

SEBI lays down framework for calculation of Net Distributable Cash Flows by REITs & InvITs – December 7, 2023

The Securities and Exchanges Board of India (SEBI) laid down the framework for calculating the available Net Distributable Cash Flows (NDCF) by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs). The circulars also mention how respective holding companies of these trusts should calculate their NDCF. Previously, the investment manager of these trusts would decide on how NDCFs would be calculated, in the offer document. Now, SEBI has extended its regulation for these investment trusts, and it would decide the computation. Accordingly, REITs and InvITs should now distribute a minimum of 90 per cent of the NDCFs at both the trust and the special purpose vehicle levels, according to two separate circulars from SEBI. To access the circular for revised framework for computation of NDCF by REITs, [click here](#) and by InvITs, [click here](#).

Credit of units of AIFs in dematerialised form – December 11, 2023

The SEBI has released a circular outlining the process to be followed for dematerialization of units issued by Alternative Investment Funds (AIFs). Consequently, all AIFs are now mandated to issue units in dematerialised form. The units issued prior to the circular were to be mandatorily dematerialised by October 31, 2023, according to issuance of units of AIFs in dematerialised form Rules dated June 21, 2023.

Accordingly, the depositories have also been directed to make necessary amendments to their byelaws, rules, and regulations for effective implementation of the provisions. They are also required to communicate the provisions to their members and participants. This is a significant move in modernizing market practices, fostering transparency and effectively monitoring transactions in the space by way of digitisation. To access the circular, [click here](#).

SEBI Streamlines Accredited Investor Registration Framework – December 18, 2024

The SEBI has simplified the requirements for the grant of accreditation to investors, along with an extending validity of the certification. The accreditation agencies will grant accreditation solely based on the Know Your Customer (KYC) and the financial information of the applicants. Further, the accreditation certificate will mandatorily include a following disclaimer, *"the assessment of the applicant for accreditation is solely based on the applicant's KYC and financial information and does not in any manner exempt market intermediaries and pooled investment vehicles from carrying out necessary due diligence of the accredited investors at the time of onboarding them as their clients."*

Under the framework, accreditation agencies, which are also KYC Registration Agencies (KRAs), may access KYC documents of applicants for the purpose of accreditation. Further, the validity of the accreditation certificate has been revised. If the applicant meets the eligibility criteria for the preceding financial year, the accreditation certificate issued will be valid for a period of two years from the date of issuance. The eligibility criteria must be met in each of the preceding two financial years.

For Individuals, Hindu Undivided Families, Sole Proprietorships, Body Corporates, and Trusts, the circular has provided that the copies of income tax return, net worth certificate, and audited financial statements will be required. To access the circular, [click here](#).

Amendment to Circular Online Resolution of Disputes in the Indian Securities Market – December 20, 2023

The SEBI has notified amendments consolidating the norms relating to the guidelines for online resolution of disputes in the Indian securities market. It provides clarity for resolution of disputes between specified

intermediaries and regulated entities in securities market, by harnessing online conciliation and/or online arbitration. The specified intermediaries and regulated entities are the investors/clients including institutional/corporate clients and listed companies including the Registrar and Transfer Agent.

Pursuant to the amendment, an investor/client shall first take up their grievance with the Market Participant by lodging a complaint directly with the concerned Market Participant. If the grievance is not redressed satisfactorily, the investor/client may, in accordance with the SCORES guidelines, escalate the same through the SCORES Portal in accordance with the process laid out therein. After exhausting the said options for resolution of the grievance, if the investor/client is still not satisfied with the outcome, they can initiate dispute resolution through the ODR Portal at <https://smartodr.in/login>. Alternatively, the investor/client can initiate dispute resolution through the ODR Portal if the grievance lodged with the concerned Market Participant was not satisfactorily resolved. To access the circular, [click here](#).

