs, NBFCs</p>	<p>The Master Direction – Know Your Customer (KYC) Direction, 2016 was amended vide a notification dated April 28, 2023, with an intent to achieve the following:</p> <ul style="list-style-type: none"> To incorporate the recent amendments dated March 7, 2023, in the Prevention of Money-Laundering Act, 2002 (“PML Act”) and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 (‘PML Rules’); To align the KYC process with increasing use of non-face-to-face lending transactions; To incorporate instructions on the procedure for implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (‘WMD Act, 2005’); To update certain instructions in accordance with FATF Recommendations. 	<p>We have discussed the amendment in our write-up (here) and YouTube video (here).</p>

**Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List:
Addition of two entries
Notification can be viewed [here](#)**

Applicability	Amendment	Actionables and timelines, if any
NBFC,HFC, PPI Issuer, SCB, RRB, LAB, UCB	In terms of para 51 of the KYC Master Directions and section 51A of the Unlawful Activities (Prevention) Act, 1967 ('UAPA'), amendments have been brought in ISIL (Da'esh) and Al Qaida sanctions list of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021).	Companies to take note and update the Sanctions List in light of the additions and ensure that no transactions are being carried out with these persons/ entities.

Our articles of financial interest

Commercial Real Estate exposures: Lending risks and Regulatory focus

- Team Finserv

Lending backed by value or liquidity of certain types of assets is regarded as sensitive sector exposure and calls for a special focus of the lending institution from a risk management perspective. Regulators view it with attention, for reasons of the vulnerability of these exposures to cyclical price changes, as also the contribution of such lending to asset bubbles and systemic instability. Capital market and commercial real estate lending are two instances. Lending to capital markets (equity shares) may cause an excess flow of liquidity into stocks, thereby creating an asset bubble. When the bubble bursts, lending goes bad, and of course with several other systemic implications. Same is the case with commercial real estate. Flow of easy or cheap money causes investor interest in CRE to build up, thereby causing prices to spiral up, resulting into asset bubble. It is for this reason that CRE exposures have always been seen by regulators with concern. Residential real estate is not free from risk of correlated credit risks due to fall in property prices, as was clearly seen during the build-up to the Global Financial Crisis.

In this article, we discuss what makes these real estate exposures significant. How different are these from other credit exposures of financial institutions? What are the regulatory norms surrounding such exposures? What constitutes exposure to CRE, both direct and indirect?

A Critical Analysis on Corporate Guarantees under Service Tax and GST

- Dayita Kanodia, Executive

A Corporate Guarantee is a guarantee in which one corporate undertakes to be responsible for the financial obligations or the performance or of any other contractual obligations by the principal debtor to the creditor, in case the principal debtor fails to meet its obligations or meet the predetermined performance parameters. Such type of guarantees are quite common among group entities that are often without any consideration and are intended towards group synergy. On the other hand a bank guarantee is a guarantee given by the bank on behalf of the applicant to cover a payment obligation to a third party.

The Supreme Court has ruled that service tax will not be levied on corporate guarantees by a parent company to its subsidiaries where there is no consideration involved. This article discusses the impact of this ruling on companies, which issue corporate guarantees without consideration.

Penal charges not a cash-cow for lenders

- Aanchal Kaur Nagpal, Manager and Dayita Kanodia, Executive

Levying of penal interest/ charges is a punitive measure adopted by lenders on borrowers defaulting in making repayments and/ or breaching any terms and conditions mutually agreed in the loan agreement. The Reserve Bank of India also allows lenders to charge such rates as long as the same are communicated to the borrower and are in accordance with the Board approved policy framed in this behalf. However, lenders, cashing in on such autonomy and flexibility, have adopted varied practices which are often prejudicial to the borrower. These include charging exorbitant rates, capitalisation of penal charges, charging of penal interest on the loan amount and not the defaulted portion etc. The RBI, in its Statement on Developmental and Regulatory Policies dated February 08, 2023, announced policy measures for introduction of guidelines for regulating the penal charges levied by financial institutions. Pursuant to the same, RBI, on April 12, 2023 has issued a draft circular on Fair Lending Practice – Penal Charges in Loan Accounts ('Draft Circular') to persuade lenders to use penal charges for their true compensatory nature and not as a revenue enhancement tool. While the Draft Circular comes with good intentions, there are certain provisions that

may seem ambiguous and contradictory, and the final guidelines would need to provide sufficient clarity to achieve the desired execution.

