



LEGAL NEWSLETTER FOR THE MONTH OF APRIL, 2024

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I. RESERVE BANK OF INDIA

1. Key Facts Statement of loans & Advances

- **Date of Applicability:** Although the RBI has provided for a threshold dated i.e., October 01, 2024 but this is in respect to all new loans sanctioned to any customer post this date. However, for the time being the Applicable Entities shall put in place necessary systems and processes to implement the additional requirement at the earliest and comply with the extant guidelines current applicable to them.

- **Applicable Entities**

All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks, excluding Payments Banks)

All Primary (Urban) Co-operative Banks, State Co-operative Banks and Central Co-operative Banks All Non-Banking Financial Companies (including Housing Finance Companies)

- **Brief on Amendment:** The RBI by virtue of this notification has extended the requirement of sharing a KFS as given in the format specified in Annex A of the Notification. It must be noted that the KFS must be written in a language understood by such borrowers and further the contents of KFS shall be explained to the borrower and an acknowledgement shall be obtained that he/she has understood the same.

Additionally, the Applicable Entities shall allow the customers to make a choice to agree to the terms and conditions of the KFS within a time period as provided below:

For Loans having tenor of 7 days or more: At least 3 working days

For loans having tenor of less than 7 days: 1 working day

Further the Applicable Entities must also note that the KFS prepared shall also be included as a summary box in the loan agreement.

- Computation sheet of annual percentage rate (Illustrative examples are provided in Annex B & Annex C)
- Amortization schedule of the loan over the loan tenor
- Charges recovered from the borrowers by the Applicable Entities on behalf of third-party service providers on actual basis, such as insurance charges, legal charges

It must be further noted that any fees, charges, etc. which are not mentioned in the KFS, cannot be charged by the REs to the borrower at any stage during the term of the loan, without explicit consent of the borrower

- **Key Actionable:** The Applicable Entities shall take a note of the formats as issued by RBI and accordingly revise their loan agreements for loans to be generated post the Applicable Date.
- **SGA View:** The mandatory requirement of issuing a KFS will certainly benefit the borrowers to make an informed decision as the said KFS is intended to provide critical information about the terms of the loan agreement.

2. Frequently Asked Questions on Guidelines on Default Loss Guarantee in Digital Lending

- **Applicable Entities:** All entities offering Digital Lending and who have exposure to Default Loss Guarantee
- **Brief on Amendment:** The Guidelines on Default Loss Guarantee were released on June 08, 2023 that provided for a default cap of 5% of the amount of loan portfolio. Since then, the industry players have had a lot of clarifications to which the RBI by virtue of these FAQs has sought to clear.
- **Actionable If any:** The Applicable Entities shall take a note of these FAQs and clarifications and accordingly take necessary actions.

3. Fair Practice Code for lenders: Charging of Interest

- **Applicable Entities:**
 - All Commercial Banks excluding Payment Banks
 - All Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks
 - All Non-Banking Financial Companies (including Micro finance Institutions and Housing Finance Companies)
- **Brief on Amendment:** The RBI during the course of its onsite review has come across lenders resorting unfair practices in charging of interest. Some of these unfair and non-standard practices are as follows:
 - a. Charging of interest from the date of sanction of loan or date of execution of loan agreement and not from the date of actual disbursement of the funds to the customer. Similarly, in the case of loans being disbursed by cheque, instances were observed where interest was charged from the date of the cheque whereas the cheque was handed over to the customer several days later
 - b. In the case of disbursal or repayment of loans during the course of the month, some REs were charging interest for the entire month, rather than charging interest only for the period for which the loan was outstanding.
 - c. In some cases, it was observed that REs was collecting one or more instalments in advance but reckoning the full loan amount for charging interest.
- **Actionable if any:** In light of these observations, the Applicable Entities are encouraged to review their existing practices and wherever such unfair practice is being undertaken, the Applicable Entity shall refund the excess amount. Lastly, the Applicable Entities are also encouraged to use online transfers in lieu of cheques being issued in a few cases for loan disbursal.

