

BHANDARI & ASSOCIATES

Company Secretaries

REGULATORY UPDATES

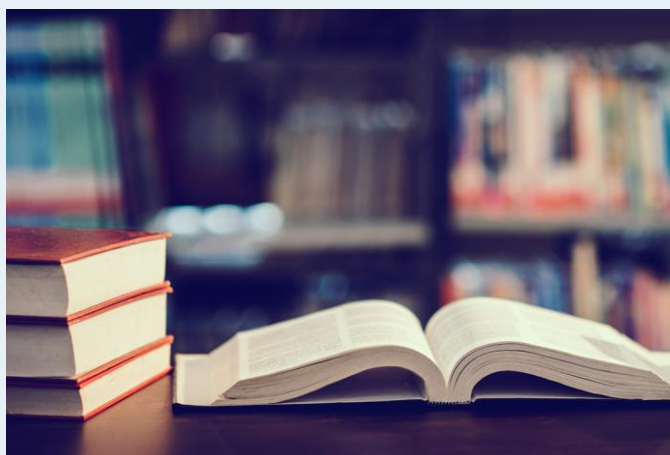
April, 2023

ABOUT US:

Bhandari & Associates was formed in the early 80's and is one amongst India's oldest practicing firms.

Our Firm is a full-service corporate law advisory firm. It assists in compliance with the Companies Act, 2013, and a wide array of other corporate laws and regulations for starts-up, medium and large Companies.

Our Regulatory Updates aim to provide an overview of the key Circulars, Notifications and Amendments by regulators/ entities including Ministry of Corporate Affairs (MCA), Securities Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Stock Exchanges (BSE and NSE).



“We are what we repeatedly do. Excellence, then is not an act, but a habit.”

- Aristotle

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Ministry of Corporate Affairs (MCA)

1. Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023

(Circular date: April 17, 2023)

MCA has notified the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 (“the Amended Rules”) which amends the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (“the Rules”).

1. For Rule 4(1) of the said Rules, the following sub rule has been substituted:

“(1) An application for removal of name of a company under sub-section (2) of section 248 shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form STK-2 along with fee of ten thousand rupees”.

2. Rule 4(3)(iv) of the said Rules has been omitted.

3. After Rule 4(3), the following has been inserted:

“(3A) The Registrar, Centre for Processing Accelerated Corporate Exit established under sub-section (1) of section 396, shall be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No. STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India.”

4. Forms STK-2, STK-6, STK-7 have been substituted through this notification which may be accessed through the below link.

The amended provisions have come into force with effect from May 01, 2023.

Accessible here: <https://www.mca.gov.in>

Securities and Exchange Board of India (SEBI) (Circulars)

1. Formulation of price bands for the first day of trading pursuant to Initial Public Offering (IPO), re-listing etc. in normal trading session

(Circular date: April 11, 2023)

SEBI vide circular no. CIR/MRD/DP/02/2012 dated January 20, 2012 had prescribed parameters regarding price discovery through Call Auction and applicable price band for the first day of trading pursuant to IPO or recommencement of trading for re-listed scrips in normal trading session.

As aforesaid Call Auction sessions are conducted on multiple stock exchanges, the discovered price / equilibrium price pursuant to such Call Auction sessions could be different on each exchange. If the difference in these discovered prices is significant, there could be a situation wherein price bands on individual exchanges are far apart from each other, giving an incorrect picture of price band to investors.

Accordingly, SEBI vide this circular has decided following for trading on first day pursuant to IPO or re-listing (including re-listing on account of scheme of arrangement but excluding scrips for which derivative contracts are available):

- a. Call Auction session would continue to be conducted separately on individual exchanges and orders would be matched by respective exchanges after computation of equilibrium price.
- b. If difference in the equilibrium price between exchanges in percentage terms (i.e. absolute difference/minimum of equilibrium prices, expressed as %) is more than the applicable price band for the scrip, a Common Equilibrium Price (CEP) would be computed by exchanges. The CEP shall be volume weighted average of equilibrium prices on individual exchanges as determined by the Call Auction.
- c. The exchanges shall set the aforesaid CEP in their trading systems and apply uniform price bands based on the CEP, as applicable.
- d. Only unexecuted pending orders from Call Auction session within the aforesaid price band shall be carried forward to the normal market segment.

