

# Newsletter VEDANAM



## Why Vedanam?

We, Mehta & Mehta present you with our monthly newsletter which cover regulatory updates, case laws and study articles. We hereby release our June, 2022 issue.

One of the most important areas we can develop as professionals is competence in accessing and sharing knowledge.



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*Disclaimer: All views in this Newsletter are expressed by the concerned individuals only and are not the views of the Department or the Company.*

## I. MINISTRY OF CORPORATE AFFAIRS (“MCA”) UPDATES:

### A. MCA CIRCULARS AND NOTIFICATIONS:

#### 1. Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 - 09<sup>th</sup> June, 2022

MCA vide its notification dated 09<sup>th</sup> June, 2022, made amendments to the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. These rules may be called as Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022.

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Comment on the Change
1.	Sub-rule 4 is inserted under Rule 4 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016	(a) Where the Registrar, on examining the application made in Form STK-2, finds that it is necessary to call for further information or finds such application or any document annexed therewith is defective or incomplete in any respect, he shall inform to the applicant to remove the defects and re-submit the complete Form within fifteen days from the date of such information, failing which the Registrar shall treat the Form as invalid in the electronic record, and shall inform the applicant, accordingly; (b) After the re-submission of the Form or document, if the Registrar finds that the Form or document is	<p>This amendment is applicable when an application is made for removal of name to register of companies in Form STK-2. This information gives ROC power to</p> <p>-Call for additional information in case the registrar finds the Form or documents submitted to be defective or incomplete.</p> <p>-Further, the applicant is required to re-submit the information within fifteen days to remove such defect and to complete the Form.</p>

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Comment on the Change
		<p>defective or incomplete in any respect, he shall give further time of fifteen days to remove such defects or complete the Form, failing which the Registrar shall treat the Form as invalid in the electronic record and shall inform the applicant, accordingly;</p> <p>(c) Any re-submission of the application in Form STK-2 made prior to the commencement of the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 shall not be counted for the purposes of reckoning the maximum number of re-submissions of such Form;</p>	<p>Further, ROC can again ask for re-submission if Registrar finds the information to be defective or incomplete.</p> <p>Further, Form STK 1, Form STK - 5 and Form STK-5A have been substituted as provided in this notification.</p> <p>It is to be noted that provisions of this notification are applicable from immediate effect.</p>

*Link to the Circular:*

<https://egazette.nic.in/WriteReadData/2022/236437.pdf>

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2. Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022- 14<sup>th</sup> June, 2022

MCA vide its notification dated 14<sup>th</sup> June, 2022, made amendments to the Companies (Appointment and Qualification of Directors) Rules, 2014. These rules may be called as Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022.

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Comment on the Change
1.	Sub-rule 5 is inserted under Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014	<p>(5) Any individual whose name has been removed from the databank under sub-rule (4), may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the following conditions, namely :-</p> <p>(i) his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial registration shall continue to be valid for</p>	<p>This amendment says that if the name of any individual has been removed from IICA (Indian Institute of Corporate Affairs) databank due to his failure to pass the online proficiency self-assessment test then such individual can apply for restoration of his name on payment of fees and his name would be restored under following conditions :-</p> <p>- His name shall be shown in a separate restored category for one year from the date of restoration. Further within that period the individual is required to</p>

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Comment on the Change
		<p>the period for which the same was initially paid; and</p> <p>(ii) in case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank."</p>	<p>pass online proficiency self-assessment test.</p> <p>- In case, the individual fails to pass online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank.</p>

Link to the Circular:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=aLN2CSvwwwzNAnu%252BGj17uw%253D%253D&type=open>

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**3. MCA National Financial Reporting Authority Amendment Rules, 2022 - 17<sup>th</sup> June, 2022**

MCA vide its notification dated 17<sup>th</sup> June, 2022, made amendments to the National Financial Reporting Authority Rules, 2018. These rules may be called National Financial Reporting Authority Amendment Rules, 2022.

Sr. No.	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Part/Chapter/Section /Sub-section(s) in the Companies Rules, 2016 Modifications	Comment on the Change
1.	Rule 13 of National Financial Reporting Authority Rules, 2018 has been substituted	<p><b>Punishment in case of non-compliance:-</b></p> <p>Whoever contravenes any of the provisions of these rules, shall be punishable with fine not exceeding five thousand rupees, and where the contravention is a continuing one, with a further fine not exceeding five hundred rupees for every day after the first during which the contravention continues.</p>	<p>This amendment is applicable where there has been non-compliance with any provisions of NFRA rules, 2018. Every person who contravenes shall be punishable with a fine of five thousand rupees and where the contravention is a continuing one, with a further fine not exceeding five hundred rupees for every day after the first during which the contravention continues.</p> <p>It is to be noted that provisions of this notification are applicable from immediate effect.</p>

**Link to the Circular:**

<https://www.mca.gov.in/bin/dms/getdocument?mcs=ALYJ%252BRnuB%252BCYMY4Llv02JA%253D%253D&type=open>

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4. **MCA Circular on relaxation in paying additional fees in case of delay in filing Form 11 (Annual Return) by Limited Liability Partnerships up to 15<sup>th</sup> July, 2022 – 29<sup>th</sup> June, 2022**

MCA, vide its Circular dated 29<sup>th</sup> June, 2022 has decided to further extend the timeline and allow LLPs to file e-Form 11 (Annual Return) for the Financial Year 2021-2022 without paying additional fees up to **15<sup>th</sup> July, 2022**.

The Circular is in continuation of MCA Circular dated 27<sup>th</sup> May, 2022.

*Link to the Circular:*

<https://www.mca.gov.in/bin/dms/getdocument?mcs=jkZozIMem2jwa2SdhjEzzg%253D%253D&type=open>

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## II. SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES:

### A. SEBI CIRCULARS AND NOTIFICATION

#### 1. SEBI Circular on Procedure for seeking prior approval for change in control of Portfolio Managers - 02<sup>nd</sup> June, 2022

- Regulation 11(aa) of SEBI (Portfolio Managers) Regulations, 2020 provides that a Portfolio Manager shall obtain prior approval of SEBI in case of change in control in such manner as may be specified by SEBI. Further, SEBI, vide its Circular dated 12<sup>th</sup> May, 2021, the procedure for obtaining prior approval in case of change in control of Portfolio Managers was specified.
- Further, in order to streamline the process of providing approval to the proposed change in control of a Portfolio Manager, SEBI modified its Circular dated 12<sup>th</sup> May, 2021 as under:
- An online application shall be made by Portfolio Manager to SEBI for prior approval through the SEBI Intermediary Portal (<https://siportal.sebi.gov.in>).
- The prior approval granted by SEBI shall be valid for a period of six months from the date of such approval.
- Applications for fresh registration pursuant to change in control shall be made to SEBI within six months from the date of prior approval.
- Pursuant to grant of prior approval by SEBI, in order to enable existing investors/ clients to take well informed decision regarding their continuance or otherwise with the changed management, the portfolio manager shall inform its existing investors/ clients about the proposed change prior to effecting the same and give an option to exit without any exit load, within a period of not less than 30 calendar days, from the date of such communication.
- In matters which involve scheme(s) of arrangement which needs sanction of the National Company Law Tribunal (“NCLT”) in terms of the provisions of the Companies Act, 2013, the Portfolio Manager shall ensure the following:
  - a) The application seeking approval for the proposed change in control under Regulation 11(aa) shall be filed with SEBI prior to filing the application with NCLT;
  - b) Upon being satisfied with compliance of the applicable regulatory requirements, in-principle approval will be granted by SEBI;

- c) The validity of such in-principle approval shall be three months from the date of such approval, within which the relevant application shall be made to NCLT;
- d) Within 15 days from the date of order of NCLT, Portfolio Manager shall submit an online application in terms of paragraph 2(i) of this Circular along with the following documents to SEBI for final approval:
- Copy of the NCLT Order approving the scheme;
  - Copy of the approved scheme;
  - Statement explaining modifications, if any, in the approved scheme vis-à-vis the draft scheme and the reasons for the same; and
  - Details of compliance with the conditions/observations mentioned in the in-principle approval provided by SEBI.
- e) All other provisions mentioned at paragraph 2(ii)-(iv) of this Circular regarding the procedure for seeking prior approval for change in control of Portfolio Managers, shall also apply.
- The provisions of this Circular shall be applicable with effect from 15<sup>th</sup> June, 2022 to all applications for approval of applications of change in control of Portfolio Manager and Circular dated 12<sup>th</sup> May, 2021 shall stand superseded with effect from the date of applicability of this Circular.

*Link to the Circular:*

*[https://www.sebi.gov.in/legal/circulars/jun-2022/procedure-for-seeking-prior-approval-for-change-in-control-of-portfolio-managers\\_59504.html](https://www.sebi.gov.in/legal/circulars/jun-2022/procedure-for-seeking-prior-approval-for-change-in-control-of-portfolio-managers_59504.html)*

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**2. SEBI Circular on Investor Grievance Redressal Mechanism - 03<sup>rd</sup> June, 2022**

SEBI, vide its Circular dated 03<sup>rd</sup> June, 2022 made amendment to Circular dated 06<sup>th</sup> November, 2020 based on feedback received from market participants in order to further strengthen the Investor Grievance Redressal Mechanism.

