

# VEDANAM

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NEWSLETTER BY MEHTA & MEHTA



## WHY VEDANAM?

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

Stay informed and empowered with our comprehensive legal Newsletter "Vedanam", a thoughtfully curated newsletter designed to provide legal professionals, scholars, and enthusiasts with the latest developments, trends, and analysis from the dynamic world of law.

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**In this newsletter you will find compilation of:**

Latest updates about our webinars and circulars, notifications and updates published by SEBI, MCA, RBI, IBBI and such other official government sites

## SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES

**SEBI Update - Extension of timeline for implementation of provisions of circular SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023 on Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform.**

The provisions of the circular dated September 20, 2023 related to work flow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies were required to come into force with effect from December 04, 2023.

Further, the designated bodies referred to in the Schedule II of circular dated September 20, 2023 were required to apply for SCORES Authentication and/or for Application Programming Interface (API) integration with SCORES within such period so as to ensure that Designated Bodies can comply with provisions of the said circular by December 04, 2023 and onwards.

It has been decided to extend the effective date of implementation of above said provisions to April 01, 2024.

Accordingly, Circular dated September 20, 2023 shall rescind the Master Circular on the redressal of investor grievances through the SEBI Complaints Redress System (SCORES) platform dated November 07, 2022 on SCORES with effect from April 01, 2024.

The Entities however, shall continue to submit the Action Taken Report ("ATR") on SCORES within 21 calendar days from the date of receipt of the complaint as directed in the circular dated September 20, 2023.

**Link - Extension of timeline for implementation of provisions of circular SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023 on Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform.**

**SEBI Update - Revised framework for computation of Net Distributable Cash Flow (NDCF) by Real Estate Investment Trusts (REITs)**

It has been decided to standardize the framework for calculation of available Net Distributable Cash Flows.

The revised framework shall be applicable with effect from April 1, 2024.

**Link - Revised framework for computation of Net Distributable Cash Flow (NDCF) by Real Estate Investment Trusts (REITs).**

**SEBI Update - Revised framework for computation of Net Distributable Cash Flow (NDCF) by Infrastructure Investment Trusts (InvITs)**

It has been decided to standardize the framework for calculation of available Net Distributable Cash Flows.

The revised framework shall be applicable with effect from April 1, 2024.

**Link - Revised framework for computation of Net Distributable Cash Flow (NDCF) by Infrastructure Investment Trusts (InvITs).**

## **SEBI Update - Credit of units of AIFs in dematerialised form**

It has been decided to specify the process to be followed for dematerialising/ crediting the units issued, in cases where investors are yet to provide demat account details to AIFs.

Managers of AIFs shall continue to reach out to existing investors to obtain their demat account details and credit the units issued to them to their respective demat accounts. Depositories shall also aid in this process as advised by SEBI. In this regard, AIF industry and depositories shall adopt implementation standards as formulated by the pilot Standard Setting Forum for AIFs ('SFA'), along with the two depositories, in consultation with SEBI.

Units already issued by schemes of AIFs to existing investors who have not provided their demat account details, shall be credited to a separate demat account named "Aggregate Escrow Demat Account".

Schemes of AIFs with corpus  $\geq$  INR 500 Crore shall credit units already issued to existing investors (on-boarded prior to November 01, 2023) who have not provided their demat account details, into Aggregate Escrow Demat Account latest by January 31, 2024. Units already issued by such schemes to existing investors who have provided demat account details shall be credited to respective investors' demat accounts at the earliest, but not later than January 31, 2024.

Schemes of AIFs with corpus  $<$  INR 500 Crore shall credit units issued to their investors who have not provided their demat account details by April 30, 2024, into Aggregate Escrow Demat Account latest by May 10, 2024.

Units issued by such schemes as on April 30, 2024, to investors who have provided demat account details shall be credited to respective investors' demat accounts at the earliest, but not later than May 10, 2024.

The circular shall come into force with immediate effect

## **Link - Credit of units of AIFs in dematerialised form**

## **SEBI Update - Upstreaming of clients' funds by Stock Brokers (SBs) / Clearing Members (CMs) to Clearing Corporations (CCs)**

SEBI received representations from various stakeholders, stock brokers, and brokers' associations citing certain operational difficulties in implementation of the framework.

Addressing the issue, SEBI issued the circular stating that stock brokers (SBs) or clearing members (CMs) will upstream all the clients' clear credit balances to clearing corporations (CCs) on the End of Day (EOD) basis. Such upstreaming will be done only in the form of either cash, lien on Fixed Deposit Receipts (FDRs) created out of clients' funds, or pledge of units of Mutual Fund Overnight Schemes (MFOS) created out of clients' funds.

Stock brokers are required to maintain designated client bank accounts to receive funds from their clients. The nomenclature of all such accounts will be changed to either of the two categories of bank accounts -- Up Streaming Client Nodal Bank Account (USCNBA) and Down Streaming Client Nodal Bank Account (DSCNBA).

In Up Streaming Client Nodal Bank Account, SB/CM will receive clients' funds, while payment to clients will be done only from Down Streaming Client Nodal Bank Account.

In addition, CMs, who clear trades for other SBs, will only use the designated bank account maintained with the nomenclature "Name of the CM-TM prop account" to receive or pay proprietary funds from/to stock brokers.

The clients can request SBs/CMs to release funds at any time during the day. All payment requests of the client received on a day will be processed on or before the next settlement day. In cases where the payment request is not processed on the same day, SB/CMs need to ensure that the funds of the client are placed with the clearing corporation.

**[Link - Upstreaming of clients' funds by Stock Brokers \(SBs\) / Clearing Members \(CMs\) to Clearing Corporations \(CCs\)](#)**

## **SEBI Update - Simplification of requirements for grant of accreditation to investors**

It has been decided to simplify the requirements for grant of accreditation to investors as under:

Accreditation Agencies, which are also KYC Registration Agencies (KRAs), may access Know Your Customer (KYC) documents of applicants available with them in the capacity of KRA and may also access the same from the database of other KRAs, for the purpose of accreditation.

The Accreditation agencies shall grant accreditation solely based on the KYC and the financial information of the applicants.

The accreditation certificate issued by accreditation agencies shall include the following disclaimer: "the assessment of the applicant for accreditation is solely based on the applicant's KYC and financial information and does not in any manner exempt market intermediaries and pooled investment vehicles from carrying out necessary due diligence of the accredited investors at the time of on-boarding them as their clients."

The applicant meets the eligibility criteria for preceding one financial year, the accreditation certificate issued shall be valid for a period of two years from the date of issuance.

If the applicant meets the eligibility criteria in each of the preceding two financial years, the accreditation certificate issued shall be valid for a period of three years from the date of issuance.

If the applicant is a newly incorporated entity, which does not have financial information for the preceding financial year but meets the applicable net-worth criteria as on the date of application, the accreditation certificate issued shall be valid for a period of two years from the date of issuance.

The provisions of this circular shall come into force with immediate effect.

**[Link- Simplification of requirements for grant of accreditation to investors](#)**



# SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES

## **SEBI Update - Principles of Financial Market Infrastructures (PFMIs)**

The Securities and Exchange Board of India (SEBI) has issued a circular on December 19, 2023, addressing the Principles of Financial Market Infrastructures (PFMIs).

**Overview of PFMIs:** SEBI, as a member of IOSCO, is dedicated to adopting and implementing the CPSS-IOSCO Principles for Financial Market Infrastructures (FMIs). The PFMIs, comprising 24 principles, aim to fortify the global financial market infrastructure against financial shocks.

**Applicability and Categories of FMs:** The PFMIs are applicable to systematically important FMs, including Central Counter-parties (CCP), Central Securities Depository (CSD)/Securities Settlement System (SSS), Payment and Settlement Systems (PSS), and Trade Repository (TR). These entities play a critical role in clearing, settlement, and recording of monetary and other financial transactions.

**Self-assessment and Disclosure:** SEBI emphasizes the self-assessment of FMs against PFMIs, classified as quantitative and qualitative. The directions will come into force from April 1, 2024.

