



**SNG & PARTNERS**

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# NEWSLETTER

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## NEWSLETTER

### OCTOBER, 2022

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## EDITORS DESK ...



Dear Readers,

We are pleased to share the 3rd issue of SNG Newsletter for the month of October, 2022.

This newsletter contains important developments in the areas of Financial Services which includes FEMA, IBC, PMLA and circulars issued by RBI and SEBI.

We are also sharing a few important developments with regard to ESG and Real Estate.

It is worthwhile to mention that the judgment passed by the Hon'ble Supreme Court on RBI's obligation to disclose information under RTI is quite significant and will be an interesting read to all.

I hope you will find this newsletter useful.

Best wishes,

**Rajesh Narain Gupta**  
Managing Partner,  
SNG & Partners

## A. BANKING AND FINANCE

1. **SC directs that all the writ petitions which have been filed before the High Courts challenging the validity of the Banking Regulation (Amendment) Act 2020 (Act No 39 of 2020) and/or the circular dated 25 June 2021 shall stand transferred to the High Court of Madras<sup>1</sup> :**

The Division Bench of the Supreme Court consisting of Justice DY Chandrachud and Justice Hima Kohli transferred the writ petitions challenging the Banking Regulation (Amendment) Act 2020 (Act No 39 of 2020) and/or the circular dated 25 June 2021 to the Madras High Court. Since, all the petitions were similar and had been filed in different High Courts. The Apex Court Bench has further directed that any future petition on the same matter shall also be immediately transferred to the Madras High Court.

The SC also requested that the matter be listed before one Bench only so that there is speedy disposal of the writ petitions circumventing similar questions of law. Even virtual participation in this matter was allowed as the case involves parties from diverse High Courts in India.

2. **SC agrees to reconsider Jayantilal Mistry judgment, which had mandated RBI to share information received from Banks with third parties under RTI Act. SC notices that Jayantilal Mistry case has not considered right to privacy. Various challenges on maintainability of this process were dismissed by Court, paving way for reconsideration now<sup>2</sup> :**

Petitioners in this case had challenged the action of the respondent-RBI, vide which the RBI issued directions to the petitioners/Banks to disclose certain information, which according to the petitioners is not only contrary to the provisions as contained in the RTI Act, the RBI Act and the Banking Regulation Act, 1949, but also adversely affects the right to privacy of such Banks and their consumers.

The Supreme Court Division Bench in the present petition observed that the case of Jayantilal N. Mistry did not take into consideration the aspect of balancing the right to information and the right to privacy. The Court further held that a Nine-Judge Constitution Bench of this Court in the case of K.S. Puttaswamy and another has held that the right to privacy is a fundamental right. In case of such a conflict, the Court is required to achieve a sense of balance. It held that the writ petitions under Article 32 can be maintained to challenge such directions regardless of the Jayantilal Mistry case.

3. **Centre revises jurisdiction of Debt Recovery Tribunal, forms 'Exclusive Bench' for default of ₹100 crore and above<sup>3</sup> :**

A panel of the International Financial Services Centre's Authority has recommended development of a voluntary carbon market and the creation of a global climate alliance. This is amongst the other measures to grow the sustainable financing ecosystem through India's offshore financial services centre, GIFT-IFSC.

<sup>1</sup> <https://www.latestlaws.com/latest-news/sc-transfers-all-petitions-challenging-banking-regulation-amendment-act-2020-to-madras-hc-read-order-190804/>

<sup>2</sup> <https://www.latestlaws.com/case-analysis/rbi-is-obliged-to-disclose-defaulters-list-inspection-reports-annual-statements-etc-related-to-banks-under-rti-act-read-judgement-190251/>

<sup>3</sup> <https://www.latestlaws.com/adr/corporate-law-news/ministry-of-finance-revises-jurisdiction-of-debt-recovery-tribunal-190946>



Committee has also recommended devising a framework for transition bonds, promoting regulatory sandbox for green fintech, and setting up of a platform for sustainable lending for small and medium enterprises, Government said in a statement.