The provisions of this circular shall come into effect after 60 days from the date of issuance of this circular.

Accessible here: <https://www.sebi.gov.in>

2. Contribution by eligible issuers of debt securities to the Settlement Guarantee Fund of the Limited Purpose Clearing Corporation for repo transactions in debt securities

(Circular date: April 13, 2023)

The SEBI Board in its meeting held on September 29, 2020 permitted the setting up a Limited Purpose Clearing Corporation (LPCC) for clearing and settling repo transactions in debt securities. The Board, inter alia, also decided that an amount of 0.5 basis points of the issuance value of debt securities per annum be collected upfront prior to the listing of such securities in order to build the Settlement Guarantee Fund of the LPCC.

In this regard, AMC Repo Clearing Limited (ARCL) has been granted recognition as LPCC by SEBI. The Reserve Bank of India also accorded necessary approvals to ARCL to function as a Clearing Corporation with a limited purpose and to offer central counter party services for repo transactions in debt securities.

SEBI vide this circular has provided the following framework for upfront collection of amounts as charges from eligible issuers at the time of allotment of debt securities:

- a. The eligible issuers shall be notified by the LPCC as per its risk management policy.
- b. An amount of 0.5 basis points of the issuance value of debt securities per annum based on the maturity of debt securities shall be collected by the Stock Exchanges and placed in an escrow account prior to the allotment of the debt securities. This amount is applicable on a public issue or private placement of debt securities under the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021.
- c. Stock Exchanges shall transfer the amounts so collected to the bank account of the LPCC within one working day of the receipt of the amount and inform the details of the same to the LPCC.
- d. The details of the amounts so collected shall also be disclosed by the Stock Exchanges on their websites.
- e. The above mentioned charges shall be collected on the basis of Actual/ Actual. The LPCC shall provide an illustration of the calculation of the amounts to be contributed by the eligible issuers.

The provisions of this circular shall come into force for the offer documents filed on or after May 01, 2023, for private placement/ public issues of debt securities by such eligible issuers as specified by the LPCC. The LPCC shall issue a circular accordingly to operationalise the same.

Accessible here: <https://www.sebi.gov.in>

3. Dispute Resolution Mechanism for Limited Purpose Clearing Corporation (LPCC) (Circular date: April 17, 2023)

Regulation 22F of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ('SECC Regulations') mandates a recognized Limited Purpose Clearing Corporation (LPCC) to put in place a dispute resolution mechanism, for settlement of disputes or claims arising out of transactions cleared and settled by it, in the manner as specified by the Board in consultation with the Reserve Bank of India (RBI).

SEBI vide this circular has specified that a LPCC shall adopt the following dispute resolution mechanism for settlement of disputes or claims arising out of transactions cleared and settled by it:

- a) Disputes between Clearing Members inter-se
- b) Disputes between Clearing Member or its Clients and the LPCC
- c) Disputes between the Clearing Member(s) and their Clients
- d) Disputes between the LPCC and its vendors/suppliers/service providers

This circular shall come into force with immediate effect.

Accessible here: <https://www.sebi.gov.in>

4. Bank Guarantees (BGs) created out of clients' funds (Circular date: April 25, 2023)

Currently Stock Brokers (SBs)/ Clearing Members (CMs) pledge client's funds with Banks which in turn issue Bank Guarantees (BGs) to clearing corporations for higher amounts. This implicit leverage exposes the market and especially the client's funds to risks. Pursuant to discussions with various stakeholders, SEBI vide this circular has decided to implement the following measures in order to safeguard the interests of the investors:-

- a. Beginning May 01, 2023, no new BGs shall be created out of clients' funds by SBs/CMs.