**Amendment to Circular dated 06<sup>th</sup> November, 2020 -**

**Clause 4 of the Circular dated November 6, 2020 shall be substituted with the following, namely, -**

*"4. Arbitration*

- (a) *For any dispute between the member and the client relating to or arising out of the transactions in Stock Exchange, which is of civil nature, the complainant/ member shall first refer the complaint to the IGRC and/ or to arbitration mechanism*

*provided by the Stock Exchange before resorting to other remedies available under any other law. For the removal of doubts, it is clarified that the sole arbitrator or the panel of arbitrators, as the case may be, appointed under the Stock Exchange arbitration mechanism may consider any claim relating to any dispute between a stock broker and client arising out of the transactions in stock exchange, as per law, and shall always be deemed to have the competence to rule on its jurisdiction. A complainant/member, who is not satisfied with the recommendation of the IGRC shall avail the arbitration mechanism of the Stock Exchange for settlement of complaints within three months from the date of IGRC recommendation”*

- (b) *The time period of three months mentioned in the previous sub-clause for filing arbitration shall be applicable only for the cases where the IGRC recommendation is being challenged. For any arbitration application received without going through IGRC mechanism, the above time period of three months shall not apply, and for such cases the limitation period for filing arbitration shall be governed by the law of limitation, i.e., The Limitation Act, 1963.”*

**Link to the Circular:**

[https://www.sebi.gov.in/legal/circulars/jun-2022/investor-redressal-grievance-mechanism\\_59521.html](https://www.sebi.gov.in/legal/circulars/jun-2022/investor-redressal-grievance-mechanism_59521.html)

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**3. SEBI Modifies Cyber Security and Cyber resilience framework of Stock Brokers / Depository Participants**

**I. 07<sup>th</sup> June, 2022**

- SEBI, vide circular dated 03<sup>rd</sup> December, 2018 prescribed framework for Cyber Security and Cyber Resilience for Stock Brokers / Depository Participants.
- Further, SEBI vide its circular dated 07<sup>th</sup> June, 2022 made partial modifications in the **Paragraph - 11, 41, 42 and 44 of the Annexure -1 of SEBI Circular dated 03<sup>rd</sup> December, 2018.**
- SEBI mandated Stock Brokers / Depository Participants to conduct comprehensive cyber audit at least once in a financial year. Further, along with the Cyber audit report, a declaration from the MD/ CEO/ Partners/ Proprietors certifying compliance by all SEBI Circulars and advisories related to Cyber security from time to time.
- Other than that, Stock Brokers / Depository Participants shall take necessary steps for implementation of this Circular and are directed to communicate the status of implementation of the circular to Stock Exchanges/ Depositories within 10 days from the date of this Circular.

- The provisions of the Circular shall come into force with immediate effect.

*Link to the Circular:*

[https://www.sebi.gov.in/legal/circulars/jun-2022/modification-in-cyber-security-and-cyber-resilience-framework-for-stock-brokers-depository-participants\\_59581.html](https://www.sebi.gov.in/legal/circulars/jun-2022/modification-in-cyber-security-and-cyber-resilience-framework-for-stock-brokers-depository-participants_59581.html)

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**II. 30<sup>th</sup> June, 2022**

- SEBI, vide circular dated 03<sup>rd</sup> December, 2018, 15<sup>th</sup> October, 2019 and 07<sup>th</sup> June, 2022 prescribed framework for Cyber Security and Cyber Resilience for Stock Brokers / Depository Participants.
- Further, SEBI vide its circular dated 30<sup>th</sup> June, 2022 made partial modifications *in the paragraph 52 of Annexure -1 of SEBI Circular dated 03<sup>rd</sup> December, 2018.*
- SEBI in the Circular said that Stock Brokers and Depository Participants must notify the stock exchanges or depositories as well as SEBI of any cyberattacks, threats or breaches within six hours of them becoming aware of the incident or it being brought to their notice.
- The incidents must also be reported to the Indian computer emergency response team (CERT-In).
- Further, Stock Brokers / Depository Participants shall take necessary steps for implementation of this Circular.
- The provisions of the Circular shall come into force with immediate effect.

*Link to the Circular:*

[https://www.sebi.gov.in/legal/circulars/jun-2022/modification-in-cyber-security-and-cyber-resilience-framework-for-stock-brokers-depository-participants\\_60453.html](https://www.sebi.gov.in/legal/circulars/jun-2022/modification-in-cyber-security-and-cyber-resilience-framework-for-stock-brokers-depository-participants_60453.html)

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**4. SEBI Modifies Cyber Security and Cyber resilience framework of Mutual Funds/ Asset Management Companies (AMCs) - 09<sup>th</sup> June, 2022**

- SEBI, vide circular dated 10<sup>th</sup> January, 2019 prescribed framework for Cyber Security and Cyber Resilience for Mutual Funds/ Asset Management Companies (AMCs).

- Further, SEBI vide its circular dated 09<sup>th</sup> June, 2022 made partial modifications in the Annexure -1 of SEBI Circular dated 10<sup>th</sup> January, 2019 in the following paragraphs :-

Paragraph - 11 - to have uniformity for identifying and classifying critical assets, across the industry.

Paragraph - 40, 41 and 42 on the recommendation of IT-Projects Advisory Committee (IT-PAC) of SEBI and also to adopt “audit the auditor approach” for conducting the Vulnerability Assessment and Penetration Testing (VAPT) of the intermediaries.

Paragraph - 51 For receipt of quarterly reports containing information on cyber-attacks and threats experienced by Mutual Funds/ AMCs in a time bound manner.

- SEBI also mandated Stock Brokers/Depository Participants to conduct comprehensive cyber audit at least 2 times in a financial year. Further, along with the Cyber audit report, a declaration from the MD/ CEO certifying compliance by all SEBI Circulars and advisories related to Cyber security from time to time.
- Further, Stock Brokers / Depository Participants shall take necessary steps for implementation of this Circular.
- The provisions of the Circular shall come into force from 15<sup>th</sup> July, 2022.

Link to the Circular:

<https://www.sebi.gov.in/legal/circulars/jun-2022/circular-on-modification-in-cyber-security-and-cyber-resilience-framework-of-mutual-funds-asset-management-companies-amcs-59611.html>

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5. SEBI Circular on Nomination for Mutual Fund Unit Holders - 15<sup>th</sup> June, 2022

- SEBI, vide its Circular dated 15<sup>th</sup> June, 2022 to bring uniformity in practices across securities market provided Investors subscribing to mutual fund units on or after 1<sup>st</sup> August, 2022, the choice of :
  - a) Providing nomination in the format specified in fourth schedule of SEBI (Mutual Funds) Regulations, 1996 (or)
  - b) Opting out of nomination through a signed Declaration form as provided in Annexure - A to this circular.
- Further it is to be noted that, In case of physical option, the forms shall carry the wet signature of all the unit holder(s) and in case of online option,

the forms shall be using e-Sign facility recognized under Information Technology Act, 2000.

- Other than that, All the AMCs are advised to set deadline as 31<sup>st</sup> March, 2023 for nomination / opting out of nomination for all the existing individual unit holder(s), failing which the folios shall be frozen for debits.

**Link to the Circular:**

[https://www.sebi.gov.in/legal/circulars/jun-2022/nomination-for-mutual-fund-unit-holders\\_59743.html](https://www.sebi.gov.in/legal/circulars/jun-2022/nomination-for-mutual-fund-unit-holders_59743.html)

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**6. SEBI Circular on Naming / Tagging of demat accounts maintained by Stock Brokers - 20<sup>th</sup> June, 2022**

SEBI, vide its Circular dated 20<sup>th</sup> June, 2022 said that all demat accounts maintained by stock brokers should be appropriately tagged by 30<sup>th</sup> June, 2022. SEBI, further prescribed that :

- Credit of securities will not be allowed in any demat account left untagged from 1<sup>st</sup> July, 2022 onwards. However, SEBI said that credit on corporate actions shall be permitted.
- Debit of securities shall also not be allowed in any demat account left untagged from 1<sup>st</sup> August, 2022.
- Stock Broker shall obtain permission from Stock Exchanges to allow tagging of such demat accounts from 1<sup>st</sup> August, 2022 onwards. Stock Exchange shall grant such approval within two working days after imposing penalty as per their internal policy.
- SEBI, further added that, Circular shall not be applicable for the demat accounts which are used exclusively for banking activities by stock brokers which are also banks.

Currently stock brokers are required to maintain demat accounts only under the following 5 categories:

Sr. No.	Demat Account Category	Purpose of Demat Account
1.	Proprietary Account	Hold Own Securities
2.	Pool account	Settlement Purpose
3.	Client Unpaid Securities Account	Hold Unpaid Securities of Clients

4.	Client Securities Margin Pledge Account	For Margin obligations to be given by way of Pledge/ Re-pledge
5.	Client Securities under Margin Funding Account	Hold funded securities in respect of margin funding

Further, it is to be noted that naming proprietary demat accounts of the stock broker as 'Stock Broker -Proprietary Account' is voluntary and accounts which are not tagged would be deemed to be proprietary.

Stock Exchanges and Depositories shall coordinate and ensure compliance of this circular by the stock brokers and submit a compliance report to SEBI on 1<sup>st</sup> July, 2022 and 1<sup>st</sup> August, 2022.