#### **4. Notification by the Ministry of Electronics and Information Technology amends the IT Act, 2000 schedule to include Demand Promissory Note and Power of Attorney in favor of entities regulated by the RBI, SEBI, NHB, IRDA and PFRDA**

“With regard to the Notification by the Ministry of Electronics and Information Technology dated 26th September, 2022, in exercise of the powers conferred by the proviso to sub-section (4) of Section 1 of the Information Technology Act, 2000, the Central Government has made Amendments to the First Schedule of the Act.

The Act’s Schedule amended would include Demand Promissory Note and Power of Attorney in favor of entities regulated by the Reserve Bank of India, Securities and Exchange Board of India, National Housing Bank, Insurance Regulatory and Development Authority, and Pension Fund Regulatory and Development Authority.

Any contract for the sale or conveyance of immovable property or any interest in such property has been omitted. Hence, a contract of sale, conveyance, and mortgage can now be done electronically in terms of the Amendment, but these have a physical registration requirement.”

## **B. ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG):**

### **1. International Financial Services Centre’s Authority, India backs Voluntary Carbon Market and Global Climate Alliance<sup>4</sup> :**

A panel of the International Financial Services Centre’s Authority has recommended development of a voluntary carbon market and the creation of a global climate alliance. This is amongst the other measures to grow the sustainable financing ecosystem through India’s offshore financial services centre, GIFT-IFSC.

Committee has also recommended devising a framework for transition bonds, promoting regulatory sandbox for green fintech, and setting up of a platform for sustainable lending for small and medium enterprises, Government said in a statement.

<sup>4</sup> <https://latestlaws.com/corporate-law-news/international-financial-services-centres-authority-india-backs-voluntary-carbon-market-and-global-climate-alliance-191238/>



## C. FOREIGN EXCHANGE MANAGEMENT ACT (FEMA):

### 1. Under investigation for financial misappropriation, Xiaomi India says nothing illegal about royalty payout<sup>5</sup> :

After FEMA approved the seizure of deposits worth Rs. 5551 crores, Xiaomi India alleged that the transactions were made post RBI approval and claims that the royalty payments and the statements to the Bank are legitimate. They also contended that they don't hold any assets outside India and hence, Section 4 of FEMA would be inapplicable. The company has further decided to take all the necessary steps required to protect the reputation and interest of the company as well as the shareholders.

### 2. Xiaomi approaches Karnataka HC over seizure of assets, HC denies Interim Relief<sup>6</sup> :

Xiaomi filed a petition to challenge the order of FEMA which confirmed the seizure order of the ED. However, the Karnataka High Court did not grant an interim order in favor of the company yet. HC Bench orally asked for a bank guarantee for the entire amount that was originally ordered to be seized by the ED.

## D. INSOLVENCY AND BANKRUPTCY CODE (IBC):

### 1. SC expounds: Ex- promoters cannot hold stake in insolvent firm<sup>7</sup> :

The Apex Court's Division Bench led by Justice MR Shah and Justice Krishna Murari dismissed an appeal by upholding the decision of NCLAT and observed that the resolution plan is not workable. It also expounded that ex-promoters cannot be shareholders of the insolvent firm and agreed with the decision of the NCLAT.

### 2. Creditors approved Jet Airways Resolution Plan<sup>8</sup> :

A plan submitted by consortium of London based, Kalrock Capital and UAE based businessman, Murari Lal Jalan has been confirmed subject to the approvals from the NCLT and India's airline regulator.

Jet Airways was crippled with losses and as a result was forced to ground all flights since April 2019. The airline owed approximately Rs. 30,000 crores to its financial and operational creditors.

