ETERNITY:LAW APPRISE

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Reserve Bank of India

Master Direction on Issuance and Operation of Prepaid Payment Instruments

Know Your Customer ("**KYC**") is a process through which banks and other financial institutions obtain and verify information about their customers' identity and address in order to ensure the services are not misused in anyway.

The guidelines were issued by The Reserve Bank of India ("**RBI**") for issuance and operations of Prepaid Payment Instruments ("**PPI**") in April 2009 to facilitate an orderly development of the pre-paid systems.

The RBI has issued a number of circulars from time to time on issuance and operation of PPIs and ultimately vide its notification dated October 11, 2017 has issued *the Master Direction on Issuance and Operation of PPI*. In the light of developments in the field, progress made by PPI Issuers, experience gained and with a view to foster innovation and competition, ensure safety and security, customer protection, etc., it was decided to review the instructions relating to the issuance and operation of PPIs and issue comprehensive Directions on the subject. The provisions of the Master Direction shall apply to all PPI Issuers, System Providers and System Participants. The purpose of issuing this Master Direction is as follows: -

> *"1.4 Purpose*
> *a) To provide a framework for authorisation, regulation and supervision of entities operating payment systems for issuance of PPIs in the country;*
> *b) To foster competition and encourage innovation in this segment in a prudent manner while taking into account safety and security of transactions as well as systems along with customer protection and convenience.*
> *c) To provide for harmonisation and interoperability of PPIs"*

Some of the key changes introduced are as follows:

1. **Eligibility to issue PPIs**

   Only Banks which comply with eligibility criteria, including those set forth by the regulatory authority of the RBI, are permitted to issue semi-closed and open system PPIs, after obtaining approval from the RBI. However non- banking entities are permitted to issue only semi-closed systems after such authorization from the RBI.

2. **Capital Requirements**

   The regulations have increased the net owned fund requirements for PPI operators from Rs. 1,00,00,000 (Rupees One Crore) to Rs. 5,00,00,000 (Rupees Five Crores) initially, which is to be increased to Rs. 15,00,00,000 (Rupees Fifteen Crores within three (3) years. Existing wallet issuers must meet the Rs. 15,00,00,000 (Rupees Fifteen Crores) capital requirement by March 31, 2020. This is a marked increase from the current requirement of Rs. 1,00,00,000 (Rupees One Crore) and is symbolic of the increasing role of PPI operators.

   An additional requirement for intimating the Department of Payment and Settlement System (DPSS) has been introduced.

3. **Limits on Transactions**

   Cash loading to PPIs has been limited to Rs. 50,000/- (Rupees Fifty Thousand Only) per month subject to the overall limit of the PPI. Further PPI issuers shall ensure that no interest is payable on PPI balances. PPIs may be issued only as cards, wallets, and any such form / instrument which can be used to access the PPI and to use the amount therein.

4. **Intimation**

   There is a requirement of communicating the following to the RBI:

   i. The RBI shall endeavor to reply within fifteen (15) business days after the receipt of any communication with regards to any proposed major change, such as changes in product features / process, structure or operation of the payment system, etc.

   ii. Any takeover or acquisition of control or change in management of a non-bank entity shall be communicated within fifteen (15) days with complete

including 'Declaration and Undertaking' by each of the new directors, if any. RBI shall examine the 'fit and proper' status of the management and, if required, place suitable restrictions on such a change.

5. Interoperability

A key positive change is the push towards interoperability. The RBI has now contemplated wallet to wallet interoperability and also wallet to bank account interoperability via the UPI infrastructure.

6. Issuance, loading and reloading of PPIs

The formulation and implementation of the following policies to be duly approved by the Board of Directors of the PPI issuers has been introduced in the Master Directions. They are:

i. Policy for issuance of various types / categories of PPIs and all activities related thereto;
ii. Policy laying down the framework for engaging agents for the purpose of issuance and reloading of PPIs;
iii. Policy for co-branding arrangement of the PPI issuer. The policy shall specifically address issues pertaining to the various risks associated with such an arrangement including reputation risk and the PPI issuer shall put in place suitable risk mitigation measures. The policy shall also lay down the roles, responsibilities and obligations of each co-branding partner, clearly;
iv. Policy for revalidation of the gift instruments and PPIs for Mass Transit Systems (PPI-MTS);
v. Risk Management Policy;
vi. Information Security policy for the safety and security of the payment systems operated by the PPI issuer, and implement security measures in accordance with the policy to mitigate identified risks;
vii. Grievance Redressal Policy.