**Link to the Circular:**

[https://www.sebi.gov.in/legal/circulars/jun-2022/naming-tagging-of-demat-accounts-maintained-by-stock-brokers\\_59830.html](https://www.sebi.gov.in/legal/circulars/jun-2022/naming-tagging-of-demat-accounts-maintained-by-stock-brokers_59830.html)

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**7. SEBI reduces timelines for listing of units of privately placed Infrastructure Investment Trust (InvIT) – 24<sup>th</sup> June, 2022**

SEBI, vide circular dated 24<sup>th</sup> June, 2022 reduces timelines for listing of units of privately placed Infrastructure Investment Trust (InvIT) to six working days which under Regulation 16 (8) (a) of SEBI (Infrastructure Investment Trusts) Regulations, 2015 (“InvIT Regulations) was of thirty working days from the date of allotment.

After discussion with Market Participants, it was felt that these timelines prescribed in the InvIT Regulations are indicative. Hence, the change is a part of continuing endeavour to streamline the process of allotment and listing of units.

The timelines within which the units shall be listed from issue closure under six working days are as under :-

Sr. No.	Details of Activities	Due Date
1.	Closure of issue and receipt of funds	T day
2.	Post receipt of funds, Sponsor shall transfer its entire shareholding or interest or rights in the HoldCo and /or SPV or ownership of the infrastructure projects as disclosed in the placement memorandum.	Within T+3 working day



3.	Finalize the list of allottees along with the number of units to be allotted to the applicants pursuant to the issue.	
4.	Finalization of Final Placement Memorandum (FPM) and dispatch of confirmation of allocation notes ("CANs") along with FPM.	
5.	Investment manager on behalf of the InvIT to initiate corporate action for credit of units of InvIT to the demat account of sponsor(s)/other shareholders of the SPV/Holdcos and to the demat account of the investors in the private placement.	
6.	Receipt of confirmation by Investment Manager from Depositories for credit of Units in demat accounts of sponsor(s)/other shareholders of the SPV/Holdcos and the investors in the private placement, and lock-in of units to the extent applicable.	Within T+4 working day
7.	Post successful allotment, Investment Manager on behalf of InvIT shall make listing application to stock exchange(s) for listing and trading permission	
8.	Stock exchange(s) to issue notice for listing and commencement of trading.	Within T+5 working day
9.	Stock exchange to send the notice to depositories in order to change the status of ISIN to active.	
10.	Trading commences	Within T+6 working day
Working days will be all trading days of stock exchanges, excluding Sundays, and bank holidays.		

SEBI further added that stock exchanges and depositories shall co-ordinate to ensure completion of listing and commencement of trading of units within six working days.

The provisions of this Circular shall be applicable to listing of units of privately placed InvIT under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 which opens on or after 01<sup>st</sup> August, 2022.

*Link to the Circular:*

<https://www.sebi.gov.in/legal/circulars/jun-2022/reduction-of-timelines-for-listing-of-units-of-privately-placed-infrastructure-investment-trust-invlt-60089.html>

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**8. SEBI introduces Unified Payments Interface (UPI) for Real Estate Investment Trusts.- 24<sup>th</sup> June, 2022**

Synopsis :- *SEBI, vide its Circular dated 24<sup>th</sup> June, 2022 introduces Unified Payments Interface (UPI) for Real Estate Investment Trusts. The Circular is in reference to SEBI Circular dated 15<sup>th</sup> January, 2019 where SEBI provided process for payment for applications in public issue of units of Real Estate Investment Trust (REIT) through the facility of ASBA.*

After Consultation with stakeholders, SEBI has now decided to provide an additional option to individual investors to apply in public issues of units of REITs with a facility to block funds through Unified Payments Interface (UPI) mechanism for application value upto Rs. 5 Lakh.

The process flow for availing the option of blocking funds through UPI mechanism is placed at **Annex I** to this Circular.

SEBI further added that, National Payments Corporation of India (NPCI), Unified Payments Interface (UPI) and Sponsor Bank are the New entities / mechanisms to be part of the public issues through UPI.

Further, it is noted that details of investor viz. PAN, DP ID/ Client ID, entered on the Stock Exchange platform at the time of bidding, shall be validated by the Stock Exchange/s with the Depositories on real time basis.

Further, SEBI availed requirement on Stock Exchanges to update demand data on working days on their website which shall include all the UPI (accepted/pending) and ASBA bids.

Other than that, the additional text of data fields required in the Application and bidding form is placed at **Annex II** of the Circular. The roles of the Issuer, Registrar, Stock exchange, Intermediaries and Collecting Banks is given at **Annex III** of this Circular.

The provisions of this circular shall be applicable to a public issue of units of InvIT under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 which opens on or after 01<sup>st</sup> August, 2022. Stock Exchanges, Depositories, NPCI, Sponsor Banks and Self Certified Syndicate Banks shall make required changes to implement the same from 01<sup>st</sup> August, 2022

*Link to the Circular:*

<https://www.sebi.gov.in/legal/circulars/jun-2022/introduction-of-unified-payments-interface-upi-mechanism-for-real-estate-investment-trusts-reits-60070.html>

GO UP

**9. SEBI introduces Unified Payments Interface (UPI) for Infrastructure Investment Trusts - 24<sup>th</sup> June, 2022**

Synopsis :- *SEBI, vide its Circular dated 24<sup>th</sup> June, 2022 introduces Unified Payments Interface (UPI) for Infrastructure Investment Trusts. The Circular is in reference to SEBI Circular dated 15<sup>th</sup> January, 2019 where SEBI provided process for payment for applications in public issue of units of Infrastructure Investment Trust (InvIT) through the facility of ASBA.*

After Consultation with stakeholders, SEBI has now decided to provide an additional option to individual investors to apply in public issues of units of InvITs with a facility to block funds through Unified Payments Interface (UPI) mechanism for application value upto Rs. 5 Lakh.

The process flow for availing the option of blocking funds through UPI mechanism is placed at Annex I to this Circular.

SEBI further added that, National Payments Corporation of India (NPCI), Unified Payments Interface (UPI) and Sponsor Bank are the New entities / mechanisms to be part of the public issues through UPI.

Further, it is noted that details of investor viz. PAN, DP ID/ Client ID, entered on the Stock Exchange platform at the time of bidding, shall be validated by the Stock Exchange/s with the Depositories on real time basis.

Further, SEBI availed requirement on Stock Exchanges to update demand data on working days on their website which shall include all the UPI (accepted/pending) and ASBA bids.

Other than that, the additional text of data fields required in the Application and bidding form is placed at Annex II of the Circular. The roles of the Issuer, Registrar, Stock exchange, Intermediaries and Collecting Banks is given at Annex III of this Circular.

The provisions of this circular shall be applicable to a public issue of units of InvIT under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 which opens on or after 01<sup>st</sup> August, 2022. Stock Exchanges, Depositories, NPCI, Sponsor Banks and Self Certified Syndicate Banks shall make required changes to implement the same from 01<sup>st</sup> August, 2022

[Link to the Circular:](#)

[https://www.sebi.gov.in/legal/circulars/jun-2022/introduction-of-unified-payments-interface-upi-mechanism-for-infrastructure-investment-trusts-invits\\_60072.html](https://www.sebi.gov.in/legal/circulars/jun-2022/introduction-of-unified-payments-interface-upi-mechanism-for-infrastructure-investment-trusts-invits_60072.html)

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**10. SEBI revised threshold for Adjustments in derivative contracts for dividend announcements - 28<sup>th</sup> June, 2022**

*SEBI, vide its Circular dated 28<sup>th</sup> June, 2022 revised threshold for Adjustments in derivative contracts for dividend announcements from 5 per cent and above to 2 per cent and above.*

Currently, dividends below 5 per cent of the market value of the underlying stock are treated as ordinary dividends and no adjustment is made in the strike price but with this amendment now strike price would be adjusted for dividend at and above 2 per cent. Therefore above 2 per cent dividend would also be treated as extra-ordinary dividends.

SEBI, further added that, decision was taken after receiving representations from stakeholders and also after taking examination and suggestions from Secondary Market Advisory Committee (SMAC).

The revised threshold, as stated above, would be applicable for dividend announcements done on or after the effective date of the circular.

Further, SEBI circulars dated 21<sup>st</sup> June, 2001, 18<sup>th</sup> December, 2002 and 05<sup>th</sup> July, 2018 shall, accordingly, be modified to the above extent. All other provisions of the said SEBI circulars shall continue to remain applicable.

The provisions of this circular shall come into effect from 29<sup>th</sup> June, 2022.

[Link to the Circular:](#)

[https://www.sebi.gov.in/legal/circulars/jun-2022/adjustment-in-derivative-contracts-for-dividend-announcements\\_60306.html](https://www.sebi.gov.in/legal/circulars/jun-2022/adjustment-in-derivative-contracts-for-dividend-announcements_60306.html)

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**11. SEBI extended timelines for implementation of Circular on 'Execution of Demat Debit and Pledge Instruction'(DDPI) for transfer of securities towards deliveries / settlement obligations and pledging / re-pledging of securities' - 30<sup>th</sup> June, 2022**

Synopsis :- SEBI, vide its Circular dated 30<sup>th</sup> June, 2022 extended timelines from 01<sup>st</sup> July, 2022 to 01<sup>st</sup> September, 2022 for implementation of Circular on 'Execution of Demat Debit and Pledge Instruction'(DDPI) for transfer of securities towards deliveries / settlement obligations and pledging / re-pledging of securities'.

