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Bombay High Court's Judgment in Invesco v Zee - A major boost for shareholders' rights in India

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Main stories

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

In this issue of *Insight*, as the lead article, we have covered the Bombay High Court's judgment in the *Invesco vs. Zee case*, from the point of view of corporate democracy. The judgment re-affirms the legislative intent behind having a single specialised forum (as opposed to civil courts) for adjudication of all company disputes and upholds the principles of speedy and effective exercise of shareholders' rights, without the interference of civil courts.

We have also set out the key amendments to related party transactions framework under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which came into effect from April 01, 2022.

Apart from the above, we have also captured the 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 Reserve Bank of India ("**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 them to cam.publications@cyrilshroff.com.

Regards,

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India's leading law firm

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Bombay High Court's Judgment in Invesco v Zee: A major boost for shareholders' rights in India

In a recent judgment pronounced in the *Invesco Developing Markets Fund v. Zee Entertainment Enterprises Limited*[1] ("**Judgment**"), on March 22, 2022, a Division Bench of the Bombay High Court ("**BHC**") allowed Invesco's appeal against a judgment dated October 26, 2021[2], which was passed by a Single Judge of the BHC (referred to hereinafter as the "**Impugned Order**"). This Impugned Order had granted an injunction, restraining Invesco from calling for and holding an extraordinary general meeting ("**EGM**") of Zee.

Factual background

The *Invesco v. Zee* dispute has its genesis in the requisition notice, dated September 11, 2021, issued by Invesco (which holds a 17.88% stake in Zee) under Section 100(2)(a) of the Companies Act, 2013 ("**Act**"), calling for an EGM of Zee ("**Requisition**"). Invesco had proposed the removal of three directors of Zee, including its Managing Director & CEO. The Requisition had also proposed the appointment of six independent directors on Zee's Board of Directors ("**Board**").

After Invesco filed a petition under Section 98 of the Act before the National Company Law Tribunal ("**NCLT**"), Mumbai, seeking an order that the requisitioned EGM be called and held, Zee was directed to consider the Requisition. On October 1, 2021, Zee rejected the Requisition as being invalid/ illegal and simultaneously filed a Suit and an Interim Application[3] therein before the BHC, *inter alia* seeking an injunction restraining Invesco from taking any action or step in furtherance of the Requisition, including calling for and holding the EGM under Section 100(4) of the Act. The Single Judge *vide* the Impugned Order granted Zee the injunction.

In this issue of Insight we examine the Judgment, which sets aside the Impugned Order and re-affirms the legislative intent behind the enactment of Section 430 of the Act *(i.e. there is an absolute bar on civil court jurisdiction in respect of matters which the NCLT or NCLAT is empowered to determine)*.

Analysis of the Judgment

On Sections 98 and 100 of the Act

In the Impugned Order, the Single Judge had concluded that the resolutions proposed by Invesco sought to bring about an *"illegality"*, which would result in a situation where Zee is in violation of multiple statutory compliance requirements. As per the Single Judge, the issue was not about the interpretation of the expression *"valid requisition"* under Section 100(4) of the Act, but about the Court's power to invalidate such requisitions, which were purportedly *'illegal'*.[4]

Setting aside these findings, the Division Bench of the BHC has held that on a plain and literal reading of Section 100(4), the expression *"valid requisition"* is restricted to ***numerical and procedural compliances*** with the requirements of Section 100, and nothing further.

The Division Bench relied upon the landmark decision of a Constitution Bench of the Supreme Court of India ("**SC**") in *LIC v. Escorts*[5], and the decision of the BHC in *Cricket Club of India v. Madhav L. Apte*[6] (in the context of Section 169(6) of the Companies Act, 1956, which broadly corresponds to Section 100(4) of the Act) to hold *inter alia* that:

(i) the word 'valid' had *no* reference to the 'object' of the requisition, but rather to the requirements in the Section itself;

1 *Appeal (L) No. 25420 of 2021 in IA (L) No. 22525 of 2021 in Suit (L) No. 22522 of 2021 with IA (L) No. 25423 of 2021.*
2 Zee Entertainment Enterprises Limited v. Invesco Developing Markets Fund [2021] 229 CompCas 540 (Bom).
3 *Suit (L) No. 22522 of 2021 with IA (L) No. 22525 of 2021.*
4 The Impugned Order at Para 53.
5 *(1986) 1 SCC 264, at Para 100.*
6 *[1975] 45 Comp Cas 574 (Bom).*

(ii) an eligible shareholder is not bound to disclose the reasons for the resolutions proposed to be moved at the requisitioned meeting;

(iii) the reasons provided are not subject to judicial review;

(iv) there is no discretion vested with the Board to sit in judgment over '*any matter*' to be placed for consideration at a requisitioned EGM;

(v) the Board has a mandatory obligation to call the EGM, if the procedural and numerical requirements specified under Section 100 are met;

(vi) the Act and/or its provisions pertaining to listed companies do not enable courts to deviate from the ratio set out in *LIC v Escorts* (which was rendered in the context of the 1956 Act); and

(vii) even if the requisition is illegal or invalid, the Board is still obliged to call for the meeting.

The Judgment further holds that unlike Section 303(5) of the English Companies Act, 2006[7], Section 100 of the Act does not contain any provision which provides that a resolution may be moved at a requisitioned meeting unless "*it would, if passed, be **ineffective***", and therefore, the principles enshrined in Section 303(5) of the English Companies Act, 2006, cannot be imported into Section 100 of the Act.

The Judgment specifically notes that the language used in Sections 98 and 100 of the Act aid corporate democracy and protect shareholders' rights, and that this intent and object of the legislature cannot be ignored whilst construing the relevant provisions of the Act.

Interpretation of Section 430 of the Act

Section 430 of the Act provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter, which the NCLT or the NCLAT is empowered to determine by or under the Act or any other law for the time being in force, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act, or any other law for the time being in force, by the NCLT or the NCLAT.

The Division Bench of the BHC has held that in the face of ***absolute bar*** *(on civil court jurisdiction)* contained in Section 430, the Impugned Order could not have granted an injunction against Invesco. The Bench further held that given the scheme of Sections 96-100 of the Act, the *Invesco v. Zee* dispute would squarely fall within the NCLT's jurisdiction. Since Invesco's case (to hold the EGM) is being considered as "*impracticable*", they are entitled to approach the NCLT under Section 98 for an order to do so. The Division Bench also held that a civil court has no authority to interfere with the jurisdiction of the NCLT, and in this case grant an injunction, which would effectively prevent the NCLT from considering Invesco's prayer.

Significantly, the Judgment set aside the Single Judge's finding to the effect that *"the NCLT Rules that set out the list of provisions over which the NCLT/ NCLAT have jurisdiction does not include Sections 100, 149, 150 or 168 [of the Act]"*[8]. The Division Bench held that the plain and simple language contained in Section 430 of the Act cannot be defeated by the NCLT Rules, 2016 ("**NCLT Rules**"), and/ or the Schedule of Fees provided thereunder; and that, in any case, the Schedule of Fees specifically provides for an application under Section 98, which Invesco has filed.

This re-affirms the position that the NCLT Rules and/ or the Schedule of Fees, being in the nature of delegated legislation, do not (and cannot) confer 'jurisdiction' on civil courts. The legislative intent of Section 430 is to grant exclusive jurisdiction to the NCLT/ NCLAT on all company law matters. Hence, civil courts would not have any 'residuary jurisdiction' over provisions of the Act that are not specifically covered under the Schedule of Fees.

Consequences of interfering with corporate democracy

The Division Bench also analysed the consequences of allowing civil courts, in certain cases, the authority to grant injunction restraining shareholders of a company from exercising their statutory right of calling for and holding an EGM. In this regard, the Judgment holds that a wrong precedent would be set where any unwilling Board of a company, which intends to obstruct its shareholder/(s) from calling for and holding an EGM, will resolve that the company file a civil suit.

Before the civil court, the company may pray for an injunction alleging *"resultant illegalities"* in the proposed resolutions. Till such time as adjudication of the *"illegalities"* is completed, to balance equities, the civil court will injunct the meeting. Any decision would then be subject to multiple rounds of appeal. This

[7] *Section 303(5) states that "A resolution may properly be moved at a meeting unless- a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise)".*
[8] *The Impugned Order, at Para 75.*

would, in turn, open litigation floodgates, where corporate democracy would be *"rendered nugatory"* and the purpose of the SC's decision in *LIC v. Escorts* would be lost and the very foundations of corporate democracy in India would be undermined. This is also apparent from the fact that Invesco has been unable to call for and hold an EGM for more than six months now. The Division Bench has thus held that they cannot lay down a precedent resulting in such drastic consequences, derailing the democratic functioning of companies across India, owing to the non-cooperative and obstructive conduct of the board of directors.

Key Takeaways

The Division Bench's Judgment is a much-awaited decision since it reinstates the settled legal position on corporate democracy in India. Litigants can no longer question the NCLT's jurisdiction to adjudicate questions arising out of Section 100 of the Act or other provisions such as Section 186 (inter-corporate loans and investments) and Section 188 (related party transactions) that are not explicitly covered under the NCLT Rules. Parallel proceedings (simultaneously before the NCLT and civil courts) cannot be initiated in corporate disputes, thereby re-affirming the legislative intent behind the enactment of Section 430, and the rationale behind having a **single specialised forum** for adjudication of all company disputes.

The Judgment conclusively determines the issue of whether civil courts may, in certain cases, have 'concurrent jurisdiction' to adjudicate disputes, which otherwise only the NCLT or the NCLAT are empowered to determine.