With an enlarged view of the Government to make India go cashless and straddle towards the concept of digitalisation, many companies, specifically NBFCs are seeking approval from the Reserve Bank of India (RBI) to set up business in Prepaid Payment Instruments (PPI). The advent of such digitalization has seen the need for rapid changes to be made in the field of digital payments. There is certainly a requirement to introduce a change in the law

SEBI

Non-compliance with the Minimum Public Shareholding requirements

1. Securities and Exchange Board of India ("**SEBI**") vide its *Circular dated October 10, 2017* has provided for the effects of non-compliance with the Minimum Public Shareholding ("**MPS**") requirements specified in rules 19(2) and 19A of *the Securities Contracts (Regulation) Rules, 1957* in the manner as specified by the SEBI from time to time.

2. This circular provides for all recognized stock exchanges to review compliance with MPS requirements based on shareholding pattern/ other filings made with them by the listed entities from time to time and within fifteen (15) days from date of observation of non-compliance, the stock exchanges shall issue notices to such entities intimating all actions taken/ being taken as per this circular and advise the entities to ensure compliance.

3. In case of non-compliance by the listed entity, the stock exchanges shall:
   a. impose a fine of Rs. 5,000 (Rupees Five Thousand) per day of non-compliance on the listed entity and such fine shall continue to be imposed till the date of compliance by such listed entity;
   b. intimate the depositories to freeze the entire shareholding of the promoter and promoter group in such listed entity till the date of compliance by such entity. The above restriction shall not be an impediment for the entity for compliance with the minimum public shareholding norms through the methods specified/approved by SEBI.
   c. The promoters, promoter group and directors of the listed entity shall not hold any new position as director in any other listed entity till the date of compliance by such entity. An intimation to this effect shall be provided to the listed entity by the recognized stock exchange and the listed entity shall subsequently intimate the same to its promoters, promoter group and directors.

4. In case of continued non-compliance by the listed entity for a period of more than one (1) year, the below mentioned actions will be initiated:
   a. The recognized stock exchange shall impose an increased fine of ₹10,000/- per day

of non-compliance on the listed entity and such fine shall continue to be imposed till the date of compliance by such listed entity.

b. The directions mentioned in the points 3(b) and 3(c) would continue till the date of non-compliance.

The above amount of fine realized as per the above structure shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange.

5. The stock exchange may also consider compulsory delisting of the non-compliant listed entity in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulation) Rules, 1957 and the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 as amended from time to time.

6. The other entities which are non-compliant as on date of the circular, the stock exchanges shall undertake such action as prescribed in points 3 or 4 above depending on the period of non-compliance by the entity. However, the fines, as applicable, shall be imposed prospectively from the date of this circular.

The detailed guidelines of this circular can be found in the link provided below:

Non-compliance with the Minimum Public Shareholding (MPS) requirements.

Criteria for Settlement Mode of Commodity Derivative Contracts

SEBI vide its *Circular dated October 16, 2017* has provided guidelines for deciding appropriate settlement mode for commodity derivatives contracts in order to enable commodity derivative contracts to effectively discharge their hedging function to their respective underlying physical markets. The guidelines are as follows:

1. The first preference of settlement type shall always be by the way of physical delivery.

2. Any exemption from the above i.e. cash settlement of commodity derivatives contract, may be considered only in following scenarios with a proper justification –
   a. Physical delivery is difficult to implement due to any reason, which may inter-alia include the following:
      i. commodity is intangible; or
      ii. commodity is difficult to store may be due to low shelf life or inadequate storage infrastructure; or
      iii. it is difficult to physically handle and transport the commodity due to inadequate logistics and transport infrastructure.

   b. There is availability of reliable benchmark price of the commodity which can be used as reference for settlement price. Exchanges shall satisfy themselves that the reference spot price is robust – fair indicator of prevailing prices and not susceptible to any distortion/manipulation.

3. Subject to the above conditions, both cash settled and physically settled derivative contracts on the same commodity may also be considered for trading, in case basis of price discovery of the proposed contracts is different.

Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 – Amendments

SEBI vide its *Circular dated October 17, 2017* has provided amendments to the *SEBI (IFSC) Guidelines, 2015* and the *SEBI Circular dated July 27, 2017* amending these guidelines.

Guideline 8(2) which shall now read as follows:

> "8 (2) Any entity based in India or in a foreign jurisdiction may form a company in IFSC to act as a trading member of a stock exchange and/ or a clearing member of a clearing corporation in IFSC."

RERA

MahaRERA

Vasant Jadhav Versus Kailas Patil

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") in its *Order dated October 05, 2017* has directed developer Kailas Patil ("**Respondent**") to pay 10.15 per cent interest to the flat buyer Vasant Jadhav ("**Complainant**") in the Kailash Heights housing project in Kalwa, Thane till he gives actual possession of the flats. The Complainant, who paid a sum of Rs. 32,15,865/- (Rupees Thirty Two Lakhs Fifteen Thousand Eight Hundred and Sixty Five Only) for a flat in the above-mentioned building project, had filed the complaint with the MahaRERA, seeking compensation for delayed possession.