**Quantitative** - Quarterly (within 30 days from the end of the quarter - June, September, December and March)

**Qualitative**- Annually (within 30 days from the end of the financial year)

**Monitoring and Assessment:** FMs will be monitored annually by the Regulatory Oversight Committee (ROC), with reports submitted to the governing board of the FMI and SEBI within 60 days from the end of the financial year.

The provisions of this Circular shall come into force from the quarter end December, 2023.

## **Link - Principles of Financial Market Infrastructures (PFMIs)**

### **SEBI Updates - Business Continuity for Clearing Corporations through Software as a Service (SaaS) Model**

To strengthen the business continuity framework of clearing corporations (CC) for handling major software malfunctions, SEBI on 20th Dec 2023 issued the circular to establish their critical Risk Management Systems (RMS) using a software-as-a-service (SaaS) model.

RMS is classified as a critical system of CC and plays an important role in ensuring smooth and uninterrupted functioning of the securities market by carrying out online real time risk management of trades happening on stock exchanges.

Non-availability of RMS poses a major risk to the continuity of trading on stock exchanges.

In the first phase, systems would be designed to provide additional tool for business continuity in case of issues with Risk Management Systems (RMS) of CCs.

In order to further manage disruptions impacting availability of RMS, it is proposed to have another contingency measure in place under Software as a Service (SaaS) model.

The framework in the first phase would operate for existing interoperable segments of CCs (Cash Market, Equity Derivatives Segment, Currency Derivatives)

# SECURITIES AND EXCHANGE BOARD OF INDIA UPDATES

Each CC shall design a system to run its RMS related operations, to risk manage trades for its clearing members, using the RMS related software components of another CC. This instance would be called SaaS-RMS.

A CC to take decision to shift operations to SaaS-RMS within 30 minutes of occurrence of its inability to do online real time risk management of trades at its site of functioning.

Within 30 minutes of the above, all allied activities such as sending violation messages to exchanges, intimating details of portal to interact with SaaS-RMS to the Clearing Members etc. to be activated through SaaS-RMS.

Mock session of SaaS-RMS to be carried out at least once in a quarter to familiarize and train members.

## **Link - Business Continuity for Clearing Corporations through Software as a Service (SaaS) Model**

### **SEBI Update - Extension of timelines for providing 'choice of nomination' in eligible demat accounts and mutual fund folios**

It has been decided to extend the last date for submission of 'choice of nomination' for demat accounts and mutual fund folios to June 30, 2024.

## **Link - Extension of timelines for providing 'choice of nomination' in eligible demat accounts and mutual fund folios**

### **SEBI Update - Settlement of Running Account of Client's Funds lying with Trading Member (TM)**

SEBI has decided to accept the recommendation to settle the running account of clients on Friday and/or Saturday, which streamlines the process of settlement and ensures ease of doing business for various stakeholders

The Trading Member, after considering the End of the Day (EOD) obligation of funds across all the Exchanges, shall settle the running accounts at the choice of the clients on quarterly and monthly basis, on the dates stipulated by the Stock Exchanges.

Stock exchanges shall, jointly, issue the annual calendar for the settlement of running account (quarterly and monthly) at the beginning of the financial year.

TM shall ensure that funds, if any, received from clients, whose running account has been settled, remain in the "Up Streaming Client Nodal Bank Account" and no such funds shall be used for settlement of running account of other clients. Stock Exchanges shall evolve a monitoring mechanism for this purpose

The provisions of this circular shall be applicable with effect from the quarterly settlement of Jan-Mar 2024 and monthly settlement of January 2024

**Monitoring and Assessment:** FMIs will be monitored annually by the Regulatory Oversight Committee (ROC), with reports submitted to the governing board of the FMI and SEBI within 60 days from the end of the financial year.

## **Link- Settlement of Running Account of Client's Funds lying with Trading Member (TM)**

# SEBI Update – Framework on Social Stock Exchange (“SSE”)

## Framework on Social Stock Exchange (“SSE”)

In Paragraph 1, sub-paragraph A, titled “Minimum requirement to be met by a Not for Profit Organization (NPO) for registration with SSE in terms of Regulation 292F of the ICDR Regulations”, the following requirement under the Board Parameter in the table given below shall read as under:

Broad Parameter	Indicator	Details
Exemption under Income-tax Act, 1961:	Registration Certificate under section 12A/ 12AA/ 12AB/ 10(23C)/ 10(46) under Income tax Act, 1961	a. Registration Certificate under section 12A/ 12AA/ 12AB/ 10(23C)/ 10(46) to be valid for at least the next 12 months. b. Details regarding pending notices or scrutiny cases from all regulatory and statutory authority shall be disclosed at the time of making the application for the registration c. Fines or penalties if imposed shall be disclosed as paid or appealed within 7 days. The Stock Exchanges shall have the right to refuse registration of those applicants, if the notices/ scrutiny cases are grave and debilitating enough to endanger the registration of the NPO under the Income-tax Act, 1961 or other relevant laws
Deduction under Income-tax Act, 1961	Valid 80G registration under Income Tax Act, 1961 for entities registered under section 12A/ 12AA/ 12AB of the Income-tax Act, 1961	Entity to ensure disclosure whether tax deduction is available or not to investors.
Paragraph	Framework on Social Stock Exchange (“SSE”) 19th Sept 2022	Framework on Social Stock Exchange (“SSE”) 28th Dec 2023
In Paragraph 1, in sub-paragraph B	Minimum Initial Disclosure Requirement for NPOs raising funds through the issuance of Zero Coupon Zero Principal Instruments in terms of Regulation 292K(1) of the ICDR Regulations	Minimum Initial Disclosure Requirement for NPOs raising funds through the issuance of Zero Coupon Zero Principal Instruments in terms of Regulation 292K of the ICDR Regulations
Paragraph 1, after subparagraph A and before sub-paragraph B, the following new sub-paragraphs AA - Procedure for public issuance of Zero Coupon Zero Principal Instruments by a not for profit organization		(1) The not for profit organization shall, through the lead manager(s), file the draft fundraising document with the Social Stock Exchange where it is registered along with the fees as specified by the Social Stock Exchange and an application seeking in-principle approval for listing of its Zero Coupon Zero Principal Instruments on the Social Stock Exchange; Provided that Social Stock Exchange shall specify the details to be incorporated in the fundraising document: (2) The draft fundraising document shall be made available on the website of Social Stock Exchange and the not for profit organization for a period of at least 21 days for public comments. (3) The Social Stock Exchange shall provide its observation on the draft fundraising document to the not for profit organization within a time period of 30 days from the filing of the draft fundraising document or receipt of clarification, if any, sought by the Social Stock Exchange from not for profit organization whichever is later. (4) The not for profit organization shall incorporate the observations of the Social Stock Exchange in draft fund raising document and file the final fund raising document to Social Stock Exchange prior to opening the issue.
Sub-paragraphs AB - Contents of the fund raising document.		(1) The draft fund raising document and the final fund raising document shall contain all material disclosures which are true and adequate to enable the applicants to take an informed decision. (2) Without prejudice to the generality of clause (1) above, the draft fund raising document and the final fund raising document shall contain disclosures as may be specified by the Board from time to time: Provided that the Social Stock Exchange may mandate additional disclosures in respect of the draft fund raising document and the final fund raising documents.
Sub-paragraphs AC - Other conditions relating to issuance of Zero Coupon Zero Principal Instruments		(1) Zero Coupon Zero Principal Instruments shall be issued in dematerialized form only. (2) The Zero Coupon Zero Principal Instruments shall not be transferable from the original subscriber/ holder till the expiry of the tenure of the said instrument. (3) The minimum issue size shall be rupees fifty lakhs. (4) The minimum application size shall be rupees ten thousand. (5) The minimum subscription required to be achieved shall be 75% of the funds proposed to be raised through issuance of Zero Coupon Zero Principal Instruments. (6) In case of any under subscription, the not for profit organization shall, in the fund raising document, provide details on the following: a) manner of raising balance capital in case of such under subscription between 75% and 100%; b) possible impact on achieving the social objective(s) in case such under subscription is not arranged Provided that the funds shall be refunded in case the subscription is less than 75% of the issue size (7) The Social Stock Exchange shall maintain the details of the allotment pursuant to issuance of Zero Coupon Zero Principal Instruments by a not for profit organization. (8) The Social Stock Exchange shall specify the additional norms in respect of issue procedure including on agreements with depositories, banks, etc., ASBA related matters, duration for public issuance, allocation methodology and any other ancillary matter related to issue procedure.”