Perhaps the most significant takeaway from the Judgment[9] is its unequivocal re-affirmation to the principles of corporate democracy. The Division Bench has set aside the Single Judge's findings *"on all counts"*. This not only sends a strong positive signal to private equity, venture capital, institutional and other investors, but also reinforces speedy and effective exercise of shareholders' rights.

[9] *Invesco has issued a Press Statement dated March 23, 2022, which mentions that Invesco has decided not to pursue the EGM as per its Requisition dated September 11, 2021.*

Amendments to the regulatory framework governing Related Party Transactions

The Working Group on Related Party Transactions ("**Working Group**") released its recommendations on January 22, 2020 ("**RPT WG Report**"), to significantly tighten the regulatory framework under the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 ("**SEBI Listing Regulations**"), governing related party transactions ("**RPT**"). The underlying focus of the recommendations was to mitigate the possibility of abuse of RPT framework by promoters and controlling shareholders, since such incidents were on the rise in the recent past. Accordingly, the Working Group prescribed rigorous revisions to the existing processes of substantive and procedural review that the RPTs were subjected to, by basing its recommendations on the following principles:

1. ***Enhanced transparency:*** To maximise informed shareholder participation, the Working Group recommended *inter alia* the following information to be made available to the shareholders: (i) summary of information disclosed by the management to the audit committee, (ii) recommendation of the audit committee and whether it received unanimous approval, and (iii) valuation or other external report, if any, to be made available for inspection at the registered office.
2. ***Improved quality of information being made available to investors:*** To eliminate asymmetry in information and building upon the existing periodical disclosure requirements under the SEBI Listing Regulations and accounting standards, the Working Group recommended a standardised format of RPT disclosure to be filed with the stock exchanges every six months on the same date as of the publication of financial results.
3. ***Better approval processes by listed entities:*** The Working Group recommended various measures such as requirement of "prior" shareholders' approval for all material RPTs, lower materiality thresholds necessitating shareholders' approval, requirement of audit committee approval of listed company for RPTs undertaken by unlisted subsidiaries, even if listed company is not a party to such RPTs, etc.
4. ***Enhanced enforcement mechanisms:*** To ensure better monitoring of RPTs, the Working Group recommended that reporting of RPTs should be done in inline-XBRL format, which provides human-readable and machine-readable data, thereby allowing regulators to use data analytics to identify violations of regulatory norms.

Based on the above recommendations of the Working Group (with some modifications), the SEBI *vide* its notification dated November 09, 2021, notified the amendments to the RPT framework under the SEBI Listing Regulations with effect from April 01, 2022 ("**RPT Amendments**"). However, various industry bodies raised concerns regarding practical difficulties in their implementation.[10] No relaxations have been granted as of now.

As such, the RPT Amendments *inter alia* substantially enhance the scope of 'related party', 'related party transactions' and the 'materiality' threshold for seeking shareholders' approval, in line with the recommendations of the RPT WG Report (*albeit with some modifications*) and some of the critical amendments are summarised below.

Significant[11] shareholding as a determinant of related party

Prior to the RPT Amendments, 20% shareholding alone or the promoter status by itself did not characterise a party as a 'related party', unless both the requirements were conjunctively met. However, w.e.f. April 01, 2022, the definition of a related party has been widened to include any person or entity forming a part of the promoter or promoter group, irrespective of their shareholding, as well as any person or entity holding 20% or more of equity shares, either directly or *on a beneficial interest basis, at any time* during the immediately preceding financial year. This amendment is introduced to ensure that all persons who exercise significant influence over the decisions of a listed entity, whether on account of being a promoter or by virtue of their shareholding, should be brought within the ambit of 'related parties'.

In view of this change, the declarations made under Section 89 of the Companies Act, 2013, would need to be carefully evaluated to identify if a party has to be classified as a 'related party' on account of its beneficial interest in the company since the shareholding threshold is not restricted only to direct holdings anymore.

Further, to determine whether a person is a related party, his or her shareholding in the listed entity will have to be evaluated for the immediately preceding financial year to check if it exceeded the specified threshold ***at any time***. Therefore, if the shareholding of the person exceeded the threshold limit in the immediately preceding financial year and subsequently decreased during the said financial year or the current financial year, such person may still be treated as a related party,

[10] Industry raises concerns over SEBI's related party transaction norms <https://economictimes.indiatimes.com/markets/stocks/news/industry-raises-concerns-over-sebis-related-party-transaction-norms/articleshow/89647416.cms>

[11] *The RPT WG Report noted that the Working Group arrived at the 20% threshold for 'related party' classification basis the definition of 'significant influence' under the Companies Act, 2013 and the Indian Accounting Standards.*

irrespective of their shareholding in the current financial year. In view of this, the list of 'related parties' is likely to be an ever-evolving one, which would require robust monitoring on a yearly basis.

Enhanced scope of RPT

Prior to the amendment, a transaction undertaken only by a listed entity with its own related party was categorised as an RPT. Now, with the widened scope of RPT, transactions undertaken by the listed entity and its subsidiaries with their own related parties and also with each other's related parties will be included. It may happen that a related party of a subsidiary need not necessarily be a related party of the holding listed company and *vice versa*. However, the transactions undertaken by the subsidiary company with a related party of its holding listed company (*and vice versa*) would be construed as RPT under the SEBI LODR Regulations.

The intent of enhancing the scope of RPTs is to regulate the consolidated entity as a whole, by preventing subsidiaries from being used as a conduit for moving out from the consolidated entity the value/assets which rightfully belong to the shareholders of the listed entity.[12]

On account of this change, the listed entity has to take approval from its audit committee for RPTs undertaken by its unlisted[13] subsidiaries, if the value of such transaction with the related party, individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover, as per the last audited financial statements of the listed entity.

Lower materiality threshold

A transaction with a related party would now be considered "material" if the transaction entered into, whether individually or taken together with previous transactions during a financial year, exceeds: (i) INR 1,000 crore; or (ii) 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

Given that the definitions of 'related party' and 'related party transactions' stand changed as discussed above, it may happen that previous contracts which were neither 'related party transactions' nor 'material' for the listed entity may become 'material related party transactions' and thereby necessitating the requirement of obtaining prior approval of the shareholders of the listed entity.

In this regard, SEBI has clarified that an RPT under an existing contract, which has continued beyond April 01, 2022, and has become 'material' as per the revised materiality threshold, has to be placed before the shareholders in the first general meeting held after April 01, 2022.[14] As such, going forward, the listed entity would have to obtain prior shareholder approval for undertaking material RPTs under the existing long-term executory contracts entered into by the listed entity with a related party prior to April 01, 2022.

Prior shareholders' approval

All material related party transactions would now be subject to *prior* shareholder approval, as opposed to the erstwhile requirement of merely obtaining a shareholders' approval without the timing of such approval being specified.[15] Therefore, if the listed entity anticipates that the value of the RPTs with a related party are likely to exceed the materiality threshold during the financial year, an omnibus shareholders' approval for all such RPTs may be obtained: (i) at the beginning of such financial year itself if the materiality threshold is likely to exceed in the first half of the financial year; or (ii) at the annual general meeting ("**AGM**") if materiality threshold is likely to exceed in the second half of the financial year, as the case may be.

In this regard, SEBI has recently clarified that the omnibus shareholders' approval for continuing material RPTs shall be valid: (i) up to the date of the next AGM for a period not exceeding fifteen months, in case of RPTs approved in an AGM; and (ii) for a period not exceeding one year, in case of RPTs approved in general meetings other than AGM.[16] In view of this, in case of a contract with a related party where material RPTs are contemplated to be undertaken over the course of several financial years, such material RPTs would have to be placed before the shareholders for approval in each such financial year.

Conclusion

While the RPT Amendments are intended to raise the governance bar for listed entities to address practices of cash stripping, siphoning of funds and round tripping, listed entities will face practical difficulties in the near term as well as increased compliance costs. SEBI would need to provide necessary guidance and clarifications, as required to ease the compliance burden and aid implementation.

12 *Chapter 3 of the RPT WG Report.*
13 *Since listed subsidiaries are independently subject to the RPT framework under SEBI Listing Regulations, prior approval of the audit committee of the listed parent company is not required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party.*
14 *SEBI Circular SEBI/HO/CFD/CMD1/CIR/P/2022/40 dated March 30, 2022.*
15 *The RPT WG Report had recommended this amendment to make the requirement of shareholder approval consistent with the requirement of taking a prior audit committee approval for RPTs.*
16 *SEBI Circular SEBI/HO/CFD/CMD1/CIR/P/2022/47 dated April 08, 2022.*

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A. Amendments

1. *Amendment to Companies (Accounts) Rules, 2014*

   - The MCA has amended Rule 12 *(Filing of financial statements and fees to be paid thereon)* of the Companies (Accounts) Rules, 2014 ("**Accounts Rules**"), to add a new sub-rule mandating companies to furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards, as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be. Accordingly, new form CSR-2 regarding Report on Corporate Social Responsibility has been introduced.
   - For the preceding financial year i.e. FY2020-21, Form CSR-2 must be filed separately on or before May 31, 2022, after filing of Form AOC-4/ AOC-XBRL/ AOC-NBFC (Ind AS), as applicable.
   - Further, for the companies which use accounting software for maintaining its books of accounts, the timeline for migrating to an accounting software that has a feature of recording audit trail of each and every transaction and creating an edit log of each change made in the books of account, has been extended from April 01, 2022, to April 01, 2023.