In his defense, the Respondent contended that the project was delayed due to factors beyond his control. The Respondent had contended that soon after he commenced construction of the project in 2008, a bridge constructed on a stream collapsed and therefore he could not continue construction till 2012 when it was reconstructed. He said he had to wait till December 2014 to get an error corrected in land records and resubmit an amended plan for construction of additional to the initial seven (7) storey building.

Adjudicating officer Hon'ble Mr. Bhalchandra Kapadnis, Member, MahaRERA observed that the developer had initially planned to construct a seven (7) storey building and thereafter changed his mind to add additional floors and the process of obtaining sanctions continued till 2017. It was held that:

> *"The facts to which the respondent refers to are not, in my opinion, sufficient to hold that the project is delayed because of the reasons beyond his control."*

MahaRERA thereby directed the Respondent to pay a monthly simple interest at 10.15 per cent on the investment amount made by the Complainant, from the promised date of possession, February 28, 2017, till the Respondent gives actual possession of the flat.

Sukhamani Juhu Himalaya CHSL Versus Moonland Builders Private Limited

1. A Complaint was filed by Sukhmani Juhu Himalaya CHSL ("**Complainant**"), a land owner of the project land/society, regarding various violations of the development agreement which was entered into between the Complainant and Moonland Builders Private Limited ("**Respondent**").

2. Vide its *Order dated October 24, 2017* MahaRERA explained to the Complainant that MahaRERA was not a forum for settlement of such disputes, regarding their development agreement with the promoter, as the disputes does not pertain to any contravention or violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 or the rules or regulations made there under.

Hence, the Complaint was dismissed.

High Court

Settlement of Compoundable Criminal Offences

In the case of *Dayawati vs Yogesh Kumar Gosain*, a division bench of the Delhi High Court on October 17, 2017, held that a compoundable criminal offence, such as the one under Section 138 of the Negotiable Instruments Act 1881 ("**N.I Act**") can be referred for mediation.

The question that came before the Bench was whether a Criminal Court can in any matter refer parties before it to a dispute resolution by mediation.

Answering the above question, the Hon'ble Bench observed that even though an express statutory provision enabling the criminal court to refer the complainant and accused persons to an alternate dispute redressal mechanism which includes mediation, has not been specifically provided for by the Legislature, the Code of Criminal Procedure, 1973 ("**CrPC**"), however does allow and recognize settlement without stipulating or restricting the process by which it may reach an amicable settlement. There is thus no bar to utilizing the alternate dispute mechanisms including arbitration, mediation, conciliation, as provided under Section 89 of the Code of Civil Procedure, 1908 for the purposes of settling disputes which are the subject matter of offences covered under Section 320 of CrPC.

Insolvency and Bankruptcy Code, 2016

Black Pearl Hotels Pvt. Ltd. Vs Planet M Retail Ltd.

Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") has pronounced its *Order dated October 17, 2017* in the matter of Black Pearl Hotels Pvt. Ltd. ("**Appellant**"/ "**Operational Creditor**") Vs Planet M Retail Ltd. ("**Respondent**"/ "**Corporate Debtor**").

1. Background

   The Operational Creditor had entered into a Business Conducting Agreement ("**Agreement**") with the Corporate Debtor for conducting and manging certain business, in consideration of which, Corporate Debtor is liable to pay monthly conducting fee to the Operational Creditor. However, the Corporate Debtor failed to pay the agreed conducting fees since October 2011 and thereafter the Agreement was terminated by the Corporate Debtor. Subsequently an arbitration application was filed on March 30, 2012 and the Operational Creditor continued raising debit notes on the Corporate Debtor. The arbitration application was dismissed on March 04, 2014. The Operational Creditor issued a notice to the Corporate Debtor on March 18, 2017 under section 8 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") and the claim therein was disputed by the Corporate Debtor. The Operational Creditor approached the National Company Law Tribunal ("**NCLT**") to initiate the Corporate Insolvency Resolution Process ("**CIRP**") under Section 9 of the Code.

