

January 2023 | ISSUE

VEDANAM

RBI & IBC UPDATES

WHY VEDANAM?

We, Mehta & Mehta present you with our monthly newsletter which cover regulatory updates, case laws and study articles. We hereby release our January, 2023 issue.

QUOTE OF THE MONTH:

Knowledge Is Like A Garden
If It Is Not Cultivated It Cannot
Be Harvested



INDEX

I. RESERVE BANK OF INDIA (“RBI”) UPDATES:
1. RBI Update: Foreign Investment in India - Rationalisation of reporting in Single Master Form (SMF) on FIRMS Portal dated 4th January, 2023
2. RBI Update: Formation of new districts in the State of Chhattisgarh – Assignment of Lead Bank Responsibility dated 6th January, 2023
3. RBI Update: Basel III Capital Regulations - Eligible Credit Rating Agencies dated 9th January, 2023
4. RBI Update: Operational Risk Management: Price / Yield range setting in e-Kuber dated 11th January, 2023
5. RBI Update: Formation of new district in the State of Arunachal Pradesh – Assignment of Lead Bank Responsibility dated 13th January, 2023
6. RBI Update: Formation of new district in the State of Sikkim – Assignment of Lead Bank Responsibility dated 13th January, 2023
7. RBI Update: Master Direction – Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023 dated 16th January, 2023
8. RBI Update: Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies dated 16th January, 2023
9. RBI Update: Designation of two individuals and one organisation under Section 35(1) (a) and 2(1) (m) of the Unlawful Activities (Prevention) Act,1967 and their listing in the First and Fourth Schedule of the Act dated 17th January, 2023
10. RBI Update: Implementation of Section 51A of UAPA, 1967: Updates to UNSC’s 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Addition of 1 entry dated 17th January, 2023
11. RBI Update: Safe Deposit Locker/Safe Custody Article Facility provided by banks dated 23rd January, 2023
12. RBI Update: ‘Fully Accessible Route’ for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds dated 23rd January, 2023
13. RBI Update: Designation of 3 individuals as ‘Terrorists’ under Section 35 (1) (a) of the Unlawful Activities (Prevention) Act (UAPA), 1967 and their listing in the Schedule IV of the Act-Reg dated 24th January, 2023

14. RBI Update: Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Addition of 1 entry dated 30 th January, 2023
<u>II. INSOLVENCY LAW:</u>
1. Jagdish v Oyo Hotels & Homes Pvt. Ltd.- 13 th January, 2023
2. Jindal Stainless Ltd. Vs. Mr. Shailendra Ajmera
3. Narendra Singh Panwar v. Pashchimanchal Vidyut Vitran Nigam Limited And Others

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. RESERVE BANK OF INDIA ("RBI") UPDATES:

A. RBI CIRCULARS AND NOTIFICATIONS:

1. RBI Update: Foreign Investment in India - Rationalisation of reporting in Single Master Form (SMF) on FIRMS Portal dated 4th January, 2023

Reserve Bank of India vide its Circular dated 4th January, 2023 attention of Authorised Dealer Category-I banks (AD banks) is invited to A.P. (DIR Series) Circular No. 30 dated June 07, 2018.

With regard to the reporting of foreign investment in SMF on FIRMS portal, the following changes are being implemented:

- The forms submitted on the portal will be auto acknowledged. The AD banks shall verify the same within 5 working days based on the uploaded documents, as specified.
- In cases of delayed reporting, the AD banks shall either advise the Late Submission Fee (LSF) to the applicants, which will be computed by the system or advise for compounding of contravention, as the case may be.

The salient features of the changes made in the system are given in Annex of the Circular for ready reference and the detailed guidelines, the FIRMS manual available at <https://firms.rbi.org.in> may be referred to, and the version of manual available at the portal will have the finality in case of any mismatch.

The forms submitted in FIRMS will now be processed as detailed below:

- a) All forms submitted with the requisite documents will be auto-acknowledged on the FIRMS portal with a time stamp and an auto-generated e-mail will be sent to the applicant.
- b) The forms submitted within prescribed timelines, will be verified by the AD banks based on the uploaded mandatory documents and ensure that the same are in compliance with the extant guidelines.
- c) The system would identify the delay in reporting, if any.
- d) For forms filed with a delay less than or equal to three years, the AD banks will approve the same, subject to payment of LSF.
- e) The LSF will be computed by the system and an e-mail will be sent to the applicant and the concerned Regional Office (RO) of

RBI specifying the amount and the timeline within which it is to be paid to the concerned RO of RBI.