### 3. SC: Confirming the applicability of the Limitation Act on IBC, sufficient cause is a sine qua non for condoning delay<sup>9</sup> :

The Supreme Court has held that it is the discretion of the NCLT/NCLAT to hear applications beyond

5 <https://latestlaws.com/corporate-law-news/under-investigation-for-financial-misappropriation-xiaomi-india-says-nothing-illegal-about-royalty-pay-out-190223/>

6 <https://latestlaws.com/latest-news/xiaomi-approaches-high-court-again-over-seizure-of-assets-190374/>

7 <https://www.latestlaws.com/corporate-law-news/ex-promoters-can-t-hold-stake-in-insolvent-firm-says-supreme-court-190185/>

8 <https://www.latestlaws.com/did-you-know/creditors-approve-jet-airways-resolution-plan/>

9 <https://www.latestlaws.com/case-analysis/confirming-the-applicability-of-the-limitation-act-on-ibc-sc-held-sufficient-cause-is-a-sine-qua-non-for-condoning-delay-read-judgment-190851/>



the prescribed period of limitation, however the same is subject to sufficient cause, the onus of which lies on the Applicant.

The Apex Court observed that the Limitation Act is applicable to IBC as far as practicable. It also noted that NCLT/NCLAT has the discretion to hear applications even beyond the expiry of the prescribed period of limitation if there is sufficient cause due to which the application could not be presented within the limitation period. The sufficient cause has to be seen on a case-by-case basis, but it is a prerequisite for condoning delays in filing applications or appeals. The onus of the same is on the Appellant.

With respect to the relevant date for purposes of limitation, the Apex Court opined that the material date is when the right to sue accrues and whether the cause of action is continuous. It is the remedy and not the claim which is barred by limitation.

#### **4. Insolvency and Bankruptcy Board of India (Amendment) Regulations, 2022<sup>10</sup> :**

There are several amendments introduced in the Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. Following amendments have been introduced:

- a. Clause 9 of schedule to be renumbered as 9. (1).
- b. Addition of clause 9(2) which talks about enrollment of professional entity as insolvency professional.
- c. Substitution of word individual in clause 10(1)
- d. Addition of item after clause 12(1) (fa) which talks about details of the partners/ directors.
- e. Substitution of words “professional member” in clause 12A (2)
- f. Addition of proviso after clause 12A (2) which bars application of item (c), (e) and (g)(iii) for a professional member.

#### **5. Delhi High Court clarifies: There is distinction in moratorium under Sections 14 and 33 (5), IBC<sup>11</sup>:**

The High Court of Delhi has held that under Section 33(5) there is no bar on a suit or proceedings being continued along with the liquidation proceedings as the word “pending” is not used anywhere in the Section, unlike Section 14.

The HC Bench held that both Sections 14 and 33(5) belong to different chapters of the IBC, the former deals with Corporate Insolvency Resolution Profession (hereinafter referred to as “CIRP”) and the latter deals with Liquidation Proceedings. The Section 14 moratorium comes into effect upon an order passed by the Adjudicating Authority (hereinafter referred to as “AA”) and is continued till the completion of CIRP. The moratorium ceases to have effect in case resolution plan is approved by AA or if a liquidation order is passed under Section 33(4) of the IBC. After an order of liquidation under Section 33(4) it is

<sup>10</sup> <https://ibbi.gov.in/uploads/legalframework/fe64020d75bf890e8128d1a4224b0acc.pdf>

<sup>11</sup> <https://www.latestlaws.com/case-analysis/hc-clarifies-there-is-distinction-in-moratorium-under-sections-14-and-33-5-ibc-read-judgment-190847/>



the moratorium under Section 33(5) that takes place.

The Bench further added that based on the reasons, there is no absolute bar under Section 33(5) in a suit or proceedings being continued along with liquidation proceedings.

#### **6. NCLAT held: Liquidation decision by CoC is open to Judicial Review<sup>12</sup> :**

It was held that CoC has expansive power and can order for liquidation any time before confirmation of the Resolution Plan. In the present case since the reason given for liquidation was based on commercial wisdom and the same was upheld by NCLT, NCLAT did not interfere in the decision, however it was noted by the Court that the decision of liquidation is open to judicial review by both NCLT and NCLAT.

