



NEWSLETTER

Legal, Compliance and ESG

05 December 2020

Dear Readers,

We bring to your reading and attention following topics:

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A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa

I. Non-Applicability of Provisions of the RBI Act to a NBFC¹

RBI vide its notification dated November 18, 2020 has notified that the provisions of Sections 45-IA, 45-IB and 45-IC of the Reserve Bank of India Act, 1934 (2 of 1934) shall not apply to a non-banking financial company which is a Housing Finance Institution as defined in clause (d) of section 2 of the National Housing Bank Act, 1987 (53 of 1987).

II. Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020²

IBBI vide its notification dated November 13, 2020 has notified the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020. From now on an information utility shall disseminate every public announcement it receives or has access to, on the date of its receipt or access, as the case may be, to its registered users, who are creditors of the corporate debtor undergoing

1

<http://www.egazette.nic.in/WriteReadData/2020/223173.pdf>

2

<https://ibbi.gov.in/uploads/legalframework/1c05b4c5735edfff380a650335907d9b.pdf>

insolvency proceeding under the Code.

III. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020³

IBBI vide its notification dated November 13, 2020 has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020.

Key highlights of the amendment are:

- i. A Financial Creditor in order to substantiate the pre occurred default, has to furnish 'evidence of the default' recorded with the information utility along with the application made under Section 7.
- ii. The Board in pursuance of this power has amended the Regulations to specify/add two 'other record' or 'evidence of default' such as Certified copy of entries in the relevant account in the bankers' book, and Order of a Court or Tribunal that has adjudicated upon the non-payment of a debt.
- iii. RP to intimate each claimant the principle or formulae for payment of debts under a resolution plan, within 15 days of the order of the AA approving such resolution plan.
- iv. The IRP/RP are now required to submit the list of creditors on an electronic platform for dissemination on its website.

IV. Mistakes Committed by Insolvency Professionals in Conduct of Corporate Insolvency Resolution Process⁴

IBBI vide its communication dated November 13, 2020 has listed out a few such mistakes with a hope that these will not be committed by any IP, pre-empting the IBBI/IPA to initiate any disciplinary action. Few mistakes listed in the communication are:

- i. Assignment without having Authorisation
- ii. Fee payable to IP

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<https://ibbi.gov.in/uploads/legalframework/f659d8b67003518230543dd56825fffc.pdf>

4

<https://ibbi.gov.in/uploads/legalframework/33ce2304913fe3f24b7bd9b22b631b37.pdf>

- iii. Application for cooperation
- iv. Public announcement
- v. Updating of list of claims
- vi. Authority of CoC
- vii. Appointment of professionals
- viii. Appointment of registered valuers
- ix. Payment for professional services etc.

V. Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign law firms⁵

RBI vide its notification dated November 23, 2020 has notified that no fresh permissions/renewal of permission shall be granted by the Reserve Bank/AD Category-I banks to any foreign law firm for opening of Liaison Office in India, till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

The Hon'ble Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession.

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https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?id=11997

B. Co-Lending by Banks and NBFCs to Priority Sector⁶

~ Anand Asawa

RBI vide their circular No. RBI/2020-21/63 FIDD.CO.Plan.BC.No.8/04.09.01/2020-21 dated November 5, 2020 (“November 5 Circular”) issued circular on Co-Lending by Banks and NBFCs to Priority Sector. (Applicable to all Registered Non-Banking Financial Companies (including Housing Finance Companies).

Please refer to the circular FIDD.CO.Plan.BC.08/04.09.01/2018-19 dated September 21, 2018⁷ on co-origination of loans by banks and NBFCs for lending to priority sector (“September 21 Circular”). The arrangement entailed joint contribution of credit at the facility level by both the lenders as also sharing of risks and rewards. The November 5 Circular supersedes the September 21 Circular; However, outstanding loans in terms of the September 21 Circular would continue to be classified under priority sector till their repayment or maturity, whichever is earlier.

Based on the feedback received from the stakeholders and to better leverage the respective comparative advantages of the banks and NBFCs in a collaborative effort, it has been decided to provide greater operational flexibility to the lending institutions, while requiring them to conform to the regulatory guidelines on outsourcing, KYC, etc. The primary focus of the revised scheme, rechristened as “Co-Lending Model” (CLM), is to improve the flow of credit to the unserved and underserved sector of the economy and make available funds to the ultimate beneficiary at an affordable cost, considering the lower cost of funds from banks and greater reach of the NBFCs. Detailed features of the CLM are furnished in the Annex.

