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# insight

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## *Towards recovery:*

# M&A in the 'new normal' – impact on deal trends and processes

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## Main stories



Welcome to this issue of **Insight**.

As the global economic activity is regaining momentum, it is clear that the M&A landscape is witnessing interesting developments and the deals in the post-COVID-19 'new normal' will be materially different from the pre-COVID-19 market practices. In this issue, we have covered the kind of changes emerging and expected to emerge in the M&A space, including a shift in the key drivers behind deal making and growing emphasis on certain key deal terms in the 'new normal'.

Apart from the above, we have also captured the key notifications and orders issued by the Ministry of Corporate Affairs in relation to the Companies Act, 2013 as well as circulars and notifications issued by the RBI and SEBI for the period under review including the various compliance relaxations provided to companies, in the aftermath of the COVID-19 crisis.

Any feedback and suggestions would be valuable in our pursuit to constantly improve Insight and ensure its continued success amongst readers. Please feel free to send any feedback, suggestions or comments to cam.publications@cyrilshroff.com.

While we send you this issue, we acknowledge the havoc and pain caused by COVID-19 in nations, homes and families across the world, including in India. Yet, it is in times like this that we must come together to support each other (while staying physically apart), remain optimistic and keep on going. Our best wishes are with you.

Regards,
**CYRIL SHROFF**

**Managing Partner**
**Cyril Amarchand Mangaldas**

India's leading law firm

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# M&A IN THE 'NEW NORMAL' – IMPACT ON DEAL TRENDS AND PROCESSES

As the ramifications of COVID-19 continue to unfold, India is gradually moving towards unlocking the economy in phases. With this, the projections for 2021 are hopeful, with the economy expected to bounce back with some growth.[1]

At the initial stages of the COVID-19 pandemic in early 2020, corporates had pushed the brakes on M&A activity. With economic activity regaining momentum, deal-making is expected to recover both globally and domestically – either as the more profitable businesses seek to capitalise on recent growth or as the less profitable businesses grapple with liquidity stress and continuity concerns. A survey conducted amongst M&A executives in the United States revealed that M&A activity is certainly expected to rise in the next 12 months, *albeit* not to the pre-pandemic levels.[2]

While increased M&A activity is expected in certain sectors, COVID-19 will undoubtedly be a catalyst for more fundamental changes in M&A globally. In this issue of *Insight*, we have sought to provide a glimpse into some of the macro level changes (i.e. deal drivers, participants and structuring) and micro level changes (i.e. diligence, documentation and negotiations) that are here to stay.

## Unlocked but Uncertain Economy

In India, despite a 2% fall in the deal volumes as compared to 2019, on a year to date basis, there has been a 13% increase in deal values. The telecom sector which accounted for 40% of the deal values in 2020 was followed by the energy, e-commerce, manufacturing, IT and banking sectors which together contributed to 37% of the total deal values. Not surprisingly, almost half of the deals were in the start-up space. However, the numbers for August have not been optimistic with deal values plummeting by 55% and 88% as compared to August 2019 and July 2020, respectively.[3]

While the fluctuations bear out the difficulty in predicting the impact of the pandemic, the recent big-ticket transactions do highlight the ability of Indian businesses to attract significant investments to a strong domestic market and technical expertise. The Indian government is also incentivising investment by introducing various incentives like the lower corporate tax regime with effective rate of 17.16% for manufacturing companies, production-linked incentive schemes such as the Scheme for Promotion of manufacturing of Electronic Components and Semiconductors, opening up sectors like agriculture to private players and introducing direct and indirect tax dispute resolution schemes.

### Drivers & Trends in M&A Activity

M&A activity has been largely sector-specific with some sectors seeing a surfeit of M&A, while M&A in other sectors have been significantly muted. We have considered some of the drivers and trends below:

Strategic M&A and Sectoral Shifts: The pandemic has pushed certain sectors such as technology, pharma, insurance, e-commerce and telecom into a wave of growth and advancement. However, even within these sectors there is a growing distinction between the cash positions of the 'haves' and 'have nots'.[4] In this environment, market leaders and those with comfortable liquidity positions are acquiring symbiotic assets with high growth potential during the current downturn, when targets are cash strapped, valuations are low, existing promoters want an 'out', and financing is expensive . The key driver for this M&A trend is to take market leadership.

Private Equity Funding: Private equity investors and sovereign funds are more than ready to invest and provide much needed liquidity to companies. This is not a surprise given that private equity was estimated to be sitting on USD 2.4 trillion in dry powder before the pandemic hit.[5] Private equity funds are known for identifying 'synergies' and investing to drive growth by improved governance and strategic focus and have in the recent past been looking at control deals (i.e. strategic investments instead of the traditional financial investments). India, as of August 2020, has seen multiple private equity investments in sectors such as banking, e-commerce, healthcare, education as well as energy and natural resources.[6]

Corporate Restructuring& Programmatic Acquisitions: In sectors which are somewhat insulated from the pandemic but bearing the brunt of a slow economy, companies and conglomerates are:

(i) undertaking a strategic review of existing portfolios, on the one hand to dispose of subsidiaries or assets which are

1 'A Crisis Like No Other, An Uncertain Recovery', World Economic Outlook Update, International Monetary Fund, June 2020, also available at https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020.
2 'US dealmakers expect uptick in M&A, but no swift return to pre-crisis levels', White & Case, September 28, 2020, also available at https://www.whitecase.com/publications/insight/us-dealmakers-expect-uptick-ma-no-swift-return-pre-crisis-levels.
3 'Providing M&A and PE Deal Insights', GrantThornton Deal Tracker, September 2020, Volume 16.8, also available at https://www.grantthornton.in/insights/articles/monthly-dealtracker--september-2020/.
4 'India's post-COVID-19 economic recovery: The M&A imperative', McKinsey & Company, July 09, 2020, also available at https://www.mckinsey.com/business-functions/m-and-a/our-insights/indias-post-covid-19-economic-recovery-the-m-and-a-imperative.
5 'Global Private Equity Report 2020,', Bain & Company, also available at https://www.bain.com/insights/payments-global-private-equity-report-2020/.
6 'Providing M&A and PE Deal Insights', GrantThornton Deal Tracker.

underperforming or have been impacted by the pandemic; and

(ii) looking to acquire assets in other growing categories or to gain access to new markets, channels and suppliers through consolidation, to create new opportunities.

During previous downturns like the dot com crash and the 2008 financial crisis, companies that used a programmatic approach to M&A i.e. making many relatively small transactions as part of deliberate and systematic M&A programs, delivered excess returns with less volatility than did companies that relied on organic growth and big ticket deals.[7] This trend is now visible in FMCG and retail space as well as in the energy and infrastructure sectors, where corporates are looking to crisis-proof themselves, including through smaller regional acquisitions. The key driver here being a balance between consolidation and diversification, with an aim to salvage and optimise business value.

Other Significant Trends: (i) Digital transformation in order to stay relevant, as can be seen in the banking, healthcare and education space; and (ii) Providing exits to minority investors and promoters at favourable valuations on assumptions of future growth, as we've seen in the logistics, pharma, energy and infrastructure space.

Divestures and Stressed M&A: The M&A story of companies in sectors which are directly impacted by the pandemic such as hotels, aviation, travel and tourism, real estate, advertising and media may not be as optimistic as the valuations have plummeted and there is little interest for further fund infusion in view of potentially dismal returns. It is expected that M&A activity will be muted in these sectors in the near to medium future, as these the companies will strive to survive on the basis of government subsidies and loan moratoriums. However, once the loan moratoriums are discontinued, divestitures and takeovers may be more frequent in these sectors.

