

Synopsis

Reserve Bank of
India

SEBI (ICDR Regulations)

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RBI UPDATES

A. Extension of Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit

It was notified earlier that Banks shall identify the eligible exporters as per the Government of India scheme for Interest Equalisation and credit their accounts with the eligible amount of interest equalisation. The banks shall also reduce the interest rate charged to the eligible exporters as per the guidelines on interest rates on such advances by the rate of interest equalisation provided by Government of India.

The interest equalisation benefit is available from the date of disbursement up to the date of repayment or up to the date beyond which the outstanding export credit becomes overdue. However, the interest equalisation was available to the eligible exporters only during the period the scheme being in force.

In this regard Government of India has approved the extension of Interest Equalization Scheme for pre and post shipment Rupee export credit, with same scope and coverage, for one more year i.e. up to March 31, 2021.

The extension shall take effect from April 01, 2020 and end on March 31, 2021 covering a period of one year. Consequently, the extant operational instructions issued by the RBI under the scheme shall continue to remain in force up to March 31, 2021.

B. Measures announced RBI Governor on May 22, 2020:

a) Liquidity Adjustment Facility – Repo and Reverse Repo Rates:

- i) Repo rate under the liquidity adjustment facility (LAF) is reduced by 40 bps to 4.0 per cent from 4.40 per cent with effect from May 22, 2020;
- ii) The Marginal Standing Facility (MSF) rate and the Bank rate is reduced from 4.65 per cent to 4.25 per cent with effect from May 22, 2020;
- iii) The Reverse Repo rate under the LAF is reduced to 3.35 per cent from 3.75 per cent;

b) Measures to Ease Financial Stress:

- i) The RBI had earlier announced certain regulatory measures permitting all Commercial Banks and NBFCs (lending institutions) to allow granting of 3 months moratorium on term loan instalments and deferment of interest for 3 months on working capital facilities. The above measures are being extended by another three months from June 1, 2020 till August 31, 2020 taking the total period of applicability of the measures to six months (i.e. from March 1, 2020 to August 31, 2020).
- ii) In order to ameliorate the difficulties faced by borrowers in repaying the accumulated interest for the deferment period on working capital facilities in one shot, lending institutions are permitted to convert the accumulated interest on working capital facilities over the deferment period (up to August 31, 2020) into a funded interest term loan which shall be repayable not later than the end of the current financial year (i.e., March 31, 2021).
- iii) As the moratorium/deferment is being provided specifically to enable borrowers to tide over COVID-19 disruptions, the same will not be treated as changes in terms and conditions of loan agreements due to financial difficulty of the borrowers and, consequently, will not result in asset classification downgrade.
- iv) In respect of working capital facilities sanctioned in the form of cash credit/overdraft, lending institutions are permitted to recalculate the 'drawing power' by reducing the margins till the extended period, *i.e.*, August 31, 2020. In order to smoothen the impact for the borrowers, lending institutions are permitted to restore the margins to the original levels by March 31, 2021. Such changes in credit terms permitted to the borrowers to specifically tide over COVID-19's fallout will not be treated as concessions granted due to financial difficulty of the borrower, under Paragraph 2 of the Annex to the Reserve Bank of India (Prudential Framework for

Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019 ('Prudential Framework'), and consequently, will not result in asset classification downgrade.

v) Under the Prudential Framework, lending institutions are required to hold an additional provision of 20 per cent in the case of large accounts under default if a resolution plan has not been implemented within 210 days from the date of such default. Given the continuing challenges to resolution of stressed assets, lending institutions are permitted to exclude the entire moratorium/deferment period from March 1, 2020 to August 31, 2020 from the calculation of 30-day Review Period or 180-day Resolution Period, if the Review/Resolution Period had not expired as on March 1, 2020.

vi) In view of the current difficulty in raising resources from capital markets, the group exposure limit of banks is being increased from 25 per cent to 30 per cent of eligible capital base, for enabling corporates to meet their funding requirements from banks. The increased limit will be applicable up to June 30, 2021.

c) Export Credit:

In order to eliminate difficulties being faced by exporters in their production and realisation cycles, it has been decided to increase the maximum permissible period of pre-shipment and post-shipment export credit sanctioned by banks from the existing one year to 15 months, for disbursements made up to July 31, 2020.

d) Liquidity Facility for Exim Bank of India

In order to enable EXIM bank to meet its foreign currency resource requirements, it has been decided to provide a facility of INR 15,000 crore line of credit for 90 days for US dollar swap facility to EXIM Bank.

e) Extension of Time for Payment for Imports

With a view to providing greater flexibility to importers in managing their operating cycles, it has been decided to extend the time period for completion of outward remittances against normal imports (excluding import of gold/diamonds and precious stones/jewellery) into India from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020.



RELAXATIONS PROVIDED BY SECURITIES AND EXCHANGE BOARD OF INDIA (“SEBI”) DUE TO COVID-19 VIRUS PANDAMIC

A. Relaxation from the applicability of SEBI Circular dated October 10, 2017 on non-compliance with the Minimum Public Shareholding (MPS) requirements:

SEBI has provided a relaxation for all listed entities who were supposed to comply with the requirement of MPS between the period March 01, 2020 to August 31, 2020. The Recognized Stock exchanges are advised not to take any penal action for non-compliance by the listed entities during the said period.

B. Additional relaxation in relation to compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (LODR)– COVID -19 pandemic:

SEBI has decided to provided further relaxations / issue clarifications regarding SEBI LODR due to the challenges faced by listed entities due to the Covid-19 pandemic. They are as below:

a. Relaxations necessitating out of MCA circulars:

Having regard to the relief provided by Ministry of Corporate Affairs (MCA) following provisions of LODR are relaxed.

- i. **Requirement of sending physical copies of annual report to shareholder**–Regulation 36 (1)(b)/(c) of LODR prescribes that Listed entity shall send a hard copy of the statement containing salient features of all the documents, as prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses and

hard copies of full annual reports to those shareholders, who request for the same, respectively. Regulation 58 (1)(b) &(c) of the LODR extend similar requirements to entities which have listed their NCDs and NCRPS'.

This requirement of Regulations 36 (1)(b) and (c) and Regulation 58 (1)(b) &(c) of the LODR are dispensed with for listed entities who conduct their AGMs during the calendar year 2020 (i.e. till December 31, 2020).

- ii. **Requirement of proxy for general meetings** – Regulation 44(4) of LODR - This regulation specifies that the listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against a resolution.

This regulation has been dispensed with temporarily for Annual General Meetings held through electronic mode by listed entities during calendar year 2020

- iii. **Requirement of dividend warrants/cheques** – Regulation 12 of LODR - This regulation prescribes issuance of 'payable at par' warrants or cheques in case it is not possible to use electronic modes of payment. In case, the dividend exceeds Rs.1,500/-, the 'payable at par' warrants or cheques shall be sent by speed post.

This regulation will apply upon normalization of the postal services. However, listed entities shall endeavour to obtain the bank account details and use the electronic modes of payment as per LODR.

b. Relaxation from publication of advertisements in the newspapers

SEBI had earlier through its circular dated March 26, 2020 exempted publication of advertisements of all events scheduled till May 15, 2020 in newspapers. This exemption is now extended to all events scheduled till June 30, 2020.

c. Relaxation from publishing quarterly consolidated financial results under regulation 33(3)(b) of the LODR for certain categories of listed entities

- i. Listed entities which are banking and/or Insurance companies or have subsidiaries which are banking and/or Insurance companies may submit consolidated financial results under Regulation 33(3)(b) of LODR for the Quarter ending June 30, 2020 on a voluntary basis. However, they will continue to submit the standalone financial results as required under regulation 33(3)(a) of LODR.
- ii. If the listed entity chooses to publish only Standalone financial results and not consolidated financial results, they shall give the reason for the same.

