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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

MASTER CIRCULAR FOR FOREIGN PORTFOLIO INVESTORS, DESIGNATED DEPOSITORY PARTICIPANTS AND ELIGIBLE FOREIGN INVESTORS

This Master Circular issued on December 19, 2022 by Securities and Exchange Board of India (SEBI) contains provisions of previously issued Operational Guidelines for FPIs, DDPs and Eligible Foreign Investors under the SEBI (Foreign Portfolio Investors) Regulations 2019. This circular is issued in the exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

PART: A - REGISTRATION OF FOREIGN PORTFOLIO INVESTOR
Guidance for processing of FPI applications by DDPs

FPI applicant shall submit duly filled prescribed application form–CAF supported by required documents and applicable fees for SEBI registration and issuance of PAN. All signatures on the application form must be original and be done in the proper manner. The applicant will be notified by the DDP to provide clarification or the requested information within a reasonable amount of time if the application form is unclear or incomplete.

DDPs are supposed to check the following to consider the eligibility of the FPI application:

- Country Check
- Non-resident Indian(NRI)/ overseas citizens of India(OCI) / resident Indians(RI) check
- Fit and proper person check
- Category I FPI check
- Regulatory check

Obligations of DDPs

i. **Infrastructure** – Necessary infrastructure including adequate office space, competent manpower and computer systems to discharge its activities as DDP.
ii. **Manual** – Shall have a manual setting systems and procedures to be followed for effective and efficient discharge of its function as DDP.
iii. **Monitoring of systems and controls** – Every DDP shall have adequate mechanisms for reviewing, monitoring and evaluating its control, systems, procedures and safeguards.

Reporting

CORPORATE LAWS

i. Every DDP shall submit to SEBI monthly reports of the fees collected for all the FPI applicants as per the format set out in Annexure C hereto and such other reports as may be required by DEBI
ii. Depository/ DDP shall submit to SEBI monthly reports of the fees collected for all the FPIs registered by it as per the format set out in Annexure D hereto and such other reports as may be required by SEBI.

Requirement for Segregated Portfolios

i. FPIs having segregated portfolio(s) are required to provide BO declaration for each fund/sub-fund/share class/equivalent structure that invests in India. Further, in case of addition of fund / sub fund / share class /equivalent structure with segregated portfolio that invests in India, the FPI shall be required to provide BO information prior to investing in India through such new fund/sub fund/share class/equivalent structure.
ii. Existing FPIs with segregated portfolio are required to provide the BO details for each fund/sub-fund/share class/equivalent structure that invests in India at the time of continuance of registration. In case of non-submission of BO details within the prescribed timelines, the FPI shall not be allowed to make fresh purchases till the time it is compliant with the said requirement.

PART B – KYC REQUIREMENTS FOR FPIs

FPIs are required to provide KYC-related documents based on the category under which it is registered. Once the KYC is completed, the intermediary will upload the Form and supporting documents on the KYC Registration Agencies(KRA) portal for other market intermediaries to access and complete their KYC requirements. Apart from the KYC requirement stated below, each intermediary may have additional documentation requirements for conducting enhanced due diligence as per their internal policies.

Data security

The KYC Registration Agencies (KRAs) shall secure the personal information provided with regard to the beneficial owner including the SMO of FPI. Such information should be made available to intermediaries only on 'need to know basis' using an authentication method wherein an intermediary, can access the information from KRA using the authentication (similar to One Time Password "OTP") after the KRA gets confirmation from the FPI or its Global custodian or Investment Manager. For this purpose, KRAs need to maintain the email ids of

the FPI and/ or its representative. This functionality will be optional and it will be deactivated only upon receipt of instruction from the FPI to KRA.

The Key features are as below:

a. Up-to 3 email ids of the FPI can be recorded with 1 mandatory id and 2 optional email ids
b. Download Consent Flag – Yes / No (Default value is set as "Yes")
    i. 'Yes' means Consent required for download
    ii. 'No' means download without consent
c. Where Download Consent Flag is "Yes", an email with the consent link with decision tab "Approve" or "Reject", will be sent to the authorised representative of FPI (as per the details updated in "a" above), requesting their consent to provide the KYC records to the requesting intermediary.
d. KRA will send an email to the requesting intermediary that consent request email has been sent to the authorised representative of the FPI, to enable them to follow up for the consent.
e. KRA will permit download of KYC records and information once the consent is received from the authorised representative of the FPI.
f. Whenever KYC details of client are modified by intermediaries, KRA system sends unsolicited download of KYC information to all intermediaries who have either uploaded/downloaded/modified KYC information of the FPI. The unsolicited KYC download including UBO details of the FPI will be available to the intermediaries who have uploaded/downloaded/modified, such FPIs KYC details in the past, even when the Download Consent Flag is set as "Yes" or otherwise.
g. In case the FPI closes the account with an intermediary, the FPI or the intermediary shall inform KRA to delink the KYC of such FPI, so that unsolicited download request can be discontinued.

PART C - INVESTMENT CONDITIONS / RESTRICTION ON FOREIGN PORTFOLIO INVESTORS REGISTERED SEBI (FOREIGN PORTFOLIO INVESTOR) REGULATIONS, 2019.