2. NCLT's Ruling

   NCLT ruled that the claims made by the Operational Creditor by issuing of debit notes till the filing of the arbitration application were time barred as the arbitration application was dismissed without any liberty and the issuing of debit notes after the filing of the arbitration application were illegal as the Corporate Debtor was not using the premises and not carrying on any business. The application was dismissed by NCLT on the grounds that there was no debt as provided in the Code. The relevant extract of NCLT's ruling is reproduced below for ready reference:

   > *"When the debt is a time barred one, there is no legal obligation on the part of the corporate debtor to pay the same and due to lapse of time the right to sue is barred by limitation, hence, in this case, there is no debt as defined in the IB Code."*

3. NCLAT's ruling

   a. The Operational Creditor approached NCLAT against the order of NCLT. NCLAT considered ruling of the Hon'ble Supreme Court in the matter of Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure Trustee Ltd., Civil Appeal No.10711 of 2017 where the Hon'ble supreme Court had dismissed the appeal stating that the question of law viz. whether the Limitation Act, 1963 would apply to the proceeding were kept open.

   b. NCLAT examined the Article 137 of the Limitation Act, 1963 where it was stated that the any applications for which the limitation period was not provided for in the Limitation Act, 1963 would have a limitation period of three (3) years, which would commence from the date when the right to apply accrues.

   c. NCLAT further observed that the Code had come into force on December 01, 2016 and hence on the basis of the Article 137 of the Limitation Act, 1963, the period of commencement of application under the Code accrues from December 2016. The application of the Operational Creditor was allowed under Section 9 of the Code as NCLAT observed that the application was not barred by limitation and there was no pending arbitration dispute.

4. Analysis of NCLAT's Ruling

   Such a ruling by NCLAT has given a chance to the creditors to approach the Adjudicating Authority under the Code, irrespective of the period in which the debts have incurred and the debts are time barred. Further, the ruling provides a time period till December 01, 2019 to creditors for application for initiation of insolvency proceedings to recover their debts.

Value Line Interiors Private Limited Vs Rattan India Power Limited

1. National Company Law Tribunal (Delhi bench) ("**NCLT**") has pronounced its *Order dated October 23, 2017* in the matter of Value Line Interiors Private Limited ("**Operational Creditor**"/ "**Petitioner**") Vs Rattan India Power Limited ("**Corporate Debtor**"/ "**Respondent**").

2. The Petitioner herein is engaged in the business of interior designing and finishing and was appointed by the Respondent for carrying out such work for their new corporate office. A letter of intent was issued and an arrangement was agreed wherein all running bills had to be verified and approved in ten (10) days. The Petitioner stated that payments were received only for a part of the approved bills and hence after various reminders, a notice was issued under Section 8 of the Code.

3. The Respondent had filed a reply to the aforesaid notice issued by the Petitioner. It was submitted by the Respondent that the Petitioner had supressed many facts and various existing disputes in respect of the works executed. It was further stated by the Respondent that there were inordinate delays on the part of the Petitioner in completing the works and time was the essence in their contract, and the Respondent had to suffer losses due to the delays. Also, objections had been raised and communicated by the Respondent in respect of the quality of works accrued by the Petitioner. Various letters and communications had been submitted by the Respondent.

4. NCLT observed that there was a dispute existing before the filing of the petition and that merely the existence of the dispute was a sufficient reason to not maintain the Petitioner's application.

MCA

Clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016

Ministry of Corporate Affairs vide it's *General Circular dated October 25, 2017* ("**IBC Circular**") has provided a clarification as to whether approval of shareholders/members of the corporate debtor/company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under Sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/members under provisions of Companies Act, 2013 or any other law.

2. The clarification was sought in view of the requirement under section 30(2)(e) of the Code which is reproduced below for ready reference:

> *"30. (1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.*
>
> *(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—(e) does not contravene any of the provisions of the law for the time being in force;"*

3. The IBC Circular provided that the resolution plan by the resolution professional is to be approved by the Adjudicating Authority and there is no requirement for obtaining approval of shareholder/members of the corporate debtor during the process.

4. The approval of the resolution plan by the Adjudicating Authority should be according to the applicable laws and therefore is legally implementable.

5. The resolution plan approved by the Adjudicating Authority is binding on the corporate debtor and its employees, members, creditors guarantors and other stakeholders involved in the resolution plan according to section 31(1) of the Code.

6. The approval of the shareholder/members of the corporate debtors/company, which would normally have been required under the provisions of the Companies Act, 2013 or any other act if the resolution plan under the Code was not being considered, would be deemed to have been received once the resolution plan has been approved by the Adjudicating Authority.

Notification of Section 247 of the Companies Act, 2013

The Ministry of Corporate Affairs ("**MCA**") vide its *Notification dated October 18, 2017* has notified that the provisions of Section 247 (Valuation by Registered Valuers) of the Companies Act, 2013 would come into force from October 18, 2017. The Companies (Registered Valuers and Valuation) Rules, 2017 ("**Rules**") have also been notified simultaneously.

The Rules provide for a transition period upto March 31, 2018 for registration of valuers with the authority keeping in view the period which would be required by the valuers organisations and the valuers to fulfil the requirements under the law.

The link of notified Rules has been provided below for ready reference:

Companies (Registered Valuers and Valuation) Rules, 2017.

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Warm Regards,

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