4. Guidance Note on Operational Risk Management and Operational Resilience

- **Date of Applicability:** April 30,2024
- **Applicable Entities**
 - All Commercial Banks:
 - All Primary (Urban) Co-operative Banks, State Co-operative Banks and Central Co-operative Banks All India Financial Institutions (viz Exim Bank, NABARD, NHB, SIDBI and NaBFID); and
 - All Non-Banking Financial Companies (including Housing Finance Companies).
- **Brief on Amendment:** Risk is inherent in all organizations irrespective of their size or nature, operational risk is a type of risk that is inherent in all banking/financial products, services, activities, processes and systems. To counter or mitigate this risk effectively, the Applicable Entities particularly their senior management or the board of directors have to formulate a risk management framework.
An operational disruption can threaten the viability of an Applicable Entities, impact its customers and other market participants, and ultimately have an impact on financial stability. It can result from man-made causes, Information Technology (IT) threats (e.g., cyber-attacks, changes in technology, technology failures, etc), geopolitical conflicts, business disruptions, internal/external frauds, execution/ delivery errors, third party dependencies, or natural causes (e.g., climate change,pandemic, etc.).

In view of the foregoing the RBI through the Guidance Note intents to:
 - Promote and further improve the effectiveness of Operational Risk Management of the Applicable Entities, and
 - Enhance their Operational Resilience given the interconnections and interdependencies, within the financial system, that result from the complex and dynamic environment in which the REs operates.
- **Key Actionable** The RBI has vide this Guidance Note also released an [Annexure](#) that essentially contains the key changes carried out in the Guidance Note *vis a vis* repealed Guidance Note.

II. SECURITIES AND EXCHANGE BOARD OF INDIA

SEBI launches SCORES 2.0 a new version of the SEBI complaint redressal system for Investors

- Securities Exchange Board of India ("SEBI") through a press release dated 01.04.2024 launched a new version of the SEBI Complaint Redress System ("SCORES 2.0").
- SEBI through its circular dated 20.09.2023 had revamped the existing complaint redressal mechanism ("SCORES 2.0 Circular"). Pursuant to the changes in the SCORES 2.0 Circular, the salient features of SCORES 2.0 are as follows:
 - The timelines have been reduced and made uniform across the securities market, i.e. to 21 calendar days from the date of receipt of complaint;
 - All complaints are required to be auto-routed to the concerned regulated entity to eliminate time lapses, if any, in the flow of complaints;
 - Non-adherence to the prescribed timelines by the relevant regulated entity or designated body, as the case may be, shall lead to the auto-escalation of complaints to the next level;
 - Two levels of review shall be available to the investors. The first level of review shall be by the 'designated body' if the investor is dissatisfied with the resolution provided by the concerned regulated entity. The second level of review shall be conducted by SEBI in case the investor is still dissatisfied after the first review;
 - KYC Registration Agency database has been integrated for easy registration of investors onto the platform;
 - Investors shall be able to lodge complaints only through SCORES 2.0, however, the investors shall be able to check the status of complaints already lodged, under the older version of SCORES.
- For referring to the FAQs issued by SEBI please [click here](#)

III. FOREIGN EXCHANGE AND MANAGEMENT ACT, 1999

1. Notification Of Foreign Exchange Management (Foreign Currency Accounts By A Person Resident In India) (Amendment) Regulations, 2024

- The RBI on 23rd April 2024 notified Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Amendment) Regulations, 2024 ('Amendment Regulations').
- The Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 ('Principal Regulations') provide for cases wherein residents in India may open and maintain a foreign currency account.
- In this regard, sub-regulation (F)(1) of regulation 5 has been amended to permit parking of funds raised by direct listing of equity shares of companies incorporated in India on International Exchanges, in foreign currency accounts with banks outside India wherein the funds so raised are pending their utilisation or repatriation to India

2. Notification of Foreign Exchange Management (Mode of Payment And Reporting of Non-debt Instruments) (Amendment) Regulations, 2024

- The RBI on 19th April 2024 notified Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024.
- The Amendment Regulations cover the following aspects pertaining to international listing:
 - Mode of payment of consideration for purchase / subscription of equity shares of an Indian company listed on an International Exchange – may be by way of banking channels to a foreign currency account or an inward remittance from abroad through banking channels;
 - Reporting of such purchase/ subscription – The reporting shall be made in Form LEC (FII). Both the Amendments as aforesaid are in line with other amendments made by government pertaining to permission for direct listing of securities by Indian Companies on international exchange of GIFT IFSC to boost foreign investment.

