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Token to Success: RBI's Measures for Tokenisation of Card Transactions

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Main stories

Welcome to this issue of ***Insight***.

The rapid shift towards digital payments over the last few years, coupled with the need to have a robust cybersecurity framework for protection of customers' sensitive financial data, has led to an increased focus on card tokenisation. In the lead article of this issue, we have provided an overview of the Reserve Bank of India's framework ("**RBI**") framework on tokenisation of card transactions and other recent measures.

Apart from the above, we have also captured key notifications and orders issued by the Ministry of Corporate Affairs ("**MCA**"), in relation to the Companies Act, 2013, as well as circulars and notifications issued by the RBI and the Securities and Exchange Board of India ("**SEBI**") for the period under review.

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

Our best wishes are with you.

Regards,

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TOKEN TO SUCCESS: RBI'S MEASURES FOR TOKENISATION OF CARD TRANSACTIONS

Introduction

Digital transformation has seen significant acceleration during the pandemic induced lockdowns. However, like with most technological advancements, increased digitisation also comes with higher cybersecurity risks and consequently protection of personal sensitive data, particularly financial information, has become one of the top priorities of the government/ regulators.

Over the last few years, the Indian government and the RBI has taken various measures to protect sensitive financial information of individuals, and one such measure, which has recently received a lot of attention, is card tokenisation.[1]

In simple terms, card tokenisation is a process by which card details of a customer, such as the card number, expiry date, etc., are kept secure through the use of 'tokens', generated by issuing banks or the relevant card networks (such as Mastercard, Visa, Rupay, AmEx and Diner's Club).[2] Tokens are a unique surrogate code, which replaces the 16 digits on a card, and its use ensures that customer card details are not revealed to the merchants while facilitating payments. Currently, the card details are stored by the merchants online or on cloud systems in an encrypted format, each of which pose risks associated with security breach.

Need For Tokenisation

Over the last few years, India has witnessed increased internet penetration and a steep rise in adoption of digital payment methods. These factors, coupled with the state of cybersecurity infrastructure, make tokenisation an important tool towards protecting sensitive financial information of users. Two key factors that underline the need for tokenisation in India are:

(a) *Customers leaning towards Digital Payments:* Traditionally, cash has been the primary mode of payments in India. However, there has been a marked shift towards digital payments over the last few years, with events such as the 2016 demonetisation and the Covid-19 induced restrictions on physical movement acting as catalysts. Digital payments in India are expected to increase three-fold by 2025.[3] Tokenisation will therefore help reduce data footprint and risk of security breach as companies will be storing tokens and not sensitive cardholder data.

(b) *Customer Security:* Tokenisation provides an additional security layer and its effective implementation will help mitigate costs emanating from risks such as ransomware attacks. This will not only facilitate smoother customer experience, but also attract more consumers to digital payment options.

Acknowledging the potential of card tokenisation in India, Samsung was the first to introduce it through the launch of Samsung Pay in March 2017. This was soon adopted by other key players, including Google and Reliance, with the introduction of Google Pay and Jio Pay, respectively.

Regulatory Background

In a bid to regulate the nascent space of tokenisation in card transactions, which was witnessing significant activity and entry of new players, the RBI in exercise of its powers under the Payment and Settlement Systems Act, 2007, introduced a new framework *vide* circular dated January 8, 2019 ("**2019 Framework**"). However, the framework had many shortcomings, such as (a) it allowed authorised card payment networks to offer card tokenisation services to any token requestor (i.e., third party app provider), subject to conditions mentioned in the circular; and (b) the card payment networks were allowed to enable tokenisation only through trusted devices, such as

1 The concept of tokenisation dates back to the year 2001 when it was first used by TrustCommerce for storing customer card holder data.
2 The FAQs on Tokenisation – Card Transaction <https://www.rbi.org.in/commonperson/English/Scripts/FAQs.aspx?Id=2917> defines tokenisation to mean replacement of actual card details with an alternate code called the "token", generated from a unique combination of card, token requestor (i.e. the entity which receives request from the customer for tokenisation of a card and passes it on to the card network) and the device.
3 Digital Payments in India likely to Grow Threefold by 2025 <https://www.business-standard.com/article/economy-policy/digital-payments-in-india-likely-to-grow-threefold-by-2025-says-report-120082600009_1.html>

mobile phones, tablets, laptops, desktops, IoT devices and wearables.[4] Having said that, given the nascent stage that the IT tech infrastructure was in at that point in time, the 2019 Framework contemplated sufficient flexibility, such as updating the guidelines for extension to other devices based on the experience gained.

Right from the beginning, there was demand from industry players to notify a more robust legal framework and address the shortcomings of the 2019 Framework. The final push, however, came in the form of RBI circular dated March 17, 2020[5], which *inter alia* prohibited authorised payment aggregators and the merchants on-boarded by them from storing customer card credentials within their database or server, as a result of multiple instances of leak of credit/ debit card information of cardholders stored by merchants.[6]

Introduction of tokenisation at a larger scale thus became the need of the hour and led to the RBI issuing its circulars dated August 25, 2021[7], and September 7, 2021[8], permitting card-on-file tokenisation services and introducing other changes ("**Updated Framework**").

Key Features of the Updated Framework

(a) *Transition from trusted device tokenisation to cloud based tokenisation:* The Updated Framework addresses this and allows for cloud-based tokenisation, where tokens are no longer linked to a particular device (i.e., mobile or tablets).

(b) *Issuer banks to also act as token service providers ("**TSP**"):* The Updated Framework permits not only the card networks, but also the respective card issuer banks to issue tokens as a TSP. TSPs can, however, provide tokenisation services only for cards that are either issued by them or are affiliated with them.

(c) *Additional Factor Authentication ("**AFA**"):* Merchants had earlier raised grievances regarding numerous AFA validations required under the 2019 Framework. While the RBI has retained the AFA in the Updated Framework, it has rationalised the process by permitting simultaneous AFA validations where card payment for a purchase transaction at a merchant is being performed, along with the registration for card on file tokenisation.

(d) *Limitations on Data Storage:* The RBI has restated that no entity except TSPs can store any card data from July 1, 2022[9], and directed such other entities to purge the data stored previously. However, as an exception to this rule, the RBI has allowed non-TSPs to store the last four digits of the actual card number and name of the card issuer for tracking/ reconciliation purposes.

Benefits and Drawbacks

The biggest benefit of tokenisation is the safety of user information. Data breaches of merchants will no longer affect users since only token details will be obtained from a hack, which carry no value to anyone other than the TSPs. Further, tokenisation is a blessing in disguise for merchants, operationally and financially, as they are no longer required to store and encrypt the sensitive information while still benefitting from it. Lastly, tokenisation continues to keep digital payments convenient, while practically removing the risks associated with retention of details by the merchants. This will reinforce customer trust.

Having said that, the Updated Framework poses a risk of negatively impacting customer experience by likely delaying refunds and replacements. This is because while the Updated Framework allows merchants to store the last four digits of the actual card number and card issuer's names, merchants may find it challenging to identify issuers of cards and the card type based on such limited information. Further, over the past few months, some additional criticism has emerged on implementation timeline and the impact on user experience, which stems from the fact that the tech support required for setting up tokenisation is highly time consuming and there is a risk of consumers reverting to cash or opting for other forms of payment to avoid the hassle of tokenising their cards or entering card details each time while making a purchase.