- f) Once the LSF amount is realised, the concerned RO will update the status in the FIRMS portal and the updated status will be communicated to the applicant through a system generated e-mail, which can also be viewed in the FIRMS portal.
- g) The AD bank will approve the forms filed with a delay greater than three years, subject to compounding of contravention. The applicant may thereafter approach RBI with their application for compounding.
- h) The remarks of the AD Bank for rejection of forms, if any, will be communicated to the applicant through a system generated e-mail and the same can also be viewed in the FIRMS portal.

This Circular is applicable to all Category-I Authorised Dealer Banks and shall come into immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12433&Mode=0>

GO UP

2. RBI Update: Formation of new districts in the State of Chhattisgarh – Assignment of Lead Bank Responsibility dated 6th January, 2023

Reserve Bank of India vide its Circular dated 6th January, 2023 has informed that the Government of Chhattisgarh has notified formation of five new districts in the state of Chhattisgarh vide Gazette Notifications No. F 11-40/2021/Seven 4, No. F 11-08/2022/Seven-4, No. F 11-37/2021/Seven-4 dated September 1, 2022, and No. F 11-38/2021/Seven-4, No. No. F 11-39/2021/Seven-4 dated September 8, 2022 . Accordingly, it has been decided to designate Lead Banks of the new districts as under:

Sr No	Newly Created District	Erstwhile District(s)	Lead Bank Responsibility assigned to	District Working Code allotted to new district
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1	Sarangarh-Bilaigarh	(i) Raigarh (ii) Baloda Bazar - Bhatapara	State Bank of India	01R
2	Khairagarh-Chhuikhadan-Gandai	Rajnandgaon	State Bank of India	01P
3	Mohla-Manpur-Ambagarh Chouki		Bank of Baroda	01Q
4	Sakti	Janjgir-Champa	State Bank of India	01S
5	Manendragarh-Chirmiri-Bharatpur (MCB)	Korea	Central Bank of India	01T

The above District Working Code of the new districts have also been allotted for the purpose of BSR reporting by banks and there will be no change in the Lead Banks of the other districts in the state of Chhattisgarh.

This Circular is applicable to all the Lead Banks Concerned and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12434&Mode=0>

GO UP

3. RBI Update: Basel III Capital Regulations - Eligible Credit Rating Agencies dated 9th January, 2023

Reserve Bank of India vide its Circular dated 9th January, 2023 has referred to paragraph 6.1.2 of the Master Circular DOR.CAP.REC.3/21.06.201/2022-23 dated April 01, 2022 on Basel III Capital Regulations, wherein the list of domestic credit rating agencies accredited for the purpose of risk weighting banks' claims for capital adequacy purposes had been prescribed.

Further, Banks have been advised to use the ratings of the following domestic credit rating agencies (arranged in alphabetical order) for risk weighting their claims for capital adequacy purposes:

- Acuite Ratings & Research Limited (Acuite)
- Credit Analysis and Research Limited (CARE);
- CRISIL Ratings Limited;
- ICRA Limited;
- India Ratings and Research Private Limited (India Ratings); and
- INFOMERICS Valuation and Rating Pvt Ltd. (INFOMERICS)

Further, Regulated Entities/ Market Participants are advised that in respect of ratings/credit evaluations required in terms of any guidelines issued by the Reserve Bank, no such fresh ratings/evaluations shall be obtained from Brickwork Ratings India Private Limited (Refer: Press Release: 2022-2023/1033 dated October 12, 2022). All other provisions regarding external credit ratings stipulated in the Master Circular shall remain unchanged.

This Circular is applicable to all Scheduled Commercial Banks (including Small Finance Banks and excluding Local Area Banks, Payments Banks and Regional Rural Banks) and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12435&Mode=0>

GO UP

4. RBI Update: Operational Risk Management: Price / Yield range setting in e-Kuber dated 11th January, 2023

Reserve Bank of India vide its Circular dated 11th January, 2023 has advised all market participants to utilise the 'Price/ Yield range setting' facility provided on the e-Kuber platform before placing bids in the primary market auctions of government securities (G-Secs.)

