

Newsletter
Volume 33, Oct 2024



SNG & PARTNERS

Advocates & Solicitors

ESTD 1962



INDEX

5

ARBITRATION AND CONCILIATION ACT, 1996

1. Delhi High Court: When seat of arbitration is at three places, the parties are at liberty to approach any one of the said three places
2. Allahabad High Court: Non-filing of a certified copy of arbitral award appropriate if sufficient explanation provided u/S 34
3. Supreme Court upholds Arbitration clause: 'Public Premises Act neither bars nor overlaps with Arbitration Proceedings
4. Allahabad High Court: Orders of the tribunal cannot be challenged u/A 227 when remedies under act available

4. NCLAT expounds that pendency of the Civil Suit cannot be grounds to reject Sec 7 when the debt and default was proved
5. NCLAT expounds moratorium under Sec 96 of IBC would strictly apply to the security interest created by the Appellant in his personal capacity

7

INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

1. NCLAT rules that relief under Sec 43 of the not available if outstanding is more than 2 years prior to CIRP commencement date
2. NCLAT rules that there is no provision under the IBC for set off/adjustment/counter claim
3. NCLAT expounds that no application can be filed, even after expiry of the period under Section 10A for the default which occurred during the 10A period

9

MINISTRY OF CORPORATE AFFAIRS (MCA)

1. Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024
2. Companies (Indian Accounting Standards) Third Amendment Rules, 2024
3. Companies (Accounts) Amendment Rules, 2024

INDEX

12

RESERVE BANK OF INDIA (RBI)

1. Gold loans - Irregular practices observed in grant of loans against pledge of gold ornaments and jewellery
2. Facilitating accessibility to digital payment systems for Persons with Disabilities – Guidelines
3. Submission of information to Credit Information Companies (CICs) by ARCs
4. Implementation of Credit Information Reporting Mechanism subsequent to cancellation of licence or Certificate of Registration

14

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. Review of Stress Testing Framework for Equity Derivatives segment for determining the corpus of Core Settlement Guarantee Fund
2. Securities and Exchange Board of India (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2024
3. Measures to Strengthen Equity Index Derivatives Framework for Increased Investor Protection and Market Stability
4. Securities and Exchange Board of India (Real Estate Investment Trusts) (Third Amendment) Regulations, 2024

5. Specific due diligence of investors and investments of AIFs
6. Change in timing for securities payout in the Activity schedule for T+1 Rolling Settlement
7. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
8. Timelines for disclosures by Social Enterprises on Social Stock Exchange ("SSE")
9. Extension of timeline for implementation of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75 dated June 05, 2024
10. Monitoring Shareholding of Market Infrastructure Institutions (MIIs)
11. Monitoring of position limits for equity derivative segment
12. Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism
13. Association of persons regulated by the Board and their agents with certain persons

19

INDEPENDENT DIRECTOR – LEGAL CONCEPTS



Editor's note

I am pleased to share with you our newsletter for the month of October, 2024, which covers significant legal and regulatory developments.

These recent judicial rulings under the Arbitration and Conciliation Act, 1996 are poised to have significant implications. By upholding the sanctity of arbitration clauses, promoting procedural flexibility, and curbing judicial interference, the courts are reinforcing India's commitment to becoming a preferred hub for arbitration, particularly in commercial and contractual disputes.

The recent rulings by NCLAT collectively streamline insolvency proceedings by reinforcing the principles of creditor protection, statutory timelines, and IBC's supremacy over other legal frameworks. The decisions promote efficiency, reduce litigation delays, and enhance creditor confidence, which is crucial for strengthening India's insolvency ecosystem.

The Ministry of Corporate Affairs (MCA) has recently introduced several amendments to enhance governance standards.

The new directives by RBI on gold loan practices, digital accessibility, credit information reporting, and data submission protocols for Asset Reconstruction Companies (ARCs) are noteworthy. Following a review of gold loan portfolios, the RBI identified several irregularities, including improper valuation practices, insufficient due diligence, and lack of transparency in auction procedures upon customer defaults. Lenders are now mandated to reassess their gold loan policies and address the highlighted deficiencies. The RBI has also directed banks and non-bank payment service providers (PSPs) to review and modify their payment systems and devices to ensure accessibility for Persons with Disabilities (PwDs), in line with accessibility standards set by the Ministry of Finance. This initiative promotes inclusivity, making digital transactions more user-friendly for PwDs.