Consultation paper on 'Introduction of optional T+0 and optional Instant Settlement of Trades in addition to T+1 Settlement Cycle in Indian Securities Markets' – December 22, 2023

The SEBI has released a consultation paper proposing instant trade settlement. In the past, the settlement cycle has been shortened from T+5 to T+3 in 2002, subsequently to T+2 in 2003 and finally to T+1 settlement. The consultation paper proposes to implement instant trade settlement in two phases. In phase 1, the regulator has proposed an optional T+0 settlement cycle for trades till 1:30 pm, with settlement of funds and securities to be completed on the same day by 4:30 pm. In phase 2, an optional immediate trade-by-trade settlement for funds and securities may be carried out. In the second phase, trading will be carried out till 3.30 pm. After implementation of phase 2, phase 1 (optional T+0 settlement) will be discontinued.

The instant settlement mechanism is expected to provide flexibility in terms of faster pay-out of the funds against the securities to the sellers and faster pay-out of securities against the funds to the buyers. Further, it aims to free up capital in the market thereby enhancing the overall market efficiency while also enhancing the overall risk management of clearing corporations as the trades will be backed by upfront funds and securities. To access the consultation paper, [click here](#).

Notification: Investments in Alternative Investment Funds – December 19, 2023

The Reserve Bank of India (RBI) has issued a directive aimed at overseeing the investment practices of Alternative Investment Funds (AIFs). This directive is applicable to commercial banks, financial institutions, and Non-Banking Financial Companies (NBFC). The regulatory focus is primarily on mitigating the practice of "evergreening" loans through the AIF route to address potential evergreening structures and recognize the need for caution without imposing a blanket ban on AIF investments.

This involves a scenario where Regulated Entities (REs), including NBFCs, engage in structures where they invest in AIFs, which subsequently invest in Non-Convertible Debentures (NCDs) of the debtor company associated with the RE. This allows the debtor company to utilize the funds obtained through NCD issuance to repay overdue loans from the RE, creating an appearance of debt resolution while maintaining exposure through AIF investments. However, there are potential unintended consequences, such as misclassifying all AIF investments as associated with evergreening, increased due diligence requirements for REs and AIFs, and the possibility of discouraging domestic institutional investment compared to foreign counterparts.

To address the concerns and potential evergreening, the RBI has thus advised the REs to refrain from investing in any AIF scheme that has downstream investments, either directly or indirectly, in a debtor company of the RE. If an AIF scheme, in which an RE is already an investor, makes a downstream investment in a debtor company, the RE must liquidate its investment in the scheme within 30 days from the date of such downstream investment. If an RE has already invested in such schemes at the time of the circular issuance, the 30-day liquidation period starts from the circular's date. REs are required to promptly inform the AIFs involved. In the event REs are unable to liquidate their investments within the prescribed time limit, they must make a 100% provision on such investments. Additionally, investments by REs in the subordinated units of any AIF scheme with a 'priority distribution model' will be subject to a full deduction from RE's capital funds. To access the directive, [click here](#).

Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023 – December 29, 2023

The RBI has released a consolidated Master Direction regarding the Internal Ombudsman (IO) mechanism and strengthen the internal grievance redressal mechanism of the REs. The Master Direction will apply to banks and NBFCs, which will include deposit-taking NBFCs (NBFCs-D) with 10 or more branches; non-deposit taking NBFCs (NBFCs-ND) with asset size of Rs.5,000 crore and above and having public customer interface. It seeks to bring uniformity in timeline for escalation of complaints to the IO, exemptions to the complaints that can be brought before the IO, temporary absence of IO, qualifications for appointment of IO, and reporting formats. It also introduces the post of Deputy Internal Ombudsman. To access the Master Direction, [click here](#).

Master Direction – Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024 – January 3, 2024

RBI has notified detailed guidelines for the issuance and regulation of Commercial Paper (CP) and NCD in a bid to strengthen the framework for short-term debt instruments, enhancing transparency and investor protection. The directions are effective from April 1, 2024, and apply to all entities dealing in CPs and NCDs of up to one year's maturity.

It broadens the scope of entities that can issue CPs and NCDs to include companies, NBFCs, REITs, All India Financial Institutions (AIFIs), and other corporates meeting specific criteria. Both residents and non-residents can invest in these instruments. It specifies that the CPs and NCDs must be issued in dematerialized form, in minimum denominations of ₹5 lakh, and follow specific tenor limits. They cannot be underwritten or co-accepted.