## M&A in the New Normal

Value Creation: While the M&A process will primarily be driven by the afore-stated objectives i.e. dominance, survival or divestiture, as the case may be, it is essential for corporates and investors to update M&A strategies and to pay more emphasis on post M&A integration and value creation in these uncertain times.

Strategic Alliances: Given that it will be long before the markets emerge from financial uncertainty and risks, it is also possible that we see a growing collaboration between acquirers/ private equity players and exiting founders or promoters instead of outright acquisitions, establishments of joint ventures etc. with a long term view to seize opportunities and subdue the risk involved at the same time.

Decision Making & Control: Acquirers and investors are looking for more control on strategic decisions to steer the business in more promising directions, in order to prioritise growth and cash in on any opportunities. In businesses that are cash strapped, investors would have a lot of leverage to negotiate more control rights.

Valuation and Contingent Pricing Mechanisms: One of the barriers in the ongoing private equity and M&A deals is the inability of the parties to agree on valuations. Uncertainty in vaccination timelines, lockdown regulations, labour disruptions and changing economic and social behaviours are making valuation and projections difficult. In order to overcome the obstacles of the valuation gap between the sellers and the buyers, parties are increasingly seen to rely on contingent pricing mechanisms such as deferred consideration/ escrow mechanisms which are based on financial assessments to be undertaken once the regulatory restrictions and moratoriums are lifted, earn out mechanisms which are based on the future growth of the asset and COVID-19 specific indemnity obligations.

## Deal Terms – What to Expect

While deal terms are inherently fact and sector specific, the following are certain key points that are being considered by M&A dealmakers in the new normal.

1. Walk Away Rights: In case of deals which had already been executed before the pandemic hit, we saw various acquirers triggering the Material Adverse Effect (MAE) Clause and pulling out of deals, unless there were specific or implied pandemic exclusions. In deals executed after the pandemic, parties have moved away from boiler-plate clauses and a lot of attention is being paid to MAE clauses. The position that most of the parties are now settling into is the acquirer assuming the risk of slump in the target's performance due to restrictions or other disruptions caused by the pandemic, unless the target is affected disproportionately as compared to other players in the same sector.
2. Standstill Obligations: Typically, all acquisition agreements require that the sellers continue the target's business in the 'ordinary course' which is 'consistent with past practice'. But in the new normal, we see extended negotiations with the sellers wanting the flexibility to operate the target business or assets in order to navigate any after effects or further

7 'The power of through-cycle M&A', McKinsey & Company, April 30, 2020, also available at https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/the-power-of-through-cycle-m-and-a#.

waves of COVID-19 instead of parties relying on the standard set of interim covenants.

3. Break Fees: Pre-pandemic, the requirement of acquirers having to make payments in case they decide to walk away from a deal was rare in bi-lateral deals and heavily negotiated even in bid scenarios. With markets being volatile and even the financial position and liquidity of the acquirers and investors being uncertain, sellers may negotiate hard on this requirement to avoid the pains and opportunity cost of the deal not closing whether on account of 'buyer's remorse' or actual market volatility.
4. COVID-19 Indemnity: Many sellers are valuing their businesses or assets on the assumptions that the impact is temporary. Given that the financial health of such businesses and assets cannot be clearly gauged in the near future and in order to avoid overpaying, sellers may be required to indemnify the buyer (for up to a portion of the consideration) in case of a situation where the business does not emerge out of the after-effects of the pandemic in the manner foreseen by the parties at the time of acquisition.

While there is definitely a resurgence and an appetite for M&A, countries and businesses are still reeling from the effects of COVID-19, which will continue to unfold over the next 6 to 12 months. Across the globe countries are faced with a potential second wave of the pandemic and consequent lockdowns, frayed geo-political relations all of which have resulted in valuations being far more subjective.

But as all crisis present unlikely opportunities, companies which are looking towards M&A as a lever for survival or growth in this 'new normal' need to equip themselves to use the M&A tools in the best manner possible. This may include re-assessing the company's strategic goals and distinct capabilities to identify potential targets which will salvage or add value, identify best ways in which funds can be raised in the current economy and revise integration approaches to suit a technology dependent future.

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## COVID-19 Related Updates

### I. Amendments and Notifications

1. *Contribution to certain additional research and development projects included as eligible CSR contributions*

   Entry (ix) of Schedule VII to the Companies Act, 2013 ("**Companies Act**") has been amended to include contributions to research and development ("**R&D**") projects in the field of science, technology, engineering and medicine funded by the government or its agency/undertaking, as being eligible for computation towards corporate social responsibility ("**CSR**") contribution of a company under Section 135 of the Companies Act.

   *(MCA Notification no. G.S.R. 525(E) dated August 24, 2020)*

2. *CSR Rules amended to boost funding for COVID-19 vaccines / drugs*

   In order to boost funding towards R&D activities pertaining to development of vaccines / drugs for COVID-19, following amendments have been made to the Companies (CSR Policy) Rules, 2014 ("**CSR Rules**") vide the Companies (CSR Policy) Amendment Rules, 2020:

   (i) definition of 'CSR Policy' has been amended to include a proviso specifying that any company engaged in R&D activities of new vaccine, drugs and medical devices in their normal course of business may undertake said R&D activities in relation to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 , subject to such activities being (a) carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Companies Act; and (b) disclosed separately in the annual report on CSR included in the board's report;

   (ii) Rule 4(1) and Rule 6(1) have been appropriately amended to remove the proscription on activities of a company "undertaken in pursuance of its normal course of business" from being included as a CSR activity within the ambit of Companies Act.

   *(MCA Notification no. G.S.R. 526(E) dated August 24, 2020)*

3. *Further extension of relaxations relating to board meetings conducted through audio visual means*

   Under the Companies Act, certain actions such as approval of the annual financial statements, board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition or takeover, as well as audit committee meetings for consideration of financial statements, can only be taken at physical board meetings. In view of COVID-19 pandemic, the Ministry of Corporate Affairs ("**MCA**") had issued various circulars allowing companies to take such decisions at meetings conducted through video conferencing or other audio visual means ("**VC**") until June 30, 2020, which was subsequently extended till September 30, 2020. This relaxation has now been further extended till December 31, 2020 through Companies (Meetings of Board and its Powers) Third Amendment Rules, 2020.

   *(MCA Notification no. G.S.R. 526(E) dated August 24, 2020)*

### II. Circulars

1. *Clarification on dispatch of notices under Section 62(2) of the Companies Act for rights issue*

   The MCA has extended applicability of the relaxations granted vide circular dated May 11, 2020 (*covered in Volume XIII Issue 1 of Insight*) to rights issue by listed companies. The MCA had earlier clarified that inability of a listed company to dispatch notices pertaining to rights issue through postal/courier services, for issues opening up to July 31, 2020, is not in violation of Section 62(2) of the Companies Act, provided such listed companies are in compliance with the

relevant circulars issued by the Securities and Exchange Board of India ("**SEBI**"). This relaxation/clarification has now been extended to rights issues opening up to December 31, 2020.

*(MCA General Circular No. 27/2020 dated August 3, 2020)*

2. *Clarification on availing time-period extension to hold annual general meeting for the FY 2020, beyond the statutory period*

MCA has reiterated that companies that are unable to hold their annual general meeting ("**AGM**") for the financial year ending March 31, 2020 within the period stipulated under Section 96 of the Companies Act, read with the relaxations provided by MCA vide its circular dated May 5, 2020 (*covered in Volume XIII Issue 1 of Insight*) to hold the meeting through VC ought to file an application in Form No. GNL-1 to the applicable Registrar of Companies on or before September 29, 2020, seeking extension of time to hold the AGM. Registrars were directed by the MCA to view all such applications liberally, and to grant extension for the period as applied for (up to three months) in such applications.