SEBI, further added that extension has been provided after receiving representations from the Depositories.

Therefore, the provisions of Circular dated 04<sup>th</sup> April, 2022 are applicable from 01<sup>st</sup> September, 2022.

**Link to the Circular:**

[https://www.sebi.gov.in/legal/circulars/jun-2022/implementation-of-circular-on-execution-of-demat-debit-and-pledge-instruction-ddpi-for-transfer-of-securities-towards-deliveries-settlement-obligations-and-pledging-re-pledging-of-securities-\\_60403.html](https://www.sebi.gov.in/legal/circulars/jun-2022/implementation-of-circular-on-execution-of-demat-debit-and-pledge-instruction-ddpi-for-transfer-of-securities-towards-deliveries-settlement-obligations-and-pledging-re-pledging-of-securities-_60403.html)

**GO UP**

**12. SEBI comes out with new format for disclosure of Shareholding patterns- 30<sup>th</sup> June, 2022**

SEBI, vide its Circular dated 30<sup>th</sup> June, 2022 came out with new format for disclosure of Shareholding patterns of the public shareholders in order to bring more clarity and transparency to investors.

The amendments in the disclosure requirements are as stated below :-

- In the disclosure of public shareholding, names of the shareholders holding one per cent or above of shares of the listed entity is to be disclosed.
- Further, names of the shareholders who are persons acting in concert, if available, will be disclosed separately.

Further, SEBI came out with new formats for disclosure for :-

- Statement showing shareholding pattern of the Public shareholder.
- Statement showing shareholding pattern of the Non-Promoter-Non-Public shareholder.

The revised disclosure formats are available under *Annexure A of the Circular*.

Under the new disclosure format pertaining to shareholding pattern of the public-shareholders, SEBI has added a sub-categorisation of shares column. Sub-categorisation of shares will be based on shareholding under the three categories :-

- Shareholders who are represent by a nominee director who is on the board of the listed entity.
- Shareholders who have entered into shareholder agreement with the listed entity.
- Shareholders acting as persons in concert with promoter.

SEBI also specified further that all listed entities shall disclose details pertaining to foreign ownership limits in the format prescribed at *Annexure B of the Circular*.

This Circular will come into force with effect from the quarter ending 30<sup>th</sup> September, 2022.

*Link to the Circular:*

[https://www.sebi.gov.in/legal/circulars/jun-2022/disclosure-of-holding-of-specified-securities-and-holding-of-specified-securities-in-dematerialized-form\\_60459.html](https://www.sebi.gov.in/legal/circulars/jun-2022/disclosure-of-holding-of-specified-securities-and-holding-of-specified-securities-in-dematerialized-form_60459.html)

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### III. OTHER UPDATES / CASE LAWS

#### ➤ INSOLVENCY LAW

#### 1. IBBI Update : Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) (Amendment) Regulations, 2022

Reg No	Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulations, 2017.	Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) (Amendment) Regulations, 2022.	Comments
Reg 5 after sub reg (3) new provision inserted		"Provided that the Chairperson may amend the consolidated remuneration given in Schedule II for reasons to be recorded in writing."	The Chairperson may amend the consolidated remuneration given in Schedule II
Reg 8 <b>Terms and condition of engagement.</b> sub reg (1)	A selected candidate shall be engaged as Research Associates or Consultants on contractual basis for not less than six months and not more two years	A selected candidate shall ordinarily be engaged as a Research Associate or Consultant, as the case may be, on contractual basis <b>for a period not less than one year and up to three years:</b>  Provided that the Chairperson may extend the term of such engagement, one year at a time, up to a maximum of total five years."	The time period for contractual basis is extended

"SCHEDULE II  
(See regulation 5)

Level	Experience (Employment/ Practice/Research) in the relevant discipline (Years)	Consolidated Monthly Remuneration + 10 percent annual increase
Level I (Research Associate)	Up to three years	Rs. 60,000
Level II (Research Associate)	Minimum three years	Rs. 80,000
Level III (Research Associate)	Minimum five years	Rs. 1,05,000
Level IV (Consultant)	Minimum ten years	Rs. 1,30,000
Level V (Consultant)	Minimum fifteen years	Rs. 1,55,000

Even though, Interim Resolution Professional/Resolution Professional are not obliged to include the name of such Homebuyers, who have not filed the claim within the time in their List of Creditors, but there is no reason for not collating the claims of such Homebuyers whose claims are reflected from the records of the Corporate Debtor, Information Memorandum ought to have included the claim of those Homebuyers, who have not even filed their claims to correct liabilities of the Corporate Debtor for its appropriate resolution including their payments and allotment.

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**2. IBBI Update : Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022**

Regulation	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022	Comments
Reg 2B Record or evidence of transaction, debt and default by operational creditor		The operational creditor shall, along with application under section 9, furnish copies of relevant extracts of Form GSTR-1 and Form	The Operational Creditor who is register under GST need to file form GSTR-1 and Form GSTR-3B and



<p>New Reg Inserted</p>		<p>GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable</p> <p>Provided that provisions of this regulation shall not apply to those operational creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax</p>	<p>operational creditors which is not register under GST are not require to file the form</p>
<p>Reg 2C Submission of information along with application.</p> <p>New Reg inserted</p>		<p>The financial creditor or operational creditor shall, while filing application under section 7 or 9, as the case may be, also furnish details of his/ its – (a) Permanent Account Number; and (b) Email-ID.</p>	<p>The financial creditor filing the application need to submits its pan cards details and email id while filing the application</p>
<p>Regulation 7 Claims by operational creditors. in sub-regulation (2), in clause (b), after sub-clause (iv), the sub-clause shall be inserted</p>		<p>Copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable: Provided that</p>	<p>The operational creditors to whom the GST is applicable required to submit Form GSTR-1 and Form GSTR-3B</p>

		provisions of this sub-clause shall not apply to those creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax	
Regulation 35 Fair value and Liquidation value, in sub-regulation (1), for clause (b)	<del>if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and</del> -	If the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a). Explanation.- For the purpose of clause (b), (i) "asset class" means the definition provided under the Companies (Registered Valuers and Valuation) Rules, 2017; (ii) "significantly different" means a difference of twenty-five per	The two estimate value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause

		cent. in liquidation value under an asset class and the same shall be calculated as $(L1-L2)/L1$ , where, L1= higher valuation of liquidation value L2= lower valuation of liquidation value.	
Regulation 35A Preferential and other transactions. after sub-regulation (3)  New sub reg inserted		The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc	The relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc need to be provided by creditors to resolution professional.
Regulation 36 Information memorandum. , after sub-regulation (3)  New reg 3A inserted		The creditors shall provide to the resolution professional the latest financial statements and other relevant financial information of the corporate debtor available with them	The latest financial statement and other relevant financial information related to corporate debtor need to be provided by creditor to resolution professional
Regulation 38 Mandatory contents of the resolution plan , in sub-regulation (2), after clause (c)  New clause inserted		Provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading	The manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful

		<p>under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:</p> <p>Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.</p>	<p>trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan. This will not be applicable to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.</p>
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**3. IBBI Update : Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022**

Regulation	Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.	Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022.	Comments
Regulation 2 Definitions. , in sub-regulation (1)  New clause inserted		“Record of default” means the status of authentication of default issued in Form D of the Schedule	New definition inserted record of default
Regulation 20 Acceptance and receipt of information. – (i) after sub-regulation (1)  New sub regulation inserted		(1A) Before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21.”	Before filing application under section 7 or 9 creditors shall file the information with information utility and then information utility shall process the information for the purpose of issuing record of default
Reg 21 short title substituted          sub-regulation (2), in clause	<del>Information of default.</del>	Authentication of default	Short title is substituted from information of default to authentication of default

<p>(c), for sub-clause (ii)</p>	<p>Recorded with any other statutory repository as approved by the Board, failing which</p>	<p>Recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry as repositories or any other statutory repository as approved by the Board, failing which</p>	<p>The information utility should deliver the information of default or reminder to the MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry as repositories or any other statutory repository as approved by the Board, failing which</p>
<p>Sub regulation 4</p>	<p>- <del>After recording the status of information of default under sub-regulation (3), the information utility shall communicate the status of authentication in physical or electronic form of the relevant colour, as indicated in column (4) of the Table thereof, to the registered users who are (a) creditors of the debtor who has defaulted; 19 (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.</del></p>	<p>After recording the status of information of default under sub-regulation (3), the information utility shall communicate the status of authentication in physical or electronic form of the relevant colour, as indicated in column (4) of the Tables 1 or 2, as the case may be, by issuing a record of default in Form D of the Schedule, to the registered users who are- (a) creditors of the debtor who has defaulted in payment of a debt; (b) parties and sureties, if any, to the debt in respect of which the</p>	<p>Information utility shall communicate the status of authentication in physical or electronic form to the registered users who are- (a) creditors of the debtor who has defaulted in payment of a debt; (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.</p>

		information of default has been received	
Regulation 41 Disciplinary proceedings. sub-regulation (8)	<del>The order passed under sub-regulation (7) shall not become effective until thirty days have elapsed from the date of issue of the order, unless the Disciplinary Committee states otherwise in the order along with the reasons for the same.</del> -	The disciplinary proceedings shall be conducted in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.	The disciplinary proceedings shall be conducted in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Inspection and Investigation)

Link:

<https://ibbi.gov.in/uploads/legalframework/d4151ccebfbae55e8f7c0f68f6d18e4d.pdf>

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#### **4. IBBI Update : Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2022**

The show cause notice shall provide fifteen (15) days to the notice to make their written submissions.

