



NEWSLETTER

Legal, Compliance and ESG

9 December 2021

Dear Readers,

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A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa and Saurav Agarwal

1. Master Circular on Scheme of Arrangement¹

SEBI, vide its circular dated November 23, 2021, issued a Master circular which is a compilation of relevant and updated circulars issued by SEBI which deal with schemes of arrangement, and which are operational as on date of this circular.

2. Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Clarifications²

RBI, vide its notification dated November 12, 2021, has issued a clarification on prudential norms on Income Recognition, Asset Classification, and Provisioning pertaining to Advances, with a view to ensure uniformity in the implementation of IRACP (Income recognition, asset classification, and provisioning pertaining to advances) norms across all lending institutions, certain aspects of the extant regulatory guidelines are being clarified and/or harmonized, which will be applicable mutatis mutandis to all lending institutions.

A clarification regarding the definition of 'out of order' has been issued. The Cash Credit/Overdraft (CC/OD) account is classified as NPA (Non-Performing Asset) if it is 'out of order'. In cases where the outstanding balance in the principal operating account is less than the sanctioned limit/drawing power, the extant instructions, inter alia, stipulate that the account should be treated as 'out of order' if there are no credits continuously for 90 days as on the date of Balance Sheet or credits are not enough to cover the interest debited during the same period.

With a view to increasing awareness among the borrowers, lending institutions shall place consumer education literature on their websites, explaining with examples, the

¹https://www.sebi.gov.in/legal/master-circulars/nov-2021/master-circular-on-scheme-of-arrangement_54132.html

concepts of date of overdue, SMA and NPA classification and upgradation, with specific reference to the day-end process. Lending institutions may also consider displaying such consumer education literature in their branches by means of posters and/or other appropriate media.

Further, it shall also be ensured that their front-line officers educate borrowers about all these concepts, with respect to loans availed by them, at the time of sanction/disbursal/renewal of loans. These instructions shall be complied with at the earliest, but no later than March 31, 2022.

3. Reserve Bank - Integrated Ombudsman Scheme, 2021³

RBI, vide its notification dated November 12, 2021, has launched the integrated ombudsman scheme, 2021, a unified ombudsman scheme which will encompass customer grievance across different RBI regulated entities. The Scheme covers the following regulated entities:

- i. all Commercial Banks, Regional Rural Banks, Scheduled Primary (Urban) Co-operative Banks and Non-Scheduled Primary (Urban) Co-operative Banks with deposits size of Rupees 50 crore and above as on the date of the audited balance sheet of the previous financial year;
- ii. all Non-Banking Financial Companies (excluding Housing Finance Companies) which (a) are authorised to accept deposits; or (b) have customer interface, with an assets size of Rupees 100 crore and above as on the date of the audited balance sheet of the previous financial year;
- iii. all System Participants as defined under the Scheme

²<https://rbidocs.rbi.org.in/rdocs/notification/PDF/s/125IRAC5D423E89A957430AEEEE46913F90155.E.PDF>

³<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12192&Mode=0>

4. Appointment of Internal Ombudsman by Non-Banking Financial Companies⁴

RBI, vide its circular dated November 15, 2021, directs NBFCs registered with RBI under Section 45-IA of the RBI Act, 1934, fulfilling the criteria given below, to appoint an Internal Ombudsman (IO).

- i. Deposit-taking NBFCs (NBFCs-D) with 10 or more branches.
- ii. Non-Deposit taking NBFCs (NBFCs-ND) with asset size of Rs.5,000 crore and above and having public customer interface.

The following types of NBFCs will be excluded from the applicability of this direction:

- i. Stand-alone Primary Dealer;
- ii. Non-Banking Financial Company - Infrastructure Finance Company (NBFC-IFC);
- iii. Core Investment Company (CIC);
- iv. Infrastructure Debt Fund - Non-Banking Financial Company (IDF-NBFC);
- v. Non-Banking Financial Company – Account Aggregator (NBFC-AA);
- vi. NBFC under Corporate Insolvency Resolution Process;
- vii. NBFC in liquidation;
- viii. NBFC having only captive customers.

⁴https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12195

B. Distribution of property under Hindu Succession Act, 1956

~ Vivek Ugale, Senior Officer - Legal

A written and a registered Will, is the best and most convenient way for you to pass on your estate to the persons whom you want to. Now what happens if a person dies without a will and to whom his/her property will pass on? The Hindu Succession Act 1956 is quite clear about it.

1. If the Deceased is a Male

The property of a Hindu male dying intestate, or without a will, would be given first to heirs within Class I. If there are no heirs categorized as Class I, the property will be given to heirs within Class II. If there are no Class I or II heirs, then the property will first go to agnates (distant blood relatives of male lineage) and if no agnates are available then to cognates (distant blood relatives of male or female lineage). And if there are no cognates then the estate will go to government. The detail is as under:

Class I heirs:

Firstly to: Mother, Widow, Son, Daughter

Secondly to: Widow of pre-deceased son, Daughter of pre-deceased son

Thirdly to: Widow of pre-deceased sons of pre-deceased son, Son of pre-deceased son of pre-deceased son, Daughter of pre-deceased son of pre-deceased son

Fourthly to: Daughter of a pre-deceased daughter, Son of a pre-deceased daughter

Fifthly to: Son of a pre-deceased daughter's pre-deceased daughter, Daughter of a pre-deceased daughter's pre-deceased daughter

Sixthly to: Daughter of a pre-deceased son of a pre-deceased daughter, Daughter of a pre-deceased daughter of pre-deceased son.