Potential uses of Tokenisation of Information in India

Countries world-over have started recognising the right to privacy, right to be forgotten and the right to happiness (which includes freedom from attacks on reputation/ character). This has resulted in increased obligations on governments and other players in the market, concerning protection of sensitive data.[10] Tokenisation is already being used by US retailers for protection

4 Tokenisation- Card Transaction <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11449&Mode=0>
5 Guidelines on Regulation of Payment Aggregators and Payment Gateways <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT17460E0944781414C47951B6D79AE4B211C.PDF> read with RBI circulars dated March 31, 2021 and December 23, 2021 extending the timeline for compliance, which is now June 30, 2022.
6 The most recent instances where debit/credit card related information of the cardholders were leaked includes Domino's, Swiggy and Amazon.
7 Tokenisation – Card Transactions : Extending the Scope of Permitted Devices <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12152&Mode=0>
8 Tokenisation – Card Transactions: Permitting Card-on-File Tokenisation (CoFT) Services <https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12159>
9 RBI Circular dated December 23, 2021 extended the timeline for compliance, which was earlier December 31, 2021.
10 Race, ethnicity, political opinions, religious or philosophical beliefs, trade union membership, health/medical information, sexual orientation, genetic data and biometric data that uniquely identifies an individual fall under the bucket of sensitive data under most legislations.

of sensitive financial data other than card details[11]. Similarly, different businesses in Europe have started using tokenisation for protection of non-financial sensitive data, such as in the health care sector for patient records, factories and firms for employee files and generally securing information regarding usernames, passwords, email addresses, etc[12]. However, given the limited awareness and recognition of data privacy rights in India, obscuring and anonymising of data continue to be the primary measures for protection of sensitive data.

Given that obscuring and anonymising have plenty of serious shortcomings, tokenisation is likely to be a critical tool for the protection of sensitive information (other than card details) in the future in India, especially with the notification of the much awaited Personal Data Protection Bill and the general development of the data privacy regime in India. There are already signs of it as Unique Identification Authority of India introduced virtual IDs in 2018, with the intention of tokenising the identity of a person in relation to its Aadhaar details[13]. Unfortunately, the virtual IDs were not widely launched in India[14]. Once information tokenisation becomes more mainstream, the Updated Framework can provide the blueprint for development of legal framework concerning tokenisation of even the non-financial sensitive information.

Conclusion

Tokenisation holds substantial promise and is being pitched as the future of secured transactions. However, like any other systemic overhaul, card tokenisation has also met with its share of criticism on account of the short implementation timelines and scepticism on the overall benefits of tokenisation, versus the risks under the prevailing card data storage framework. There is also apprehension that these measures may even inadvertently push the customers away from undertaking card payments in favour of other convenient payment methods, such as cash on delivery or UPI.

As such, cooperation and coordination between the RBI and market players, therefore, holds the key to effective implementation of the Updated Framework and the success of card tokenisation in India. Fortunately, market players have been active in providing their inputs and the RBI has reciprocated by responding to the market concerns. The RBI has taken note of the criticism and deferred the date of implementation from the earlier deadline of December 31, 2021, to June 30, 2022. If the trend continues, card tokenisation framework can be expected to beneficially evolve with time.

11 Tokenization: Benefits and Challenges for Securing Transaction Data <https://www.securityweek.com/tokenization-benefits-and-challenges-securing-transaction-data>
12 GDPR and Tokenizing Data <https://tdwi.org/articles/2018/06/06/biz-all-gdpr-and-tokenizing-data-3.aspx>
13 Temporary Virtual ID Aims To Secure Aadhaar Data: 10 Points <https://www.ndtv.com/business/unique-identification-authority-of-india-uidai-introduces-virtual-id-vid-meaning-how-vid-works-1798511>
14 Aadhaar as Proof of Identity: Could Tokenization Offer a Solution? <https://www.cgdev.org/blog/aadhaar-proof-identity-could-tokenization-offer-solution>

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A. Circulars and Notifications

1. *Relaxation on levy of additional fee for delayed filing of certain forms*

   The MCA has waived levy of additional fee on delayed form filings for financial year 2020-21 in the following cases:

   - filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non- XBRL *(forms for filing financial statements)* up to February 15, 2022; and
   - filing e-forms MGT-7 / MGT-7A *(forms for filing annual returns)* up to February 28, 2022.

   (MCA General Circular No. 17/2021, dated October 29, 2021; and MCA General Circular No. 22/2021, dated December 29, 2021)

2. *Extension for conducting AGM and EGM through VC/ OAVM which are due in 2021*

   - The MCA had, *vide* its circular dated May 05, 2020, allowed companies to hold their annual general meetings ("**AGMs**") through video conferencing ("**VC**")/ other audio visual means ("**OAVM**"), subject to fulfilment of certain criteria as set out therein and as covered in our previous edition dated June 30, 2020. The MCA has now permitted companies (i) whose AGMs are due for the financial year ending March 31, 2021, and (ii) that propose to organise their AGM for the financial year ending March 31, 2022, during the first quarter of financial year 2022-2023, to conduct their AGMs on or before June 30, 2022, in accordance with the requirements set out under the circular dated May 05, 2020.
   - The MCA had, *vide* its circular dated April 08, 2020, and April 13, 2020, allowed companies to hold their extra-ordinary general meetings ("**EGM**") through VC/ OAVM or transact through postal ballot, subject to considerations as set out therein and as covered in our previous edition dated June 30, 2020. The MCA has now allowed companies to conduct their EGMs through VC/ OAVM or transact through postal ballot up to June 30, 2022, in accordance with the framework set out under these circulars.

   (MCA General Circular No. 19/2021, dated December 08, 2021; MCA General Circular No. 20/2021, dated December 08, 2021 and MCA General Circular No. 21/2021, dated December 14, 2021)

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SECURITIES LAW UPDATES

A. Rules & Regulations

1. *Amendments to the SEBI FPI Regulations*

SEBI (Foreign Portfolio Investors) Regulations, 2019 ("**SEBI FPI Regulations**"), has been amended to permit resident Indians (other than individuals) to become constituents of Foreign Portfolio Investors ("**FPIs**") that are registered as Alternative Investment Funds ("**AIFs**") in International Financial Services Centres ("**IFSC**"), subject to fulfilment of the following conditions:

- The applicant is an AIF setup in the IFSC;
- Such resident Indian is a sponsor or manager of the applicant; and
- The contribution of such resident Indian is up to 2.5% of the corpus of the applicant or USD 7,50,000 (whichever is lower) in case the applicant is a Category I or II AIF, or 5% of the corpus of the applicant or US $ 1.5 million (whichever is lower) in case of a Category III AIF.

(SEBI Notification No. No. SEBI/LADNRO/GN/2019/36 dated October 26, 2021)

2. *Amendments to the SEBI ICDR Regulations*

SEBI *vide* its notification dated October 26, 2021 ("**Notification**"), has amended the eligibility requirements for an initial public offer by an issuer who has issued equity shares with superior voting rights ("**SR**") to its promoters or founders under the SEBI (Issue of Capital and Disclosure Requirements), 2018 ("**SEBI ICDR Regulations**"). The amendments made pursuant to the Notification are as follows:

- the net-worth of the SR shareholder, as determined by a registered valuer, should not be more than Rs. 1,000 crore. While determining the individual net worth of the SR shareholder, the investment or shareholding in other listed companies will be considered, but not the shareholding in the issuer company; and
- the minimum time gap between issuance of SR shares (prior to the filing of draft red herring prospectus) and filing of red herring prospectus has been reduced to three months from the earlier requirement of six months.

(Notification No. SEBI/LAD-NRO/GN/2021/52 dated October 26, 2021)

3. *Amendments to the SEBI LODR Regulations*

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**SEBI LODR Regulations**"), has been amended to include changes/ decisions in relation to (a) definition of related party transactions and (b) approval and disclosure requirements of related party transactions, as approved by the SEBI Board in its meeting dated September 28, 2021, which has been covered in detail in our previous edition, except for the following additions:

- Certain transactions have been exempted from the definition of "related party transaction", including (i) issue of specified securities on a preferential basis as per SEBI regulations, (ii) specified corporate actions by the listed entity, which are uniformly applicable/ offered to all shareholders in proportion to their shareholding, and (iii) acceptance of fixed deposits by banks/ non-banking finance companies at the terms uniformly applicable/ offered to all shareholders/ public, subject to disclosure

of the same, along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by SEBI.