In a significant move to strengthen the capital markets and align them with evolving global standards, the Securities and Exchange Board of India (SEBI) has recently introduced a slew of updates across multiple regulatory frameworks. As we move into 2025, stakeholders across the capital markets, including investors, intermediaries, and market institutions, will need to align their practices with these new regulatory standards to ensure compliance and capitalize on the strengthened market framework.

In this issue, we have also included a note authored by our Partner, Mr. Navneet Gupta on the role of Independent Directors (IDs) in India, particularly under the Companies Act, 2013 and the legal framework surrounding it. This note is a valuable resource for anyone involved in corporate governance, ensuring that the role of Independent Directors is well understood and effectively implemented to promote transparency, accountability, and ethical conduct in Indian companies.

I hope you will find this edition useful.

Best wishes,

Rajesh Narain Gupta

Founder & Chairman,
SNG & Partners

A. ARBITRATION AND CONCILIATION ACT, 1996

1. Delhi High Court: When seat of arbitration is at three places, the parties are at liberty to approach any one of the said three places

The Delhi High Court expounded that at the stage of Section 11 petition under the Arbitration and Conciliation Act, 1996, this Court is only required to see the prima facie existence of an arbitration agreement and is not to adjudicate upon the merits of the case. It was also held that in case the seat of arbitration is at three places, the parties are at liberty to approach any one of the said three places.

[Read More](#)

2. Allahabad High Court: Non-filing of a certified copy of arbitral award appropriate if sufficient explanation provided u/S 34

The Allahabad High Court observed that if a certified/ signed copy of the award cannot be obtained and filed with an application under Section 34 of the Arbitration and Conciliation Act, 1966, filing a copy of the award along with an explanation would be an appropriate exercise.

[Read More](#)

3. Supreme Court upholds Arbitration clause: 'Public Premises Act neither bars nor overlaps with Arbitration Proceedings'

Recently, the Supreme Court addressed the interplay between the Public Premises Act 1971 and the Arbitration and Conciliation Act 1996, concluding that the former does not override the latter. The Court upheld the High Court's decision to appoint an arbitrator in a case involving warehousing services, emphasising the significance of the existing arbitration clause in resolving contractual disputes.

[Read More](#)

4. Allahabad High Court: Orders of the tribunal cannot be challenged under Article 227 when remedies under Act are available

The Allahabad High Court, while dismissing a petition filed under Article 227 challenging orders passed by an arbitral tribunal, observed that a petition under Article 227 of the Constitution cannot be entertained against an order of the Arbitral Tribunal when efficacious remedies are already available in the arbitration act itself.

[Read More](#)

B. INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

1. NCLAT rules that relief under Section 43 of the not available if outstanding is more than 2 years prior to CIRP commencement date

The NCLAT, Principal Bench New Delhi expounded that even when all the requirements of sub-section (2) of Section 43 of the Code are satisfied, in order to fall within the mischief sought to be remedied by Section 43, the questioned preference ought to have been given at a relevant time. In other words, for a preference to become an avoidable one, it ought to have been given within the period specified in sub-section (4) of Section 43. The extent of 'relevant time' is different with reference to the relationship of the beneficiary with the corporate debtor inasmuch as, for the persons falling within the expression 'related party' within the meaning of Section 5 (24) of the Code, such period is of two years before the insolvency commencement date whereas it is one year in relation to the person other than a related party.

[Read More](#)

2. NCLAT rules that there is no provision under the IBC for set off/adjustment/counter claim

The NCLAT, Principal Bench New Delhi expounded that there is no provision under the IBC for set off/adjustment/counter claim.

In the present case, it was held that the financial debt is due and payable and is within limitation is an admitted fact. Therefore, the NCLT has erred in allowing adjustment of Rs. 10,85,850/- against the financial debt for the reasons aforesaid.