IV. MINISTRY OF CORPORATE AFFAIRS (“MCA”):

1. Orders of Registrar of Companies

A. Order For Penalty Under Section 42 of The Companies Act, 2013:

- In the matter of adjudication of Planify Capital Limited the Registrar of Companies (ROC) discovered that Planify Capital Limited (the "Company") had been functioning as a fundraising platform for startups, facilitating the sale of shares of unlisted companies to its investors. During the investigation, it was found that the Company issued 454,530 shares to Planify Enterprises Private Limited (a related company) for subsequent transfer to 76 investors, mainly individuals. Additionally, the Company promoted this share issuance through a YouTube video on its channel and through advertorials on news portals.
- Notably, the Company misrepresented the valuation report by using Planify Enterprises Private Limited's report instead of its own. These actions were found to be in breach of Section 42 of the Companies Act 2013, which governs private placements of securities. This section stipulates that private placements can only be made to a select group of individuals identified by the board during the fiscal year. Moreover, it prohibits companies from publicly advertising or using media to inform the public about such placements.
- Following the allotment of securities, companies are required to file Form PAS 3 (return of allotment) with the ROC within 15 days. In this case, it was evident that the Company violated Section 42(7) by advertising the share issuance openly, with penalties outlined in Section 42(10).
- However, since this section does not specify fixed penalties for violations, the penalties provided under Rule 3(12) of the Companies (Adjudication of Penalties) Rules, 2014, were applied.

B. Order for penalty under Section 137 of the Companies Act, 2013

- In the matter of adjudication of Dalit Industries Association of Bihar Dalit Industries Association of Bihar, a private limited company located in Patna, Bihar, was incorporated on March 13, 2020, with an initial paid-up share capital of Rs. 3,00,000/-. However, the company neglected to submit its financial statements to the Registrar of Companies (ROC) for the fiscal years spanning from 2020-2021 to 2022-2023, despite receiving notices of default from the ROC. Although the company qualified as a 'Small Company' with a paid-up share capital below Rs. 4 crores, its failure to file financial statements led to the forfeiture of benefits under Section 446B of the Companies Act.

Section 137(1) of the Companies Act, 2013 mandates that every company specified under this section must file its financial statements, including consolidated financial statements if applicable, within 30 days of the Annual General Meeting (AGM) with the ROC.

Additionally, Section 446B of the Companies Act, 2013 outlines provisions for reduced penalties in the cases of One Person Company (OPC), Small Company, Start-up Company, and Producer Company. The penalty imposed shall not exceed one-half of the penalty specified in the relevant provision, with a maximum penalty of two lakh rupees for a company and one lakh rupees for the officer in default.

Penalty

Accordingly, ROC Bihar imposed a penalty of Rs. 1, 34, 500 on the Company and Rs. 1,20,900 each on the officers- in- default of the Company.

2. E-forms updated in the month of April, 2024:

S.No	Description	e- Form	Date of Amendment
1.	Registration of Entities for undertaking CSR Activities	Form CSR-1	April 18, 2024
2.	Form for furnishing half yearly return with the registrar in respect of outstanding payments to Micro or Small Enterprise.	Form MSME	April 05, 2024
3.	Form for filing Cost Audit Report with the Central Government	Form CRA-4	April 19, 2024
4.	Information to the Registrar by Company for appointment of Auditor	Form ADT-1	April 18, 2024
5.	Notice of Resignation by the Auditor	Form ADT-3	April 24, 2024
6.	Persons not holding beneficial interest in shares	Form MGT-6	April 19, 2024
7.	Form for submission of Prospectus with the Registrar [LEAP-1]	Form LEAP-1	April 18, 2024
8.	Form for filing Report on Annual General Meeting	Form MGT-15	April 30, 2024
9.	Form for filing annual return by a company	Form MGT-7	April 24, 2024
10	Filing balance sheet and other documents with the Registrar 2.(a)	Form 23 AC	April 30, 2024
11	Filing Profit and Loss account and other documents with the Registrar	Form 23ACA	April 30, 2024