*(MCA General Circular No. 28/2020 dated August 17, 2020)*

3. *Extension of various settlement/relaxation schemes including CFSS, LSS and Charge Scheme, owing to COVID-19*

In order to provide companies greater ease of doing business, particularly in the wake of the large scale disruption caused by the COVID-19 pandemic, MCA has extended the Companies Fresh Start Scheme, 2020 ("**CFSS**"), LLP Settlement Scheme, 2020 ("**LSS**"), and Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act ("**Charge Scheme**") till December 31, 2020. For more details on these schemes, please refer to Volume XII Issue 4 and Volume XIII Issue 1 of Insight.

*(MCA General Circular Nos. 30/2020, 31/2020 and 32/2020, each dated September 28, 2020)*

4. *Extension of time for conducting extra-ordinary general meetings through VC or through postal ballot*

The MCA has extended the time-period, allowing companies to conduct extra ordinary general meetings through VC or transact items through postal ballot in accordance with the framework provided in MCA general circulars dated April 8, 2020 and April 13, 2020 (*covered in Volume XIII Issue 1 of Insight*), till December 31, 2020.

*(MCA General Circular No. 33/2020 dated September 28, 2020)*

# Other Updates

## I. Amendments and Notifications

1. *Amendment of Deposit Rules to benefit start-ups*

The Companies (Acceptance of Deposit) Rules, 2014 ("**Deposit Rules**") have been amended in the following manner:

(i) The Deposit Rules prescribed that an amount of INR 25 lakhs or more received by a start-up company from a person in a single tranche, by way of a convertible note, was not considered as 'Deposit' only when convertible into equity shares or repayable within a period not exceeding 5 years from the date of issue. This has now been amended to make the permissible conversion/ repayment period 10 years from the date of issue.

(ii) The non-applicability of maximum limit in respect of deposits to be accepted from members of a private start-up company, has been extended to 10 years from the date of its incorporation instead of the earlier 5 years.

(iii) The definition of 'start-up' has been amended to make it consistent with the most recent definition used by the Department for Promotion of Industry and Internal Trade ("**DPIIT**").

*(MCA Notification no. G.S.R. 548 (E) dated September 7, 2020)*

2. *Companies (Amendment) Act, 2020*

The Companies (Amendment) Bill, 2020 (*covered in Volume XII Issue 4 of Insight*) has received the assent of the President of India on the September 28, 2020 and its provisions shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for coming into force of a different provisions.

*(Act No. 29 of 2020, dated September 28, 2019)*

## II. Reports

1. *Report on Business Responsibility Reporting*

In furtherance to updation and formulation of the National Guidelines on Responsible Business Conduct ("**NGRBCs**") in 2019, the MCA had constituted a 'Committee on Business Responsibility Reporting', comprising of representatives from MCA, SEBI, three professional institutes, and two eminent professionals who had worked on developing the NGRBCs, to develop new business responsibility reporting formats for listed and unlisted companies.

Prepared after extensive consultations with various stakeholders, this report recommends a new reporting framework called as the 'Business Responsibility and Sustainability Report' ("**BRSR**") to better reflect the intent and scope of reporting on non-financial parameters (i.e. environmental and social reporting) and to serve as a single source for all non-financial disclosures. SEBI already mandates top 1000 listed companies by market capitalisation to make disclosures on business responsibility and sustainability indicators contained in the NGRBCs through the Business Responsibility Reporting ("**BRR**"). The BRSR is intended to be an update to the existing BRR, to incorporate the current global practices in non-financial sustainability reporting.

The reporting can be done in two disclosure formats namely 'comprehensive format' and a 'Lite version'. The comprehensive BRSR format contains three broad sections namely General disclosure, disclosure on management and processes, and principle – wise performance, whereas the BRSR lite version recommends a slightly pared down form of the comprehensive format to cater to companies unfamiliar with any form of sustainability reporting.

The implementation of reporting requirement is suggested to be done in phases so that smaller companies have the time to adapt and learn from the larger ones. The Committee suggests that in case of listed entities, reporting may be done by top 1000 listed companies (by market capitalization) as applicable presently, or as prescribed by SEBI. The reporting requirement may be extended by MCA to unlisted companies above specified thresholds of turnover and/or paid-up capital and smaller unlisted companies below this threshold may, to begin with, adopt a lite version of the format, on a voluntary basis.

Pursuant to the BRSR released by the committee constituted by the MCA, SEBI has also released a comprehensive format for business reporting by listed entities, and is intended to enable businesses to engage more meaningfully with their stakeholders, and encourage them to go beyond regulatory financial compliance and report on their social and environmental impacts. Apart from specifying the formats of reporting, SEBI has developed a guidance note to define and interpret the scope of each question/ reporting requirement in the BRSR/ format of disclosures.

SEBI has proposed that the format shall be applicable to the top 1000 listed entities by market capitalization and that to begin with, the new format will be adopted by such listed entities on a voluntary basis for the financial year 2020 – 21 (for those who choose not to adopt the new format, the existing format will apply) and mandatorily from the financial year 2021-22. The last date for receiving public comments for this consultation paper has been extended up to October 18, 2020.

*(BRSR Released by the MCA on August 11, 2020 read with the SEBI Consultation Paper on the Format for BRSR dated August 18, 2020)*

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# FOREIGN EXCHANGE AND RBI UPDATES

## COVID-19 Related Updates

### I. Circulars and Notifications

1. *Special liquidity scheme for NBFCs and HFCs*

   The Government of India has approved a scheme to improve the liquidity position of non-banking financial companies ("**NBFCs**")/ housing finance companies ("**HFCs**") (eligible under the scheme) through a special purpose vehicle set up by SBICAP (a subsidiary of State Bank of India) ("**SLS Trust**"). Under this scheme, investment-grade short-term papers of eligible NBFCs/HFCs will be purchased by the SLS Trust and the proceeds generated therefrom shall solely be utilised by the NBFC/ HFCs for the purpose of extinguishing their existing liabilities. SLS Trust would cease to make fresh purchases after September 30, 2020 and would recover all dues by December 31, 2020 or as may be modified subsequently under the scheme.

   *(Notification No. RBI/2020-21/01 dated July 01, 2020)*

2. *Resolution framework for COVID-19-related stress*

   The Reserve Bank of India ("**RBI**") has provided a window under the RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019, dated June 7, 2019 ("**Prudential Framework**") to enable the lenders (including commercial banks, NBFCs, HFCs) to implement a resolution plan in respect of eligible corporate exposures (having stress on account of COVID-19) without change in ownership, and personal loans, while classifying such exposures as Standard, subject to specified conditions ("**COVID-19 Resolution Framework**"). The lenders are required to put in place a board approved policy detailing the manner in which such evaluation may be done and the objective criteria that may be applied while considering the resolution plan in each case. Some key provisions of the COVID-19 Resolution Framework for exposures (other than personal loans) are set out below:

   (i) *Ineligible borrowers:* Exposures of lending institutions to financial service providers and Central and State Governments, local Government bodies and body corporates established by an Act of Parliament or State Legislature are amongst the category of borrowers who are not eligible for the resolution plan. Only those borrower accounts which were classified as Standard and were not in default for more than 30 days with any lending institution as on March 1, 2020 are eligible.

   (ii) *Invocation of the Resolution:* The resolution plan in respect of eligible corporate borrowers may be invoked at any time until December 31, 2020 and should be implemented within 180 days from the date of invocation. If there are multiple lending institutions with exposure to a borrower, the resolution process shall be treated as invoked in respect of any borrower if lending institutions representing 75% by value of the total outstanding credit facilities (fund based as well non-fund based), and not less than 60% of lending institutions by number agree to invoke the same. An inter-creditor agreement ("**ICA**") is required to be signed by all the lenders of borrower within 30 days of invocation of the resolution plan.

