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Simplifications and Eliminations: A Synopsis of the Amended Buyback Regulations

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

In the lead article of this issue, we have highlighted the amendments introduced by the Securities and Exchange Board of India ("**SEBI**") to its buyback framework, with a view to streamline and simplify the process.

Apart from the above, we have also captured key notifications and orders issued by the Ministry of Corporate Affairs ("**MCA**"), in relation to the Companies Act, 2013 ("**Companies Act**"), the circulars and notifications issued by the Reserve Bank of India ("**RBI**") and the 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,

CYRIL SHROFF

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Simplifications and Eliminations: A Synopsis of the Amended Buyback Regulations

Introduction

In December 2022, SEBI's Board approved certain amendments to the Securities and Exchange Board of India (BuyBack of Securities) Regulations, 2018 (the "**Existing Regulations**"). These amendments were published on February 7, 2023, pursuant to the Securities and Exchange Board of India (BuyBack of Securities) (Amendment) Regulations, 2023 ("**Amendment Regulations** and with the Existing Regulations the "**Buyback Regulations**"). The Amendment Regulations were to come into force from the 30th day of their publication in the official gazette, i.e. on March 9, 2023. The emphasis of several of the amendments was on simplifying the buyback process, by eliminating certain methods of buyback and reducing overall timelines.

Key Amendments

- **Draft letter of offer**

  i) The Amendment Regulations have deleted the concept of a draft letter of offer and SEBI associated review for buybacks under the tender offer route. The manager to the buyback is now responsible for certifying to SEBI that the letter of offer is compliant with the Buyback Regulations and that it contains the information required under the Buyback Regulations.

  ii) SEBI's intention of reducing the time taken to complete the buyback process and eliminating the SEBI review is likely to pose challenges from a timing standpoint for companies that require exemptive relief (i.e. in a scenario where shareholders from the United States of America hold more than 10% of the shares of such companies) under the Securities Exchange Act of 1934 from the Securities and Exchange Commission ("**SEC**") of the United States of America. This is because such companies, which previously required exemptive relief, utilised the time taken by SEBI to review the draft letter of offer to obtain such relief, before dispatching the letter of offer. The direct dispatch of the letter of offer in the revised regime is likely to impact the exemptive relief process. Further, given that the letter of offer is dispatched pursuant to a compliance certificate issued by the manager to the buyback, the manager's role has been enhanced significantly.

- **Record date**

  While the purpose of the record date continues to be to determine the entitlement and names of shareholders of the company, who are eligible to participate in/ tender their shares in a buyback, several key additional activities are now linked to the record date.

  In the context of a buyback under the tender offer route, these include dispatch of the letter of offer to shareholders (within two working days of the record date) and opening of the tendering period for the buyback (within four working days of the record date). In the context of a buyback from the open market under the stock exchange route, the offer must open within four working days from the record date.

- **Reduction in the tendering period**

  The Amendment Regulations provide for a reduction in the number of days for which the tendering period is open for participation/ tendering by eligible shareholders from 10 working days to five working days. While this change is likely to quicken the overall buyback process, companies which require exemptive relief from the SEC of the United States of America, will now need to factor in the reduced number of days in the tendering period as part of their application process.

- **Price increase**

  The board of directors of the company now has the flexibility (in a tender offer buyback) to increase the maximum buyback price and decrease the number of securities proposed to be bought back, such that there is no change in the aggregate size of the buyback. This flexibility is available until one working day prior to the record date and is likely to be a useful method of generating participation in a buyback,

particularly if there is substantial time between the date of the board approval and the date of opening the buyback.