- b. Existing BGs created out of clients' funds shall be wound down by September 30, 2023.

The provisions of this framework shall not be applicable for proprietary funds of SBs/CMs in any segment and SB's proprietary funds deposited with CM in the capacity of a client.

The stock exchanges and clearing corporations shall take stock of the current position of the BGs issued out of clients' funds by SBs/CMs and monitor the wind down to ensure implementation of the circular without any disruption of services to clients. For the purpose, stock exchanges and clearing corporations shall put in place periodic reporting mechanisms for SBs/CMs.

Stock exchanges and clearing corporations are directed to submit the data mentioned in this circular to SEBI on fortnightly basis (starting from June 01, 2023).

SBs/CMs shall be required to provide a certificate, by its statutory auditor confirming the implementation of this circular. Such a certificate shall be submitted to stock exchanges/clearing corporations by October 16, 2023.

Stock exchanges and clearing corporations shall verify the compliance of the provisions of the circular in their periodic inspections/reporting. They shall also evolve adequate mechanisms to address cases of SBs/CMs who do not comply with the provisions of the circular by the stipulated dates.

SEBI vide this circular has also provided the list of SEBI circulars provisions of which shall stand modified to the extent as stated in this circular.

Accessible here: <https://www.sebi.gov.in>

5. Modifications in the requirement of filing of Offer Documents by Mutual Funds (Circular date: April 25, 2023)

SEBI, vide Circular SEBI/HO/IMD/DF2/CIR/P/2016/68 dated August 10, 2016 had mandated submission of soft copy of the final SIDs along with printed/final copy seven working days prior to the launch of the scheme.

SEBI vide this circular has modified the requirement of filing of Offer Documents by Mutual Funds and decided that AMCs shall file all final offer documents (final SID and final KIM) only digitally by emailing the same to a dedicated email id. viz: imdsidfiling@sebi.gov.in and there would be no requirement of filing of physical copies of the same with SEBI.

Accordingly, based on the consultation with Association of Mutual Funds in India (AMFI), such submission of all final SID and KIM in digital form shall be made at least two working days prior to the launch of the scheme. Further, to safeguard the interests of investors in securities market, it is also decided that all new fund offers ("NFOs") shall remain open for subscription for a minimum period of three working days.

All other provisions mentioned in the aforesaid circular shall remain unchanged.

The provisions of this circular shall be applicable with effect from May 01, 2023.

Accessible here: <https://www.sebi.gov.in>

Stock Exchange(s)

1. Additional affirmations by Practicing Company Secretaries (PCS) in Annual Secretarial Compliance Report (ASCR)

(Circular date: April 10, 2023)

With reference to Exchange Circular no. 20230316-14 dated March 16, 2023, regarding additional affirmations by PCS in ASCR, it may be noted that point no. 1 is replaced with the below mentioned point:

Sr. No	Particulars	Compliance status (Yes/No/NA)	Observations/Remarks by PCS*
1.	<u>Secretarial Standards:</u> The compliances of the listed entity are in accordance with the applicable Secretarial Standards (SS) issued by the Institute of Company Secretaries India (ICSI)		

All other details of the said circular remains unchanged.

The listed entities are required to submit the ASCR in both PDF and XBRL mode. However, the XBRL mode of submission is under development and same will be informed separately.

Accessible here: <https://www.bseindia.com>

Accessible here: <https://static.nseindia.com>

2. FAQs - Corporate Governance

(Circular date: April 10, 2023)

NSE and BSE has released the Frequently Asked Questions (FAQs) on Corporate Governance for guidance purpose. Below link may be referred for the FAQs

Accessible here: <https://www.bseindia.com>

Accessible here: <https://static.nseindia.com>

Reserve Bank of India (RBI)

1. Framework for acceptance of Green Deposits

(Circular date: April 11, 2023)

RBI vide this circular has provided a framework for acceptance of Green Deposits to encourage regulated entities (REs) to offer green deposits to customers, protect interest of the depositors, aid customers to achieve their sustainability agenda, address greenwashing concerns and help augment the flow of credit to green activities/projects. This framework shall come into effect from June 1, 2023.