V. JUDICIAL PRONOUNCEMENTS

1. *Supreme Court held that the maximum stamp duty payable for increase in the share capital as provided under the Bombay Stamp Act is payable only once and not on every subsequent increase of the share capital.*

- The Supreme Court through its judgement dated 05.04.2024 in the matter of State of Maharashtra &Anr v. National Organic Chemical Industries Ltd has held that under the Bombay Stamp Act, 1958 ("Stamp Act"), the maximum stamp duty payable on increase of share capital of a Company is payable only once if stamp duty equivalent to or more than the cap has already been paid and accordingly, no stamp duty shall be payable on subsequent increases.
- The Supreme Court clarifying the position held that the ceiling of INR 25,00,000 as provided under Article 10 of the Stamp Act (post amendment) is applicable on subsequent increases in the authorised share capital, subject to the maximum cap payable under the said article of the Stamp Act. Therefore, in case stamp duty equivalent to or more than such cap has already been paid, then no further stamp duty can be levied on every subsequent increase individually.

2. *NCLT, Mumbai held that a claim and penalty does not become 'operational debt' under the IBC Code until the liability has been adjudicated upon by a civil court.*

- The National Company Law Tribunal, Mumbai ("NCLT") through its judgement dated 02.04.2024 in the matter of Sucden India Pvt. Ltd v. Matoshri Laxmi Sugar Co-Generation Industries Ltd¹⁰ held that 'operational debt' as defined under section 5(21) of the Insolvency and Bankruptcy Code, 2016 ("IBC Code") does not include a claim of penalty or liquidated damages, and such claim of penalty liquidated damages can come under the ambit of 'operational debt' only after the claim has been adjudicated by a competent court.
- In the present case, insolvency proceedings were initiated under the IBC Code by Sucden India as an operational creditor against Matoshri Laxmi Sugar (the corporate debtor) in relation to a claim of penalty under a sugar purchase agreement for delay in supply of sugar by Matoshri Laxmi Sugar to Sucden India in accordance with the terms of such agreement and interest on the penalty amount claimed.
- The NCLT observed that in order to qualify as an 'operational debt' under Section 5(21) of the IBC Code, the amount in default must represent "a claim in respect of the provision of goods or services", however, in the instant case, the claim amount was not on account of provision of goods but on account of penalty or damages for the delay in delivery of sugar by Matoshri Laxmi Sugar to Sucden India.
- The Court relying on the settled principle that 'operational debt' under the IBC Code does not include penalty or liquidated damages held that claim and penalty do not become operational debt until the liability has been adjudicated upon by a civil court and damages have been assessed and crystallized.

VI. COMPLIANCE CALENDAR FOR THE MONTH OF MAY 2024

S. No.	Functional Area / segment	Particulars	Due Date
1.	ECB borrowers	ECB Return (ECB -2)	May 7, 2024
2.	Annual Returns of LLP	LLP -11	May 30, 2024
3.	Annual Return of a Foreign Company	Form FC -4	May 30, 2024
4.	Regulation 32(1) of SEBI LODR	Statement of deviation(s) / variation in utilization of funds	May 30, 2024
5.	Regulation 33 (3) of SEBI LODR	Financial Results alongwith Limited Review / Auditors' Report	May 30, 2024
6.	Regulation 24A of SEBI LODR	Secretarial Compliance Report	May 30, 2024
7.	Regulation 23 (9) of SEBI LODR	Disclosure of Related party transactions	On the date of publication of standalone and consolidated financial results

For more information on this or any further enquiries:
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