Monitoring of investment limit at the investor group level

Where multiple FPIs belong to the same investor group as provided under Regulation 22 (3) of the Regulations, the investment limits of all such FPIs taken together shall be clubbed at the investment limit as applicable to a single FPI. The depositories shall monitor the aggregate investment limits of FPI group based on Demat holdings data, daily on an end-of-day basis.

CORPORATE LAWS

Monitoring of Investment limit at the individual level

In order to facilitate the listed Indian companies to ensure compliance with the various foreign investment limits, the architecture of the System has been explained under the following points:

- Housing of the System
- Designated Depository
- Company Master
- Reporting of trades
- Activation of a Red Flag Alert
- Breach of foreign investment limits
- Method of disinvestment
- Failure to disinvest within 5 Trading days

Risk Management framework for FPIs

i. Margin of trades Under taken by FPIs in the Cash Market
   a. The trades of FPIs shall be margined on a T+1 basis as specified by SEBI.
   b. However, the trades of Category II FPIs who are corporate bodies, Individuals or Family offices shall be margined on an upfront basis as per the extant margining framework for the non-institutional trades.

ii. Facility for allocation of trades among related FPIs: The following framework maybe implemented to facilitate allocation of trades among the FPIs:
   a. Entities who trade on behalf of FPIs shall inform the stock brokers of the details of FPIs on whose behalf the trades would be undertaken.
   b. The Stockbroker, in turn, shall inform the stock exchanges the details of such related FPIs.
   c. Stock exchanges shall put-in place suitable mechanism to ensure that allocation of trade is permitted only among such related FPIs.

PART D - ISSUANCE OF OFFSHORE DERIVATIVE INSTRUMENTS BY FOREIGN PORTFOLIO INVESTORS UNDER SEBI (FOREIGN PORTFOLIO INVESTOR) REGULATIONS, 2019

This section deals with requirements specified by SEBI relating to issuance of Offshore Derivative Instruments (ODIs) by Foreign Portfolio Investors (FPIs) and matters connected therewith.

CORPORATE LAWS

PART E – GUIDELINES FOR PARTICIPATION/FUNCTIONING OF ELIGIBLE FOREIGN INVESTORS (EFIS) IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)

EFIs operating in International Financial Services Centre (IFSC) shall not be treated as entities regulated by SEBI. Further, SEBI registered FPIs, proposing to operate in IFSC, shall be permitted, without undergoing any additional documentation and/or prior approval process.

PART F - PUBLISHING OF INVESTOR CHARTER AND DISCLOSURE OF COMPLAINTS BY DDPs ON THEIR WEBSITES

1. All the registered DDPs shall take necessary steps to bring the Investor Charter, as provided in "Annexure-H", to the notice of their clients and ensure that the Investor Charter is prominently displayed on their respective website for ease of accessibility of investors.
2. Additionally, all DDPs shall disclose on their respective websites, the monthly data on complaints received and redressal thereof, latest by 7th of succeeding month, as per the format provided in "Annexure-I"

#Source: Click Here for more details

CORPORATE LAWS

FRAMEWORK FOR ORDERLY WINDING DOWN OF CRITICAL OPERATIONS AND SERVICES OF A CLEARING CORPORATION

The Securities and Exchange Board of India (SEBI) issued circular for framework for orderly winding down of Critical Operations and services of Clearing Corporations (CCs) on 16th December, 2022.

Important provisions of the mentioned circular are:

Identification of potential scenarios

Reasons which can wind down the Clearing Corporations from providing its critical operations and services are as follows:

a) Voluntary – When the Clearing Corporations, on its own will, wishes to exit as a strategic or a business decision.
b) Involuntary –
    - When default management resources maintained by the Clearing Corporation get exhausted due to default by Clearing Members, the Clearing Corporation fails in its duty.
    - When there have been some large operational expenses, legal expenses, business or investment losses, etc. thereby rendering a Clearing Corporation unable in fulfilling its obligations.
    - When the Clearing Corporation has received instructions to wind down its critical operations by SEBI or any other statutory authority under applicable laws.

Identification of Critical Operations and Services of Clearing Corporations

The services and operations include risk profile, operations, organizational structure, financial resources, business practices, interconnectedness and interdependencies, and any other relevant factor as deemed appropriate. As timely clearing and settlement of trades is a core function of Clearing Corporations, the operations and services such as collateral management, risk management, clearing and settlement. These also include Contractual Obligations of Clearing Corporations with Clearing Members, Stock Exchanges, Depositories arising out of clearing and settlement of trades.

Standard operating procedure (SOP)

The SOP must, among other things, specify the infrastructure and facilities, technical systems, backup plans, outsourcing activities, vendors, service

providers, etc. that must be kept or sustained in order to properly wind down vital operations and services. Once the process of orderly winding down critical operations and services is started, the SOP must also include information about key employees or staff members, along with their roles and responsibilities, etc., who will be retained and responsible for development, review, and ongoing monitoring, etc., of the critical operations and services. The framework shall also include operational methods pertaining to the transfer or close-out of positions, collateral, etc. in detail, taking into account applicable interoperable or non-interoperable circumstances for orderly winding down of critical operations and services.

