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GRC Bulletin

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About

ricago is a dynamic next generation company focusing on Enterprise Governance, Risk Management and Compliance Management (GRC) solutions.

In a globalized business environment, organizations need to comply with complex and dynamic regulatory requirements as they grow and expand into different geographies and industry verticals. With the right mix of rich domain & technology expertise, and insights from both CFO & CIO worlds, Clonect helps organizations to leverage technology optimally and innovatively, addressing GRC and GST needs.

ricago focuses on niche products in the area of Enterprise Governance, Risk Management and Compliance Management (GRC). The solution suite is a mix of products and services. Compliance Management System (CMS), Audit Management System (AMS), Labour Law Services, Compliance Enablement Services that helps firms to efficiently manage end-to-end compliance requirements and address the risk of non-compliance.

ricago CLASS (Comprehensive Labour Advisory & Special Services), New age platform for end-to-end labour law related information. Our expert team constantly monitors updates & amendments and advises clients accordingly

CORPORATE LAWS

RBI NOTIFIES RESERVE BANK OF INDIA (UNHEDGED FOREIGN CURRENCY EXPOSURE) DIRECTIONS, 2022

The Reserve Bank of India has notified the Reserve Bank of India (Unhedged Foreign Currency Exposure) Directions, 2022 on October 11, 2022.

Applicability:

1. Applicable to all commercial banks excluding Payments Banks and Regional Rural Banks.
2. Applicable to overseas branches/subsidiaries of banks incorporated in India subject to conditions as mentioned in Clause 10.

Entities that do not hedge their foreign currency exposures can incur significant losses during a period of heightened volatility in foreign exchange rates. These losses may reduce their capacity to service the loans taken from the banking system and increase their probability of default thereby affecting the health of the banking system.

This direction mainly deals with the Foreign Currency Exposure risk which is associated with the business engaged in the activities of trading in foreign currency transactions. In the current scenario of a sharp depreciation in the value of the rupee, RBI emphasizes maintaining a healthy banking system.

Key features of Reserve Bank of India (Unhedged Foreign Currency Exposure) Directions, 2022:

Important Definitions:

- *Entity* means a counterparty to which the bank has exposure in any currency.
- *Unhedged Foreign Currency Exposure (UFCE)* means Foreign Currency Exposure (FCE) excluding items that are an effective hedge against each other. To calculate the UFCE of an entity, banks shall consider two types of hedges which are financial hedge and natural hedge.
- *Foreign Currency Exposure (FCE)* of an entity means the gross sum of all items on the entity's balance sheet that have an impact on its profit and loss account due to movement in foreign exchange rates.
- *Natural hedge* means a hedge arising out of the operations of the company when cash flows offset the risk arising out of the Foreign Currency exposure (FCE)
- *This is only if the offsetting exposure has the maturity/cash flow within the same Accounting year*

CORPORATE LAWS

Computation of UFCE:

Banks shall compute the Foreign Currency Exposure (FCE) of all entities annually. For calculation, their exposure from all sources including foreign currency borrowings and External Commercial Borrowings shall be considered.

Banks shall also compute the Unhedged Foreign Currency Exposure (UFCE) of entities with FCE by obtaining information on UFCE from the concerned entity. This will be obtained from entities every quarter based on the statutory audit, internal audit, or self-declaration by the concerned entity. Further, the UFCE information shall be audited and certified by the statutory auditors of the entity, at least on an annual basis.

Provisioning and Capital Requirement:

- *Potential loss*: Banks must ascertain the potential loss to an entity from UFCE using the largest annual volatility in the USD-INR exchange rates during the last ten years.
- *Adverse exchange rate movements*: Banks shall determine the susceptibility of the entity to adverse exchange rate movements by computing the ratio of the potential loss to the entity from UFCE and the entity's EBID over the last four quarters as per the latest quarterly results certified by the statutory auditors.
- *Incremental provisioning and capital requirements*: Banks shall calculate the incremental provisioning and capital requirements at a minimum every quarter.