In December 2019 (refer: circular IDMD/1615/08.02.032/2019-20 dated December 12, 2019) the 'Price/Yield range setting' facility was provided on the e-Kuber platform as a risk management measure. The facility allows a market participant to define a range i.e., a maximum and a minimum value for bids they intend to submit in an auction. The range can be set in either price or yield terms, for each security in every auction, which can be set before the auction and can also be modified during the auction. Once the limits are set by the participating entity, the bids in the auction are automatically validated against the set limits. This is expected to eliminate instances of 'fat-finger/big-figure' error by the bidders in the G-Sec auctions.

Further, the move comes after few instances of fat-finger/big-figure error by the bidders in the G-Sec auctions conducted by Reserve Bank as RBI noticed that some of the market participants were yet to put in place the 'Price/Yield range setting' facility in their system. It may be noted that no request for cancellation of bids would be entertained after close of auction window.

This Circular is applicable to all participants in the Government Securities Market and shall come into force with immediate effect.

<u>Link to the Circular</u>
<u>https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12436&Mode=0</u>

GO UP

5. RBI Update: Formation of new district in the State of Arunachal Pradesh - Assignment of Lead Bank Responsibility dated 13th January, 2023

Reserve Bank of India vide its Circular dated 13th January, 2023 has informed that the Government of Arunachal Pradesh vide Gazette Notification No.Law/Legn-15/2022 dated May 6, 2022 had notified formation of a new district in the state of Arunachal Pradesh. Accordingly, it has been decided to designate Lead Banks of the new district as under:

Sr No	Newly Created District	Erstwhile District	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Lower Siang	(i) East Siang (ii) West Siang	State Bank of India	396

The above District Working Code of the new district has been allotted for the purpose of BSR reporting by banks and there would be no change in the Lead Banks of the earlier districts and other districts in the state of Arunachal Pradesh.

This Circular is applicable to all the Lead Banks Concerned and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12437&Mode=0>

GO UP

6. RBI Update: Formation of new district in the State of Sikkim - Assignment of Lead Bank Responsibility dated 13th January, 2023

Reserve Bank of India vide its Circular dated 13th January, 2023 informed that the Government of Sikkim vide Gazette Notification No.50/LR&DMD/ACQ/GOS dated December 20, 2021 had notified formation of a new district in the state of Sikkim. Accordingly, it has been decided to designate Lead Banks of the new district, Pakyong, as under:

Sr No	Newly Created District	Erstwhile District	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Pakyong	East Sikkim	Central Bank of India	01U

The above District Working Code of the new district has been allotted for the purpose of BSR reporting by banks and there would be no change in the Lead Banks of the earlier district and other districts in the state of Sikkim.

This Circular is applicable to all the Lead Banks Concerned and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12438&Mode=0>

GO UP

7. RBI Update: Master Direction - Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023 dated 16th January, 2023

Reserve Bank of India vide its notification dated 16th January, 2023, has come up with this Master Direction with the purpose to ensure that the ultimate ownership and control of banking companies are well diversified and the major shareholders of banking companies are 'fit and proper' on a continuing basis. The given directions may be read along with the 'Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies' issued by the Reserve Bank of India.

CHAPTER-I (Preliminary)

1. Short Title and Commencement.

These directions shall be called the Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023 and shall come into force with immediate effect.

2. Applicability

This notification is applicable to all banking companies (as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949), including Local Area Banks (LABs), Small Finance Banks (SFBs) and Payments Banks (PBs) operating in India.

3. Definitions

The terms used shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly:

- "acquisition" means, acquiring, or agreeing to acquire, shares or voting rights in a banking company, directly or indirectly;
- "aggregate holding" means the total holding, directly or indirectly, beneficial or otherwise, of shares or voting rights by a person along with his relatives, associate enterprises and persons acting in concert with him in a banking company [For the purpose of arriving at indirect holding, the acquisition of shares or voting rights mentioned in Annex I of the given notification shall also be considered and that indirect acquisition is not limited to the acquisition(s) mentioned therein];
- "applicant" means the person making an application under Section 12B of the Banking Regulation Act, 1949 (10 of 1949);
- "encumbrance" has the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- "major shareholding" means "aggregate holding" of five per cent or more of the paid-up share capital or voting rights in a banking company by a person;
- "person" means a natural person or a legal person;

- "relative" has the same meaning as defined in Section 2(77) of the Companies Act, 2013 and rules made thereunder; and
- "significant beneficial owner" has the same meaning as stated in Companies (Significant Beneficial Owners) Rules, 2018.