# SEBI Update - Modifications to provisions of Chapter XXI of NCS Master Circular1 dealing with registration and regulatory framework for Online Bond Platform Providers (OBPPs)

## Framework on Social Stock Exchange (“SSE”)

In Paragraph 1, sub-paragraph A, titled “Minimum requirement to be met by a Not for Profit Organization (NPO) for registration with SSE in terms of Regulation 292F of the ICDR Regulations”, the following requirement under the Board Parameter in the table given below shall read as under:

Clause	Registration and regulatory framework for Online Bond Platform Providers (OBPPs)	Modifications to provisions of Chapter XXI of NCS Master Circular dealing with registration and regulatory framework for Online Bond Platform Providers (OBPPs)
Clause 5.2	<p>Pursuant to discussions with market participants and stakeholders, vide notification dated November 09, 2022, a framework has been prescribed for entities operating/ desirous of operating as OBPPs under regulation 51A of the SEBI NCS Regulations, 2021: 5.1. Such entity shall be a company incorporated in India and register itself as a stock broker in the debt segment of the Stock Exchange(s); 5.2. 52An entity acting as an Online Bond Platform Provider on or prior to November 14, 2022, shall divest itself of offerings of products or services or securities on its Online Bond Platform or any other website/ platform other than the following: 5.2.1. Listed debt securities, listed municipal debt securities and listed securitised debt instruments; 5.2.2. Debt securities, municipal debt securities and securitised debt instruments proposed to be listed through a public offering; 5.2.3. Listed Government Securities, State Development Loans and Treasury Bills; and 5.2.4. Listed Sovereign Gold Bonds.”</p>	<p>“An entity acting as an Online Bond Platform Provider shall offer only the following products or securities or services on its Online Bond Platform: 5.2.1. Listed debt securities, listed municipal debt securities and listed securitised debt instruments; 5.2.2. Debt securities, municipal debt securities and securitised debt instruments proposed to be listed through a public offering; 5.2.3. Listed Government Securities, State Development Loans and Treasury Bills; 5.2.4. Listed Sovereign Gold Bonds; and 5.2.5. Other products or securities or services that are regulated by a financial sector regulator viz. SEBI, RBI, IRDAI or PFRDA. In case of the products or securities or services mentioned at 5.2.5 above, a. they may be offered by the entity either under a different tab on its online bond platform or on any other website/ platform. b. they will be governed by the directions/ stipulations of the respective financial sector regulator.”</p>
Clause 5.3.4	<p>It is also reiterated that an entity acting as an Online Bond Platform Provider shall divest itself of offerings of other products/ securities or services.</p>	<p>“It is also reiterated that an entity acting as an Online Bond Platform Provider shall divest itself of offerings of other products or securities or services which are not permitted under the clause 5.2 of this Chapter.”</p>
Clause 5.3.7	<p>If the online bond platform or any other platform/ website of the Online Bond Platform Provider has any link/ tab to websites/ platforms of its holding company, subsidiary or associate, undertaking any activity or offering products/ securities or services that are regulated by other financial sector regulators viz. RBI, IRDAI, or PFRDA, then once a user clicks on such tab/ link, the following disclaimer shall be displayed in legible font: Name of the product is regulated by RBI/IRDAI /PFRDA</p>	<p>If the online bond platform or any other platform/ website of the Online Bond Platform Provider has any link/ tab to websites/ platforms offering products or securities or services that are regulated by other financial sector regulators viz. RBI, IRDAI, or PFRDA, then once a user clicks on such tab/ link, the following disclaimer shall be displayed at all times in legible font: Name of the product is regulated by RBI/IRDAI /PFRDA In case the Online Bond Platform Provider offers products or securities or services that are regulated by SEBI on its online bond platform or any other platform/ website, the relevant SEBI regulations as applicable to the product / security / service shall apply</p>

## [Link - Modifications to provisions of Chapter XXI of NCS Master Circular1 dealing with registration and regulatory framework for Online Bond Platform Providers \(OBPPs\)](#)



# RESERVE BANK OF INDIA UPDATES

## **RBI Update - Sovereign Gold Bond (SGB) Scheme 2023-24**

Government of India, has announced Series III and IV of Sovereign Gold Bond Scheme 2023-24. Under the Scheme, there will be a distinct series (Series III and IV) which will be indicated on the Bond issued to the investor.

### **Date of Issue**

The bonds shall be issued as per the details given below:

S. No.	Tranche	Date of Subscription	Date of Issuance
1.	2023-24 Series III	December 18 - December 22, 2023	December 28, 2023, Thursday
2.	2023-24 Series IV	February 12 - February 16, 2024	February 21, 2024, Wednesday

## **Link - Sovereign Gold Bond (SGB) Scheme 2023-24**

## **RBI Update- Processing of e-mandates for recurring transactions**

A reference is invited to our circular dated June 16, 2022 in terms of which relaxation in Additional Factor of Authentication (AFA) was permitted while processing e-mandates / standing instructions on cards, Prepaid Payment Instruments and Unified Payments Interface, for subsequent recurring transactions with values up to ₹15,000/-, subject to conditions listed therein.

In this regard, as announced in the Statement on Developmental and Regulatory Policies dated December 08, 2023, it has been decided to increase the limit from ₹15,000/- to ₹1,00,000/- per transaction for the following categories: (a) subscription to mutual funds, (b) payment of insurance premiums, and (c) credit card bill payments.

## **Link - Processing of e-mandates for recurring transactions**

## **RBI Update - Investments in Alternative Investment Funds (AIFs)**

In order to address concerns relating to possible evergreening through this route, it is advised as under:

(i) REs shall not make investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE.

(ii) If an AIF scheme, in which RE is already an investor, makes a downstream investment in any such debtor company, then the RE shall liquidate its investment in the scheme within 30 days from the date of such downstream investment by the AIF. If REs have already invested into such schemes having downstream investment in their debtor companies as on date, the 30-day period for liquidation shall be counted from date of issuance of this circular. REs shall forthwith arrange to advise the AIFs suitably in the matter.

(iii) In case REs are not able to liquidate their investments within the above-prescribed time limit, they shall make 100 percent provision on such investments.

In addition, investment by REs in the subordinated units of any AIF scheme with a 'priority distribution model' shall be subject to full deduction from RE's capital funds.

## **Link - Investments in Alternative Investment Funds (AIFs)**

## **RBI Update - Card-on-File Tokenisation (CoFT) – Enabling Tokenisation through Card Issuing Banks**

It has been decided to enable CoFT directly through card issuing banks / institutions also. This will provide cardholders with an additional choice to tokenise their cards for multiple merchant sites through a single process.

### **Link - Card-on-File Tokenisation (CoFT) – Enabling Tokenisation through Card Issuing Banks**

## **RBI Update - Reverse Repo transactions - Reporting in Form 'A' Return**

The Reverse Repo transactions of a bank with non-banks (other institutions) should be reported as under:

1. For original tenors up to and inclusive of 14 days - Not required to be reported in Form A.
2. For original tenors more than 14 days - Item VI(a) of Form A [i.e. Loans, cash credits and overdrafts under Bank Credit in India (excluding inter-bank advances)]

### **Link - Reverse Repo transactions - Reporting in Form 'A' Return**

## **RBI Update - Liberalised Remittance Scheme (LRS) for Resident Individuals- Reporting of monthly return and daily transactions**

It has now been decided that, with effect from December 26, 2023, the submission of both the returns through the XBRL site will be discontinued and shifted to the Centralised Information Management System (CIMS), which is the Bank's new data warehouse. AD Category-I banks have already been onboarded on CIMS portal, and are currently submitting both the returns on XBRL site as well as CIMS portal. The Liberalised Remittance Scheme (LRS) monthly return and LRS daily return have been assigned return codes- 'R089' and 'R010' respectively on CIMS portal.