[Read More](#)

3. NCLAT expounds that no application can be filed, even after expiry of the period under Section 10A for the default which occurred during the 10A period

The NCLAT, Principal Bench New Delhi ruled that the language of the statute provides that no application for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed for any default arising on or after 25.03.2020.

The provision cannot be read to mean that after the period is over the application can be filed. If such interpretation is accepted, the whole purpose and object shall be defeated. The purpose and object of introduction of Section 10A was to give relief to the Corporate Debtor who committed default during the period which is covered by Section 10A.

The Bench opined that no application can be filed, even after expiry of the period under Section 10A for the default which occurred during the 10A period.

[Read More](#)

4. NCLAT expounds that pendency of the Civil Suit cannot be grounds to reject Section 7 when the debt and default was proved

The NCLAT, Principal Bench New Delhi ruled that the pendency of the Civil Suit was no reason for not proceeding to admit Section 7 Application, when the debt and default was proved.

In the present case, the Civil Suit was filed subsequent to filing of the Company Petition in the High Court which stood transferred to the NCLT.

[Read More](#)

5. NCLAT expounds moratorium under Sec 96 of IBC would strictly apply to the security interest created by the Appellant in his personal capacity

The NCLAT, Principal Bench New Delhi observed that the interim moratorium under Section 96(1)(b)(ii) creates a prohibition on the other creditors of the debtor from initiating any legal action in respect of the debt for which Section 95 has been initiated.

It was opined that the moratorium imposed under Section 96 of IBC, 2016, would strictly apply to the security interest created by the Appellant in his personal capacity wherein personal guarantee is given in respect of the operational debt qua White Line Enterprises and will not extend to the cover the subject property being the property of the partnership firm against which Section 95 had not been invoked.

The Bench expounded that Section 238 of IBC bestows on IBC the priority over other laws. This non-obstante clause of Section 238 makes the IBC prevail over any other law for the time being in force.

[Read More](#)

C. MINISTRY OF CORPORATE AFFAIRS (MCA)

1. Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024

These amendments will come into force on the date of their publication.

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in sub-rule (2) of rule 9B, the following proviso shall be inserted,

“Provided that a producer company covered under this sub-rule shall, within a period of five years of closure of such financial year, comply with the provision of this sub-rule.”

[Read More](#)

2. Companies (Indian Accounting Standards) Third Amendment Rules, 2024

These amendments will come into force on the date of their publication in the Official Gazette.

In the Companies (Indian Accounting Standards) Rules, 2015 (hereinafter referred to as the said rules), in rule 5, the following proviso shall be inserted:

“Provided that an insurer or insurance company may provide its financial statement as per Ind AS 104 for the purposes of consolidated financial statements by its parent or investor or venturer till the Insurance Regulatory and Development Authority notifies the Ind AS 117 and for this purpose, Ind AS 104 shall, as specified in the Schedule to these rules, continue to apply.”

A schedule has also been inserted which relates to Ind AS 104.

[Read More](#)

3. Companies (Accounts) Amendment Rules, 2024

These amendments will come into force on the date of their publication in the Official Gazette.

In the Companies (Accounts) Rules, 2014, in rule 12, in sub-rule (1B), after the third proviso, the following proviso shall be inserted:

“Provided also that for the financial year 2023-2024, Form CSR-2 shall be filed separately on or before 31st December, 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), as specified in these rules or Form No. AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 as the case may be.”

[Read More](#)

D. RESERVE BANK OF INDIA (RBI)

1. Gold loans - Irregular practices observed in grant of loans against pledge of gold ornaments and jewellery

I RBI recently carried out a review of the adherence to prudential guidelines as well as practices being followed by SEs with regard to loans against pledge of gold ornaments and jewellery.

Several irregular practices in this activity have been sighted. The major deficiencies include (i) shortcomings in use of third parties for sourcing and appraisal of loans; (ii) valuation of gold without the presence of the customer; (iii) inadequate due diligence and lack of end use monitoring of gold loans; (iv) lack of transparency during auction of gold ornaments and jewellery on default by the customer; (v) weaknesses in monitoring of LTV; and (vi) incorrect application of risk-weights, etc.