- Prior approval of the shareholders of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party, but the listed entity is not a party.

(Notification No. SEBI/LAD-NRO/GN/2021/55 dated November 9, 2021)

4. *Amendments to the SEBI SAST Regulations*

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SEBI SAST Regulations**"), has been amended to include *inter-alia* the following key amendments:

- Set out below are the key amendments to the existing regulatory framework for delisting of equity shares pursuant to open offer:

  (a) An acquirer seeking to delist the target company is now required to declare its intention at the time of making the public announcement of an open offer, in addition to the existing requirement of declaring it at the time of making the detailed public statement, except when the open offer is for an indirect acquisition that is not a deemed direct acquisition.

  (b) An acquirer is now required to mention the open offer price (i.e., price determined in accordance with regulation 8 of the SEBI SAST Regulations) as well as the indicative price (i.e., a higher price reflecting the premium that the acquirer is willing to pay for delisting) in the public announcement, the detailed public statement and the letter of offer. If the delisting threshold is met, then the acquirer is required to pay the indicative price, otherwise the open offer price is to be paid.

  (c) In the event that the delisting offer is not successful, the acquirer is required to, within 2 working days of such failure, make an announcement of the same in all the newspapers in which the detailed public statement was made and comply with all the applicable provisions in relation to completion of the open offer.

  (d) Shareholders who have tendered their shares are now entitled to withdraw such shares tendered, within 5 working days from the date of the announcement of the offer, as against the 10 working days earlier.

  (e) The SEBI SAST Regulations now also sets out the procedure to be followed in the event the target company fails to get delisted pursuant to a delisting offer, but which results in the shareholding of the acquirer exceeding the maximum permissible non-public shareholding threshold (75%). Most notably, the acquirer now has a period of 12 months to undertake a further attempt to delist the target company (subject to fulfilling certain conditions) and only upon failure of such further delisting offer is the acquirer required to ensure compliance with the minimum public shareholding within 12 months from such subsequent failed delisting offer.

- If an acquirer intends for the target company to stay listed, but whose shareholding, taken together with persons acting in concert, exceeds maximum permissible non-public shareholding, pursuant to completion of the open offer, such acquirer can (subject to compliance with certain conditions) proportionately scale down the shares or voting rights to be acquired under the underlying agreement for acquisition/ subscription of shares such that the resulting shareholding of the acquirer in the target company does not exceed the maximum permissible non-public shareholding.

(SEBI Notification No. SEBI/LADNRO/GN/2021/60 dated December 06, 2021)

B. Circulars

1. *SEBI extends relaxations relating to procedural matters for the rights issues till March 31, 2022*

In light of the COVID-19 pandemic, SEBI had *vide* circular dated May 6, 2020, provided for institution of an additional

optional mechanism (non-cash mode) by the issuers, registrar and the lead managers to accept the applications of the shareholders, subject to ensuring that no third party payments are allowed in the rights issues. The above was subject to the issuer, along with the lead manager(s) complying with point (v) of the said SEBI circular. The abovementioned relaxation is now applicable to rights issues opening till March 31, 2022. The issuer, registrar and the lead managers are now also required to ensure that the issuer conducts a vulnerability test for optional mechanism from an independent information technology auditor and submits the report to the stock exchanges.

(SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/633 dated October 1, 2021)

2. *SEBI directs stock exchanges and clearing corporations to disclose data on complaints*

In order to bring transparency in investor grievance redressal mechanism, SEBI has directed all stock exchanges and clearing corporations to disclose details of complaints received against them and redressed by them. Further, the stock exchanges (excluding the commodity derivatives exchanges), depositories and clearing corporations have been advised to make necessary amendments to their relevant byelaws, rules and regulations and communicate the status of the implementation of this circular to the SEBI, through the monthly development report.

(SEBI Circular No. SEBI/HO/CDMRD/DoC/P/CIR/2021/636 dated October 4, 2021)

(SEBI Circular No. SEBI/HO/MRD1/MRD_ICC1/P/CIR/2021/664 dated November 23, 2021)

3. *Amendments to the mechanism of providing exit option to dissenting unit holders pursuant to SEBI InvIT Regulations and SEBI REIT Regulations*

SEBI has modified its circular dated July 17, 2020. It has now set out a mechanism to provide an exit option to dissenting unit holders, pursuant to the applicable provisions of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**SEBI InvIT Regulations**") and Regulation 22(6A) and Regulation 22(8) of the application of SEBI (Real Estate Investment Trusts) Regulations, 2014 ("**SEBI REIT Regulations**"). The changes are as follows:

- The definition of relevant date has been amended to mean the last day of voting for resolution under both SEBI InvIT Regulations and SEBI REIT Regulations. In the event of an acquisition or change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor, pursuant to open offer requirements under the SEBI SAST Regulations, relevant date shall mean the date of public announcement made for the acquisition in terms of the SEBI Takeover Regulations.
- The summary of activities pertaining to exit/ open offer has been included in the event of acquisition or on change in sponsor or control of sponsor or induction of sponsor, pursuant to an open offer under the SEBI SAST Regulations. Some of the key activities are described below:

a) Acquirer to give first notice to the investment manager regarding acquisition, which triggers the provision of Regulation 22(5C) or Regulation 22(7) of SEBI InvIT Regulations or under Regulation 22(6A) or Regulation 22(8) of SEBI REIT Regulations, along with public announcement made for the acquisition in terms of SEBI SAST Regulations.

b) On receipt of notice, the investment manager shall intimate the stock exchange(s) immediately, but not later than 24 hours from the receipt of such notice.

c) Acquirer shall give second notice to the investment manager for the purpose of obtaining approval of the unit holders and also confirm to the investment manager that it shall give exit option to dissenting unit holders in case approval of the requisite majority is not received.

d) On receipt of second notice, the investment manager shall intimate stock exchange(s) immediately, but not later than 24 hours from the receipt of such second notice.

e) The investment manager shall convene a meeting of unit holders for voting, which needs to be completed not later than 3 working days from the cut-off date and within 21 days from the date of receipt of second notice from the acquirer.

f) The investment manager shall intimate the acquirer and the stock exchange(s) of the outcome of the unit holders' meeting, as certified by its compliance officer, within 48 hours of the last day of voting. The investment manager shall also provide the list of dissenting unit holders to the lead manager(s) within 48 hours of the last day of voting. The day of aforesaid intimation by the investment manager shall be construed as the "date of intimation".

g) Acquirer through the lead manager(s) shall send the Letter of Offer ("**LoF**") to all dissenting unit holders

and file a copy of the same with the stock exchange(s), within 3 working days from the date of intimation. The lead manager(s) shall exercise due diligence with regard to all information and disclosures contained in the LoF.

h) Acquirer shall create an escrow account at least 2 working days prior to opening of the tendering period, wherein the aggregate amount of consideration would be deposited.

i) The tender date shall be the seventh working day from the "date of intimation" and the tender period shall be five working days.

j) Payment of consideration to dissenting unit holders by the acquirer within a period of 3 working days from the last date of the tendering period.

k) Lead manager shall submit a report to investment manager that payment has been duly made to all dissenting unit holders whose units have been accepted in the exit option. Based on the information received from lead manager, the investment manager shall update aggregate number of units tendered, accepted, payment of the consideration and the post-exit option unit holding pattern of the Infrastructure Investment Trust ("**InvIT**")/ Real Estate Investment Trust ("**REIT**") with the stock exchange(s) within 2 working days from the date of payment of consideration.

¬ In case an acquisition or change in sponsor or inducted sponsor or control of sponsor is triggered pursuant to an open offer under the provisions of SEBI Takeover Regulations, the exit option price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the first notice date and second notice date.

