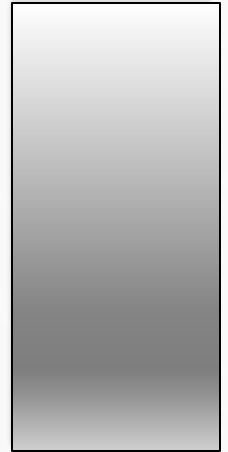


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR APRIL, 2023



Ministry of Corporate Affairs

- ❑ **Notification Reference No:** G.S.R 298 (E) (“**Notification**”).
- ❑ **Notification Date:** April 17, 2023
- ❑ **Notification Effective Date:** May 01, 2023
- ❑ **Subject of the Notification:** The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023
 - **Analysis.**
 - ✓ The Ministry of Corporate Affairs (“**MCA**”) vide the Notification has amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (“**Rules**”) primarily to provide better clarity on the authority responsible for matters pertinent to removal of name of the company from the Registrar of Companies (“**RoC**”).
 - ✓ *Vide* this Notification following amendment(s) are incorporated in the Rules:
 - Rule 4(1) of the Rules pertinent to an application for removal of name of the company has been revised to state that an application for removal of name of a company under section 248(2) shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in e-Form No. STK-2 along with fee of INR 10,000.

Ministry of Corporate Affairs (Contd...)

- Under Rule 4, sub-rule 3, which deals with enclosures for application in e-Form No. STK-2, the following clause (iv) has been omitted:
‘a copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application’.
- Under Rule 4, sub-rule (3A) has been newly inserted after sub-rule 3 of the Rules. According to the said sub-rule 3 A, ‘The Registrar, Centre for Processing Accelerated Corporate Exit’ shall be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in e-Form No. STK-2 and all matters related thereto having territorial jurisdiction all over India.
- New formats have been released for the following e-forms in substitution of the old formats:
 - e-Form No. STK-2 - Application by company to RoC for removing its name from RoC.
 - Form No. STK-6 - Public Notice.
 - Form No. STK-7 - Notice of Striking Off and Dissolution.

The new formats of e-Form No. STK-2, Form No. STK-6 and Form No. STK-7 can be accessed at the link given hereunder.

▪ **Link of the Notification.**

<https://www.mca.gov.in/bin/dms/getdocument?mds=E4gcwhTPIhSVAnUFFpelfA%253D%253D&ty pe=open>

Reserve Bank of India

- ❑ **Subject:** Master Direction on Outsourcing of Information Technology Services.
- ❑ **Name of the Master Direction:** The Reserve Bank of India (Outsourcing of Information Technology Services) Directions, 2023 (“**Directions**”).
- ❑ **Direction Date:** April 10, 2023.
- ❑ **Effective Date of Direction:** October 01, 2023.

- **Introduction**

The Directions have been introduced to, *inter alia*, provide for the indicative roles, responsibilities, due diligence process, obligations, risk factors, while outsourcing the IT services by the regulated entities (as defined herein).

- **Applicability**

This Directions are applicable to the regulated entities (“**RE/ REs**”) as mentioned hereinbelow:

- ✓ all Banking Companies (includes banks incorporated outside India licensed to operate in India);
Local area banks; small finance banks; Payment Banks; Corresponding New Banks and State Bank of India; ¹

1. as defined under the Banking Regulation Act, 1949.

Reserve Bank of India (Contd...)

- ✓ primary co-operative banks and included in Tier 3 and Tier 4; ²
- ✓ non-banking financial companies and included in top layer; upper layer and middle layer; ³
- ✓ Credit Information Companies as defined under section 2(e) of the Credit Information Companies (Regulation) Act, 2005;
- ✓ EXIM Bank, National Bank for Agriculture and Rural Development (NABARD), National Bank for Financing Infrastructure and Development (NaBFID), National Housing Bank (NHB) and Small Industries Development Bank of India (SIDBI); ⁴
- ✓ In the case of foreign banks operating in India through branch mode, reference to the Board or Board of Directors in this Directions should be read as reference to the Head Office or controlling office which has the oversight over the branch operations in India. Further, such foreign banks shall be subject to a 'comply or explain' approach wherein such foreign banks, may deviate from any specific part of the Direction subject to examination and acceptance by the RBI of a reasonably justifiable explanation for the same;

2. Primary Co-operative Banks as defined under clause (ccv) of subsection 1 of section 56 of the Banking Regulation Act, 1949 and included in 'Tier 3' and 'Tier 4' as defined in paragraphs 1.c and 1.d respectively of the Annex to RBI circular DOR.REG.No.84/07.01.000/2022-23 dated December 01, 2022 on 'Revised Regulatory Framework - Categorization of Urban Co-operative Banks (UCBs) for Regulatory Purposes'. ("**Circular 1**").