All SEs are, therefore, advised to comprehensively review their policies, processes and practices on gold loans to identify gaps, including those highlighted in this advice, and initiate appropriate remedial measures in a timebound manner. Further, the gold loan portfolio should be closely monitored, especially in the light of significant growth in the portfolio in certain SEs. It should also be ensured that adequate controls are in place over outsourced activities and third-party service providers.

The circular shall come into effect immediately.

[Read More](#)

2. Facilitating accessibility to digital payment systems for Persons with Disabilities - Guidelines

To promote effective access, payment system participants (PSPs, that is, banks and authorised non-bank payment system providers) are advised to review their payment systems / devices in terms of accessibility to Persons with Disabilities. Based on the review they may carry out the necessary modifications, such that all their payment systems and devices, such as Point-of-Sale machines, can be accessed and used by Persons with Disabilities with ease. In this connection, the Accessibility Standards issued by the Ministry of Finance referred to above may also be adhered to, as applicable, by all PSPs. While selecting potential solutions for the purpose, care should be taken to ensure that the modifications / enhancements do not compromise security aspects of their systems.

PSPs shall submit to the Reserve Bank, within one month of the date of issue of this circular, details of their systems / devices that need to be modified, along with a time bound plan of action for achieving the same.

[Read More](#)

3. Submission of information to Credit Information Companies (CICs) by ARCs

To align the guidelines with applicable banks and Non-Banking Financial Companies (“NBFCs”) and to maintain track of borrowers’ credit history after loans are transferred by banks to ARCs, the guidelines have been updated by a notification issued by RBI October 10, 2024. They key points, applicable to all ARCs are specified below:

- a. Membership of CICs: ARCs are required to become members of all CICs and submit the necessary data in accordance with the Uniform Credit Reporting Format (“UCRF”) set forth by the RBI, [Circular No. DBOD. No.CID.BC.127/20.16.056/2013-14 dated June 27,2014] as amended periodically.
- b. Submission of Information: ARCs must regularly update the information they collect and maintain on a fortnightly basis or at shorter intervals as mutually agreed with the CIC, following Regulation 10 (a) (i) and (ii) of the Credit Information Companies Regulations, 2006.
- c. Rectification of Rejected Data: ARCs are obligated to correct any rejected data received from CICs and resubmit it within seven days of receiving such notifications.
- d. Adoption of Best Practices: ARCs should establish a standard operating procedure for matters related to CICs, which should include the best practices.

Commencement: ARCs must implement the necessary systems and processes to comply with these guidelines by January 1, 2025.

[Read More](#)

4. Implementation of Credit Information Reporting Mechanism subsequent to cancellation of licence or Certificate of Registration

The Credit Information Companies (Regulation) Act, 2005 (CICRA) stipulates that only Credit Institutions (CIs) can furnish credit information to Credit Information Companies (CICs).

In view of the provisions of CICRA, entities whose licence or Certificate of Registration (CoR) has been cancelled by RBI, can no longer be deemed as CIs under CICRA and their credit information cannot be accepted by the CICs. In such cases, repayment history of borrowers of these entities is not updated even if these borrowers continue to repay/clear their dues.

Further, RBI has directed CICs and CIs to implement a credit information reporting mechanism subsequent to the cancellation of the licence/CoR of banks/ Non-Banking Finance Companies (NBFCs) .

[Read More](#)



E. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. Review of Stress Testing Framework for Equity Derivatives segment for determining the corpus of Core Settlement Guarantee Fund

Taking into account the changing market dynamics of the equity derivatives segment, with a view to have a more comprehensive understanding of the prevalent tail risk in the equity derivatives segment, SEBI, after consultation with relevant market participants in its Risk Management Review Committee, has decided to introduce the following additional hypothetical stress testing scenarios/ methodologies for determining the Minimum Required Corpus(MRC)of Core SGF in the equity derivatives segment:

- a. Stressed VaR
- b. Filteres Historic Simulation
- c. Factor Model

SEBI has advised the CCs and stock exchanges to take necessary steps to implement the provisions of this circular, including making system amendments, by February 1, 2025.