   (iii) *Financial parameters to be factored into each resolution plan:* The expert committee constituted by the RBI in terms of the COVID-19 Resolution Framework ("**Expert Committee**"), has recommended 5 specific financial ratios and the sector-specific benchmark ranges for each ratio in respect of 26 sectors, to be factored into the resolution plans. The lending institutions are free to consider other financial parameters as well while finalizing the resolution assumptions in respect of eligible corporate borrowers. The Expert Committee shall also vet the resolution plans to be implemented in respect of all accounts where the aggregate exposure of the lending institutions at the time of invocation is INR 1500 crore and above.

(iv) *Permitted features of the resolution plan:* The resolution plan may involve any action/ plan/ reorganisation including but not limited to, extension of residual tenor of the loan, with or without payment moratorium, sanctioning of additional credit facilities, even if there is no renegotiation of existing debt and conversion of a portion of the debt into equity or other marketable, non-convertible debt securities issued by the borrower, provided the amortisation schedule and the coupon carried by such debt securities are similar to the terms of the debt held on the books of the lending institutions, post implementation of the resolution plan.

(v) *Monitoring period for the resolution plan:* For any resolution plan, the monitoring period shall be the period commencing from the date of implementation of the resolution plan till the borrower pays 10% of the residual debt, subject to a minimum of one year from the first payment of interest or principal (whichever is later) on the credit facility with the longest period of moratorium ("**Monitoring Period**").

(vi) *Post Implementation Default:* Any default by the borrower with any of the signatories to the ICA during the Monitoring Period shall trigger a review period of 30 days ("**Review Period**"). If the borrower continues to be in default at the end of the Review Period, the asset classification of the borrower with all lending institutions, including those who did not sign the ICA, shall be downgraded to a non-performing asset.

*(Notification No. RBI/2020-21/16 dated August 06, 2020 and No. RBI/2020-21/34 dated September 07, 2020)*

## Other Updates

### I. Amendments

1. *Alternative Investment Fund exempted from obtaining registration as NBFCs*

The Master Directions on Exemptions from the Provisions of RBI Act, 1934 dated August 25, 2016 exempted venture capital fund companies, holding a certificate of registration under section 12 of the SEBI Act, 1992 and not holding or accepting public deposit from obtaining registration as NBFCs. Pursuant to the repeal of the SEBI (Venture Capital Funds) Regulations, 1996 and enactment of SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**"), the Master Directions have been amended to substitute the words "venture capital fund companies" with the words "Alternative Investment Fund Companies".

*(Notification No. RBI/2020-21/12 dated July 10, 2020)*

2. *Amendment of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019*

The Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2020 ("**Third Amendment**") have introduced the following changes to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("**NDI Rules**"):

(i) *Insertion of Rule 2A and amendment of Rule 3 and 4:* Under the NDI Rules, the powers granted to the RBI with respect to allowing foreign investment into India on application made to it, were exercisable in consultation with the Central Government. Under the Third Amendment, the RBI has been granted exclusive powers to administer the NDI Rules and to interpret and issue directions, circulars, instructions or clarifications, as it may deem fit, for effective implementation of the provisions of the NDI Rules.

(ii) *FDI in air transport services:* The entry routes and other conditions applicable to Foreign Direct Investment ("**FDI**") limits in respect of air transport services under the NDI Rules have been amended as follows:

(a) The dispensation provided to overseas citizens of India to make investment under automatic route of up to 100%, in scheduled air transport service/domestic scheduled passenger airline and regional air transport service, has been done away with.

(b) The 49% limit of foreign investment in M/s Air India Ltd. shall not be applicable in case of any foreign investments by non-resident Indians who Indian Nationals.

*(Notification No. RBI/2020-21/12 dated July 10, 2020)*

3. *Review of guidelines for core investment companies*

Based on the recommendations of the Working Group to Review the Regulatory and Supervisory Framework for Core Investment Companies ("**CICs**"), the RBI has introduced the following changes to the guidelines applicable to CICs:

(i) The capital contribution by a CIC in another CIC to be deducted from the investing CIC's adjusted net worth, if such contribution exceeds 10% of the owned funds of the investing CIC.

(ii) The number of layers of CICs within a group, including the parent CIC, to be restricted to 2 layers. Existing entities are required to reorganise their business structure by March 31, 2023.

(iii) The parent CIC in the group (or the CIC with the largest asset size, in case there is no identifiable parent CIC) to constitute a group risk management committee which shall *inter alia* be responsible for analysing the material risk to which the group is exposed and identify potential intra-group conflicts of interest.

(iv) CICs are mandated to prepare a consolidated financial statement as per the provisions of the Companies Act to provide a clear view of the financials of the group as a whole.

*(Notification No. RBI/2020-21/24 dated August 13, 2020)*

4. *Review of FDI Policy in Defence*

The DPIIT has issued Press Note 4 (2020 Series) to give effect to the Government's decision to raise FDI in the defence sector from 49% to 74% under the automatic route, subject to the following revised conditions:

(i) In a company requiring industrial license – 74% FDI is allowed under automatic route;

(ii) In a company not seeking industrial license or which already has approval for FDI in defence – FDI beyond 49% will require government approval. Further, infusion of fresh foreign investment up to 49% in such a company will need a mandatory submission of a declaration with the Ministry of Defence in case of (i) change in equity/shareholding pattern; or (ii) transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change.

(iii) The government reserves the right to review any foreign investment in the defence sector that affects or may affect national security.

*(DPIIT File No.: 5(8)/ 2020-FDI Policy dated September 17, 2020)*

## II. Circulars and Notifications

1. *Introduction of pilot scheme for offline retail payments using cards/ wallets/ mobile devices*

To encourage technological innovations that enable offline digital transactions, the RBI has permitted a pilot scheme to be conducted till March 31, 2021, whereby authorised payment system operators (banks and non-banks) ("**PSOs**"), subject to specified conditions, will be able to provide offline payment solutions using cards, wallets or mobile devices for remote or proximity payments.

*(Notification No. RBI/2020-21/22 dated August 06, 2020)*

2. *Introduction of online dispute resolution system for digital payments*

The RBI has directed the authorised PSOs and their participating members to implement, by January 01, 2021, a transparent, rule-based, system-driven, user-friendly and unbiased online dispute resolution ("**ODR**") mechanism, for resolving customer disputes and grievances arising out of failed transactions, with minimum requirements specified therein. Based on experience gained, such ODR mechanism may later be extended to disputes and grievances other than those related to failed transactions.

*(Notification No. RBI/2020-21/21 dated August 06, 2020)*

3. *Framework for authorisation of pan-India umbrella entity for retail payments*

The RBI has released a framework for authorisation of a pan-India entity for retail payments with the objective to set up an umbrella entity focussing on retail payment systems and has invited applications for the setting up of such umbrella entity until February 26, 2021. An Indian owned and controlled entity with 3 years' experience as a PSO/ payment service provider or technology service provider is eligible to apply as a promoter of the umbrella entity. The promoters / promoter groups are also required to confirm to the RBI's 'fit and proper' criteria. The scope of activities of the umbrella entity would include *inter alia*:

(i) Set-up, manage and operate new payment system(s) in the retail space comprising of but not limited to ATMs, White Label PoS, Aadhaar based payments and remittance services;

(ii) Operate clearing and settlement systems for participating banks and non-banks; and

(iii) Monitor retail payment system developments and related issues in the country and internationally to avoid shocks, frauds and contagions that may adversely affect the system(s) and / or the economy in general.