Moreover, it directs that banks and AIFIs may provide credit enhancement and specifies that CPs and NCDs must have a minimum credit rating of 'A3'. It lays down the guidelines on issuance, subscription, trading, and settlement of CPs and NCDs and provides that the secondary market trades must be settled through Delivery versus Payment basis. However, it does not specify the grace period for repayment and details procedures for handling defaults and buybacks. The directive mandates timely reporting of primary issuances, secondary market transactions, buybacks, and defaults, and outlines the responsibilities of Issuing and Paying Agents, Debenture Trustees, and Credit Rating Agencies. To access the Master Direction, [click here](#).

CCI seeks comments on draft of Competition Commission of India (Determination of Turnover or Income) Regulations, 2023 – December 22, 2023

The Competition Commission of India (CCI) released the 'CCI (Determination of Turnover or Income) Regulations, 2023' ("Draft Turnover Regulations") for public comments. The Draft Turnover Regulations have been released pursuant to the amendments introduced in the Competition (Amendment) Act, 2023, (which require the CCI to frame regulations for calculating the penalty to be imposed on companies as well as individuals). The Draft Turnover Regulations provide for the manner of determining the turnover or income of enterprises for the purposes of imposition of penalty for contraventions of the Competition Act. To access the draft regulations, [click here](#).

Market Study Report on Dynamics of Competition in the Mining Sector in India with a Focus on Iron Ore – December 29, 2023

The CCI has released a market study focusing on competition law concerns in the iron ore mining sector in India and its interconnected industries. It is aimed to enhance the understanding of market dynamics and bridge information gaps pertaining to the Indian mining sector, in order to establish a robust intellectual foundation of the Indian competition regime.

The study, *inter alia*, has flagged a crucial concern of the differential pricing of iron ore for different end users, which is likely to adversely affect competition in the markets. It has also highlighted the importance of promoting sustainable mining by advocating rules that phase out 'dirty' technologies gradually. Moreover, the study emphasised the need for a clear regulatory framework to incentivise the adoption of clean technology and facilitate the transformation of production processes towards sustainability. It has also recommended to ensure easing of the criteria laid down in state legislations to partake in the mining sector in India by implementing rules, to alleviate the high cost of compliance for industry participants. To access the report, [click here](#).

Central Consumer Protection Authority issues 'Guidelines for Prevention and Regulation of Dark Patterns, 2023' – December 8, 2023

The Central Consumer Protection Authority (CCPA) has issued guidelines for the prevention and regulation of dark patterns, listing 13 specified dark patterns which involve using design and choice architecture to deceive, coerce, or influence consumers into making choices that are not in their best interest. Dark patterns encompass a wide range of manipulative practices, such as false urgency, basket sneaking, confirm shaming, forced action, subscription trap, interface interference, bait and switch, drip pricing, disguised advertisement, and nagging. Such practices fall under the category of "unfair trade practices" as defined under the Consumer Protection Act, 2019. The guideline will serve as a step towards transparency in the e-commerce market regime of India. To access the press release, [click here](#).

MeitY issues advisory to all intermediaries to comply with existing IT rules – December 26, 2023

The Ministry of Electronics and Information Technology (MeitY) has recently issued an advisory to all intermediaries, urging compliance with existing IT rules. The focus of this directive is particularly on addressing concerns related to misinformation, specifically those fuelled by AI-generated deepfakes. The advisory necessitates that intermediaries communicate prohibited content, especially that outlined in Rule 3(1)(b) of the IT Rules, transparently to users. It aims to ensure a safe and trusted internet, holding intermediaries accountable for the safety.

According to the advisory, prohibited content must be communicated clearly to users through terms of service, user agreements, and reiterated during user registration, login, and information sharing/uploading on the platform. The directive underscores the responsibility of digital intermediaries to inform users about the legal consequences, including provisions in the Indian Penal Code (IPC) and the IT Act 2000, in case of Rule 3(1)(b) violations. It mandates the intermediaries to communicate their rules, regulations, privacy policy, and user agreement in the user's preferred language. They are also obligated to take reasonable measures to prevent users from engaging in activities related to 11 listed user harms or content prohibited on digital platforms, including misinformation and deepfakes. To access the press release, [click here](#).

FIRM NEWS

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