

Newsletter
Volume 12, July 2023



SNG & PARTNERS
Advocates & Solicitors
ESTD 1962



5

Environmental, Social and Governance (ESG)

1. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023
2. Draft Green Credit Programme Implementation Rules, 2023
3. Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2023
4. BRSR Core- Framework for assurance and ESG Disclosures for value chain
5. Master Circular for ESG Rating Providers
6. A new category of Mutual Fund schemes for Environmental, Social and Governance (ESG) investing and related disclosures by Mutual Funds

9

INSOLVENCY AND BANKRUPTCY CODE (IBC)

1. Advisory issued by NCLT, New Delhi regarding Go Air Ticket Holder- Refund Claims
2. Delhi High Court allows owners of aircrafts leased to Go Air to access the airport and carry out inspection
3. NCLAT, New Delhi upholds order of dismissing Sec 9 application on the ground of limitation
4. Madras High Court opines: Security interest under IBC must be created due to a transaction
5. Claim of electricity supplier regarding supply of electricity to be decided by Liquidator, rules SC, Read Judgement
6. NCLT, Mumbai Bench dismisses petition under Sec 9 as claims separately fail to meet the minimum threshold, Read Order
7. NCLT, Mumbai Bench expounds: Homebuyers can only vote on resolution plan as a class

INDEX

8. NCLAT, New Delhi expounds: Sec 9 application cannot be entertained when the dispute is pre-existing
9. NCLAT, Chennai Bench rules: Sec 7 is maintainable against co-borrower
10. NCLAT, New Delhi opines: The date of default for the guarantor will be when notice invoking the guarantee issued
11. NCLAT, New Delhi rules: No debt if no direct disbursement of money to the corporate debtor
12. NCLAT, New Delhi modifies the resolution plan to direct payments to all operational creditors
13. NCLAT, New Delhi expounds: Suspended directors have no locus standi to challenge resolution plan approved by CoC

13

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. IFSCA (Capital Market Intermediaries) (Amendment) Regulations, 2023
2. IFSCA (Banking) (Amendment) Regulations, 2023

13

MINISTRY OF CORPORATE AFFAIRS (MCA)

1. NCLAT, New Delhi expounds situations in which meetings of shareholders and creditors can be dispensed with, Read Judgement

13

RESERVE BANK OF INDIA (RBI)

1. Master Direction on Minimum Capital Requirements for Operational Risk
2. Inclusion of "NongHyup Bank" in the Second Schedule of the Reserve Bank of India Act, 1934

INDEX

15

SECURITIES EXCHANGE BOARD OF INDIA (SEBI)

1. Master Circular for Issue of Capital and Disclosure Requirements
2. Master Circular for listing obligations and disclosure requirements for Non-Convertible Securities, Securitised Debt Instruments and/or Commercial Paper
3. Manner of achieving minimum public unitholding- REITs
4. Trading supported by the Blocked amount in the Secondary Market
5. Issuance of units of AIFs in dematerialised form
6. Format for Annual Secretarial Compliance Report for REITs
7. Modalities for launching Liquidation Scheme and for distributing the investments of Alternative Investment Funds (AIFs) in-specie
8. Amendments to guidelines for the preferential issue and institutional placement of units by a listed InvIT
9. Amendments to guidelines for preferential issue and institutional placement of units by a listed REIT
10. Appointment of Director nominated by the Debenture Trustee on board of issuers
11. Disclosure of information on Issuers not cooperating (INC) with CRAs
12. Master Circular for Credit Rating Agencies
13. Master Circular for Infrastructure Investment Trusts (InvITs)
14. Master Circular for Real Investment Trusts (REITs)
15. Master Circular for Debenture Trustees
16. Master Circular for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities

17. Master Circular for issue and listing of Non-Convertible securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper
18. Regulatory Framework for Sponsors of a Mutual Fund
19. Roles and responsibilities of Trustees and board of directors of Asset Management Companies (AMCs) of Mutual Funds
20. Disclosure of material events/information by listed entities under Regulations 30 and 30A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015
21. Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations")- extending the framework for restricting trading by Designated Persons by freeing PAN at security level to all listed companies in a phased manner
22. Consultation paper on "Prudential norms for exposure of Clearing Corporations"
23. Securities Contracts (Regulation)(Stock Exchanges and Clearing Corporations) (Second Amendment) Regulations, 2023
24. Securities and Exchange Board of India (Stock Brokers) (Second Amendment) Regulations, 2023
25. Resources for Trustees of Mutual Funds
26. Investment by Mutual Fund Schemes and AMCs in units of Corporate Debt Market Development Fund
27. Framework for Corporate Debt Market Development Fund ("CDMDF")
28. Mandating legal entity identifier ("LEI") for all non-individual foreign portfolio investors (FPIs)
29. SEBI is at an early stage of considering simplification the process of onboarding clients by adopting a risk-based approach

26

RECOVERY CERTIFICATE IN RERA: EXECUTION AND ITS EFFECTIVENESS



Editor's note

I am pleased to share with you the SNG Newsletter for the month of July, 2023.

In this issue, we have covered various circulars and directives made by SEBI in the domain of Environmental, Social, and Governance (ESG) reflecting an increasing emphasis on sustainable business practices and responsible investing.

Recent judgements related to IBC are included starting with an advisory issued by the NCLT in New Delhi pertaining to the refund claims of Go Air ticket. The Delhi High Court granted aircraft lessors access to inspect their leased aircraft at airports, further illustrating the balance between lessors' rights and ongoing proceedings.