Systems and Controls:

- Incorporate an internal credit rating system
- Formulate credit risk management policies and procedures
- Stipulate internal limits for UFCE within the overall Board approved risk policy of the bank

Consortium Lending:

The directions state that the consortium leader of multiple banking arrangements shall be responsible for monitoring the UFCE on their behalf. Further, all the banks shall put in place a system that will ensure the uninterrupted sharing of information following the SEBI circular on “Lending under Consortium Arrangement / Multiple Banking Arrangements” dated 8th December 2008.

CORPORATE LAWS

(https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=4699&Mode=0)

Exemptions:

The following can be exempted from the calculation of UFCE:

- Exposures to entities classified as sovereign, banks, individuals, and Non-Performing Assets.
- Exposures arising from derivative transactions and/or factoring transactions with entities, provided such entities have no other exposures to banks in India.
- Intra-group foreign currency exposures of Multinational Corporations (MNCs) incorporated outside India

Overseas Branches/Subsidiaries:

This direction will apply to Overseas Branches and Subsidiaries based on the information of UFCE and potential losses in the manner prescribed in this direction.
This direction shall come into effect from January 1, 2023.

Conclusion:

Complying with this direction will protect the entities from volatility in the foreign exchange rates.

#Source: Click here for more details

CORPORATE LAWS

RBI NOTIFIES RESERVE BANK OF INDIA (CREDIT INFORMATION COMPANIES- INTERNAL OMBUDSMAN) DIRECTIONS, 2022

The Reserve Bank of India has notified the Reserve Bank of India (Credit Information Companies- Internal Ombudsman) Directions, 2022 on 6th October, 2022.

This direction has been issued with reference to Paragraph 2 of Statement on Developmental and Regulatory Policies dated 5th August, 2022 which stated the decision to bring Credit Information Companies (CICs) under the Internal Ombudsman (IO) Framework.

The Reserve Bank of India (RBI) has urged Credit Information Companies to designate an internal ombudsman (IO) in the manner mentioned in the direction. This Direction intends to strengthen and improve the efficiency of the internal grievance redressal mechanisms of CICs.

This direction as a whole deals with the appointment/tenure, role and responsibilities, procedural guidelines, and oversight mechanism for the Internal Ombudsman.

Applicability:

Applicable to all Credit Information Companies ('CICs') as defined under sub-section (e) of section 2 of the Credit Information Companies (Regulation) Act, 2005 ('Act').

Key points:

Appointment of Internal Ombudsman

- Appoint the Internal Ombudsman for a fixed term of not less than three years, but not exceeding five years subject to certain conditions.
- Ensuring that the post of the IO does not remain vacant at any point of time
- Shall not change emoluments, facilities and benefits accorded to the IO, once determined, during the tenure of the IO.
- If there are more number of complaints, then more than one IO can be appointed.

The office of the IO shall function from the Head or the corporate office of the CIC.

The CIC shall conduct internal audit in accordance with the Directions.

CORPORATE LAWS

Functions and Roles of Internal Ombudsman

- The IO will not look into any direct complaints from the public. It will deal with only complaints which have been examined by CIC but have been rejected wholly or partly.
- Comply to the type of complaints not to be handled as mentioned in the said Direction only.
- The IO can seek access to documents that are required for examining and processing the complaint.
- Analysis of pattern of the type of complaints which are being received on quarterly basis. Factors such as geographical location wise, product wise etc. to be considered.

The Internal Ombudsman shall report to the Managing Director or Chief Executive Officer of the CIC administratively, and to the Board functionally.

Procedural guidelines to be followed by the Internal Ombudsman and CIC

- The CIC should formulate a Standard Operating Procedure approved by its Board of Directors and establish a system of auto-escalation, within 21 days of receipt, of all complaints that are partly or wholly rejected by the CIC's internal grievance redress mechanism, to the Internal Ombudsman for a final decision.
- The IO and the CIC shall ensure that the final decision is communicated to the complainant within 30 days from the date of receipt of the complaint by the CIC.

Reporting to RBI

- The CIC shall put in place a system of periodic reporting of information to Consumer Education and Protection Department, Central Office, Reserve Bank of India, on a quarterly and annual basis as per formats provided in the Annex. These reports shall be submitted on or before the 10th day following the quarter/year for which they are due.
- The CIC shall, within five working days of appointment of the Internal Ombudsman, furnish the details of the individual so appointed to the Consumer Education and Protection Department, Central Office, Reserve Bank of India (email) in the following format.