- **Lender covenants:** Buyback related documents are required to contain disclosures related to consents obtained by companies from their lenders for buybacks.
- **Open market buyback (stock exchange) versus open market buyback (book built)**

  i) Buybacks from the open market through the stock exchanges are subject to the following limits (both in terms of size and time):

Limit (as a percentage of paid-up capital and free reserves)	Time
15%	Till March 31, 2023
10%	Till March 31, 2024
5%	Till March 31, 2025

  ii) A company is now required to ensure that:

  a) A minimum of 75% of the amount earmarked for an open market buyback under the stock exchange route is utilised for the buyback;

  b) A minimum of 40% of the amount earmarked for the buyback is utilised within half the duration specified in the Buyback Regulations;

  c) Only frequently traded shares are bought back and such buyback is subject to restrictions on placement of bids, price and volume as specified by SEBI; and

  d) The buyback offer closes in the following manner:

Closure period	Timing of opening
6 months from opening	If the buyback offer is opened on or before March 31, 2023
66 workings days	If the buyback offer is opened on or after April 1, 2023, and till March 31, 2024
22 working days	If the buyback offer is opened on or after April 1, 2024, and till March 31, 2025.

  ii) One of SEBI's objectives in the discussion paper on Existing Regulations issued in November 2022 was *"streamlining the process of buybacks from the open market, that is, through the book-building process and through stock exchanges, with a view to making such process robust, efficient, transparent and shareholder-friendly"*, and keeping in mind this objective, SEBI has introduced provisions governing a buyback through the book built process. These include pricing norms for frequently and infrequently traded shares, price ranges within which shareholders can place bids, and placing restrictions on promoter participation in such a buyback. Pursuant to the Amendment Regulations, from April 1, 2025, buybacks from the open market through the stock exchanges are not permitted.

  ii) The buybacks from the open market through stock exchanges method has up to now been the second most popular route of undertaking a buyback, and the book-built buyback process has been rarely used. The Amendment Regulations will gradually phase out (i.e. by limiting the overall number of shares that a company can buyback under this route from year to year) and eventually eliminate the stock exchange buyback from April 2025. It remains to be seen whether the demise of the buyback under the stock exchange route would resurrect the book-built buyback.

- **Escrow**

  The key change to the escrow requirement is that the escrow deposit must be completed within two working days of the public announcement. SEBI has also now permitted additional methods of escrow deposit. These are:

  i) Cash including bank deposits with any scheduled commercial bank;

  ii) Deposit of frequently traded and freely transferable securities;

  iii) Government securities;

  iv) Units of mutual funds invested in gilt funds and overnight schemes; or

  v) A combination of foregoing.

Miscellaneous Amendments

A company is now required to complete verification of offers and make payment to shareholders/ return unaccepted shares within a period of five working days from the closure of the tendering period, with the process of extinguishment now involving a secretarial auditor instead of a statutory auditor. The maximum buyback size is 25% or less of the aggregate paid-up capital and free reserves of a company, based on the standalone or consolidated financial statements of the company, whichever sets out a lower number. Finally, pursuant to the Amendment Regulations, odd lot buybacks have been eliminated.

(This article may also be accessed on our website at the blogpost here)

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

   The following key amendments have been made to the Companies (Incorporation) Rules, 2014:

   - *Specifying a Nominee:* The person who will, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company ("**OPC**") will have to be mentioned in the memorandum of OPC and details of such nomination along with the consent of such nominee will have to filed in Form INC-32.
   - *Conversion of One Person Company into a Public company or a Private company:* The OPC will file an application in e-Form No. INC-6 for its conversion into private or public company, other than under Section 8 of the Companies Act, along with altered e-MOA and e-AOA. Upon being satisfied that the requirements have been complied with and after examining the latest audited financial statement, the ROC will approve the form and issue the certificate of incorporation.
   - *Conversion of private company into One Person Company:* The company will file an application in e-Form No. INC-6 for conversion into OPC and attach the following details or documents: (i) altered e-MOA and e-AOA; (ii) copy of NOC of every creditor with the conversion application; (iii) affidavit of directors confirming that all the members of the company have given their consent for conversion. Upon being satisfied that the requirements have been complied with and after examining the latest audited financial statement, the ROC will approve the form and issue the certificate.
   - *Conversion to Section 8 Companies:* It has been clarified that the ROC will decide whether the application for registration under Section 8 of the Companies Act should be granted. For this, the ROC will consider the financial statements for two immediately preceding years from the date of application or where the company has been functional for just one financial year, it will also consider the board's reports and audit reports relating to the existing companies, and after considering objections, if any, received by it within 30 days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of Central/ State Government.
   - Separately, certain forms under the said rules have been amended and substituted.