Accordingly, AD Category-I banks shall upload the LRS monthly return on or before fifth of the succeeding month commencing from the reporting month of December 2023, and LRS daily return from December 26, 2023 onwards on the next working day on CIMS portal (URL: <https://sankalan.rbi.org.in>). In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report.

### **Link - Liberalised Remittance Scheme (LRS) for Resident Individuals- Reporting of monthly return and daily transactions**

## **RBI Update - CIMS Project implementation - Discontinuation of submission in legacy XBRL**

AD Category-I banks were required to submit the following statements on XBRL site –

- (i) Statement on **half yearly** basis (end March/end September) showing the quantity and value of gold imported by the nominated banks/ agencies/ EOUs/ SEZs in Gem & Jewellery sector, mode of payment-wise,

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(ii) Statement on monthly basis showing the quantity and value of gold imports by the nominated agencies (other than the nominated banks)/ EOUs/ SEZs in Gem & Jewellery sector during the month under report as well as the cumulative position as at the end of the said month beginning from the 1st month of the Financial Year.

It has now been decided to discontinue submission of the return through the XBRL system and shift to Centralised Information Management System (CIMS), Bank's new data warehouse for data collection, with effect from December 26, 2023. AD Category-I banks have already been onboarded on CIMS portal and are currently undertaking parallel submission of the return on both XBRL site as well as CIMS portal. The returns have been named 'Import of gold by EOUs, units in SEZ/EPZ and nominated agencies(M)', "Import of gold by EOUs, units in SEZ/EPZ and nominated agencies(HY)" and has been assigned return codes- 'R132' & 'R133' respectively on CIMS portal.

Accordingly, AD Category-I banks shall upload the two statements on CIMS portal (URL: <https://sankalan.rbi.org.in>) with effect from December 26, 2023. In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report.

**Link - CIMS Project implementation - Discontinuation of submission in legacy XBRL**

**RBI Update - Rupee Drawing Arrangement - Submission of statement/return on CIMS Portal**

It has now been decided that with effect from December 26, 2023, submission of the statement E through the XBRL site will be discontinued and shifted to the Centralized Information Management System (CIMS), which is Bank's new data warehouse. AD Category - I banks have already been onboarded on CIMS portal and are currently submitting the return on XBRL site as well as CIMS portal. The statement has been assigned a return code - 'R129' on CIMS portal.

Accordingly, all AD Category - I banks shall upload the above-mentioned statement on CIMS portal (URL: <https://sankalan.rbi.org.in>) from the quarter ending December 2023. In case no data is to be furnished, AD Category - I banks shall upload a 'NIL' report.

**Link - Rupee Drawing Arrangement - Submission of statement/return on CIMS Portal**

**RBI Update - Trade Credit for imports into India - Submission of return on issuance of bank guarantees for Trade Credits on the Centralised Information Management System (CIMS)**

It has been decided to shift the arrangement for reporting of quarterly data on issuance of guarantees for trade credits by AD banks, from XBRL platform to CIMS. The statement has been assigned return code- 'R131' on CIMS.

AD Category I banks have already been onboarded on the CIMS platform and are currently submitting the aforesaid return on XBRL site as well as the CIMS portal. Henceforth, AD Category-I banks shall furnish the return only on the CIMS portal (URL: <https://sankalan.rbi.org.in/>) as submission of the return through the XBRL site will be discontinued with effect from December 26, 2023.

## [Link - Trade Credit for imports into India – Submission of return on issuance of bank guarantees for Trade Credits on the Centralised Information Management System \(CIMS\)](#)

### **RBI Update - Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023**

These regulations shall be called the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023.

**Manner of receipt and payment.** – Save as otherwise in a manner as provided in the Act or the rules or regulations made or directions issued under the Act, no person resident in India shall make or receive payment from a person resident outside India:

Provided that the Reserve Bank may, on an application made to it, permit a person resident in India to make or receive payment under the Act.

The receipt and payment between a person resident in India and a person resident outside India shall, unless provided otherwise, be made through an Authorised Bank or Authorised Person and in the manner as specified below:

**Trade transactions** – receipt/payment for export to or import from the countries given below of eligible goods and services shall be made as under:

**Nepal and Bhutan** – in Indian Rupees provided that in case of exports from India where the importer in Nepal has been permitted by the Nepal Rashtra Bank to make payment in foreign currency, such receipts towards the amount of the export may be in foreign currency;

**Member countries of ACU, other than Nepal and Bhutan** – through ACU mechanism or as per the directions issued by the Reserve Bank to authorised dealer from time to time:

Provided that in case of imports where the goods are shipped to India from a member country of the ACU (other than Nepal and Bhutan) but the supplier is resident of a country other than a member country of the ACU, the payment may be made in a manner as specified at (iii) below.

**Countries other than member countries of ACU** – In Indian Rupees or in any foreign currency.

Notwithstanding anything contained in this sub-regulation, receipts and payments may also be made in a manner as may be provided in the extant Foreign Trade Policy framed by the Central Government.

Explanation: The expression 'ACU' (Asian Clearing Union) shall have the same meaning assigned to it under Article I of the ACU agreement and the ACU mechanism shall be construed accordingly.

**Transactions other than trade transactions** – receipt and payment shall be made as under:

**Nepal and Bhutan** – In Indian Rupees provided that in case of overseas investment in Bhutan, payment may also be made in foreign currency;

**Other Countries** – In Indian Rupees or any foreign currency.

Payment and receipt in India for any current account transaction, other than a trade transaction, between any person resident in India and a person resident outside India, who is on a visit to India, may be made only in Indian Rupees.

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Provided that any payment or receipt under regulation 3 may also be made by debit/credit to a bank account maintained in terms of the rules, regulations or directions issued under the Act.

### **Link - Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023**

### **RBI Update - Reserve Bank of India (Government Securities Lending) Directions, 2023**

RBI issued the Reserve Bank of India (Government Securities Lending) Directions, 2023

The following has been stated namely

These Directions shall be applicable to all Government securities lending transactions, undertaken in Over-the-Counter markets.

It states that Government securities issued by the Central Government excluding Treasury Bills shall be eligible for lending/borrowing under a GSL transaction. Securities obtained under a repo transaction, including through Reserve Bank's Liquidity Adjustment Facility, or borrowed under another GSL transaction shall also be eligible to be lent under a GSL transaction.

It states that Government securities issued by the Central Government (including Treasury Bills) and the State Governments shall be eligible for placing as collateral under a GSL transaction. Securities obtained under a repo transaction, including through Reserve Bank's Liquidity Adjustment Facility, or borrowed under another GSL transaction shall also be eligible to be placed as collateral under a GSL transaction.

It further state that the minimum tenor of a GSL transaction shall be one day and the maximum tenor shall be the maximum period prescribed to cover short sales in terms of the Directions on 'Secondary Market Transactions in Government Securities – Short Selling' dated July 25, 2018, as amended from time to time.

These Directions shall come into immediate effect.

### **Link - Reserve Bank of India (Government Securities Lending) Directions, 2023**

### **RBI Update - Reserve Bank of India (Financial Benchmark Administrators) Directions, 2023**

These Directions shall be called the Reserve Bank of India (Financial Benchmark Administrators) Directions, 2023

**'Financial Benchmark Administrator'** (FBA) means a person who controls the creation, operation and administration of benchmark(s).

#### **Eligibility criteria for FBAs**

An FBA shall be a company incorporated in India.

An FBA administering a 'significant benchmark' shall maintain a minimum net-worth of ₹5 crore at all times. An FBA administering a 'non-significant benchmark' shall maintain a minimum net-worth of ₹1 crore at all times.

### **Link - Reserve Bank of India (Financial Benchmark Administrators) Directions, 2023**

### **RBI Update - MHP Exemption for Transfer of Receivables**

It has been decided that transfer of such receivables by eligible transferors will be exempted from Minimum Holding Period (MHP) requirement, subject to fulfilment of the following conditions



# RESERVE BANK OF INDIA UPDATES

The residual maturity of such receivables, at the time of transfer, should not be more than 90 days, and

As specified under clauses 10 and 35 of these directions, the transferee conducts proper credit appraisal of the drawee of the bill, before acquiring such receivables.

