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CORPORATE LEGAL DEVELOPEMNTS

NEWSLETTER SEPTEMBER 2022

Weekly Insights & Updates

16th September 2022

MCA

1. MCA notifies amendment in notification for fast-track corporate insolvency resolution process

August 30, 2022: Ministry of Corporate Affairs (“MCA”) vide its notification S.O. 4142 (E) dated August 30, 2022 has made an amendment in the notification no. S.O. 1911 (E) dated June 14, 2017 (“**said Notification**”), wherein the below amendment is brought out:

- The said Notification provides the corporate debtors who could make an application for fast-track corporate insolvency resolution process under Section 55 of the Insolvency and Bankruptcy Code, 2016 which includes a ‘Startup’ (other than the partnership firm). The definition of ‘Startup’ under Clause (b) of the said Notification has now been substituted to refer ‘Startup’ as a Startup (other than the partnership firm) as defined in the notification number G.S.R. 127(E), dated February 19, 2019 instead of Starup (other than the partnership firm) as defined in the notification number G.S.R. 501(E), dated May 23, 2017.
- The notification is effective from September 2, 2022.

Link [here](#).

RBI

1. Master Directions on Acquisition or Transfer of Immovable Property under Foreign Exchange Management Act, 1999

September 1, 2022: The Reserve Bank of India (“RBI”), vide its notification RBI/FED/2015-16/7 A.P. (DIR Series) Master Directions No.12 2015-2016 issued to Cat-I Authorized Dealer (AD) banks, has replaced the Master Direction - Acquisition or Transfer of Immovable Property under Foreign Exchange Management Act, 1999 (“**Master Directions**”), in order to align it with the new Overseas Investment Framework (comprising of *Foreign Exchange Management (Overseas Investment) Directions, 2022* (“**OI Directions**”), *Foreign Exchange Management (Overseas Investment) Rules, 2022* (“**OI Rules**”), and *Foreign Exchange Management (Overseas Investment) Regulations, 2022* (“**OI Regulations**”).

Part-I of the Master Directions, dealing with acquisition or transfer of immovable property outside India by a person resident in India, shall now be governed by Rule 21 of the OI Rules and

paragraph 25 of the OI Directions.

Link [here](#).

2. Guidelines on Digital Lending

September 02, 2022: RBI, *vide* its notification RBI/2022-23 / 111 DOR. CRE. REC. 66/ 21. 07.001/ 2022-23, has issued the Guidelines on Digital Lending (“**Guidelines**”). According to the Guidelines, “**Digital Lending**” means a remote and automated lending process, largely by use of seamless digital technologies for customer acquisition, credit assessment, loan approval, disbursement, recovery, and associated customer service.

RBI, *vide* its notification, has stated that outsourcing arrangements entered by Regulated Entities (comprising of All Commercial Banks, Primary (Urban) Co-operative Banks, State Co-operative Banks, District Central Co-operative Banks; and Non-Banking Financial Companies (including Housing Finance Companies)) with a Lending Service Provider (LSP)/ Digital Lending Application (DLA) does not diminish the REs’ obligations and they shall continue to conform to the extant guidelines on outsourcing.

Outsourcing by Regulated Entities (as applicable) are presently governed by Para 2.6 of the [Master Circular on “Loans and Advances – Statutory and Other restrictions” dated July 01, 2015](#); Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks issued *vide* [Circular dated November 03, 2006](#) as amended from time to time; Para 120 and 120 A of “[Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company \(Reserve Bank\) Directions, 2016](#)” dated September 01, 2016, as amended from time to time; Para 106 and 106A of the “[Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company \(Reserve Bank\) Directions, 2016](#)” both dated September 01, 2016, as amended from time to time; “[Guidelines for Managing Risk in Outsourcing of Financial Services by Co-operative Banks](#)”, dated June 28, 2021; [Circular on ‘Outsourcing of Financial Services - Responsibilities of regulated entities employing Recovery Agents’ dated August 12, 2022](#), and other related instructions issued by the Reserve Bank from time to time.

The REs are advised to ensure that the LSPs engaged by them and the DLAs (either of the RE or of the LSP engaged by the RE) comply with the Guidelines.

Further, instructions contained in the Guidelines shall be applicable to the ‘existing customers availing fresh loans’ and to ‘new customers getting onboarded’, from the date of the publication of the Guidelines. However, in order to ensure a smooth transition, REs shall be given time till November 30, 2022, to put in place adequate systems and processes to ensure that ‘existing digital loans’ (sanctioned as on the date of the circular) are also in compliance with these Guidelines.

