

WEEKLY CORPORATE UPDATES

Saturday 06th May, 2023

(Curated & compiled by)

Team Indiacorp Law

Headed by:

Adv. (CS) Alok Kumar Kuchhal. Com, LL.B., FCS, Insolvency Professional

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MCA UPDATES

Professionals under the scanner for unethical conduct

Dated: 1st May, 2023

The Ministry of Corporate Affairs has taken a serious view of professionals who help companies incorporate by falsely certifying they have visited the premises of the intended registered office. Falsely certifying the physical premises is linked to formation of shell companies, and the government wants field officers and regulators like ICSI, Institute of Chartered Accountants of India (ICAI) and Institute of Cost Accountants of India to be vigilant and to sensitize professionals about this requirement, said the person speaking on condition of anonymity.

Related Link: <https://www.livemint.com/news/india/indias-corporate-ministry-cracks-down-on-false-premises-certification-by-professionals-for-company-incorporation-11682964736059.html>

CA, CS and CWAs covered under the ambit of PMLA If Financial Transactions executed on behalf of Client

Notification No.: S.O. 2036(E)

Dated: 3rd May, 2023

The Government has notified that the practicing chartered accountants (CA), Company Secretary (CS) and Cost and Works Accountancy (CWAs) are covered under the Prevention of Money Laundering Act, 2002 (PMLA) if following financial transactions are executed on behalf of a client.

Firstly, buying and selling of any immovable property.

Secondly, managing client money, securities, or other assets.

Thirdly, management of bank, savings, or securities accounts.

Fourthly, organization of contributions for the creation, operation, or management of companies.

Lastly, the creation, operation, or management of companies, limited liability partnerships or trusts, and buying and selling of business entities.

Link: <https://www.livelaw.in/news-updates/ca-cs-and-cwas-pmla-financial-transactions-executed-client-227969>
<https://egazette.nic.in/WriteReadData/2023/245631.pdf>

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SEBI UPDATES

SEBI to tell brokers, funds to limit use of financial influencers: Report

Dated: 05th May, 2023

India's market regulator will direct brokers and mutual funds to limit the use of financial influencers in advertising and marketing campaigns, according to two people with direct knowledge of the matter.

A surge in retail investors in equity markets during the COVID-19 pandemic led to a proliferation of influencers pushing financial advice on social media platforms.

The Securities and Exchange Board of India (SEBI) fears they could mislead investors, according to the people, who spoke on condition of anonymity about a decision that has not been reported previously.

SEBI did not respond immediately to a request for comment.

The regulator will ask brokers, traders registered with it and mutual funds to stop associating with financial influencers who are seen to be giving misleading advise and inducing investors, said the first person, a senior regulatory official.

Related Link: <https://www.moneycontrol.com/news/business/markets/sebi-to-tell-brokers-funds-to-limit-use-of-financial-influencers-report-10532861.html>

SEBI asks for investor profiles from AIFs as inter-departmental sharing gains ground

Dated: 04th May, 2023

The market regulator has asked trustees of alternative investment funds (AIFs) to share more information about fund participants, with concerns mounting around moneylaundering and round tripping.

This is part of a larger exercise by the Securities and Exchange Board of India (SEBI) to “to figure out how the country is being funded and, more importantly, who is in control of the money”, according to Yashojit Mitra, partner at Economic Laws Practice. He added that this will also help when the government is trying to stop or manage the flow from funds from certain geographical locations.

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“SEBI wishes to ascertain the potential risk of these funds to the Indian financial system,” said Sumit Agrawal, a financial regulator lawyer and founder of Regstreet Law Advisors. Various categories of AIFs may be required to different types of information based on the risks they pose, he added.

Related Link: <https://www.moneycontrol.com/news/business/sebi-asks-for-investor-profiles-from-aifs-as-inter-departmental-sharing-gains-ground-10527141.html>

New SEBI rule from today: A ban that’s a boon in many ways

Dated: 01st May, 2023

Starting May 1, 2023, stock brokers and clearing members in India will no longer be allowed to use their clients' funds for bank guarantees, according to a ruling by the Securities and Exchange Board of India (SEBI).