Return of Assets

The return of assets will be done as per the framework, guidelines issued by SEBI or any other statutory authority.

For the valuation of assets, a valuation agency is to be appointed. According to the scenario that triggers the winding down of critical operations, the amount of assets available for distribution shall be determined after payment of statutory dues, including applicable taxes; contribution to SEBI; return of refundable collateral and membership deposits of CMs; return of deposits to warehouse service providers, if any, and the unutilized Core SGF contributions of CMs and Stock Exchanges, as the case may be.

Upon its exit, the Clearing Corporation shall contribute up to 20% of its assets to SEBI Investor Protection and Education Fund to provide for future arbitration cases or unresolved complaints.

The Clearing Corporation has to pay the outstanding dues and fees of members to SEBI on its exit. Clearing Corporation is not allowed to alienate any asset without informing SEBI.

Financial Resources

According to Regulation 14(3) of SECC Regulations that each Clearing Corporation must have adequate cash to pay for expenses associated with a smooth winding down or recovery of operations.

Minimum of six months has to be considered while computing the capital requirements according to SEBI Circular.

Oversight

CORPORATE LAWS

Following approval from the governing board and upon completion of the required steps or processes, the Regulatory Oversight Committee (ROC) of the CC shall submit a report to SEBI in a manner as may be specified by SEBI. The ROC of the CC shall oversee the implementation of steps or processes involved in the orderly winding down of the CC's critical operations and services.

Obligations of Exchange(s) and Clearing Member(s)

For non-interoperable segments, if the exchange (whose trades are cleared by the exiting CC) intends to continue to offer trading in the concerned segment(s), then it shall engage with another clearing corporation within the notice period.

For both non-interoperable and interoperable segments, the CMs of exiting CC shall have to become members of new or another CC within the notice period. Alternatively, such CMs may close-out their open positions within the notice period.

#Source: Click Here for more details

CORPORATE LAWS

MASTER DIRECTION – FOREIGN EXCHANGE MANAGEMENT (HEDGING OF COMMODITY PRICE RISK AND FREIGHT RISK IN OVERSEAS MARKETS) DIRECTIONS, 2022

The Reserve Bank of India, in exercise of the powers conferred under Sections 10 (4) and 11 (1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999), hereby issues the following Directions. These Directions lay down the modalities for the AD Cat-I banks for facilitating hedging of commodity price risk and freight risk in overseas markets by their customers/constituents.

Definitions

Hedging – The activity of undertaking a derivative transaction to reduce an identifiable and measurable risk. For the purpose of these directions, the relevant risks are commodity price risk and freight risk.

Direct Exposure to Commodity Price Risk – An eligible entity will be said to have direct exposure to commodity price risk if

a. It purchases/sells a commodity (in India or abroad) whose price is fixed by reference to an international benchmark; or
b. It purchases/sells a product (in India or abroad) which contains a commodity and the price of the product is linked to an international benchmark of the commodity.

Indirect Exposure to Commodity Price Risk – An eligible entity will be said to have indirect exposure to commodity price risk if it purchases/sells a product (in India or abroad) which contains the commodity and the price of the product is not linked to an international benchmark of the commodity.

'International Financial Service Centre' shall have the same meaning as assigned to it in the Section 2(q) of the Special Economic Zones Act, 2005.

Eligible commodities – Commodities whose price risk may be hedged are:

i. In case of direct exposures to commodity price risk: All commodities (except Gems and Precious stones). Price risk of gold may only be hedged as provided at Para 5 (ii) of these directions.

ii. In case of indirect exposures to commodity price risk: Aluminium, Copper, Lead, Zinc, Nickel, and Tin. This list of eligible commodities would be reviewed annually.

Other operational guidelines

(i) Banks may permit eligible entities to hedge commodity price risk and freight risk overseas, including IFSC, using permitted products and may remit foreign exchange in respect of such transactions after satisfying themselves that:

(a) The entity has exposure to commodity price risk or freight risk, contracted or anticipated.
(b) The quantity proposed to be hedged and the tenor of the hedge are in line with the exposure.
(c) In case of OTC derivatives, the requirement to undertake OTC hedges is justified.
(d) In case of hedging using a benchmark price other than that of the commodity exposed to, the requirement to undertake such hedges is justified.
(e) Such hedging is taken up by the management of the entity under a policy approved by the Board of Directors of a company or equivalent forum for other.
(f) The entity has the necessary risk management policies in place.
(g) The entity has reasonable understanding of the utility and likely risks associated with the products proposed to be used for hedging.

(ii) OTC contracts shall be booked with a bank or with non-bank entities which are permitted to offer such derivatives by their regulators. For this purpose, a list of acceptable jurisdictions shall be specified by FEDAI.

(iii) Structured products may be permitted to eligible entities who are (a) listed on recognized domestic stock exchanges or (b) fully owned subsidiaries of such entities or (c) unlisted entities whose net worth is higher than INR 200 crore, subject to the condition that such product are used for the purpose of hedging as defined under these directions.

(iv) All payments/receipts related to hedging of exposure to commodity price risk and freight risk shall be routed through a special account with the bank for this purpose.