A show-cause notice shall be served on the service provider in electronic form at the email address provided by the service provider to the Board and a copy shall also be sent by registered post.

The Disciplinary Committee shall endeavour to dispose of the show-cause notice within a period of thirty-five days of the date of the issuance of the show cause notice.

An order of the DC can now also provide for suspension or cancellation of authorisation for assignment of an insolvency professional.

The Disciplinary Committee shall in the order passed require the service provider- (a) to discharge pending obligations, if any; (b) to continue its functions till such time as may be directed, only to enable stakeholders to shift to another service provider; and (c) to comply with any other directions.

The Board shall intimate the order to all the members of the committee of creditors of the insolvency resolution processes in which he is acting as an interim professional or resolution professional and to the Adjudicating Authority.

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**5. IBBI Update : Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2022**

Regulation	Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017.	Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2022.	Comments
Reg 3 Filing of grievance and complaint. sub-regulation (5)	<del>A grievance or a complaint shall be filed with the Board online: Provided that a grievance or complaint shall be filed by mail at <a href="mailto:complaintsandgrievances@ibbi.gov.in">complaintsandgrievances@ibbi.gov.in</a> or by post or hand delivery at the Office of the Board, until the Board provides a facility for online filing of grievances and complaints.</del>	A grievance or a complaint shall be filed with the Board on its dedicated portal <a href="http://www.ibbi.gov.in">www.ibbi.gov.in</a> ".	The grievance and complaint has to be filed at <a href="http://www.ibbi.gov.in">www.ibbi.gov.in</a>
Reg 6 short title substituted  sub-regulation (2)	<del>Disposal of grievance</del>  The aggrieved and the service provider shall submit the information and records sought under sub regulation (1) within <del>fifteen</del> days thereof.	Disposal of grievance by the Board  The aggrieved and the service provider shall submit the information and	The aggrieved and service provider has to submit the records and



New proviso inserted		records sought under sub regulation (1) within <del>seven</del> days thereof.	information within seven days
Sub-reg (3)	The Board shall close the grievance within <del>forty-five</del> days of its receipt if it does not require any redress.	Provided that an additional time not exceeding seven days may be granted by the Board for submitting the information and records sought under sub-regulation (2) on the request of the service provider.”	No additional time will be grant by the board
Sub-reg (4)	The Board shall direct the service provider to redress the grievance within <del>forty-five</del> days of its receipt if it requires any redress	The Board shall close the grievance within <del>thirty</del> days of its receipt if it does not require any redress.  The Board shall direct the service provider to redress the grievance within <del>thirty</del> days of its receipt if it requires any redress	Timelines for disposal of grievance have been reduced.
Reg 6A New Reg inserted		(1) Notwithstanding anything contained in regulation 6, the Board may forward a	With respect to Grievance proceedings against an IP, the Board may forward

		<p>grievance against an insolvency professional for disposal by the insolvency professional agency of which he is a professional member.</p> <p>(2) On receipt of the grievance under sub-regulation (1), the insolvency professional agency shall dispose of the grievance in accordance with its bye-laws and intimate the Board within thirty days of receipt of grievance.”</p>	<p>the same for disposal (by the insolvency professional agency of which he is a professional member) within 30 days.</p>
<p>Reg 7 Disposal of complaint</p> <p>Sub-regulation (2)</p> <p>New proviso is inserted</p> <p>Sub reg (3)</p>	<p>The complainant and the service provider shall submit the information and records sought under sub-regulation (1) within <del>fifteen</del> <b>fifteen</b> days thereof</p> <p>The Board shall form an opinion whether there exists a prima facie case within <del>forty-five</del> <b>forty-five</b> days of the receipt of the complaint.</p>	<p>The complainant and the service provider shall submit the information and records sought under sub-regulation (1) within <del>seven</del> <b>seven</b> days thereof</p> <p>Provided that an additional time, not exceeding seven days, may be granted by the Board on request of the service provider.”</p> <p>The Board shall investigate the</p>	<p>The time limit is to submit the information and records is been reduce</p> <p>No additional time will be allow</p> <p>With respect to Complaint Proceedings,</p>

Sub reg (5)	<p>If the complainant is not satisfied with the decision of the Board under sub-regulation (4), he may request a review <del>of such decision.</del></p> <p>-</p> <p>-</p> <p>-</p> <p>-</p>	<p>information and records and form an opinion whether there exists a prima facie case within <b>thirty days</b> of the receipt of the complaint.</p>	<p>the Board shall investigate the information and records and form an opinion whether there exists a prima facie case within thirty days of the receipt thereof.</p>
Sub reg (7)	<p><del>Where the Board is of the opinion under this regulation that there exists a prima facie case, it may order an inspection under sub-regulation (3) of regulation 3, order an investigation under sub-regulation (2) of regulation 7 or issue a show cause notice under sub-regulation (2) of regulation 11 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, as may be warranted.</del></p> <p>-</p>	<p>If the complainant is not satisfied with the decision of the Board under sub-regulation (4), he may request a review <b>within thirty days</b></p> <p>Where the Board is of the opinion that there exists a prima facie case, it may issue a show cause notice under regulation 11 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 or order an investigation under Chapter III of Insolvency and Bankruptcy Board of India (Inspection and Investigation)</p>	<p>The complainant is not satisfied with the decision of the board then he may request to review within thirty days.</p> <p>Where the Board is of the opinion that there exists a prima facie case, it may issue a show cause notice or order an investigation .</p>

		Regulations, 2017.”	
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Link:

<https://ibbi.gov.in/uploads/legalframework/c317bc75a22562eb4a439072ecda405f.pdf>

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**6. IBBI Update : Application under Rule 4, 6 or 7 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016**

The Board will forward the application for initiating insolvency received by it in terms of rule 4, 6 or 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, to the Information Utility (IU) and on receipt of the said application, the IU shall:

- (a) inform other creditors of the Corporate Debtor by sharing the application;
- (b) issue notice to the applicant, requiring it to file ‘information of default’ in the specified format under Insolvency and Bankruptcy Board of India (Information Utility) Regulations, 2017(IU Regulations); and
- (c) process the ‘information of default’ for the purpose of issuing ROD as per the IU Regulations.

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**7. Insolvency Law Committee Report: Standard of Conduct for the CoC**

The following are the excerpts from the Insolvency Law Committee Report: Standard of Conduct for the CoC.

“The CoC is entrusted with critical commercial decision making powers in the CIRP under the Code. It not only takes key decisions regarding the conduct of the business of the corporate debtor during the CIRP but is also tasked with the responsibility of assessing the viability of the corporate debtor and determining the manner in which its distress is to be resolved. Thus, the success of a CIRP hinges on the manner of functioning of the CoC. It was brought to the Committee that there have been a few instances of improper conduct by members of CoCs that have raised concerns amongst stakeholders.

In some instances, the representatives sent by members of the CoC are neither adequately apprised of their role, nor adequately empowered to take decisions. This “causes delay and allows depletion of value “which goes against two crucial objectives of the Code, i.e., timely resolution and maximization of value available for stakeholders. This is despite a circular

issued by the IBBI vide its No. IBBI/CIRP/016/2018 which provides that members of the CoC should send personnel “who are competent and are authorised to take decisions on the spot and without deferring decisions for want of any internal approval from the financial creditors.” In other instances, the tribunals have noted missteps of CoCs, such as undertaking adjudication beyond their powers, violating legal procedural requirements<sup>6</sup>, etc.

It is also pertinent to note that presently, the conduct and decision making of the CoC is not subject to any regulations, instructions, guidelines etc. of the IBBI. Unlike insolvency professionals, IUs and IPAs, the IBBI does not exercise regulatory oversight over financial creditors who form the CoC. Given this, stakeholders have suggested that CoCs should be guided by a code of conduct which lays down the expectations that financial creditors are required to meet when acting in the CoC.

The Committee had previously deliberated on this issue in its 2020 Report and suggested that “institutional financial creditors should take necessary steps to ensure that their representatives are capable of discharging their duties in a timely and efficient manner.” To enable this, the 2020 Report had recommended that–

- i) Financial institutions should build strong verticals for stressed asset management that go through period performance review. These verticals should be staffed with personnel that have adequate training and expertise.
- ii) The personnel that represent financial creditors in meetings of the CoC should be sufficiently empowered to take decisions on the spot, and effectively discharge their duties.
- iii) Industry bodies, like IBA, should develop guidance to help members of the CoC in discharging their duties consistent with the letter and spirit of the Code

The Committee took note of the above and discussed that the recommendations made in its last report have not resulted in a change in the conduct of financial creditors in the CoC. It felt that since the CoC drives the CIRP and is given wide powers to utilise its commercial wisdom, such powers should be balanced with adequate accountability. Since the decisions of the CoC impact the life of the corporate debtor, and consequently its stakeholders, it needs to be fair and transparent in its decisions. Therefore, the Committee agreed that it would be suitable for the IBBI to issue guidelines providing the standard of conduct of the CoC while acting under the provisions governing the corporate insolvency resolution process, pre-packaged insolvency resolution process and fast track insolvency resolution process. This may be in the form of guidance that provides a normative framework for conducting these processes. In order to empower the IBBI to issue such guidelines, the Committee recommended that appropriate amendments may be made to Section 196 of the Code. Further, the Committee discussed that the MCA may consult with relevant financial sector regulators such as SEBI and RBI, to frame an appropriate enforcement mechanism for the standard of conduct. Several members of the Committee agreed that the IBBI may be most suitable to carry out such enforcement. A

discussion paper addressing the standard of conduct has already been issued by the IBBI pursuant to the discussion of the Committee.

