CNK & Associates LLP

Chartered Accountants

Quarterly Insights

January 2024

FEMA and RBI

INDEX

The Foreign Exchange Management Act, 1999 (FEMA)

'Fully Accessible Route' for Investment by Non-residents in Government Securities- Inclusion of Sovereign Green Bonds

RBI/2023-24/81 dated 8th November 2023

Under the Fully Accessible Route (FAR), non-resident investors are allowed unrestricted investment in specified Central Government Securities ('Specified Securities'). The RBI, vide its above notification has now included 'Sovereign Green Bonds' issued by the Government in the fiscal year 2023-24 in the list of specified securities.

Guidelines on import of silver by Qualified Jewellers as notified by – The International Financial Services Centres Authority (IFSCA)

RBI/2023-2024/83 dated 10th November 2023

The RBI, vide the aforesaid Circular, has permitted an 11-day period to AD Category-I Banks for remittance of advance payment on behalf of Qualified Jewellers (notified by International Financial Services Centres Authority), on import of silver through India International Bullion Exchange IFSC Ltd (IIBX). Similar facility was provided for import of gold vide AP (DIR Series) Circular dated 25th May 2022.

International Trade Settlement in Indian Rupees (INR) – Opening of additional Current Account for exports proceeds

RBI/2023-2024/86 dated 17th November 2023

The RBI, vide this Circular, has allowed Exporters to open special current accounts for depositing export proceeds with the Scheduled Commercial Banks (holding AD Category -I license) having Special Rupee Vostro Accounts. The objective is to provide greater operational flexibility for the exporters coupled with promoting growth of global trade in INR.

Snippet:

- The Uttar Pradesh (UP) Government aims to develop UP into a $1 trillion economy by the year 2027, for this, it has implemented UP FDI policy 2023 focusing on sectors like agriculture, manufacturing, infrastructure, MSME (Micro, Small & Medium Enterprises), tourism, skill development and service industries.

The Reserve Bank of India (RBI)

Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2023

RBI/DOR/2023-24/104 dated 12th September 2023

The revised framework as detailed in the aforementioned Directions will be **applicable from accounting period commencing on or after 1st April 2024** to all Commercial Banks excluding Regional Rural Banks. *Inter alia*, key features of these Directions include the following:

- **Investments**

  Banks should classify their entire investment portfolio (except investments in their own subsidiaries, joint ventures and associates) under 3 categories, i.e.., Held to Maturity **(HTM)**, Available for Sale **(AFS)** and Fair Value through Profit and Loss **(FVTPL)**. Held for Trading (HFT) should be a separate investment sub-category within FVTPL.

  All investments in subsidiaries, associates and joint ventures should be held in a distinct category which is separate from the other investment categories (i.e., HTM, AFS and FVTPL).

- **Audit**

  Banks should ensure that there are adequate internal control and audit procedures in place in regard to the conduct of the investment portfolio. Banks should adhere to the specified instructions in regard to audit, review and reporting of investment transactions.

- **Income recognition**
  - Banks should recognise income on accrual basis for the following investments:

a) Government Securities, bonds and debentures of corporate bodies, where interest rates on these securities are predetermined and provided interest is serviced regularly and is not in arrears.
b) Shares of corporate bodies provided dividend has been declared by the corporate body in its Annual General Meeting and the owner's right to receive payment is established.

- Subject to the above, dividend income on equity investments held under AFS should be recognised in the Profit and Loss Account **(P&L A/c)**.
- Income from units of mutual funds, alternative investment funds and other such pooled/ collective investment funds should be recognised on cash basis.

- **Accounting for Broken Period Interest**

  Banks should not capitalise the broken period interest paid to the seller as part of cost and should treat it as an item of expenditure under the P&L A/c in respect of investments in securities.

- **Transition and Repeal Provisions**
  - At the time of transition to these Directions (i.e., on 1st April 2024), banks should re-classify their investment portfolio as on 31st March 2024, as specified in these Directions.
  - The balance in provision for depreciation, as on 31st March 2024, should be reversed into the Revenue/ General Reserve.
  - The balances in Investment Reserve Account **(IRA)** as on 31st March 2024, should be transferred to the Revenue/ General Reserve if the bank meets the minimum regulatory requirements of Investment Fluctuation Reserve **(IFR)**. If the bank does not meet the minimum IFR requirements, the balances in IRA should be transferred to IFR.
  - Banks should make suitable disclosures of the transitional adjustment made in their notes to the financial statements **(FS)** for the financial year ending 31st March 2025.

Display of information - Secured assets possessed under the SARFAESI Act, 2002

RBI/2023-24/63 dated 25th September 2023

For greater transparency, the RBI has decided that the Regulated Entities **(REs)** of the RBI which are secured creditors as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest **(SARFAESI)** Act, 2002, should display information in respect of the borrowers whose secured assets have been taken into possession by the REs under the Act.

REs should upload this information on their website in the prescribed format. The first such list should be displayed on the website of REs within 6 months from the date of this circular, and the list should be updated on monthly basis.

Master Direction – RBI (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023

RBI/DoR/2023-24/105 dated 19th October 2023

The RBI has issued the above Master Directions in supersession of the Non-Banking Financial Company **(NBFC)**–Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016 and NBFC–Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016. The Master Direction aims to regulate NBFCs to safeguard the interests of investors and depositors and to prevent the affairs of any NBFC from being conducted in a manner detrimental to the interest of investors and depositors.

