



NEWSLETTER ^{Weekly}

Volume – XLIII, Issue – II, Dated: 12th February, 2018

RESERVE BANK OF INDIA

Relief for MSME Borrowers registered under Goods and Services Tax (GST)

Presently, banks and NBFCs in India generally classify a loan account as Non-Performing Asset (NPA) based on 90 day and 120 day delinquency norms.

It has been represented to RBI that formalisation of business through registration under GST had adversely impacted the cash flows of the smaller entities during the transition phase with consequent difficulties in meeting their repayment obligations to banks and NBFCs. As a measure to support these entities in their transition to a formalised business environment, RBI has been decided that the exposure of banks and NBFCs to a borrower classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, shall continue to be classified as a standard asset in the books of banks and NBFCs subject to the following conditions:

1. The borrower is registered under the GST as on 31 January 2018;
2. Aggregate exposure (including non-fund based facilities of banks and NBFCs) to the borrower does not exceed Rs.250 million as on 31 January 2018;
3. Borrower's account was standard as on 31 August 2017;
4. Amount from borrower overdue as on 1 September 2017 and payments from the borrower due between 1 September 2017 - 31 January 2018 are paid not later than 180 days from their original due dates;
5. Provision of 5% shall be made by banks/NBFCs against the exposures not classified as NPA. Provision in respect of account may be reversed as and when no amount is overdue beyond 90/120 day norm, as the case may be; and
6. An additional time is provided for the purpose of asset classification only and not for income recognition, i.e., if the interest from borrower is overdue for more than 90/120 days, the same shall not be recognised on accrual basis.

Source: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MSME07021753E1582547B3409DBF8D72796D527B4A.PDF>

STATEMENT ON DEVELOPMENTAL AND REGULATORY POLICIES

1. **Relief for MSME Borrowers registered under GST** - Formalisation of business through registration under GST adversely impacted cash flows of smaller entities during the transition phase with consequent difficulties in meeting their repayment obligations to banks and NBFCs. As a measure to support these entities, RBI has been decided that for GST-registered MSMEs which were standard as on 31 August 2017 and for which the aggregate exposure of banks and NBFCs does not exceed Rs. 250 Million as on 31 January 2018, amounts overdue as on 1 September 2017 and payments due between 1 September 2017 and 31 January 2018, be allowed by banks and NBFCs to be paid not later than 180 days from their original due date, without a downgrade in asset classification.

2. **Removal of Credit Caps on MSME (Services) under Priority Sector** - In light of feedback received from stakeholders and in line with the increasing importance of services sector in our economy, RBI has been decided to remove the currently applicable loan limits of Rs. 50 million and Rs. 100 million per borrower to MSME (Services), for classification under priority sector. Accordingly, all bank loans to MSMEs, engaged in providing or rendering of services as defined in terms of investment in equipment under Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, shall qualify under priority sector without any credit caps.
3. **Applicability of sub-targets of Small & Marginal Farmers and Micro Enterprises for foreign banks with 20 branches and above** - In order to achieve level-playing field in priority sector lending guidelines for banks, it was stipulated in April, 2015 that post 2018 (i.e., after 3 years from the issuance of guidelines), the sub-targets for lending to small and marginal farmers and micro enterprises shall be made applicable for foreign banks with 20 branches and above. RBI has been decided that the sub-target of 8% of Adjusted Net Bank Credit (ANBC) or Credit Equivalent Amount of Off-Balance Sheet Exposure (CEOBE), whichever is higher, will be made applicable for lending to small and marginal farmers for foreign banks with 20 branches and above from FY 2018-19. Further, the sub-target for bank lending to the Micro Enterprises in the country of 7.50% of ANBC or CEOBE, whichever is higher, will also be made applicable for foreign banks with 20 branches and above from FY 2018-19.
4. **Harmonizing Benchmark Rate Methodology** - RBI introduced Marginal Cost of Funds based Lending Rates (MCLR) system with effect from 1 April 2016 on account of limitations of Base Rate regime. With the introduction of MCLR system, it was expected that the existing Base Rate linked credit exposures shall also migrate to MCLR system. It is observed, however, that a large proportion of bank loans continue to be linked to Base Rate despite RBI highlighting this concern in earlier monetary policy statements. Since MCLR is more sensitive to policy rate signals, RBI has been decided to harmonize methodology of determining benchmark rates by linking Base Rate to MCLR with effect from 1 April 2018.
5. **Comprehensive Repo Directions** - Currently, RBI's repo directions are issued separately for Government Securities and corporate debt. These directions specify, inter-alia, entities eligible to undertake repos and minimum credit rating of corporate bonds that may be used as collateral. With a view to harmonizing regulations across different types of collateral and also to encourage wider participation, especially for corporate debt repos, repo directions are proposed by RBI to be streamlined and simplified.
6. **Ease of access to non-residents for forex hedging onshore** - Access to non-residents for hedging their INR currency risk arising out of their current and capital account transactions is limited by type of risks that are permitted to be hedged and instruments that can be used. With a view to ease the access of such non-residents to onshore market for their hedging requirements, including for Masala bond exposures, RBI has now proposed to allow them to dynamically hedge their currency and interest rate exposures onshore using any of the permitted instruments.
7. **Revision of limits for exchange traded currency derivatives (ETCD)** - Currently, users can take positions in ETCDs, without having to establish proof of underlying exposure, upto USD 15 million per exchange for USD-INR and USD 5 million per exchange for other currency pairs involving the Rupee. This limit was last reviewed in March, 2015. RBI has subsequently permitted introduction of currency option contracts involving INR on exchanges. In order to encourage further participation in ETCDs, RBI has now proposed to merge these position limits across all foreign currency-INR pairs and provide a single limit of USD 100 million per user (both resident and non-resident) across all exchange traded currency derivatives, in all exchanges combined.
8. **Taking over of G-Sec benchmark and forex reference rate by Financial Benchmarks India Pvt. Ltd (FBIL)** - FBIL was incorporated in 2014 as per the recommendations of the Committee on