In the present case, the Corporate Debtor was not working since last 19 years due to which the machinery had become scrap and the building was in a dilapidated state. Therefore, the decision of continuing with the CIRP was not considered as commercially sound and NCLAT upheld the decision of the CoC.

#### **7. NCLT, Mumbai held: The recurring dates in the cause of action under IBC do not extend limitation period<sup>13</sup> :**

It was re-iterated by NCLT Mumbai Bench that in case the invoices date back to a period beyond 3 years and the same are clubbed along with invoices that are within the period of limitation, the petition will be inadmissible because first, the petition is not a suit for recovery of money and secondly, the recurring dates in cause of action is outside the scope of jurisdiction of the tribunal.

The Bench observed that it does not have the jurisdiction to cut short the invoices that lead to recurring dates in the cause of action and that the applications filed before it is not a suit for recovery of money. Therefore, the limitation period under IBC cannot be extended in case of recurring dates in the cause of action.

#### **8. NCLAT held: AA has the power to consider any kind of application<sup>14</sup> :**

The Principal Bench of NCLAT in a case that revolved around the assets being sold as going concern, opined that the Adjudicating Authority has the power to entertain any kind of application that comes before it and which is filed by either the Liquidator or a successful auction purchaser.

The Bench observed that the AA has expansive powers to consider any application in the matters of liquidation proceedings and therefore, the appellant was directed to file an appropriate application before the Adjudicating Authority.

<sup>12</sup> <https://www.latestlaws.com/case-analysis/nclat-holds-liquidation-decision-by-committee-of-creditors-is-open-to-judicial-review-read-judgment-190854/>

<sup>13</sup> <https://latestlaws.com/case-analysis/nclt-mumbai-holds-recurring-dates-in-the-cause-of-action-under-ibc-does-not-extend-the-limitation-period-read-judgment-190927/>

<sup>14</sup> <https://latestlaws.com/case-analysis/nclat-expounds-power-of-adjudicating-authority-to-consider-any-kind-of-application-read-judgment-190954/>



## 9. SC enunciates: Financial Debt under IBC does not cover indemnity clause<sup>15</sup> :

The Supreme Court has clarified that disbursement is a sine qua non for a debt to be considered as financial debt and secondly, that a simple indemnity clause of the obligations under an agreement does not come under the ambit of the financial debt as defined under Section 5(8) of the IBC.

It was observed that there was no evidence to prove that the money was disbursed to the Corporate Debtor and therefore, the question of default does not arise. Moreover, there was no proof of any borrowings by the Corporate Debtor and there was no commercial interest of the Corporate Debtor in the commercial papers. In such cases, the Court clarified that for the debt to be considered as a financial debt, it is important to prove disbursement, and if the same cannot be proved, the debt will not qualify as a financial debt.

## E. PREVENTION OF MONEY LAUNDERING ACT (PMLA):

### 1. Delhi HC expounded: A mere exculpatory statement to the ED is not a reasonable ground to be guilty of an offence under PMLA<sup>16</sup> :

Rejecting the bail application, the Delhi HC noted that allegations on the accused involved laundering of amount of ninety-six thousand crores and hence, it was a serious allegation. The Court observed that in such cases a mere exculpatory statement to the ED can never be a ground let alone a reasonable ground to believe that the accused is not guilty of the offence.

### 2. J&K HC enunciated: Court cannot substitute the period which is well enacted by the Legislature<sup>17</sup> :

The High Court of Jammu & Kashmir ruled that to file an appeal against the eviction notice, only a period of 10 days is available to the owner. Acknowledging that it might be adverse in some situations, the HC observed that possession by the authority can be taken forthwith as provided in the section, it is to tone down the rigor that a period of 10 days' notice is given to the owner for vacating the property, during which he can file an appeal against the order.

