Issue 30

NEWSLETTER

Legal, Compliance and ESG

12 October 2021

Dear Readers,

We bring to your reading and attention following topics:

A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa and Saurav Agarwal

1. Extension of time for holding of Annual General Meeting (AGM) for the financial year ended on 31.03.2021[1]

MCA vide its order dated September 23, 2021, has directed to all Registrar of Companies to accord its approval of a 2 (Two) months extension to companies who have not been able to hold their Annual General Meetings for the financial year ended March 31, 2021.

In terms of the power vested under the third proviso to sub-section (1) of Section 96 of the Act, the Registrar of Companies extended the time to hold AGM, other than the first AGM, for the financial year ended on March 31, 2021, for Companies within the jurisdiction of their respective office, which are unable to hold their Annual General Meeting, without requiring the companies to file applications for seeking such extension by filing the prescribed Form No. GNL-1, such period within the due date of holding the AGM by a period of two months from the due date by which the AGM ought to have been held in accordance with Section 96(1) of the Act.

The RoC clarified that the extension granted under this Order shall also cover the pending applications filed in Form No. GNL-1 for the extension of AGM for the financial year ended on 31.03.2021, which is yet to be approved. Further, the applications filed in Form No. GNL-1 for the extension of AGM for the financial year ended on March 31, 2021, which were rejected, where the approval for the extension of AGM up to 2 months from the due date of the AGM shall be deemed to have been granted without any further action on the part of the Company.

2. Application for Aadhaar e-KYC Authentication License[2]

RBI vide its notification dated September 13, 2021 notified that NBFCs, payment system providers, and payment system participants desirous of obtaining Aadhaar Authentication License-KYC User Agency (KUA) License or sub-KUA License (to perform authentication through a KUA), issued by the UIDAI, may submit their application to this Department for onward submission to UIDAI.

In terms of Section 11A of the Prevention of Money Laundering Act (PMLA), 2002, the government through a notification may permit entities other than banking firms to authenticate client's Aadhaar number using the e-KYC facility provided by the Unique Identification Authority of India (UIDAI). However, the notification shall be issued only after consulting with the UIDAI and the appropriate regulator.

Further, a detailed procedure for processing of applications under the aforementioned section for the use of Aadhaar authentication services by entities other than banking companies have been provided by the Department of Revenue, Ministry of Finance in its circular dated May 09, 2019.

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[1] https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/extension-agm.html

[2] https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12161&Mode=0

B. Arbitration explained

~ Vivek Ugale, Senior Officer - Legal

What is Arbitration?

Arbitration is a popular form of alternative dispute resolution that is used by many individuals and businesses to resolve disagreements in place of pursuing a lawsuit.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

Who is the Arbitrator?

An arbitrator is a neutral person chosen to resolve disputes outside the court.

The judgement given by the arbitrator is considered as final and binding.

When Arbitration Proceedings can be commenced?

Arbitration proceedings can take place when both the parties to the agreement have agreed to it.

In case of future disputes arising under a contract, the parties insert an arbitration clause in the relevant contract.

Who can initiate the Arbitration proceedings?

The claimant party can file arbitration by filing a claim before the Arbitrator and opposing party will then have an opportunity to defence.

What are the benefits of Arbitration?

Arbitration as compared to litigation is less time consuming as well as less expensive. It can provide better quality of Justice than the courts.

C. ESG: New Master Directions on Securitization and Transfer of Loan Assets

The Reserve Bank of India ("RBI") issued new 'Master Directions' on (a) securitization of standard assets and (b) transfer of loan exposures. These directions come into immediate effect replacing existing guidelines on the subject. These directions further elaborate and give clarity on many issues which were not explicitly addressed earlier. There are many relaxations compared to existing regulations and RBI has also introduced the concept of STC (Short, Transparent and Comparable) Securitization.

<u>Key takeaways are as under</u>:

Securitization of standard assets[3]

- Synthetic securitization and re-securitization continue to be prohibited
- Securitization of assets purchased from third party has now been permitted
- Securitization of single asset has also been now permitted
- Securitization of exposure to other lending institutions is now prohibited
- RMBS and replenishment structures have been recognized
- Limit of total retained exposures by originators is retained at 20%
- MHP reduced to max of 6 months; another major change is MHP to be counted from date registration of security interest where security can be registered
- MRR continues at 5% or 10% (depending on original tenor of loan), with RMBS having MRR of 5% irrespective of tenor; over-collateral (OC) not to be counted towards MRR.
- Favorable terms for reset of credit enhancement for RMBS compared to other asset classes
- STC Securitization shall have favorable capital treatment compared to non-STC transactions.
    - The guidelines have stipulated conditions to be met for a transaction to qualify as STC. These include homogeneity of assets, performance history made public for at least 5 years, healthy credit score, obligor concentration, etc.
- Overseas branches of Indian lenders not to assume securitization exposure in jurisdictions not having MRR stipulations but can do so where MHP stipulations are not prescribed
- While de-recognition of securitized assets will continue to be guided by IndAS, RBI has stipulated conditions for derecognition of securitized assets for the purposes of assessing capital adequacy.
    - The yield to investors may change consequent to changes in the benchmark to which the underlying loans are linked.
    - Any clause allowing increase in yield to the investors based on deterioration in credit quality would lead to derecognition of the securitized assets.

Transfer of Loan exposure (standard assets)[4]

- Lenders barred from acquiring (or transferring) loans from (to) other than specified Lenders [i.e., SCB, AIFI, SFB and NBFCs (inc. HFCs)] unless otherwise permitted, specifically or generally.
    - Consequently, covered bond deals involving transfer of loan to SPV (outside securitization framework) would not be possible unless so permitted by RBI.
- Restriction on Lenders to give credit enhancement continues – this applies even to Lenders who are not the Sellers.
- Loan participation (~ risk participation) outside Inter Bank Participation Certificate (IBPC) recognized
- MRR made optional; MHP requirement like securitization.

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[3] https://rbidocs.rbi.org.in/rdocs/notification/PDFs/85MDSTANDARDASSETSBE149B86CD3A4B368A5D24471DAD2300.PDF

[4] https://rbidocs.rbi.org.in/rdocs/notification/PDFs/86MDLOANEXPOSURESC6B1DFB428C349D885619396317F04DE.PDF

- The due diligence can be done at portfolio level (in case buyer is unable to do so at loan level for entire portfolio) provided (a) there is minimum MRR of 10% and (b) due diligence for at least 1/3rd of portfolio (by both number and value) is done at loan level.

These directions will enable securitization of certain loans which were earlier not permissible and reduced MHP, would help increase the stock of eligible loans available with originators on an immediate basis, helping securitization volumes in the near term. These directions (concept of STC Securitization) could signal a paradigm shift in the long run, likely leading to a deepening of the Indian securitization market with greater transparency and robust disclosure practices.