Financial Benchmarks. FBIL has so far taken over existing benchmarks such as Mumbai Inter-Bank Outright Rate (MIBOR) and option volatility, and introduced new benchmarks such as Market Repo Overnight Rate (MROR), Certificate of Deposits (CDs) and T-Bills yield curves. Development of FBIL as an independent organisation for administration of all financial market benchmarks including valuation benchmarks is important for the credibility of these benchmarks and integrity of financial markets. Accordingly, RBI has proposed that:

- (i) FBIL would assume responsibility for standardising valuation of Government securities (issued by both Centre and States) currently being done by FIMMDA; and,
- (ii) FBIL would also assume responsibility for computation and dissemination of daily "Reference Rate" for Spot USD/INR and other major currencies against the Rupee, which is currently being done by RBI.

9. **Ombudsman Scheme for customers of NBFCs** - With a view to providing customers of NBFCs with a cost-free and expeditious grievance redress mechanism, RBI has decided to introduce an Ombudsman Scheme for NBFCs. The scheme will cover all deposit taking NBFCs and those with customer interface having asset-size of Rupees 1 Billion and above. The Scheme will be operationalised by the end of this month for all deposit taking NBFCs.

10. **Review of Currency Management System** - As announced in 4th Bi-Monthly Monetary Policy Statement on 4 October 2016, RBI had constituted 2 high level inter-agency committees to review the entire gamut of currency management, including security of movement of treasure. RBI, in consultation with Government, had also arranged an audit by an external group, of 4 currency presses, 2 of which are run by RBI subsidiary and 2 by a unit of Government, so as to standardise note printing processes, procurement of raw materials, quality assurance processes, security, etc. A Task Force is being formed to implement the recommendations of the above committees within 9 months.

11. **Review of Currency Distribution and Exchange Scheme (CDES)** - To encourage technology absorption in currency operations of banks and enable them to offer improved customer services, incentives for installation of various machines have been provided by RBI, from time to time. With a view to promote a less cash economy, the incentive schemes have been reviewed and RBI has decided to discontinue going forward the incentives for installation of Cash Recycler Machines (CRMs) and Automated Teller Machines (ATMs).

Source: <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR2147D452F23A943B4865A3C8C775F9D7EF8D.PDF>

MINISTRY OF CORPORATE AFFAIRS

DESIGNATION OF SPECIAL COURT

In exercise of the powers conferred by sub-section (1) of Section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justices of the High Courts of Kerala, Orissa and Gauhati, hereby designates the following Courts of the Table below as Special Courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said sub-section, namely:-

Sr.No	Courts	Jurisdiction
1	Additional District and Sessions Court VII, Ernakulam	State of Kerala
2	District and Sessions Court, Kavaratti	Union territory of Lakshadweep
3	District and Sessions Judge, Cuttack	State of Odisha
4	Additional District and Sessions Judge, No.1, Kamrup (M), Guwahati	State of Assam

Source: http://www.mca.gov.in/Ministry/pdf/NotificationS0528Specialcourts_06022018.pdf