This Master Direction has **come into force from 16th October 2023.**

Key highlights include the following:

- The regulatory structure comprises of 4 layers based on their size, activity and perceived riskiness.
  - **NBFCs-Base Layer (NBFCs-BL)**

    This comprises of (a) non-deposit taking NBFCs with assets below Rs.1,000 crore and (b) NBFCs involved in activities like Peer-to-Peer Lending Platforms **(NBFC-P2P)**, Account Aggregators **(NBFC-AA)**, Non-Operative Financial Holding

Companies **(NOFHC)**, and NBFCs without public funds and customer interface.

- **NBFCs-Middle Layer (NBFCs-ML)**
  This layer consists of (a) all deposit-taking NBFCs **(NBFCs-D)**, regardless of their asset size, (b)non-deposit taking NBFCs with assets of Rs.1,000 crore and above and (c) NBFCs undertaking activities, such as Standalone Primary Dealers **(SPD)**, Infrastructure Debt Fund-NBFC **(IDF-NBFC)**, Core Investment Companies **(CIC)**, Housing Finance Companies **(HFC)**, and Infrastructure Finance Companies **(NBFC-IFC)**.
- **NBFCs-Upper Layer (NBFCs-UL)**
  This comprises of those NBFCs specifically identified by the RBI for enhanced regulatory requirements based on predefined parameters and scoring methodology. The top 10 NBFCs by asset size will always be in the Upper Layer
- **NBFCs-Top Layer (NBFCs-TL)**
  This layer ideally remains empty. This layer can be populated if the RBI is of the opinion that there is a substantial increase in the potential systemic risk from specific NBFCs in the Upper Layer. Such NBFCs will move to the Top Layer from the Upper Layer.

- Categorisation of NBFCs carrying out specific activity
  The regulatory structure also categorises NBFCs based on their activities.
  - NBFC-P2P, NBFC-AA, NOFHC and NBFC without public funds and customer interface will always remain in the Base Layer of the regulatory structure.
  - NBFC-D, CIC, NBFC-IFC and HFC will be included in Middle Layer or the Upper Layer. SPD and IDF-NBFC will always remain in the Middle Layer.
  - NBFC-Investment and Credit Companies (NBFCICCs), NBFC-Micro Finance Institutions (NBFC-MFIs), NBFC-Factors and Mortgage Guarantee Companies (MGCs) could lie in any of the layers of the regulatory structure depending on the parameters of the scale based regulatory framework.
  - Government owned NBFCs will be placed in the Base Layer or Middle Layer
- Multiple NBFCs in a Group - Classification in Middle Layer
  NBFCs that are part of a common Group or are floated by a common set of promoters will not be viewed on a standalone basis. The total assets of all the NBFCs in a Group will be consolidated to determine the threshold for their classification in the Middle Layer
- Once an NBFC reaches an asset size of Rs.1,000 crore or above, it will be subject to the regulatory requirements as applicable to the Middle Layer, despite not having such assets as on the date of last Balance Sheet.
- Multiple NBFCs in a Group
  NBFCs that are part of a common Group or are floated by a common set of promoters will not be viewed on a standalone basis. If the consolidated asset size of the NBFCs in the Group is Rs.1000 crore and above, then each NBFC lying in the Group will be classified as an NBFC in the Middle Layer and consequently, regulations as applicable to the Middle Layer will be applicable to them.

Appointment of Whole-Time Directors

[RBI/2023-24/70 dated 25th October 2023]

The RBI had issued a [notification dated 26th April 2021] on 'Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board' which laid down instructions with regard to the Chair and meetings of the Board, composition of certain committees of the Board, age, tenure and remuneration of directors, and appointment of the whole-time directors **(WTDs)**.

With the growing complexity of the banking sector, the RBI has issued the above Circular to establish an effective senior management team in the banks to navigate ongoing and emerging challenges.

Key features include the following:

- Banks are advised to ensure the presence of at least 2 WTDs, including the MD&CEO, on their Boards.
- The number of WTDs should be decided by the Board of the bank by taking into account factors

such as the size of operations, business complexity, and other relevant aspects.

- Banks that currently do not meet the minimum requirement as above are advised to submit their proposals for the appointment of WTDs as per the Banking Regulation Act, 1949, within a period of 4 months from the date of issuance of this Circular.
- Those banks which do not already have the enabling provisions regarding appointment of WTDs in their Articles of Association should seek necessary approvals under the Banking Regulation Act.

This Circular is applicable to all private sector banks and wholly owned subsidiaries of foreign banks (excluding payment banks and local area banks).

RBI (Financial Statements - Presentation and Disclosures) Directions, 2021: Presentation of unclaimed liabilities transferred to Depositor Education and Awareness (DEA) Fund

RBI/2023-24/71 dated 25th October 2023

The RBI has updated RBI (Financial Statements - Presentation and Disclosures) Directions, 2021 and advises that :

- All co-operative banks should present all unclaimed liabilities (where the amount due has been transferred to DEA Fund) under *"Contingent Liabilities – Others"* which was earlier required to be presented under "Contingent Liabilities – Other items for which the bank is contingently liable".
- All banks should specify in the disclosures in the Notes to Accounts to the FS that balances of the amount transferred to DEA Fund are included under *"Schedule 12 - Contingent Liabilities - Other items for which the bank is contingently liable"* or *"Contingent Liabilities – Others",* as the case may be.

These instructions are **applicable** to all commercial and cooperative banks for preparation of FSs **for the financial year ending 31st March 2024 and onwards.**

Disclaimer and Statutory Notice

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