Usually, banks issue bank guarantees on behalf of stockbrokers to stock exchanges for security deposits and margin requirements. These guarantees are submitted at clearing corporations, which then determine the brokers' trading limits. However, brokers often pledge their clients' funds with banks, which in turn issue bank guarantees for higher amounts. Banks issues BG at 2 times the amount pledged by the Broker, this exposes the market to risks. As per the circular no new BGs shall be created out of clients' funds from May 1, 2023. Existing BGs created out of clients' funds are to be wound down by September 30, 2023

Sebi has expressed concern that this practice exposes the market and clients' funds to risks. Some brokers reportedly obtain bank guarantees worth twice the amount of fixed deposits they have placed using clients' funds, creating a significant disparity between their true net worth and the guarantees utilized for trading.

To address this issue, Sebi has mandated that brokers must use their own working capital to obtain greater Clearing Corporation limitations, thereby increasing their working capital demand. Additionally, Sebi has ordered brokers to wind down any existing bank guarantees created using clients' funds by September 30, 2023.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/new-sebi-rule-from-today-a-ban-thats-a-boon-in-many-ways/articleshow/99904959.cms>

RBI UPDATES

RBI not alarmed by spikes in call rate

Dated: 04th May, 2023

Recent ungainly jumps in the call money rate, representing overnight cost of funds for high-street banks, do not appear to have roiled policy makers at the Reserve Bank of India (RBI) that has stuck to its stance of withdrawing monetary accommodation.

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Instead, the central bank is likely to help iron out wrinkles through provision of repo windows if it sees signs of continuous market dislocations, sources aware of the RBI's thinking said.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/rbi-not-alarmed-by-spikes-in-call-rate/articleshow/99972086.cms>

Convoluted ratings plague ESG scores: RBI

Dated: 04th May, 2023

The rating methods used by companies to arrive at scores for adherence to Environmental Social and Governance (ESG) norms present a convoluted picture by using too many parameters, the Reserve Bank of India said.

The practice makes "it tough for the average investor to understand what the aggregate ESG score stands for" the RBI said in its Report on Currency and Finance 2022-23.

Another major concern flagged by the RBI was to do with arithmetic averages used for the aggregation of different parameters to compute ESG ratings.

"It corresponds to viewing E, S and G scores as perfect substitutes, allowing a company the flexibility to mask its poor performance in one parameter by focusing on good performance in others," the RBI said.

The central bank noted that research has shown that the underlying bias of an ESG rating agency or the overall view of a company has a bearing on the rating provided.

Related Link: <https://economictimes.indiatimes.com/markets/stocks/news/convoluted-ratings-plague-esg-scores-rbi/articleshow/99972373.cms>

Money transfer: RBI mandates complete info about originator, beneficiary

Dated: 04th May, 2023

The Reserve Bank on Thursday instructed banks and other financial institutions to ensure cross-border as well as domestic wire transfers contain complete information about the originator and beneficiary. The central bank has updated instructions in the Master Direction on Know Your Customer (KYC) related to wire transfers and also aligned the same with the relevant recommendation of the Financial Action Task Force (FATF).

"All cross-border wire transfers shall be accompanied by accurate, complete, and meaningful originator and beneficiary information...", as per the updated instructions in the Master Direction.

Also, domestic wire transfers, where the originator is an account holder of the ordering regulated entity (RE), should be accompanied by originator and beneficiary information, as in the case of cross-border wire transfer.

Related Link: <https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-updates-kyc-instructions-on-wire-transfers/articleshow/99994300.cms?from=mdr>

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Bank credit to micro, small enterprises up 14% YoY in March: RBI data

Dated: 01st May, 2023

Bank credit to micro and small enterprises under priority sector loans in March 2023 grew by 14 per cent year-on-year (YoY) vis-a-vis 13.2 per cent YoY growth in March 2022, showed the latest monthly data on sectoral deployment of bank credit by the Reserve Bank of India (RBI). MSEs were deployed Rs 15.70 lakh crore in bank credit in March this year vis-a-vis Rs 13.77 lakh crore in March last year and Rs 15.61 lakh crore in February this year.

Credit to medium-sized enterprises also saw 13.4 per cent growth in March to Rs 3.99 lakh crore from Rs 3.51 lakh crore deployed in March last year. In February 2023, Rs 3.90 lakh crore was deployed to medium units.