[Read More](#)

2. Securities and Exchange Board of India (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2024

Following are the key amendments:

- a. In regulation 16, in sub-regulation (8), the existing clause (b) shall be substituted with the following clause:
“(b) trading lot for the purpose of trading of units on the designated stock exchange shall be rupees twenty five lakhs.”
- b. In regulation 26, after sub-regulation (3), the following sub-regulations shall be inserted:
“(4) *The investment manager and the trustee shall ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically.*
(5) *The investment manager and trustee shall ensure that a business continuity plan and disaster recovery site is in place for the records maintained electronically, to maintain data and transaction integrity.*”

[Read More](#)

3. Measures to Strengthen Equity Index Derivatives Framework for Increased Investor Protection and Market Stability

SEBI has implemented new measures to strengthen the equity index derivatives framework to address evolving market dynamics, better investor protection and market stability.

Following key measures have been introduced through this circular:

- a. Upfront collection of option premium from options buyers: SEBI has introduced new margin requirements to mitigate the risks associated with options trading. Starting February 1, 2025, option buyers will be required to pay the full premium upfront.
- b. Removal of calendar spread treatment on expiry day: SEBI has modified the treatment of calendar spread positions to address the increased basis risk on expiry days. Starting February 1, 2025, calendar spread benefits will no longer be available for contracts expiring on the same day.
- c. Intraday monitoring of position limits: SEBI has introduced intraday monitoring of position limits for equity derivatives. Beginning from April 1, 2025, stock exchanges are required to monitor position limits intraday with a minimum of four random snapshots of client positions throughout the trading day to ensure compliance.
- d. Contract size adjustment: SEBI has increased the minimum value for new index derivatives contracts to align with market growth and ensure appropriate contract sizes. Starting November 20, 2024, contracts must have a value of at least INR 15 lakhs at introduction. The lot size will be adjusted to maintain a contract value between INR 15 lakhs and INR 20 lakhs.
- e. Rationalization of weekly index derivatives: SEBI has implemented changes to weekly derivatives contracts to address the speculative nature of short-term index options trading. Starting November 20, 2024, each exchange will be limited to offering weekly derivatives contracts for only one benchmark index.
- f. Increase in tail risk coverage: SEBI has implemented an additional Extreme Loss Margin ("ELM") for short options contracts. This 2% surcharge will be effective starting November 20, 2024, and will apply to all open short options positions on expiry days.

SEBI has advised stock exchanges and clearing corporations to implement the necessary systems to comply with the provisions outlined in this circular and amend their relevant bylaws, rules, and regulations as needed to ensure adherence to the new requirements.

[Read More](#)

4. Securities and Exchange Board of India (Real Estate Investment Trusts) (Third Amendment) Regulations, 2024

Following are the key amendments:

- a. In regulation 18(16), the following shall be inserted as an explanation to clause (c):
“Explanation.—For the purpose of above clause, record date for the payment of distribution shall be two working days from the date of the declaration of distribution, excluding the date of declaration and the record date.”
- b. In regulation 22(2), after clause (a), following shall be inserted:
“(aa) the voting threshold specified under these regulations shall be calculated on the basis of unit holders present and voting.
Explanation.—The unit holders voting through the electronic voting facility and postal ballot shall be counted for the determination of unit holders present and voting;”
- c. In regulation 22(2), after clause (e), following shall be inserted:
“(f) for all unit holder meetings, the manager shall provide an option to the unit holders to attend the meeting through video conferencing or other audio visual means and the option of remote electronic voting in the manner as may be specified by the Board.”