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(v) Banks shall keep on their records full details of all hedge transactions and related remittances made by the entity.

(vi) Banks shall obtain an annual certificate from the statutory auditors of the entity confirming that the hedge transactions and the margin remittances are in line with the exposure of the entity. The statutory auditor shall also comment on the risk management policy of the entity for hedging exposure to commodity price risk and freight risk and the appropriateness of the methodology to arrive at the quantum of these exposures.

(vii) Banks shall undertake immediate corrective action in case of any irregularity or misuse of these Directions. All such cases should be reported to the Chief General Manager, Financial Markets Regulation Department, Reserve Bank of India.

Report to Reserve Bank: Banks shall submit a quarterly report to the Chief General Manager, Financial Markets Regulation Department, Reserve Bank of India through Extensible Business Reporting Language (XBRL) accessible at https://xbrl.rbi.org.in/orfsxbrl/ in the format provided in Annexure I. In case of no transactions, a "Nil" report shall be submitted by the bank.

These Directions shall come into force on December 12, 2022.

#Source: **Click Here for more details**

TAX LAWS

POSTAL EXPORT (ELECTRONIC DECLARATION AND PROCESSING) REGULATIONS 2022

The Central Board of Indirect Taxes and Customs, in exercise of the powers conferred by section 157 read with section 84 of the Customs Act 1962 notifies the Postal Export (Electronic Declaration and Processing) Regulations, 2022.

These regulations shall apply to export of goods by any person, holding a valid Import-Export Code issued by the Director General of Foreign Trade, in furtherance of business through a foreign post office appointed by the Board under clause (e) of sub-section (1) of section 7 of the Customs Act, 1962.

Under this regulation the postal authorities are directed to set up, operate and maintain the **PBE Automated System** for filing of electronic declaration for export of goods through post. An exporter who wishes to export goods through post or his authorised agent shall register himself on the PBE Automated System. The PBE Automated System shall validate and recognise the registered person and enable him to file electronic declaration and upload supporting documents on the said system.

Electronic declaration for postal export

For export of goods by post, in furtherance of the business, the exporter or his authorised agent shall make an entry thereof through an electronic declaration in the following forms

i. Postal Bill of Export-III (PBE-III) for postal exports effected through e-commerce.
ii. Postal Bill of Export-IV (PBE-IV) for all other postal exports.

Post offices for handling postal export - The postal authorities, in consultation with the Board, shall authorise certain post offices to accept and book export goods and also specify the corresponding foreign post office to each of them.

Clearance of goods for export at foreign post office –

1) On arrival in the foreign post office, the export goods shall not be dealt in any manner except as may be directed by the Principal Commissioner or Commissioner of Customs, as the case may be.
2) No person shall, except with the permission of proper officer of Customs, open any package of export goods arrived in the foreign post office for customs clearance.

TAX LAWS

3) The postal authorities shall present the export goods and the corresponding electronic declaration to the proper officer of Customs at the foreign post office, in such manner as to the satisfaction of the said proper officer, for screening, inspection, examination and assessment thereof.
4) The proper officer may verify the entry made under regulation 5, and the provision of section 17 of the Act shall apply, as they apply to other goods, subject to the modification that for the words and figures, "under section 50", wherever they occur in reference to export goods, the words and figures, "under section 84", shall be substituted.
5) The proper officer may call for clarification or documents, electronically on the PBE Automated System, from the exporter or his authorised agent in relation to the export goods.
6) Where the proper officer is satisfied that the goods entered are not prohibited goods and the duty, if any, assessed thereon and any charges payable under the Act in respect of the same have been paid, the proper officer may make an order permitting clearance of the goods for export.
7) The postal authorities shall furnish the proof of export and corresponding electronic data, captured on the PBE Automated System, to Customs.
8) Where required or permitted by the proper officer, the postal authorities shall provide for secure transfer or movement of goods from foreign post office to booking post office.

Retention of records - The exporter or his authorised agent shall retain, for a period of five years from the date of filing an electronic declaration on the PBE Automated System, a copy of the said declaration and all supporting documents, which were used or relied upon for such electronic declaration and, where required, shall produce them before Customs in connection with any action or proceedings under the Act or under any other law for the time being in force.

Role and responsibilities of authorised agent –

1) The authorised agent of the exporter may file electronic declaration on his behalf and assist the exporter in performing the functions related to clearance of export goods through post.
2) The exporter authorising such agent shall be fully responsible for all the operations and transactions performed by such agent on his behalf and shall be liable for payment of any dues owed to the government or penal provisions as applicable under these regulations or the Act or any other law for the time being in force.

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3) Notwithstanding anything contained in sub-regulation (2), the authorised agent shall be governed by the regulations made under section 146, and section 147 of the Act.

Penalty - Without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or any other law for the time being in force, any person who contravenes any of the provisions of these regulations or abets such contravention or fails to comply with any of the provision of these regulations with which it was his duty to comply, shall be liable to a penalty to an extent of the amount specified under clause (ii) of sub - section (2) of section 158 of the Act.

This regulation shall come into force on 9th December 2022.