The HC observed that even though Section 8(3) provides for 45 days to file an appeal, the party does not always have to challenge the order on the last day of the limitation. Immediate steps can be taken by the party as soon as there is an apprehension that an eviction order might be passed and therefore, by literally interpreting the provisions, an appeal must be preferred within 10 days.

<sup>15</sup> <https://latestlaws.com/case-analysis/financial-debt-under-ibc-does-not-cover-the-indemnity-clause-says-sc-read-judgment-190959/>

<sup>16</sup> <https://www.latestlaws.com/case-analysis/hc-a-mere-exculpatory-statement-to-the-ed-not-a-reasonable-ground-to-be-guilty-of-an-offence-under-pmla-read-judgment-190249/>

<sup>17</sup> <https://www.latestlaws.com/case-analysis/hc-opines-court-cannot-substitute-the-period-which-is-well-enacted-by-the-legislature-read-judgment-190956/>



## **F. REAL ESTATE REGULATORY AUTHORITY (RERA):**

### **1. MAHA, RERA expounded: If the Promoter fails to handover the possession of the flat to the allottee then, he will be liable<sup>18</sup> :**

Maharashtra Real Estate Regulatory Authority held that the allottee can either withdraw from the project or continue in the project in case of failure to handover possession on the agreed date by the Promoter. In case of withdrawal, the full amount paid by the allottee along with the interest and compensation shall be refunded by the Promoter, and in case of continual the Promoter is liable to pay interest for the delayed possession.

### **2. MAHA, RERA opined: Once the OC for the Real Estate Project is received, the project is assumed to be completed as per the sanctioned plan<sup>19</sup> :**

Maharashtra Real Estate Regulatory Authority held that the interest for delayed possession only accrues if the Promoter fails to complete the project or is unable to handover the possession as on the agreed date.

The essence of Section 18 was noted, and it was held that the violation must be evident on the date of filing of the complaint.

### **3. Centre proposes to submit model Builder-Buyer Agreement with mandatory RERA clauses before the SC<sup>20</sup> :**

In a PIL filed seeking a model Builder-Buyer Agreement, the Supreme Court opined that to protect the interests of the homebuyers a model agreement is a necessity. The model agreement would be divided into 2 parts, one part will be in consonance with the mandatory provisions of RERA and the second part will be additional clauses based on the individual needs and exigencies of each State/UT.

### **4. MAHA, RERA held: Additional evidence can be allowed if no prejudice is caused to the other party<sup>21</sup> :**

Maharashtra RERA allowed additional evidence to be placed on record as it noted that the documents that are to be placed as evidence are also known to the opposite party and that the opposite party always has the right to rebut the admissibility and relevancy of the said evidence.

18 <https://www.latestlaws.com/case-analysis/maharera-if-the-promoter-fails-to-handover-the-possession-of-the-flat-to-the-allottee-then-he-will-be-liable-read-judgement-190241/>

19 <https://www.latestlaws.com/case-analysis/maharera-once-the-oc-for-real-estate-project-is-received-from-the-relevant-planning-authority-the-project-is-assumed-to-be-complete-in-all-aspects-as-per-the-sanctioned-plan-190246/>

20 <https://www.latestlaws.com/case-analysis/centre-proposes-to-submit-model-builder-buyer-agreement-with-mandatory-rera-clauses-before-supreme-court-read-order-190279/>

21 <https://www.latestlaws.com/case-analysis/maha-rera-holds-additional-evidence-can-be-allowed-if-no-prejudice-is-caused-to-the-other-party-read-judgment-190856/>





## **G. RESERVE BANK OF INDIA (RBI):**

### **1. Guidelines on Digital lending released by RBI<sup>22</sup> :**

RBI has released guidelines on digital lending, which is made applicable to regulated entities such as commercial banks, states co-operative banks, non-banking financing company etc. Some of the significant features of the guidelines include disclosures to the borrowers by regulated entities, scrutinizing the economic profile of the borrowers, requirement of prior consent for data collection and setting up of grievance redressal.