[Read More](#)

5. Specific due diligence of investors and investments of AIFs

In this circular, the specific due diligence to be carried out by AIFs, managers of AIFs and their Key Management Personnel, with respect to investors and investments of the AIF, to prevent facilitation of circumvention of the following regulatory frameworks, are being specified:

- a. Provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR Regulations'), and other regulations of SEBI wherein benefits or relaxations have been provided to entities designated as Qualified Institutional Buyers (QIBs).
- b. Provisions of the 'Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' (SARFAESI Act) wherein benefits are provided to entities designated as Qualified Buyers (QBs).
- c. Prudential norms specified by Reserve Bank of India (RBI) for regulated lenders with respect to Income Recognition, Asset Classification, Provisioning and restructuring of stressed assets.
- d. Rule 6 of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules) for investment from countries sharing land border with India (read with Press Note 3 dated April 17, 2020 of FDI Policy 2020)

The trustee/sponsor of AIF, as the case may be, shall ensure that the 'Compliance Test Report' prepared by the manager in terms of Chapter 15 of Master Circular for AIFs, includes compliance with the provisions of this circular.

[Read More](#)

6. Change in timing for securities payout in the Activity schedule for T+1 Rolling Settlement

SEBI has revised the timing of payout of security from 1:30 PM to 3:30 PM, resulting in direct payout, allowing the securities under the equity cash segment (including netted cash and futures & O Physical Settlement) to be credited in

same settlement day instead of one working day from receipt of payout from clearing corporations.

Further, paragraph 1.4 'Activity Schedule for T+1 Rolling Settlement' of chapter 3

'Settlement' of the SEBI Master Circular for Stock Exchanges and Clearing Corporations dated October 16, 2023, has also been amended accordingly.

[Read More](#)

7. **Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

Recently, MCA, vide General Circular No.09/2024 dated September 19, 2024, has extended the relaxation from sending physical copies of financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) to the shareholders, for the AGMs conducted till September 30, 2025.

In view of the above, SEBI has decided to extend the relaxations in respect of regulation 36(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") for Annual General Meetings (AGMs) and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) held till September 30, 2025.

[Read More](#)

8. **Timelines for disclosures by Social Enterprises on Social Stock Exchange ("SSE")**

The outer timeline for annual disclosures under Regulation 91C(1) and annual impact report under Regulation 91E(1) of LODR Regulations by Social Enterprises on Social Stock Exchange, for FY 2023-24 has been extended upto January 31, 2025.

[Read More](#)

9. **Extension of timeline for implementation of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75 dated June 05, 2024**

SEBI has extended the timeline for implementation of Circular no. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75 dated June 05, 2024, which mandated pay-out of securities directly to the client's demat account from October 14, 2024 to November 11, 2024.

[Read More](#)

10. **Monitoring Shareholding of Market Infrastructure Institutions (MIIs)**

In order to ensure ease of compliance and effective monitoring of the provisions related to minimum public shareholding, other shareholding limits and fit & proper criteria under SECC Regulations, 2018 and SEBI (Depositories and Participants) Regulations, 2018 (D&P Regulations, 2018) it has been decided that:

- a. The framework for monitoring and ensuring compliance with shareholding norms currently applicable to listed Stock Exchanges and listed Depositories shall be applicable to all MIs (i.e. both listed and unlisted)
- b. All MIs shall disclose their shareholding pattern as per the requirements and formats specified for listed companies under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations, 2015) on their respective websites.

The circular will come into effect 90 days from its issuance date i.e., January 12, 2025.

[Read More](#)

11. Monitoring of position limits for equity derivative segment

Based on the feedback received from market participants, the deliberations held in the Secondary Market Advisory Committee (SMAC) and further internal discussions, the following has been decided:

- a. The position limits for TMs, cumulatively for client and proprietary trades, in index Futures and Options contracts may be set at higher of INR 7,500 crore or 15% of the total OI in the market.
- b. As per the extant practice, the position limits will be applicable for index futures and index options separately.

[Read More](#)

12. Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism

SEBI has proposed to introduce a Liquidity Window facility framework by use of put options as specified under Regulation 15 of the NCS Regulations, exercisable on pre-specified dates or intervals in the manner outlined in this circular.

- a. Prospective applicability: The Liquidity Window facility can be provided only for prospective issuances of debt securities through public issue process or on a private placement basis (proposed to be listed).