The Supreme Court's perspective on secured creditors' rights during insolvency procedures sheds light on the complexities of moratorium periods and the restoration of creditor rights.

Distinct decisions by various NCLT and NCLAT benches emphasize the necessity of meeting specific thresholds for petition maintainability, highlighted homebuyers' collective voting rights, and examine operational debts within pre-existing disputes.

Further, the role of corporate guarantors, and the parameters for invoking the guarantee are clarified by NCLAT, New Delhi.

Under the IFSCA the definitions of "Capital Market intermediary" and "Distributor" have been introduced, refining the scope and roles of entities operating within the IFSC. IFSCA (Banking) (Amendment) Regulations, 2023, allow banks to establish a banking unit either as a subsidiary or a branch, thereby facilitating diversified banking models within the International Financial Services Centre.

The National Company Law Appellate Tribunal (NCLAT), New Delhi, has provided valuable insights into the conditions under which shareholder and creditor meetings can be dispensed with under Section 232(1) of the Companies Act, 2013.

The Reserve Bank of India (RBI) has issued a Master Direction on Minimum Capital Requirements for Operational Risk, a measure aimed at ensuring that commercial banks maintain adequate regulatory capital against operational risk exposures. Further, RBI's inclusion of "NongHyup Bank" in the Second Schedule of the Reserve Bank of India Act, 1934, exemplifies its commitment to regulatory oversight and fostering a robust financial ecosystem.

The Master Circulars issued by SEBI for various instruments, including Issue of Capital and Disclosure Requirements, listing obligations, and disclosure requirements for non-convertible securities, securitized debt instruments, and commercial paper, consolidate key guidelines, enabling stakeholders to access relevant information seamlessly are important.

SEBI's framework for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) is reported. In addition, SEBI's emphasis on disclosing material events by listed entities, promoting transparency, and a proposed consultation paper on prudential norms for exposure of Clearing Corporations demonstrate the regulator's proactive approach in addressing emerging challenges.

The dynamic regulatory landscape presented by IFSCA, MCA, RBI, and SEBI reflects a concerted effort to foster financial stability, innovation, and transparency within the international financial services sector and domestic markets.

I hope you find this issue of the newsletter useful.

Best wishes,

Rajesh Narain Gupta

Managing Partner,
SNG & Partners

A. ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)

1. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023

SEBI has introduced the following amendments in the Listing Obligations and Disclosure Requirements:

a. Substitution of Regulation 34(2)(f):

“For the top one thousand listed entities based on market capitalization, a Business Responsibility and Sustainability Report on the environmental, social and governance disclosures, in the format as may be specified by the Board from time to time:

Provided that the assurance of the Business Responsibility and Sustainability Report Core shall be obtained, with effect from and in the manner as may be specified by the Board from time to time:

Provided further that the listed entities shall also make disclosures and obtain assurance as per the Business Responsibility and Sustainability Report Core for their value chain, with effect from and in the manner as may be specified by the Board from time to time:

Provided further that the remaining listed entities, including the entities that have listed their specified securities on the SME Exchange, may voluntarily disclose the Business Responsibility and Sustainability Report and may voluntarily obtain the assurance of the Business Responsibility and Sustainability Report Core, for themselves or their value chain, as the case may be.

Explanation:

1: For this clause:

- (i) market capitalization shall be calculated as on the 31st day of March of every financial year;
- (ii) Business Responsibility and Sustainability Report Core shall comprise such key performance indicators as may be specified by the Board from time to time;
- (iii) “value chain” for the listed entities shall be specified by the Board from time to time”

The amendment has been brought into force by SEBI to enhance the reliability of ESG disclosures.

[Read More](#)

2. Draft Green Credit Programme Implementation Rules, 2023

The Government of India introduced LiFE ('Lifestyle for Environment') as a grassroots-level mass movement for combating climate change and promoting environmental actions for a better sustainable way of living.

To enable this, a Green Credit Programme is proposed to be launched at a national level. The aim is to incentivise voluntary environmental actions of stakeholders. The Programme will also motivate private-sector industries to fulfil their obligations and undertake activities that are relevant to buying Green Credits.

The Green Credits will also be made available for trading on a domestic platform. Therefore, a domestic voluntary market platform is instituted by the Central Government. Public comments are invited on the same.

The rules drafted for the same are titled Green Credit Programme Implementation Rules, 2023. They will come into effect from the date published in the official gazette.

[Read More](#)

3. Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2023

SEBI has inserted Chapter IV in the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999.

The chapter is titled "ESG Rating Providers". The chapter contains definitions for ESG ratings and ESG rating providers.

The following heads are introduced in the chapter:

- a. Eligibility criteria
- b. Grant of certificate as an ESG rating provider
- c. Conditions of certificate
- d. Code of conduct
- e. Transparency, governance and prevention of conflict of interest
- f. Rating process and monitoring of ESG Rating
- g. Disclosure of ESG rating definitions

[Read More](#)

4. BRSR Core- Framework for assurance and ESG Disclosures for value chain

The BRSR Core is a subset of BRSR consisting of key performance indicators under 9 ESG attributes. The BRSR Core specifies the data and approach for reporting and assurance.

As of now, from 2023-2024, the top 1000 listed entities shall make disclosures as per the updated BRSR format as part of the annual reports.

The ESG disclosures for the value chain shall apply to the top 250 listed entities on a comply or explain basis from FY 2024-25.