   (File No. I l13l2Ol3-CL-V, Vol-IV dated January 19, 2023)

2. ***Amendment to Companies (Registration Offices and Fees) Rules, 2014***

   A new Rule 8 was introduced to the Companies (Registration Offices and Fees) Rules, 2014, which provides that e-forms must be signed by the insolvency resolution professional or resolution professional or liquidator of companies under insolvency or liquidation, as the case may be, and filed with the Registrar of Companies ("**ROC**") along with the prescribed fee.

   (MCA Notification Number G.S.R. 45(E) dated January 20, 2023)

3. ***Amendment to formats of certain forms***

The MCA has modified and substituted various forms under different rules under the Companies Act. Some of the key changes/ modifications to the formats of certain forms are as follows:

- Form MR-1 (Return of appointment of managerial personnel), and MR-2 (Form of application to the Central Government for approval of appointment of managing director or whole-time director or manager) have been amended and substituted by the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2023, wherein, *inter alia*, Form MR-1 now requires details of the residence status of the appointed managerial personnel (needs to be specified if he is a non-resident) and Form MR-2 mandates the disclosure of details of application pending before the National Company Law Tribunal/ National Company Law Appellate Tribunal.
- In terms of the Companies (Miscellaneous) Amendment Rules, 2023, details relating to the last financial statement and annual returns need to be provided for a company for which dormant status is being sought, in the latest format of Form MSC-1 (Application to ROC for obtaining the status of dormant company).
- In terms of the Companies (Share Capital and Debentures) Amendment Rules, 2023, filing of Form SH-15 (Certificate of compliance for securities buyback) has been dispensed with. Instead, a declaration needs to be filed with the return filed in Form SH-11 (Return in respect of buyback of securities), certifying that the buyback of securities is compliant with the Companies Act and the rules thereunder, which is to be signed by two directors of the company, including the managing director.
- Form PAS-3 *inter alia* now requires disclosure of key information, pertaining to the valuation report (such as name of the valuer, valuation method, valuation amount), and details of the securities being allotted (type, class, number and total amount of securities allotted and conversion terms).

(File No.1/05/2013-CL-V dated January 20, 2023, MCA Notification Number G.S.R. 46(E) dated January 20, 2023. F.No. 1/04/2013-CL-V, Part IV dated January 21, 2023; MCA Notification Number G.S.R 37(E) dated January 20, 2023)

4. ***Relaxation in relation to filings of certain forms***

The MCA had permitted the physical filing of the following forms with an undertaking that the relevant e-forms will be filed on the portal with requisite fees when such filing is enabled:

- Forms GNL-2 (filing of prospectus related documents and private placement) and MGT-14 (filing of Resolutions relating to prospectus related documents and private placement) which were due to be filed during the period between January 7, 2023, and January 22, 2023.
- Forms GNL-2, MGT-14, PAS-3 (Allotment of Shares), SH-8 (letter of offer for buyback of own shares or other securities), SH-9 (Declaration of Solvency) and SH-11 (return in respect of buyback of securities) which were due to be filed during the period of process stabilisation of the newly launched e-forms, i.e., February 22, 2023, to March 31, 2023.

(General Circular No. 1/2023 dated January 1, 2023; General Circular No. 3/2023 dated February 7, 2023; General Circular No. 4/2023 dated February 21, 2023; General Circular No. 5/2023 dated February 22, 2023)

5. ***Central Government announces establishment of C-PACE***

The Ministry of Corporate Affairs ("**MCA**") has issued a notification regarding the establishment of Centre for Processing Accelerated Corporate Exits ("**C-PACE**") in Gurgaon, Haryana. C-PACE was established to facilitate expedited corporate exits by means of voluntary winding up of companies.

(Notification [F. No. A-42/21/2022-Ad.II-MCA] dated March 17, 2023)

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SECURITIES LAW UPDATES

A. Circulars

1. ***Compliance relaxation for certain provisions of the SEBI Listing Regulations***

   As per these extended SEBI relaxations, hard copies of the statement containing salient features of all the documents prescribed under Section 136 of the Companies Act (financial statements, board's report, auditor's report, etc.) need not be sent to those shareholders and debenture holders who have not registered their email addresses till September 30, 2023.