#Source: Click Here for more details

GENERAL LAWS

IRDAI (REGISTRATION OF INDIAN INSURANCE COMPANIES) REGULATIONS, 2022

The Insurance Regulatory Development Authority of India, in exercise of the powers conferred by Section 114A of the Insurance Act, 1938, section 3, section 3A and section 6A of the Insurance Act,1938 and section 26 of the Insurance Regulatory and Development Authority Act, 1999 has passed the Insurance Regulatory and Development Authority of India (Registration of Indian Insurance Companies) Regulations, 2022.

This is in order to promote growth of insurance sector by simplifying the process of registration of Indian insurance companies and to promote ease of doing business.

The classes of business of insurance for which requisition for registration application may be made are:

(i) Life insurance business.
(ii) General insurance business.
(iii) Health insurance business exclusively.
(iv) Reinsurance business exclusively.
(v) Any other class as may be specified by the Authority.

An applicant shall not be eligible to apply for the requisition in the following circumstances:

i. Where the requisition for registration application or the application for registration has been rejected by the Authority or withdrawn by the applicant at any time during two financial years preceding the date of application
ii. Where Certificate of Registration has been cancelled by the Authority at any time during two financial years preceding the date of application.
iii. Where the name of the applicant does not contain the words 'insurance' or 'assurance' or 'reinsurance'.

Compliance Requirement:

(1) Lock-in period: The equity shares of the applicant shall be locked-in for the period as under:

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Sr. No.	Particulars	Investment in the capacity of	Lock in Period
1.	Investment at the time of or before grant of R3 (i.e. Certificate of Registration)	Promoter or Investor	5 years from the date of grant of R3
2.	Investment during 5 years post grant of R3: In case of change in shareholding pattern	Promoter or Investor	Earlier of the following: a) 5 years from the date of investment. b) 8 years from the grant of R3.
3.	Investment after 5 years but before 10 years post grant of R3: In case of change in shareholding pattern	Promoter	Earlier of the following: a) 3 years from the date of investment; or b) 12 years from the grant of R3
		Investor	Earlier of the following: a) 2 years from the date of investment; or b) 11 years from the grant of R3
4.	Investment after 10 years post grant of R3: In case of change in shareholding pattern	Promoter	2 years from the date of investment Investor
		Investor	1 year from the date of investment

(2) Fit and Proper Criteria:

i. The Authority shall assess the applicant, its promoters and investors on the fit and proper criteria on the basis of factors as may be considered relevant including but not limited to those specified in Schedule 1 of these Regulations.

ii. The applicant, promoter and investors shall be fit and proper on a continuous basis i.e., even after the grant of Certificate of Registration.

iii. In case, the applicant, its promoters and/or investors are found to be not fit and proper at any stage, the Authority may take such action as may be deemed appropriate.

(3) Special Purpose Vehicle: In case the applicant is promoted by a Special Purpose Vehicle (SPV), the following conditions shall be complied with:

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i. The SPV shall not issue convertible instruments of any kind;
ii. No stock options or sweat equity shares shall be issued to the employees or directors of SPV;
iii. Prior approval of the Authority shall be obtained for transfer of shares of the SPV as per the limits specified under Section 6A of the Act in accordance with the manner specified in Schedule 2 of these Regulations.
iv. The investment limits, lock-in period and other requirements as per these Regulations shall also be applicable at the SPV level.
v. The criteria as specified in clause (iii) of sub regulation (2) of Regulation 5 shall also be applicable for the promoter and investor of the SPV.
vi. The equity shares to be issued by the SPV shall be valued at a price determined on the basis of valuation certificate issued by two SEBI Registered Category-I Merchant Bankers. Such certificates shall not have been issued prior to 30 days from the date of allotment of shares. The Merchant Bankers shall provide a proper report addressed to the Board of directors with justification for such valuation. A copy of the summary along with critical elements of the valuation report shall be sent to the shareholders along with the notice of the general meeting.
vii. The paid-up capital of the SPV shall be equal to or more than the minimum paid up capital of the applicant required under section 6 of the Act.

(4) Operating Company: In case the applicant is promoted by an operating company, the said promoter will be subject to necessary due-diligence including but not limited to the following:

i. The examination of the nature of operating company on the basis of substance over form.
ii. The track record of business operations, liquidity and profitability.
iii. Ability of the promoter to raise capital to meet the business and solvency requirements of the applicant, on an ongoing basis
iv. The shareholding pattern of the promoter.

(5) Investment as "Promoter": Investment in the capacity of promoter, directly or indirectly, in an insurer shall be in compliance with the following:

i. The person shall not be a promoter of more than one life insurer, one general insurer, one health insurer and one reinsurer;
ii. The person shall submit an undertaking to infuse capital in the insurer to meet its solvency and/or business requirements, if any, in future.

iii. The person is otherwise eligible to act as promoter of the insurer under these Regulations.

(6) Promoter(s) Holding: The minimum shareholding of all the promoter(s) of the insurer shall be collectively maintained at above fifty (50) per cent of the paid up equity capital of the insurer:

Provided that promoter(s) may dilute their stake in the insurer below fifty (50) percent but not below twenty-six (26) percent of the paid up equity capital of the insurer in case the following conditions are complied with:

i. The insurer has track record of solvency ratio above control level during 5 years immediately preceding the dilution of stake by promoter(s).
ii. The shares of the insurer are listed on the stock exchange(s) in India.