In terms of the CLM, banks are permitted to co-lend with all registered NBFCs (including HFCs) based on a prior agreement. The co-lending banks will take their share of the individual loans on a back-to-back basis in their books. However, NBFCs shall be required to retain a minimum of 20 per cent share of the individual loans on their books.

- The banks and NBFCs shall formulate Board approved policies for entering into the CLM and place the approved policies on their websites. Based on their Board approved policies, a Master Agreement may be entered into between the two partner institutions which shall inter-alia include, terms and conditions of the arrangement, the criteria for selection of partner institutions, the specific product lines and areas of operation, along with provisions related to segregation of responsibilities as well as customer interface and protection issues, as detailed in the Annex.
- The Master Agreement may provide for the banks to either mandatorily take their share of the individual loans originated by the NBFCs in their books as per the terms of the agreement, or to retain the discretion to reject certain loans after their due diligence prior to taking in their books, subject to the conditions specified in the Annex.
- The banks can claim priority sector status in respect of their share of credit while engaging in the CLM adhering to the specified conditions.
- The CLM shall not be applicable to foreign banks (including WOS) with less than 20 branches.

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<https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NT6300DF94088B674E7FB6FC7EEC214B0200.PDF>

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<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT49BAA4688D36A64EAF8DB0BFD99C6FC54C.PDF>

C. Case Study: Indiabulls Financial Services vs M/S A.R Industries Pvt Ltd & Anr

~ Pramod Sonawane

Headnotes: Dishonour of Cheque - Cheques issued for EMIs - Later consolidated cheque of total amount due issued - Earlier cheque issued by the accused to pay the EMIs of the loan amount become unenforceable.

After dishonour of the cheque in dispute, there was again a demand by complainant company from the accused whereby the total outstanding amount was fixed and another cheque for consolidated amount due was issued - Complainant company had also filed a criminal complaint under Section 138 of the Negotiable Instruments Act for dishonour of a cheque for consolidated outstanding loan amount which was pending.

It was held by the Hon'ble court that earlier cheque issued by the accused to pay the EMIs of the loan amount become unenforceable - Complaint dismissed and the accused was rightly acquitted.

D. ESG: FAQs on Code of Conduct while interacting with customers for Collections

~ Suprabhat Pathak

Query 1: During what time of the day, can we call/visit customers for collections or otherwise?

Answer: Customers should be called only between 0700 Hrs. and 1900 Hrs. unless exceptional circumstances warrant deviation from this timeframe. Under no circumstances, customer can be called beyond 2100 hrs.

Query 2: Can we be disrespectful towards the customers and use foul language, if the customer is not paying dues?

Answer: Certainly not! All Customers (including Customers who are late in paying or in default) must be treated with respect, dignity, courtesy and fairness. Customers deserve to be treated with dignity. APAC Representatives should always remain professional during telephone conversations and visits. No written or verbal threats, abuse or rudeness is permitted. APAC Representative should use only acceptable business language, even if the other party does not.

Query 3: What if the customer is being abusive and using foul language against us?

Answer: All employees of APAC and its representatives deserve to be treated with dignity. They may refer the customer to management, or end calls when a customer becomes abusive or threatening. Customers should be informed prior to termination of such calls. All calls where the customer becomes abusive or threatening should be appropriately documented.

Query 4: How do we initiate the conversation with the customer during collection?

Answer: APAC employees/ third party representatives should always identify themselves and the Company/Entity that they represent at the very beginning of every interaction with customers.

Query 5: Can we still visit the customers at their business address if the customer has requested us not to?

Answer: Customer requests that calls/visits to place of work be stopped are to be honored if he/she provides a suitable alternate where he/she may be reached during collection working hours. Such customers should be asked to provide an alternate address/phone number where they may be reached.

Query 6: If the customer is requesting to talk to the supervisor, should we honour the request or can we ignore it?

Answer: Customer or third-party requests for supervisor names or requests to speak with supervisor should always be honored.

Query 7: Which policies are important to be adhered by the collection team/APAC employee/representatives before approaching the customers for recovery/collections.

Answer: APAC employees/third party agencies shall always adhere to the collection policy and fair practice code and internal policies of the company. Collection Agencies should be informed while enrolling their services to adhere to internal policies. All activities should be consistent with the guidelines issued (from time to time) by Reserve Bank of India.