   However, the listed entities should ensure that hard copies of full annual reports are sent to those shareholders and debenture holders who request the same. Further, notice of shareholders' annual general meeting, published by advertisement in terms of Regulation 47 of the SEBI Listing Regulations, will disclose the web-link to the annual report to enable shareholders to have access to the full annual report.

   (SEBI Circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/4 dated January 5, 2023) and (SEBI Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/001 dated January 5, 2023)

2. ***SEBI issues comprehensive framework on Offer for Sale of Shares through Stock Exchange Mechanism***

   SEBI has issued a circular ("**Circular**") modifying certain provisions of the existing offer for sale ("**OFS**") framework through the stock exchange mechanism and has set out a comprehensive framework for the same.

   Some of the key highlights of the comprehensive framework on OFS ("**OFS Mechanism**") are as follows:

   - The OFS Mechanism will be available on BSE, NSE and the Metropolitan Stock Exchange of India.
   - The OFS Mechanism will be available to (a) promoter(s) and promoter group entities ("**PPG Entities**") of companies that are required to increase public shareholding to meet the minimum public shareholding requirements; and (b) PPG Entities and non-promoter shareholders of companies with market capitalisation of ₹1,000 crore and above (to be calculated in a prescribed manner).
   - The OFS size will be minimum INR 25 crore. However, OFS by PPG Entities can be less than INR 25 crore, in order to achieve minimum public shareholding.
   - The cooling off period for transactions (i.e. purchase or sale prior to and after the OFS) will be based on the liquidity of shares on exchanges, and are as under: (a) +2 weeks for most liquid shares, (b) +4 weeks for liquid shares, and (c) +12 weeks for illiquid shares. Irrespective of the above, the promoter(s) or promoter group entities of companies whose shares are either liquid or illiquid are permitted to offer their shares only through OFS or qualified institutional placement with a gap of two weeks between successive offers.
   - The Circular also details various operational requirements for the OFS Mechanism, *inter alia*: (a) appointment of brokers; (b) notice/ announcement of the OFS, containing details, such as name of sellers(s), name of stock exchange(s), date and time of opening of the offer and number of shares being offered; (c) floor price;

(d) option of seller to offer discount to retail investors; (e) timelines, etc.

- The Circular prescribes allocation requirements for the OFS Mechanism, *inter alia*, as follows: (a) a minimum of 25% of the offer size shall be reserved for mutual funds and insurance companies. Any unsubscribed portion will be made available to other bidders; (b) minimum of 10% of the offer size shall be reserved for retail investors; (c) in case of excess demand in retail category at the cut-off price, allocation shall be on a proportionate basis; (d) unsubscribed portion of the offer size reserved for retail investors shall be allocated to non-retail bidders on T+1 day, at a price equal to or higher to the cut-off price; (e) no single bidder, other than mutual funds and insurance companies, shall be allocated more than 25% of the offer size.
- As per the Circular, the OFS can be withdrawn prior to the proposed opening. In such a scenario, there will be a cooling off period of 10 trading days from the date of withdrawal before an offer is made once again.
- However, OFS cancellation shall not be permitted during the bidding period. If the seller(s) fails to get sufficient demand from non-retail investors at or above the floor price on T day, then they may choose to cancel the offer, post bidding, in full (both retail and non-retail) on T day and not proceed with the offer to retail investors on T+1 day.

(SEBI Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/10 dated January 10, 2023)

3. *Facility of conducting meetings of unit holders of InvITs and REITs through video conferencing or other audio-visual means*

SEBI has allowed investment managers of InvITs and REITs to conduct meetings with unitholders through video conferencing or other audio-visual means.

The investment manager of an InvIT or REIT, while conducting the meetings with unit holders through video conferencing or other audio-visual means is required to adopt the procedure as specified under the relevant circulars, in addition to any other requirement as specified by SEBI, which includes, *inter alia*, recording and safe keeping of transcripts of the meeting, considering the convenience of unitholders in different time zones, facilitating the joining of the meeting for fifteen minutes before the scheduled time, provision of remote e-voting, ensuring attendance of at least one independent director of the investment manager of the InvIT/ REIT and the auditor of the InvIT/ REIT and attendance of the trustee of the InvIT/ REIT for the purposes of monitoring the meeting. The notice of the meeting must contain clear instructions on participation in the meeting.