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/639 dated October 5, 2021)

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/640 dated October 5, 2021)

4. *SEBI revises formats for limited review or audit reports for issuers of non-convertible securities*

SEBI in its circulars dated November 27, 2015, and August 10, 2016 ("**Prior Circulars**"), had prescribed formats for the disclosure of financial results by listed entities that have listed their debt securities and/ or non-cumulative redeemable preference shares, in accordance with the SEBI LODR Regulations. Pursuant to an amendment to the SEBI LODR Regulations on September 27, 2021, which mandated entities with listed non-convertible securities to disclose their financial results on a quarterly basis, SEBI in its circular dated October 14, 2021 ("**Circular**"), superseding the Prior Circulars, prescribed revised formats for limited review or audit reports to be submitted by such issuers of non-convertible securities. The formats prescribed in the Circular are applicable to all listed entities other than insurance companies and include formats for (a) limited review report for quarterly standalone financial results for entities other than banks and Non-Banking Financial Companies ("**NBFCs**"); (b) limited review report for quarterly standalone financial results for banks and NBFCs; (c) audit report for quarterly standalone financial results for entities other than banks and NBFCs; (d) audit report for quarterly standalone financial results for banks and NBFCs; (e) audited annual consolidated financial results for entities other than banks and NBFCs; and (f) audited annual consolidated financial results for banks and NBFCs.

(SEBI Circular No. SEBI/HO/DDHS/CIR/2021/0000000638 dated October 14, 2021)

5. *SEBI clarifies transmission of securities to joint holder(s) by RTAs*

SEBI observed that in some cases the registrar and share transfer agents ("**RTAs**") have not effected transmission of securities to the surviving joint holder(s), according to the provisions laid down under the Companies Act, 2013, due to counterclaim / disputes from the legal representative of one of the deceased holder. In this regard, SEBI has advised the RTAs to comply with the provisions of the Companies Act, 2013, and transmit securities in favour of surviving joint holder(s), provided that there is nothing contrary to the same in the articles of association of the company.

(SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/644 dated October 18, 2021)

6. *SEBI amends circular pertaining to investor protection fund/ investor service fund and related matters*

SEBI *vide* its circular dated June 13, 2017, issued guidelines for investor protection fund, investor service fund and related matters. Based on the feedback received from the stock exchanges, SEBI now requires stock exchanges to ensure that once a member has been declared a defaulter, the claim(s) shall be placed before the Member Core Settlement Guarantee Fund Committee ("**MCSGFC**", the erstwhile Defaulters' Committee) for sanction and ratification. Further,

MCSGFC's advice with respect to legitimate claims shall be sent to the investor protection fund trust for disbursement of the amount immediately.

Further, in case the claim amount is more than the coverage limit under the investor protection fund or the amount sanctioned and ratified by the MCSGFC is less than the claim amount, then the investor will be at liberty to go for arbitration/ any other legal forum outside the exchange mechanism for claim of the balance amount.

(SEBI Circular No. SEBI/HO/CDMRD/DoC/P/CIR/2021/651 dated October 22, 2021)

7. *FPIs (surrendering registration) are permitted to write off debt securities*

SEBI *vide* its circulars dated November 05, 2019, and September 21, 2020, had permitted FPIs, who wish to surrender their registration, to write-off all shares in their beneficiary account, which they are unable to sell for any reason. Pursuant to requests received from various stakeholders, SEBI has now also decided to permit FPIs, who wish to surrender their registration, to also write-off all debt securities in their beneficiary account, which they are unable to sell for any reason.

(SEBI Circular No. SEBI/HO/FPI&C/P/CIR/2021/656 dated November 08, 2021)

8. *Disclosure obligations of listed entities in relation to related party transactions*

SEBI *vide* its notification dated November 9, 2021, amended the SEBI LODR Regulations, mandating listed entities to disclose related party transactions to the stock exchanges in the format prescribed by SEBI. SEBI has now prescribed the information, which shall be placed before the audit committee and the shareholders for consideration of related party transactions.

The information which shall be reviewed by the audit committee includes, among others, type, material terms and particulars of the proposed transaction, name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest, value, applicable terms, covenants, tenure, interest rate, justification of the related party transaction, copy of valuation report, if any. The audit committee shall also be required to review the status of long term (more than one year) or recurring related party transactions on an annual basis.

Further, the information which shall be provided to the shareholders for consideration of related party transactions includes, among others, summary of the information provided by the management of the listed entity to the audit committee, justification, statement that valuation report, if any, relied upon shall be made available on the registered email address of the shareholders and percentage of counter party's annual consolidated turnover, which is represented by the value of the proposed related party transaction on a voluntary basis.

The circular also provides format for making half yearly disclosures of related party transactions, which comes into effect from April 1, 2022.

(SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated November 22, 2021)

9. *Circulars on Schemes of Arrangement by Listed Entities*

SEBI by way of its circulars dated November 16, 2021, and November 18, 2021 ("**Amendment Circulars**") amended certain provisions of the SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/249, dated December 22, 2020, dealing with schemes of arrangement by listed entities. The amendments proposed in the Amendment Circulars will be applicable to all the schemes filed with the stock exchanges from November 16, 2021. Some of the key amendments are as follows:

- The listed entities involved in the scheme are now required to submit the following additional documents to the stock exchanges:
  (a) an undertaking specifying that no material event has occurred during the intervening period of filing of scheme documents with the stock exchanges and the period under consideration for valuation;
  (b) a declaration in relation to any past defaults of listed debt obligations of the entities forming a part of the scheme; and
  (c) a no-objection certificate from its lending scheduled commercial banks/ financial institutions/ debenture trustees.
- A trust nominated by the board of directors is required to aggregate and hold fractional entitlements under the scheme of arrangement, if any, and such fractional entitlements are required to be sold within a 90 day time period (from the date of allotment of shares, as per the draft scheme) and profits thereof be disbursed to the shareholders by the trustee. Further, SEBI has cast additional responsibilities on the audit committee and the independent directors of the listed entity to monitor and report to the designated stock exchange (within 7 days of compensating the shareholders) whether proceeds of fractional entitlements are distributed to eligible shareholders within the stipulated timeframe. A listed entity is liable for punitive action for any misstatement or failure to furnish such information as per the provisions of the applicable laws and regulations.

(SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000657 dated November 16, 2021; SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000659 dated November 18, 2021; and SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated November 23, 2021)

10. *Non-compliance with certain provisions of SEBI ICDR Regulations*

SEBI *vide* its circular dated August 19, 2019, had specified the fines to be imposed by the stock exchanges for non-compliance with certain provisions of SEBI ICDR Regulations.

In partial modification of the aforementioned circular, SEBI has clarified that the stock exchanges may deviate from the provisions of the circular, wherever the interest of the investors are not adversely affected, if found necessary, only after recording reasons in writing.

(SEBI Circular No. SEBI/HO/CFD/DIL1/P/CIR/2021/0660 dated November 23, 2021)

11. *Disclosure of investor charter and complaints by market intermediaries and participants on their websites*

SEBI has developed a charter for the various intermediaries and participants like RTAs, debenture trustee, merchant bankers (in specific to debts market, public offer of Invits/ REITs, etc.), investment advisors, and research analysts to spread awareness about the services provided to the investors, rights of investors, dos and don'ts for the investors and grievance redressal mechanism for the investors. The registered intermediaries/ market participants mentioned above are required to take necessary steps to bring the charter to the notice of existing and new investors, by way of disseminating on their websites and through email and also displaying it at prominent places in offices.

In order to bring about transparency in investor grievance redressal mechanism, all these registered intermediaries/ market participants are required to disclose the data on complaints received against them or issues dealt by them and redressal thereof, on their websites latest by seventh of the succeeding month in the format provided under the circular.

The provisions of this circular have come into effect from January 1, 2022.

(SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/670 dated November 26, 2021)

(SEBI Circular No. SEBI/HO/MIRSD/MIRSD_CRADT/P/CIR/2021/675 dated November 30, 2021)

(SEBI Circular No. SEBI/HO/CFD/DCR2/P/CIR/2021/0661 dated November 23, 2021)

(SEBI Circular No. SEBI/HO/DDHS/P/CIR/2021/0669 dated November 26, 2021)

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/0671 dated November 26, 2021)

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/672 dated November 26, 2021)

(SEBI Circular No. SEBI/HO/IMD/IMD-II CIS/P/CIR/2021/0686 dated December 13, 2021)

(SEBI Circular No. SEBI/HO/IMD/IMD-II CIS/P/CIR/2021/0685 dated December 13, 2021)

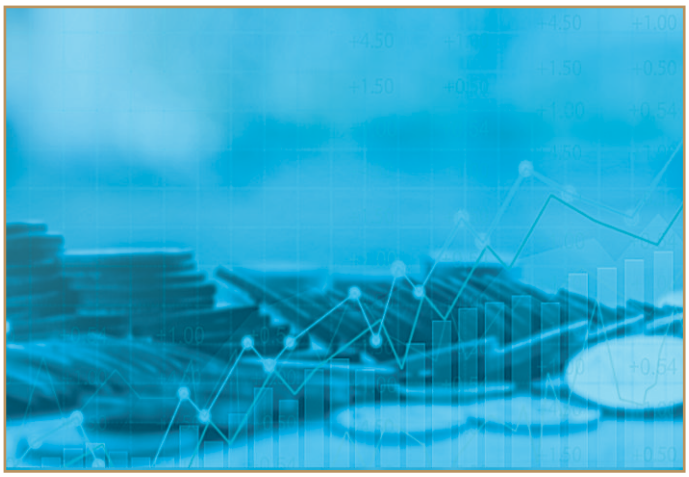
(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/690 dated December 16, 2021)

12. *SEBI issues master circular for InvITs and REITs*

SEBI has issued a master circular to enable the users to access all the applicable circulars in relation to InvITs and REITs at one place. The compilation has all the relevant circulars up to October 31, 2021.

SEBI has further clarified that if there are any inconsistencies between the Master Circular and the relevant circular, then the contents of the relevant circular shall prevail. Some of the key contents of the Master Circulars are set out below:

- **Online Filing System**: The chapter deals with the online filing system to facilitate ease of operations in terms of applying for registration, reporting, and various compliances under the SEBI InvIT Regulations and SEBI REIT Regulations.
- **Guidelines for public issue of units of InvITs/ REITs**: The chapter deals with appointment and obligations of merchant bankers and other intermediaries, filing of offer document, allocation in public issue, application and abridged version of the offer document, security deposit, opening of an issue and subscription period, underwriting, price and price band, bidding process, and allotment procedure and basis of allotment, among others.
- **Disclosure of financial information in offer document for InvITs/ REITs**: The chapter contains guidelines on the details of financial information to be disclosed in the offer document/ placement memorandum, such as the period of financial information to be disclosed, nature of financial information, content and basis of preparation of financial information, additional financial disclosures, and audit of financial information, among others.
- **Continuous Disclosures and Compliances by InvITs/ REITs**: The chapter provides guidelines for the disclosures of financial information to stock exchanges, such as frequency and time period for disclosure.



- **Participation by Strategic Investor(s) in InvITs/REITs**: The chapter provides details of the operational modalities for participation by strategic investors. It also mentions that the units subscribed to by the strategic investors, pursuant to the unit subscription agreement will be locked in for a period of 180 days from the date of listing in the public issue.
- **Guidelines for issuance of debt securities by InvITs/ REITs**: The chapter deals with the manner in which provisions of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, shall be followed for issuance of debt securities by InvITs and REITs.
- **Guidelines for preferential issue and institutional placement of units by listed InvITs/REITs**: The chapter outlines the definition of institutional placement, conditions for issuance, manner of issuance of units, manner of preferential issue of units by a listed InvIT/ REIT, pricing of units (frequently and infrequently traded units), lock-in period, transferability and allotment, among others.
- **Guidelines for filing of placement memorandum by InvITs proposed to be listed**: The chapter provides for the manner of filing a draft placement memorandum and placement memorandum with the SEBI and stock exchanges for private placement of units of an InvIT that is proposed to be listed.
- **Guidelines for rights issue of units by listed InvITs/REITs**: The chapter provides the conditions for

issuance of units pursuant to a rights issue by a listed InvIT/REIT, such as the appointment of merchant bankers and other intermediaries, draft letter of offer and letter of offer, application, pricing of units, timelines, manner of issuance of units, subscription.

- **Guidelines for rights issue of units by unlisted InvITs**: The chapter provides the conditions for issuance of units pursuant to a rights issue by an unlisted InvIT, such as underwriting, letter of offer, application, pricing of units, timelines, manner of issuance of units, allotment, and restriction on further capital issues.
- **Encumbrance on units of InvITs/ REITs**: The chapter provides the details of creation and invocation of encumbrance on units during the mandatory holding period, including obligations of entity creating the encumbrance, and other obligations.
- **Manner and mechanism of providing exit option to dissenting unitholders**: The chapter provides details of the manner and mechanism that needs to be followed while providing exit option to dissenting unitholders.

(SEBI Master Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/673 dated November 29, 2021)

(SEBI Master Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/674 dated November 29, 2021)

13. *SEBI directs stock exchanges to facilitate investor awareness through stockbrokers*

In order to facilitate awareness among investors about various activities such as opening of account, KYC and in-person verification, complaint resolution, issuance of contract notes and various statements, process for dematerialization/ re-materialization, etc., SEBI has stipulated an investor charter for stock brokers, which details out the services provided to investors, rights of investors, various activities of stock brokers with timelines, dos and don'ts for investors and grievance redressal mechanism, which has come in force with effect from January 1, 2022. The investor charter also provides for timelines for various activities to be undertaken by the stockbrokers and the procedure for redressal of investor grievances.

(SEBI circular no. SEBI/HO/MIRSD/DOP/CIR/P/2021/676 dated December 2, 2021)

14. *Extension of facility for conducting annual meeting and other meetings of unitholders of REITs and InvITs through VC/OAVM*

SEBI, *vide* circular dated February 26, 2021, had permitted REITs/ InvITs to conduct annual meetings of unitholders through VC/ OAVM till December 31, 2021, and other meetings of unitholders through VC/OAVM till June 30, 2021. The MCA, vide circular dated December 08, 2021, had extended the facility of holding annual general meetings and extraordinary general meetings through VC/ OAVM till June 30, 2022. Accordingly, SEBI has extended the facility to conduct annual meetings of unitholders in terms of the SEBI InvIT Regulations and the SEBI REIT Regulations, and meetings other than annual meetings, through VC or OAVM till June 30, 2022. The procedures prescribed in SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102, dated June 22, 2020, shall continue to apply to REITs and InvITs in this regard.

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div2/P/CIR/2021/697 dated December 22, 2021)

15. *SEBI revises circular on non-compliance with provisions related to continuous disclosures by issuers of listed non-convertible securities and/ or commercial papers*

SEBI has amended the uniform structure for levying fines/ penalty for non-compliance by the Issuers of listed non-convertible securities and/ or commercial papers, related to continuous disclosures specified under the SEBI LODR Regulations. Stock exchanges are permitted to levy fines based on the said circular and may deviate from the circular, if found necessary, only after recording reasons in writing.

The stock exchange(s) shall take uniform actions in consultation with each other if the non-compliant entity is listed on multiple stock exchanges. SEBI has specified in Part A and Part B of Annexure-I of the circular, the fines to be levied in case of non-compliance by issuers of listed non-

convertible securities and listed commercial papers respectively. Annexure II of the circular has laid down the procedure to be followed by the concerned stock exchanges and states that every recognised stock exchange must review the compliance status of the entities listing their non-convertible securities and commercial papers and shall issue notices to the concerned non-compliant entities within 30 days from the due date of the prescribed timeline. The circular is applicable for compliances falling on or after February 1, 2022.