[Read More](#)

5. Master Circular for ESG Rating Providers

ESG rating providers are regulated under the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999.

A master circular has been issued by SEBI and the ERPs are directed to comply with the conditions as prescribed under this master circular.

The circular will come into effect immediately.

[Read More](#)

6. A new category of Mutual Fund schemes for Environmental, Social and Governance (ESG) investing and related disclosures by Mutual Funds

To facilitate green financing with a focus on enhanced disclosures and mitigation of greenwashing risk, the following has been decided:

a. Thematic schemes on ESG strategies

It has been decided to introduce a separate sub-category for ESG investments under the thematic category of equity schemes. A minimum of 80% of the total assets under management of ESG schemes shall be invested in equity.

b. Investment criteria for ESG Schemes

It has been decided that an ESG scheme shall invest a minimum of 65% of its assets under management in companies that are reporting on comprehensive BRSR.

c. Disclosure requirements for ESG schemes

The mutual funds shall disclose the name of the ESG strategy in the name of the concerned ESG fund/scheme.

[Read More](#)

B. INSOLVENCY AND BANKRUPTCY CODE (IBC)

1. Advisory issued by NCLT, New Delhi regarding Go Air Ticket Holder- Refund Claims

Concerning the case of Go Air (CP No. (IB)-264 (PB)/2023), the NCLT has issued an advisory stating that a Resolution Professional has been appointed in the matter.

All the passengers are advised to make claims before the RP and the guidelines for the same are also annexed in the advisory.

[Read More](#)

2. Delhi High Court allows owners of aircraft leased to Go Air to access the airport and carry out inspection

The Delhi High Court allowed the Petitioners who are lessors and owners of aircraft that have been leased to Go Air (India) Ltd. to access the airports where the aircraft were parked and carry out an inspection.

[Read More](#)

3. NCLAT, New Delhi upholds order of dismissing Sec 9 application on the ground of limitation

The NCLAT, New Delhi observed that the certificate relied upon by the Appellant was neither titled as a completion certificate nor did it give any date of completion of the project. Therefore, it was ruled that the NCLT did not commit any error in rejecting the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") on the grounds of limitation.

[Read More](#)

4. Madras High Court opines: Security interest under IBC must be created due to a transaction

The Madras High Court propounded that the security interest as per the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"), must be created under a transaction securing payment or performance of an obligation. In the present case, there was no transaction, and no security interest was created.

It was noted that there was no nexus between the Petitioner and Respondent No.1. The Petitioner was an unpaid vendor with no connection to the Customs Department. The ambit of the security interest cannot be stretched enough to cover goods based on violations committed by another party.

It was further ruled that any creditor must file a claim within

the time limit as per Regulation 16 of the Regulations, 2016, i.e., 30 days from the publication date of advertisements to secure the rights. It was also held that Respondent No.1 could not claim the benefit of any statutory charge and, therefore, would not be a secured creditor.

[Read More](#)

5. Claim of electricity supplier regarding supply of electricity to be decided by Liquidator, rules SC, Read Judgement

.....

The Hon'ble Supreme Court opined that during an insolvency process, a secured creditor could not realize its dues by initiating the proceedings. This is because Section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") enables the imposition of a moratorium period. It was noted that the rights of secured creditors are restored only in the event of failure of the insolvency resolution process at the stage of liquidation.

Further, the Bench examined section 53 and opined that the government dues and operational debts, as per the mechanism, have lower priority than dues owed to the unsecured financial creditors.

Moreover, the secured creditor has to decide at the beginning of the liquidation process whether or not to relinquish its secured interest. If it relinquishes, its dues are ranked higher in the waterfall mechanism. Observing all this, the Supreme Court directed the liquidator to adjudicate the Appellant's claims regarding the electricity supply bills.

[Read More](#)

6. NCLT, Mumbai Bench dismisses petition under Sec 9 as claims separately fail to meet the minimum threshold, Read Order

.....

The NCLT, Mumbai Bench expounded that if the individual claims of the Operational creditors do not meet the threshold limit the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") has to be dismissed.

[Read More](#)

7. NCLT, Mumbai Bench expounds: Homebuyers can only vote on resolution plan as a class

The NCLT, Mumbai Bench propounded that homebuyers can vote in favour or against the plan only as a class. Therefore, there is no locus standi for some of the home buyers who are otherwise in the minority to oppose the plan as dissatisfied home buyers.

[Read More](#)

8. NCLAT, New Delhi expounds: Sec 9 application cannot be entertained when the dispute is pre-existing

The NCLAT, New Delhi analysed Section 5(21) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) which defines operational debt and opined that the claim must bear some nexus with a provision of goods or services irrespective of who is to be the supplier or receiver. In the present case, it was noted that the dispute was pre-existing; therefore, the Section 9 application was rightly dismissed.

[Read More](#)

9. NCLAT, Chennai Bench rules: Sec 7 is maintainable against co-borrower

The NCLAT, Chennai Bench expounded that when the Appellant itself chose to join hands with the co-borrower and owned all rights and liabilities as a co-borrower, then the Section 7 application of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) was rightly admitted against the Appellant.

Subsequently, even a board resolution along with an addendum agreement was executed.

Therefore, the Appellant was a co-borrower against whom Section 7 Application was maintainable.