Further, the investment manager of the InvIT/ REIT is required to disclose to the stock exchanges and their trustee that the meeting of unitholders shall be conducted through video conferencing or other audio-visual means.

(SEBI Circular No. SEBI/HO/DDHS/DDHS_Div2/P/CIR/2023/14 dated January 12, 2023 and SEBI Circular No. SEBI/HO/DDHS/DDHS_Div2/P/CIR/2023/13 dated January 12, 2023)

4. *Manner of achieving minimum public shareholding*

SEBI, *vide* circular bearing reference no. SEBI/ HO/ CFD/ CMD/ CIR/ P/ 43/ 2018, dated February 22, 2018, had permitted listed entities to use different methods to achieve compliance with the minimum public shareholding ("**MPS**") requirements mandated under Rule 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**"), read with Regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**").

In order to facilitate listed entities achieve MPS compliance, SEBI has introduced two additional methods, i.e., (a) increase in public holding pursuant to exercise of options and allotment of shares under an employee stock option, and (b) transfer of shares held by promoter(s)/ promoter group to an Exchange Traded Fund managed by a SEBI registered mutual fund, subject to a maximum of 5% of the paid-up equity share capital of the listed entity.

(SEBI Circular No. SEBI/HO/CFD/PoD2/P/CIR/2023/18 dated February 3, 2023)

5. *Revised disclosure requirements for issuance and listing of green debt securities*

SEBI has amended Chapter IX (Green Debt Securities) of the operational circular for issue and listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper, dated August 10, 2021 ("**NCS Operational Circular**"). Pursuant to the amendments, which are applicable to all issues of green debt securities launched on or after April 1, 2023, the revised Chapter IX provides for, *inter alia*, the following:

- **Initial disclosure requirements for issue and listing of green debt securities:** An issuer issuing green debt securities will make *inter alia* the following disclosures in the offer document: (a) a statement on environmental sustainability objectives of the issue of green debt securities; (b) brief details of the decision-making process followed/ proposed for determining the eligibility of project(s) and/ or asset(s), for which the proceeds are being raised through the issuance of green debt securities; (c) details of the projects and/ or assets or areas where the issuer proposes to utilise the proceeds of the issue of green debt securities, including towards refinancing of existing green projects and/ or assets, if any; (d) details of the system/ procedures to be employed for tracking the deployment of the proceeds of the issue; and (e) details of the intended types of temporary placement of the unallocated and unutilised net proceeds from the issue of green debt securities.

- **Continuous disclosure requirements for listed green debt securities:** An issuer who has listed green debt securities will provide *inter alia* the following disclosures, along with its annual report and financial results: (a) utilisation of the proceeds of the issue, as per the tracking done by the issuer using the internal process as disclosed in the offer document, which shall be verified by the report of an external auditor, who shall verify the internal tracking method and the allocation of funds towards the projects and/ or assets, from the proceeds of green debt securities; (b) details of unutilised proceeds, including the temporary placement/ utilisation of unallocated and unutilised proceeds from each ISIN of green debt security issued by the issuer; and (c) list of projects and/ or assets to which proceeds of the green debt securities have been allocated/ invested, including a brief description of such projects and/ or assets and the amounts disbursed in the annual report.

- **Appointment of a third-party reviewer/ certifier:** An issuer will appoint a third-party reviewer/ certifier for post-issue management of the use of proceeds from the green debt security and verification of the internal tracking and impact reporting, on a 'comply or explain' basis, for a period of two years.

- **Responsibilities of the issuer:** An issuer of green debt securities will *inter alia*: (a) maintain a decision-making process, which it uses to determine the continuing eligibility of the projects and/ or assets; (b) ensure that all projects and/ or assets funded by the proceeds of the green debt securities meet the documented objectives of the green debt securities; and (c) ensure compliance with SEBI circular dated February 3, 2023, on the *"Dos and don'ts relating to green debt securities to avoid occurrences of greenwashing"*.

(SEBI Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/023 dated February 6, 2023)

6. ***Clarifications related to issuance and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under Chapter V of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021***

- SEBI has brought clarity on the applicability of the provisions of Chapter V of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**SEBI NCS Regulations**"),

by specifying that only securities having the below mentioned characteristics will be mandatorily required to comply with the provisions for issuance and listing specified in the NCS Regulations and circulars issued thereunder:

i) the issuer is permitted by RBI to issue such instruments;

ii) the instruments form part of non-equity regulatory capital;

iii) the instruments are perpetual debt instruments, perpetual non-cumulative preference shares or instruments of similar nature; and

iv) the instruments contain a discretion with the issuer/ RBI for events including but not restricted to all or any of the below events: (i) conversion to equity; (ii) write off of interest/ principal; (iii) skipping/ delaying payment of interest/ principal; (iv) making an early recall; and (v) changing any terms of issue of the instrument.

- The SEBI NCS Regulations require the articles of association ("**AoA**") of an issuer that is a company, to include provisions with respect to the requirement for the board of directors to appoint such person nominated by the debenture trustee in terms of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993. The SEBI NCS Regulations also provide a time period up to September 30, 2023, for existing debt listed issuers to amend their AoA. In view of the difficulties faced by first-time issuers for completion of formalities in undertaking this amendment to their AoA, SEBI has advised stock exchanges to take an undertaking from such first-time issuers that they will ensure that relevant amendment to their AoA will be undertaken within a period of six months from the date of listing of the debt securities. This undertaking may be obtained at the time of granting the in-principle approval.

(SEBI Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/027 dated February 8, 2023 and SEBI Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/028 dated February 9, 2023)

7. ***Amendment to the SEBI InvIT Regulations and SEBI REIT Regulations***

SEBI has amended the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 ("**SEBI InvIT Regulations**"), and the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 ("**SEBI REIT Regulations**"), to provide for *inter alia* governance norms for infrastructure investment trusts ("**InvITs**") and real estate investment trusts ("**REITs**"), with the introduction of new chapters to each of the SEBI InvIT Regulations and the SEBI REIT Regulations on the applicability of select provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**SEBI Listing Regulations**"), to InvITs and REITs and the corresponding changes to or introduction of certain definitions of the SEBI InvIT Regulations and the SEBI REIT Regulations to, *inter alia*, facilitate the applicability of key concepts under the SEBI Listing Regulations to InvITs and REITs.

Some of the key amendments are set out below:

- **Changes to the audit framework:** InvITs and REITs shall be required to appoint an individual or a firm as the statutory auditor for a term of five years (i.e. from the date of conclusion of the annual meeting in which the auditor has been appointed till the date of conclusion of the sixth annual meeting of unitholders). InvITs and REITs will not be permitted to appoint (i) an individual as an auditor for more than one term of five years; and (ii) an audit firm as the auditor for more than two consecutive terms of five years. Auditors shall be required to mandatorily undertake a limited review of the audit of all entities or companies whose accounts are to be consolidated with the accounts of the InvIT and REIT.

- **Calculation of the value of assets of InvITs and REITs:** Investments by listed InvITs and REITs in overnight mutual funds, characterised by their investments in overnight securities, having a maturity of one day, shall be considered as cash and cash equivalent and the amount of cash and cash equivalent shall be excluded from calculating the value of the assets of InvITs and REITs.

- **Requirements related to unclaimed or unpaid distributions:** Any amount remaining unclaimed or unpaid out of the distributions declared by an InvIT or REIT will mandatorily have to be transferred to a SEBI-constituted Investor Protection and Education Fund (IPEF).

- **Alignment of independent director related requirements in line with listed entities:**

i) The amendments have codified the tests for independence of directors on the board of investment managers of InvITs and REITs, in line with the SEBI

Listing Regulations, by introducing the definition of an 'independent director' to the relevant regulations. The person proposed to be appointed as an independent director will have to meet the requirements of experience, expertise, absence of pecuniary relationships, pre-existing commercial arrangements or positions of conflicts and shareholdings, among others. Amendments have also been made to the scope of entities, which need to be assessed whilst applying the tests of independence. Such independent directors will be required to hold at least one meeting in a financial year, without the presence of non-independent directors and members of the management, wherein all independent directors shall be present.

ii) The maximum tenure of independent directors even in case of InvITs or REITs will be in accordance with the Companies Act. Such an independent director, upon resignation, will not be eligible for appointment on the board of the investment manager, its holding or associate companies, the holding companies or special purpose vehicles of the InvIT/ REIT, or companies belonging to the promoter group of the investment manager, for a period of one year post resignation.