Aggregate priority sector credit by banks to MSEs and medium units in March 2023 stood at Rs 19.69 lakh crore – 14.4 per cent of Rs 136.55 lakh crore non-food bank credit deployed across sectors – with 13.8 per cent growth from Rs 17.29 lakh crore deployed in March 2022.

Related Link: <https://www.financialexpress.com/industry/sme/msme-fin-bank-credit-to-micro-small-enterprises-up-14-yoy-in-march-rbi-data/3069975/>

NCLT AND M & A UPDATES

New claims cannot be admitted when Resolution Plan is approved by the CoC and is pending before the AA For approval: NCLT Mumbai Reiterates

Dated: 01st May, 2023

DS Kulkarni Developers Ltd. (“Corporate Debtor”) was admitted into Corporate Insolvency Resolution Process (“CIRP”) vide an order dated 26.09.2019. D. .S. Kulkarni and Associates (“Applicant”) was a sister concern of the Corporate Debtor and was engaged in various transactions with the Corporate Debtor.

It was further observed by the Tribunal that the resolution plan has been approved by the CoC and has been submitted before the Adjudicating Authority for its approval, which has also reserved its order. It was not desirable to entertain such claims when the resolution plan is pending for approval before the Tribunal.

Related Link: <https://www.livelaw.in/ibc-cases/new-claims-cannot-be-admitted-when-resolution-plan-is-approved-by-the-coc-and-is-pending-before-the-aa-for-approval-nclt-mumbai-reiterates-227766>

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Interest can be added to Reach 1 Crore threshold Only if Provided in the Agreement: NCLT New Delhi Reiterates

Dated: 03rd May, 2023

There is further no specific agreement pursuant to which interest could be claimed or a delayed payment clause with interest in the invoices. It was thus observed by the Tribunal that interest can be added claimed to reach 1 Crore threshold. If in terms of any agreement interest is payable, thus debt will include interest to be made from Corporate Debtor.

Related Link: https://www.livelaw.in/ibc-cases/interest-can-be-added-to-reach-1-crore-threshold-only-if-provided-in-the-agreement-nclt-new-delhi-reiterates-227914?utm_source=internal-artice&utm_medium=also-read

Supreme Court allows NCLT to act against IL&FS auditors

Dated: 03rd May, 2023

The Supreme Court has allowed the National Company Law Tribunal (NCLT) to proceed with its enquiry and any subsequent action against the auditors of IL&FS Financial Services, a unit of Infrastructure Leasing and Financial Services that filed for bankruptcy in 2018.

The Supreme Court upheld provisions in India's 'Companies Act, 2013' that allows the government to enquire and act against auditors, according to an order uploaded on the court's website on Wednesday.

The country's top court was ruling on a petition filed by the government against a lower court order in 2020 that said any action against auditors is not applicable if they resign.

The Supreme Court, however, made it clear in its ruling that it was not making any comments on the merits of the allegations against the auditors.

The government had moved a petition in the NCLT in 2019 to bar IL&FS Financial Services' former auditors - Deloitte Haskin and Sells (DHS LLP) and BSR and Co, a KPMG affiliate - for five years owing to lapses in their conduct.

The Supreme Court, while allowing the application to proceed, said the NCLT should pass a final order on the centre's application.

DHS LLP will continue to present its position, supported by the facts and necessary context, before the relevant judicial forums, a spokesperson for the firm told Reuters, noting the ruling did not restrict it from servicing its clients.

BSR and Co said it was assessing the order and will determine its next steps, noting the ruling "has not decided on the merits of the case."

The top court ruling also allowed a local court to continue the proceedings lodged by the Serious Fraud and Investigation Office (SFIO) in accordance with law and on its own merits.

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Related Link: <https://economictimes.indiatimes.com/industry/services/consultancy/-/audit/supreme-court-allows-nclt-to-act-against-ilfs-auditors/articleshow/99964441.cms>

Thanking You,

Team Indiacorp

0120 - 421 4372, 9810894275, 8826016751

indiacorp@live.com, info@indiacorplaw.com

www.indiacorplaw.com

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