(SEBI Circular No. SEBI/HO/DDHS_Div2/P/CIR/2021/699 dated December 29, 2021)

C. Informal Guidance

1. *Informal guidance on requirement of annexing examination report with the financial statements under the SEBI NCS Regulations*

An informal guidance was sought from in relation to (i) the requirement of attaching the statutory auditor report and limited review report with the financial information under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**SEBI NCS Regulations**"); and (ii) attaching the examination report by the statutory auditor, annual statutory auditors report, and quarterly limited review reports issued by the statutory auditors of MFL.

SEBI referred to provisions of the SEBI NCS Regulations and stated that an issuer which seeks to issue debt securities by way of public issue or by way of private placement is *inter alia* required to make disclosures pertaining to (i) the columnar representation of the audited financial information; (ii) unaudited financial information accompanied with the limited review report in relation to the stub period; (iii) statutory auditor's report, along with requisite schedules, footnotes, summary, etc; (iv) key operational parameters on a consolidated and standalone basis as per the disclosure requirements under the SEBI NCS Regulations; and (v) of the debt equity ratio of the issuer before and after the issue. Further, since the auditor's report is required to be accompanied with columnar representation of audited financial information for the three completed years, a separate audit report may not be required and for the stub period, the unaudited financial information accompanied with limited review report would suffice for the purpose SEBI NCS Regulations.

(SEBI Informal Guidance No. SEBI/HO/DDHS/P/OW/2021/28580/1 dated October 14, 2021)

2. *Informal guidance on procedure to obtain shareholder approval for material related party transactions where all corporate shareholders are identified as related parties*

An informal guidance was sought from SEBI for material related party transactions to be entered into by a company, given that all corporate shareholders of that company are identified as related parties since such company was formed pursuant to a joint venture and shareholders' agreement executed by four leading financial institutions.

In terms of Regulation 23 of the SEBI LODR Regulations, all material related party transactions shall require approval of shareholders through resolution and no related party shall vote to approve such resolutions if the entity is a related party to the particular transaction. Further, the proviso to Section 188(1) of the Companies Act, 2013, provides an exemption to the aforementioned provision whereby, a company in which 90% or more members, in number, are relatives of promoters or are related parties, such related parties can vote on related party transactions.

The relevant company had sought the following guidance, given that all corporate shareholders of such company were identified as related parties and could not vote to approve related party transactions:

- What would be the procedure to obtain shareholder's approval for ratification of all existing and prospective material related party transactions and;
- Whether such company can continue with the abovementioned exemption where the related party (except a related party for a particular transaction) can vote for approving material related party transactions.

SEBI noted that based on the inherent difficulty faced by the relevant company, reference could be made to explanation 3 to Regulation 15(1A) of the SEBI LODR Regulations in terms of which, if a company is unable to achieve full compliance with the provisions, it shall explain the reasons for such non-compliance/ partial compliance and the steps initiated to achieve full compliance in the quarterly compliance report filed under Regulation 27(2)(a) of SEBI LODR Regulations.

(SEBI Informal Guidance No. SEBI/HO/DDHS/P/OW/2021/37583/1 dated December 16, 2021)

D. Press Release

1. *SEBI Board Meeting dated December 28, 2021*

SEBI, in its board meeting held on December 28, 2021, approved inter alia the following key proposals for changes to the extant SEBI regulations:

- SEBI LODR Regulations

  (a) Any appointment or re-appointment of any person as a director, including as managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, can now only be undertaken with the prior approval of the shareholders.

  (b) In order to improve ease, convenience, and safety of investor transactions, issuance of securities in dematerialised form is now permitted in case the investor requests for issue of duplicate shares, etc.

- SEBI (Settlement Proceedings) Regulations, 2018

  (a) Time-period for filing a settlement application rationalised to 60 days from the date of receipt of the show cause notice or a supplementary notice, whichever is later.

  (b) Clarification of certain provisions relating to the condition precedent for settlement, non-monetary terms, provisions relating to irregularity in procedure, settlement scheme and legal cost.

  (c) Time-period for submission of revised settlement terms form, after the internal committee ("**IC**") meeting, rationalised to 15 days from the date of the IC meeting.

  (d) Rationalisation of the following:

    i. Time-period for remittance of settlement amount and for compliance of all settlement terms;

    ii. Proceeding Conversion Factor;

    iii. Base Values;

    iv. Amounts in respect of disclosure violations; and

    v. Settlement terms attributable to the nature and extent of violations.

  (e) Separate guidelines for dealing with the procedure to be adopted for arriving at suitable terms, pursuant to filing of a compounding application.

  Implications of the approved amendments to SEBI (Settlement Proceedings) Regulations, 2018 has been covered in CAM's previous publication.

- SEBI ICDR Regulations:

  SEBI has approved that the following shall be applicable for all preferential issues where relevant date is after the date of notification in the official gazette, among others:

  (a) Factors to be considered for determining the floor price;

  (b) In case of change in control/ allotment of more than 5% of post issue fully diluted share capital of issuer company to an allottee or to allottees acting in concert, a valuation report from a registered independent valuer shall be obtained. Further, in case of change in control, a committee of independent directors shall provide a reasoned recommendation, along with their comments on all aspects of preferential issuance, including pricing;

  (c) The lock-in requirement for allotment of up to 20% of the post issue paid up capital has been reduced from three years to 18 months and the lock-in requirement for allotment exceeding 20% of the post issue capital has been reduced to six months from one year;

  (d) Promoters would be permitted to pledge the shares locked-in, pursuant to a preferential issue, provided if pledge of such specified securities is one of the terms of sanction of the loan granted by the financial institutions and the said loan is to be sanctioned to the issuer company or its subsidiary(ies) for the purpose of financing one or more of the objects of the preferential issue.

- SEBI (Stock Brokers) Regulations, 1992, and SEBI (Depositories and Participants) Regulations, 2018.

  SEBI has approved amendments to the SEBI (Stock Broker) Regulations, 1992, to prescribe the definition of

professional clearing member and has amended Schedule VI of the regulations to provide for the revised net worth requirement within the prescribed timelines for trading members, self-clearing members, clearing members and professional clearing members.

Further, an amendment to the SEBI (Depositaries and Participants) Regulations, 2018, has also been proposed to provide for revised net worth requirement, within the prescribed timelines for stockbroker depository participant.

(SEBI Press Release No. P.R 38/2021 dated December 28, 2021)

E. Consultation Papers

1. *Proposal to introduce disclosure norms for ESG Mutual Fund Schemes*

SEBI, in its consultation paper dated October 26, 2021, has proposed the introduction of disclosure norms for domestic mutual fund schemes that invest as per the ESG (Environment, Sustainability and Governance) philosophy ("**ESG Schemes**"), considering the increased activity in this area. The consultation paper includes inter alia the following key proposals:

- From October 1, 2022, asset management companies ("**AMC**") for ESG schemes can only invest in securities with Business Responsibility and Sustainability Report ("**BRSR**") disclosures. The existing investments in the schemes for which there are no BRSR disclosures would be grandfathered by SEBI until September 30, 2023.
- The following mandatory disclosures in the Scheme Information Documents ("**SID**") for mutual funds, which launch ESG Schemes:
  - (a) Investment policy, objectives, and strategy to ensure that the type of strategy and objectives followed by the scheme, with regard to sustainability or ESG characteristics merit the nomenclature of an ESG fund. Further, the name of the scheme should accurately reflect the nature and extent of the scheme's ESG focus.
  - (b) Disclosure of material risks that arise from a scheme's focus on sustainability and this shall include the requirement to disclose measures taken to mitigate risks related to green washing and risk of reliance on third party scores, if any, given the dispersion in scores across provider.
  - (c) Asset allocation in relation to the portion of investment towards ESG theme *(as only a minimum of 80% of total assets of the scheme is required to be invested in securities following ESG theme)*. However, it is proposed that the residual portion of the investment should not be in stark contrast to the philosophy of the scheme from the theme.