NOTIFICATION REGARDING EXEMPTION TO GOVERNMENT COMPANIES UNDER SECTION 129(6) OF COMPANIES ACT, 2013 FROM RECOGNIZING DEFERRED TAX ASSETS/ DEFERRED TAX LIABILITY UNDER AS-22/IND AS-12

In exercise of the powers conferred by sub-section (6) of Section 129 of the Companies Act, 2013 (18 of 2013), the Central Government, directs that the provisions of Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability shall not apply, for seven years with effect from the 1st April, 2017, to a Government company which:—

- (a) is a public financial institution under sub-clause (iv) of clause (72) of section 2 of the Companies Act, 2013;
- (b) is a Non-Banking Financial Company registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934; and
- (c) is engaged in the business of infrastructure finance leasing with not less than seventy five per cent of its total revenue being generated from such business with Government companies or other entities owned or controlled by Government.

Source: http://www.mca.gov.in/Ministry/pdf/NotificationS0529_06022018.pdf

GOVERNMENT HAS LAUNCHED SIMPLIFIED PRO-FORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE) E-FORM FOR PROVIDING SPEEDY INCORPORATION IN LINE WITH INTERNATIONAL BEST PRACTICES

The Ministry of Corporate Affairs had notified a new e-form called Simplified Pro-forma for Incorporating Company Electronically (SPICE), on the occasion of 2nd October 2016, with the objective of providing speedy incorporation in line with international best practices. The salient features of SPICE are:-

- Standardised format of e-Memorandum of Association (eMoA) and e-Articles of Association (eAoA) as per Companies Act, 2013 as linked e-forms.
- Provision to apply for Company Incorporation with a pre-approved Company Name.
- Mandatory usage of Digital Signature Certificates (DSCs) by Subscribers and Witnesses (max 7+1) in SPICE eMOA and SPICE eAOA instead of ink signed signatures.
- Standardisation and machine tracking of changes made by stakeholders to standardised eMoA and eAoA.

Whenever any stakeholder encounters any technical issues in using SPICE, a ticket is raised by him/her for resolution of the same. These tickets are resolved by the service provider within specified timelines. Dedicated e-mail and helpline facilities have also been created for resolution of any issues faced by stakeholders.

Source: <http://pib.gov.in/PressReleseDetail.aspx?PRID=1519116>

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2018

In exercise of the powers conferred by clause (t) of subsection (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India made Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018 to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In the said notification certain clauses with respect to evaluation matrix, fair value, liquidation value and regulations with respect to submission of information memorandum in the electronic form by the resolution professional were inserted and substituted with respect to Appointment of Registered values, Fair value and Liquidation value, Invitation of Resolution Plans, Resolution Plan. The details of same are as mentioned in the link herein below.

Source:http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Feb/CIRP%20Amendment%2006022018_2018-02-06%2021:47:42.pdf

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (FAST TRACK INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2018

In exercise of the powers conferred by clause (t) of subsection (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India made Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018 to amend the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.

In the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 certain clauses with respect to evaluation matrix, fair value, liquidation value and regulations with respect to submission of information memorandum in the electronic form by the resolution professional were inserted and substituted with respect to Appointment of Registered valuers, Fair value and Liquidation value, Invitation of Resolution Plans, Resolution Plan. The details of same are as mentioned in the link herein below.

Source: http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Feb/Fast%20Track%2007022018_2018-02-07%2023:03:05.pdf

Your suggestions are invited regarding improvement of the format of the newsletter and its relevance to your work.

You may send your suggestions at sujoy@asalegal.in

Disclaimer:

The content in this mail is offered only as updates in Financial, Capital Market, Corporate etc. sectors. This mail should not be used as a substitute for obtaining legal advice from an attorney licensed or authorized to practice in your jurisdiction. Nothing in this mail is intended to create an attorney-client relationship and nothing posted constitutes legal advice.

DELHI

3, Birbal Road, Ground & First Floor,
Jangpura Extension, New Delhi 110014.
Phone: +91-11-43575459, 45661440, 43552440
+91-11-24327050-52, +91-9311052521
Fax: +91-11-24327053&43108998

MUMBAI

305 & 306, 3rd Floor, Magnum Opus,
Near Grand Hyatt, Behind Mudra Group,
Santacruz (East), Mumbai – 400 055.
Phone: +91-22-69515555, 26661979

BENGALURU

No.506, A-Wing, 5th Floor,
Mittal Tower, M.G. Road,
Bengaluru – 560001.
Phone: +91-9483454589

Website : www.asalegal.in