[Read More](#)

10. NCLAT, New Delhi opines: The date of default for the guarantor will be when notice invoking the guarantee issued

The NCLAT, New Delhi Bench has opined that the default date for the principal borrower cannot be put to be the default date for the corporate guarantor.

It was further ruled that the liability of the corporate guarantor and the principal borrower is coextensive, but when the guarantee requires invocation of the deed, the default date of the guarantor should be when the corporate guarantee has been invoked.

[Read More](#)

11. NCLAT, New Delhi rules: No debt if no direct disbursement of money to the corporate debtor

The NCLAT, New Delhi expounded that the trigger for Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) is the occurrence of default by the Corporate Debtor. The Bench expounded that it is a basic requirement of the Section that there must be a financial debt owed by the Corporate Debtor to the financial creditor.

In the present case, the Appellant failed to prove any direct disbursement of money to the Corporate Debtor. Further, the Corporate Debtor did not admit the debt even once. There was no proof of the existence of a debt.

Further, it was noted that there was no case made for piercing the corporate veil as the Appellant could not even prove any direct transactions with the Corporate Debtor.

[Read More](#)

12. NCLAT, New Delhi modifies the resolution plan to direct payments to all operational creditors

The NCLAT, New Delhi expounded that it was open for the Resolution Applicant to allocate no amount to any of the Operational Creditors as per the mechanism under Section 53. However, the rest could not be denied when payments were made to other operational creditors.

The Bench directed to modify the plan to the extent that the payments should be made to all 4 operational creditors.

[Read More](#)

**13. NCLAT, New Delhi expounds:
Suspended directors have no locus
standi to challenge resolution plan
approved by CoC**

The NCLAT, New Delhi Bench opined that after a charge was created in favour of the Bank, the Corporate Debtor needed to get the consent of the Bank to execute the lease rent agreement.

It was expounded that the suspended board of directors does not have locus standi to file an appeal against the plan's approval by the committee of creditors.

Regarding the change of business plan due to the resolution plan, it was ruled that the same is permitted under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"). Further, in the present case, the Corporate Debtor was not doing business for many years.

[Read More](#)

C. INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

**1. IFSCA (Capital Market
Intermediaries) (Amendment)
Regulations, 2023**

The IFSCA has amended the IFSCA (Capital Market Intermediaries) Regulations to insert the definitions of:

- a. Capital Market intermediary
- b. Distributor

[Read More](#)

**2. IFSCA (Banking) (Amendment)
Regulations, 2023**

The IFSCA had amended IFSCA (Banking) Regulations, 2020 to allow banks to set up a banking unit as a subsidiary or as a branch.

[Read More](#)

D. MINISTRY OF CORPORATE AFFAIRS (MCA)

1. NCLAT, New Delhi expounds situations in which meetings of shareholders and creditors can be dispensed with, Read Judgement

The NCLAT, New Delhi expounded that if the transferor company is a wholly owned subsidiary of the Transferee Company and there is no reorganization of share capital and the creditors and shareholders are not affected by the implementation of the scheme and further, the assets far exceed the liabilities, then the requirement for holding a meeting as per Section 232(1) of the Companies Act, 2013 could be dispensed with.

[Read More](#)

E. RESERVE BANK OF INDIA (RBI)

1. Master Direction on Minimum Capital Requirements for Operational Risk

The RBI has issued a Master Direction on Minimum Capital Requirements for Operational Risk. The directions require as specified Commercial Bank to hold sufficient regulatory capital against its exposures arising from Operational Risk.

These directions are titled 'Reserve Bank Of India (Minimum Capital Requirements for Operational Risk) Directions, 2023' and the effective date for the same will be communicated separately.

[Read More](#)

2. Inclusion of "NongHyup Bank" in the Second Schedule of the Reserve Bank of India Act, 1934

RBI has notified that the NongHyup Bank has been included in the Second Schedule of the Reserve Bank of India Act, 1934.

[Read More](#)

F. SECURITIES EXCHANGE BOARD OF INDIA (SEBI)

1. Master Circular for Issue of Capital and Disclosure Requirements

SEBI has issued a master circular to give stakeholders access to all circulars relating to the Securities Exchange Board Of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 in one place.

[Read More](#)

2. Master Circular for listing obligations and disclosure requirements for Non-Convertible Securities, Securitized Debt Instruments and/or Commercial Paper

SEBI has issued a master circular to effectively regulate the corporate bond market and enable the stakeholders to have access to all the applicable circulars relating to the Securities Exchange Board Of India (listing obligations and disclosure requirements) Regulations, 2015 in one place.

This master circular includes prescribed formats for issuers to submit statements pertaining to the utilization of issue proceeds and review ratings received from credit rating agencies. Other provisions in the master circular are:

- a. Format for filing financial information, limited review report/audit report for issuers of Non-Convertible Securities, a statement indicating utilization, disclosures of corporate governance by listed entities
- b. Disclosure obligations of listed entities in relation to their related party transactions.
- c. Non-compliance with provisions related to continuous disclosures.

[Read More](#)

3. Manner of achieving minimum public unitholding- REITs

SEBI(Real Estate Investment Trusts) Regulations, 2014 mandates that any listed REIT having public unitholding below 25% shall increase the public unitholding to a minimum 25% within three years from the date of listing of units under the initial offer.