It is mandatory for Credit Information Company (CIC) and the Internal Ombudsman to abide by the said directions.

This direction shall come into effect from April 1, 2023.

CORPORATE LAWS

Conclusion:

This Direction emphasizes on strengthening the internal grievance redress mechanism within the Credit Information Company (CIC) by enabling a review of customer complaints before their rejection, by an independent apex level authority within the CIC.

#Source: Click here for more details

CORPORATE LAWS

SEBI ISSUES CIRCULAR FOR SUSPENSION, CANCELLATION OR SURRENDER OF CERTIFICATE OF REGISTRATION OF A CREDIT RATING AGENCY

The Securities and Exchange Board of India ('SEBI') has issued a circular on Suspension, Cancellation, or Surrender of the Certificate of Registration of a Credit Rating Agency ('CRA') to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market on 13th October 2022.

Credit Rating Agency

Credit Rating Agencies (CRA) are responsible for doing calculations based on the financial statements of the firm issuing debt. Hence, they provide a comprehensive view regarding the returns and risks of a firm issuing debt through a recognized stock exchange. They are one of the market intermediaries involved in the business of rating securities offered through the right and public issues. The agencies further rate the debtors on their ability to pay the debt based on the calculations obtained from the financial statements.

The Credit Rating Agencies are required to obtain a Registration certificate from the SEBI for carrying on the activities of rating securities. The application is to be made to SEBI, who will, after examining the relevant documents and conditions, grant a registration certificate by Credit Rating Regulations 1999. The certificate act as authenticity for the investors as they will invest in the securities based on those ratings.

Compliance for Surrender of certificate of registration after submitting the request for the same

CRA shall

- Display the Order or the Request prominently on its website.
- Communicate the same to its clients within 15 days of the Order or the Request
- Not take any new clients or fresh mandates
- Incorporate proper migration of assignments as desired by clients to other CRA(s) holding a certificate of registration under CRA Regulations
- Continue to comply with the provisions of the CRA Regulations and SEBI.

Compliance for winding up the process after acceptance of the request

CRA shall

- Return the certificate of registration so canceled to SEBI
- Stop representation of activities for which the certificate was granted
- Suspend undertaking activity
- Continue to comply with SEBI and CRA regulations until it is wound up
- Determine provisions as regards liability incurred or assumed by it

Compliance during the Suspension of Certificate of Registration

CRA shall

- Suspend undertaking activity for which such certificate of registration had been granted
- Take such other action including providing any records or documents within the period and in the manner, as may be required under the CRA regulations or as may be directed by SEBI

Credibility of the credit ratings assigned by the CRA

- In case of ***cancellation of certificate of registration***, the credit ratings assigned by the CRA shall be valid till such time the client withdraws the assignment and/or migrates the assignment to another CRA as specified or the CRA is wound-up, whichever is earlier.
- In case of ***surrender of certificate of registration***, the credit ratings assigned by the CRA whose certificate of registration is being surrendered shall be valid till such time the client withdraws the assignment and/or migrates to another CRA, or the date of acceptance of surrender by SEBI, whichever is earlier.
- In case of ***suspension of certificate of registration***, the credit ratings assigned by the CRA, whose certificate of registration is suspended, shall not be valid during the period of suspension.

Compliance for Listed entities after Suspension, Cancellation or Surrender of Registration Certificate

Listed entities or issuers who have obtained credit rating from a CRA whose registration is cancelled or suspended or surrendered, desirous of obtaining credit rating for regulatory purposes, shall obtain credit rating(s) from another SEBI registered CRA(s) holding a valid certificate of registration under CRA Regulations.

CORPORATE LAWS

Conclusion:
This circular emphasizes the framework that provides an orderly migration of credit rating from the CRA whose CRA registration is cancelled, surrendered, or suspended to the SEBI-registered CRA.