(7) Investment as "Investor": Investment in the capacity of investor, directly or indirectly, in an insurer shall be in compliance with the following:

i. The investment by a single "investor" shall be less than twenty-five (25) percent of the paid up equity share capital of insurer.
ii. The investment by all the "investors" collectively shall be less than fifty (50) percent of the paid-up equity share capital of the insurer:
Provided that the said restriction shall not be applicable in case the equity shares of the insurer are listed on the stock exchange(s) in India.
iii. Number of Insurers:
    a. An investor may invest in any number of insurers provided that the investment does not exceed ten percent of the paid-up capital of the respective insurers.
    b. In case of investment of more than ten percent but less than twenty-five percent of paid-up capital of the insurers, investment by the investor shall be restricted to not more than two insurers in each class of insurance business.

Provided that the investor may nominate a director on the Board of the insurer if its investment exceeds 10 percent of the paid up capital of the respective insurer.

iv. In case of a one-time investment by an investor in an unlisted insurer, the investor shall make an upfront disclosure to this effect to the insurer. In such a case, the promoter(s) shall submit an undertaking to the Authority to infuse capital in the insurer to meet its solvency and/or business requirements, if any, in future.

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(8) Additional Stipulations for Investment by promoter and/or investor: Investment shall also be in compliance with the following:

(i) Investment shall be made entirely out of own funds and not from borrowed funds.

(ii) In case any of the group entities or body corporate under the same management have also invested in the insurer, the limits under these Regulations shall apply at the group level. For the purposes of this sub-clause, the expressions "group" and "same management" shall have the meanings respectively as provided under explanation to section 6A(4)(b)(iii) of the Act.

(iii) The provisions relating to transfer of shares as contained in Section 6A(4)(b) of the Act shall apply mutatis-mutandis to the creation of pledge or any other kind of encumbrance over shares of an insurer.

(iv) In case of investment by an entity in more than one insurer, directly or indirectly:

a. The person shall disclose the facts related to common holding to all the investee insurers.

b. The person along with the insurer shall put in place mechanism to avoid any conflict of interest that may arise due to the said common equity holding

c. The director nominated by the said person shall recuse from the discussions on any matter pertaining to other investee insurer(s), where the conflict of interest may arise.

(9) Criteria for Investment by the Private Equity Funds:

i. The private equity funds may invest in the applicant in the capacity of a promoter or investor in the manner as specified under these Regulations.

ii. Investment in the insurer, including proposed limit in respect of future capital requirement of the insurer, shall be as per the PE Fund's strategy reflected in its placement memorandum to its investors or its charter documents.

iii. A Private Equity Fund may invest in any insurer in the capacity of "promoter", only if it meets the following criteria:

a. The manager of the PE Fund or its Parent Fund has completed 10 years of operation

b. The funds raised by the PE Fund including its group entity(ies) is USD 500 million or more (or its equivalent in INR)

c. The investible funds available with the PE Fund is not less than USD 100 million.

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d. The manager of the PE Fund has invested in the financial sector in India or the other jurisdictions.

(10) Transfer of Shares: No registration of transfer of shares or issue of equity capital of an insurance company, which would result in change in shareholding, shall be made, where:

i. after the transfer, the total paid-up holding of the transferee in the shares of the insurance company is likely to exceed five percent of its paid-up capital.

ii. the Nominal value of shares intended to be transferred by an individual, firm, group, constituents of a group, or body corporate under same management, jointly or severally exceeds one percent of the paid-up equity capital of the insurance company.

Unless the prior approval of the Authority has been obtained for the said transfer in the manner as specified in Schedule 2 of these Regulations.

These Regulations shall come into force from **10th December 2022** and shall remain in force for a period of three years thereafter unless reviewed or repealed earlier.

The following Regulations shall be repealed from the date these Regulations come into force:

a. Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000; and
b. Insurance Regulatory and Development Authority of India (Transfer of Equity Shares of Insurance Companies) Regulations, 2015.

#Source: Click Here for more details

GENERAL LAWS

SPECIAL ECONOMIC ZONES (FIFTH AMENDMENT) RULES, 2022

The Special Economic Zones (Fifth Amendment) Rules, 2022 shall come into force on the date of their publication i.e., December 8, 2022 in the Official Gazette under the powers conferred by section 55 of the Special Economic Zones Act, 2005.