- b. Eligibility of investors to avail the Liquidity Window facility: The Issuer shall specify eligibility of investors who can avail of the Liquidity Window facility i.e. whether the facility shall be available to all investors in the debt securities or only to retail investors in the debt securities. Eligible investors desirous of availing of the liquidity window shall hold the debt securities in demat form
- c. Designated Stock Exchange: Issuer may designate one of the Stock Exchanges as the 'Designated Stock Exchange' for the purpose of liquidity window facility.

The provisions of this circular shall be applicable on and from November 01, 2024.

[Read More](#)

13. Association of persons regulated by the Board and their agents with certain persons

.....

Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2024, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Fourth Amendment) Regulations, 2024 and Securities and Exchange Board of India (Depositories and Participants) (Second Amendment) Regulations, 2024 have been notified by SEBI on August 26, 2024.

- a. In terms of these regulations, a “specified digital platform” shall mean digital platform as specified by the Board, which has a mechanism in place to take preventive as well as curative action, to the satisfaction of the Board, to ensure that such a platform is not used for indulging in any activity as referred to in clauses (i) or (ii) of paragraph 2 of this circular.
- b. It has been clarified that the term “another person” shall not include a person who is engaged in investor education, provided that such a person does not, directly or indirectly, indulge in any activity as referred to in clauses (i) or (ii) of paragraph 2 of this circular.

[Read More](#)

F. INDEPENDENT DIRECTOR – LEGAL CONCEPTS

The concept of Independent Director was not there in the earlier Companies Act, 1956. However J.J. Irani Committee (“the Committee”), which has been constituted by the Ministry of Corporate Affairs to advise the Government on the new Companies Law, in its report has discussed in detail the changes which are required in the provisions relating to the Board of Directors. Amongst others, the Committee, in view of various responsibilities of the Board to balance various interests, has recommended the presence of Independent Directors to improve corporate governance. The Committee was of the view that public companies or the companies with significant public interest must appoint Independent Directors on their boards as presence of these directors would bring an element of objectivity to the board process and would benefit the minority interest as well. The Committee was of the view that not all the companies are required to appoint Independent Directors and thus presence of Independent Directors may vary depending upon the size and type of companies.

In compliance of the recommendations as per the Committee’s report, the Companies Act, 2013 (“the Act”) has mandated the presence of Independent Directors.

Below are certain relevant provisions of the Act relating to the Independent Directors:

A. Definition of Independent Director

Section 149(6) of the Act defines an Independent Director in relation to a company. As per this provision, independence of a person who is deemed to be a person of integrity, possess relevant experience / expertise is perceived to be independent not only from the promoters but also from the point of view of any pecuniary relationship / employment etc. with the company, its holding, subsidiary or associate company. Therefore, an Independent Director (which definition does not include Managing Director, Wholetime Director or Nominee Director) must be a person of integrity, possess relevant experience / expertise and must be independent not only from the promoters but also from the point of view of any pecuniary relationship / employment etc. with the company, its holding, subsidiary or associate company as mentioned in the said provision.

B. Companies that are required to have Independent Directors

As per Section 149(4) of the Act, every public listed company shall have at least one third of its total number of Directors as Independent Directors and the Central Government may prescribe the minimum number of Independent Directors in case of any class or classes of public companies.

, as per Rule (4) of Companies (Appointment and Qualifications of Directors) Rules, 2014 (“Rules”), the following class of companies shall have at least two directors as Independent Directors :-

- a) Public companies having paid-up share capital of Rs. 10.00 crores or above.
- b) Public companies having turnover of Rs. 100.00 crores or more.

- c) Public companies which have outstanding loans, debentures or deposits exceeding Rs. 50.00 crores.

C. Exemption from appointment of Independent Director

As per Rule 4(2) of Rules (inserted in July, 2017), the following class of unlisted public companies shall not be required to appoint Independent Directors, namely:-

- i) Joint Venture.
- ii) Wholly owned subsidiaries
- iii) Dormant companies as defined in Section 455 of the Act.