Various methods have been specified by SEBI that the Manager of REIT shall adopt to achieve minimum public unitholding. Some of the methods are:

- a. Issuance of units to the public through offer documents

- b. Offer for sale units held by the Sponsor/ Manager/ and their associates/related parties and Sponsor group to the public through an offer document.
- c. Rights issue to public unitholders
- d. Bonus issue to public unitholders
- e. Allotment of units under institutional placement

[Read More](#)

4. Trading supported by a Blocked amount in the Secondary Market

SEBI has introduced a supplementary process for trading in the secondary market based on blocked funds in an investor's bank account to protect the investors from the default of members (Trading members/ Clearing members).

In this proposed framework, the funds will remain in the account of the client but will be blocked in the favour of the Clearing Corporation till the expiry of the block mandate or till the block is released by the Clearing Corporation.

The circular also explains how the below-mentioned scenarios will be handled under the proposed framework:

- a. Prefunded purchase by client
- b. Delivery sale by client by EPI
- c. Purchase/sale by client supported by margins
- d. Intraday cash market/derivatives trading

The entities are expected to make the required changes and test the systems and processes for robustness to make the facility live by January 01, 2024.

[Read More](#)

5. Issuance of units of AIFs in dematerialised form

An amendment was made to SEBI (Alternative Investment Funds) Regulations 2012 on June 15, 2023. Regulation 10(aa) of AIF Regulations, AIF will issue units in a dematerialized form subject to the conditions specified by SEBI.

Therefore, SEBI has specified the conditions and issued a timeframe for the dematerialisation of the units.

- a. Schemes of AIFs with a corpus of more than Rs 500 cr.

Latest by October 31, 2023 – dematerialisation of all units issued

November 01, 2023 onwards- Issuance of units only in dematerialisation form.

b. Schemes of AIFs with a corpus less than Rs 500 cr.

Latest by April 30, 2024- dematerialisation of all units issued

May 01, 2024, onwards- Issuance of units only in dematerialisation form.

The circular will come into effect immediately.

[Read More](#)

6. Format for Annual Secretarial Compliance Report for REITs

SEBI has prescribed the following to comply with the annual secretarial compliance report:

- a. The Manager of REIT shall appoint a practising CS to examine the compliance of all applicable SEBI regulations and circulars annually.
- b. The format for the annual secretarial compliance report is also annexed.
- c. The Manager of REIT shall provide documents and information as asked by practising CS for the Secretarial Compliance Report.
- d. The Manager of REIT shall submit the annual Secretarial Compliance Report within 60 days from the end of each financial year.

The circular shall come into force with immediate effect.

[Read More](#)

7. Modalities for launching Liquidation Scheme and for distributing the investments of Alternative Investment Funds (AIFs) in-specie

The following new regulations were inserted in the SEBI (Alternative Investment Funds) Regulations, 2012:

- a. Regulation 2(1)(pb)
- b. Regulation 2(1)(pc)
- c. Regulation 29(9)

The following has been specified in this regard:

- (i) Liquidation Scheme

If the AIF decides to launch a liquidation scheme, the AIF

shall obtain the consent of 75% of investors. The scheme shall contain the words “liquidation scheme” in its name. Further, the AIF shall arrange a bid for at least 25% of the value of the unliquidated investments.

- (ii) In specie distribution of unliquidated investments of a scheme

If the AIF decides to launch an unliquidated investment in specie, the AIF shall obtain the consent of 75% of investors. Further, the AIF shall arrange a bid for a minimum 25% of the value of the unliquidated investments.

The circular shall come into force with immediate effect.

[Read More](#)

8. Amendments to guidelines for the preferential issue and institutional placement of units by a listed InvIT

Based on the feedback received, the guidelines for preferential issues and institutional placement of units by a listed InvIT are modified. Below is the modification:

- a. Clause 2 of Annexure II of SEBI circular dated November 27, 2019:

“Pricing of units:

The institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date:

Provided that the InvIT may offer a discount of not more than five percent on the price so calculated, subject to the approval of unitholders through a resolution as specified in guideline 2.1.

Explanation: “relevant date” for causes related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue.”

The circular shall come into force with immediate effect.

[Read More](#)

9. Amendments to guidelines for preferential issue and institutional placement of units by a listed REIT

Based on the feedback received, the guidelines for preferential issues and institutional placement of units by listed REITs are modified. Below is the modification:

- a. Clause 2 of Annexure II of SEBI circular dated November 27, 2019:

“Pricing of units:

The institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date:

Provided that the REIT may offer a discount of not more than five percent on the price so calculated, subject to the approval of unitholders through a resolution as specified in guideline 2.1.

Explanation: “relevant date” for causes related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue.”

The circular shall come into force with immediate effect.

[Read More](#)

10. Appointment of Director nominated by the Debenture Trustee on board of issuers

As per SEBI (Issue and Listing of Non- Non-convertible Securities) Regulations, 2021 an issuer is obligated to ensure that Articles of Association requires its Board of Directors to appoint as director, the person nominated by the Debenture Trustee.

The obligation is for the issuers that are a company, however, no similar obligations exist for the issuers that are not a company. Therefore, certain representations have been received from the Debenture Trustee:

- Appointment of a director on the board of certain issuers which are under statutes requires prior approval of the President of India.
- Certain issuers are unable to appoint Nominee Directors on their boards as their principal documents do not provide for it.
- Issuers incorporated under different statutes are also under the purview of other regulators and are unable to

execute such amendments as the board is governed by different statutes that do not provide for the appointment of nominee directors.

In case of the above-mentioned three situations, an undertaking should be submitted to the Debenture Trustee and the Debenture Trustee shall ensure compliance with the circular.

