

Sebi knocks at PMO door on NPA disclosure rules

Regulator keen on implementing a revised proposal

The Securities and Exchange Board of India (Sebi) has approached the Prime Minister's Office (PMO) and the Ministry of Corporate Affairs (MCA) to look into its proposal mandating listed companies to make public disclosures within a day of loan defaults. According to sources, the market regulator is keen on implementing its initial proposal with certain changes.

The new rule was to come into effect in October 2017 but got deferred due to hurdles in its implementation. A revised proposal was discussed on December 28 at Sebi's board meeting, which decided to hold it further, saying it required more discussion.

Sources said the Reserve Bank of India (RBI) and the Ministry of Finance were not keen on the proposal as the move would require banks to make an additional provisioning of Rs 260 billion.

Sebi, on the other hand, is pushing the proposal as it will benefit investors and lead to more transparency. "The proposed norms will help bridge the critical gaps in the availability of timely information for investors, to properly assess the financial health of a company and take informed decisions," said a person privy to the development.

He said the regulator was considering keeping short-term loans like cash credit out of the obligation of disclosure. The new version of the disclosure norms is likely to be unveiled in the customary board meeting after the Budget 2018-19. Sebi plans to implement the norms from April 1.

Sebi is of the view that the timely disclosure of loan defaults would also help the government arrest unscrupulous persons who are misusing the provisions of the Insolvency and Bankruptcy Code(IBC)

Sources said the regulator apprised the MCA about instances where promoters of companies going through the insolvency process had created "front entities" to buy them out in distress sale under an asset reconstruction model. "We have come across cases where these firms are approaching reputed nonbanking finance companies to set up their own asset reconstruction companies and then bidding for the assets being sold under the insolvency process," said another person.

Under the IBC, wilful defaulters and promoters of non-performing accounts of over a year are barred from bidding in insolvency proceedings. These persons, however, can become eligible to submit resolution plans if they clear all overdue amount with interest and other charges relating to the NPA accounts.

Sebi's initial proposal hit a roadblock on September 29, 2016, two days before the implementation, when the finance ministry directed the market regulator to defer the proposal. Further, it had asked Sebi to study the implications and put out the guidelines with certain modifications. As directed, Sebi took a cue from RBI's April 2013 direction to rating agencies and board members, and suggested that the norms could be modified accordingly.

The definition says that “default” for the purpose of this circular shall mean nonpayment of interest or principal amount in full on the pre-agreed date. For revolving facilities provided by banks like cash credit, an entity would be considered to be in default beyond 30 days from the date of overdrawing. Sebi mentioned this in the board note of December 28.

However, Sebi was of the view that this definition would not help address the issue. “Credit rating agencies do conduct their due diligence with respect to timely payment by the corporates, but information about loan turning into special mention account (account that is treated as NPA, depending on time period of delay in repayment of loan obligation) is generally not available in the public domain and is not disclosed readily to the CRAs by the banks,” said one person cited above.

In some cases, the information is available only after bankruptcy proceedings have been initiated. Such disclosures are often made too late, losing their relevance for the investor taking investment decisions, he added. Even a bank expert believes that the concept of pre-agreed date does not put obligation on the company to make disclosures, even if it delayed payment.

“Pre-agreed date is the date decided between the bank and the customer, and it is often modified by banks depending on the intent of the default. If the delay is technical, then bank always provides a grace period to do the payment. However, the Sebi proposal ruled out practicality of the default, which needs to be addressed,” said Ashvin Parekh, managing partner, Ashvin Parekh Advisory Services.

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