*(Press Release: 2020-2021/206 dated August 18, 2020)*

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## COVID-19 Related Updates

### I. Amendments

1. *Amendments to guidelines for preferential issue and institutional placement of units by listed REITs and InvITs*

SEBI had issued circulars providing guidelines for preferential issue and institutional placement of units by listed infrastructure investment trusts ("**InvITs**") or real estate investment trusts ("**REITs**"), as amended from time to time ("**Guidelines**"). In light of COVID-19, SEBI has further amended the Guidelines, the key highlights of such amendments being as follows:

(i) A listed InvIT or REIT may undertake any subsequent institutional placement after the expiry of a period of 2 weeks from the date of the prior institutional placement undertaken by such InvIT or REIT, which was earlier a 6 month period.

(ii) For preferential issues made between the date of the amendments (i.e. September 28, 2020) and December 31, 2020, an alternate pricing method has been introduced by the Amendments. Further, units allotted on a preferential basis using the pricing method set out above shall be locked-in for a period of 3 years.

(iii) For the computation of the lock-in requirement, SEBI has clarified that the units held by the sponsor(s) and locked-in for 3 years, in the past at the time of undertaking an initial offer, shall be taken into account. The units locked-in at the time of the initial offer shall not be put under fresh lock-in again, even though they are considered for computing the lock-in requirement, in case the said units are free of lock-in at the time of the preferential issue.

*(Circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/184 dated September 28, 2020 and no. SEBI/HO/DDHS/DDHS/CIR/P/2020/183 dated September 28, 2020)*

### II. Circulars and Notifications

1. *Extension of relaxation with respect to compliance requirements for REITs and InvITs due to the COVID-19*

In light of the COVID-19, SEBI had initially temporarily extended the due date for regulatory filings to be made and compliances to be observed for InvITs and REITs for the period ending March 31, 2020, by one month over and above the timelines prescribed under the SEBI (InvIT) Regulations, 2014 and the SEBI (REIT) Regulations, 2014, respectively vide its circular dated March 23, 2020.

SEBI has now further extended the timeline for regulatory filings and compliances to be observed for InvITs and REITs for the period ending March 31, 2020 by a month over and above the extended timelines specified in the aforementioned circular.

*(Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/114 dated July 1, 2020)*

2. *Relaxation of compliance requirements relating to listing of non-convertible debentures, non-convertible redeemable preference shares and commercial papers*

In light of COVID-19, SEBI had extended the timeline for submission of quarterly and yearly financial results under Regulation 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Listing Regulations**") and the half yearly and/or annual financial results under Regulation 52 of the Listing Regulations, for the period ending March 31, 2020, to July 31, 2020. Further, as per the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue And Listing Of Non-Convertible Redeemable Preference Shares) Regulations, 2013 and circulars related to listing of commercial papers, entities are required to submit its latest audited financials which should not be older than six months. However, listed entities are permitted to use

unaudited financials with limited review in lieu of the audited financials for the stub period, subject to the unaudited financials not being older than six months.

In this regard, SEBI has permitted the listed companies who issued non-convertible debentures, non-convertible redeemable preference shares and commercial papers, on or after July 1, 2020 and intended to list the same, on or before July 31, 2020, to use available financials as on December 31, 2019.

*(Circular No. SEBI/HO/DDHS/CIR/P/2020/121 dated July 15, 2020)*

3. *Extension of one-time relaxation from enforcement of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 with respect to rights issues*

On May 6, 2020, SEBI had issued a circular whereby it allowed a one-time relaxation from the strict enforcement of certain provisions under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**") pertaining to rights issues that open up to July 31, 2020. SEBI has now extended the aforesaid relaxation to up to December 31, 2020.

*(Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/136 dated July 24, 2020)*

4. *Relaxation of procedural matters pertaining to takeovers and buy-backs*

In light of the COVID-19, SEBI had issued the circular dated May 14, 2020 granting one time relaxations from the strict enforcement of certain regulations of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations**") and the SEBI (Buy-back of Securities) Regulations, 2018 in relation to open offers and buy-backs through tender offers opening up to July 31, 2020. The validity of such relaxation has been further extended and shall be applicable for open offers and buy-backs through tender offers opening up to December 31, 2020.

*(Circular no. SEBI/HO/CFD/DCR2/CIR/P/2020/139 dated July 27, 2020)*

5. *Extension of timeline for submission of financial results for the quarter/ half year ending June 30, 2020 due to the continuing impact of the COVID-19 pandemic*

As per Regulation 33 of the Listing Regulations, listed entities are required to submit the financial results for the quarter/ half year ended June 30, 2020, on or before August 14, 2020. SEBI has extended the timeline for submission of financial results under the Listing Regulations, for the quarter/ half year ended June 30, 2020 to September 15, 2020.

*(Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/140 dated July 29, 2020)*

6. *Extension of relaxation with respect to validity of SEBI observations and revision in issue size*

In light of the COVID-19, SEBI had initially temporarily permitted to increase or decrease the fresh issue size for public offer and rights issues by up to 50% of the estimated issue size (instead of the earlier limit of 20%) in offer documents without requiring to file a fresh draft offer document vide its circular dated April 21, 2020. SEBI has now further extended the aforesaid relaxation till March 31, 2020. Additionally, SEBI has extended the validity of the observations which will expire between October 1, 2020 and March 31, 2021 to March 31, 2021, provided the lead managers undertake to comply with Schedule XVI of the ICDR Regulations, while submitting the updated offer document.

*(Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/188 dated September 29, 2020)*

## Other Updates

### I. Amendments

1. *Amendments to the Takeover Regulations*

The SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2020 notified on July 1, 2020 have introduced the following amendments to the Takeover Regulations:

(i) Insertion of a second proviso to Regulation 17(1) which requires an acquirer in case of an indirect acquisition where a public announcement has been made in terms of Regulation 13(2)(e) of the Takeover Regulations, to deposit an amount equivalent to 100% of the consideration payable in the open offer in an escrow account opened in terms of Regulation 17(1).

(ii) Insertion of a second proviso to Regulation 17(3)(c) prohibiting deposit of security in the escrow account of the acquirer in terms of Regulation 17(3)(c) in case of an indirect acquisition where a public announcement has been made in terms of Regulation 13(2)(e).

(iii) Insertion of a sub-regulation (11A) in Regulation 18 imposing an interest of 10% per annum on the acquirer for the period of delay when such acquirer is unable to make payment to the shareholders who have accepted the open offer, within the prescribed period, unless the delay in payment is not attributable to any act or omission of the acquirer, or due to reasons or circumstances beyond the control of acquirer.

(iv) Regulation 22(2A) has been amended to expand the ambit of acquisition of shares of a target company by an acquirer, to include acquisition through bulk deals and block deals, with the deletion of the words "other than through bulk deals or block deals".

*(Gazette Notification No. SEBI/LAD-NRO/GN/2020/20 dated July 1, 2020)*

2. *Amendments to SEBI (Prohibition of Insider Trading) Regulations, 2015 prescribing norms for structured digital database*

The SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2020 notified on July 1, 2020 have introduced the following amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**"):

(i) Maintenance of Digital Data Bases:

(a) The substituted Regulation 3(5) requires the board of directors/ heads of organisations of all entities handling unpublished price sensitive information ("**UPSI**") to maintain structural digital data bases which are to contain the nature of UPSI, the names of persons who have shared the information, the names of the persons with whom the information is shared under Regulation 3 along with the Permanent Account Number of such persons.

(b) Insertion of Regulation 3(6) which requires the above-mentioned data to be maintained for a period of 8 years after the relevant transaction or, in case of any proceedings initiated by SEBI, till the time such proceedings are completed.