D. Declaration of status as Independent Director

Every Independent Director who has been appointed on the Board of Directors of a company shall at the first meeting of the Board of Directors give a declaration that he meets the criteria of independence as given in Section 149(6) of the Act. He has to make similar declaration at the first meeting of the Board of Directors in every financial year or at the time when there is a change in the circumstances which may affect his status as Independent Director.

E. Term of office of Independent Director

An Independent Director can hold office for a term upto 5 years on the board of a company and also becomes eligible for re-appointment by passing a special resolution by the shareholders of the company at the AGM and disclosure of such appointment in the board report. No Independent Director, however, will be entitled to hold office for more than two consecutive terms. After holding office for two consecutive terms, he will again become eligible for re-appointment after expiration of three years from the date when he ceases to be an Independent Director in the company. However, during such period of three years, he was not associated with the company in any manner directly or indirectly.

As per Section 152 of the Act, unless an article provides for retirement of all directors, at every AGM not less than two thirds of the directors of a public company shall retire by rotation and can be appointed by the company in the general meeting. However, Section 149 (13) provides that provision of the Act with respect to retirement of directors by rotation shall not be applicable to Independent Directors. Thus, Independent Directors can continuously hold their position as Independent Director for entire term of five years.

F. Code of conduct for Independent Directors.

The Schedule IV of the Act contains a code of conduct (“Code”) which acts as a guide to professional conduct for any Independent Director. This Code has been prescribed with the objective to promote confidence of investing community , minority shareholders, regulators etc. This detailed Code / guidelines mandate that Independent Director shall uphold ethical standards of integrity and probity, act objectively and constructively, exercise his responsibility in a bona fide manner in the interest of the company. The Code expects every Independent Director to bring an independent judgement on the board deliberations, evaluate the performance of the board and management and satisfy themselves on the integrity of financial information, financial control and system of risk management etc. There may be circumstances that they may have some concerns about any aspect about running of the company in general. In such a scenario, the Code expects them to raise the concerns and get them addressed from the board and if they are not resolved completely, then insist that their concerns are recorded in the minutes of the meeting of the board.

G. Separate meetings of Independent Directors

Clause VII of the Code stipulates that the Independent Directors of a company shall hold at least one meeting in a financial year without the attendance of non- Independent Directors and members of management. In this meeting, the Independent Directors having obligated to review the performance of non-Independent Directors, board, Chairperson of the company and assess quality, quantity and timeliness of flow of information between the company, management and board, which is necessary for the board to effectively and reasonably perform their duties.

H. Accountability of Independent Director

Section 149(12) prescribes that notwithstanding contained in the Act, an Independent Director shall be held liable only in respect of such acts or omissions which have occurred with his knowledge which knowledge is attributable through the board process and with his consent or connivance or where he has not acted diligently.

Author : Navneet Gupta
Partner

**EXCLUSIVE ALLIANCE PARTNERS - R&P PARTNERS and A.R. GUPTA & ASSOCIATES, AHMEDABAD
CHENNAI | COIMBATORE | HYDERABAD | MADURAI | KOCHI | TRIVANDRUM**

www.sngpartners.in

DELHI

One, Bazar Lane,
Bengali Market,
New Delhi 110001

+91 11 43582000

13, Babar Road,
Bengali Market
New Delhi 110001

+91 11 43011624/25/26

R – 26, Ground Floor,
South Extension Part II,
New Delhi 110049

+91 11 46175500

I-6, Jungpura-B,
New Delhi – 110014

+91 11 46175500

BENGALURU

2nd Floor, 15/7, Saraf Towers,
Primrose Road, Off M G Road,
Ashoka Nagar,
Bengaluru 560001

+91 80 46675151

MUMBAI

9th Floor, Nehru Centre,
Dr. Annie Besant Road,
Worli, Mumbai - 400 018

+91 22 69215151

1011-1015 Raheja Chambers,
10th Floor, Nariman Point,
Free Press Journal Marg,
Mumbai 400021

+91 22 6825 5151

13th Floor, Earnest House
NCPA Marg,
Nariman Point
Mumbai-400021

+91 22 6983 5751