Petitioner's contentions:

- i. The Garnishee order was illegal, Void-ab-initio since the resolution plan had already been approved by the NCLT and was binding upon the petitioner and all of its creditors, including VAT Authorities.
- ii. The petitioner also relied on several other rulings wherein it was held that the dues payable to the Government would come within the meaning of "Operational Debt" making the Government an "Operational Creditor". Also, the claims of the Government would have to be adjudicated and paid solely in the manner prescribed in the resolution plan as approved by the NCLT.
- iii. Further, the petitioner submitted that as per the resolution plan, all claims of the taxes and liabilities whether admitted or not, due or contingent, whether or not set out in the provisional balance sheet, shall stand extinguished by virtue of the NCLT order approving the resolution plan, thus taxes even if accrued cannot be realised from the Petitioner.

High Court Decision:

The Court observed the following:

- i. Section 31 of the IBC clearly lays down that the approved resolution plan shall be binding only on those stakeholders who were involved in the resolution plan. The public announcement of the CIRP was required to be made in Jharkhand. But due to non-publication of the public notice in Jharkhand, the VAT authorities has no opportunity to make their claim in the CIRP and thus the resolution plan was not binding on them.
- ii. There was an amendment in Sec 31(1) of the IBC to make the approved resolution plan binding on Government authorities in respect of statutory dues. This was made effective on August 16,2019. However, in the given case the resolution plan was approved prior to the effective date. Hence, this amendment was not applicable to the given case. **It was also held that the amendment to Sec 31(1) of the IBC cannot be applicable retrospectively.**
- iii. Accordingly, it was held that the resolution plan shall not be binding on VAT authorities since they were not involved in the resolution process.

B. NCLAT concludes that apprehension of bias expressed by Corporate Debtor is a valid ground to substitute Insolvency Resolution Professional (IRP).

State Bank of India V/s M/s. Metenere Ltd. (NCLAT)

Facts of case:

- i. State Bank of India, as a financial creditor filed an application under Section 7 'Initiation of Corporate Insolvency Resolution Process'. In the said application SBI proposed an ex-employee to be appointed as the IRP. The Corporate Debtor, M/s. Metenere Ltd objected to the appointment of an ex-employee as the IRP, and who is currently drawing pension from the SBI. The corporate debtor, raised the apprehension of unfairness and bias in dealings by the proposed IRP on the above grounds.
- ii. The Principal Bench of the NCLT agreeing with claims of the corporate debtor passed an order directing the Financial Creditor to substitute a different IRP since the NCLT was of the view that the IRP could not function fairly and without bias as an independent Umpire.
- iii. Aggrieved by the Order of the NCLT, the Financial Creditor approached the NCLAT seeking to have the impugned order set aside.

Conclusion

NCLAT refused to entertain the Appeal, stating that it does not see any merit in it. The NCLAT while agreeing that there was no disqualification or ineligibility towards the proposed IRP to act as an IRP, yet the NCLAT concluded that apprehensions of bias cannot be dismissed on the fact of the past relationship with the Financial Creditor and hence, upheld the order of NCLT. It also observed that the Financial Creditor should not have been disgruntled due to the NCLT order since it was not detrimental to it in any manner.

Companies Act 2013



UPDATES IN THE COMPANIES ACT, 2013

A. Clarification on dispatch of notice u/s 62(2) of Companies Act 2013('CA 13') by listed companies for Right Issue opening up to July 31,2020:

The Ministry of Corporate Affairs keeping in view the present COVID-19 situation has clarified that where a listed company is unable to dispatch the notice to shareholders through registered post/ speed post / courier for rights issue opening up to July 31,2020, it would not be viewed as violation of section 62(2) of CA-13.

Such listed companies shall also comply with the other conditions specified in the SEBI circular SEBI/HO/CFD/DIL2/CIR/P/2020/78 date May 6,2020.

Above is as per General Circular No.21/2020 dated May 11,2020

B. Extension of relaxation period/days of Extension:

The Ministry of corporate affairs ('MCA') had previously issued notification with regards to period/days of extension for names reserved and resubmission of forms. Due to continued difficulty on account of COVID-19 the MCA has further extended the relaxations.

The period/days of extension for names reserved and resubmission of forms issued by MCA is given in the below link:

https://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

C. Corporate Social Responsibility ('CSR'):

As per schedule VII of Companies Act 2013 ('CA-13'), any contribution made by companies to Prime minister relief fund would be treated as eligible CSR Activity.

Along with the above relief fund Central government in exercise of its powers as specified in Sec 467 'Powers of Central Government to amend schedules' of CA-13, has inserted the following in schedule VII of CA-13 i.e. any contribution by companies to PM CARES fund shall also be eligible to considered as CSR Activity.

The above amendment shall be deemed to have come into force from March 28, 2020.

ii. Reduction in TCS

The rate of Tax Collection at Source (TCS) for the specified receipts has also been reduced by 25% for the period from 14th May, 2020 to 31st March, 2021.

The Revised TDS and TCS rates are available on:

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/834/Press-Release-Reduction-in-TDS-TCS-Rates-dated-14-05-2020.pdf>

It is further stated that there shall be no reduction in rates of TDS or TCS, where the tax is required to be deducted or collected at higher rate due to non-furnishing of PAN/Aadhaar.

C. Amendment of Safe Harbour Rules:

CBDT vide notification dated 20th May, 2020 has amended Rule 10TD and Rule 10TE of the Income Tax Rules 1962 with respect to provisions of Applicability of Safe Harbour to an entity. The rules are available on: https://www.incometaxindia.gov.in/communications/notification/notification_25_2020.pdf.

D. Facility of Instant PAN through Aadhaar based e-KYC:

Finance Minister formally launched the facility for instant allotment of PAN (on near to real time basis) on 28th May, 2020. This facility is now available for those PAN applicants who possess a valid Aadhaar number and have a mobile number registered with Aadhaar. The allotment process is paperless and an electronic PAN (e-PAN) is issued to the applicants free of cost.

The instant PAN applicant is required to access the e-filing website of the Income Tax Department to provide her/his valid Aadhaar number and then submit the OTP received on her/his Aadhaar registered mobile number. On successful completion of this process, a 15- digit acknowledgment number is generated. If required, the applicant can check the status of the request anytime by providing her/his valid Aadhaar number and on successful allotment, can download the e-PAN. The e-PAN is also sent to the applicant on her/his email id, if it is registered with Aadhaar.



INDIRECT TAX UPDATES

- A. **Notification No. 43/2020-Central Tax dated May 16, 2020** – Seeks to bring into force effective from May 18, 2020, section 128 of the Finance Act, 2020, in order to bring amendment to Section 140(Transitional arrangement for input tax credit) of CGST Act with retrospective effect from July 01, 2017 to prescribe the manner and time limit for taking transitional credit.

Sub-section (1) to (9) of section 140 are amended retrospectively to enable the Government to provide by rules the time limits to file TRAN-1 and for other compliances. This Amendment is in the background of decision by High Courts which had ruled to allow transitory credit even when required returns were not filed before the due date.

M&R Comments:

- This amendment has negated the recent High Courts judgments and provided that transitory credit taken after the due date will be disallowed if return filed beyond the due date by making this with retrospective effect.
- The effect of the judgements on extension of due date based on period of limitation is restricted to the petitioners only.

B. ADVANCE RULING

In the Case of	Date of ruling	Matter related to	GIST of the case
Advance Ruling No KAR/ADRG/30/2020	May 04, 2020	Anil Kumar Agrawal	It is ruled by the Advance ruling authority, if the executive director of a company renders services to the company, then the services of the director is treated as an employee to the employer, are neither treated as supply of goods nor as supply of services , in terms of schedule III of CGST Act 2017 and remuneration received for the services rendered as executive director is not

			<p>includable in the aggregate turnover of the applicant, as it is the value of services supplied by the applicant being an employee. It is ruled by the Advance ruling authority, if the executive director of a company renders services to the company, then the services of the director is treated as an employee to the employer, are neither treated as supply of goods nor as supply of services, in terms of schedule III of CGST Act 2017 and remuneration received for the services rendered as executive director is not includable in the aggregate turnover of the applicant, as it is the value of services supplied by the applicant being an employee. If the remuneration received by applicant as a Non-Executive Director (Independent Director), such remuneration paid by the company is liable to tax under reverse charge mechanism under section 9(3) of the CGST Act 2017, in the hands of the company, under entry no. 6 of Notification No. 13/2017-Central Tax (Rate) dt June 28, 2017 and the above said remuneration will be included in the aggregate turnover of the applicant for determining whether GST registration is mandatory or not.</p>
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C. GST Case Law:

In the Case of	Date of ruling	Matter related to	GIST of the case
Bharti Airtel Limited Vs. Union of India & Others – Delhi High Court	May 05, 2020	Rectification of GSTR 3B for the period Jul-Sep 2017	Where by virtue of Circular No. 26/26/2017-GST, dated 29.12.2017 petitioner i.e., Bharti Airtel is being prevented from correcting its monthly GST returns, and consequently seeking refund of excess of taxes paid. Delhi High Court held that the failure of the Government to operationalize the statutory returns, GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee. The GSTR 3B which was merely a summary return as an alternative did not have the statutory features of the returns prescribed

			<p>under the Act. Therefore, if there were errors in capturing ITC on account of which cash was paid for discharging GST liability instead of utilising ITC which could not be captured correctly at that time, the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund. Accordingly, we allow the present petition and permit the Petitioner to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July, 2017 to September, 2017.</p>
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D. Customs:

- i. **Notification No. 22/2020-Customs Dt. May 12, 2020:** Confirmation on the provisional increase of 5% in the rate of duty of customs levied vide notification No. 29/2019-Cus dated 04.09.2019, for a period of 180 days, on imports of “Refined Bleached Deodorized Palmolein and Refined Bleached Deodorized Palm Oil”, falling under tariff item [1511 90 10] or tariff item [1511 90 20] of the First Schedule to the Customs Tariff Act, 1975, originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement.
- ii. **Notification No.23/2020-Customs Dt. May 14, 2020:** Seeks further amend Customs Notification 50/2017-Customs Dt. June 30, 2017 so as to extend the period of validity of existing Export Performance Certificates for FY 2019-20 up to September 30, 2020.
- iii. **Notification No. 24/2020-Customs, dt. May 21, 2020 –** Amendment has been made to the below mentioned Notifications by extending the last date of export by six months for the cases where the last date of export falls between Feb 01, 2020 and July 31, 2020 due to outbreak of COVID - 19 pandemic.
 - Notification No. 56/2000 dt. May 05, 2000 relates to export of gold/silver/platinum, alloys, findings and mountings of gold/silver/platinum and plain semi-finished gold/silver/platinum jewellery by nominated agencies or status holders under the scheme for “Export Against Supply by Foreign buyer” who have claimed exemption from custom duty while importing the above said goods.
 - Notification No. 57/2000 dt. May 08, 2000 relates to export of silver, gold and platinum, falling under heading Nos. 71.06, 71.08 and 71.10 respectively of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which are imported into India as replenishment under the Scheme for 'Export through Exhibitions/Export promotion Tours/Export of Branded Jewellery' or under the scheme for 'Export Against Supply by Nominated Agencies' and claimed exemption from custom duty.

- Notification No. 40/2015 dt. July 21, 2015 relates to re-export of cut and polished diamonds by the laboratories and agencies notified in the foreign trade policy who have claimed exemption from custom duty while importing the diamonds
- iv. **Notification No. 25/2020-Customs, dt. May 21, 2020** – Inclusion of Gopalpur Port (INGPR1) as notified port for getting benefits under Advance Authorisation/Export Promotion Capital Goods schemes and other export incentive schemes like MEIS/SEIS and other such schemes.
- v. Following amendments are made to the TABLE -1, TABLE-2, and TABLE-3 in the notification No. 36/2001-Customs (N.T.), dated the August 3, 2001, vide Notification No. 45/2020-Customs (N.T.) dated May 19, 2020
Tariff notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver- Reg
Detailed notification is available at
<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt45-2020.pdf>
- vi. **Exchange Rates Notification No.46/2020-Custom (NT) dated May 21, 2020** Detailed notification is available at: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt46-2020.pdf>
- vii. **Notification No.08/2020-Customs (ADD), dt. May 19, 2020:** To impose anti-dumping duty on import of Sodium Citrate originating in or exported from China PR for a period of further 5 years.
- viii. **Circular No.23/2020- F. No.473/02/2020-LC dt. May 11, 2020:** The facility for accepting undertaking in lieu of bond for the period has been extended till May 30, 2020 and date for submission of proper bond in lieu of which the undertaking is being temporarily accepted is extended till June 15, 2020 (Conditions underlined in Circular No.17/2020 dt April 03, 2020 stand as they are).
- ix. **Circular No. 24/2020 – F.No.450/148/2025-Cus IV (Pt-II) dt. May 14, 2020:** Implementation of PGA e-SANCHIT – Paperless processing under SWIFT- Uploading of Licenses/Permits/Certificates/Other Authorisations (LPCOs) by PGA’s. Now one more Participating Governing Agency (PGA) namely Registrar of Newspapers of India (RNI) with its LPCOs as mentioned below is being brought onboard e-SANCHIT.

Sr No.	Document Code	Document Name	Document Description	PGA Code
1	101RN1	Certificate of Registration	Certificate of Registration issued by RNI for registering the publisher/Owner	RNI

2	911RN1	Self Declaration certificate for Import	Self declaration certificate is submitted by Publisher/Owner of the newspaper and authenticated by RNI before importing the newsprint.	RNI
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- x. **Circular No. 25/2020 having F. No.484/03/2015-LC (Vol-II), dt. May 18, 2020:** Electronic Sealing-deposit in and removal of goods from Customs Bonded Warehouse. Circular-19/2018-Customs dt. June 18, 2018 and Circular-10/2020-Customes dt. February 07, 2020 issued previously in this matter and yet to be operationalized, stand rescinded.
- xi. **Instruction F.No.609/38/2019-DBK dt. May 12, 2020:** It is clarified that the incidence of National Calamity Contingent Duty (NCCD) levied on the inputs used in the manufacture of export goods where applicable, is required to be factored in calculation of brand rate of duty drawback.
- xii. **Instruction F. No. 401/05/2020-Cus III, dt. May 20, 2020:** The requirement of veterinary certificate for Import of Milk and Milk products into India. Requirement of Veterinary Certificate issued by Competent Authority of exporting country has been mandated under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and compliance of the same is to be ensured by field formations in consignments of dairy products.

E. CENTRAL EXCISE:

- i. **Notification No. 01/2020-Central Excise (N.T.) dt. May 14, 2020:** The following amendments were made to SVLDRS Rules, 2019.
 - a. The amended rules may be called as Sabka Vishwas (Legacy Dispute Resolution) Scheme (Amendment) Rules, 2020, which shall come into force from the date of their publication in the official gazette.
 - b. In rule 6 (Verification by designated committee and issue of estimate, etc.,) sub-rule 2 - The statement under sub-sections (1) and (4) of section 127, as the case may be, shall be issued by the designated committee electronically, on or before the 31st day of May, 2020 under sub-rule (1) of rule 3, in Form SVLDRS-3 setting forth therein the particulars of the amount payable.
 - c. In rule 6 (Verification by designated committee and issue of estimate, etc.,) sub-rule 3 Where the amount estimated to be payable by the declarant exceeds the amount declared by the declarant, then, the designated committee shall issue electronically, on or before the 1st day of May, 2020 in Form SVLDRS-2, an estimate of the amount payable by the declarant along with a notice of opportunity for personal hearing.
 - d. In rule 7 (Form and manner of making the payment) - Every declarant shall pay electronically the amount, as indicated in Form SVLDRS-3 issued by the designated committee, on or before the 30th day of June, 2020.

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