The Amendment is **Substitution made to Rule 43 A** –

Rule 43A. Work from Home —

1) A Unit may permit its employees, specified in sub-rule (2), to work from home or from any place outside the Special Economic Zone in accordance with this rule.
2) The following employees are covered under sub-rule (1).
   (i) employees of Units which provide Information Technology and Information Technology enabled services.
   (ii) employees, who are temporarily incapacitated.
   (iii) employees, who are travelling.
   (iv) employees, who are working offsite.
3) The permission granted under sub-rule (1) shall be applicable upto the 31st December, 2023.
4) The facility for work from home or from any place outside the Special Economic Zone may cover all the employees of the Unit.
5) Where a Unit permits its employees for work from home or from any place outside the Special Economic Zone under this rule, it shall intimate the same to the Development Commissioner through an email on or before the date on which the facility for work from home or from any place outside the Special Economic Zone is permitted.
   Provided that where a Unit has permitted its employees for work from home or from any place outside the Special Economic Zone, before the commencement of the Special Economic Zones (Fifth Amendment) Rules, 2022 and permits its employees for work from home or from any place outside the Special Economic Zone under this rule, it shall intimate the same to the Development Commissioner through an email on or before the 31st January, 2023.
6) The Unit shall not be required to submit the lists of employees who are allowed to follow work from home or from any place outside the Special Economic Zone, but shall maintain in the Unit the lists of employees who had been permitted to work from home or from any place outside the

GENERAL LAWS

Special Economic Zone and shall be submitted for verification whenever is required by the Development Commissioner.

7) The facility for work from home or from any place outside the Special Economic Zone shall be admissible if the Unit continues to operate from the premises as per their Letter of Approval, as amended from time to time.
8) The work to be performed by the employee permitted to work from home under this rule shall be as per the services approved for the Unit, and the work is related to a project of the Unit.
9) The Unit shall ensure export revenue of the resultant products or services to be accounted for by the Unit to which the employee is tagged.
10) Where an employee ceases to be part of the project of the Unit, the employee shall be un-tagged from the Unit and the Unit shall surrender the identity card as per sub-rule (2) of rule 70.
11) The Unit may provide to an employee duty-free goods, including laptop, desktop, and other electronic equipment needed by the employee for work from home or from any place outside the Special Economic Zone and the same shall be allowed to be taken outside the Special Economic Zone without payment of duty or integrated goods and services tax on temporary basis:

    Provided that the Units while opting for the facility of work from home or from any place outside the Special Economic Zone shall ensure that such duty-free goods are duly accounted for in the appropriate records as per the extant rules and are available for verification, if necessary.
12) Notwithstanding anything in sub-rule (1) of rule 50, the temporary removal of such duty-free goods shall be allowed for a period commensurate with the validity of the facility for work from home or anywhere outside the Special Economic Zone:

    Provided that if a Unit fails to bring back the duty-free goods into the Special Economic Zone within the period specified in this sub-rule, the duty applicable on such goods shall be paid by the Unit.
13) In this rule, the expression “employees” shall include all persons employed on the rolls of the Unit or under a direct contract or where the Unit is the principal employer under a contract with another organisation where such persons are expected to report on a day-to-day basis for work to the Unit and the Unit administers the control on their attendance.

#Source: Click Here for more details

JUDICIAL INSIGHT

AN ASSIGNEE IS NOT PROHIBITED UNDER THE INSOLVENCY AND BANKRUPTCY CODE 2016 FROM CONTINUING PENDING PROCEEDINGS

Facts of the Case

Housing Development Finance Corporation Limited ("HDFCL") has sanctioned a loan to the Siti Networks Ltd. ("Corporate Debtor") on 06.09.2016. The Corporate Debtor was classified as Non-Performing Asset on 30.06.2019. Thereafter, on 17.02.2022 HDFCL filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and notices were issued.

On 29.06.2022, HDFCL *vide* Registered Assignment Deed assigned the debt of the Corporate Debtor to the Assets Care and Reconstruction Enterprise Limited ("ACREL/Assignee"). The Corporate Debtor was also informed about the assignment *vide* letter dated 06.07.2022. the Assignee filed an application before Adjudicating Authority seeking to be substituted as Financial Creditor in place of original Applicant (HDFCL) and to be permitted to pursue the Section 7 petition filed by HDFCL. The Adjudicating Authority *vide* an order on 01.11.2022 allowed ACREL (Assignee) to be substituted on the basis of assignment. The Adjudicating Authority held that there was no binding precedent from higher forum and there is no express prohibition in the IBC to prevent the assignee to come on record and continue the pending proceedings. The Corporate Debtor challenged the order dated 01.11.2022 before NCLAT.

Submission by the Appellant

Learned Counsel for the Appellant submits that the assignee could not have been permitted to continue Section 7 proceedings although it is open for the assignee to file a fresh Application under Section 7 which was permissible on the strength of assignment. He submits that he has placed reliance on the judgment of the NCLT, Bengaluru Bench dated 26.08.2019 where the Bengaluru Bench has taken the view that although the assignment was made during pendency of the proceeding but it is the prerogative of the Applicant to file miscellaneous application to implead proper and necessary party and the State Bank of India who was Applicant having assigned could not prosecute the Application and the assignee also cannot substitute itself as Applicant.

JUDICIAL INSIGHT

Submission by the Respondent

Learned Counsel for the Respondents refuting the submissions of the Learned Counsel for the Appellant submits that by virtue of assignment which happened after filing of the Application by 'Housing Development Finance Corporation Limited', the Respondent has every right to be substituted to continue the proceeding. He has relied on sub-section (4) of Section 5 of the SARFAESI Act, 2002 which clearly contemplate continuation and prosecution of any proceeding by an assignee who acquire financial asset.