- In addition to the above disclosures in the SID, AMCs are also required to undertake inter-alia the following:
  - (a) AMCs should monitor and evaluate the investments in terms of key performance indicators, real world outcomes, active engagement, and stewardship activities with investee companies.
  - (b) Disclose policy on stewardship and shareholder engagement and past stewardship and shareholder engagement record to ensure that the policy is in accordance with the objectives of the scheme.
  - (c) AMCs will periodically be required to disclose *inter alia* the contribution to 'positive environmental change', and the various ESG engagement and stewardship activities carried out during the financial year.
  - (d) AMCs should disclose on their website information covering various aspects of ESG investing, such as source of ESG information of underlying investments, investment process and philosophy, key ESG factors to be considered in decision making, etc.
- Under general obligations, SEBI *inter alia* has suggested that the board of an AMC should submit a declaration to the trustees of mutual fund that the scheme is following its disclosed strategy and is in compliance with its policies on a quarterly basis.

(SEBI Consultation Paper dated October 26, 2021)

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FOREIGN EXCHANGE AND RBI UPDATES

A. Amendments

1. *Amendments to the FEM (Non-Debt Instruments) Rules 2019 in relation to Petroleum and Natural Gas sector*

   - In furtherance to Press Note No. 3 (2021 Series), dated July 29, 2021, issued by the Department for Promotion of Industry and Internal Trade ("**DPIIT**"), the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("**NDI Rules**"), has been amended to permit 100% foreign direct investment ("**FDI**") under automatic route for petroleum refining, undertaken by public sector undertakings, in case an in-principle approval for strategic divestment has been approved by the government for such public sector undertaking.

     (Notification S.O. 4091(E) dated October 05, 2021)

2. *Amendments to the FEM (Non-Debt Instruments) Rules, 2019, in relation to telecom sector*

   - Pursuant to the structural reforms approved by the Central Government in the telecom sector, the NDI Rules have been amended to (a) increase the FDI limit under automatic route from 49% to 100% in the telecom sector, and (b) broaden the scope of permitted activities to include 'Other Service Providers' and such other services as may be permitted by the Department of Telecommunications.

   - In Press Note No. 4 (2021 Series), pursuant to which this amendment is issued, the DPIIT clarified that FDI in telecom sector will continue to remain subject to the restrictions of Press Note No. 3 (2020 Series), i.e. an entity of a country, which shares a land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the government route.

     (DPIIT File No.: 5(4)/2021-FDI Policy, dated October 06, 2021; Notification S.O. 4242(E) dated October 12, 2021)

3. *Amendments to the FEM (Debt Instruments) Regulations 2019 for notifying eligible debt securities for Foreign Portfolio Investors*

   - Pursuant to the announcement made in the Union Budget 2021-22, the RBI has amended the Foreign Exchange Management (Debt Instruments) Regulations, 2019, to permit investment by FPIs in debt securities issued by InvITs and REITs. FPIs can acquire the debt securities issued by InvITs and REITs under the Medium-Term Framework ("**MTF**") or the Voluntary Retention Route ("**VRR**"). Such investments will be reckoned within the limits and be subject to the terms and conditions for investments by FPIs in debt securities under the respective regulations of MTF and VRR.

     (Notification No. FEMA.396(1)/2021-RB dated October 13, 20201; RBI/2021-22/120 A.P. (DIR Series) Circular No. 16 dated November 08, 2021)

B. Circulars and Notifications

1. *Extension of Priority Sector Lending classification for on-lending by non-banking financial companies*

   - The RBI had allowed the facility of bank lending to NBFCs for on-lending to be classified as priority sector up to September 30, 2021. Keeping in view the increased traction observed in delivering credit to the underserved/

unserved segments of the economy, the RBI has extended this facility till March 31, 2022.

- The loans disbursed under the on-lending model will continue to be classified under priority sector, till the date of repayment/ maturity, whichever is earlier, and all other guidelines issued in this regard will continue to apply.

(RBI/2021-22/110 FIDD.CO.Plan.BC.No.15/04.09.01/2021-22 dated October 08, 2021)

2. *Revisions to Regulatory Framework for Scale Based Regulation for NBFCs*

The RBI has issued an integrated scale-based regulatory framework ("**SBR**") for NBFCs, based on the inputs received on the discussion paper in this regard. The SBR guidelines are proposed to be effective from October 01, 2022. The main highlights of the framework are as follows:

- **Regulatory Structure for NBFCs**: Regulatory structure for NBFCs will comprise of the following four layers, based on their size, activity, and perceived risk.
  - (a) **NBFC – Base Layer ("NBFC-BL")**: The Base Layer will comprise of:
    - (i) non-deposit taking NBFCs below the asset size of ₹1000 crore; and
    - (ii) NBFCs undertaking the following activities - (A) NBFC-Peer to Peer Lending Platform ("**NBFC-P2P**"); (B) NBFC-Account Aggregator ("**NBFC-AA**"); (C) Non-Operative Financial Holding Company ("**NOFHC**"); and (D) NBFCs not availing public funds and not having any customer interface.
  - (b) **NBFC – Middle Layer** ("**NBFC-ML**"): The Middle Layer will consist of:
    - (i) All deposit-taking NBFCs ("**NBFC-D**"), irrespective of the asset size;
    - (ii) non-deposit taking NBFCs with asset size of ₹1000 crore and above; and
    - (iii) NBFCs undertaking the following activities: (A) Standalone Primary Dealers ("**SPDs**"); (B) Infrastructure Debt Fund - Non-Banking Financial Companies ("**IDF-NBFCs**"); (C) Core Investment Companies ("**CICs**"); (D) Housing Finance Companies ("**HFCs**"); and (E) Infrastructure Finance Companies ("**NBFC-IFCs**").
  - (c) **NBFC - Upper Layer ("NBFC-UL")**: The Upper Layer will comprise of those NBFCs that are specifically identified by the RBI as warranting enhanced regulatory requirement, based on an identified set of parameters and scoring methodology.
  - (d) **NBFC – Top Layer**: The Top Layer is ideally expected to be empty. The Top Layer can get populated if the RBI is of the opinion that there is a substantial increase in potential systemic risks from specific NBFCs in the Upper Layer.
- **Categorisation of NBFCs carrying out specific activity**
  - (a) NBFC-P2P, NBFC-AA, NOFHC and NBFCs not availing public funds and not having customer interface will always remain in the Base Layer of the regulatory structure.
  - (b) While SPDs and IDF-NBFCs will always remain in the Middle Layer, NBFC-D, CICs, NBFC-IFCs and HFCs may be included in the Middle Layer of Upper Layer, as the case may be.
  - (c) The remaining NBFCs, viz., Investment and Credit Companies ("**NBFC-ICC**"), Micro Finance Institution ("**NBFC-MFI**"), NBFC-Factors ("**NBFC-Factors**") and NBFC Mortgage Guarantee Companies ("**NBFC-MGC**") could lie in any of the layers of the regulatory structure, depending on the parameters of the SBR.
- With effect from October 01, 2022, all references to non-deposit taking NBFC ("**NBFC-ND**") will mean NBFC-BL and all references to deposit taking NBFC ("**NBFC-D**") and significantly important NBFC-ND will mean NBFC-ML or NBFC-UL, as the case may be. It is proposed that NBFC-BL, NBFC-ML and NBFC-UL will be subject to regulations, as currently applicable, except to the extent changes expressly provided in the SBR.
- **Regulatory changes under SBR for all the layers in the regulatory structure**
  - (a) **Net Owned Fund**: Regulatory minimum Net Owned Fund ("**NOF**") for NBFC-ICC, NBFC-MFI and NBFC-Factors will be increased to INR 10 crore, in a phased manner.
  - (b) **NPA Classification**: The extant classification norm for non-performing assets ("**NPA**") stands changed to the overdue period of more than 90 days for all categories of NBFCs. The NBFCs in the Base Layer may adhere to the 90 days NPA norm in a phased manner.
  - (c) **Experience of the Board**: Considering the need for professional experience in managing the affairs of NBFCs, at least one of the directors will have relevant experience of having worked in a bank/ NBFC.