The widow (or widows), mother and each of the children take equal shares. Where one or more of such sons or daughters is no more, then, the Class 1 heirs in that branch will all jointly stand in the place left behind by such deceased son or daughter and shall take between them one share.

All these heirs inherit simultaneously and to the exclusion of other heirs. In the absence of any of the heirs in this category, the property devolves upon the enumerated heirs specified in class II

Class II Legal Heirs

In case no Class-I heirs are not available, Class-II heirs, are considered. Among the heirs specified in Class II, those who are mentioned first get the property simultaneously and in exclusion to those in the subsequent entries. For example, if the father is no longer live, then the second in list such as "(1) Son's daughter's son (2) son's daughter's daughter, (3) brother, (4) sister" will get the property in equal measure, provided all the heirs are available. However, whoever is alive will get the property in equal proportion.

(i) Father

(ii) (1) Son's daughter's son (2) son's daughter's daughter, (3) brother, (4) sister.

- (iii) (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter
- (iv) (1) Brother's son (2) Sister's son, (3) brother's daughter (4) Sister's daughter
- (v) Father's father. Father's mother
- (vi) Father's widow, brother's widow
- (vii) Father's brother, father's sister
- (viii) Mother's father, mother's sister
- (ix) Mother's brother, mother's sister

2. If the Deceased is a Female

The property of a female Hindu dying without a will shall devolve according to the following rules:

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

In case of a Hindu female dying intestate and without any issue or any children or any predeceased children, any property inherited by her from her parents shall not devolve upon her husband or his heirs but revert to her natal family.

Similarly, in case a Hindu female dies intestate and without any issue or any children or any predeceased children, then any property inherited by her from her husband, or her father-in-law devolves upon the heirs of her husband.

Thus, property inherited from her husband would not devolve upon her father or his heirs.

Agnates and Cognates

If there are no heirs in Class II, the property will be given to the deceased's agnates (a male or female descendant by male links from a common male ancestor) or relatives through male lineage (for example first cousin and their children). If there are no agnates or relatives through the male's lineage, then the property is given to the cognates (One related by blood or origin with another, especially a person sharing an ancestor with another), or any relative through the lineage of males or females (for example second cousin and their children).

Certain Exceptions:

- Any person who commits murder is disqualified from receiving any form of inheritance from the victim.
- Full Blood preferred to Half blood
- If a relative converts from Hinduism, he or she is still eligible for inheritance. The descendants of that converted relative, however, are disqualified from receiving inheritance from their Hindu relatives, unless they have converted back to Hinduism before the death of the relative.
- Widows remarrying are not entitled to inherit as widow

C. ESG: Socially responsible investing: Indian investors are taking to ESG investments⁵

In the last few years, socially responsible investing has gained enormous attention globally. Due to this paradigm shift in the global investment strategy, investors are looking for those companies that give high relevance to the environmental, social, and governance (ESG) factors in doing business.

Concept of ESG investment

The concept of ESG investments is much accepted among the global fund managers as many of them are tracking ESG indices such as the S&P 500 ESG Index, S&P Europe350 ESG Index, and others for making investment decisions. ESG investments are gaining popularity among both active and passive fund managers. Passive fund managers track an ESG index whereas active fund managers look into the ESG scores for making the fund's trading strategies. Even though the concept of ESG investing is well-established in the global markets, it is still at a nascent stage in the Indian market.

ESG Investment in India

Although the concept of ESG investing is new among investors in India, they have started to look into the important aspects of socially responsible investing while making investment decisions. S&P BSE Carbonex; S&P BSE Greenex and S&P BSE 100 ESG are the three sustainability investing indices of BSE. It is imperative to examine how these sustainability investing indices of India support the realisation of the United Nations Sustainable Stock Exchanges Initiatives.

Performance of EGS index in India

During the period between January 2020 to September 2020 end, except S&P BSE Carbonex, the other two sustainability indices show positive average daily returns. However, since October 2020 the three sustainability indices show higher positive average daily returns. During the Covid-19 period, all these three sustainability indices show positive average daily returns.

The correlations among the three sustainability indices are high during this Covid-19 period. Between March 2020 and May 2020, high spikes are observed for all three sustainability indices daily average returns. This was approximately the period when Covid-19 lockdown measures were implemented across the globe including India. This indicates that the fear of Covid-19 spread has impacted significantly on all these three sustainability indices for a short period.

The ongoing Covid-19 crisis already has had a tumultuous impact on all the global economies and financial markets. A slight adjustment to the global economies and markets occurred only after the governments of the countries announced measures to support the national economy and enterprises affected by the Covid-19 crisis. Global economies and financial markets have reacted accordingly with several policies regionally and globally as the principal result of the pandemic.

The performance of these three sustainability indices is compared with the Sensex (See graphic). The S&P BSE 100 ESG index outperformed Sensex in all the three cases (one-, three-, and five-year annual returns). The estimates also indicate that all these three sustainability indices outperformed the Sensex during the Covid-19 crisis.

Outperformance of the three sustainability indices of India over the market (Sensex) during the ongoing Covid-19 crisis clearly indicates the importance of sustainability index investing in India. Higher level of co-movement among the three sustainability indices indicates that the investors will not get the benefit of portfolio diversification by investing comprehensively in these three S&P BSE Carbonex, S&P BSE Greenex and S&P BSE 100 ESG index. This socially responsible investing trend among the market participants in India seems to be a popular trend in the near future as India aligns itself with the global market trends.

⁵ <https://www.financialexpress.com/money/socially-responsible-investing-indian-investors-are-taking-to-esg-investments/2362104/>