HELD

The Bench opined that Section 5(4) of the SARFAESI Act, 2002 does contemplate continuation of all proceedings after acquisition of financial assets by an assignee. There is no dispute that ACREL was assigned the debt by HDFCL during pendency of Section 7 proceedings. Further, Order XXII Rule 10 of Civil Procedure Code, 1908 contemplates continuance of proceeding on the basis of devolution of rights with the leave of the Court, which is applied generally in civil proceeding and suit.

The Bench held that there is no prohibition under IBC or its Regulations from continuing the proceeding by an assignee. The Bench upheld the order of the Adjudicating Authority and dismissed the appeal.

Case Name: Siti Networks Ltd. vs Assets Care and Reconstruction Enterprises Ltd. & Anr. [Comp. App. (AT) (Ins.) No. 1449 of 2022, NCLAT New Delhi] dated 13 December 2022

JUDICIAL INSIGHT

PARTIES CANNOT BE REFERRED TO ARBITRATION DURING MORATORIUM GRANTED BY NCLT UNDER THE COMPANIES ACT 2013

FACTS OF THE CASE

The petitioner (DLF Ltd.) and the respondent (IL&FS Engineering and Construction Company), executed a Construction Contract. After certain disputes arose between the parties, the petitioner invoked the arbitration clause and issued a notice under Section 21 of the Arbitration & Conciliation Act 1996. The respondent, in its reply to the notice invoking arbitration, contended that in view of the order passed by the NCLAT, staying the institution of suits and proceedings against IL&FS, i.e., the parent company of the respondent, and its 348 Group Companies, the parties cannot be referred to arbitration.

Thereafter, the petitioner filed an application under Section 11 of the Arbitration & Conciliation Act 1996 seeking appointment of an Arbitrator before the Delhi High Court.

Submissions by the Respondent

The respondent submitted before the High Court that it is a part of the IL&FS Group, which is subject to a moratorium by virtue of an order passed by the NCLAT under Sections 241 and 242 of the Companies Act, 2013. Thus, it argued that the respondent cannot be referred to arbitration. The respondent added that in furtherance of the resolution process, a public advertisement was issued in the Economic Times. In the said advertisement, the creditors of the IL&FS Group Companies, including the petitioner, were directed to submit their claims regarding undischarged liabilities, that were due up to October 15, 2018.

The respondent averred that the claims submitted by the petitioner, which were due up to October 15, 2018, were dismissed by the Claims Management Advisor, adding that the said fact was suppressed by the petitioner. The respondent submitted that since it is subject to a resolution process, the claims raised by the petitioner that accrue after October 15, 2018, cannot be referred to arbitration. It contended that a successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted.

Submissions by the Petitioner –

JUDICIAL INSIGHT

The petitioner argued that the claims which accrued post October 15, 2018 were outside the resolution framework of IL&FS and thus, they must be referred to arbitration, failing which the petitioner would be rendered remediless. The petitioner contended before the High Court that the moratorium granted by the NCLAT was not a statutory moratorium under Section 14 of the IBC. It argued that since the resolution of IL&FS was initiated under Sections 241 and 242 of the Companies Act, 2013 and not under IBC, the rigours of Section 14 of the IBC were not attracted.

It added that NCLAT is a statutory Tribunal over which the High Court has supervisory jurisdiction, therefore, the order passed by the NCLAT cannot curtail the jurisdiction of the High Court under Section 11 of the A&C Act. Thus, the petitioner argued that the NCLAT could not have passed the orders restraining institution and continuation of proceedings before the High Court.

HELD

While observing that the order passed by the NCLAT was challenged before the Supreme Court, the High Court noted that no stay order has been granted by the Apex Court.

The bench referred to the decision of the Coordinate Bench of the Delhi High Court in *M/s. Apco-Titan (JV) versus National Highways & Infrastructure Development Corporation Ltd. (2019),* where the High Court had concluded that in view of the NCLAT order, no suit was maintainable against the Group Companies of IL&FS.

Dismissing the contention of the petitioner that the moratorium granted by the NCLAT was not a statutory moratorium, the High Court ruled that the order passed by the NCLAT is akin to an order of moratorium passed under Section 14 of the IBC. While holding that the purpose and rationale behind granting a moratorium is to ensure that the assets of the corporate debtor are protected, the bench ruled that moratorium is granted with an intention to keep the company a going concern and for using the said period to strengthen its financial position.

Thus, it concluded that the intent of the order passed by the NCLAT is to protect the assets of IL&FS and its group companies, in order to make the resolution process effective and purposeful. Therefore, the bench held that it cannot be the intent of the NCLAT order to allow proceedings with respect to claims arising after the cut-off date, i.e., October 15, 2018.

Case Name: DLF Ltd. vs IL&FS Engineering and Construction Company [ARB.P. 1166/2021, Delhi High Court] judgement dated 21 December 2022

Contact Us

Head Quarters:

#75, 3rd Cross, 17th Main, 2nd Block, Koramangala, Bengaluru - 560034

Ph: +91 8040912427

Email: info@ricago.com

Website: www.ricago.com

Follow us on: