



NEWSLETTER

Legal, Compliance and ESG

8 November 2021

Dear Readers,

Wish you all a very Happy Diwali and a prosperous New Year!

For this edition, we bring to your reading and attention the following topics:

A. LEGAL AND REGULATORY UPDATES:-----	2
1. Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014-----	2
2. Revised formats for filing financial information for issuers of non-convertible securities -----	2
3. Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs-----	2
4. Can Hindu Undivided Family (HUF) / its Karta become partner/Designated Partner (DP) in Limited Liability Partnerships (LLP)-----	2
B. Section 138 Negotiable Instruments Act, 1881 -----	3
C. Online Arbitration Practices in India -----	5
D. ESG: Development in India's financial Sector-----	7

A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa and Saurav Agarwal

1. Extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014¹

MCA, vide its general circular dated October 29, 2021, extended the due date for filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 e-Forms upto 30th November 2021.

2. Revised formats for filing financial information for issuers of non-convertible securities²

SEBI, vide its circular dated October 05, 2021, has released the revised formats for filing financial information by entities that have listed their non-convertible securities on stock exchanges.

It has mandated that such entities should disclose financial results on a quarterly basis, including assets and liabilities, and cash flows. SEBI has also asked the entities to disclose reasons for delay or non-disclosure of financial results to the stock exchanges within one working day of the due date of submission of the financial results. If the entities decide to delay the results prior to the due date, they have to disclose detailed reasons for such delays to the stock exchanges within one working day of taking the decision.

The regulator has provided a format for disclosure of standalone financial results on a quarterly basis and standalone and consolidated financial results on an annual basis. Besides, a format for statement of assets and liabilities on a half-yearly basis has been

given and the same should contain the items mentioned in the format of the balance sheet as given under the Companies Act, 2013.

Further, the format for statement of cash flows on a half-yearly basis is also provided and the same should be prepared under the indirect method in accordance with the relevant accounting standards.

3. Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs³

RBI, vide its notification dated October 22, 2021, has notified the revised Scale Based Regulatory Framework for Non-Banking Financial Companies (NBFCs).

As the SBR framework encompasses different facets of regulation of NBFCs covering capital requirements, governance standards, prudential regulation, etc. it has been decided to first issue an integrated regulatory framework for NBFCs under SBR providing a holistic view of the SBR structure, set of fresh regulations being introduced and respective timelines.

4. Can Hindu Undivided Family (HUF) / its Karta become partner/Designated Partner (DP) in Limited Liability Partnerships (LLP)⁴

MCA vide its general circular dated 29 July 2021 clarified that as per section 5 of the LLP Act, 2008, only an individual or a body corporate may become a partner in an LLP. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its Karta cannot become designated partner in LLP

¹<https://www.mca.gov.in/bin/dms/getdocument?m ds=A5nNeF4Hy8RsmBJKnnKERw%3D%3D&type=op en>

²<https://www.sebi.gov.in/legal/circulars/oct-2021/revised-formats-for-filing-financial->

information-for-issuers-of-non-convertible-securities_53136.html

³<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12179&Mode=0>

⁴https://www.mca.gov.in/Ministry/pdf/General_Circular_13_2013_LLP.pdf

B. Section 138 Negotiable Instruments Act, 1881

~ Vivek Ugale, Senior Officer - Legal

What is section 138 in the Negotiable Instruments Act, 1881 (“Act”)?

The Negotiable Instrument Act was first drafted in 1866 and came into force in 1881. It is originally a colonial law, still widely in practice. Section 138 of the Act deals with the punishment for the dishonour of the cheque. The cheque is a negotiable instrument drawn on a specified banker and not expressed to be payable otherwise on demand.

Section 6 of the Act makes it clear that this definition of a cheque includes an electronic image of a truncated cheque and a cheque in electronic form. Concerning the dishonour of cheque, the criminal proceeding against the accused is a recent addition; Before this, there were only civil and alternate dispute resolution available to the drawee. There are still both the remedies available to the drawee. The civil remedy is the filing of a civil suit for the recovery of damages and the criminal remedy available under Section 138 of Act. Section 138 of Act is a penal provision that deals with the punishment of dishonor of cheque/ Bounce cheque.

What is the procedure to file section 138 case under the Act?

If the cheque is returned unpaid from the bank, the following steps to be followed by the drawee:

- Bearer should collect returned cheque and cheque return memo from the bank immediately.
- A notice should be served to the drawer within 30 days of the return of the cheque informing the drawer about dishonor of cheque.
- And should make demand of cheque amount within 15 days of receipt of the notice.
- It is advisable that the notice is served through a lawyer.
- If the drawer does not pay the amount of cheque within 15 days of receipt of the notice, the drawer can file a criminal complaint under section 138 of Act within next 1 month in the court where the cause of action has taken place.

What are the documents required to file the complaint under Section 138 of the Act?

The following documents are required to file the complaint under Act:

- Original dishonored cheque
- Bounce Memo
- Copy of legal notice along with postal receipt

What is section 141 in the Act?

If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial

corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution.]

Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of this section:

“company” means any body corporate and includes a firm or other association of individuals; and

“director”, in relation to a firm, means a partner in the firm.]

What is the punishment under section 138 of NI act?

According to section 138 of Act, the dishonor of cheque is a criminal offence and is punishable by imprisonment up to 2 years or with monetary penalty (which may extend to twice the amount of cheque) or with both.

C. Online Arbitration Practices in India⁵

~ Yogesh Babar - Assistant Manager, Legal

A technology revolution in the legal industry has been underway for some time now but only recently owing to the Covid-19 pandemic, the same has come to forefront of the legal professionals as well as general public's consciousness.

To put a stop to the possibility of spread of Covid-19, various restrictions have been put in place, which have made holding in-person hearings difficult. The same has resulted in rise of virtual hearings and there is an emerging consensus to better integrate the use of technology in dispute resolution, particularly in alternative dispute resolution methods or online arbitration practices. Unlike courts, the ADR mechanism are not required to clear bureaucratic hurdles to implement changes, thus the arbitral bodies are flexible and are able to adapt to the need of the hour.

Although in both the physical as well as virtual hearing, the core principles of Arbitration i.e., autonomy, consent, fair treatment, confidentiality etc. would have to remain intact. The goal should be to hold substantive hearings remotely and as efficiently and securely as possible. Though the switch to the virtual technology will definitely raise significant technical, procedural, legal and existential challenges.

Thus, the Arbitral bodies such ICC, SIAC, LCIA since the abrupt halt have been issuing press releases and seeking suggestions on online arbitration practices, electronic filings, virtual evidentiary hearings, and online case management. Based on these suggestions, certain guidelines for virtual arbitrations proceedings have been issued and the mechanism laid out therein is now being employed at pace in international arbitrations.

Key Practices for an effective Online Arbitration

A number of major arbitration institutions on account of COVID-19 have postponed hearings, and no postponement request has been denied by the registry / secretariat of these institutions. Though, the institutions have maintained that they wish to avoid delays and conduct proceedings in order to maintain the sanctimony of Arbitral proceedings. Thus, virtual hearings are indispensable, and a properly held virtual hearings can save considerable time and costs, and so by adopting certain good practices in conducting them, one can ensure a smooth experience, which are as under:

- Logistical and technological specifications such as the number of participants, access to technology, time-zone difference, guiding protocols, any data privacy concerns, the online platform i.e., Face Time, Skype, Vidyocloud, Microsoft Teams, Zoom, or Bluejeans, and the online document management system should be agreed prior to the hearing.
- The conduct of the online arbitration proceeding must be fair to both parties, so the length of arguments and time allocation to each party has to be agreed, and arbitral tribunal should ensure that parties stick to them and do not speak over each other.
- A practice round between the arbitral participants should be organized to ensure that all participants, including the tribunal, have adequate hardware and sufficient training to work the technology so that no one is left at a disadvantage, and that the hearing runs efficiently.
- The audio-video quality and the tribunal's clarity of line of sight of the witness should be properly ensured.
- The functionality of the break-out rooms, common and private chat features, and understanding how and when these will be engaged should be in place and be available when required

⁵ <https://www.mondaq.com/india/arbitration-dispute-resolution/978492/online-arbitration-practices-in-india>

- Access of the parties and the tribunal to e-documents must be ensured, and presentation of evidence by witnesses must be closely monitored and efficiently displayed via computers at all venues to ensure security of the documents and efficiency of the proceedings.
- There should be a back-up plan in place, in case of any unanticipated circumstances, such as moving to teleconference.
- The participants at their end should also ensure of quiet location with adequate lighting with proper access to internet, with quality mic and a plan in place for any troubleshooting equipment.