(MCA Notification No. G.S.R 107(E) dated February 11, 2022 and MCA Notification No. G.S.R. 235(E) dated March 31, 2022)

2. *The Limited Liability Partnership (Amendment) Rules, 2022*

The Limited Liability Partnership Rules, 2009 ("**LLP Rules**"), have been amended with effect from April 01, 2022. Some key amendments are as follows:

- Rule 19(1) provided for changing the name of a limited liability partnership ("**LLP**") if it resembled the name of another LLP, body corporate or any other entity. The said rule has been amended to include within its ambit the proprietor of a registered trademark under the Trade Marks Act, 1999. Such a proprietor may apply to the regional director ("**RD**") to give direction to a subsequently incorporated LLP to change its name, if the name of such LLP is similar/ too nearly resembles the trademark or name of the proprietor. An application of a proprietor of a registered trademark in relation to the same shall be maintainable, if made within three years from the date of incorporation or registration or change of the name of LLP under the Limited Liability Partnership Act, 2008 ("**LLP Act**").
- Rule 19A has been introduced to prescribe the manner in which the new name of the LLP would be determined, where such an LLP fails to change its name in accordance with the directions issued by the RD under the LLP Act within the prescribed time period.
- Detailed provisions prescribing procedure on adjudication of penalties and appeals have been introduced in the LLP Rules.

(MCA Notification No. G.S.R 109(E) dated February 11, 2022)

3. *The Limited Liability Partnership (Second Amendment) Rules, 2022*

The LLP Rules have been further amended with effect from March 04, 2022, to provide for inter-alia the following key amendments:

- The number of Designated Partner Identification Number that can be applied for at the time of incorporation have been increased to 5 from 2, thereby allowing the appointment of 5 designated partners at the time of incorporation itself.
- Where either a corporate insolvency resolution process or liquidation has been initiated against an LLP under the Insolvency and Bankruptcy Code, 2016, or the LLP Act, the Statement of Account and Solvency and annual returns of such LLP can now be signed by an interim resolution professional, resolution professional, liquidator or LLP administrator, as the case may be, instead of the designated partner of the LLP.
- A web-based procedure for incorporation of LLPs has been introduced and accordingly all e-forms have been transitioned to web-based forms.

(MCA Notification No. G.S.R (E) dated March 04, 2022)

B. Circulars and Notifications

1. *Extension of exemptions under Competition Act, 2002*

- The MCA *vide* a gazette notification dated March 27, 2017, had exempted from the requirement of notifying to the Competition Commission of India ("**CCI**"), those combinations where the value of the assets being acquired, taken control off or merged, did not exceed INR 350 crore in assets in India or INR 1,000 crore in turnover in India ("**De-Minimis Exemption**"). The De-Minimis Exemption was valid for a period of 5 years from the date of such notification. Accordingly, the MCA *vide* its notification dated March 16, 2022, has now extended the De-Minimis Exemption for 5 more years, i.e., till March 28, 2027.
- The MCA *vide* a gazette notification dated June 29, 2017, had exempted every person or enterprise party to a

combination, as referred to under Section 5 of the Competition Act, 2002 ("**Competition Act**"), from giving notice within 30 days *(as mandated under Section 6(2))*, subject to compliance with provisions of Section 6(2A) and Section 43A of the Competition Act. This exemption has been extended by another 5 years and is now valid till June 30, 2027.

(MCA Notification No. S.O. 1192(E) dated March 16, 2022 and MCA Notification No. S.O. 1193(E) dated March 16, 2022)

2. *Provisions of Companies Act, 2013, made applicable to LLPs, with suitable modification*

Pursuant to powers under Section 67 of the LLP Act, the following provisions of the Companies Act, 2013, have been made applicable to LLPs with necessary modifications: (i) Section 90 *(Register of significant beneficial owners)*; (ii) Section 164 *(Disqualifications for appointment of directors)*; (iii) Section 165 *(Number of directorships)*; (iv) Section 167 *(Vacation of office of director)*; (v) Section 206(5) *(Inspection of books)*; (vi) Section 207(3) *(Conduct of inspection and inquiry)*; (vii) Section 252 *(Appeal to NCLT)*; and (viii) Section 439 *(Offences to be non-cognizable)*.

(MCA Notification No. G.S.R 110(E) dated February 11, 2022)

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A. Amendments

1. *Amendment to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018*

   SEBI has *vide* notification dated January 14, 2022 ("**Notification**"), amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**SEBI ICDR Regulations**"). For some of the key amendments which have been introduced to SEBI ICDR Regulations, please see "*Insight - Special Edition on Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022*" issued on January 19, 2022.

   (Notification No. SEBI/LAD-NRO/GN/2022/63 dated January 14, 2022)

2. *Amendment to SEBI (Credit Rating Agencies) Regulations, 1999*

   In terms of SEBI (Credit Rating Agencies) Regulations, 1999 ("**SEBI CRA Regulations**"), a credit rating agency is not permitted to carry out any activity other than rating of the securities which are listed or proposed to be listed on the stock exchanges or a financial instrument as governed by the financial sector regulator or authorised by SEBI. Pursuant to an amendment to the SEBI ICDR Regulations, credit rating agencies have now been authorised to act as monitoring agents for an initial public offering of securities. Accordingly, SEBI has created an exception to the aforementioned condition of SEBI CRA Regulations, whereby a credit rating agency is now authorised to carry out any activity which may be permitted by SEBI in addition to rating of the securities or financial instruments.

   (Notification No. SEBI/LAD-NRO/GN/2022/69 dated January 24, 2022)

3. *Amendment to the SEBI Listing Regulations*

   SEBI has *vide* notification dated January 24, 2022, amended the SEBI Listing Regulations, and has introduced provisions relating to the appointment or re-appointment of persons who fail to get elected as directors, including as whole-time directors or managing directors or managers, at the general meeting of a listed entity. Some of the key amendments are set out below:

   - a listed entity will have to take shareholder approval for appointment of a manager at the next general meeting or within three months from the date of appointment, whichever is earlier. The requirement was earlier applicable only for appointment of a person on the board of directors;
   - the appointment or re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, will only be appointed or re-appointed with prior approval of shareholders;
   - a listed entity is now required to place the monitoring agency report before the audit committee quarterly, instead of annually;
   - requests for effecting transfer of securities will not be processed unless the securities are held in the dematerialised form with a depository and the transmission or transposition of securities held in physical or dematerialised form shall only be effected in dematerialised form; and
   - upon receipt of proper documentation, the listed entity will ensure that transmission requests are processed for

securities within 7 days after receipt of the specified documents.

(Notification No. SEBI/LAD-NRO/GN/2022/66 dated January 24, 2022)

4. *Amendment to the SEBI (Depositories and Participants) Regulations, 2018*

SEBI has, *vide* notification dated February 23, 2022, amended the SEBI (Depositories and Participants) Regulations, 2018, clarifying that a stock broker who has been granted a certificate by SEBI to act as a participant shall have a net worth of Rs 3 crore from the date of this notification, which shall be increased to Rs 5 crore within two years from the date of this notification. Further, in terms of the amendment notification, a self-clearing member fulfilling the net worth requirements as provided under the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992, shall also be eligible to register as a depository participant.

(Notification No. SEBI/LAD-NRO/GN/2022/74 dated February 23, 2022)

5. *Amendments to SEBI (Alternative Investment Fund) Regulations, 2012*

SEBI has amended the SEBI (Alternative Investment Fund) Regulations, 2012 ("**AIF Regulations**"), to provide revised investment limits for Category III Alternative Investment Funds ("**AIFs**"), as below:

- Category III AIFs shall not invest more than 10% of the investable funds in an investee company, directly or through investment units of other AIFs. However, in case of investment in listed equity of an investee company, this investment limit may be calculated as 10% of either the investable funds or the net asset value of the scheme.
- The large value funds for accredited investors of Category III AIFs may invest up to 20% of the investable funds in an investee company, directly or through investment units of other AIFs. However, in case of investment in listed equity of an investee company, this investment limit may be calculated as 20% of either the investable funds or the net asset value of the scheme.

(Notification No. SEBI/LAD-NRO/GN/2022/75 dated March 16, 2022)

6. *Separation of role of chairperson and managing director or chief executive officer made optional*

SEBI has *vide* notification dated March 22, 2022, amended the SEBI Listing Regulations, relaxing the requirement to

separate the roles of chairperson and managing director or chief executive officer of a company. Accordingly, the mandatory requirement for top 500 listed entities to ensure that a chairperson of the board of directors is a non-executive director and not related to the managing director or the chief executive officer with effect from April 1, 2022, has been omitted and made discretionary.

(Notification No. SEBI/ LAD-NRO/GN/2022/76 dated March 22, 2022)

B. Circulars

1. *Advice to recognised stock exchanges to increase awareness regarding online mechanisms for investor grievance redressal*

SEBI has issued a circular advising all recognised stock exchanges, including commodity derivatives exchanges, depositories and clearing corporations, to facilitate and increase awareness on online mechanisms for investor grievance redressal, so that investors are encouraged to lodge their complaints through online mechanisms such as the SCORES portal and the SCORES mobile application. SEBI has further advised them to display the following links on the home page of their websites and mobile apps:

- the link or option to lodge a complaint with them directly; and
- the link to the SCORES website or the link to download the SCORES mobile app.

(SEBI Circular No. SEBI/HO/MRD1/MRD1_ICC1/P/CIR/2022/05 dated January 5, 2022)

2. *Disclosure obligations for related party transactions made applicable to high value debt listed entities*

SEBI had earlier amended Regulation 23 of the SEBI Listing Regulations, making it mandatory for entities, which have listed specified securities to disclose RPT to the stock exchanges in the specified format, and *vide* circular no. SEBI/HO/CFD/CMD1/CIR/P/2021/662, dated November 22, 2021 ("**November Circular**"), specified certain disclosure obligations concerning listed entities pertaining to RPT, including (i) the information to be reviewed by the audit committee for approval of RPTs; (ii) information to be provided to shareholders for consideration of RPT and; (iii) format for reporting of RPT to the stock exchanges. SEBI has now widened the scope of the November Circular by making it applicable to high value debt listed entities as well.