Securitisation: Indian market grows amidst global volume contraction

- Timothy Lopes, Manager

The global securitisation market in 2022 saw a decline in volumes as compared to record issuance volumes seen in the year 2021. The decline was mainly driven by 24% year-on-year decline in volumes in the United States, obviously because of inflation, general economic conditions and low level of business confidence, coupled with supply chain disruptions and uncertainty caused by the Russia-Ukraine conflict.

Further, the S&P Global Ratings: Global Structured Finance 2023 Outlook has projected that 2023 volumes would also decline down to \$1019 billion, a 7% drop year-on-year. The drop may only turn to be optimistic, as the volumes of ABS issuance reported on SIFMA's website show a drop of about 33% in YTD volumes (upto March, 2023), compared to the same period in 2022. Note that the US ABS issuance data does not typically include RMBS issuance. Considering the prevailing situation, investors' interest in structured finance securities may remain subdued. Default rates on retail lending have also been on a high pitch.

Let us dive deeper into the nature of the securitisation market by way of this article.

Classification of fraud and reporting

- Rhea Shah, Executive

A recent ruling of the Supreme Court placed emphasis on the classification of an account as fraudulent and the consequences thereof. The ruling is in favour of incorporating the principles of natural justice during the process of declaring an account as fraudulent. Fraud classification by banks and NBFCs is essentially guided by Master Directions on Frauds – Classification and Reporting by commercial banks and select FIs and the Master Direction – Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016, respectively ('Fraud Directions'). However, there has been a certain extent of ambiguity as to the procedural aspects of the classification. While the basic purpose of such classification remains to ensure the early detection and reporting of a fraudulent transaction, it also entails significance in implementing a procedure that is fast and robust for the RBI to disseminate information regarding fraudulent borrowers and related parties. The categorisation of frauds under the Fraud Directions is a wide concept wherein the term "fraud" essentially includes the various types of frauds as provided for in the Indian Penal Code such as misappropriation, cheating and forgery amongst others. Further, these guidelines streamline the process of fraud classification and reporting for the banks as well as ensure that the accountability for the same is fixed.

Taxation in Securitisation: A judicial overview

- Anirudh Grover, Executive

Securitization transactions in India post the pandemic has seen significant improvement with volumes growing by 70% to Rs. 73000 crores in FY 2023 compared to Rs. 43000 crores in FY 2022.[1] This growth was also highlighted in one of our recent write up wherein it can be seen from the data laid down that despite the global slowdown in the world economy on account of the pandemic, the volume of securitization transactions in India gained a lot of popularity. Given the impetus of this fundraising mode, it is important to have a vibrant securitization market. This can be only achieved if the governing framework with respect to taxation does not impose an additional taxation burden on the parties.

Through this article, the writer will be reviewing the stance of various courts by highlighting the principles with respect to the taxation of the parties involved in a securitization framework i.e. Originator, Special Purpose Vehicle('SPV'), and the Investors.

For a better understanding of the framework of securitization, the readers can also refer to our Article on [Securitization: A Primer.](#)

Section 3: Special Mentions



Mr. Vinod Kothari
Managing Partner

- Session on the topic “Income Tax Quandaries with IBC” on April 17, 2023 through online mode.
- Session on the topic “Recent Changes In NBFC Regulations And Audit Trail” on April 21, 2023 at ICAI-EIRC



Ms. Vinita Nair
Senior Partner

- Webinar on “Annual Secretarial Compliance Report” organized by ICSI- CCGRT on April 21, 2023.



Ms. Barsha Dikshit
Partner

- EDP Session on the topic “Legal Drafting” at ICSI – EIRC on April 20, 2023.



Ms. Pammy Jaiswal

- EDP Session on the topic “Company Law” at ICSI – EIRC on April 24, 2023.



Ms. Sikha Bansal

- Session on the topic “Income Tax Quandaries with IBC” on April 17, 2023 through online mode.

Section 4: Contact Us

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Our Credo

“Focus on capabilities, opportunities follow”