#Source: Click here for more details

TAX LAWS

CBIC NOTIFIES CENTRAL GOODS AND SERVICES TAX (SECOND AMENDMENT) RULES, 2022

The Central Board of Indirect Taxes and Customs notified the Central Goods and Services Tax (Second Amendment) Rules, 2022 on 28th September, 2022.

Sr. No.	Amendment
1.	**Inserted : Rule 21(h) and (i)** (h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months; (i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods
2.	**Omitted : Rule 36(2)** The words, letters and figure, ", and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person" shall be omitted
3.	**Inserted : Rule 36(4)(b)** After the words, "the details of", the words, "input tax credit in respect of" shall be inserted
4.	**Substituted: Rule 37 (1) and (2)** —(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM

TAX LAWS

	GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice: Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16: Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.; (2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).
5.	**Omitted: Rule 37(3)** Sub-rule (3) shall be omitted.
6.	**Omitted: Rule 38(a)(ii) and (d)** -In clause (a), in sub-clause (ii), the word, letters and figure, —in FORM GSTR-2‖ shall be omitted -clause (d) shall be omitted
7.	**Substituted: Rule 38(c)** For the words, letters and figure, “and shall be furnished in FORM GSTR-2”, the words, letters and figure, “and the balance amount of input tax credit shall be reversed in FORM GSTR-3B”shall be substituted.
8.	**Omitted: Rule 42(1)(g)** The words, letters and figure, “at the invoice level in FORM GSTR-2 and” shall be omitted.
9.	**Omitted: Rule 43(1)**

TAX LAWS

	The words, letters and figure, "FORM GSTR-2 and" at both the places where they occur, shall be omitted
10	**Substituted: Rule 60(7)** For the words "auto-drafted", the words "auto-generated" shall be substituted
11	**Omitted:** Rules 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, FORM GSTR-1A, FORM GSTR-2 and FORM GSTR-3 of the said rules shall be omitted
12	**Omitted: Rule 83(8)(a)** The words "and inward" shall be omitted
13	**Substituted: Rule 85(2)(b)** For the words "said person;", the words "said person; or" shall be substituted
14	**Omitted: Rule 85(2)(c)** Clause (c) shall be omitted
15	**Inserted: Rule 89(1)** After the words "claiming refund of", the words, brackets and figures "any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or" shall be inserted
16	**Omitted: Rule 89(1)** The first proviso shall be omitted
17	**Substituted: Rule 89(1)** (c) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted; (d) in the third proviso, for the words "Provided also that", the words "Provided further that" shall be substituted;
18	**Substituted: Rule 96(3)**

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	For the words, letters and figures, "FORM GSTR-3 or FORM GSTR-3B, as the case may be", the letters and figure, "FORM GSTR-3B" shall be substituted
19	**Omitted: In FORM GST PCT-05** In FORM GST PCT-05 of the said rules, in Part-A, in the table, against Sr. No.1, under the heading —List of Activities", the words, —and inward", shall be omitted

This shall come into force with effect from 1st October, 2022.

#Source: Click here for more details

GENERAL LAWS

IRDAI ISSUES GUIDELINES ON ESTABLISHMENT AND CLOSURE OF LIAISON OFFICE IN INDIA BY AN INSURANCE COMPANY REGISTRERED OUTSIDE INDIA

The IRDAI had laid down framework for approval of opening of Liaison Office in India by Insurance Companies registered outside India (Overseas Insurer) and the Guidelines for closure of Liaison Office established in India by Overseas Insurer. The stipulations/ directions have been reviewed and the guidelines on "Establishment and Closure of Liaison Office in India by an Insurance Company registered outside India" are issued. These guidelines shall be effective from 17th October, 2022 and shall supersede all the earlier instructions/guidelines issued on the subject by the Authority.

1. **Liaison Office:**

   Liaison Office (LO) would mean a place of office to act as a channel of communication between the Principal place of business or Head Office (HO) by whatever name called of an Overseas Insurer and entities in India but which does not undertake any commercial/ trading/ soliciting/ industrial activity, directly or indirectly, and maintains itself out of foreign remittances received from the Overseas Insurer through normal banking channels.

2. **Eligibility norms for opening a Liaison office:**

   The Overseas Insurer applying for opening of LO should have a financially sound track record. A profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 65 million shall be the minimum requirement for applying for opening a Liaison office in India.

3. **Application and Approval process:**

   a. The Overseas Insurer desirous of opening a Liaison office shall apply to the Insurance Regulatory and Development Authority of India in Form IRDAI-FIC-1, along with the following prescribed documents and requisite fees.
   b. The Authority shall, after exercising due diligence in respect of the applicant Overseas Insurer's background and satisfying itself regarding adherence to the eligibility criteria for establishing LO, grant approval for opening of LO or reject the application. An

applicant whose application for grant of approval for opening of Liaison Office is rejected by the Authority, may approach the Authority for review of its decision within 30 days from the date of receipt of the communication.

c. An Overseas Insurer may request the Authority for extension of the approval for another *one year.* The Authority may consider such request, provided the LO has complied with all the terms and conditions stipulated in these guidelines and communicated by the Authority in the initial approval letter. The application for extension has to be submitted with all the information as given in IRDAI-FIC-1 format mentioning "Application for Extension of validity of Liaison Office", at least two months before the date of expiry of the validity of the first approval, along with a processing fee (non-refundable) of USD 2500.
d. The permission granted for opening / extension of LO shall be subject to such additional terms and conditions as may be stipulated by the Authority from time to time.
e. An Overseas Insurer which has been granted approval by the Authority for opening of LO in India shall establish such office within six months from the date of approval of the Authority. In case such office is not established within a period of six months, the approval granted by the Authority shall be deemed to have been withdrawn.
f. Overseas Insurers which have opened/started Liaison Offices in India within a period of three years prior to the date of these guidelines may apply for extension of approval for a further period of one year in terms of these guidelines.
g. Overseas Insurers which have been already granted an extension of approval to continue their Liaison offices and have been operating their LOs for more than 3 years as on the date of these guidelines shall close the LO within a period of six months in terms of these guidelines.

4. Permitted activities for a Liaison Office of Overseas Insurer in India:

a. Representing the Overseas Insurer in India.
b. Carrying out market research/ feasibility study in the field of insurance.
c. Acting as a communication channel between the Overseas Insurer and entities in India.

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5. <u>Conditions for Approval:</u>

a. The LO shall not carry on any activity other than the activity for which approval has been granted by IRDAI.

b. The entire expenses of the LO in India will be met exclusively out of the inward foreign remittances received from the Overseas Insurer through normal banking channels.

c. The LO in India shall not borrow or lend any money from/ to any person in India nor shall it accept deposits in India.

d. The LO in India shall not acquire, hold, (otherwise than by way of lease for a period not exceeding three years) transfer or dispose of any immovable property in India.

e. The LO in India shall not enter into any contracts, except to the extent required for the purpose of the normal functioning of the LO for which the approval is granted by IRDAI.

f. The LO in India will not have any signing/ commitment powers, except to the extent required for normal functioning of the office, on behalf of the Head Office.

g. The LO in India shall obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up their office in India.

h. The LO in India shall register with the Registrar of Companies (ROCs) if such registration is required under the Companies Act, 2013.

i. The LO in India and the Overseas Insurer shall be required to comply with the terms and conditions of the General Permission granted by RBI under the Foreign Exchange Management Act, 1999 and any other law in force, as amended from time to time.

j. The LO in India shall have to strictly obey and respect the laws in force in India and there shall be no compromise or excuse for ignorance of the Indian legal system in any manner.

k. Principal Officer of LO in India shall act as a Nodal officer and shall be responsible for ensuring compliance of these guidelines and any other directions issued by the Authority from time to time.

l. The officials of a Liaison office of Overseas Insurer shall not participate in the management of any other entity in India.

m. In case of any regulatory action initiated by the home country insurance regulator on the Overseas Insurer, LO shall inform the details to IRDAI within 15 days from the date of action initiated.

n. The approval for Liaison Office granted to an entity shall not be transferable to another entity under any circumstances including on account of acquisitions/mergers.

o. Change in the name of the existing LO may be permitted by the Authority, if an application to this effect is filed along with the Board resolution and relevant documents/certificate from the home country insurance regulator.

6. Books and Records to be maintained by LO:

a. LO shall maintain only one bank account for its receipts and payments. If the existing LOs have opened multiple bank accounts as on the date of these guidelines, such accounts shall be closed within 3 months or seek specific approval from IRDAI justifying the reasons to have multiple bank accounts.

b. Proper books of accounts and records reflecting the funds received from HO and expenses incurred by the LO shall also be maintained.

c. A Balance Sheet, Statement of Income and Expenditure and a Statement of Receipts and Payments (Cash Flow Statement) signed by an independent Chartered Accountant and the Principal Officer of the Liaison Office in India shall be furnished to the Authority within 60 days from the end of every financial year.

7. Annual Activity Certificate by LO:

a. The LO shall submit Annual Activity Certificate (Annexure III), from an independent Chartered Accountant or the Company Secretary.

b. The Annual Activity Certificate shall be furnished to the Authority by the LO within 60 days from the end of financial year along with a statement showing details of the research activities/studies undertaken and the information/reports shared with the HO during the reporting financial year by the LO, duly certified by the Principal officer of the LO.

c. All Liaison offices existing on the date of these guidelines shall be liable to furnish the returns/reports/certificates to the Authority as specified in these guidelines.

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8. Closure of LO

Requests for closure of Liaison Office shall be submitted to the Authority in form IRDAFIC-2 (Annexure IV), at least two months before the date of expiry of the validity of the approval.

The LO shall, at least two months before the closure of its operations in India, publish a public notice informing the proposed closure of its operations in India, in at least one English daily newspaper circulating in the whole or substantially the whole of India and in one newspaper published in the regional language of the state where the LO is situated.

The application for closure of Liaison Office shall be submitted along with the following documents as prescribed.

9. Action in case of default or non-compliance:

a. If any LO, which is required under these guidelines, or other instructions/guidelines issued by the Authority from time to time, -
   i. to furnish any document, statement, account, return or report to the Authority, fails to furnish the same;
   ii. does not cooperate the inspection/investigating Authority appointed by IRDAURBI/Govt. of India; or
   iii. to comply with the directions, fails to comply with such directions;
   iv. fails to comply with the terms and conditions of approval granted by the Authority;

The Authority may, at any time, withdraw the approval granted to LO. The Authority shall seek an explanation and provide an opportunity of being heard to the LO, before withdrawal of such approval and may also direct the Overseas Insurer to remove the Principal Officer of the LO in India and share the action initiated against the LO of the Overseas Insurer with the home country insurance regulator.

#Source: Click here for more details

GENERAL LAWS

MINISTRY OF COMMERCE AND INDUSTRY NOTIFIES CREDIT GUARANTEE SCHEME FOR STARTUPS (CGSS)

On 6th October 2022, the Ministry of Commerce and Industry approved the Credit Guarantee Scheme for Startups (CGSS). This is to provide credit guarantees to loans extended by Member Institutions (MIs) to finance eligible borrowers being Startups.

The main objective of this Scheme is to provide a guarantee up to a specified limit against credit instruments extended by Member Institutions (MIs) to finance eligible Startups.

Important Definitions:

Member Institutions (MIs) means financial intermediaries (Banks, FIs, NBFCs, AIFs) engaged in lending/investing and conforming to the eligibility criteria duly approved under the scheme and as modified by the Trust, from time to time, and who have entered into an agreement with/submitted Undertaking to the Trust for availing the guarantee.

Non-Performing Asset means an asset classified as a non-performing asset based on the instructions and guidelines issued by the Reserve Bank of India from time to time.

Lock-in period - means the period during which no invocation of guarantee can be made

Eligibility criteria's:

For the borrower:

- Startup as recognized by DPIIT as per Gazette Notifications issued from time to time, and
- Startups that have reached the stage of stable revenue stream, as assessed from audited monthly statements over 12 months, amenable to debt financing, and
- Startup not in default to any lending/investing institution and not classified as a Non-Performing Asset as per RBI guidelines, and
- Startup whose eligibility is certified by the member institution for guaranteed cover

For the lending/investing institutions:

- Scheduled Commercial Banks and Financial Institutions,

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- RBI registered Non-Banking Financial Companies (NBFCs) having a rating of BBB and above as rated by external credit rating agencies accredited by RBI and having minimum networth of Rs. 100 crore. However, it may be noted that in case an NBFC subsequently becomes ineligible, due to a downgrade in the credit rating below BBB, the NBFC shall not be eligible for further guarantee cover till upgradation again to the eligible category.
- SEBI registered Alternative Investment Funds (AIFs).

Highlights of the Credit Guarantee Scheme for Startups (CGSS):

- Maximum guarantee cover per borrower shall not exceed Rs.10 crore.
- DPIIT will be constituting a Management Committee (MC) and a Risk Evaluation Committee (REC) for reviewing, supervising and operational oversight of the Scheme. The National Credit Guarantee Trustee Company Limited (NCGTC) will be operating the Scheme.
- MI shall evaluate credit applications by using prudent banking judgement and shall use their business discretion / due diligence in selecting commercially viable proposals and conduct the account(s) of the borrowers with normal banking prudence
- MI shall furnish a Statutory Auditor Certificate/Management Certificate as prescribed by the Trust with every new application or continuity/updation file during the renewal of guarantee cover
- Credit guarantee cover under this model would be either transaction based or umbrella based
- Important to note the submissions that need to be made to the Trustee/Trustees as prescribed in the Scheme.

Conclusion:

This Scheme will provide much-needed collateral-free debt funding to Startups.

With the objective of mobilising domestic capital for Indian startups, CGSS will complement the existing Schemes under Startup India initiative viz. Fund of Funds for Startups and Startup India Seed Fund Scheme.

#Source: Click here for more details

JUDICIAL INSIGHT

PROFIT ORIENTED EDUCATIONAL TRUSTS CAN'T CLAIM INCOME TAX EXEMPTION - EDUCATION MUST BE THE SOLE OBJECTIVE

Facts of the Case:

- M/s New Noble Educational Society ("the Appellant") has applied for the registration of a trust which has been set up for the charitable purpose of education under the Income Tax Act, 1961 ("**the IT Act**") and also claimed benefit of exemption under Section 10(23C) of the IT Act.
- The Revenue Department ("the Respondent") has denied the Appellant's claim for registration on the ground that the Appellant was not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 ("**the A.P. Charities Act**") as a condition precedent for grant of approval.
- Further, the Appellant's claim was denied on the ground that the Appellant's trust who has claimed the benefit of exemption under Section 10(23C)(vi) of the IT Act, but the Respondent found that the concerned trust was not created 'solely' for the purpose of education and further to check its genuineness, examined the memorandum of association or the rules or the constitution of the concerned trust.

Respondent's Argument:

- As per Section 10(22) of the IT Act, the income of university or other educational institutions existing 'solely' for educational purposes, and not for profit, and it was excluded from the tax liability.
- Additionally, there were two key elements to the definition of what could be excluded from the ambit of taxation –
  - (i) that the institution should exist 'solely' for education; and
  - (ii) it should not exist for profit.

Argument by the Appellant:

- The Appellant contended that, the precondition was absent in the provisos to Section 10(23C) (vi) of the IT Act, and that since the IT Act was a complete code in itself, other Acts such as the A.P. Charities Act could not form the basis for denying approval.
- It was urged that there was no bar or restriction imposed by law on trusts involved or engaged in activities other than education, from claiming

JUDICIAL INSIGHT

exemption under Section 10(23C)(vi) of the IT Act, provided their motive was not-for-profit.

- It was submitted that the Appellant had other objects apart from education that was charitable and that did not mean that it ceased to be an institution existing 'solely' for educational purposes. Consequently, the denial of registration by the Respondent was contrary to the law.
- Being aggrieved by the Judgement of the Respondent, the Appellant filed an appeal before the Supreme Court.

Issue of the case:

Is the issue passed by the Respondent in accordance with the law or not?

Decision held:

- It is stated that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) of the IT Act should also comply with provisions of such state laws. This would enable the Respondent to ascertain the genuineness of the trust. This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from 01.04.2021.
- It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.
- The reference to 'business' and 'profits' in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of business which is 'incidental' to educational activity – as explained in the earlier part of the judgment i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc. e. The reasoning and conclusions in American Hotel (supra) and Queen's Education Society (supra) so far as they pertain to the interpretation of expression 'solely' are hereby disapproved. The judgments are accordingly overruled to that extent.

The Court observed:

"In a knowledge based, information driven society, true wealth is education – and access to it. Every social order accommodates, and even cherishes,

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charitable endeavour, since it is impelled by the desire to give back, what one has taken or benefitted from society. Our Constitution reflects a value which equates education with charity. That it is to be treated as neither business, trade, nor commerce, has been declared by one of the most authoritative pronouncements of this court in T.M.A Pai Foundation (supra). The interpretation of education being the 'sole' object of every trust or organization which seeks to propagate it, through this decision, accords with the constitutional understanding and, what is more, maintains its pristine and unsullied nature"

***Case name**: M/S New Noble Educational Society vs The Chief Commissioner Of Income Tax and 1 Anr on 19th October, 2022*

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THE COURT CAN CONDUCT A PRELIMINARY INQUIRY UNDER SECTION 45 OF THE A&C ACT TO DECIDE THE ISSUE OF NON-ARBITRABILITY

Facts of the case:

The parties entered into a Sole Distribution Agreement dated 01.07.2017 wherein the defendant/applicant placed a purchase order on the plaintiff/respondent. A dispute arose between the parties related to non-payment of dues by the defendant/applicant.

Contentions of the Defendant:

- The present dispute relates to claims for compensation and non-extension of the agreement, therefore, squarely covered by Clause 15(2)(a).
- Clause 15(2)(a) provides for reference to arbitration, accordingly, the dispute should be referred to arbitration and the suit must be dismissed.
- Clause 15(2)(b) also confers exclusive jurisdiction on the Courts at Milan, and the only exception carved out is when injunctive relief is sought. However, the present suit is filed for recovery of money, thus, does not fall within the exception, therefore, the suit is non-maintainable.
- The applicant/defendant also has a counter-claim against the plaintiff/respondent for which it already has issued a notice of arbitration, therefore, the present dispute must also be referred to the same arbitration otherwise an absurd situation would arise whereby the claims arising out of the same agreement would be decided by two different forums which may be contradictory to each other and the uniformity would be disturbed.

Contentions of the Respondent:

- Clause 15(2)(b) also confers the choice on the plaintiff to file a suit in any court of law, therefore, the objection regarding the jurisdiction of the Court is liable to be rejected.
- The defendant is at liberty to invoke arbitration for its claims, however, the subject matter of the suit is beyond the arbitration clause
- Clause 15(2)(a) only deals with claims arising out of termination of the agreement and matters connected or incidental thereto, however, the claims of the plaintiff/respondent are for the recovery of money due to the defendant, therefore, it falls outside the scope of arbitration clause.

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Observations of the Court:

The Bench, relying on the observations and judgment laid down in Vidya Drolia, Indian Oil Corporation and Emaar India Limited reiterated the legal position that while considering an application u/s 8 or 45 of the A&C Act, the court is required to hold a preliminary enquiry as to whether the subject matter of the plaint is arbitrable or not, or if it fell within the scope of 'excepted matters'.

It was nobody's case that this Court was not a court of competent jurisdiction. Regarding the dispute resolution clause, it noted that the phrase 'including but not limited to injunctive relief measures' clearly showed that the suit need not be limited to injunctive relief. So, this suit would be maintainable.

Decision held:

The Court answered the issue as to whether it is permissible for the parties to provide remedies before different forums for disputes arising out of the same agreement. The Court held that two commercial entities entering into an agreement and providing for a different method of dispute resolution for different disputes may result in an anomalous situation where two disputes arising out of the same agreement would be decided by different forums, however, the choice of the parties is to be given supremacy and only disputes contemplated under the arbitration clause can be referred to arbitration and no other. Accordingly, the Court dismissed the application filed under Section 45 of the A&C Act.

***Case name**: Sorin Group Italia S.R.L vs Neeraj Garg on 28 October, 2022*

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