Mechanism employed by Indian Arbitral Bodies

In 2014, the Law Commission of India encouraged the use of technology such as videoconferencing and teleconferencing to aid the efficiency of online arbitral proceedings, but these recommendations have not found much popularity in India due to a resistance from arbitrators and counsel, for a lack of technological exposure. Though, the arbitration community in India has been working proactively for the development of India as an arbitration-friendly jurisdiction, and the acceptance of virtual arbitration could play a prominent role in this movement.

Indian Council of Arbitration (ICA)

The Indian Council of Arbitration (ICA) is currently using video conferencing tools to conduct online arbitration proceeding. The ICA Secretariat upon receiving emails of the interest parties, are making arrangement for conducting hearing via video conferencing. Also, ICA is accepting registration of fresh arbitration cases. The letter issued by ICA provides for the list of scanned documents required for initiation of a fresh case along with requisite fees, and the details of account where the same is to be deposited. ICA is yet to frame any guidelines on virtual hearing.

Conclusion

The acceptance of virtual dispute resolution is not unanimous, though the use of video conference and virtual hearings provides a viable alternative to international travel and in-person attendance at an arbitral hearing. But the use of virtual technology to conduct remote proceedings raises some legal concerns, such as challenges to the legal enforcement of an arbitral award passed in an arbitration held via video conferencing. Currently, due to pandemic, the virtual hearings have been used as an interim tool for avoiding disruptions, but sooner or later the Virtual hearings are bound to become a new normal for cross-border disputes. Though still certain cases may require in-person hearing.

The lessons learned during these challenging times may be the push needed to help arbitration better fulfill its purpose of providing an expeditious and cost-effective means for the final resolution of disputes. Virtual procedures or online arbitration practices adopted even partially, if not for the entire arbitration, could significantly reduce the costs of travel, and of organising physical hearings. Institutions in India may use this opportunity to become more attractive to parties by promptly preparing themselves with the infrastructure to administer online arbitrations. Also, the government should enact the necessary changes for adopting virtual hearings via video conferencing in the Arbitration Act, and issue model guidelines on virtual hearing for all the arbitral institution in India.

D. ESG: Development in India's financial Sector

~ Silvina Alphanso, Intern

There is a rapid expansion of financial sector in India. Existing firms are performing excellent and also new entities are entering the market. Indian financial sector comprises of commercial banks, non-banking financial companies, insurance companies, co-operatives, mutual funds, and also other financial institutions.

Our government has introduced various reforms to liberalise, regulate and enhance this industry. Also, the Government and Reserve Bank of India have taken measures to facilitate easy access to finance for Micro, Small and Medium Enterprises (MSMEs). The measures include launching Credit Guarantee Fund Scheme for MSMEs, issuing guidelines to banks etc. With a constant push of government, India's financial sector is becoming one of the vibrant financial sectors.

Government have taken various initiatives for development of financial services. In July 2021, Rajya Sabha approved the Factoring Regulation (Amendment) Bill in 2020, enabling 9000 NBFCs to participate in the factoring market. In August 2021, Prime Minister Mr. Narendra Modi launched e-RUPI, a person and purpose-specific digital payment solution. E-RUPI is a QR code or SMS string-based e-voucher that is sent to the beneficiary's cell phone. Users of this one-time payment mechanism will be able to redeem the voucher at the service provider without the usage of a card, digital payments app, or internet banking access.

There are various developments in the digital payment platforms for the rural India as well. In July 2021, Dvara Kshetriya Gramin Financial Services Pvt Ltd., an NBFC operating in rural areas of India, acquired 'TransactNow' digital platform, an early phase tech start-up that provides digital financial services to India's unbanked and underserved population.

In August 2021, Neokred, an Open Banking Stack which offers curated versions of issuance in the payment ecosystem partnered with Virenxia have planned to develop a comprehensive solution to provide an exclusive payment card for Indian farmers, The Kisan Card.

India is expected to be one of the largest private wealth markets globally in coming few years. It is one of the most vibrant global economies in banking and insurance sectors. The relaxation of foreign investment rules has received a positive response from the insurance sector, with many companies announcing plans to increase their stakes in joint ventures with Indian Companies.

It can be concluded that the rising income in India is driving a huge demand for financial services. There's a big hand of the Government for the rising financial market in the country. Various initiatives taken by the Government has led to the development of India's financial sector.