3. Non-Banking Financial Companies as defined under clause (f) of section 45I of the Reserve Bank of India Act, 1934 and included in 'Top Layer', 'Upper Layer' and 'Middle Layer' as defined in paragraphs 1.5, 1.4 and 1.3 respectively of the Annex to RBI circular DOR.CRE.REC.No.60/03.10.001/2021-22 dated October 22, 2021 on 'Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs'. ("**Circular 2**").

Reserve Bank of India (Contd...)

- ✓ This Directions shall apply to Material Outsourcing of Information Technology Services arrangements (as defined hereinbelow) entered by the REs.

▪ Terms

- ✓ “IT” Information Technology.
- ✓ “RBI” the Reserve Bank of India.
- ✓ “**Material Outsourcing of IT Services**” are those which:
 - if disrupted or compromised shall have the potential to significantly impact the RE’s business operations; or
 - may have material impact on the RE’s customers in the event of any unauthorised access, loss or theft of customer information.

4. as established by the Export-Import Bank of India Act, 1981; the National Bank for Agriculture and Rural Development Act, 1981; the National Bank for Financing Infrastructure and Development Act, 2021; National Housing Bank Act, 1987 and the Small Industries Development Bank of India Act, 1989, respectively.

Reserve Bank of India (Contd...)

✓ Outsourcing of financial services” and “Outsourcing of IT Services”

Outsourcing of financial services ⁵

“Outsourcing” may be defined as a bank's use of a third party (either an affiliated entity within a corporate group or an entity that is external to the corporate group) to perform activities on a continuing basis that would normally be undertaken by the bank itself, now or in the future;

“Continuing basis” would include agreements for a limited period;

“Financial services” include applications processing (loan origination, credit card), document processing, marketing and research, supervision of loans, data processing and back office related activities etc.

5. Outsourcing” as defined in RBI ‘Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by banks’ issued vide circular DBOD.NO.BP.40/ 21.04.158/ 2006-07 dated November 3, 2006, as amended from time to time (“**Circular 3**”).

Reserve Bank of India (Contd...)

Outsourcing of IT Services

It shall include:

- ✓ IT infrastructure management, maintenance and support (hardware, software or firmware);
- ✓ Network and security solutions, maintenance (hardware, software or firmware);
- ✓ Application Development, Maintenance and Testing; Application Service Providers (ASPs) including ATM Switch ASPs;
- ✓ Services and operations related to Data Centres;
- ✓ Cloud Computing Services;
- ✓ Managed Security Services;
- ✓ Management of IT infrastructure and technology services associated with payment system ecosystem.

Reserve Bank of India (Contd...)

✓ **“Service Provider”** means the provider of IT or IT enabled services and includes entities related to the RE or those which belong to the same group or conglomerate to which the RE belongs.

▪ **Responsibility of RE**

The basic fundamental is that, the RE (including its board and senior management) shall be ultimately responsible for the outsourced activity in the same way if the same is not outsourced. The obligation on the RE (including its board and senior management) shall remain intact and therefore it should ensure that the service provider(s) (whether located in India or outside India) which are engaged are highly efficient and in no way the management/ administering of the activities by RE which are outsourced are hampered including the ease of carrying out the supervisory functions by RBI in this regard.

▪ **The Directions have clearly specified the responsibility in relation to redressal of grievance of the outsourced services.**

The obligation to resolve the customer grievance lies with the RE and the customer shall have a right to approach to the RE and obtain the redressal (as applicable) from the RE irrespective of the outsourcing arrangements entered by RE.

Reserve Bank of India (Contd...)

- **The broad governance framework is listed hereunder in relation to outsourcing of IT Services.**
 - ✓ As a pre-requisite, the RE shall ensure that it has the Board approved IT outsourcing policy which shall clearly indicate the roles and responsibilities of the parties concerned viz., (i) board; (ii) committees of the board (if any); (iii) senior management; (iv) IT function; (v) business function. The policy shall be exhaustive in all manners to ensure that it provides a benchmark to select the activity(ies) for outsourcing and the selection criteria for service providers; the parameter for material outsourcing; disaster recovery; business continuity plans; termination processes; and exit strategies.
 - ✓ Additionally, the RE shall warrant that all the applicable laws, rules, regulations, guidelines, any conditions of approval, licensing, or registration, as applicable are complied with in relation to the outsourcing of IT services.
 - ✓ The Directions clearly define the role of the board; the senior management and IT function while outsourcing of the IT Service(s).
 - ✓ The RE is expected to conduct a due diligence (on risk based approach basis) while considering or renewing any arrangement of outsourcing of IT services to assess the capability of the service provider(s).
 - ✓ Some of the factors are set out in the Directions which the RE should strive to achieve with

Reserve Bank of India (Contd...)

modalities and additions, as required while conducting the due diligence process before engaging service provider(s) for outsourcing of IT services.