The provisions of this circular came into effect on January 7, 2022.

(SEBI Circular No. SEBI/ HO/ DDHS/ DDHS_Div1/ P/ CIR/ 2022/ 0000000006 dated January 7, 2022)

3. *Clarification in relation to circulars on Schemes of Arrangement by Listed Entities*

SEBI has issued the following clarifications regarding the requirement to obtain no-objection certificate ("**NOC**") from lenders in terms of Master Circular No. SEBI/ HO/ CFD/ DIL1/ CIR/ P/ 2020/ 249, dated December 22, 2020 ("**Scheme Master Circular**"), as amended, dealing with schemes of arrangement by listed entities (amendments to the Scheme Master Circular were covered in our *previous issue dated February 11, 2022*):

- ***NOC from secured creditors:*** The NOC is required to be obtained, in terms of Part I, Para A.2(k) of the Scheme Master Circular, from not less than 75% of the secured creditors in value. This clarification shall be applicable to all schemes filed with the stock exchanges, with retrospective effect from November 16, 2021. The Scheme Master Circular initially only provided for submission of NOC from lending scheduled commercial banks/ financial institutions/ debenture trustees, without specifying the 75% threshold requirement.
- ***Timing of NOC:*** The aforesaid NOC obtained from the secured creditors shall be submitted to the stock exchanges before the receipt of the no-objection letter from stock exchanges.

(SEBI Circular No. SEBI/HO/CFD/SSEP/CIR/P/2022/003 dated January 03, 2022, read with SEBI Circular No. SEBI/HO/ CFD/DIL2/CIR/P/2022/11 dated February 01, 2022)

4. *Issuance of Securities in dematerialised form in case of Investor Service Requests*

- As an on-going measure to further improve ease of dealing in the securities markets for investors, SEBI has made it mandatory for listed companies to issue securities in dematerialised form, while processing the following investor service requests:
  - (i) Issue of duplicate securities certificate;
  - (ii) Claim from Unclaimed Suspense Account;
  - (iii) Renewal/ Exchange of securities certificate;
  - (iv) Endorsement;
  - (v) Sub-division/ Splitting/ Consolidation of securities certificate;
  - (vi) Transmission/ Transposition.
- The issuer companies and the registrar and transfer agents ("**RTAs**") have to host Form ISR-4 *(as prescribed by SEBI)* on their website, which shall be submitted by the securities holder/ claimant while making the aforesaid service request(s).
- The RTAs/ issuer company shall issue a 'letter of confirmation' in lieu of physical securities certificate(s), to the securities holder/ claimant within 30 days of receipt of such request. Such 'letter of confirmation' shall be valid for 120 days, within which the securities holder/ claimant shall make a request to the depository participant for dematerialising the said securities. In case the securities holder/ claimant fails to submit the demat request within the aforesaid period, the RTA/ issuer companies shall credit the securities to the Suspense Escrow Demat Account of the issuer company.

(SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/8 dated January 25, 2022)

5. *Process for change in control of Asset Management Company/ Sponsor and/ or Manager of AIF involving scheme of arrangement*

- In order to streamline the process of providing approval to the proposed change in control of an asset management company ("**AMC**"), involving scheme of arrangement which needs sanction of the NCLT in terms of the provisions of Companies Act 2013, SEBI *vide* its circular dated January 31, 2022 ("**AMC Circular**"), has prescribed the following process:

(i) the application seeking change in control of the AMC under the SEBI (Mutual Fund) Regulation, 1996, shall be filed with SEBI prior to the application with NCLT;

(ii) upon being satisfied of compliance to applicable regulatory requirements, SEBI may grant an in-principle approval, which will be valid for 3 months within which the relevant application shall be made to NCLT;

(iii) within 15 days from the date of order of NCLT, the applicant shall submit the prescribed documents with SEBI, seeking final approval for such change in control.

- The AMC Circular shall be applicable to all applications for change in control of AMC for which the scheme(s) of arrangement are filed with NCLT on or after March 01, 2022.
- SEBI *vide* its circular dated March 23, 2022 ("**AIF Circular**"), has prescribed the same process to be followed in case of change in control of sponsor and/ or manager of the AIF under the AIF Regulations, involving scheme of arrangement which needs sanction of NCLT. The AIF Circular shall be applicable to all applications for change in control of sponsor and/ or manager of the AIF for which the scheme(s) of arrangement is filed with NCLT on or after April 01, 2022.

(SEBI Circular No. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2022/10 dated January 31, 2022 and SEBI Circular No. SEBI/HO/IMD-1/ DF9/CIR/2022/032 dated March 23, 2022)

6. *Automation of disclosure requirements under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011*

- SEBI *vide* its circular dated March 07, 2022, in relation to the implementation of system driven disclosures ("**SDD Circular**"), has done away with the manual filing for transactions undertaken in the depository system under Regulation 29 and Regulation 31 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations**"), except in the following cases:

(i) in case the disclosure requirement is triggered due to acquisition or disposal of shares, as the case may be, by the acquirer together with persons acting in concert ("**PACs**");

(ii) triggering of disclosure requirement in case the shares are held in physical form by the acquirer and/or PACs; and

(iii) listed companies that have not provided PAN of promoter(s), including member(s) of the promoter group, to the designated depository or companies that have not appointed any depository as their designated depository.

- To streamline the capture and dissemination of information related to "encumbrances", the SDD Circular further prescribes the following:

(i) all types of encumbrances as defined under Regulation 28(3) of Takeover Regulations to be necessarily recorded in the depository system;

(ii) the depositories to capture details of the ultimate lender, along with name of the trustee acting on behalf of such ultimate lender such as banks, NBFCs, etc. In case of issuance of debentures, name of the debenture issuer must be captured in the depository system;

(iii) the depositories to now capture the reasons for encumbrances in the depository system; and

(iv) the depositories to devise an appropriate mechanism to record all types of outstanding encumbrances in the depository system by June 30, 2022.

- The provisions of the SDD Circular shall come into effect from July 01, 2022.

(SEBI Circular No. SEBI/HO/CFD/DCR-3/P/CIR/2022/27 dated February 1, 2022)

7. *Disclosures in the abridged prospectus and front cover page of the offer document in initial public offerings*

SEBI has revised the format for disclosures on the front cover page and the abridged prospectus *vide* its circular dated February 4, 2022 ("**Circular**"). The Circular requires the issuer company and the book running lead managers to ensure that the disclosures in the abridged prospectus are adequate, accurate and not misleading. In terms of the Circular, a copy of the abridged prospectus is required to be made available on the websites of the issuer company, the book running lead managers and the registrar to the issue, respectively, and a link for downloading the same is required to be included in the price band advertisement. Further, qualitative statements in the abridged prospectus are required to be substantiated with key performance indicators and other quantitative factors. Additionally, among others, a quick response (QR) code is required to be included on the front page of the documents, such as front the cover page, abridged prospectus, price band advertisement, etc., which

should lead to downloading of prospectus, abridged prospectus and price band advertisement, as applicable. The Circular is applicable to all issues opening after February 4, 2022.

(SEBI Circular No. SEBI/HO/CFD/SSEP/CIR/P/2022/14 dated February 4, 2022)

8. *Guidelines on accounting with respect to Indian Accounting Standards*

Pursuant to an amendment to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 ("**MF Regulations**"), SEBI mandated the asset management companies ("**AMCs**") to prepare its financial statements and accounts of mutual fund schemes in accordance with Indian Accounting Standards ("**IND AS**") and any addendum thereto, as notified by the Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time. SEBI has now prescribed certain requirements to be followed by the AMCs while preparing the financial statements. Some of the key requirements are as follows:

- The opening balance sheet shall be prepared as on the date of transition and the comparatives as per the requirements of the IND AS.
- As per the MF Regulations, perspective historical per unit statistics required disclosure of scheme wise per unit statistics for the past three years. However, with the adoption of IND AS, while the mutual funds have been permitted to not restate the previous year's published perspective historical per unit statistics as per requirement of IND AS for the first two years from the date of adoption of IND AS, following additional information shall be given:
  - (i) Labelling of previous Generally Accepted Accounting Principles information prominently if they are not prepared in accordance with IND AS;
  - (ii) Although no quantification of adjustments is required, the nature of such adjustments shall be disclosed, which will make the financial statements compliant with the IND AS;
- The financial statements shall have to be prepared in accordance with the formats specified in the SEBI circular.

(SEBI Circular No. SEBI/HO/IMD-II/DOF8/P/CIR/2022/12 dated February 4, 2022)

9. *Guidelines for conversion of a private listed infrastructure investment trust to a public infrastructure investment trust*

SEBI has issued guidelines for the conversion of a private listed infrastructure investment trust ("**InvIT**") to a public InvIT. The conversion may be done upon undertaking public issue of units, comprising a fresh issue of units and/ or an offer for sale of units, in compliance with the requirements for initial offer through a public issue under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations**") and circulars issued thereunder.