CHAPTER-II (Prior approval for Acquisition)

4. Procedure for prior approval

- Prior approval of Reserve Bank is required by any person who intends to make an acquisition which is likely to result in major shareholding in a banking company by making an application to the Reserve Bank.
- Reserve Bank may seek comments from the banking company on receipt of the application and declaration from the applicant on the proposed acquisition.
- On receipt of the reference from the Reserve Bank, without prejudice to the generality of the aspects to be considered, the board of directors (the board) of the banking company shall, based on the information provided as well as due diligence undertaken by the banking company, deliberate on the proposed acquisition, and assess the 'fit and proper' status of the person. The concerned banking company shall furnish its comments after considering all relevant aspects along with a copy of the relevant board resolution and information in Form A1 specified in these directions to the Reserve Bank within 30 days. For this purpose, banking companies shall put in place a board-approved 'fit and proper' criteria for major shareholders, which shall consider, at a minimum, the illustrative 'fit and proper' criteria mentioned in the Annex II of the given notification.
- The Reserve Bank would undertake due diligence to assess the 'fit and proper' status of the applicant. The decision of the Reserve Bank to
 - (a) accord or deny permission or
 - (b) accord permission for acquisition of a lower quantum of aggregate holding than that has been applied for,
 shall be binding on the applicant and the concerned banking company. The Reserve Bank may also impose such conditions on the applicant and the concerned banking company as deemed fit while according the permission.
- Subsequent to such acquisition, if at any point in time the aggregate holding falls below five per cent, the person will be required to seek fresh approval from the Reserve Bank if the person intends to again raise the aggregate holding to five percent or more of the paid-up share capital or total voting

rights of the banking company (as per sub-section (1) of Section 12B of B R Act, 1949).

- The persons from Financial Action Task Force (FATF) non-compliant jurisdictions shall not be permitted to acquire major shareholding in a banking company. The existing major shareholders from such FATF non-compliant jurisdictions will, however, be allowed to continue with their investment, provided that there shall not be any further acquisition without prior approval of the Reserve Bank. Reserve Bank may, however, at any point of time, consider the fitness of such persons holding shares and pass appropriate orders on their permissible voting rights in accordance with law and applicable rules.

CHAPTER-III (Continuous Monitoring Arrangements)

5. Due Diligence

A banking company shall continuously monitor that the following persons are 'fit and proper' on an ongoing basis:

- its major shareholders who have completed the approved acquisition;
- those applicants for whom comments have been provided by the concerned banking company to the Reserve Bank for approval to have major shareholding; and
- those applicants who have been approved by the Reserve Bank to have major shareholding but are yet to complete the approved acquisition.

Further, a banking company shall

- put in place a mechanism to obtain information on a continuous basis on any changes in the information provided in Form A appended to the Guidelines of RBI notification or any other development which may have a bearing on the 'fit and proper' status of major shareholder / applicant;
- examine any concern / information regarding the major shareholders / applicants that could render such persons not 'fit and proper' to continue as / become major shareholder and immediately furnish the report on the same to the Reserve Bank;
- obtain, within one month of the close of financial year, a report on any changes in the information provided in Form A appended to the Guidelines of RBI notification from the major shareholder / applicant; and
- make an assessment about the 'fit and proper' status of such person(s) in the light of information provided

and its own investigations and forward the comments of its Board regarding the 'fit and proper' status of its major shareholders / applicants, to the Department of Regulation, Reserve Bank of India, not later than September 30 every year.

The banking companies have been asked to put in place a mechanism to obtain information on any change in significant beneficial owner or acquisition by a person to the extent of 10 per cent or more of paid-up equity share capital of the major shareholder and shall further report such change within 30 days to the Reserve Bank.

6. Detecting violation of Section 12B (1) of the B R Act, 1949

Banking company will have to establish a continuous monitoring mechanism to ascertain that a major shareholder has obtained prior approval of the Reserve Bank for the shareholding/voting rights. Even when the acquisition / aggregate holding is less than five per cent of paid-up share capital or voting rights of a banking company, a reference shall be made to the Reserve Bank by the banking company along with a copy of board resolution and necessary documents, if it has reason to believe that the methods adopted are meant to circumvent the statutory requirements. The banking company shall submit periodical reports on the continuous monitoring arrangements to its board.