Link [here](#).

3. Review of Prudential Norms – Risk Weights for Exposures guaranteed by Credit Guarantee Schemes (CGS)

September 07, 2022: As per paragraph 5.2 of the [Master Circular on Basel III Capital Regulations dated April 1, 2022](#) applicable to all Scheduled Commercial Banks (Excluding Small Finance Banks, Payments Banks and Regional Rural Banks) (“**Master Circular**”), banks are permitted to apply zero percent risk weights in respect of claims on Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Credit Risk Guarantee Fund Trust for Low Income Housing (CRGFTLIH) and individual schemes under National Credit Guarantee Trustee Company Ltd (NCGTC).

RBI, *vide* its notification RBI/2022-23/ 113 DOR. STR.REC.67/ 21.06.201/2022-23 issued to all Scheduled Commercial Banks (including Regional Rural Banks), all Primary (Urban) Co-operative Banks, all Non-Banking Financial Companies (including Housing Finance Companies), and all All-India Financial Institutions, in order to have a consistent approach with regard to risk weights for exposures guaranteed by the Trust Funds as mentioned in the paragraph above, the risk weight

of zero percent shall be applicable in respect of exposures guaranteed under any existing or future schemes launched by CGTMSE, CRGFTLIH and NCGTC satisfying the following conditions:

- i. **Prudential Aspects:** The guarantees provided under the respective schemes should comply with the requirements for credit risk mitigation in terms of paragraph 7.5 of the Master Circular Capital Regulations dated April 1, 2022 which requires such guarantees to be direct, explicit, irrevocable and unconditional.
- ii. **Restrictions on permissible claims:** The zero percent risk weight shall be restricted to the maximum permissible claim and the residual exposure shall be subjected to risk weight where terms of the guarantee schemes restrict the maximum permissible through guarantee coverage absorption by MIL, pay-out cap, etc.
- iii. The maximum capital charged in case of portfolio- level guarantee, effective from April 1, 2023 shall be capped at a notional level arrived at by treating the entire exposure as unguaranteed.

Further, subject to the aforementioned prescriptions, any future scheme launched under any of the aforementioned Trust Funds, in order to be eligible for zero percent risk weight, shall provide for settlement of the eligible guaranteed claims within 30 days from the date of lodgement, and the lodgement shall be permitted within 60 days from the date of default.

Some illustrative examples of risk weights applicable on claims guaranteed under specific existing schemes are given in the [Annex](#) to the said Master Circular.

The above regulatory stipulation shall be applicable to all the regulated entities to whom this notification is addressed, to the extent such entities are recognised as eligible MLIs under the respective schemes.

Link [here](#).

Authors

Nusrat Hassan
Co-Managing Partner
nusrat@linklegal.in

Sayantani Dutta
Partner
sayantani.dutta@linklegal.in

Ambuj Sonal
Associate Partner
ambuj.sonal@linklegal.in

Tanvi Pande
Senior Associate
tanvi.pande@linklegal.in

Abhinav Anand
Senior Associate
abhinav.anand@linklegal.in

Shreyali Srivastava
Associate
shreyali.srivastava@linklegal.in

FIRM'S RECOGNITION



OUR OFFICES

DELHI

Aiwan-e-Ghalib Complex,
Mata Sundri Lane,
New Delhi 110 002, India
Tel: +91 11 4651 1000

MUMBAI

21/22, Second Floor,
Free Press House,
Free Press Journal Road,
215, Nariman Point,
Mumbai – 400 021, India
Tel: +91 22 6633 6791/6625 2222

BENGALURU

#10, First Floor, 12th Main,
Palace Road,
Vasanth Nagar,
Bengaluru – 560 052, India
Tel: +91 80 4123 1072

HYDERABAD

1st Floor, MC Design House,
Plot No. 27, Rohini Layout,
HITEC City, Madhapur,
Hyderabad – 500 081, India
Tel: +91 40 3516 8987, +91 40 3516 8988

CHENNAI

1B, First Floor 17-A,
Diamond Business Center,
Kalakshetra Road,
Chennai – 600 041, India
Tel: +91 44 4271 9731

NEW YORK

57 West, 57th Street,
4th Floor, New York,
NY 10019
Tel: (212) 389-6281/ (212) 381-1057



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