The Committee also discussed the scope of the standard of conduct. It noted that the standard of conduct should lay down the rules of procedural fairness and efficiency that the CoC is required to abide by. However, the Committee cautioned that the standard of conduct should not be utilised to expand or limit the substantive powers of the CoC and should not provide guidance that diminishes its commercial wisdom. Additionally, such a standard of conduct should elucidate the role of the CoC vis-à-vis insolvency professionals, in line with the discussion in the 2020 Report of this Committee."

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**8. Kotak Mahindra Bank Limited Vs. A. Balakrishnan & Anr. – 30<sup>th</sup> May, 2022**

**A liability in respect of a claim arising out of a Recovery Certificate under the Recovery of Debts and Bankruptcy Act, 1993 would be a "financial debt" under IBC.**

**Case Title-** Kotak Mahindra Bank Limited Vs. A. Balakrishnan & Anr.

**Date of Order** – 30<sup>th</sup> May 2022

**Fact of the Case**

Recovery certificates were issued on 07.06.2017 and 20.10.2017. On 05.10.2018, KMBL filed an application under Section 7 of the IBC before the NCLT seeking initiation of the CIRP against the Corporate Debtor claiming an amount of Rs. 835,93,52,369. It was admitted by the NCLT on 20.09.2019. An appeal was filed by the Director of the Corporate Debtor before NCLAT on the ground that the application under Section 7 was filed after the expiry of the limitation period. The appeal was allowed by NCLAT. The present appeal challenged the order of NCLAT allowing the appeal filed by the director of corporate debtor.

**Decision**

Hon'ble Supreme Court observed that Considering the object and purpose of the statute, the Court was of the view that Section 5(8) would include a debt which has crystallised in the form of a decree and held that

A liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

The application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such,

the application under Section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation.

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GO UP

9. **Subhash Chandra Goyal Sole v. K B Ispat Private Ltd. – 30<sup>th</sup> May, 2022**

**IBC is not intended to be a substitute to a recovery forum and also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked.**

**Case Title - Subhash Chandra Goyal Sole v. K B Ispat Private Ltd.**

**Date of Order- 30<sup>th</sup> May 2022**

**Fact of the Case**

This appeal was filed by the Appellant- Subhash Chandra Goyal, sole proprietor of Goyal Enterprises under section 61 of IBC against the impugned order passed by NCLT, Ahmedabad Bench. CD had approached the Appellant for providing supplies of Sponge Iron etc. goods to the CD which will be used by the CD as raw materials / process materials for its plant. Appellant stated that there is a default in the payment and it is an unpaid operational debt and hence it is just and equitable that CIRP be initiated against the CD.

**Decision**

Hon'ble NCLAT dismissed the appeal and held that,

Application has been filed with the sole motive of chasing for payments. Now Hon'ble Supreme Court has already settled the matter that the provisions of the Code is not intended to be a substitute to be a recovery forum. IBC is not intended to be a substitute to a recovery forum and also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked. The Code cannot be used whenever there is existence of real dispute and also whenever the intention is to use the Code as a means for chasing of payment or building pressure for releasing the payments.

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GO UP

10. **Puneet Kaur versus K V Developers Private Limited – 02<sup>nd</sup> June, 2022**

**Liability of Corporate Debtor should be included in Information Memorandum regardless of delay in filing claims**

**Case Title -Puneet Kaur versus K V Developers Private Limited**

**Date of Order – 2<sup>nd</sup> June 2022**

**Fact of the Case**

Appellant homebuyers filed different interlocutory application before NCLT seeking direction to admit their claims but the same was rejected by NCLT on the ground that claims are filed after a gap of eight months and thus cannot be admitted and the also the COC had approved the Resolution Plan. The issues were whether the Resolution Professional was obliged to include the details of Homebuyers as reflected in the records of the Corporate Debtor in the Information Memorandum, even though they have not filed their claim before the Resolution Professional within time and whether Resolution Applicant ought to have also dealt with Resolution Plan regarding Homebuyers, whose names and claims are reflected in the record of the CD.

**Decision**

Hon'ble NCALT disposed of the appeal and held that,

Even though, Interim Resolution Professional/Resolution Professional are not obliged to include the name of such Homebuyers, who have not filed the claim within the time in their List of Creditors, but there is no reason for not collating the claims of such Homebuyers whose claims are reflected from the records of the Corporate Debtor, Information Memorandum ought to have included the claim of those Homebuyers, who have not even filed their claims to correct liabilities of the Corporate Debtor for its appropriate resolution including their payments and allotment.

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GO UP



**1. RBI Updates: Reserve Bank of India (Variation Margin) Directions, 2022**

(1) These Directions shall be called the Master Direction – Reserve Bank of India (Variation Margin) Directions, 2022.

(2) These Directions shall come into force with effect from December 01, 2022.

**Applicability**

(1) The provisions of these Directions shall apply to the following contracts, which are entered into on or after the date on which these Directions come into force:

- a. Non-centrally cleared foreign exchange derivative contracts undertaken in terms of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 (Notification dated May 3, 2000) and Master Direction – Risk Management and Inter-Bank Dealings dated July 05, 2016, as amended from time to time;
- b. Non-centrally cleared interest rate derivative contracts undertaken in terms of the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019 (Notification dated June 26, 2019), as amended from time to time;
- c. Non-centrally cleared credit derivative contracts undertaken in terms of Master Direction – Reserve Bank of India (Credit Derivatives) Directions, 2022 (Notification No. dated February 10, 2022), as amended from time to time; and
- d. Any other non-centrally cleared derivative (NCCD) contract as may be specified by the Reserve Bank.

(2) Genuine amendments, including the following, to an existing derivative contract entered into before the date on which these Directions come into force ('grandfathered contract') will not qualify as a new derivative contract under these Directions.

- a. non-material amendments that do not substantially change the terms and conditions of the contract or create any new significant exposures;
- b. amendments made solely for the purpose of addressing benchmark reforms; and
- c. contracts arising from novation, portfolio compression and application of standard trade maintenance processes on grandfathered contracts. Contracts resulting from compression of grandfathered contracts together with contracts which are subject to these Directions shall, however, be subject to the margin requirements under these Directions.

The ceiling on such loans is now revised to ₹10 lakh in metropolitan centres (those centres with a population of 10 lakh and above) and ₹6 lakh in other centres.

## 2. RBI Updates : Provisioning for Standard assets by Non-Banking Financial Company - Upper Layer

The Reserve Bank of India on June 06, 2022, issued guidelines on differential provisioning to be held by NBFCs classified as NBFC-Upper Layer (NBFC-UL) towards different classes of standard assets.

Accordingly, it has been decided that NBFCs classified as NBFC-UL shall maintain provisions in respect of 'standard' assets at the following rates for the funded amount outstanding

Category of Assets	Rate of Provision
Individual housing loans and loans to Small and Micro Enterprises (SMEs)	0.25 per cent
Housing loans extended at teaser rates	2.00 per cent, which will decrease to 0.40 per cent after 1 year from the date on which the rates are reset at higher rates (if the accounts remain 'standard')
Advances to Commercial Real Estate - Residential Housing (CRE - RH) Sector	0.75 per cent
Advances to Commercial Real Estate (CRE) Sector (other than CRE-RH)	1.00 per cent
Restructured advances	As stipulated in the applicable prudential norms for restructuring of advances
All other loans and advances not included above, including loans to Medium Enterprises	0.40 per cent

Current credit exposures arising on account of the permitted derivative transactions shall also attract provisioning requirements as applicable to the loan assets in the 'standard' category, of the concerned counterparties.

Since NBFCs with a net worth of Rs. 250 crore or above are required to comply with Indian Accounting Standards (Ind AS) for the preparation of their financial statements, they shall continue to hold impairment allowances as required under Ind AS.

It will come in effective from October 1, 2022.

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**GO UP**

3. **RBI Update : Branches of Indian Banks operating in GIFT-IFSC - acting as Professional Clearing Member (PCM) of India International Bullion Exchange IFSC Limited (IIBX)**

The Reserve Bank of India (RBI) on June 7, 2022 has issued Notification regarding Branches of Indian Banks operating in GIFT-IFSC to act as Professional Clearing Member (PCM) of India International Bullion Exchange IFSC Limited (IIBX).

**The following has been stated namely: -**

- **Applicability** - The instructions are applicable to domestic scheduled commercial banks (including foreign banks operating through a Wholly Owned Subsidiary incorporated in India), which are authorised to deal in foreign exchange and have a branch in GIFT-IFSC.