7. Diversified shareholding in the banking company

The banking companies (excluding Payments Banks) which are operational as on the date of issue of these directions and where the aggregate holding of a person is not in conformance with the Guidelines as given in the RBI notification shall within six months from the date of issue of these directions submit a shareholding dilution plan.

8. Reporting Requirements

After issue and allotment of shares, a banking company shall report the details in the Form A2 within 14 days of completion of the allotment process and limits approved by the Reserve Bank for a person shall not be breached.

CHAPTER-IV (Repeal and Other Provisions)

- 9.** Three Master Directions have been consolidated into these directions with suitable modifications, and thus they are repealed from the date of issue of these directions. Further, detailed direction is mentioned in the given notification.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12439&Mode=0>

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8. RBI Update: Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies dated 16th January, 2023

The content of this guidelines should be read together with Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023, and applicable provisions of the Banking Regulation Act, 1949.

Prior approval for acquisition of shares or voting rights in a banking company.

Every person, who intends to acquire shares or voting rights and intends to be a major shareholder of a banking company, is required to obtain previous approval of the Reserve Bank and make an application to the Reserve Bank along with the declaration in Form A.

Further, if at any point in time the aggregate holding of the person falls below five per cent, as per sub-section (1) of Section 12B of B R Act, 1949, the person will be required to again obtain prior approval from the Reserve Bank to raise the aggregate holding to five per cent or more of total paid-up share capital or voting rights of the banking company.

Further, the persons from Financial Action Task Force (FATF) non-compliant jurisdictions shall not be permitted to acquire major shareholding in the banking company. However, the existing major shareholders from such FATF non-compliant jurisdictions would be allowed to continue with their investment, provided that there shall not be any further acquisition without prior approval of the Reserve Bank. The Reserve Bank may, however, review the 'fit and proper' status of such holders of shares or voting rights at any point of time and may take steps to limit their voting rights in accordance with law.

Information to be provided for continuous monitoring

In addition to furnishing the information sought by the banking company, major shareholders who have completed the approved acquisition or applicants who have obtained the approval to have major shareholding or applicants who have submitted the application for obtaining the prior approval shall inform the banking company of any change in the information provided in Form A or any other development which may have a bearing on the 'fit and proper' status.

Limits on shareholding

Permission of the Reserve Bank to acquire shares or voting rights in a banking company shall be subject to the following limits:

(a) Non-promoter:

- i. 10 per cent of the paid-up share capital or voting rights of the banking company in case of natural persons, non-financial institutions, financial institutions directly or indirectly connected with Large Industrial Houses and financial institutions that are owned to the extent of 50 per cent or more or controlled by individuals (including the relatives and persons acting in concert), or
- ii. 15 per cent of the paid-up share capital or voting rights of the banking company in case of financial institutions (excluding those mentioned in paragraph 8(a)(i) above), supranational institutions, public sector undertaking and central/state government.

(b) Promoter: 26 per cent of the paid-up share capital or voting rights of the banking company after the completion of 15 years from commencement of business of the banking company.

During the period prior to the completion of the 15 years, the promoters of banking companies may be allowed to hold a higher percentage of shareholding as part of the licensing conditions or as part of the shareholding dilution plan submitted by the banking company and approved by the Reserve Bank with such conditions as deemed fit.

Reserve Bank may also permit higher shareholding [than the limits prescribed above] on a case-to-case basis under circumstances such as relinquishment by existing promoters, supervisory intervention including under Prompt Corrective Action, reconstruction/restructuring of banks, entrenchment of existing promoters or any other action in the interest of the banking company and its depositors or in the interest of consolidation in the banking sector, etc. While allowing such higher shareholding, Reserve Bank may impose conditions as deemed fit (including dilution of such higher shareholding within a timeline).

Lock-in requirement

Shareholding of 10 per cent or more but less than 40 per cent of the paid-up equity share capital	Lock-in for 5 Years
Shareholding of 40 per cent or more	Lock-in for 5 Years (only 40 per cent of paid-up equity share capital shall remain under lock-in)

Further, Promoter(s) and promoter group are required to report details of creation/invocation/release of encumbrance on shares which are not under lock-in to the banking company within two working days of such an event in the format specified in Form B as given in these Guidelines. After the end of the lock-in period, there is no requirement for any minimum shareholding.

Ceiling on voting rights

No shareholder in a banking company can exercise voting rights on poll in excess of 26 per cent of total voting rights of all the shareholders of the banking company.