The circular comes into force with immediate effect.

[Read More](#)

11. Disclosure of information on Issuers not cooperating (INC) with CRAs

To promote transparency and information regarding the non-cooperative issuers to various stakeholders, market participants and investors, the following is specified by SEBI:

- a. A CRA shall disclose 2 lists of issuers who are non-cooperative with the CRA.
- b. The format has been provided as per which the list shall be disclosed.

The above disclosures shall be updated daily.

The circular shall come into force from July 15, 2023.

[Read More](#)

12. Master Circular for Credit Rating Agencies

SEBI has issued a master circular compiling all the existing circulars concerning Credit Rating Agencies so that the stakeholders can have access in one place.

[Read More](#)

13. Master Circular for Infrastructure Investment Trusts (InvITs)

SEBI has issued a master circular for effective regulation of infrastructure Investment Trusts. This is done so that the stakeholders can have access to all applicable circulars in one place.

[Read More](#)

14. Master Circular for Real Investment Trusts (REITs)

SEBI has issued a master circular for effective regulation of real estate Investment Trusts. This is done so that the stakeholders can have access to all applicable circulars in one place.

[Read More](#)

15. Master Circular for Debenture Trustees

For effective regulation of the corporate bond market and to enable the Debenture Trustees and other stakeholders to have access at one place to all the circulars related to the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, SEBI has issued a master circular compiling all the circulars.

[Read More](#)

16. Master Circular for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities

A master circular has been issued by SEBI which provides a chapter-wise framework for compliance with various obligations under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

[Read More](#)

17. Master Circular for issue and listing of Non-Convertible securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper

A master circular has been issued by SEBI for effective regulation of the corporate bond market and to enable the issuers and stakeholders to have access to all the circulars at one place related to the issue and listing of Non-Convertible securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper.

[Read More](#)

18. Regulatory Framework for Sponsors of a Mutual Fund

The SEBI (Mutual Funds) Regulations, 1996 were amended on June 26, 2023. In relation to the same, the following has been decided:

- a. Regulation 21(1)(f)
The Asset Management Company (“AMC”) shall deploy the minimum net worth either in cash, money market instruments, government securities, treasury bills or in listed AAA-rated debt securities.
- b. Acquisition of an AMC
It has been decided that in case of a change in control of an existing AMC, the cost of acquisition may also be funded out of borrowings by a sponsor. Further, the stake of the sponsor will be free from any encumbrances.
- c. Pooled Investment Vehicle as a sponsor of Mutual Funds
Only the private equity funds can sponsor a mutual fund. A criteria has also been prescribed for any Private Equity to qualify as a mutual fund sponsor.

[Read More](#)

19. Roles and responsibilities of Trustees and board of directors of Asset Management Companies (AMCs) of Mutual Funds

According to amendments in the SEBI (Mutual Funds) Regulations, 1996, the following has been decided:

- a. Core Responsibilities of the Trustees
The trustees shall exercise due diligence on matters as specified by SEBI. The core responsibilities are:
 - (i) Trustees shall ensure fairness of the fees and expenses charged by AMCs.
 - (ii) Trustees shall review the performance of AMC in its scheme vis-à-vis performance of peers
 - (iii) Trustees shall be responsible for addressing conflict of interest between stakeholders and unitholders.
 - b. The Trustees shall independently evaluate the extent of compliance by AMC vis-avis the identified key areas.
 - c. The trustees shall periodically review the steps taken by AMCs for folios that do not contain all the KYC attributes.
- The circular shall come into force from January 01, 2024.

[Read More](#)

20. Disclosure of material events/ information by listed entities under Regulations 30 and 30A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015

To bring more transparency and ensure effective and efficient disclosure of material events by the listed entities, the LODR Regulations were notified and amended. The present circular issued by SEBI consists of 4 Annexures regarding the disclosure requirements under Regulations 30 and 30A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015.

a. Annexure I

It specifies the details that are to be provided while disclosing the events in Part A Schedule III.

b. Annexure II

It specifies the timelines for disclosing events as per Part A of Schedule III.

c. Annexure III

It guides when an event/information can be said to have occurred.

d. Annexure IV

It guides the criteria for the determination of the materiality of events/information.

[Read More](#)

21. Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”)- extending the framework for restricting trading by Designated Persons by freeing PAN at security

SEBI had introduced a framework for compliance requirements under Clause 4 of Schedule B read with Regulation 9 of PIT Regulations. The framework was initially applicable to only those listed companies that were part of the benchmark indices i.e., NIFTY 50 and SENSEX.

The above framework has now been extended to all the Stock Exchanges. The timewise implementation of the framework has been specified.

[Read More](#)

22. Consultation paper on “Prudential norms for exposure of Clearing Corporations”

SEBI has released a consultation paper to mitigate the concentration risk or exposure of Clearing Corporations.

While framing the investment policy, the Clearing Corporations shall consider the following principles:

a. Highest degree of safety and least market risk

- b. Investment to be broadly in fixed deposits/central government securities and liquid schemes of debt mutual funds.

Following are some heads for which public comments are invited:

- (i) Exposure to clearing corporations
- (ii) Criteria for selection of banks
- (iii) Bank exposure through cash, FDs and BGs limit

The comments can be sent latest by August 10, 2023.