(d) **Ceiling on IPO funding**: A ceiling of INR 1 crore per borrower to be fixed for financing subscription to an initial public offer. NBFCs may fix more conservative limits. The IPO funding ceiling will come into effect from April 01, 2022.

- The framework also provides capital, prudential and governance guidelines for the various layers of NBFCs as well as the transition path of NBFCs to Upper Layer.

(RBI/2021-22/112 DOR.CRE.REC.No.60/03.10.001/2021-22 dated October 22, 2021)

3. *Accepted recommendations from the Report on extant ownership guidelines and corporate structure for Indian private sector banks*

An internal working group was constituted by the RBI in 2020 ("**IWG**") to review the extant guidelines on ownership and corporate structure of Indian private sector banks. Set out below are some of the key recommendations (with or without modifications) of the IWG, which have been accepted by the RBI:

- **Limits on promoter shareholding in the long run**: The cap on promoters' stake in the long run of 15 years may be raised from the current levels of 15% to 26% of paid-up voting equity share capital of the bank. This stipulation should be uniform for all types of promoters.
- **Change in non-promoter shareholding**: In place of the current long-run shareholding guidelines concerning non-promoter shareholding, it is proposed to cap the non-promoter shareholding at 10% of the paid-up voting equity share capital of the bank in case of natural persons and non-financial institutions/ entities and at 15% of the paid-up voting equity share capital of the bank in case of all categories of financial institutions/ entities, supranational institutions, public sector undertaking or Government.
- **Enhancement of minimum initial capital requirement**: It is recommended that the minimum initial capital requirement (i.e., paid-up voting equity share capital/ net worth) for licencing new banks be enhanced in the following manner:

(a) For Universal Banks: From current INR 500 crore to INR 1000 crore.

(b) For small finance banks: From current INR 200 crore to INR 300 crore.

(c) For UCBs transiting to SFBs: From current INR 100 crore to INR 150 crore (to be increased to INR 300 crore in five years).

- **Dilution Requirement**: There would be no intermediate dilution sub-targets between 5-15 years. However, at the time of issue of licences, promoters are required to mandatorily submit a dilution schedule, which will be examined, approved and monitored by the RBI.
- **Monitoring mechanism for determining 'fit and proper'**: A monitoring mechanism may be devised to ensure that control of promoting entity/ major shareholder of the bank, does not fall in the hands of persons who are not found to be fit and proper. Licencing conditions/ approvals for acquisitions may stipulate

reporting requirements whenever a shareholder becomes a significant beneficial owner (as defined in the Companies Act, 2013) of the promoting entity/ major shareholder of the bank.

- **Pledge of shares during lock-in**: The pledge of shares by promoters during the lock-in period, which amounts to bringing the unencumbered promoters' shares below the prescribed minimum threshold, should be disallowed.
- **Restrictions on voting rights of a pledgee**: In case invoking the pledge results in purchase/ transfer of shares of such bank, beyond 5% of the total shareholding of the bank, without prior approval of the RBI, the voting rights of such pledgee must be restricted to 5% till the pledgee obtains permission of the RBI for regularisation of acquisition of these shares.

The RBI has stated that the consequential amendments in instructions/ circulars/ master directions/ licencing guidelines, following the acceptance of the recommendations is being carried out and will be notified in due course. However, during the interregnum, the RBI has stated that all stakeholders may be guided by these decisions.

(Notification S.O. 4091(E) dated October 05, 2021)

4. *No RBI approval required for capital infusion or transfers in overseas bank branches and subsidiaries*

- In order to provide greater operational flexibility, the central bank has removed the requirement of banks obtaining prior RBI approval for: (a) infusion of capital in their overseas branches/ subsidiaries, and (b) retention of profits in and transfer or repatriation of profits from the overseas branches/ subsidiaries, provided such banks meet the regulatory capital requirements (including capital buffers). Instead, the banks are required to seek approval of their boards for the same.
- Banks are required to report all such instances of infusion of capital and/ or retention/ transfer/ repatriation of profits in overseas branches and subsidiaries within 30 days of such action, to the RBI.
- This circular is applicable to all Scheduled Commercial Banks, other than Foreign Banks, Small Finance Banks, Payment Banks and Regional Rural Banks.

(RBI/2021-22/136 DOR.CAP.REC.No.72/21.06.201/2021-22 dated December 08, 2021)

5. *Increase in all-in-cost benchmark and ceiling for Foreign Currency External Commercial Borrowing / Trade Credit*

In view of the discontinuance of London Interbank Offered Rate ("**LIBOR**") as the benchmark rate, the following changes to the all-in-cost benchmark, the ceiling for foreign currency denominated external commercial borrowing ("**FCY ECB**") and trade credit ("**FCY TC**") has been introduced:

- **Benchmark redefined**: Currently, the benchmark rate in case of FCY ECB and FCY TC is the 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing. Henceforth, the benchmark in case of FCY ECB and FCY TC will be any widely accepted interbank rate or alternative reference rate ("**ARR**") of 6-month tenor, applicable to the currency of borrowing.
- **Increase in all-in-cost ceiling for new FCY-ECB/ FCY-TC**: To take into account the differences in credit risk and term premia between LIBOR and ARRs, the all-in-cost ceiling for new FCY ECB and FCY TC has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.
- **One-time adjustment in all-in-cost ceiling for existing FCY-ECB/ FCY-TC**: To enable the smooth transition of existing FCY ECB/ FCY TC linked to LIBOR, whose benchmarks are changed to ARR, the all-in cost ceiling for such ECB/ TC has been revised upward by 100 basis points to 550 bps and 350 bps, respectively, over the ARR.

(RBI/2021-22/135 A.P. (DIR Series) Circular No. 19 dated December 08, 2021)

6. *Introduction of Legal Entity Identifier for Cross-border Transactions w.e.f. October 01, 2022*

- With effect from October 1, 2022, the AD Category I banks will be required to obtain a Legal Entity Identifier ("**LEI**") number from the resident entities (non-individuals) undertaking capital or current account transactions of ₹50 crore and above (per transaction), under the Foreign Exchange Management Act, 1999. LEI is a 20-digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems. As regards non-resident counterparts/ overseas entities, in case of non-availability of LEI information, AD Category I banks may process the transactions to avoid disruptions.

- LEI can be obtained from any of the local operating units, accredited by the Global Legal Entity Identifier Foundation, the body tasked to support the implementation and use of LEI. In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (https://www.ccilindia-lei.co.in), which is also recognised as an issuer of LEI by the RBI under the Payment and Settlement Systems Act, 2007. Once an entity has obtained an LEI number, it must be reported in all transactions of that entity, irrespective of transaction size.

(RBI/2021-22/137 A.P. (DIR Series) Circular No. 20 dated December 10, 2021)

7. *Clarification on Acquisition/ Transfer of Immovable Property in India by Overseas Citizen of India*

In response to the queries raised to the RBI, based on newspaper reports on the Supreme Court judgement dated February 26, 2021, in the matter of *Asha John Divianathan vs. Vikram Malhotra & Ors (Civil Appeal 9546 of 2010)*[15], the RBI has clarified that the concerned Supreme Court judgement was related to provisions of the Foreign Exchange Regulation Act, 1973, which has since been repealed under Section 49 of Foreign Exchange Management Act, 1999 ("**FEMA**"), and non-resident Indians/ overseas citizens of India are now governed by the provisions of FEMA. As such, non-resident Indians/ overseas citizens of India do not require prior approval of the RBI for acquisition and transfer of immovable property in India, other than agricultural land/ farm house/ plantation property, as per the terms and conditions laid down in Chapter IX of the NDI Rules (as amended from time to time), issued under Section 46 of FEMA.

(Press Release: 2021-2022/1439 dated December 29, 2021)

[15] Civil Appeal 9546 of 2010.

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