- **Procedure for Application** - The parent bank ('bank') shall seek a No Objection Certificate (NoC) from the Reserve Bank of India prior to its branch in GIFT-IFSC seeking professional clearing membership of IIBX, subject to fulfillment of the prudential requirements. An eligible bank shall, with prior approval of its Board, make an application to the Department of Regulation, Reserve Bank of India with details of its proposed business plan as a PCM along with particulars of the risk management architecture instituted at its branch in GIFT-IFSC.

- **Terms and Conditions** - While operating as a PCM of IIBX, the bank shall ensure strict compliance on a continuing basis with the following conditions:

1. The bank shall ensure adherence to extant RBI guidelines on capital requirements for their exposures (including but not limited to default fund contributions, posted collateral, exposure to clients, trade exposure to CCP) arising from its branch in GIFT-IFSC functioning as PCM on IIBX. The bank shall comply with the regulatory capital requirement of the host or home regulator, whichever is more stringent.

2. The bank shall ensure adherence to extant RBI guidelines on management of liquidity risk (including those arising from its functioning as a PCM of IIBX) as issued from time to time.

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**GO UP**

4. **RBI Update: Liquidity Adjustment Facility - Change in rates**

It has been decided by the Monetary Policy Committee (MPC) to increase the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 4.40 per cent to **4.90 per cent** with immediate effect.

The standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted to 4.65 per cent and 5.15 per cent respectively, with immediate effect.

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**GO UP**

## 5. RBI Updates : Standing Liquidity Facility for Primary Dealers

The policy repo rate under the Liquidity Adjustment Facility (LAF) has been increased by 50 basis points from 4.40 per cent to 4.90 per cent with immediate effect.

The Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate of 4.90 per cent with effect from June 8, 2022.

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GO UP

## 6. RBI Updates : Change in Bank Rate

The Bank Rate is revised upwards by 50 basis points from 4.65 per cent to 5.15 per cent with immediate effect.

### Penal Interest Rates which are linked to the Bank Rate

Item	Existing Rate	Revised Rate (With immediate effect)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (7.65 per cent) or Bank Rate plus 5.0 percentage points (9.65 per cent).	Bank Rate plus 3.0 percentage points (8.15 per cent) or Bank Rate plus 5.0 percentage points (10.15 per cent).

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GO UP

## 7. RBI Updates : Section 23 of the Banking Regulation Act, 1949 - Doorstep Banking

Primary (Urban) Co-operative Banks (UCBs) are required to seek prior approval of the Reserve Bank for opening any new place of business including offering services at the doorstep of the customer.

It has been decided to allow financially sound and well managed (FSWM) UCBs to provide Doorstep Banking Services to their customers on a voluntary basis. However, Non-FSWM UCBs would have to seek prior approval of concerned Regional Office of Department of Supervision of the Reserve Bank to provide Doorstep Banking Services.

Eligible UCBs may formulate a scheme for providing Doorstep Banking Services to their customers, with the approval of their Boards

The operation of the scheme may also be reviewed by the Boards of UCBs on a **half-yearly basis** during the first year of its operation. The scheme may be reviewed thereafter on an **annual basis**.

In case the GLP of the NBFC-MFIs/other MFIs exceeds the stipulated limit at a later date, all priority sector loans created prior to exceeding the GLP limit will continue to be classified by the SFBs as PSL till repayment/maturity, whichever is earlier.

<b>Link:</b>
<a href="https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12334&amp;Mode=0">https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12334&amp;Mode=0</a>

**GO UP**

**8. RBI Updates : Enhancement in Individual Housing Loan limits and credit to Commercial Real Estate - Residential Housing (CRE-RH)**

It has been decided to revise the limits on residential housing loans sanctioned by rural co-operative banks to an individual borrower as under:

<b>Category of the bank</b>	<b>Existing Limit (per individual borrower)</b>	<b>Revised Limit (per individual borrower)</b>
(a) StCBs/DCCBs having assessed net worth less than ₹100 crore	₹20 lakh	₹50 lakh
(b) StCBs/DCCBs having assessed net worth equal to or more than ₹100 crore	₹30 lakh	₹75 lakh

It has been decided to allow StCBs and DCCBs to extend finance to Commercial Real Estate-Residential Housing (CRE-RH) within the existing aggregate housing finance limit of 5% of their total assets. For this purpose, CRE-RH shall consist of loans to builders/developers for residential housing projects (except for captive consumption). Such projects should ordinarily not include non-residential commercial real estate. However, integrated housing projects comprising some commercial space (e.g. shopping complex, school, etc.) can also be classified under CRE-RH, provided that the commercial area in the residential housing project does not exceed 10% of the total Floor Space Index (FSI) of the project. Standard asset provision of 0.75% and risk weight of 75% shall be maintained for CRE-RH advances.

Banks shall have a Board-approved policy for financing CRE-RH and a review note on the performance of the CRE-RH portfolio shall be placed before the Board at least on a half-yearly basis.

The above instructions will come into effect from the date of this circular.

Link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12335&Mode=0>

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**GO UP**

9. **RBI Updates : Change in Bank Rate**

The Bank Rate is revised upwards by 40 basis points from *4.25 per cent to 4.65 per cent* with immediate effect.

**Penal Interest Rates which are linked to the Bank Rate**

Item	Existing Rate	Revised Rate (With immediate effect)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (7.25 per cent) or Bank Rate plus 5.0 percentage points (9.25 per cent).	Bank Rate plus 3.0 percentage points (7.65 per cent) or Bank Rate plus 5.0 percentage points (9.65 per cent)

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**GO UP**

10. **RBI Updates : Discontinuation of Return under Foreign Exchange Management Act, 1999**

Attention of Authorised Persons is invited to A.P. (DIR series) circular No 26, dated February 18, 2022, wherein Authorised Persons were advised about proposed discontinuation of the return "Details of guarantee availed and invoked from non-resident entities". It was also advised that the date of discontinuation would be notified in due course.

In this regard, reference may be drawn to A.P. (DIR series) circular No 20, dated August 29, 2012, Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 and the Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016, as amended from time to time (Refer Part X - 'Statement for reporting of non-resident guarantees issued and invoked in respect of fund and non-fund based facilities between two persons resident in India').

It has now been decided to discontinue the above return, with effect from the quarter ending June 2022.

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**GO UP**

## 11. RBI Updates : Individual Housing loans – Enhancement in limits

It has been decided to revise the limits on individual housing loans sanctioned by urban co-operative banks to an individual borrower as under:

Category of the bank	Existing Limit* (per individual borrower)	Revised Limit* (per individual borrower)
(a) Tier-I UCBs	₹30 lakh	₹60 lakh
(b) Tier-II UCBs	₹70 lakh	₹140 lakh
<b>*subject to prescribed prudential exposure limits</b>		

The above instructions will come into effect from the date of this circular.

<u>Link:</u>
<a href="https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12336&amp;Mode=0">https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12336&amp;Mode=0</a>

**GO UP**

## 12. RBI Updates: Punjab and Maharashtra Co-operative Bank Limited (Amalgamation with Unity Small Finance Bank Limited) Scheme, 2022 - Provisioning on interbank exposure and valuation of Perpetual Non-Cumulative Preference Shares (PNCPS) and Equity Warrants

The Reserve Bank on 10<sup>th</sup> June 2022 issued fresh provisioning norms for urban cooperative banks' interbank exposure as well as valuation of their perpetual non-cumulative preference shares and equity warrants, directing them to continue making provisions to the tune of 20 per cent for such exposures

The banking regulator came up with these rules in the wake of the bankruptcy of the corruption-ridden Punjab & Maharashtra Cooperative Bank (PMC) in September 2019 and the subsequent merger of the cooperative bank with Unity Small Finance Bank, which came into effect from 25<sup>th</sup> January, 2022.

Earlier, similar directions were issued after the board of the largest cooperative bank was superseded by the RBI and the subsequent circulars on these matters issued on 20<sup>th</sup> April, 2020 and on 25<sup>th</sup> January, 2022.

"UCBs shall continue to make provisions on inter-bank exposures arising from outstanding uninsured deposits, as under the 20<sup>th</sup> April, 2020 circular until the actual allotment of PNCPS (Perpetual Non-Cumulative Preference Shares)/equity warrants," the RBI said on Friday.

The new norms are applicable for all Urban Cooperative Banks (UCBs) and are in force with immediate effect.

The PMC Bank amalgamation scheme and the resultant caps on conversion of PNCPS and equity warrants and other inter-bank exposures had provided for conversion of outstanding uninsured deposits, including interest accrued till



March 31, 2021 to the credit of the institutional depositors, into PNCPS and equity warrants of Unity Small Finance Bank as on appointed date.

"However, it is observed that the actual receipt of PNCPS and equity warrants in the account of institutional depositors is yet to take place. Therefore, it is clarified that UCBs shall continue to make provisions on inter-bank exposures arising from outstanding uninsured deposits, as under the 20<sup>th</sup> April, 2020 circular until the actual allotment of PNCPS/equity warrants," the central bank said.

The allotment of PNCPS/equity warrants, provisions made on exposures arising from deposits will be reversed only if such provisions are in excess of the loss, if any, due to treatment of PNCPS and equity warrants.

