

<b>FEMA</b> <b>CA. Manoj Shah, CA Atal Bhanja</b>
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### Summary Information on few Compounding Orders issued after 1st March 2020

Sr. No.	Party Name	Nature of Contravention	Date of Order	Compounding Fees (Rs.)
1.	Radical Health Tech Private Limited	Contraventions under 3.1(l)(A) of FEMA Notification No. 395 for receipt of foreign direct investment through mode other than permissible modes of payment.	12-07-2023	786
2.	Oldendorff Carriers GmbH & Co KG (Indian Branch Office)	Contraventions under Regulation 4(l) of FEMA Notification No. 22(R) read with para 4(i) of FED Master Direction No. 10 of delay in submission of Annual Activity Certificate.	17-07-2023	60,000
3.	Enecovery Waste Solutions Private Limited	Contraventions under Regulation 4(1) of FEMA Notification No. 395 relating to delay in filing of Form FCGPR for reporting of allotment of shares.	13-07-2023	2,45,000
4.	Manjula Devi Shroff	Regulation 20A read with Para A(6) of Schedule V of FEMA Notification No. 12 relating to setting of step down subsidiary of JV/WOS outside India by resident individual despite not being allowed to do so.	28-06-2023	63,470

### 1. RBI NOTIFICATION NO. RBI/2023-24/51 DOR.CRE.REC.No.27/07.10.002/2023-24 Dated July 25, 2023

#### Master Circular - Management of Advances – UCBS

In reference to their Mater Circular DOR.CRE.REC.No.17/13.05.000/2022-23 dated April 8, 2022 on the captioned subject, RBI has issued Master Circular that consolidates and updates all the instructions / guidelines on the subject issued till date. It has addressed the following particulars specifically;

SI No.	Particulars
1	Introduction
2	Working Capital Requirements
3	Loan System for delivery of bank credit
4	Credit Administration
5	Exchange of credit information
6	Prudential Guidelines on Restructuring of Advances
7	Specific Lending Activities
8	Discounting/Rediscounting of Bills by Banks
9	Loans to Self Help Groups (SHGs) / Joint Liability Groups (JLGs)
10	Revival of Interest Tax Act, 1974
11	Relief measures to be extended in areas affected by natural calamities
Annex - 1 Guidelines on Valuation of Properties – Empanelment of Valuers	
Annex - 2 Recommendations of the Committee to Recommended Data Format of Credit Information to Credit Information Companies (CICs)	
Annex - 3 Credit information reporting in respect of Self Help Group (SHG) members	
Annex - 4 Format for reporting of borrowal accounts classified as doubtful, loss for suit filed with outstanding of ₹1crore and above and Format for reporting of information on cases of wilful default of ₹25 lakh and above	
Annex - 5 Definition of Micro, Small and Medium Enterprises	
Annex - 6 Safeguards-Advances against pledge of Gold/Silver ornaments	
Annex - 7 Guidelines for Relief Measures by Banks in Areas Affected by Natural Calamities	
Appendix List of circulars consolidated in the Master Circular	

The detailed Circular can be found at the link;

<https://www.rbi.org.in/Scripts/NotificationUser.aspx/NotificationUser.aspx?Id=12525&Mode=0>

## **2. RBI NOTIFICATION NO. RBI/2023-24/52 (DOR.RET.REC.29/12.01.001/2023-24 & DOR.RET.REC.30/12.01.001/2023-24) Dated August 10, 2023**

### **Reserve Bank of India Act, 1934 - Section 42(1A) - Requirement for maintaining additional CRR**

- Under Section 42(1) of the Reserve Bank of India Act, 1934, all Scheduled Banks are required to maintain with Reserve Bank of India a Cash Reserve Ratio (CRR) of 4.50 per cent of Net Demand and Time Liabilities (NDTL).
- On a review of the current liquidity conditions, RBI has issued a directive under Section 42(1A) of the Reserve Bank of India Act, 1934 requiring all Scheduled Commercial Banks / Regional Rural Banks / all Scheduled Primary (Urban) Co-operative Banks / all Scheduled State Co-operative Banks to maintain with the Reserve Bank of India, effective from the fortnight beginning August 12, 2023, an incremental CRR (I-CRR) of 10 per cent on the increase in NDTL between May 19, 2023 and July 28, 2023. The I-CRR will be reviewed on September 8, 2023 or earlier.