- ✓ The RE shall also have the risk management framework for outsourcing of IT services which deals with the processes; responsibilities for identification, measurement, mitigation, management and reporting of the risk associated with the activity(ies) outsourced.
- ✓ It is the responsibility of the RE to have a devised system/ process to maintain the confidentiality of the data and information pertaining to the customers which are provided to the service provider(s).
- ✓ In the event of multiple service providers which collaborate to provide the service(s) to RE, the RE shall be responsible for monitoring the service by all service providers and other aspects in this regard.

■ **Outsourcing Agreement**

- ✓ The RE shall ensure that an outsourcing agreement is reduced in writing setting out the rights and obligations of both the parties viz., the RE and the service provider(s) and it shall be such that the RE has adequate control over the outsourced activity including the right to intervene with the measures as and when required to meet with the legal and regulatory obligations by RE.
- ✓ Basic check points have been provided in the Directions in relation to areas to be covered while drafting an outsourcing agreement.

Reserve Bank of India (Contd...)

- **Monitoring of outsourced IT activities**

- ✓ The RE shall ensure that it conducts a audit on time-to-time basis of the service provider to whom the services of IT services are outsourced by RE and such audit may be undertaken either by RE's internal auditor or external auditor appointed for that purpose.
- ✓ A concept of pooled (shared) audit has been explained in the Directions. Meaning the audit of a single service provider by two or more REs together viz., joint audit of common service provider.
- ✓ The RE shall ensure that it takes requisite steps to make the customer aware about the discontinuance of the service which was taken by the RE from the service provider, in case the outsourcing agreement terminates for any reason.

- **Outsourcing to a related party / non-related party**

- ✓ RE shall also ensure that the service provider, if not a group company shall not be owned or controlled by any director, or key managerial personnel, or approver of the outsourcing arrangement of the RE, or their relatives. The terms 'control', 'director', 'key managerial personnel', and 'relative' have the same meaning as defined under the Companies Act, 2013 and the rules framed thereunder.
- *an exception to this requirement may be made with the approval of Board/ Board level Committee, which shall be followed by appropriate disclosure, oversight and monitoring of such arrangements.*

Reserve Bank of India (Contd...)

- **Cross – Border Outsourcing**

- ✓ The service(s) may be outsourced outside India viz, cross border services, however it shall be the responsibility of the RE to verify/examine all the factors such as the country risk; governing law of the arrangement; the law(s) of liquidation (in case the service provider liquidates); and ease of availability and access of records of the RE which is maintained cross border by the service provider and its audit by the RE and RBI in the foreign jurisdiction where it is maintained;
- ✓ While outsourcing of service(s) cross border, the RE shall confirm and make efforts that there is no compromise of the compliance as provided in the regulations (as applicable) prescribed by RBI and all the statutory requirements are complied.

- **Other provisions**

- ✓ While outsourcing of IT services there must be a defined back up for business continuity plan and disaster recovery plan of the service provider including the exit strategy and handover; destruction; removal of the data and information being in the possession of the service provider during the service(s) rendered by it to the RE.
- ✓ The Directions provide an indicative list (i) of services which are not classified as “outsourcing of IT services”; and (ii) entities which are not considered as third-party service provider, at Appendix III of the Direction.

Reserve Bank of India (Contd...)

- **Time frame for compliance with the Directions**

- ✓ This Direction shall be effective from October 01, 2023.
- ✓ Time frame for compliance with the Directions basis the already existing outsourcing agreement and the new outsourcing agreement.

Situation	In case of existing outsourcing arrangements ("Agreements") which are already in force as on the Direction Date	Incase of new outsourcing arrangements ("Agreements")
Situation I	<p>the Agreements that are due for renewal before October 01, 2023 –</p> <ul style="list-style-type: none"> ○ it shall comply as on the renewal date; however, ○ not later than 12 months from the Directions' Date 	<p>the Agreements that come into force before October 01, 2023 –</p> <ul style="list-style-type: none"> ○ it shall comply as on the agreement date; but, ○ not later than 12 months from the Directions' Date
Situation II	<p>the Agreements that are due for renewal on or after October 01, 2023 –</p> <ul style="list-style-type: none"> ○ it shall comply as on the renewal date; or, ○ 36 months from the Directions' Date whichever is earlier 	<p>the Agreements that come into force on or after October 01, 2023 –</p> <ul style="list-style-type: none"> ○ it shall comply from the date of agreement itself

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- **Links**

Direction

[Reserve Bank of India - Master Directions \(rbi.org.in\)](http://rbi.org.in)

Circular 1

[Reserve Bank of India - Notifications \(rbi.org.in\)](http://rbi.org.in)

Circular 2

[Reserve Bank of India - Notifications \(rbi.org.in\)](http://rbi.org.in)

Circular 3

[Reserve Bank of India - Notifications \(rbi.org.in\)](http://rbi.org.in)

Deets / Disclaimer

❑ Deets.

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❑ Disclaimer.

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Thank You



There is no wealth like knowledge and no poverty like ignorance - Buddha