Further, detailed guidelines is mentioned in the given notification.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12440&Mode=0>

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9. RBI Update: Designation of two individuals and one organisation under Section 35(1) (a) and 2(1) (m) of the Unlawful Activities (Prevention) Act,1967 and their listing in the First and Fourth Schedule of the Act dated 17th January, 2023

Reserve Bank of India vide its Circular dated 17th January, 2023, has referred to Section 53 of its Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021 and has directed that the procedure laid down in the UAPA Order dated February 2, 2021 (Annex II of this Master Direction) shall be strictly followed and meticulous compliance with the Order issued by the Government shall be ensured.

Further, it is highlighted that the UAPA Order in Annex II of the MD on KYC, 2016 shall apply to amendments carried out in Schedule I and IV of the UAPA, 1967 apart from the UNSC lists mentioned in the Order.

In this relation, vide Gazette notifications dated January 04, 2023 and January 05, 2023, of the MHA, two individuals and one organization have been declared as 'Terrorists' and 'Terrorist Organisation' and have been listed in the Schedule I and IV of the UAPA 1967, under Section 35 (1) (a) and 2(1) (m) of UAPA 1967. The Statutory Order (S.O.) numbers and the respective entries are in the table below:

S.O. Numbers	Entries
29(E)	49. Aijaz Ahmad Ahanger @ Abu Usman Al-Kashmiri
39(E)	50. Mohammed Amin Khubaiab @ Abu Khubaiab @ Pinna @ Muhammed Amin Butt
45(E)	"/The Resistance Front and all its manifestations and front Organisations"

This Circular is applicable to all Regulated Entities and shall come into force with immediate effect.

[Link to the Circular:](#)

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12441&Mode=0>

GO UP

10. RBI Update: Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Addition of 1 entry dated 17th January, 2023

Reserve Bank of India vide its Circular dated 17th January, 2023, has referred to Section 51 of its Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021, wherein it is mentioned that "Regulated Entities (REs) shall ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC)."

In this relation, Ministry of External Affairs (MEA) has informed about UNSC press release SC/15177 dated January 16, 2023 wherein the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities approved the addition of the entry specified in the given circular to its ISIL (Da'esh) and Al-Qaida Sanctions List of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021) and adopted under Chapter VII of the Charter of the United Nations.

This Circular is applicable to all the Regulated entities and shall come into force with immediate effect.

[Link to the Circular:](#)

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12442&Mode=0>

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11. RBI Update: Safe Deposit Locker/Safe Custody Article Facility provided by banks dated 23rd January, 2023

Reserve Bank of India vide its Circular dated 23rd January, 2023 referred to the RBI circular DOR.LEG.REC/40/09.07.005/2021-22 dated August 18, 2021 wherein banks were required to renew their locker agreements with existing locker customers by January 01, 2023.

In the given Circular, it has been decided to extend the deadline for banks to complete the process of renewal of agreements for the existing safe deposit lockers in a phased manner.

Why Extension?

- The Banks were required to renew their locker agreements with existing locker customers by January 01, 2023.
- However, it has come to the notice of the Reserve Bank that large number of customers are yet to execute the revised agreement and are facing difficulties in doing the same.
- In many cases, the banks are yet to inform the customers about the need for renewal of agreements before January 01, 2023.
- Further, there is a need for revision in the Model Agreement drafted by the Indian Banks' Association (IBA) to fully comply with the revised instruction.

Banks are advised to notify all their customers of the revised requirements by April 30, 2023 and ensure that at least 50 per cent and 75 per cent of their existing customers have executed the revised agreements by June 30 and September 30, 2023 respectively. Banks shall report the status of compliance with these instructions on the DAKSH supervisory portal of the Reserve Bank on a monthly basis.

IBA is being advised separately to review and revise the Model Agreement to ensure that it complies with the requirements of circular dated August 18, 2021 and circulate a revised version to all banks by February 28, 2023.

Banks are advised to facilitate execution of the fresh/supplementary stamped agreements with their customers by taking measures such as arranging stamp papers, franking, electronic execution of agreement, e-stamping, etc. and provide a copy of the executed agreement to the customer. Where operations in lockers have been frozen for non-execution of agreement by January 01, 2023, the same should be unfrozen with immediate effect.