### **2. RBI launches Daksh- Reserve Bank's Advanced Supervisory Monitoring System<sup>23</sup> :**

In an attempt to make work processes such as communications, inspection, reporting of cyber incidents etc., more efficient and automated, a web-based application is launched by RBI. The objective is to strengthen the compliance culture in entities like banks, NBFCs etc., and to provide easy accessibility to security and supervision.

### **3. RBI launches Quarterly Order Books, Inventories and Capacity Utilization Survey (July-September 2022)<sup>24</sup> :**

The 59th round of Order Books, Inventories and Capacity Utilization Survey for the period of July-September 2022 has been launched by RBI. The information in the survey includes quantitative data related to new, backlog and pending orders, total inventories, production, and value during the quarter etc. the findings of the surveys are released on the website.

### **4. RBI announces rate of interest on Government of India Floating Rate Bond 2028<sup>25</sup> :**

The rate of interest is applicable for the half year i.e., October 04, 2022, to April 03, 2023 and shall be 7.01% p.a. It will carry a coupon carrying a base rate (which is to be calculated using a formula plus a fixed spread equivalent to 0.64%.

### **5. RBI releases list of NBFCs in the upper layer Scale Based Regulation for NBFCs<sup>26</sup> :**

A Scale Based Regulation was issued by RBI which categorized NBFCs in base layer, middle layer, upper layer, and top layer category. The upper layer category was to be specified by RBI based on certain parameters and scoring method. The upper layer category of NBFCs has not been identified by the RBI.

### **6. 4 NBFCs have surrendered their certificate of registration to RBI<sup>27</sup> :**

RBI in lieu of its powers under Section 45-IA (6) of the Reserve Bank of India Act, 1934 has cancelled

<sup>22</sup> <https://www.latestlaws.com/latest-news/rbi-releases-guidelines-on-digital-lending-190235/>

<sup>23</sup> <https://www.latestlaws.com/did-you-know/rbi-launches-quarterly-order-books-inventories-and-capacity-utilisation-survey-july-september-2022-round-59-190273/>

<sup>24</sup> <https://www.latestlaws.com/latest-news/rbi-launches-daksh-reserve-bank-s-advanced-supervisory-monitoring-system-190449/>

<sup>25</sup> <https://www.latestlaws.com/did-you-know/rbi-announces-rate-of-interest-on-government-of-india-floating-rate-bond-2028-190460/>

<sup>26</sup> <https://www.latestlaws.com/did-you-know/rbi-releases-list-of-nbfc-in-the-upper-layer-under-scale-based-regulation-for-nbfc-190461/>

<sup>27</sup> <https://www.latestlaws.com/did-you-know/four-nbfc-surrender-their-certificate-of-registration-to-rbi-190797/>

the certificate of registration of 4 NBFCs as they had surrendered their certificate. These 4 NBFCs shall not transact the business owing to the cancellation.

#### **7. Late submission fee for reporting delays under FEMA<sup>28</sup> :**

RBI has introduced late submission fee for reporting delays in Foreign Investment, External Commercial Borrowings and Overseas Investment related transactions w.e.f. November 07, 2017, January 16, 2019, and August 22, 2022, respectively.

#### **8. Liquidity Adjustment Facility – change in rates<sup>29</sup> :**

RBI has issued notification pertaining to the change in policy Repo rate under the Liquidity Adjustment Facility. It has been increased by 50 basis points, i.e., from 5.40% to 5.90% with immediate effect.

#### **9. Standing Liquidity Facility for Primary Dealers<sup>30</sup> :**

RBI has announced that the Standing Liquidity Facility provided to Primary Dealers from the Reserve Bank would be available at a revised rate of 5.90% with immediate effect.

#### **10. Reserve Bank of India (Unhedged Foreign Currency Exposure) Directions, 2022<sup>31</sup> :**

RBI has issued directions, “Reserve Bank of India (Unhedged Foreign Currency Exposure) Directions, 2022” along with an explanatory note. These directions are to come into force from 1st January, 2023.