[Read More](#)

23. Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Second Amendment) Regulations, 2023

Following amendments have been made to Securities Contracts (Regulation)(Stock Exchanges and Clearing Corporations) Regulations, 2018:

- a. Regulation 22D
After the words “clearing members” and before the words “and issuers of the debt securities”, “participants” has been inserted.
- b. Regulation 37 (2)
After the words “the event of clearing members” and before the words “failing to honour”, “participants” have been inserted.
- c. Regulation 37(3)
After the words “failure of clearing member”, “participants” have been inserted.

[Read More](#)

24. Securities and Exchange Board of India (Stock Brokers) (Second Amendment) Regulations, 2023

Following amendments have been made to the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992:

- a. Regulation 10A
Insertion of 2nd proviso:
“Provided further that no separate registration shall be required for any person registered with the limited purpose clearing corporation as a participant for participating in the tri-party repo segment for undertaking proprietary trades in corporate bonds”.

- a. Insertion of Explanation 2 in Regulation 10A
“Explanation 2- For these regulations, “participant” means any person who is an eligible entity as stipulated under the Repurchase Transactions (Repo) (Reserve Bank) Directions, 2018.”

[Read More](#)

25. Resources for Trustees of Mutual Funds

The master circular issued by SEBI on May 19, 2023, on mutual funds has been amended. The format for half-yearly trustee reports provided under Chapter 2 of formats has been modified:

“72.Compliance with the requirement of standing arrangements with independent firms for special purpose audit and/or to seek legal advice.”

[Read More](#)

26. Investment by Mutual Fund Schemes and AMCs in units of Corporate Debt Market Development Fund

Corporate Debt Market Development Fund (“CDMDF”) has to be launched as a close-ended scheme with an initial tenure of 15 years from the date of initial closing. Accordingly, SEBI has decided the following:

- a. AMCs of mutual funds shall subscribe to the units of CDMDF.
- b. Specified debt-oriented MF Schemes shall invest 35 bps of their AUM in the units of CDMDF.
- c. The initial contribution shall be based on the AUM of the specified MF Schemes as of December 31, 2022.
- d. The sellers of debt securities shall be paid 90% of the consideration in cash and 10% in terms of units of CDMDF.

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

[Read More](#)

27. Framework for Corporate Debt Market Development Fund (“CDMDF”)

The following has been prescribed by SEBI for the CDMDF:

- a. The fund shall deal only in the following securities:
 - (i) Low-duration government securities
 - (ii) Treasury bills
 - (iii) Tri-party repo on G-sec
 - (iv) Guaranteed corporate bond repo with maturity
- b. CDMDF shall follow the fair pricing document
- c. CDMDF shall follow the loss waterfall accounting
- d. CDMDF shall disclose the Net Asset Value of the fund on all business days

[Read More](#)

28. Mandating legal entity identifier (“LEI”) for all non-individual foreign portfolio investors (FPIs)

The LEI code is a unique global 20-character code to identify legally distinct entities that engage in financial transactions.

Currently, the FPIs have to provide their LEI details in the Common Application Form. Now, it has been decided to make the requirement of providing LEI details for all non-individual FPIs mandatory.

The circular shall come into force with immediate effect.

[Read More](#)

29. SEBI is at an early stage of considering simplification of the process of on-boarding clients by adopting of risk-based approach

The SEBI has released a press release to clarify that there is no proposal to curb retail participation in derivative markets.

Currently, it is prescribed that the stock broker shall have documentary evidence of financial capability for all clients for trading in the derivative segment.

It is being considered if the said can be made applicable based on risk assessment of the clients.

However, any such changes would go through the comprehensive consultation process.

[Read More](#)

G. RECOVERY CERTIFICATE IN RERA: EXECUTION AND ITS EFFECTIVENESS

INTRODUCTION

The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “RERA Act”) was introduced with the primal objective of the regularization and standardization of real estate sector and enforcing accountability to the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the home buyers through legislation to the extent permissible under the law. The statement and object of RERA Act states that “An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”¹

RERA serves as a powerful instrument for homebuyers to voice their concerns against developers, builders, or promoters in the real estate industry who, despite making promises and accepting buyers’ hard-earned money, fail to deliver the possession of their property within the stipulated timeframe. RERA ensures that the investment made in a real estate project is safeguarded and empowers home buyers to opt-out of the project and claim a full refund of their deposited amount, including interest, from the builder² and also provide the provision for filing complaint with the RERA Authority³.

Whenever an allottee files a complaint under Section 31 of the RERA Act before the RERA or the Adjudicating Officer, it undergoes adjudication. If the default is proven, the RERA or the Adjudicating Officer, as appropriate, has the power under Section 38 and 71 of the RERA Act to levy penalties or interest on the builder or developer. Additionally, they have the power to order compensation to the allottee for the losses incurred.

RECOVERY CERTIFICATE

Once the RERA Authority pass an order upon the complaint filed by the allottee under Section 31 of the RERA Act, the builder has to execute the order within 45 days or within such a time period as specified in the order and provide a refund or compensation to the allottee. In case, the builder fails to enforce the order and further commits default in paying the interest or penalty or compensation, the home buyer can file for the execution of the said order passed by the RERA or the Adjudicating Officer against the builder before the same RERA Authority under Section 40 of the RERA Act and the RERA Authority has the power to issue Recovery Certificate to recover the said penalty

1 Real Estate (Regulation and Development) Act, 2016, ACT NO. 16 OF 2016

2 Section 18, Real Estate (Regulation and Development) Act, 2016

3 Section 31, Real Estate (Regulation and Development) Act, 2016

or interest or compensation from the builder as “arrears of land revenue”.

A Recovery Certificate is issued by the state RERA under Section 40(1) of the Real Estate (Regulation and Development) Act, 2016. As per the sub-section, *if a promoter or allottee or real estate agent fails to pay any interest or penalty or compensation imposed on him by the adjudicating officer or by the RERA or by the Appellate Tribunal under RERA Act or Rules and Regulations made thereunder, then such interest, penalty or compensation shall be recoverable from the defaulting promoter, allottee or real estate agent as arrears of land revenue. For recovery of an amount as arrears of land revenue, recovery certificate is issued.*⁴ The Hon’ble Supreme Court in *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors*⁵ clearly stated that not only interest and penalty but the principal amount is also recovered as arrears of land revenue under Section 40. The Hon’ble Court observed that there exist visible inconsistencies in the powers of the Authority regarding refund of the principal amount under Section 18 of the Act and the text of the provision by which such refund can be referred under Section 40(1) of the Act. If Section 40(1) is strictly construed, it would defeat the purpose of the Act. The Court held that there exists ambiguity in Section 40(1) of the Act and the same must be harmonized with the purpose of the Act. It was further clarified that the amount which has been determined and refundable to the allottees is recoverable within the ambit of Section 40(1) of the Act.

EXECUTION OF RECOVERY CERTIFICATE

The execution of the recovery certificate has not been covered under scheme of the RERA Act. Recovery of arrears of land revenue is a process that is not given under the RERA Act and rather it is a procedure which is enumerated in the Land or Local Laws. In case of Uttar Pradesh, the procedure to recover land revenue is given under the U.P. Revenue Code, 2006 and also in the erstwhile U.P. Zamindari Abolition and Land Reforms Act, 1950. The order passed under Section 40 of the RERA Act which is termed as ‘Recovery Certificate’ is addressed to the District Magistrate of the concerned district and it is further directed to recover the amount, as specified in the said order, from the builder or promoter as arrears of land revenue.

The Recovery Certificate is sent by the RERA Authority to the concerned District Collector requesting to recover the amount under the Revenue Code wherein the recovery certificate is executed through following methods:⁶

- By arrest and detention of the defaulter;
- By attachment and sale of movable property including agricultural produce;
- By attachment of any bank account or locker of the defaulter;

4 Section 40(1) Real Estate (Regulation and Development) Act, 2016

5 *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* 2021 SCC Online SC 1044

6 Section 170 U.P. Revenue Code, 2006

- By attachment of the land in respect of which the arrear is due;
- By lease or sale of the land in respect of which arrear is due;
- By attachment and sale of other immovable property of the defaulter;
- By appointing a receiver of any property movable or immovable, of the defaulter.

In case, the District Magistrate fails to recover the amount as directed by the RERA in the Recovery Certificate under Section 40 the RERA Act, the allottee is left with no remedy under the RERA Act and it is at this juncture the entire exercise done by the allottee is rendered fruitless. However, at this juncture when the District Magistrate fails to abide by the Recovery Certificate issued by the RERA, fully or partially, an allottee can first write a representation addressed to the said District Magistrate explaining his grievance and praying for the compliance of the RC issued by the RERA. If, the District Magistrate still fails to execute the Recovery Certificate then the allottee at this stage can approach the concerned High Court by filing a Writ Petition under Article 226 of the Indian Constitution, seeking a Writ of Mandamus for a direction to the DM to complete the recovery process in compliance of the Recovery Certificate issued by the RERA in a specified period of time.

EFFECTIVENESS OF RECOVERY CERTIFICATE

The validity of the Recovery Certificate has upheld by the Hon'ble Supreme Court and various High Courts and the allottees can get the Recovery Certificate executed by the District Magistrate. However, the ground reality is different from what is there on the paper. In a report published by the Times of India on 3rd October 2020 revealed that the U.P. Rera has disposed of 74% of the total cases in the state. But it has been dragging its feet about securing recovery certificates from the defaulting builders. Of 2,177 RCs issued in the past three years, only 353 have been realised so far ⁷. A report from the District Revenue Officer (DRO) revealed that the Haryana Real Estate Regulatory Authority (HRERA) Gurugram issued 240 recovery certificates against several defaulter builders, but only one had been realised so far. The report added that the remaining 239 certificates have been sent to the concerned district collectors or tehsildar in Gurugram and other states like Delhi and Kolkata. ⁸ It has now come in the knowledge of common man that most of the home buyers despite getting refund order and recovery certificate from the state's RERA have not been able to get the money refunded from the developer as the execution of recovery certificates by the Collector has not been effective enough. The execution of recovery certificates has become a bottleneck in the successful execution of RERA Act.

⁷ UP-Rera lags behind in securing recovery papers | TOI Original - Times of India Videos (indiatimes.com)

⁸ Haryana RERA issues 240 recovery certificates only 1 executed (Money Life.in)

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

www.sngpartners.in

DELHI

R-26, Ground Floor,
South Extension Part II,
New Delhi - 110 049
+91 11 46175500

One Bazar Lane,
Bengali Market,
New Delhi - 110 001
+91 11 43582000

13 Babar Road,
Bengali Market,
New Delhi - 110001
+91 11 43011624

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

96, Free Press House,
Nariman Point,
Mumbai - 400 021
+91 22 68255151

SINGAPORE

3 Church Street
#25-01 Samsung Hub
Singapore - 049 483
+65 93833585