**[Link - MHP Exemption for Transfer of Receivables](#)**

## **RBI Update - Classification of MSMEs**

The Master Direction- Lending to Micro, Small & Medium Enterprises (MSME) Sector:

Existing para	Revised para
Para 2.2: All the above enterprises are required to register online on the Udyam Registration portal and obtain 'Udyam Registration Certificate'.	Para 2.2: All the above enterprises are required to register online on the Udyam Registration portal and obtain 'Udyam Registration Certificate'. For PSL purposes banks shall be guided by the classification recorded in the Udyam Registration Certificate (URC).
Para 2.4 to 2.7	Deleted

**[Link - Classification of MSMEs](#)**

**RBI Update - Payments Infrastructure Development Fund - Extension of Scheme and Enhancements**

To provide impetus to deployment of acceptance infrastructure, the following enhancements are being made to the Scheme:

- The beneficiaries identified as part of the PM Vishwakarma Scheme, across the country, shall be included as merchants for deployment under the PIDF Scheme. All eligible installations since the inception of the PM Vishwakarma Scheme, i.e., September 17, 2023, may prefer claims under the PIDF Scheme.
- The PIDF Scheme presently subsidises deployment of acceptance infrastructure based on category of device - physical or digital. It has been decided to enable other contemporary devices, viz., (i) Soundbox devices - providing instant audio payment confirmation along with payment acceptance by "scan & pay" and Near Field Communication (NFC), and (ii) Aadhaar-enabled biometric devices - certified biometric scanner devices facilitating Aadhaar authentication for acceptance of payment by merchant through BHIM Aadhaar Pay, would be eligible for subsidy under the Scheme, for installations made from October 01, 2023 onwards.
- The amount of subsidy for devices deployed in special focus areas, viz., North Eastern States, Union Territories of Jammu & Kashmir and Ladakh, is increased from 75% to 90% of the total cost, irrespective of the type of device, for installations made from October 01, 2023 onwards.

**[Link - Payments Infrastructure Development Fund - Extension of Scheme and Enhancements](#)**

**RBI Update - Fair Lending Practice - Penal Charges in Loan Accounts: Extension of Timeline for Implementation of Instructions**

# RESERVE BANK OF INDIA UPDATES

It has been decided to extend the timeline for implementation of the instructions by three months. Accordingly, Regulated entities (REs) shall ensure that the instructions are implemented in respect of all the fresh loans availed from April 1, 2024 onwards. In the case of existing loans, the switchover to the new penal charges regime shall be ensured on the next review/ renewal date falling on or after April 1, 2024, but not later than June 30, 2024.

## **Link - Fair Lending Practice - Penal Charges in Loan Accounts: Extension of Timeline for Implementation of Instructions**

### **RBI Update - Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023**

The RBI issued the Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023.

#### **Applicability**

(1) These Directions shall apply to

(a) Banks as defined under clause 3(1)(a) of these Directions and having 10 or more banking outlets in India, whether such bank is incorporated in India or outside India;

(b) NBFCs as defined under clause 3(1)(j) of these Directions and fulfilling the following criteria as on date:

1. Deposit-taking NBFCs (NBFCs-D) with 10 or more branches;
2. Non-Deposit taking NBFCs (NBFCs-ND) with asset size of Rs.5,000 crore and above and having public customer interface;

(c) All NBSPs as defined in Clause 3(1)(k) of these Directions with more than one crore Pre-paid Payment Instruments outstanding as on March 31, 2023, or thereafter. However, the Scheme shall continue to be applicable even if the number of Pre-paid Payment Instruments outstanding falls below the threshold at a later date;

(d) All Credit Information Companies as defined under clause 3(1)(e).

(2) Any regulated entity, subsequent to the issue of these Directions, reaching the threshold/s prescribed under clause 4(1) shall come under the ambit of these Directions and hence would be required to put in place an Internal Ombudsman framework within six months of reaching the threshold.

(3) The Reserve Bank, if it is satisfied in public interest, may, by order, direct any regulated entity to appoint an Internal Ombudsman and these directions shall apply to that regulated entity.

## **Link - Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023**

### **RBI Update - Basel III Framework on Liquidity Standards - Net Stable Funding Ratio (NSFR) - Review of National Development Banks**

It has been decided that the other All India Financial Institutions (AIFIs) i.e. EXIM Bank and National Bank for Financing Infrastructure and Development (NaBFID) shall also be considered as National Development Banks (NDBs) for NSFR computation.

Further, unencumbered loans to NDBs with a residual maturity of one year or more that would qualify for a 35 per cent or lower risk weight under the Standardised Approach for credit risk shall be assigned a Required Stable Funding (RSF) factor of 65 per cent (as against 100 per cent currently).

## **[Link - Basel III Framework on Liquidity Standards - Net Stable Funding Ratio \(NSFR\) - Review of National Development Banks](#)**

### **RBI Update - Review of Instructions on Bulk Deposits for Urban Co-operative Banks (UCBs)**

It has been decided to enhance the bulk deposit limit for Scheduled Primary (Urban) Co-operative Banks, in Tier 3 and 4, to Rupees one crore and above. Accordingly, "Bulk Deposit" for Primary (Urban) Co-operative Banks would now mean:

- Single Rupee term deposits of Rupees one crore and above for Scheduled UCBs categorised as Tier 3 and 4 UCBs under the revised regulatory framework.
- Single Rupee term deposits of Rupees fifteen lakh and above for all other UCBs (i.e., other than Scheduled UCBs in Tier 3 and 4).

## **[Link - Review of Instructions on Bulk Deposits for Urban Co-operative Banks \(UCBs\)](#)**

### **RBI Update - Inoperative Accounts /Unclaimed Deposits in Banks- Revised Instructions**

It has been decided to issue comprehensive guidelines on the measures to be put in place by the banks covering various aspects of classifying accounts and deposits as inoperative accounts and unclaimed deposits, as the case may be, periodic review of such accounts and deposits, measures to prevent fraud in such accounts/deposits, grievance redressal mechanism for expeditious resolution of complaints, steps to be taken for tracing the customers of inoperative accounts/ unclaimed deposits including their nominees/ legal heirs for re-activation of accounts, settlement of claims or closure and the process to be followed by them.

This circular is applicable to all Commercial Banks (including RRBs) and all Co-operative Banks.

The revised instructions shall come into effect from **April 1, 2024**.

## **[Link - Inoperative Accounts /Unclaimed Deposits in Banks- Revised Instructions](#)**

### **RBI Update - Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024**

RBI on January 03, 2024 has issued revised Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024. The master directions provides the following reporting requirements:

Primary issuances: Details of all issuances in primary markets of the CPs and NCDs shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the day of issuance.

## RESERVE BANK OF INDIA UPDATES

**Secondary market transactions:** All secondary market transactions in CPs and NCDs, executed in the OTC market and/or on the recognised stock exchanges, shall be reported with time stamp within 15 minutes of execution (the time when price is agreed) on the F-TRAC platform by each counterparty to the transaction.

**Buybacks:** Details of buybacks of CPs and NCDs shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the buyback date.

**Default:** Instances of default and repayment of defaulted obligation shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the day of default or the day of repayment of defaulted obligations, as the case may be.

**Reporting by depositories:** The depositories shall report to the Reserve Bank, the details of the CPs and NCDs held with them in the dematerialised form, in the prescribed format furnished in Annex II, at fortnightly intervals (on the 15th day and on the last day of the month) or as and when called upon to do so by the Reserve Bank.

**Reporting by Debenture Trustee:** The Debenture Trustee shall report the details of the outstanding amount of NCDs and the particulars of default in repayment of NCD, at quarterly intervals (within 15 days from the end of the quarter), in the format prescribed in Annex III to the Reserve Bank through e-mail ([reportfmd@rbi.org.in](mailto:reportfmd@rbi.org.in)).