It Implies;

- An additional average daily balance over and above the average daily balance required to be maintained under sub-section (1) of Section 42; and
- That the amount of such additional average daily balance shall not be less than 10 per cent of the increase in net demand and time liabilities between May 19, 2023 and July 28, 2023.

## **3. RBI NOTIFICATION NO. RBI/2023-24/53 DoR.MCS.REC.28/01.01.001/2023-24 Dated August 18, 2023**

### **Fair Lending Practice - Penal Charges in Loan Accounts**

- Reserve Bank has issued various guidelines to the Regulated Entities (REs) to ensure reasonableness and transparency in disclosure of penal interest. Under the extant guidelines, lending institutions have the operational autonomy to formulate Board approved policy for levy of penal rates of interest. It has been observed that many REs use penal rates of interest, over and above the applicable interest rates, in case of defaults / non-compliance by the borrower with the terms on which credit facilities were sanctioned.
- The intent of levying penal interest/charges is essentially to inculcate a sense of credit discipline and such charges are not meant to be used as a revenue enhancement tool over and above the contracted rate of interest. However, supervisory reviews have indicated divergent practices amongst the REs with regard to levy of penal interest/charges leading to customer grievances and disputes.
- On a review of the practices followed by REs for charging penal interest/charges on loans, the following instructions are issued for adoption.
  - (i) Penalty, if charged, for non-compliance of material terms and conditions of loan contract by the borrower shall be treated as 'penal charges' and shall not be levied in the form of 'penal interest' that is added to the rate of interest charged on the advances. There shall be no capitalisation of penal charges i.e., no further interest computed on such charges. However, this will not affect the normal procedures for compounding of interest in the loan account.
  - (ii) The REs shall not introduce any additional component to the rate of interest and ensure compliance to these guidelines in both letter and spirit.
  - (iii) The REs shall formulate a Board approved policy on penal charges or similar charges on loans, by whatever name called.
  - (iv) The quantum of penal charges shall be reasonable and commensurate with the non-compliance of material terms and conditions of loan contract without being discriminatory within a particular loan / product category.
  - (v) The penal charges in case of loans sanctioned to 'individual borrowers, for purposes other than business', shall not be higher than the penal charges applicable to non-individual borrowers for similar non-compliance of material terms and conditions.
  - (vi) The quantum and reason for penal charges shall be clearly disclosed by REs to the customers in the loan agreement and most important terms & conditions / Key Fact Statement (KFS) as applicable, in addition to being displayed on REs website under Interest rates and Service Charges.

- (vii) Whenever reminders for non-compliance of material terms and conditions of loan are sent to borrowers, the applicable penal charges shall be communicated. Further, any instance of levy of penal charges and the reason therefor shall also be communicated.
- (viii) These instructions shall come into effect from January 1, 2024. REs may carry out appropriate revisions in their policy framework and ensure implementation of the instructions in respect of all the fresh loans availed/ renewed from the effective date. In the case of existing loans, the switchover to new penal charges regime shall be ensured on next review or renewal date or six months from the effective date of this circular, whichever is earlier.

- The above instructions are issued under sections 21, 35A and 56 of the Banking Regulation Act, 1949, sections 45JA, 45L and 45M of the Reserve Bank of India Act, 1934, and section 30A of the National Housing Bank Act, 1987 and shall be updated in the relevant Master Directions / Master Circulars of the applicable REs. The list of amendments to the Master Directions / Master Circulars has been provided in the Annex, which can be referred at the link; <https://www.rbi.org.in/Scripts/NotificationUser.aspx/NotificationUser.aspx?Id=12527&Mode=0>
- These instructions shall, however, not apply to Credit Cards, External Commercial Borrowings, Trade Credits and Structured Obligations which are covered under product specific directions.