#### **11. Reserve Bank of India (Financial Statements- Presentation and Disclosures) Directions, 2021<sup>32</sup>:**

RBI has instructed that all Commercial Banks (excluding Regional Rural Banks) and all Primary (Urban) Co-operative Banks are required to disclose details of divergence in asset classification and provisioning if such divergence exceeds certain specified thresholds. These instructions are for the disclosures in the notes to the annual financial statements of the year ending 31st March 2023 and onwards.

#### **12. Multiple NBFCs in a group- classification in the Middle layer<sup>33</sup> :**

RBI has issued a notification to clarify that for the purpose of determining the threshold for the classification in the Middle Layer, the total assets of all the NBFCs shall be consolidated.

#### **13. Review of Regulatory framework for Asset Reconstructive Companies<sup>34</sup> :**

RBI has amended the regulatory framework for Asset Reconstruction Companies based on the suggestions made by the Committee set up by RBI and feedback from the stakeholders. This is done to achieve

<sup>28</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIRSERIES16B175DFF736684DCA87CB5546DCF4DA27.PDF>

<sup>29</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/RATEHIKECE17F0B3230A4E68AF94ED21762713CA.PDF>

<sup>30</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT1219853A01C1A73429D83C38B8726A8D75D.PDF>

<sup>31</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/UNHEDGEDFOREIGN557B15D6B5B8417887A64D6CCB6A8C5F.PDF>

<sup>32</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI130D54317FD9BE84CEF95FE968AA883887E.PDF>

<sup>33</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI129CEAD60B20A804890B68E2C53FE0C0B5E.PDF>

<sup>34</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/ARCS3AD8FB7FBDE1424EB0962073C2A2912C.PDF>

the twin purpose of strengthening the transparency in the ARC sector and to improve the corporate governance standards in ARCs.

#### **14. Classification for the purposes of maintenance of CRR/SLR<sup>35</sup> :**

RBI has issued a clarification that for the purpose of computation of NDTL for CRR and SLR, the amount received towards claims in respect of guarantees invoked and held by banks pending adjustment towards the relative advances need not be treated as outside liabilities.

## **H. SECURITIES EXCHANGE BOARD OF INDIA (SEBI):**

### **1. Extension of timeline for entering details of the existing outstanding convertible securities<sup>36</sup> :**

SEBI has issued a circular and provided a 1-month extension for entering the details of the existing outstanding non-convertible securities in the 'Security and Covenant Monitoring' system hosted by the Depositories to safeguard the interests of the investors in securities and to further the development and regulation of the securities market.

The time provided to issuers to enter their details into the DLT system for existing outstanding non-convertible securities is on or before October 31, 2022. The verification by the Debenture Trustees has to be completed by December 31, 2022.

The use of blockchain technology has also been recommended by the SEBI to record and monitor security creation and covenants of non-convertible securities.

### **2. Approval for amendments in the insider trading rules<sup>37</sup> :**

The rules pertaining to insider trading specifically exclude mutual funds from the definition of the securities. These rules are only applicable to dealing in securities of listed companies or the companies which are to be listed and are in possession of unpublished price sensitive information.

The SEBI Board has via board meeting approved the proposal, which recommended amendments in the insider trading rules for inclusion of trading in units of mutual funds as well.

### **3. Execution of 'Demat Debit and Pledge Instruction'<sup>38</sup> :**

SEBI issued a circular to clarify the execution of 'Demat Debit and Pledge Instruction' for transfer of securities and the same is to be made applicable from November 18, 2022. To simplify the process, certain conditions are to be made part of a separate document viz. Demat Debit and Pledge Instruction'.