(ii) Trading Window Restrictions: Clause 4(3)(b) of Schedule B has been amended to expand the scope of transactions which are eligible for relaxation from trading windows with the insertion of the words "or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time."

(iii) Disciplinary Actions: In addition to the requirement of the code of conduct of the listed companies and intermediaries/ fiduciaries to stipulate sanctions and disciplinary actions for the violation of the code of conduct formulated under Regulation 9(1), as per the amended Clause 12 of Schedule B (*for listed companies*) and Clause 10 of Schedule C (*for intermediaries and fiduciaries*), amounts collected for violation of such code of conduct are to be remitted to SEBI, to be credited into the Investor Protection and Education Fund.

(iv) Reporting of Non-Compliance of the PIT Regulations: While prior to the amendment, listed companies and intermediaries/ fiduciaries were required to intimate SEBI of any instances of violation of the PIT Regulations, as per the amendments to Clause 13 of Schedule B (*for listed companies*) and Clause 11 of Schedule C (*for intermediaries and fiduciaries*), such intimations are to be made to the relevant stock exchanges where the securities are being traded, in a form and manner asprescribed by SEBI from time to time.

*(Gazette Notification No. SEBI/LAD-NRO/GN/2020/23 dated July 17, 2020)*

3. *Guidelines detailing manner and mechanism of providing exit option to dissenting unit holders of REITs and InvITs*

Pursuant to the SEBI (REIT) (Second Amendment) Regulations, 2020 and the SEBI (InvIT) (Second Amendment) Regulations, 2020, each dated June 16, 2020 (collectively, "**SEBI InvIT and REIT Amendments**"), an InvIT or REIT may undertake the following with the prior approval of 75% of the unitholders by value (excluding the value of units held by related parties to the transaction):

(i) Induction of new sponsors to an InvIT or a REIT, with or without the exit of an existing sponsor. In the case of an InvIT, the inducted sponsor can only be a company, LLP or a body corporate.

(ii) Change in control of sponsor. Where the requisite unitholder approval is not received, an exit opportunity will have to be provided to dissenting unitholders in the manner specified by SEBI by the inducted sponsor (in case of a change or induction of a sponsor) or relevant the sponsor which has undergone a change in control.

(iii) Acquisition of units of an InvIT or a REIT in excess of 25% of the value of the outstanding units of an InvIT or a REIT, by persons (along with persons acting in concert with such person), other than the sponsor(s), their related parties and their associates. Where the requisite unitholder approval is not received, the proposed acquirer is required to give an exit opportunity to dissenting unitholders to the extent and in a manner specified by SEBI.

Pursuant to the SEBI InvIT and REIT Amendments, SEBI, has issued guidelines ("**Exit Guidelines**") in relation to the conditions, manner and mechanism of exit options to be provided to dissenting unit holders. Under the Exit Guidelines, an acquirer providing an exit option to dissenting unitholders will be required to appoint merchant bankers as lead managers for the exit option or offer. The lead managers will be required to send a letter of offer to all the dissenting unit holders and also file the same along with the due diligence certificate, in the prescribed formats, with the stock exchanges. The letter of offer, *inter alia*, will comprise of the details of the acquirer (including persons acting in concert, if any), the procedure for accepting the offer, details of the exit option/ offer as well as the exit price (which shall be calculated in terms of the pricing formula prescribed under the Exit Guidelines).

*(Notification No. SEBI/LAD-NRO/GN/2020/16 dated June 16, 2020, Notification No. SEBI/LAD-NRO/GN/2020/15 dated June 16, 2020, Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/123 dated July 17, 2020 and No. SEBI/HO/DDHS/DDHS/CIR/P/2020/122 dated July 17, 2020)*

4. *Amendments to the Securities Contracts (Regulation) Rules, 1957*

   Rule 19A (1) of the Securities Contracts (Regulation) Rules, 1957 ("**SCR Rules**") requires public listed companies to maintain a minimum public shareholding of 25%. As per the first proviso to Rule 19A(1), public listed companies having public shareholding of less than 25% prior to or at the time of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018 were required to increase their public shareholding to 25% within 2 years from the commencement date . This timeline had expired on August 2, 2020. The Securities Contracts (Regulation) (Second Amendment) Rules, 2020 has amended the SCR Rules to extend this timeline to three years (i.e. up to August 2, 2021).

   *(Notification No. G.S.R. 485(E) dated July 31, 2020)*

5. *Amendments to the Listing Regulations*

   SEBI has amended Regulation 42(1) of the Listing Regulations pursuant to the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2020. Listed entities will now be required to intimate the record date for any of the events specified thereunder, to all stock exchange(s) where it is listed, where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of an index on which derivatives are available.

   *(Circular No. SEBI/LAD-NRO/GN/2020/25 dated August 5, 2020)*

6. *Rationalization of the eligibility criteria and disclosure requirements for rights issues*

   SEBI has amended the ICDR Regulations, to rationalise eligibility criteria and disclosure requirements for rights issues. The key amendments *inter alia*, include:

   (i) The issuer shall be eligible to make truncated disclosures in terms of Part B of Schedule VI of ICDR Regulations in case: (a) where it has been filing periodic reports/ statements/ information in compliance with the Listing Regulations, for last 1 year instead of last 3 years as required earlier; (b) where 3 years have passed after change in management pursuant to acquisition of control or listing consequent to a scheme of arrangement.

   (ii) A new set of disclosures under Part B-1 have been introduced for issuers not satisfying Part B eligibility conditions. Accordingly, disclosure requirements under Part B have been rationalized to avoid duplication of information in letter of offer.

   (iii) Increasing the threshold of issue size from INR 10,00,00,000 to INR 50,00,00,000 for filing the draft letter of offer with SEBI for observations.

   (iv) The mandatory requirement of 90% of the minimum subscription to not be applicable to the issuer companies where object of the issue involves financing other than financing of capital expenditure for a project. However, the promoters and promoter group of the issuer companies shall undertake to fully subscribe their portion of the rights entitlement.

   (v) Issuer companies to be eligible to make fast track rights issue, in case of pending show-cause notices in respect to adjudication, prosecution proceedings and audit qualification, provided that necessary disclosures along with potential adverse impact on the issuer companies are disclosed in the letter of offer.

   *(Circular No. SEBI/LAD-NRO/GN/2020/31dated September 28, 2020)*

## II. Notifications and Circulars

1. *RTAs and AIFs to collect stamp duty*

   The Central Government has *vide* gazette notification S.O.116(E) dated January 8, 2020, notified registrars to an issue and/or share transfer agents ("**RTAs**") registered under the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993, as 'depositories', for the limited purpose of acting as a 'collecting agent' under the Indian Stamp Act, 1899 in case of instruments or transactions which are to be carried out otherwise than through a recognised stock exchange or depository. Accordingly, SEBI has directed RTAs appointed by AIFs to collect stamp duty on the issue, transfer and sale of units of AIFs (which are not carried out in the dematerialised mode) in accordance with the provisions of the Indian Stamp Act, 1899 and rules made thereunder, w.e.f. July 1, 2020. For those AIFs which have not appointed RTAs prior to July 15, 2020, as an interim measure, the AIFs are required to collect the applicable stamp duty in a designated

bank account and transfer such amount to the RTA upon its appointment.

*(Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/113 dated June 30, 2020)*

2. *Depositories to record all types of encumbrances*

SEBI has directed depositories to put in place a system for capturing and recording all types of encumbrances required to be disclosed by promoters of public listed companies under the Takeover Regulations. While currently the reporting framework makes provision for capturing details of pledge, hypothecation and non-disposal undertakings, depositories will be now be required to follow processes and other norms similar to that stipulated for the purpose of capturing and recording non-disposal undertakings for capturing all types of encumbrances specified in Regulation 28(3) of the Takeover Regulations. The provisions of this circular are to be implemented within one month from the date of this circular (i.e. July 24, 2020).