The roles and responsibilities of the IPA, Debenture Trustee and Credit Rating Agency (CRA) with respect to the operations in CP and NCD markets are set out in the directions.

**[Link - Reserve Bank of India \(Commercial Paper and Non-Convertible Debentures\)](#)**

**RBI Update - Amendment to the Master Direction (MD) on KYC**

The Master Direction (MD) on KYC dated February 25, 2016, as amended from time to time, in terms of which Regulated Entities (REs) have to undertake Customer Due Diligence (CDD), as per the process laid out therein, for their customers.

The definition of Politically Exposed Persons (PEPs) is provided in sub-clause (xvii) of clause (a) of Section 3 of the MD on KYC. However, in order to provide better clarity, it has been decided to include the definition of PEPs as an explanation to Section 41 of the Master Direction as under:

“Explanation: For the purpose of this Section, “Politically Exposed Persons” (PEPs) are individuals who are or have been entrusted with prominent public functions by a foreign country, including the Heads of States/Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials.”

**[Link - Amendment to the Master Direction \(MD\) on KYC](#)**

## RESERVE BANK OF INDIA UPDATES

### **RBI Update - Risk Management and Inter-Bank Dealings - Hedging of foreign exchange risk**

The Foreign Exchange Management (Foreign Exchange Derivative Contracts) (First Amendment) Regulations, 2020 (Notification dated February 18, 2020) and A. P. (DIR Series) circular dated April 07, 2020 (which came into effect from September 01, 2020) were issued after a comprehensive review and public consultation. The foreign exchange risk management facilities have been further reviewed based on the feedback received from market participants and experience gained since the revised framework came into force. Also, the Directions in respect of all types of foreign exchange transactions (including cash, tom and spot) have been consolidated. Further, the Directions contained in the Currency Futures (Reserve Bank) Directions, 2008 (Notification dated August 06, 2008), as amended from time to time, and Exchange Traded Currency Options (Reserve Bank) Directions, 2010 (Notification dated July 30, 2010), as amended from time to time, are now being incorporated in the Master Direction - Risk Management and Inter-Bank Dealings.

The revised Directions are provided at Annex-I to this circular. **These Directions shall come into effect from April 05, 2024**, replacing the existing Directions in Part A (Section I) of the Master Direction - Risk Management and Interbank Dealings dated July 5, 2016, as amended from time to time, and in supersession of the notifications listed in the Annex-II.

**[Link - Risk Management and Inter-Bank Dealings - Hedging of foreign exchange risk](#)**

### **RBI Update - Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)**

Please refer to Section 52 of our Master Direction on Know Your Customer dated February 25, 2016 as amended on January 04, 2024 (MD on KYC), in terms of which, inter alia "Regulated Entities (REs) shall ensure meticulous compliance with the "Procedure for Implementation of Section 12A of the Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005" laid down in terms of Section 12A of the WMD Act, 2005 vide Order dated September 01, 2023, by the Ministry of Finance, Government of India (Annex III of the Master Direction on Know Your Customer)."

Further, in terms of Section 53 of our MD on KYC, "the REs shall verify every day, the 'UNSCR 1718 Sanctions List of Designated Individuals and Entities', as available at <https://www.mea.gov.in/Implementation-of-UNSC-Sanctions-DPRK.htm>, to take into account any modifications to the list in terms of additions, deletions or other changes and also ensure compliance with the 'Implementation of Security Council Resolution on Democratic People's Republic of Korea Order, 2017', as amended from time to time by the Central Government".



## RESERVE BANK OF INDIA UPDATES

A reference is also invited to our circular DOR.AML.REC.23/14.06.001/2023-24 dated July 04, 2023, communicating thereby the Consolidated List of UNSC Designated / Sanctioned Individuals and Entities under the UNSC Resolutions relating to non-proliferation. Certain amendments to the entries in the List were notified vide our circulars DOR. AML.REC.24/14.06.001/2023-24 dated July 04, 2023 and DOR. AML.REC.33/14.06.001/2023-24 dated August 18, 2023, respectively.

Ministry of External Affairs (MEA), GoI has informed that the UNSC Committee established pursuant to resolution 1718(2006) has enacted the amendments, specified with strikethrough and/or underline in certain entries on its Sanctions List of individuals and entities (enclosed with this circular). Hence, the 'designated list' as referred in Para 2.1 and other relevant paras of the aforementioned Order dated September 01, 2023 is amended in accordance with the changes in these relevant entries.

The latest version of the UNSC Sanctions lists on DPRK is accessible on the UN Security Council's website at the following URLs:

<https://www.un.org/securitycouncil/sanctions/1718/materials>

The REs are advised to take note of the aforementioned communications and ensure meticulous compliance.

**Link - Implementation of Section 12A of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005: Designated List (Amendments)**



**Unlawful Activities  
(prevention) Act  
UAPA**

# Insolvency and Bankruptcy Case Laws

## Rakesh Ranjan v. Fanendra Harakchand Munot & Anr. – NCLAT New Delhi Judgement Date – 4th Dec 2023

### Facts of the case

- I.A. filed by the Resolution Professional for approval of the Resolution Plan has been allowed and the Resolution Plan submitted by the Successful Resolution Applicant has been approved.
- This Appeal has been filed by the Appellant who had also submitted a Resolution Plan which was not considered due to reason that he failed to submit the Bank Guarantee of Rs. 50 Lakhs as per RFRP.

### Decision of the Adjudicating Authority

- CIRP Regulation 36B(4) it only provides for request of resolution plan shall not require any non-refundable deposit. In RFRP there is no such clause which requires that Resolution Applicant has to submit any non-refundable deposit. With regard to Regulation 36B(4A), RFRP itself contains a condition. Therefore, the RFRP was fully in compliance with Regulation 36B(4A).
- In this case, requirement of Bank Guarantee was only for the purpose to consider seriousness of the Resolution Applicants who are able to submit the Bank Guarantee of Rs. 50 Lakhs. Appellant has never complied the said and has not challenged the RFRP at any stage, cannot be allowed to contend that the said condition is not correct.
- Appellant has made a request to CoC to waive the requirement of Bank Guarantee which was not accepted by the CoC and Appellant having not complied with the terms of the RFRP in submitting the plan, we do not find any illegality in the decision of the CoC in not considering the Resolution Plan of the Appellant. Learned Counsel for the SRA submits that plan has already been implemented and distribution have been made.
- In view of the above, we see no reason to entertain this Appeal, the Appeal is dismissed.

## BANK GUARANTEE (BG)



## **ROC slapped Rs. 36.60 lakhs penalty on Ex, directors & Co., for non-appointment of KMPs within the prescribed time limit – A Case Study**

### **Brief of this case**

1. This case which is being examined is, in respect of a listed company known as Sylph Technologies Limited in which the appointment of the whole time director, chief financial officer and company secretary – all the three positions were not done during the year 2018 and 2019 though, the company was mandatorily required to appoint/fill up the vacant positions of these post of Key Managerial Personnel. The Registrar of Companies during the examination and enquiry of this company observed that these positions were vacant i.e. whole time director position was vacant for a period of 150 days and the chief financial officer and the company secretary positions were vacant for 210 days. The matter was taken up with the company by the Registrar of Companies and based on the response received from the company's ex-directors, the Registrar of Companies penalized the company and its ex. directors for violation committed by them when they were holding the position of the directorship. In all an amount of 36.60 lakhs have been levied as penalty upon the company and its ex-directors.

This case is an eye opening case which exhibits the point that the director though resigned from the company, such resigning director is liable for penal actions even after his resignation for all the offences which occurred during his tenure of his directorship. This position has been clarified under section 168(2) of the Companies Act 2013, on the resignation of director clearly states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later with a provisions that the director who had resigned shall be liable even after his resignation for the offences which occurred during his tenure.

### **Relevant provisions under the Companies Act 2013**

2. Section 203 of the Companies Act 2013 is the relevant provision on this matter in the chapter XIII – Appointment and Remuneration of Managerial Personnel under the heading appointment of key managerial personnel and the extract of the section is as given below.