This framework shall be applicable to the following entities, collectively referred to as regulated entities (REs):

- a) Scheduled Commercial Banks including Small Finance Banks (excluding Regional Rural Banks, Local Area Banks and Payments Banks) and
- b) All Deposit taking Non-Banking Financial Companies (NBFCs) registered with the Reserve Bank of India under clause (5) of Section 45IA of The Reserve Bank of India Act, 1934, including Housing Finance Companies (HFCs) registered under Section 29A of The National Housing Bank Act, 1987.

This framework provides the definition of green activities/projects, green deposit, green finance and greenwashing. This framework also includes the following:

- Denomination, interest rates and tenor of deposits
- Policy
- Financing Framework
- Use of proceeds
- Third-Party Verification/Assurance and Impact Assessment
- Reporting and Disclosures

REs shall make appropriate disclosures in their Annual Financial Statements on the portfolio-level information regarding the use of the green deposit funds as per the proforma prescribed in Annex 2 of this circular.

Accessible here: <https://www.rbi.org.in>

2. Provisioning for standard assets by primary (Urban) co-operative banks – revised norms under four-tiered regulatory framework

(Circular date: April 24, 2023)

RBI vide to circular DOR.REG.No.84/07.01.000/2022-23 dated December 01, 2022 had categorized Urban Co-operative Banks (UCBs) into four Tiers namely Tier 1, Tier 2, Tier 3 and Tier 4 for regulatory purposes.

The current standard assets provisioning norms for UCBs, consolidated in the Master Circular DOR.STR.REC.5/21.04.048/2022-23 dated April 01, 2022, are based on the earlier categorization of UCBs into Tier I and Tier II as defined in para 4 of circular UBD.CO.LS.Cir.No.66/07.01.000/2008-09 dated May 06, 2009.

On a review, it has been decided to harmonise the provisioning norms for standard assets applicable to all categories of UCBs, irrespective of their Tier in the revised

framework. Accordingly, the standard asset provisioning norms applicable to Tier I, Tier 2, Tier 3 and Tier 4 UCBs under the revised framework shall be as under:

- a. Direct advances to agriculture and SME sectors which are standard, shall attract a uniform provisioning requirement of 0.25 percent of the funded outstanding on a portfolio basis.
- b. Advances to commercial real estate (CRE) sector which are standard shall attract a uniform provisioning requirement of 1.00 percent of the funded outstanding on a portfolio basis.
- c. For advances to commercial real estate - residential housing (CRE-RH) sector, which are standard, the provisioning requirement shall be 0.75 percent
- d. For all other advances, banks shall maintain a uniform general standard asset provision of a minimum of 0.40 percent of the funded outstanding on a portfolio basis.

The erstwhile Tier I UCBs, which are currently maintaining standard asset provision of 0.25% on 'all other loans and advances not included above' as specified in table at para 2 above, are permitted to achieve the provisioning requirement of 0.40% on such advances in a staggered manner by March 31, 2025. Thus, provision on all such standard loans and advances outstanding as on March 31, 2023 shall be increased to 0.30% by March 31, 2024, to 0.35% by September 30, 2024 and to 0.40% by March 31, 2025.

These guidelines shall come into effect from the date of this circular. All other instructions stipulated in the Master Circular *ibid* remain unchanged.

Accessible here: <https://www.rbi.org.in>

3. Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

(Circular date: April 26, 2023)

RBI vide this circular has amended the directions under para 2 (ii) of the aforementioned A.P. (DIR Series) Circular dated February 16, 2021, as – “Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making the permissible investments under Liberalised Remittance Scheme (LRS). Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the Master Direction No. 7/2015-16 on LRS.

Accessible here: <https://www.rbi.org.in>

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