*(Circular No. EBI/HO/MRD2/DDAP/CIR/P/2020/137 dated July 24, 2020)*

3. *Clarification on applicability of Regulation 40(1) of the Listing Regulations*

SEBI issued a clarification on the applicability of proviso to Regulation 40(1) of the Listing Regulations to open offers, buybacks and delisting of securities of listed entities, stating that shareholders holding securities in physical form are allowed to tender shares in open offers, buybacks through tender offer route and exit offers in case of voluntary or compulsory delisting, subject to compliance with the applicable regulations.

*(Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/144 dated July 31, 2020)*

4. *Circular on grievance resolution between listed entities and proxy advisers*

Acknowledging the probability that proxy advisors and listed entities may have different views on agenda items of the listed entity which may lead to grievances, SEBI seeks to facilitate the resolution of grievances of listed entities against SEBI registered proxy advisors. Accordingly, listed entities may approach SEBI whereof SEBI will examine the matter for non-compliance by proxy advisors with the provisions of the Code of Conduct under regulation 24(2) and regulation 23(1) of the SEBI (Research Analyst) Regulations, 2014 and the procedural guidelines for proxy advisors issued vide SEBI circular dated August 03, 2020.

In light of the prevailing business and market conditions due to the COVID-19, the provisions of this circular and the procedural guidelines for proxy advisors issued vide SEBI circular dated August 03, 2020 will be applicable with effect from January 1, 2021.

*(Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/119 dated August 4, 2020, Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/157 dated August 27, 2020 and Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/159 dated August 27, 2020)*

5. *SEBI releases cut-off date for re-lodgement of transfer requests of shares*

SEBI in its press release dated March 27, 2019 had clarified that transfer deeds in relation to the transfer of shares of listed entities in physical form (which has been discontinued with effect from April 1, 2020) lodged prior to April 1, 2019 and rejected / returned due to deficiency in documents may be re-lodged with requisite documents. SEBI has now determined March 31, 2021 as the cut-off date for the re-lodgement of such transfer deeds and requisite documentation. Further, the shares that are re-lodged for transfer are to be issued in the demat mode.

*(Circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/166 dated September 7, 2020)*

## III. CONSULTATION PAPERS AND BOARD MEETING

1. *Recalibration of threshold for minimum public shareholding norms, enhanced disclosures in corporate insolvency resolution process cases*

SEBI has sought public comments to proposed recalibration of threshold for minimum public shareholding ("**MPS**") in companies which undergo corporate insolvency resolution process ("**CIRP**") and seek relisting of its shares pursuant to implementation of the approved resolution plan. The consultation paper, for which comments were due by September 18, 2020, proposed the following options to meet the MPS norms:

(i) Post-CIRP, the companies may be mandated to achieve at least 10% public shareholding within 6 months and 25% within 3 years from the date of breach of MPS norms. It is proposed that the 18 months period, as mandated under Rule 19A (5) of the SCR Rules be brought down to 6 months.

(ii) Post-CIRP, the companies may be mandated to have at least 5% public shareholding at the time of relisting. Such companies may be provided 12 months to achieve public shareholding of 10% and further 24 months to achieve public shareholding of 25%.

(iii) Post-CIRP, the companies may be mandated to have at least 10% public shareholding at the time of relisting. Such companies may be provided 3 years to achieve MPS of 25%.

(iv) Shares under lock-in requirement of 1 year from the receipt of a trading approval under the ICDR Regulations, in case of a preferential issue of shares arising from a resolution plan, may be permitted to be freed from such lock-in, only to the extent to enable MPS compliance.

*(Consultation Paper dated August 19, 2020)*

2. *Proposed Amendments to the Listing Regulations*

SEBI has proposed to amend certain provisions of Listing Regulations, which include, *inter alia*, the following, public comments on which are invited till October 11, 2020:

(i) The provisions of the Listing Regulations (including corporate governance provisions), that become applicable to a listed entity on the basis of its market capitalisation, its net-worth or its paid-up capital requirements, would continue to apply irrespective of the same falling below the prescribed thresholds in the future.

(ii) A shareholders' resolution will also be required in case of disposal of shares in its material subsidiary resulting in reduction of its shareholding to 'equal to 50%'.

(iii) Disclosure of financial results to be made within 30 minutes of approval of the agenda by the board of directors (instead of 30 minutes from conclusion of the board meeting).

(iv) Advance notice to be given for consideration of bonus issue by the board of directors of listed entity, irrespective of whether the same forms part of the agenda papers.

(v) Extension of requirement for formulating and disclosing dividend distribution policy in the annual reports and the websites, to the top 1000 listed entities, from the top 500 listed entities (by market capitalisation).

(vi) A separate newspaper advertisement in relation to the notice of a meeting of board of directors to discuss financial results, quarterly statement of deviation or variation may be dispensed with.

(vii) The definition of independent director to be aligned with the Companies Act in relation to transactions of relatives. However, in a departure from the Companies Act a lower threshold for pecuniary relationship of relatives which is currently prescribed in the Listing Regulations is proposed to be retained.

(viii) Voting results to be intimated to the stock exchanges within two working days (in place of 48 hours) from the conclusion of general meeting.

*(SEBI Consultation Paper dated September 11, 2020)*

3. *Board Meeting dated September 19, 2020*

The following are certain key the decisions undertaken by SEBI in its board meeting:

(i) Role of debenture trustees: SEBI has approved amendments to SEBI (Debenture Trustee) Regulations,

1993, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and Listing Regulations to strengthen the role of debenture trustees which will now include diligence of assets on which charges are created, convening meetings of debenture holders and continuous monitoring of the asset cover.

(ii) Delisting of listed subsidiaries: SEBI has decided to grant exemption from the reverse book building process for delisting of listed subsidiaries which are to become wholly owned subsidiaries of the listed parent pursuant to a scheme of arrangement. To be eligible for this exemption:

(a) both the companies should be in the same line of business and listed for at least 3 years;

(b) the subsidiary should have been a listed subsidiary of the listed holding entity for at least 3 preceding years; and

(c) both the companies should be compliant with the Listing Regulations.

Separately, the votes cast by public shareholders of the listed subsidiary in favour of the proposal should be at least 2 times the number of votes cast against it.

(iii) Disclosures related to forensic audit of listed entities: SEBI has mandated the following disclosures in case of forensic audits of listed companies, without any application of materiality:

(a) The fact of initiation of forensic audit (by whatever name called) along-with name of entity initiating the forensic audit and reasons for the same, if available; and

(b) Final forensic audit report (other than by regulatory / enforcement agencies), on receipt by the listed entity, along with comments of the management, if any.

*(Minutes of SEBI Board Meeting dated September 29, 2020, PR No.52/2020)*

## IV. INFORMAL GUIDANCE

1. *Cashless funding of restricted stock units to employees of a listed company*

Way to Wealth Brokers Private Limited ("**W2W**") is a registered stock broker with SEBI and has been approached by a listed company for cashless funding of restricted stock units ("**RSUs**") being offered to its employees as a part of an employee compensation plan (including for NRIs). The RSUs are being issued at face value (plus the applicable prerequisite tax) at exercise ("**Funding Amount**"). The employees will open their depository participant account ("**DP Account**") with W2W and upon a duly signed exercise letter and undertaking from the employee, W2W will credit the Funding Amount to the relevant employee bank account (and thereafter to the listed company's designated bank account) and the RSU will be directly credited by the listed company to the employee's DP account. Within 2 working days of such credit, the RSUs, to the extent of the Funding Amount and the transaction charges would be sold and the sale proceeds will be adjusted towards the cashless funding made by W2W.