#### **4. RBI NOTIFICATION NO. RBI/2023-24/54 DoR.SIG.FIN.REC.31/03.10.001/2023-24 Dated August 18, 2023**

##### **Review of Regulatory Framework for IDF-NBFCs**

- In order to enable IDF-NBFCs to play a greater role in the financing of the infrastructure sector and to harmonise the regulations governing financing of infrastructure sector by the NBFCs, a review of the guidelines applicable to IDF-NBFCs has been undertaken, in consultation with the Government of India.
- The revised regulatory framework for IDF-NBFCs is provided in the Annex. These guidelines shall come into effect from the date of this circular.

##### **Annex**

1. An IDF is set up either as a trust or as a company. A trust based IDF is registered as an IDF-Mutual Fund (IDF-MF) and is regulated by the Securities and Exchange Board of India (SEBI) whereas a company based IDF is registered as an IDF-NBFC and is regulated by the Reserve Bank of India (RBI).
2. Definition  
An IDF-NBFC means a non-deposit taking NBFC which is permitted to – (i) refinance post commencement operations date (COD) infrastructure projects that have completed at least one year of satisfactory commercial operations; and (ii) finance toll operate transfer (TOT) projects as the direct lender.
3. Net owned funds (NOF) and regulatory capital  
An IDF-NBFC shall be required to have an NOF of at least ₹300 crore and capital-to-risk weighted assets ratio (CRAR) of minimum 15 per cent (with minimum Tier 1 capital of 10 per cent).
4. Raising of funds
  - (i) IDF-NBFC shall raise funds through issue of either rupee or dollar denominated bonds of minimum five-year maturity. With a view to facilitate better asset-liability management (ALM), IDF-NBFCs can raise funds through shorter tenor bonds and commercial papers (CPs) from the domestic market to the extent of up to 10 per cent of their total outstanding borrowings.
  - (ii) In addition to the bond route, IDF-NBFCs can also raise funds through loan route under external commercial borrowings (ECBs). However, such borrowings shall be subject to minimum tenor of five years and the ECB loans should not be sourced from foreign branches of Indian banks.
  - (iii) Regarding ECBs, IDF-NBFCs shall also be required to adhere to the guidelines issued by the Foreign Exchange Department of the RBI.
5. Exposure limits  
The exposure limits for IDF-NBFCs shall be 30% of their Tier 1 capital for single borrower/ party and 50% of their Tier 1 capital for single group of borrowers/ parties.

## 6. Risk weights

For computing CRAR of the IDF-NBFCs, their assets shall be risk-weighted as per risk-weights applicable to NBFC-Investment and Credit Companies (NBFC-ICCs).

## 7. Requirements of a sponsor and tripartite agreement

7.1 Under the earlier guidelines, an IDF-NBFC was required to be sponsored by a bank or an NBFC-Infrastructure Finance Company (NBFC-IFC). The requirement of a sponsor for an IDF-NBFC has now been withdrawn and shareholders of IDF-NBFCs shall be subjected to scrutiny as applicable to other NBFCs, including NBFC-IFCs.

7.2 Earlier, IDF-NBFCs were required to enter into a tripartite agreement with the concessionaire and the project authority for investments in the Public Private Partnership (PPP) infrastructure projects having a project authority. The requirement of the tripartite agreement has now been made optional.

## 8. Other regulatory norms

All other regulatory norms including income recognition, asset classification and provisioning norms as applicable to NBFC-ICCs shall be applicable to IDF-NBFCs.

## 9. Guidelines governing sponsorship of IDF-MFs by NBFCs

9.1 All NBFCs shall be eligible to sponsor (sponsorship as defined by SEBI Regulations for Mutual Funds) IDF-MFs with prior approval of the RBI subject to the following conditions (based on the audited financial statements), in addition to those prescribed by SEBI:

- (i) The NBFC shall have a minimum NOF of ₹300 crore and CRAR of 15 percent;
- (ii) Its net NPAs shall be less than 3 per cent of the net advances;
- (iii) It shall have been in existence for at least 5 years;
- (iv) It shall be earning profits for the last three years and its performance shall be satisfactory;
- (v) The CRAR of the NBFC post investment in the IDF-MF shall not be less than the regulatory minimum prescribed for it;
- (vi) The NBFC shall continue to maintain the required level of NOF after accounting for investment in the proposed IDF-MF;
- (vii) There shall be no supervisory concerns with respect to the NBFC.