<sup>35</sup> <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOT13292DB96317089497D89F8821384E04600.PDF>

<sup>36</sup> [https://www.sebi.gov.in/legal/circulars/oct-2022/extension-of-timeline-for-entering-the-details-of-the-existing-outstanding-non-convertible-securities-in-the-security-and-covenant-monitoring-system-hosted-by-depositories\\_63648.html](https://www.sebi.gov.in/legal/circulars/oct-2022/extension-of-timeline-for-entering-the-details-of-the-existing-outstanding-non-convertible-securities-in-the-security-and-covenant-monitoring-system-hosted-by-depositories_63648.html)

<sup>37</sup> [https://www.sebi.gov.in/media/press-releases/sep-2022/sebi-board-meeting\\_63565.html](https://www.sebi.gov.in/media/press-releases/sep-2022/sebi-board-meeting_63565.html)

<sup>38</sup> [https://www.sebi.gov.in/legal/circulars/oct-2022/execution-of-demat-debit-and-pledge-instruction-ddpi-for-transfer-of-securities-towards-deliveries-settlement-obligations-and-pledging-re-pledging-of-securities-clarification\\_63724.html](https://www.sebi.gov.in/legal/circulars/oct-2022/execution-of-demat-debit-and-pledge-instruction-ddpi-for-transfer-of-securities-towards-deliveries-settlement-obligations-and-pledging-re-pledging-of-securities-clarification_63724.html)

The conditions are:

- a. Transfer of securities held in the beneficial owner accounts towards stock exchange related deliveries arising out of trades executed by clients on the stock exchange via same stockbroker
- b. To meet margin requirements of the clients, pledging/re-pledging of securities in favor of trading member or clearing member
- c. Transactions involving mutual funds being executed on stock exchange

**4. Clarification on block mechanism in Demat account of clients undertaking sale transactions<sup>39</sup>:**

Vide circular dated 16th July 2021 SEBI had made the facility of block mechanism mandatory for all Early pay-in transactions. In the mechanism, shares of a client intending to make a sale transaction are blocked in the Demat account of the client in favor of the clearing corporation.

Pursuant to this, depositories and custodians made several representations, and therefore, it is clarified not that the block mechanism shall not be applicable to clients who have arrangements with custodians registered with SEBI for clearing and settlement of trades. Apart from this, all other provisions remain intact.

**5. Request for Quote (RFQ) platform for trade execution and settlement of trades in listed Non-convertible Securities, Securitized Debt instruments, Municipal Debt securities and Commercial Paper<sup>40</sup> :**

Offered by National Stock Exchange of India Limited and Bombay Stock Exchange Limited, RFQ platform is an electronic platform that enables sophisticated and multilateral negotiations to take place. This platform provides a centralized online trading platform with straight-through processing of clearing and settlement to complete a trade in listed Non-convertible Securities, Securitized Debt instruments, Municipal Debt securities and Commercial Paper.

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. To strengthen and widen the Indian Corporate Bonds Market, SEBI has now decided to permit the stockbrokers that are registered under the Debt segment of the Stock exchange to place bids on this platform on behalf of the clients w.e.f. 1st January 2023. This is in addition to the already existing option of placing bids in a proprietary capacity.

<sup>39</sup> [https://www.sebi.gov.in/legal/circulars/oct-2022/block-mechanism-in-demat-account-of-clients-undertaking-sale-transactions-clarification\\_64384.html](https://www.sebi.gov.in/legal/circulars/oct-2022/block-mechanism-in-demat-account-of-clients-undertaking-sale-transactions-clarification_64384.html)

<sup>40</sup> [https://www.sebi.gov.in/legal/circulars/oct-2022/request-for-quote-rfq-platform-for-trade-execution-and-settlement-of-trades-in-listed-non-convertible-securities-securitised-debt-instruments-municipal-debt-securities-and-commercial-paper\\_64215.html](https://www.sebi.gov.in/legal/circulars/oct-2022/request-for-quote-rfq-platform-for-trade-execution-and-settlement-of-trades-in-listed-non-convertible-securities-securitised-debt-instruments-municipal-debt-securities-and-commercial-paper_64215.html)



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