The key provisions of the circular are set out below:

- ***Conditions for issuance:*** A private listed InvIT is required to fulfil the following conditions for purposes of conversion:
  - (i) InvIT assets must satisfy the conditions specified in Regulation 18(5) of InvIT Regulations;

(ii) InvIT must be compliant with applicable obligations and disclosure requirements for private listed InvITs, since the date of its listing or the preceding three years, whichever is less;

(iii) InvIT must have not defaulted in making any distribution since listing of its units since the date of its listing or the preceding three years, whichever is less;

(iv) InvIT must be compliant with Regulation 16(6) and 16(7) of the InvIT Regulations, as applicable to a private listed InvIT; and

(v) InvIT must have obtained approval from 75% of its unitholders by value.

The conditions mentioned above are in addition to the conditions applicable for initial offer through public issue of units under the InvIT Regulations and any circular issued thereunder.

- ***Offer for sale:*** Units held by an existing unitholder may be offered for sale in a public issue if such units have been held by the sellers for a period of at least one year prior to the filing of the draft offer document. Such units must be free from any encumbrance or lock-in on the date of filing of the draft offer document with SEBI.

- ***Lock-In:***

(i) Minimum sponsor(s) contribution for private placement of units shall be 15% of the units issued through the public issue or to the extent of 15% of the post-issue capital. Such units shall be locked-in for a period of eighteen months from the date of listing of units allotted through the public offer.

(ii) In the event the project manager of the InvIT is not a sponsor of the InvIT or an associate of the sponsor, the minimum sponsor(s) contribution for the public issue of units shall be 25% of the units issued through the public issue or to the extent of 25% of the post-issue capital.

(iii) Units held by the sponsor(s) in excess of minimum sponsor contribution, will be locked-in for a period of one year from the date of listing of units allotted through the public issue.

(iv) Units held prior to the issue, by persons other than the sponsor(s), shall be locked in for a period one year from the date of listing of units allotted through the public issue.

- The maximum subscription from any investor other than sponsor(s), its related parties and its associates, in the offer shall not be more than 25% of the total unit capital on post-issue basis.

- In addition to the disclosures mandated in terms of Schedule III of the InvIT Regulations and any circulars issued for the purpose, the InvIT shall disclose the following:

(i) Details of distributions made by the InvIT; and

(ii) Comparison of actual performance *vis-à-vis* the projections made in the placement memorandum at the time of initial offer.

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/15 dated February 9, 2022)

10. <u>*Guidelines for conversion of private unlisted InvIT to private listed InvIT*</u>

SEBI has issued guidelines for the conversion of a private unlisted InvIT to a private listed InvIT. The conversion may be done upon undertaking a private placement of units, comprising a fresh issue of units and/ or an offer for sale of units, in compliance with the requirements for initial offer through a private placement of units under the InvIT Regulations and circulars issued thereunder.

The key provisions of the circular are set out below:

- ***Conditions for issuance:*** A private unlisted InvIT is required to fulfil the following conditions for purposes of conversion:

(i) InvIT assets must satisfy the conditions specified under Regulation 18(4) of the InvIT Regulations;

(ii) InvIT is compliant with applicable obligations and disclosure requirements for private unlisted InvIT since the date of issuance of its unlisted units or preceding three years, whichever is less;

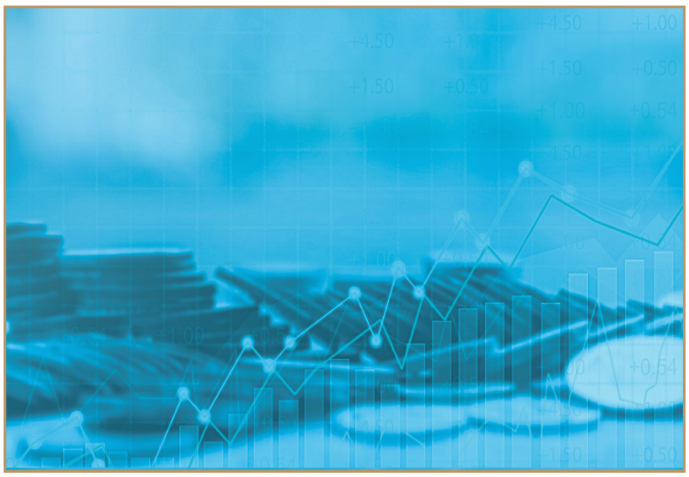
(iii) InvIT must have not defaulted in making any distributions since issuance of its unlisted units since the date of issuance of the unlisted units or preceding three years, whichever is less; and

(iv) InvIT must have obtained approval from 75% of the unitholders by value.

The conditions mentioned above are in addition to the conditions applicable for initial offer through private placement of units under the InvIT Regulations and any circular issued thereunder.

- ***Offer for Sale:*** Units held by an existing unitholder in a private unlisted InvIT can be offered for sale in a private placement if such units have been held by the sellers for a period of at least one year prior to the filing of the draft placement memorandum. Such units must be free from any encumbrance or lock-in on the date of filing of draft placement memorandum with SEBI.
- ***Lock-In:***
  - (i) Minimum sponsor(s) contribution for the private placement of units shall be 15% of the units issued through private placement or to the extent of 15% of the post-issue capital. Such units shall be locked-in for a period of three years from the date of listing of units allotted through such private placement.
  - (ii) In the event the project manager of the InvIT is not a sponsor of the InvIT or an associate of the sponsor, the minimum sponsor(s) contribution for the private placement of units shall be 25% of the units issued through the private placement or to the extent of 25% of the post-issue capital.
  - (iii) Units held by the sponsor(s) in excess of minimum sponsor contribution, will be locked-in for a period of one year from the date of listing of units allotted through the private placement.
  - (iv) Units held prior to the issue, by persons other than the sponsor(s), shall be locked in for a period one year from the date of listing of units allotted through the private placement.
- The maximum subscription from any investor other than sponsor(s), its related parties and its associates, in the offer shall not be more than 25% of the total unit capital on post-issue basis.
- In addition to the disclosures mandated in terms of Schedule III of the InvIT Regulations and any circulars issued for the purpose, the InvIT shall disclose the following:
  - (i) Details of distributions made by the InvIT; and
  - (ii) Comparison of actual performance vis-à-vis the projections made in the placement memorandum at the time of initial offer.

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/16 dated February 9, 2022)



11. *Review of the extent of free access to usage of data provided in the public domain*

SEBI has reviewed the extent of free access to the usage of data available in the public domain and has clarified that as far as the data is provided by various data sources in the Indian securities markets, pursuant to regulatory mandates for reporting and disclosure in the public domain, such data should be made available to users 'free of charge', both for viewing and downloading in the formats specified by the regulatory mandates for reporting, as well as their usage for value addition purposes.

(SEBI Circular No. SEBI/HO/DEPA-III/DEPA-III_SSU/P/CIR/2022/25 dated February 25, 2022)

12. *Further relaxation to market participants for compliance with regulatory requirements in respect of certain service requests*

SEBI has *vide* circular dated February 25, 2022 ("**Circular**"), granted further relaxation till June 30, 2022 (in view of the Covid-19 situation), to intermediaries and market participants to ensure adherence to the timelines provided in the circular dated April 29, 2021, for certain service requests. Accordingly, intermediaries and market participants may take additional 30 days over the prescribed timelines for completion of the following service requests:

- processing of remat requests;
- processing of transmission requests;

- processing of request for issue of duplicate share certificates;
- processing of requests for name deletion/ name change /transposition;
- processing of requests for consolidation/ split/ replacement of share certificates/ amalgamation of folios;
- handling investor correspondence/ grievances /SCORES complaints; and
- processing of demat requests.

(SEBI Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/26 dated February 25, 2022)

13. *Revision of UPI limits for investors applying in public issues of debt securities through the UPI mechanism*

SEBI had *vide* circular dated August 10, 2021, laid down the procedure for issue and listing of debt securities, *inter alia*, providing an option to investors to apply in debt securities by blocking funds through UPI mechanism for an application value of up to Rs 2 lakh. Subsequently, National Payments Corporation of India, *vide* circular dated December 9, 2021, had enhanced the per transaction limit through UPI from Rs 2 lakh to Rs 5 lakh. To bring uniformity, SEBI has now increased the investment limit for investors applying in public issues of debt securities through the UPI mechanism from Rs 2 lakhs per application to Rs 5 lakhs per application. The increase in investment limits shall be applicable to public issues of debt securities opening on or after May 1, 2022.

(SEBI Circular No. SEBI/HO/DDHS/P/CIR/2022/0028 dated March 8, 2022)

14. *Amendment to the operational circular dated August 10, 2021, for issue and listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper*

SEBI has amended chapter-XIV of the operational circular dated August 10, 2021 ("**Operational Circular**"), which mandated depositories and stock exchanges to host, create and maintain, a centralised database of corporate bonds, which are held in dematerialised form. The annexure to Chapter-XIV provides the list of data fields to be submitted by the issuer to depositories, at the time of allotting the ISIN. To bring more uniformity and clarity in the classifications used across sectors, SEBI has adopted a harmonised four level industry classification framework, as suggested by the Market Data Advisory Committee and amended Chapter XIV and annexures related to such chapter. The amendments introduced by way of circular, include, (i) submission of information required within 30 days from the end of the financial year, instead of the earlier requirement on periodical and/ or "as and when basis"; (ii) deletion of (type of issuer - based on nature of business) under Instrument/ Issuer classification in Clause 8 (b) of Annexure XIV-A; and (iii) revision in format of table in Clause 9 of Annexure XIV-A (based on business sector).

The provisions of this circular are applicable to all issuances of debt securities, which open on or after April 1, 2022.

(SEBI Circular No. SEBI/HO/DDHS/P/CIR/2021/031 dated March 22, 2022)

C. Consultation Papers

1. *Consultation paper on Environmental, Social and Governance (ESG) Rating Providers for Securities Markets*

   SEBI has issued a consultation paper on 'Environmental, Social and Governance ("**ESG**") Rating Providers for Securities Markets' on a proposed regulatory framework to regulate ESG ratings providers ("**ERP**"). Some of the key proposals put forth in the consultation paper by SEBI are as follows:

   - ***Proposed scope of regulation/ accreditation:*** SEBI has proposed to accredit ERPs for the purpose of assigning ESG ratings to listed entities and listed securities. Listed entities, intending to avail an ESG rating, shall obtain the same from a SEBI accredited ERP only. Further, SEBI registered entities engaged in fund-based investment activities such as mutual funds or alternative investment funds, desirous of using third-party ESG ratings as part of their decision making process for investing in Indian securities, shall avail services of SEBI accredited ERPs and any passive funds launched by these entities shall be based on ESG related indices, which use ratings of SEBI accredited ERPs only.
   - ***Eligible entities:*** SEBI registered credit rating agencies and research analysts are proposed to be considered eligible to be accredited by SEBI as ERPs, subject to fulfilment of eligibility criteria.
   - ***Eligibility criteria:*** An ERP should have adequate infrastructure to provide such ESG ratings, which would indicate its seriousness of intent in setting up the business and also inspire confidence. Some of the criteria proposed by SEBI include a minimum net worth of Rs 10 crore, as per the latest audited financial statements (this requirement would be in addition to the applicable minimum net worth requirement for the entity as CRA/ RA), ERP shall have infrastructure and technical know-how to undertake ESG rating mandates, at least one specialist shall be required in the field of data analytics, sustainability, finance, information technology and law and an applicant should be a 'fit and proper person' as stated in Schedule II of SEBI (Intermediaries) Regulations, 2008.
   - ***ESG Rating products:*** The most common type of ESG rating are ESG Risk ratings, which are an assessment of a company's resilience to ESG related risks, which assess the impact of social or environmental issues on the company's enterprise value; and ESG Impact ratings, which are an assessment of the positive and negative impact of companies on the environment and society, along with an assessment of their corporate governance profiles.
   - ***ESG Rating process:*** An ERP shall follow a proper rating process and ensure consistency in application of its methodology for the same product (as publicly disclosed) across ESG ratings assigned by it. The ERP shall have a reasonable and adequate basis for performing rating evaluations, with the support of appropriate and in-depth rating research, along with the maintenance of records for its decisions.
   - ***Proposed business model:*** SEBI has proposed a 'subscriber pay' model for ERPs, in comparison to the 'issuer pay' model to minimise the conflict of interest that arises in the latter model.

Comments were to be sent latest by April 10, 2022.

(Consultation Paper on Environmental, Social and Governance (ESG) Rating Provider for Securities Markets dated January 24, 2022)

2. *Consultation paper on disclosures for 'Basis of Issue Price' section in the offer documents*

By way of consultation paper dated February 18, 2022 ("**Consultation Paper**"), SEBI has sought public comments on the provisions relating to disclosures under the *'Basis of Issue Price'* section in the offer document.

Apart from disclosing the financial ratios as per the extant requirements, SEBI has proposed that disclosures related to key performance indicators ("**KPIs**") of the business of the issuer company that have been considered or have a bearing in arriving at the basis of issue price shall also be disclosed. The proposals include, *inter alia*, the following:

- disclosure of relevant KPIs shared with any pre-IPO investors during the three years prior to the IPO, along with an explanation on contribution of these KPIs to form the basis for issue price;
- providing an explanation for those KPIs that the issuer company deem non-relevant for the IPO;
- certification/ audit of the KPIs by statutory auditors; and
- disclosure of comparison of KPIs with Indian or global listed peer companies in the offer document, and comparison of KPIs over time should be explained.

The Consultation Paper also provides proposal for an 18 months look back period of past transactions for the valuation of an issuer company and disclosures of valuation based on such transactions.

(Consultation Paper on Disclosures for 'Basis of Issue Price' section in offer document under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 dated February 18, 2022)

3. *Proposal to change the timelines of procedural activities under Takeover Regulations and Buyback Regulations*

Considering the technological advancements in digital and fintech and changes made in the manner of tendering and settlement of shares, SEBI in its consultation paper dated March 25, 2022, has proposed changes in the timelines of procedural activities under the Takeover Regulations and the SEBI (Buyback of Securities) Regulations, 2018 ("**Buy-back Regulations**"). The proposed changes would help reduce the overall time taken for completion of an open offer under the Takeover Regulations from 62 working days to 42, and overall time for completion of buyback under the Buyback Regulations from 43 working days to 36. The consultation paper includes the following key proposals:

- ***Proposals under Takeover Regulations***

  (i) The time period provided to the acquirer for publishing of detailed public statement ("**DPS**") from the date of public announcement ('**PA**") to be reduced to 3 working days from 5. The requirement of submission of draft letter of offer ("**DLOF**") to SEBI within 5 working days from the DPS to be changed to 5 working days from the date of PA, i.e. 2 working days from the date of DPS. Further, the deposit of money in the escrow account may be linked to filing of the DLOF with SEBI, instead of DPS as is the case currently.

  (ii) The time for dispatch of letter of offer to be reduced to 5 working days, from 7 working days, from the date of receipt of SEBI comments/ expiry period in case no comment is received from SEBI.

  (iii) Tendering period to start not later than 10 working days *(as against the current time-period of 12 working days)* from date of receipt of comments from the Board and remain open for 5 working days *(as against the current time-period of 10 working days)*.

  (iv) The period for payment of consideration to be reduced to 5 working days, as against the current 10 working days from the closure of tendering period.

  (v) Post-offer PA may be made within 2 working days *(as against the current time-period of 5 working days)* from the expiry of the offer period.

- ***SEBI (Buy Back of Shares) Regulations, 2018***

  (i) The tendering period to remain open for 5 working days *(instead of current time-period of 10 working days)*.

  (ii) The period for payment of consideration to be reduced to 5 working days as against the current time-period of 10 working days from the closure of tendering period.

(Consultation Paper dated March 25, 2022)

4. *Proposal to relax certain provisions under the Takeover Regulations, regarding determination of open offer price in case of divestment of Public Sector Undertaking*

SEBI in its consultation paper dated March 25, 2022, has proposed to relax certain provisions of Takeover Regulations,

with regard to determination of open offer price in case of divestment of PSU, considering the fact that strategic divestment of public sector undertakings ("**PSUs**") is at variance with privately executed agreements. The consultation paper includes the following proposals:

- Dispensing with the requirement of 60 days' volume weighted average market price-based parameter for calculation of offer price, in case of disinvestment of PSUs.
- Dispensing with the requirement of 60 days' volume weighted average market price-based parameter for calculation of offer price for indirect acquisition, in case PSUs have stake in other company/ies and due to such disinvestment, an indirect acquisition is triggered; and
- Disclosure of the upfront negotiated price by the acquirer for both direct acquisitions as well for indirect acquisitions.

(Consultation Paper dated March 25, 2022)

D. Informal Guidance

1. *Informal Guidance in relation to the provisions of the InvIT Regulations*

An informal guidance was sought from SEBI on (i) whether build, own, operate and transfer model ("**BOOT**") for smart meters will fall within the ambit of the definitions of "infrastructure" and "infrastructure project" as stated in the InvIT Regulations; (ii) whether sub-contracting activities under the BOOT model for smart meters, would be covered under the definition of "infrastructure" under Regulation 2(1)(t) of the InvIT Regulations, read with the Ministry of Finance notification dated October 7, 2013, as amended ("**MoF Notification**"); and (iii) whether BOOT model for smart meters would be covered under the "social and commercial infrastructure" sector, as mentioned in the MoF Notification, given that it helps the Government ensure lowest human intervention in electricity supply, thereby safeguarding public interest.

SEBI referred to the provisions under InvIT Regulations and stated that (i) the BOOT model for smart meters cannot be considered as " infrastructure sub-sectors" as per Regulation 2(1)(t) of InvIT Regulations and the MoF Notification on the same; (ii) since BOOT model for smart meters does not fall within the definition of "infrastructure", there is no need to consider whether sub-contracting activities under the BOOT model for smart meters would be covered under the definition of "infrastructure" under Regulation 2(1)(t) of the InvIT Regulations, read with the relevant notifications; and (iii) as per the MoF Notification, the infrastructure sub-sectors mentioned against the category "social and commercial infrastructure" does not include "BOOT model for smart meters" or "smart meters". Therefore "BOOT model for smart meters" or "smart meters" are not covered under the category "social and commercial infrastructure" and the same is not covered under the definition of "infrastructure" under Regulation 2(1)(t) of the InvIT Regulations.

(SEBI Informal Guidance No. SEBI/HO/DDHS/DDHS_Div3/P/OW/2021/33500/1 dated November 23, 2021 and published on February 24, 2022)

2. *Informal guidance on whether a large volume of transfer of shares by way of gift would constitute a deemed public offer in terms of Chapter III (Prospectus and Allotment of Securities) – Part I (Public Offer) of Companies Act, 2013,*

An informal guidance was sought from SEBI under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003, in relation to (i) whether transfer of shares by way of gift to a large number of people would constitute a deemed public offer, wherein, in this instance, the shareholders of a private company were desirous of gifting equity shares to various artisans across India and small or marginalised farmers, without any consideration or conditions; (ii) whether such a transfer of shares by way of gift would be prohibited by Regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, if applicable; and (iii) given the large number of proposed transfers by way of gift, whether any specific disclosure with regard to the transferors, the transferees, and any other undertakings would be required to be made by the Company in the draft red herring prospectus to be filed by it with SEBI, for undertaking the IPO in this regard.

SEBI referred to Section 42(2) of the Companies Act, 2013, read with Rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014, whereby any offer by a company, listed or unlisted, to allot or invitation to subscribe, or allot securities to more than 200 persons, in aggregate, in any financial year, shall be deemed to be an offer to public. In this regard, SEBI has clarified that since the intended gifting of shares by the existing shareholders of the private company does not involve payment of any consideration by the transferee may not per se be a deemed public issue, unless there is an arrangement/ design in existence between the private company and the existing shareholders to circumvent the applicable provisions of law.

Further, since the information sought in relation to Regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, is general in nature and correspondence provided was not sufficient to examine the ingredients of the same, SEBI refrained from giving a reply on the same.

In relation to the query concerning disclosure in the draft red herring prospectus, SEBI has not given a reply as it cannot provide a hypothetical response on the basis of a proposed transaction yet to be implemented.

(SEBI Informal Guidance No. SEBI/HO/CFD/DIL1/P/OW/2021/39809/1 dated December 29, 2021)

3. *Informal Guidance Sought in relation to SEBI (Research Analyst) Regulations, 2014*

An informal guidance was sought in relation to SEBI (Research Analyst) Regulations, 2014, by a stockbroker company, which was also a research analyst ("**Relevant Company**").

Regulations 16(2) and (3) of Securities and Exchange Board of India (Research Analyst) Regulations, 2014 ("**SEBI RA Regulations**"), restrict independent research analysts, individuals employed as research analysts by research entities or their associates to deal or trade in securities that (i) such research analysts recommend or follow within 30 days before and 5 days after the publication of a research report, and (ii) such research analysts review in a manner contrary to their recommendation. The Relevant Company, therefore, restricted the relevant research analysts from dealing in securities that the research analysts had recommended or followed within 30 days before and 5 days after the publication of a research report. It also restricted the head of research from dealing in such securities 5 days after publication of such research report. To confirm this understanding, an interpretive letter was sought by the Relevant Company from SEBI.

In addition to Regulation 16(2) SEBI RA Regulations, SEBI noted that in terms of Regulation 2(u) of SEBI RA Regulations, 'research analyst' includes any person or entity who is engaged in or responsible for preparation and issuance of research reports or carrying out research analysis, whether or not such person has been assigned the job title of a research analyst.

SEBI further noted the key responsibilities of research team of the Relevant Company which included providing unbiased fundamental and technical research reports and stock recommendations. Further, the head of research was *inter alia*, responsible for assisting the research analysts by mentoring junior analysts, ensuring consistency of research product, and reviewing/ approving the work done by the analysts, thereby falling under the above definition of a research analyst. The Relevant Company was therefore required to comply with the provisions of the SEBI RA Regulations, including regulation 16(2).

(SEBI information guidance letter SEBI/HO/IMD/DF1/ 00551/1 dated January 5, 2022)

4. *Informal guidance on the applicability of the Securities Contracts (Regulation) Rules, 1957*

An informal guidance was sought by a company, registered as a stockbroker, distributor and registered investment advisor ("**RIA**") (amongst others), regarding the applicability

of prohibition under Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**"), for a tie up of an entity acting as a broker/ distributor, with a third party RIA for providing services to its customers. The tie up would involve payment of referral fees by the third-party RIA to the stockbroker and a separate agreement would be entered into between the customer and the third-party RIA. Further, no personal liability would accrue upon the broker entity.

SEBI referred to Rule 8(3)(f) of the SCRR and noted that the provision permits a member of the stock exchange to function as a broker or agent in a business other than that of securities or commodity derivatives, provided that such a member does not incur any personal financial liability by functioning as such a broker or agent. Thus, SEBI observed that the tie up of a broker entity with a third party RIA, for referral fees, without involvement of any personal financial liability would be valid, provided that the broker maintains high standards of service and segregation of business to avoid any potential conflict of interest.

(SEBI Informal Guidance No. SEBI/HO/MIRSD/DoP/P/OW/2022/6143/1dated February 14,2022)

5. *Informal guidance in the matter of YES Bank Limited under SEBI (Prohibition of Insider Trading) Regulations, 2015*

An informal guidance was sought under the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**SEBI PIT Regulations**"), by a listed bank ("**Bank**") on whether (i) the units allotted under AIFs are covered under the definition of 'securities' and (ii) the employees of the Bank covered as designated persons and their immediate relatives ("**Relevant Persons**") shall be allowed to invest in the units of AIFs.

The Bank adopted a referral model for AIFs, wherein the Bank referred its customers to the AIF AMCs signed up with the Bank in lieu of commission. The Relevant Persons could invest their funds through the AIF servicers offered by the Bank, provided that they have zero communication with the fund manager of the AIF regarding unpublished price sensitive information and vice versa.

Against this backdrop, the SEBI provided the following informal guidance:

- In relation to point (i) mentioned above, as per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**"), 'securities' includes units or any other instrument issued by any pooled investment vehicle, and as per Section 2(da) of SCRA and 2(1)(b) of the AIF Regulations, AIFs are classified as pooled investment vehicles. Further, in terms of Regulation 2(1) of the SEBI PIT Regulations, the term 'securities' has the same connotation as under SCRA. Accordingly, it was clarified that the units of AIFs are covered under the definition of 'securities', and
- In relation to point (ii), in terms of the SEBI PIT Regulations, any person having UPSI shall be considered as an 'insider'. In the current situation, since the designated persons have UPSI, they would be considered as insiders. Accordingly, it was clarified that the Relevant Persons would be allowed to invest in the units of AIFs, subject to compliance with the applicable provisions of SEBI PIT Regulations and SEBI AIF Regulations.

(SEBI Informal Guidance No. SEBI/HO/ISD1/P/OW/2022/11110/1 dated March 16, 2022)

E. Board Meeting

1. *SEBI board meeting held on February 15, 2022*

SEBI, in its board meeting held on February 15, 2022, has decided that the provisions mandating separation of the role of chairperson and managing director or chief executive officer of listed companies will be applicable from April 1, 2022, for top 500 companies on a voluntary basis.

Among other proposals, SEBI has also approved amendments to the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993 ("**SEBI DT Regulations**"), Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**SEBI NCS Regulations**"), and SEBI Listing Regulations, to align the framework and terminology with respect to *'security cover'*, wherein the term *'asset cover'* has been substituted with the term *'security cover'* in SEBI DT Regulations and SEBI Listing Regulations, and prescribed the maintenance of security cover sufficient to discharge both principal and interest thereon in SEBI Listing Regulations. Further, references with respect to disclosure of credit ratings have been rationalised and due diligence certificate for unsecured debt securities has been prescribed in SEBI NCS Regulations.

2. *SEBI's board meeting held on March 29, 2022*

To ensure uniform processes are followed by the registrars to an issue and share transfer agents/ listed companies and to ease the transmission process for investors, SEBI, in its board meeting held on March 29, 2022, has approved the amendments to the SEBI Listing Regulations, increasing the existing threshold limit for simplified documents from INR

2,00,000 to INR 5,00,000 for securities held in physical mode per listed issuer, and from INR 500,000 to INR 15,00,000 for securities held in dematerialised mode for each beneficiary account. Further, a legal heirship certificate or its equivalent certificate issued by competent Government authority will be an acceptable document for transmission of securities.

F. Press Release

1. *Empowering the investors through investor charters*

SEBI has issued a press release dated January 17, 2022 ("**Press Release**"), highlighting the recent policy initiatives to protect investor interest. The Press Release discusses the various steps that have been taken to implement the investor charter. Investor charters contain information for investors, including details of various services provided by the intermediaries to investors, their timelines, investor grievance redressal mechanism, etc. SEBI has also highlighted the efforts taken to improve the efficacy of investor grievance redressal mechanism, as well as publishing the status of disposal of investor grievance on SCORES (SEBI Complaints Redressal System) website monthly. The Press Release also lists some recent policy initiatives undertaken by SEBI, including, but not limited to (i) amendments to Investor Protection Fund /Investor Service Fund; (ii) standardisation of process of investor service requests; (iii) providing electronic interface for processing investor's queries, complaints and service requests by RTAs; and (iv) mandatory requirement of furnishing PAN and KYC details for all holders of physical securities in listed companies to pre-empt grievances relating to non-receipt of payments and intimation/ notification from the company.

(SEBI Press Release PR No. 2/2022. dated January 17, 2022)

2. *"Manthan"–SEBI Ideathon to promote innovation in the Securities Market*

SEBI has launched "Manthan" – SEBI Ideathon on March 30, 2022, highlighting the advantages of adopting financial technology, which results in, among other things, reducing costs and increasing access to people, thereby laying the corner stone for financial inclusion. Similarly, Regulatory Technology (RegTech) and Supervisory Technology (SupTech) ensure effective market regulation while lowering the cost of compliance for market participants.

Manthan is a six-week Ideathon, in association with BSE, NSE, NSDL, CDSL, KFintech, CAMS, LinkInTime and MCX to promote innovation in the securities market and to facilitate the creation of a pool of ideas and innovative solutions.

The event is open for registration from March 30, 2022, till May 14, 2022, at https://manthan.devfolio.co/

(SEBI Press Release PR No. 9/2022 dated March 30, 2022)

FOREIGN EXCHANGE AND RBI UPDATES

A. Notifications

1. *Master Direction – RBI (Regulatory Framework for Microfinance Loans) Directions, 2022*

   Based on the feedback received on the consultative document on regulation of microfinance loans, the RBI has released Master Directions – RBI (Regulation of Microfinance Loans) Direction, 2022 ("**Microfinance Directions**"). Following are *inter-alia* the key aspects of the Microfinance Directions:

   - ***Applicability:*** The Microfinance Directions are applicable to all commercial banks *(excluding Payments Banks)*, primary (urban)/ state/ district/ central co-operative banks and Non-Banking Financial Companies ("**NBFCs**"), including Microfinance Institutions and Housing Finance Companies (collectively "**Lenders**").
   - ***Definition of "microfinance loans":*** Microfinance loans are defined as collateral-free loans given to a household having annual household income up to INR 3,00,000. Further, to ensure that the microfinance loan is collateral-free, the loan must not be linked with a lien on the deposit account of the borrower.
   - ***Obligations of Lenders:*** Lenders are required to put in place a board-approved policy for:
     (i) assessment of household income;
     (ii) limit on the outflows on account of repayment of monthly loan obligations of a household as a percentage of the monthly household income *(which shall be subject to a limit of maximum 50% of the monthly household income)*;
     (iii) pricing of microfinance loans which shall, *inter alia*, include well documented interest rate model, ceiling on the interest rate, etc.;
     (iv) fair practices code.
   - ***Scrutiny of interest rates:*** Interest rates and other charges/ fees on microfinance loans must not be usurious and shall be subjected to supervisory scrutiny by RBI. Further, lenders are not permitted to charge pre-payment penalty on microfinance loans and any penalty on delayed payment shall be applied on the overdue amount and not on the entire loan amount;

   (RBI Notification No.RBI/DOR/2021-22/89 DoR.FIN.REC.95/03.10.038/2021-22 dated March 12, 2022)

2. *Registration of Factors (Reserve Bank) Regulations, 2022*

   The RBI has notified Registration of Factors (Reserve Bank) Regulations, 2022 ("**Factor Regulations**"), pertaining to the manner of granting Certificate of Registration to companies that propose to do factoring business ("**NBFC-Factor**"). Some key features of the Factor Regulations are as follows:

   - Every company seeking registration as NBFC-Factor shall have a minimum NOF of INR 5 crore, or as specified by RBI;
   - An NBFC-Factor shall ensure that its financial assets in the factoring business constitute at least 50% of its total assets and its income derived from factoring business is not less than 50% of its gross income ("**Principal Business Criteria**").

- If any existing NBFC – Investment and Credit Company ("**NBFC-ICC**") intends to undertake factoring business, it shall satisfy the following eligibility criteria:
  (i) not accepting or holding public deposits;
  (ii) total assets of INR 1,000 crore and above, as per the last audited balance sheet;
  (iii) meeting the NOF requirement.
- If an existing NBFC-ICC intends to undertake factoring business, but does not satisfy the above conditions, it shall approach the RBI for conversion from NBFC-ICC to NBFC-Factor and undertake to comply with the Principal Business Criteria.

(RBI Notification No. DOR.FIN.080/CGM(JPS) – 2022 dated January 14, 2022)

B. Circulars

1. *Circular on implementation of Core Financial Services Solution by NBFCs*

- The RBI *vide* its circular dated February 23, 2022, has mandated NBFCs classified as 'Middle Layer' and 'Upper Layer' - in terms of the Regulatory Framework for Scale Based Regulation for NBFCs (*covered in our previous edition dated February 11, 2020*), with 10 and more 'fixed point service delivery units' - to implement 'Core Financial Services Solution' ("**CFSS**"), similar to the 'Core Banking Solution' adopted by banks. The CFSS shall provide for seamless customer interface in digital offerings and transactions.
- The specified NBFCs should implement CFSS on or before September 30, 2025. Further, NBFC-Upper Layer must ensure that the CFSS is implemented at least in 70% of the 'fixed point service delivery units' on or before September 30, 2024. The NBFCs are required to submit quarterly progress report on implementation to the RBI from the quarter ending on March 31, 2023.

(RBI Circular No. RBI/2021-22/175 DoS.CO.PPG.SEC/10/11.01.005/2021-22 dated February 23, 2022)

C. Press Release

1. *Eligibility criteria for entities to be categorised as Specified User under Credit Information Companies Regulations, 2006*

The RBI *vide* its press release dated January 05, 2022, released the eligibility criteria for entities to be categorised as "Specified User" under Regulation 3(j) of the Credit Information Companies Regulations, 2006. Regulation 3(j) categorises all entities engaged in the processing of information, for the support or benefit of credit institutions and satisfying the criteria laid down by the RBI, as 'Specified Users'. Prior to the amendment, Regulation 3 permitted only insurance companies, telecom service providers, credit rating agency, SEBI-registered stock brokers, commodities exchange trading member, the Securities and Exchange Board of India, Insurance Regulatory and Development Authority, an 'information utility' under the Insolvency and Bankruptcy Code, 2016, and a resolution professional appointed under the Insolvency Bankruptcy Code, to be considered 'Specified Users'. Pursuant to the press release, entities meeting the following criteria may apply to Credit Information Companies ("**CICs**") for obtaining the membership of CIC as a 'Specified User':

The entity should be a company incorporated in India or a statutory corporation established in India and such company or statutory corporation should be allowed to undertake business/ activity of processing of information for the support or benefit of credit institutions under their charter documents or governing statute, as the case may be;

- The entity must be holding a certification from a certified auditor that it has a robust and secure information system in place;
- If the applicant entity is a company, it shall satisfy the following additional criteria:
  (i) the company shall have a net worth of not less than INR 2 crore as per the latest audited balance sheet, on a continuing basis;
  (ii) the company shall be owned and controlled by resident Indian citizens/ Indian company owned and controlled by resident Indian citizens;
  (iii) the company shall have not less than 3 years of experience in running the business of processing information for the support or benefit of credit institutions and shall have a clean track record;
  (iv) the company shall have well diversified ownership (this condition will not apply if shares/ voting rights are held by Central Government/ State Government/ Central or State controlled undertakings); and
  (v) the company, its promoters or directors shall not have a conviction record, involving moral turpitude or any economic offence, at any point in the past.

(RBI Press Release dated January 05, 2021)

2. *Review of FDI Policy for permitting foreign investment in Life Insurance Corporation and other modifications*

The Department for Promotion of Industry and Internal Trade has issued Press Note No. 1 of 2022 series ("**Press Note**"), to amend the Consolidated FDI Policy Circular of 2020 (as amended from time to time) ("**FDI Policy**"). The Press Note permits foreign investment in Life Insurance Corporation of India ("**LIC**") and provides for certain other clarificatory modifications. Accordingly, the following amendments have been introduced by the Press Note:

- ***Foreign investment in LIC:*** In view of the upcoming LIC initial public offer, the Press Note has made the following amendments to the FDI Policy:

  (i) *Definition of 'Indian company' and 'capital':* The definition of an 'Indian Company' has been modified to include body corporates established or constituted by or under any Central or State Act. Further, the definition of 'Capital' has been amended to include equity shares issued under the provisions of 'any other applicable law'. While these changes may have been brought about to permit foreign direct investment ("**FDI**") in LIC, these changes have also paved the way for the Government to permit FDI in other statutory companies as well.

  (ii) *Foreign investment cap for LIC:* In the extant FDI Policy, FDI in an Indian insurance company is permitted up to 74% of its share capital. However, FDI was not allowed in LIC, on account of it being a statutory corporation, established under the Life Insurance Corporation Act, 1956 ("**LIC Act**"). The Press Note has now permitted up to 20% foreign investment in LIC under the automatic route. Apart from the above, the Press Note also stipulates the following key conditions for FDI in LIC:

  (a) Foreign investment in LIC shall be subject to compliance with the applicable provisions of the LIC Act;

  (b) Foreign portfolio investment in LIC shall be governed by the provisions of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019, and SEBI (Foreign Portfolio Investors) Regulations, 2019, and

  (c) Any increase in foreign investment in LIC shall be in accordance with the pricing guidelines specified by the RBI.

  (iii) *Introduction of definition of "Share-Based Employee Benefit":* A new definition of 'Share Based Employee Benefits' has been added to allow the issuance of capital instruments by a statutory body corporate to its employees resident outside India, in order to allow LIC and other statutory body corporates to issue such benefits. The relevant conditions prescribed for the issuance of employees stock option scheme ("**ESOP**") under the extant FDI Policy will also be applicable to share based employee benefits.

- ***Specific exclusion of Real Estate Investment Trusts from real estate business:*** The Press Note provides that Real Estate Investment Trusts registered and regulated under the SEBI (Real Estate Investment Trusts) Regulations, 2014, will not be included under the scope of real estate business.

- ***ESOP Reporting:*** The issuance of ESOPs by an Indian company to its employees resident outside India earlier had to be reported under the extant FDI Policy in Form ESOP to the Regional Office of the RBI within 30 days of its issuance. As per the Press Note, such reporting will now be made to the Foreign Exchange Department of the RBI in Form "ESOP Reporting" within 30 days of issuance.

- ***Extension of tenure of convertible notes issued by start-ups:*** Under the extant FDI Policy, a start-up can acknowledge receipt of money by way of a convertible note, which is convertible into specified number of equity shares of such start-up company, within a period not exceeding 5 years from the date of issue of such convertible note. This tenure has now been extended to 10 years.

- ***Investment by a resident Indian with beneficial interest being held by non-resident entity:*** Pursuant to the Press Note, in case any declaration is made by a person under the provisions of the Companies Act, 2013, or *'any other applicable law'* about *beneficial interest being held by a non-resident entity*, then the same shall be counted as foreign investment even though the investment may be made by a resident Indian citizen.

(Press Note No. 1 (Series 2022) dated March 14, 2022)

insight
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