This Circular is applicable to all Commercial Banks (including RRBs, Small Finance Banks, Payment Banks and Local Area Banks), Co-operative Banks and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12443&Mode=0>

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12. RBI Update: 'Fully Accessible Route' for Investment by Non-residents in Government Securities - Inclusion of Sovereign Green Bonds dated 23rd January, 2023

Reserve Bank of India vide its Circular dated 23rd January, 2023, has issued a notification regarding the 'Fully Accessible Route' (FAR) for Investment by Non-residents in Government Securities - Inclusion of Sovereign Green Bonds.

The Government Securities eligible for investment under the FAR ('specified securities') were notified by the Bank, vide circular no. FMRD.FMSD.No.25/14.01.006/2019-20 dated March 30, 2020, and circular no. FMRD.FMID.No.04/14.01.006/2022-23 dated July 07, 2022.

It has now been decided to designate all Sovereign Green Bonds issued by the Government in the fiscal year 2022-23 as 'specified securities' under the FAR.

The Directions contained in this circular have been issued under Section 45W of Chapter IIID of the Reserve Bank of India Act, 1934. They are without prejudice to permissions/ approvals, if any, required under any other law.

This Circular is applicable to all participants in Government Securities market and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12444&Mode=0>

GO UP

13. RBI Update: Designation of 3 individuals as ‘Terrorists’ under Section 35 (1) (a) of the Unlawful Activities (Prevention) Act (UAPA), 1967 and their listing in the Schedule IV of the Act-Reg dated 24th January, 2023

Reserve Bank of India vide its circular dated 24th January, 2023 has referred to Section 53 of its Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10, 2021 wherein it has directed that the procedure laid down in the UAPA Order dated February 2, 2021 (Annex II of this Master Direction) shall be strictly followed and meticulous compliance with the Order issued by the Government shall be ensured.” With regard to Section 52, it has been directed that the details of accounts resembling any of the individuals/entities in the lists shall be reported to FIU-IND apart from Ministry of Home Affairs. It is further highlighted that the UAPA Order in Annex II of the MD on KYC, 2016 shall apply to amendments carried out in Schedule I and IV of the UAPA, 1967 apart from the UNSC lists mentioned in the Order.

Further, in this relation, vide Gazette notifications dated January 06, 2023, January 07, 2023 and January 09, 2023, of the MHA, three individuals have been declared as ‘Terrorists’ and have been listed in the IV of the UAPA 1967, under Section 35 (1) (a) of UAPA 1967. The Statutory Order (S.O.) numbers and the respective entries are as provided below:

S.O. Numbers	Entries
71(E)	51. Arbaz Ahmad Mir
104(E)	52. Dr. Asif Maqbool Dar
105(E)	53. Arshdeep Singh Gill @ Arsh Dala

This Circular is applicable to all the Regulated Entities and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12446&Mode=0>

GO UP

14. RBI Update: Implementation of Section 51A of UAPA, 1967: Updates to UNSC’s 1267/ 1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Addition of 1 entry dated 30th January, 2023

Reserve Bank of India vide its Circular dated 30th January, 2023 has referred to Section 51 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on May 10 , 2021 , wherein it is

mentioned that “Regulated Entities (REs) shall ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC).”

In this relation, Ministry of External Affairs (MEA) has informed about UNSC press release SC/15186 dated January 27, 2023 wherein the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh), Al-Qaida, and associated individuals, groups, undertakings and entities approved the addition of the entry specified below to its ISIL (Da’esh) and Al-Qaida Sanctions List of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021) and adopted under Chapter VII of the Charter of the United Nations.

This Circular is applicable to all the Regulated entities and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12447&Mode=0>

GO UP

II. INSOLVENCY LAW:

1. Jagdish v Oyo Hotels & Homes Pvt. Ltd.- 13th January, 2023

The relief of not proceeding with its IPO sought by the Operational Creditor, have been regarded as premature, since CIRP has not yet been initiated against Oyo.

Case Title: Jagdish v Oyo Hotels & Homes Pvt. Ltd

Date of Order - 13 th Jan 2023

Fact of the Case

Mr. Jagdish (Operational Creditor) filed a petition under Section 9 of the IBC, seeking initiation of CIRP against the CD. Recently, the CD announced Initial Public Offering (IPO) of its shares and the IPO is still under process. Operational Creditor filed applications before the AA seeking direction to the CD not to proceed with IPO and to furnish their latest financial statement. AA observed that that the CD was not yet admitted in CIRP, therefore the applications were premature as they sought prohibitory orders against the CD.