**Companies Act 2013 Chapter XIII – Appointment and Remuneration of Managerial Personnel Section 203 – Appointment of key managerial**

Section	Provisions
203 (1)	<p>Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—</p> <ul style="list-style-type: none"><li>(i) Managing director, or Chief Executive Officer or Manager and in their absence, a Whole-time Director;</li><li>(ii) Company secretary; and</li><li>(iii) Chief Financial Officer</li></ul>
Proviso	<p>Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless, —</p> <ul style="list-style-type: none"><li>(a) the articles of such a company provide otherwise; or</li><li>(b) the company does not carry multiple businesses.</li></ul>
Proviso	<p>Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government</p>
203 (2)	<p>Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.</p>
203 (3)	<p>A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time: Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board: Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel: Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India</p>

203 (4)	If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.
203 (4) (A)	The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole-time director of the Government Company. The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole-time director of the Government Company.
Proviso	Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government
Penal provision for any default/violation	
203 (5)	If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

### **Consequences of default/violation - action from the Regulator**

**3.** To understand the consequences of any default/noncompliance in complying with the provisions of section 203 relating to appointment of key managerial personnel within the specified time limit, we shall go through the three decided case laws by the Registrar of Companies of Gwalior of Madhya Pradesh on this matter on 6th December 2023.

### **The relevant case law on this matter**

**4.** We shall go through the adjudication orders (in all there) passed by the Registrar of Companies, Gwalior on 6th December 2023 in the matter of M/s Sylph Technologies Limited of Indore.

(1) Adjudication order bearing No. ROC-G/Adj.Pen/ u/s/203(1) sylph Technologies/ 2756 in the matter of adjudication proceeding under sub-section (1) of section 203 of the Companies Act 2013 for non-appointment of company secretary within the specified time limit

(2) Adjudication order bearing No. ROC-G/Adj.Pen/ u/s/203(1) sylph Technologies/2762 in the matter of adjudication proceeding under sub-section (1) of section 203 of the Companies Act 2013 for non-appointment of chief financial officer within the specified time limit

(3) Adjudication order bearing No. ROC-G/Adj.Pen/ u/s/203(1) sylph Technologies/ 2768 in the matter of adjudication proceeding under sub-section (1) of section 203 of the Companies Act 2013 for non-appointment of whole time director within the specified time limit.



# Knowledge Sharing Article

## Details of the company

5. M/s. Sylph Technologies Limited incorporated on 14th May 1992 under the provisions of the Companies Act 1956 and the company falls under the jurisdiction of Registrar of Companies, Madhya Pradesh and the office of the Registrar is situated at Gwalior. This company is having its registered office situated at 201E, Johari Palace, 51 M.G Road, Indore Tukoganj, Indore in the state of Madhya Pradesh. The company, as per the details shown at the MCA portal is currently having five directors on its board out of which one of them is managing director and one of the directors is additional director appointed on 7th October 2023. The company is also having chief financial officer and a company secretary on its role in the whole time employment who are the key managerial personnel. Sylph is a software technology company providing software development services & solutions with services such as outsourcing software development, web development, product development, strategy consulting, offshore software development, e-commerce for web and mobile enablement.

## Facts about the case

6. The following are the facts on this case: — The inspector from the office of the Registrar of Companies of Gwalior carried out inspection of the books of account/inquiry under section 206 of the Companies Act 2013 and other books and papers of the company under section 207 of the Companies Act 2013 and submitted his report as per the provisions of section 208 of the Companies Act 2013. The inspector had pointed out in his inspection report non-compliance of the following instances or violations as given below: —

(i) During the inspection/enquiry, the inspecting officials observed that the company violated the provisions of section 203(1) of the Companies Act 2013 which attracted penal provision under section 203 (5) of the Companies Act 2013 by not appointing the company secretary for the period between 2nd November 2018 to 30th May 2019. (period of default amounted to 210 days)

(ii) Further the inspection/enquiry, the inspecting officials observed that the company violated the provisions of section 203(1) of the Companies Act 2013 which attracted penal provision under section 203 (5) of the Companies Act 2013 by not appointing the chief financial officer for the period between 2nd November 2018 to 30th May 2019 (period of default amounted to 210 days).

(iii) Further to the above, the inspection/enquiry, the inspecting officials also observed that the company violated the provisions of section 203(1) of the Companies Act 2013 which attracted penal provision under section 203 (5) of the Companies Act 2013 by not appointing the whole time director for the period between 2nd November 2018 to 31st March 2019 (period of default amounted to 150 days)

## Officers in default at the time of offence taking place

6.1 The default/violation took place in the company during the financial year 2018-19 and 2019-20 and during these period there were three non-executive directors were on the board one of them being an independent non-executive director. All of them had resigned from the company when the enquiry was taken up and the Registrar of Companies identified them as officers in default and proceeded with the adjudication process and all the three directors were held liable for the offence besides the company.

### **Matter reported to the Directorate and instruction issued by the Directorate**

**7.** The above matter was reported to the directorate of Ministry of Corporate Affairs by the office of the Registrar of Companies upon completion of the inspection/enquiry. The directorate vide its letter dated 1st May 2023, directed the Registrar of Companies to take necessary action for the violation of section 203(1) of the Companies Act 2013 against the company and its directors.

### **Action taken by the Registrar of Companies – issue of show cause notice**

**8.** The Registrar of Companies/Adjudication Officer also issued three show cause notices for each of the offence committed by the company bearing under section 203(1) of the Companies Act 2013 to the company and its directors vide show cause notice no. ROC-G/Adj-Pen/u/s 203(1)/sylph/Tech/2377 – 2381; ROC-G/Adj-Pen/u/s 203(1)/sylph/Tech/2387 – 2389 and ROC-G/Adj-Pen/u/s 203(1)/sylph/Tech/2387 – 2391 all dated 20th October 2023 for the violation of the provisions of the Act directing the company and its directors to show cause as to why penal action could not be taken against them.

### **Response from the ex. directors of the company to the show cause notice**

**9.** With reference to the show cause notice issued by the Registrar of Companies dated 20th October 2023, one of the ex.director of the company responded with his reply vide his letter dated 27th October 2023. In that letter of reply the director stated that he had resigned from the directorship of the company during the month of March 2022. He further requested the Registrar of Companies to grant him 30 days' time to respond the show cause notice. Similarly two more ex. directors of the company had also responded with their reply vide his letter dated 31st October 2023. In that letter of reply both the directors had stated that they had also resigned from the directorship of the company during the month of March 2022. Both of them had requested the Registrar of Companies to grant him 30 days' time to respond the show cause notice. One more letter was also received from the son of one director on 31st October 2023 stating that the director whose address the show cause notice was sent, expired in the month of April 2021 and enclosed a certificate in this respect, and requested drop the proceedings against this particular director.

### **Notice of enquiry issued by the Registrar of Companies**

**10.** Thereafter, the Registrar of Companies had issued a notice of enquiry under section 203(1) of the Companies Act 2013 (three different notices for each of the offences) bearing notice no. ROC-G/Adj-Pen/u/s 203(1)/sylph Technologies/ 2626 – 2629; ROC-G/Adj-Pen/u/s 203(1)/sylph Technologies/ 2630 – 2633 and ROC-G/Adj-Pen/u/s 203(1)/sylph Technologies/ 2634 – 2637 dated 22nd November 2023 to the company and its directors on default calling for further information.

### **Response received for the notice of enquiry from two of non-executive directors (who had already resigned from the company)**

**11.** In response to the notice of enquiry, two of the ex. directors of the company (who had already resigned from the company) replied via e-mail dated 30th November 2023 informing the following to the Registrar of Companies with respect to the non-appointment of chief financial officer during the period 02.11.2019 to 30.05.2019, non-appointment of whole-time director during the period 02.11.2019 to 31.03.2019 and non-appointment of company secretary during the period 02.11.2019 to 30.05.2019.