9.2 NBFCs that fulfil the eligibility criteria as above shall approach the Department of Regulation of the RBI, for prior approval to sponsor IDF-MFs.

## **5. RBI NOTIFICATION NO. RBI/2023-24/55 DOR.MCS.REC.32/01.01.003/2023-24 Dated August 18, 2023**

### **Reset of Floating Interest Rate on Equated Monthly Instalments (EMI) based Personal Loans<sup>1</sup>**

- Please refer to RBI circular no. DBR.No.Dir.BC.10/13.03.00/2015-16 dated July 01, 2015, Master Directions no. DNBR.PD.007/03.10.119/2016-17 dated September 01, 2016, DNBR.PD.008/03.10.119/2016-17 dated September 01, 2016 and DOR.FIN.HFC.CC.No.120/03.10.136/2020-21 dated February 17, 2021 vide which the guidelines pertaining to Fair Practices Code for lenders have been issued to SCBs, NBFCs and HFCs, respectively. In terms of extant instructions of Reserve Bank of India, regulated entities (REs) have the freedom to offer all categories of advances either on fixed or on floating interest rates basis.
- At the time of sanction of EMI based floating rate personal loans, REs are required to take into account the repayment capacity of borrowers to ensure that adequate headroom/ margin is available for elongation of tenor and/ or increase in EMI, in the scenario of possible increase in the external benchmark rate during the tenor of the loan. However, in respect of EMI based floating rate personal loans, in the wake of rising interest rates, several consumer grievances related to elongation of loan tenor and/or increase in EMI amount, without proper communication with and/or consent of the borrowers have been received. In order to address these concerns, the REs are advised to put in place an appropriate policy framework meeting the following requirements for implementation and compliance:
  - i. At the time of sanction, REs shall clearly communicate to the borrowers about the possible impact of change in benchmark interest rate on the loan leading to changes in EMI and/or tenor or both. Subsequently, any increase in the EMI/ tenor or both on account of the above shall be communicated to the borrower immediately through appropriate channels.

- ii. At the time of reset of interest rates, REs shall provide the option to the borrowers to switch over to a fixed rate as per their Board approved policy. The policy, inter alia, may also specify the number of times a borrower will be allowed to switch during the tenor of the loan.
  - iii. The borrowers shall also be given the choice to opt for (i) enhancement in EMI or elongation of tenor or for a combination of both options; and, (ii) to prepay, either in part or in full, at any point during the tenor of the loan. Levy of foreclosure charges/ pre-payment penalty shall be subject to extant instructions.
  - iv. All applicable charges for switching of loans from floating to fixed rate and any other service charges/ administrative costs incidental to the exercise of the above options shall be transparently disclosed in the sanction letter and also at the time of revision of such charges/ costs by the REs from time to time.
  - v. REs shall ensure that the elongation of tenor in case of floating rate loan does not result in negative amortisation.
  - vi. REs shall share / make accessible to the borrowers, through appropriate channels, a statement at the end of each quarter which shall at the minimum, enumerate the principal and interest recovered till date, EMI amount, number of EMIs left and annualized rate of interest / Annual Percentage Rate (APR) for the entire tenor of the loan. The REs shall ensure that the statements are simple and easily understood by the borrower.
- Apart from the equated monthly instalment loans, these instructions would also apply, mutatis mutandis, to all equated instalment based loans of different periodicities. In case of loans linked to an external benchmark under the External Benchmark Lending Rate (EBLR) regime, the banks should follow extant instructions and also put in place adequate information systems to monitor transmission of changes in the benchmark rate to the lending rate.
  - REs shall ensure that the above instructions are extended to the existing as well as new loans suitably by December 31, 2023. All existing borrowers shall be sent a communication, through appropriate channels, intimating the options available to them.
  - The above instructions are issued under sections 21, 35A and 56 of the Banking Regulation Act, 1949, sections 45JA, 45L and 45M of the Reserve Bank of India Act, 1934, and sections 30A and 32 of the National Housing Bank Act, 1987.