Decision

Hon'ble NCLAT New Delhi rejected the appeal and held that,

“The Adjudicating Authority observed that the Corporate Debtor having not admitted in CIRP, application is premature. We do not find any reason to take any different view which was taken by the Adjudicating Authority.

The Adjudicating Authority has not entertained the application observing that applicant is seeking prohibitory order. Section 9 application which has been filed by the Appellant is to be considered on its own merits and at the stage when Adjudicating Authority has not even heard the application for admission, we do not find any error in the rejection of application IA/394(AHM)2022.

However, observe that it is open for the Adjudicating Authority to ask for any documents from either of the parties, at any stage of the proceedings, if it so deem fit and proper.”

After adoption of Challenge Method to find out the best plan, one Resolution Applicant cannot be allowed to submit a Revised Resolution Plan.

GO UP

2. Jindal Stainless Ltd. Vs. Mr. Shailendra Ajmera

After adoption of Challenge Method to find out the best plan, one Resolution Applicant cannot be allowed to submit a Revised Resolution Plan.

Case Title - Jindal Stainless Ltd. Vs. Mr. Shailendra Ajmera

Date of Order- 18th Jan 2023

Fact of the Case

The CoC in 12th meeting decided to undertake a Challenge Process in order to give an opportunity to the Resolution Applicants to improve their plans. The Challenge Process continued for seven rounds until there was only one competing Resolution Applicant remaining in the Challenge Process. The Appellant (Respondent No.1) as well as two other Resolution Applicants submitted their amended Resolution Plans by 18.07.2022. On 19.07.2022, the Respondent No.1 sent an e-mail to the RP stating that it is willing to submit the entire NPV offered as upfront payment within 30 days. An Application before the AA seeking a direction that RP to consider the offer dated 29.07.2022 and place the same before the CoC. Further prayer was made that the RP be restrained from continuing with CIRP. AA allowed the application. The Appellant filed this appeal and submitted that the AA committed error in issuing the impugned direction for considering the revised plan of Respondent.

Decision

Hon'ble NCLAT New Delhi held that,

It is well settled that the timeline in the IBC has its salutary value and it was the wisdom of the CoC which decided to vote on the Resolution Plan after completion of Challenge Process and not to proceed to take any further negotiation or further modification of the plan, that decision ought not to have been interfered with. The Application was filed by the Respondent No.2 on 07.08.2022 by which date CoC has already decided to resolve the vote on all the plans and voting has also commenced w.e.f. 07.08.2022. NCLAT have gone through the whole Application filed by the Respondent No.2. There is not even mention of the fact that voting has already commenced w.e.f. 07.08.2022."

GO UP

3. Narendra Singh Panwar v. Pashchimanchal Vidyut Vitran Nigam Limited And Others

Approval of a resolution plan does not ipso facto absolve the surety/guarantor of his or her liability, which arises out of an independent contract of guarantee.

Case Title - Narendra Singh Panwar v. Pashchimanchal Vidyut Vitran Nigam Limited And Others

Date of Order- 12th Jan 2023

Fact of the Case

The main issue for consideration was whether the Director of the Company who is claimed to be the personal guarantor in the matter of payment of electricity dues of the Company would be able to sustain the challenge to the demand of dues of electricity from the personal assets of the Directors, in view of the Insolvency Proceedings concluded in relation to the defaulter company namely the Corporate debtor. The main contention of the petitioner was to challenge the recovery on the ground that approval of the resolution plan in the insolvency proceeding in relation to the defaulter company namely M/s Trimurti Concast Pvt ltd (CD) would ipso facto discharge both the Directors of the defaulter Company, one of whom is the petitioner.

Decision

Hon'ble Allahabad High Court held that,

“...that it is, therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.

In view of the above discussions, it is clear that approval of a resolution plan does not ipso facto absolve the surety/guarantor of his or her liability, which arises out of an independent contract of guarantee. To what extent, the liability of a guarantor can be pressed into service would depend on the 22 terms of the guarantee/contract, itself. For the above position of law, the main contention of the learned counsel for the petitioner to challenge the recovery on the ground that approval of the resolution plan in the insolvency proceeding in relation to the defaulter company namely M/s Trimurti Concast Pvt ltd (Corporate debtor) would ipso facto discharge both the Directors of the defaulter Company, one of whom is the petitioner before us, is liable to be turned down.”

THANKYOU