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- a. That the company had already applied for the compounding of offences with the regulatory authorities by filing the requisite compounding application form on 02.11.2018 for the offence.
- b. Both the directors had stated that they were non-executive directors of the company during the period of violation as mentioned in the notice issued by the Registrar of Companies and they both were not looking after the day to affair of the company.
- c. Both the directors had further stated that they had tried their level best to appoint an eligible person in the company, but they could not find eligible person who could have accepted the appointment in the company looking to the financial position and business of the company.
- d. Both the directors further submitted that the default/violation committed by the company was not on account their fault but it was due to the circumstances in the market and financial situation of the company. Further they had stated, due their continuous efforts they could locate a suitable candidate for the KMP positions and appointed them.
- e. Both the directors had informed the Registrar of Companies that they had not drawn any remuneration and not even sitting fees for the board meetings during the entire duration of their directorship meaning thereby that both of them had not gained any monetary benefits from the company.
- f. Both the directors stated that it was not out of place to mention that since the company's financial position was not good, one of the director had advanced interest free loan to the company to make company to fulfil its financial obligations and had requested the regulators to condone the violation of section 203 of the Companies Act 2013 as same was not committed internationally.
- g. Both the directors also informed to the Registrar of Companies that they had resigned from the directorship of the company in March 2022.

## **Response received for the notice of enquiry from one of the independent non-executive director (who had already resigned from the company)**

**12.** In response to the notice of enquiry, one of the non-executive independent ex. director (who had already resigned from the company) replied via e-mail dated 30th November 2023 informing the following to the Registrar of Companies with respect to the non-appointment of chief financial officer during the period 02.11.2019 to 30.05.2019, non-appointment of whole time director during the period 02.11.2019 to 31.03.2019 and non-appointment of company secretary during the period 02.11.2019 to 30.05.2019.

- a. That he had already applied for the compounding of offences with the regulatory authorities by filing the requisite compounding application before on 02.11.2018.
- b. The director stated that he was a non-executive independent director of the company during the period of violation as mentioned in the notice issued by the Registrar of Companies and he was not looking after the day to affair of the company.
- c. The independent director stated that he had tried his level best to appoint an eligible person in the company, but the company could not find eligible person who could have accepted the appointment in the company looking to the financial position and business of the company.

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- d.** The independent director submitted that the default/violation committed by the company was not on account of his fault but it was due to the circumstances in the market and financial situation of the company.
- e.** The independent director informed the Registrar of Companies that he had raised this issue at the various meetings of the board of directors which was duly accounted for. Hence default/violation committed by the company was not on account of him and he was not fault for any of the violation committed by the company.
- f.** The independent director further informed the Registrar of Companies that due his continuous efforts the company could find eligible personnel and appointed them as KMPs
- g.** The independent director informed the Registrar of Companies that he had not drawn any remuneration and not even sitting fees for the board meetings during the entire duration of his their directorship meaning thereby that he had not gained any monetary benefits from the company and had requested the Registrar of Companies to condone the violation of section 203 of the Companies Act 2013 as same was not committed internationally and he was only an independent director of the company.
- h.** The independent director informed to the Registrar of Companies he had resigned from the directorship of the company in March 2022 and he was neither a director nor a shareholder of the company.

## **Personal hearing notice issued by the Registrar of Companies**

**13.** The Registrar of Companies/Adjudication Officer issued an adjudication notice pursuant to Rule 3(3) of the Companies (Adjudication of Penalties) Rules 2014 by fixing a personal hearing on 30th November 2023 to the company and its directors in default directing them to appear before him and make the submissions at the personal hearing at his office at Gwalior.

## **On the day of personal hearing**

**14.** On the day of the personal hearing i.e. on 30th November 2023 none of the representatives of the company or directors had either furnished their reply had appeared on the date so fixed before the Adjudicating Officer for the hearing. The Adjudication Officer decided to proceed with the adjudication proceedings pursuant to section 454 of the Companies Act 2013 read with sub-Rule 11 of Rule 2 of the Companies (Adjudication of Penalties) Rules 2014 in the absence of the representatives of the company.

## **Conclusions reached by the Registrar of Companies/Adjudication Officer**

**15.** The Registrar of Companies/Adjudication Officer, after having considered the facts and circumstances of the letter dated 20th October 2023 and 22nd November 2023 issued by the office of the Registrar of Companies of Gwalior, concluded that the company and its directors were in default and were liable for penalties as prescribed under section 203 (5) of the Companies Act 2013 for default was made in complying with the requirements of section 203(1) of the Companies Act 2013 of the company i.e. sylph Technologies for 150 days delay (02.11.2018 to 31.03.2019) in appointing the whole time directors and 210 days delay ( 02.11.2018 to 30.05.2019) in appoint the company secretary and the chief financial officer in terms of section 203(1) of the Companies Act 2013.

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## Orders (in all three) passed by the Registrar of Companies/Adjudication Officer (ex-parte order)

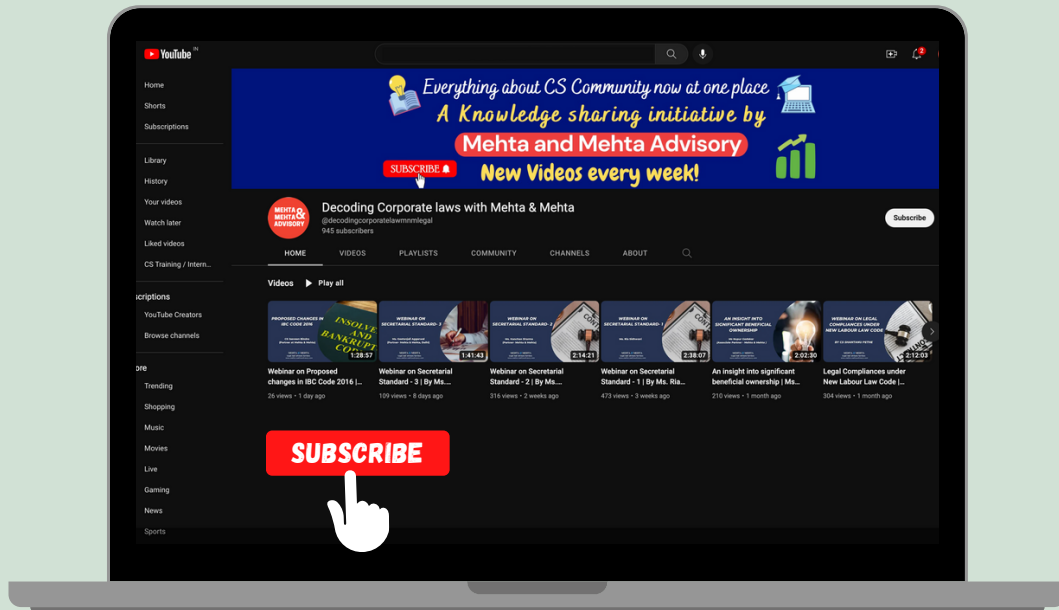
The Registrar of Companies/Adjudication Officer, in exercise of the powers conferred on him vide Notification dated 24th March, 2015 imposed a penalty as prescribed under section 203(5) of the Companies Act 2013. The penalty imposed on the company and its directors in default were as per the table below.

Nature of default	Relevant section of Co' Act 2013	Penalty imposed on company/directors	Number of days default	Total penalty as per section 203(5) of the Companies Act 2013	Penalty imposed
			Days	Rupees	Rupees
Non-appointment company secretary	203 (1)	Company	210	5,00,000 + 2,10,000 (1000*210) = 7,10,000 (Maximum penalty 5,00,000)	5,00,000
		Non-exe. Director - 1	210	50,000 + 2,10,000 (1000*210) = 2,60,000	2,60,000
		Non-Exe. Director - 2	210	2,60,000	2,60,000
		Non-exe. independent Director	210	(Maximum penalty 5,00,000)	2,60,000
Sub-total					12, 80,000



Non-appointment chief financial officer	203 (1)	Company	210	5,00,000 + 2,10,000 (1000*210) = 7,10,000 (Maximum penalty 5,00,000)	5,00,000
		Non-exe. Director - 1	210		2,00,000
		Non-Exe. Director - 2	210	50,000 + 2,10,000 (1000*210) = 2,60,000 (Maximum penalty 5,00,000)	2,00,000
		Non- Exe. independent Director	210		2,00,000
Sub-total					11, 00,000
Total Penalty imposed					36,60,000

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