Equity warrants shall be valued at a price of Re 1 per warrant, as and when they are converted into equity shares, the valuation will be based on market prices. Thus, at present, no provisions need to be made on investment in equity warrants.

UCBs to fully provide for their investments in PNCPS and also allowed them to spread their provisions for investments in PNCPS, net of extant provisions made on exposures arising from outstanding uninsured deposits, equally over two financial years such that the entire loss is fully provided for by 31<sup>st</sup> March, 2024.

Further, these PNCPS and equity warrants shall be classified as non-SLR investments and shall be exempt from any other limits as mentioned in the master circular on investments by UCBs which was issued on 01<sup>st</sup> April, 2022, the regulator said.

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**GO UP**

### **13. RBI Updates : Bank finance to Government owned entities**

The Reserve Bank of India (RBI) on 14<sup>th</sup> June asked banks to comply with regulations pertaining to financing government entities.

RBI have come across instances where banks have not been strictly complying with our extant instructions on assessment of commercial viability, ascertainment of revenue streams for debt servicing obligations and monitoring of end use of funds in respect of their financing of infrastructure/ housing projects of government owned entities.

Further, banks have also been found to have violated the RBI's instructions which inter alia require that in case of projects undertaken by government-owned entities, term loans should be sanctioned only for corporate bodies.

Due diligence should be carried out on the viability and bankability of the projects to ensure that the revenue stream from the project is sufficient to take care of the debt servicing obligations and that the repayment or servicing of debt is not from budgetary resources.

Banks are advised to carry out a review and place before their boards a comprehensive report on the status of compliance with the instructions within three months.

The above instructions will come into effect from the date of this circular.



**14. RBI Updates : Sovereign Gold Bond (SGB) Scheme 2022-23**

The first tranche of Sovereign Gold Bond (SGB) for 2022-23 will open for subscription for five days from June 20. the second tranche (2022-23 Series II) will be available for subscription during August 22-26, 2022.

The Subscription of the Gold Bonds under this Scheme shall be open (Monday to Friday) on the dates specified above, provided that the Central Government may, with prior notice, close the Scheme at any time before the period specified above.

Subscription for the Bonds may be made in the prescribed application form Form A or in any other form as near as thereto, stating clearly the grams (in units) of gold and the full name and address of the applicant. Every application must be accompanied by valid 'PAN details' issued by the Income Tax Department to the investor(s).

The Receiving Office shall issue an acknowledgment receipt in Form B to the applicant.

All online applications should be accompanied by email Id of the investor/s which should be uploaded on the Ekuber portal of Reserve Bank of India along with the subscription details

**15. RBI Updates : Extension of timeline for implementation of certain provisions of Master Direction - Credit Card and Debit Card - Issuance and Conduct Directions, 2022**

It has been decided to extend the timeline for implementation of the following provisions of the Master Direction to October 01, 2022:

Paragraph 6(a)(vi) - Card-issuers shall seek One Time Password (OTP) based consent from the cardholder for activating a credit card, if the same has not been activated by the customer for more than 30 days from the date of issuance. If no consent is received for activating the card, card-issuers shall close the credit card account without any cost to the customer within seven working days from date of seeking confirmation from the customer.

Paragraph 6(b)(v) - Card-issuers shall ensure that the credit limit as sanctioned and advised to the cardholder is not breached at any point in time without seeking explicit consent from the cardholder.

Paragraph 9(b)(ii) - No capitalization of unpaid charges/levies/taxes for charging/compounding of interest.

## 16. **RBI Updates : Master Circular - Housing Finance for UCBs**

The Reserve Bank of India (RBI) on 23rd June 2022 doubled the limit on home loans issued by urban cooperative banks (UCB). With this, tier-I UCBs can issue individual housing loans of up to Rs 60 lakh while tier-II UCBs are allowed to offer loans of up to Rs 1.4 crore.

Taking into account the increase in housing prices since the limits were last revised and considering the customer needs, it has been decided to increase the existing limits on individual housing loans by cooperative banks.

The central bank has also revised the prudential lending norms for these banks. According to the circular, the RBI has reduced the exposure limits of UCBs to a group of connected borrowers to 25% of its total tier-I capital from 40% earlier. The exposure limit for a single borrower for UCBs remains at 15% of the tier-I capital. The exposure of UCBs to housing, real estate and commercial real estate loans is limited to 10% of their total assets.

UCBs cannot charge foreclosure charges or pre-payment penalties on home loans extended on a floating interest rate basis. Housing loans issued by UCBs should be repayable within a maximum period of 20 years.

The central bank also allowed rural cooperative banks to issue loans for residential housing projects. The move is aimed at improving credit flows from cooperative banks to the housing sector.

*Link:*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12344&Mode=0>

**GO UP**

## 17. **RBI Updates : Restriction on Storage of Actual Card Data [i.e. Card-on-File (CoF)]**

It has been decided to revise the limits on individual housing loans sanctioned by urban co-operative banks to an individual borrower as under:

Reserve Bank of India (RBI) circulars dated March 17, 2020 and dated March 31, 2021 on "Guidelines on Regulation of Payment Aggregators and Payment Gateways", and dated September 07, 2021 on "Tokenisation – Card Transactions: Permitting Card-on-File Tokenisation (CoFT) Services".

In terms of these circulars, with effect from January 1, 2022, no entity in the card transaction / payment chain, other than the card issuers and / or card networks, shall store the CoF data, and any such data stored previously shall be purged. Subsequently, to allow more time to the industry stakeholders for devising alternate mechanism(s) to handle any use case or post-transaction activity, this

timeline was extended to June 30, 2022, vide circular dated December 23, 2021 on “Restriction on storage of actual card data [i.e. Card-on-File (CoF)]”.

It is observed that considerable progress has been made in terms of token creation. Transaction processing based on these tokens has also commenced, though it is yet to gain traction across all categories of merchants. Further, an alternate system in respect of transactions where cardholders decide to enter the card details manually at the time of undertaking the transaction (commonly referred to as “guest checkout transactions”) has not been implemented by the industry stakeholders, so far.

It has been decided to extend the timeline for storing of CoF data by three months, i.e., till September 30, 2022, after which such data shall be purged.

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**GO UP**

**18. RBI Updates : Provisioning Requirement for Investment in Security Receipts (SRs)**

To provide a glide path to the entities which were kept out of the ambit of circular “Guidelines on Sale of Stressed Assets by Banks” dated September 1, 2016 and ensure smooth implementation of clause 77 of the MD-TLE, it is advised as under in respect of valuation of investments in SRs outstanding on the date of issuance of MD-TLE (September 24, 2021):

The difference between the carrying value of such SRs and the valuation arrived at as on the next financial reporting date after the date of issuance of MD-TLE, in terms of clause 77 of the MD-TLE, may be provided over a five-year period starting with the financial year ending March 31, 2022 - i.e. from FY2021-22 till FY 2025-26.

Subsequent valuations of investments in such SRs on an ongoing basis shall, however, be strictly in terms of the provisions of MD-TLE.

All lending institutions shall put in place a board approved plan to ensure that the provision made in each of the financial years in compliance with clause 2(a) above is not less than one fifth of the required provisioning on this count.

Valuation of investments in SRs made after the issuance of MD-TLE shall be strictly in terms of the provisions thereunder.

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**GO UP**

## IV. KNOWLEDGE SHARING

### **SECRETARIAL AUDIT UNDER COMPANIES ACT, 2013**

Secretarial Audit is the audit of compliance status of the Company. It is governed under Section 204 of Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

#### **Applicability of Secretarial Audit :-**

- Every **Listed Company**;
- Every Public Every Public company having a **paid up share capital of Fifty Crore rupees or more**; or
- Every Public company having a **turnover of two hundred fifty Crore rupees or more**;

Shall annex with its Board report made u/s. 134(3), a Secretarial Audit Report given by a Company Secretary in practice.

#### **Who can conduct Secretarial Audit :-**

Member of Institute of Company Secretaries of India holding certificate of practice can conduct Secretarial Audit and furnish certification of Secretarial Audit Report.

#### **Appointment of Secretarial Auditor :-**

As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, Secretarial Auditor can be appointed by passing a Board Resolution at a duly convened Board Meeting.

Copy of Resolution for appointment of Secretarial Auditor shall be filed in Form MGT-14 with Registrar of Companies within 30 days.

It is always desirable that the appointment shall be confirmed by the Company in its General Meeting.

#### **Secretarial audit report :-**

The Secretarial audit report should be filed in Form MR-3, as prescribed in the Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

### **Scope of Secretarial audit :-**

A secretarial auditor has to check compliances by the company under the following laws and rules made there-under;

- i. The Companies Act, 2013 (the Act) and the rules made there-under;
- ii. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made there-under;
- iii. The Depositories Act, 1996 and the Regulations and Bye-laws framed there-under;
- iv. Foreign Exchange Management Act, 1999 and the rules and regulations made there-under to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
- v. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-
  - a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
  - b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
  - c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
  - d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999; Advertisement
  - e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
  - f) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
  - g) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
  - h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
- vi. Secretarial Standards issued by The Institute of Company Secretaries of India.

- vii. The Listing Agreements entered into by the Company with Stock Exchange(s), if applicable; Advertisement
  - viii. Other laws as may be applicable specifically to the company.
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GO UP

*THANKYOU*  
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