In this regard, W2W has sought clarification on whether it is permitted to fund options offered by listed companies to its employees on a cashless basis as per Regulation 9(2) of the SEBI (Share Based Employee Benefits) Regulations, 2014 ("**SBEB Regulations**"), and if so, what is the maximum amount per unit/ security that can be funded by W2W.

SEBI observed that under the SBEB Regulations, W2W, if permitted by the listed company, may fund the payment of the exercise price, which funding may be adjusted against the sale proceeds of some or all of the shares, subject to applicable law. Moreover, the SBEB Regulations do not prescribe any maximum limit on the amount per unit/ security that can be funded.

*(Informal Guidance No. SEBI/HO/CFD/DCR1/OW/P/2020/0011948/1, dated July 20, 2020)*

2. *Merchant Banker seeking registration with the IBBI*

Sundae Capital Advisors Private Limited ("**Sundae Capital**") is registered as a Category I merchant banker with SEBI, carrying on various capital market transactions, advisory services for merger / capital re-structuring, ESOP advisory and valuation practice under different regulatory regimes. Regulation 13A of the SEBI (Merchant Bankers) Regulations, 1992 prohibits registered merchant bankers from carrying on business other than in the securities market.

Prior to the notification of Section 247 of the Companies Act which related to provisions for registered valuers, Category I merchant bankers were permitted to undertake valuation under various specified provisions under the Companies Act. However, the Companies (Registered Valuers and Valuation) Rules, 2017 ("**Valuation Rules**") require registered valuers to obtain prior registration with Insolvency and Bankruptcy Board of India ("**IBBI**") for the purpose of issuance of valuation reports under certain specified provisions of the Companies Act.

Accordingly, while highlighting that valuation of securities by Category I merchant banker is permitted under various provisions of law (*vis.* NDI Rules, Income Tax Act, 1961 and the Companies Act prior to the notification of Section 247), Sundae Capital has sought clarification on whether the registration sought to be obtained from the IBBI as per the Valuation Rules will be considered a business associated with the securities market.

SEBI has clarified that while Sundae Capital may obtain a registered valuer certificate under the Companies Act, the assignments taken up by the same will be required to be restricted only to the activities permitted under the SEBI (Merchant Bankers) Regulations, 1992.

*(Informal Guidance No. SEBI/HO/MIRSD/SMR/PP4557/2020 dated February 4, 2020 and uploaded on July 27, 2020)*

3. *Monitoring of trades in securities under the PIT Regulations*

KP Capital Advisors Private Limited ("**KP Capital**"), a SEBI registered Category I merchant banker (i.e. an intermediary) sought clarifications in relation to the following:

(i) Whether the trade of securities of listed companies in respect of which KP Capital is neither a connected person, nor has any UPSI, is required to be monitored under the PIT Regulations?

*SEBI Response* - On a joint reading of Regulation 9(1) and Clause 4 of Schedule C of the PIT Regulations, the trading of all securities above a certain threshold (as may be stipulated by the board of directors of the intermediary) are subject to a pre-clearance by the compliance officer, irrespective of whether KP Capital is a connected person, or has any UPSI.

(ii) Whether the compliance officer of KP Capital can share its list of restricted securities maintained in accordance with Clause 5 of Schedule C of the PIT Regulations, with the designated persons so they can know the permissibility of their proposed trade?

*SEBI Response* - Sharing such list of restricted securities would undermine the confidentiality requirement under Clause 5 of Schedule C of the PIT Regulations.

*(Informal Guidance No. ISD/OW/2020/134921/1 dated August 19, 2020)*

4. *Inter-se Transfer amongst the promoter group*

HEG Limited ("**HEG**") is a listed company and the shareholding of its promoters and promoter group is 59.62%. The promoters and promoter group (including RSWM Limited) have traded certain number of shares in the open market and now, subsequently, an *inter se* transfer of shares of HEG between individuals and non-individuals of the promoter group is proposed to be undertaken by way of a block deal executed on the stock exchange ("**Proposed Transaction**"). The transfer of shares pursuant to the Proposed Transaction will not exceed 5%. In this context, set out below are the HEG queries and the SEBI responses to the same:

(i) Whether provisions of contra-trade under the PIT Regulations apply to trades made by an individual promoter or whether they apply to the entire promoter group?

*SEBI Response* - Contra trade restrictions apply to trades made by promoters individually and not the entire promoter group, as per Regulation 9 read with Clause 3 of Schedule B of the PIT Regulation.

(ii) Assuming that the Proposed Transaction is undertaken during the period wherein trading window restrictions are applicable, whether the trading restriction stipulated in Clause 4 of Schedule B of the PIT Regulations would apply to the Proposed Transaction?

*SEBI Response* - The Proposed Transfer contemplates the *inter se* transfer of shares between promoters through a block deal window mechanism, while in possession of UPSI and without being in breach of Regulation 3 of the PIT Regulations. Further the parties are making a conscious and informed trade decision. Therefore, the requirements of Regulation 4(1)(ii) of the PIT Regulations are met and the Proposed Transaction will not attract the trading window restrictions, subject to the proviso to Regulation 4(1) and pre-clearance by the compliance officer. SEBI has clarified that the circumstances specified in (i) to (iv) of Regulation 4(1) are for demonstrating innocence and not exemptions from the applicability of Regulation 4(1) of the PIT Regulations.

(iii) Whether the Proposed Transaction is within the limits of Regulations 3(2) of the Takeover Regulations and if so, whether any exemption under Regulation 10 of the Takeover Regulations will be applicable?

*SEBI Response* - Since the transfer of shares under the Proposed Transaction will not exceed 5%, the obligation to make an open offer is not triggered. However, HEG is required to ensure that all the acquisitions by the concerned parties within the financial year are to be taken into account for the explanation in this response to hold good. Further, HEG is required to fulfil other disclosure obligations under the Takeover Regulations or any other obligations under the SEBI regulations.

*(Informal Guidance No. SEBI/HO/ISD/OW/P/2020/10749/1 dated June 4, 2020 and uploaded on September 2, 2020)*

5. *Eligibility Criteria and Decision Making by investors in an AIF*

LV Angel Fund ("**Fund**") is registered as an AIF Category I with SEBI and is managed by Lets Venture Advisors LLP ("**Manager**"). Certain individual investors of the fund have proposed a limited liability partnership ("**LLP**") structure for investing in the firm, wherein each of the individual investors are eligible as 'angel investors' while the LLP itself may not be eligible as an angel investor. Further, certain investors of the Fund have requested the Fund to contractually provide for the waiver of the right of such investors to approve transactions of the Fund and that such investors will agree to invest in all transactions approved by a 'lead investor'. In this

context, set out below are the queries from the Manager and the SEBI responses to the same:

(i) Whether an LLP, the partners of which qualify as angel investors in their individual capacity, will qualify as an eligible investor even though it fails to meet the minimum net worth criteria of INR 10 Crores (*as per Regulation 19A(2) of the AIF Regulations*)?

*SEBI Response* - Since an LLP and its partners are distinct persons, it is the LLP (and not its partners *in* their individual capacities) that will need to meet the minimum net worth criteria of INR 10 Crores under Regulation 19A(2) of the AIF Regulations, in order to be eligible as an angel investor.

(ii) Whether investors of an angel fund can waive their rights under Regulation 19(G)(3) of the AIF Regulations and agree that their consent to participate in investments be determined as per contractual provisions, in the aforementioned manner?

*SEBI Response* - There is no provision under the AIF Regulations which provides for the waiver of the right of investors to approve any transactions for investment.

*(Informal Guidance No. SEBI/HO/IMD/DF6/OW/P/2020/15440, dated September 17, 2020)*

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