- **Requirements in relation to board composition, quorum and frequency of meetings:** The board of directors of the investment manager will comprise of at least six directors, including at least one woman independent director. The quorum of every board meeting will be met with the presence of the higher of at least one third of the total strength or three directors and at least one independent director. The board is also required to meet at least four times a year, with a maximum time gap of 120 days between any two meetings.

- **Committee related requirements: The constitution of the following committees has been made mandatory for InvITs and REITs:** (i) audit committee; (ii) nomination and remuneration committee; (iii) stakeholders relationship committee; and (iv) risk management committee. The requirements in relation to the composition, quorum and frequency of meetings for these committees are prescribed under the SEBI Listing Regulations and the role and scope of activities of these committees will be guided by the terms of reference set out in the SEBI Listing Regulations.

- **Governance framework for InvITs and REITs:** Investment managers will be required to formulate vigil mechanisms, including a whistle-blower policy, for directors and employees to report genuine concerns. Further, the audit committee will review the functioning of the vigil mechanism, and an independent service provider may be engaged for providing or operating the mechanism and will report to the audit committee.

- **Compensation or profit-sharing arrangements:** The employees, including key managerial personnel or directors or promoters of listed entities, will be restricted from entering into any agreements, pertaining to compensation or profit sharing in connection with dealings in the securities of the listed entity, unless prior board and public shareholder approval is obtained.

- **Additional reporting requirements:** The amendments have introduced new reporting requirements, both internal and external, which InvITs and REITs will be required to follow, such as secretarial compliance reports and quarterly compliance reports.

(Notification No. SEBI/LAD-NRO/GN/2023/122 dated February 14, 2023 and Notification No. SEBI/LAD-NRO/GN/2023/123 dated February 14, 2023)

8. ***SEBI Circular on introduction of Issue Summary Document for public issues, further issues, buyback, offer***

SEBI, in order to facilitate consumption of data by stakeholders such as researchers, policy makers, market analysts, and market participants, in respect of public issues, further issues, buyback offers, under the SEBI Takeover Regulations, SEBI Delisting Regulations, etc., has decided to make available relevant information or data points to the stock exchanges and depositories in a structured manner. The highlights of the Issue Summary Document ("**ISD**") are as follows:

- *XBRL (Extensible Business Reporting Language) format*

  The ISD has been designed in XBRL (Extensible Business Reporting Language) format for the following:

  i) public issue of specified securities (initial public offer or further public offer);

  ii) further issues (i.e. preferential issue, qualified institutions placement (QIP), rights issue, issue of American Depository Receipts (ADR), Global Depository Receipts (GDR) and Foreign Currency Convertible Bonds (FCCBs));

  iii) buyback of equity shares (through tender offer or from the open market);

  iv) open offer under SEBI SAST Regulations; and

  v) voluntary delisting of equity shares where exit opportunity is required under SEBI Delisting Regulations.

- *Filing of ISD:*

  The ISD is required to be filed in two stages, i.e., pre-offer fields and post-offer fields after allotment.

- *Format and submission of ISD:*

  The format of ISD has been set out in the Circular, which also sets out the timelines for submission of details and casts responsibility on the entity responsible for submission of such data. The data can be submitted with any stock exchange where securities are proposed to be listed and the said stock exchange shall transmit the information to the other stock exchange(s) and depositories for dissemination.

The Circular will be implemented in phases, with the (a) first phase being applicable for offer documents filed in relation to public issues on or after March 1, 2023, (b) second phase being appliable for further issues on or after April 3, 2023, and (c) third phase being applicable for open offer, buyback and voluntary delisting on or after May 2, 2023. Further, in terms of the Circular, the book running lead managers are required to disseminate all advertisements in connection with a public issue under the SEBI ICDR Regulations in PDF format on the websites of the stock exchanges from March 1, 2023.

(SEBI Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2023/29 dated February 15, 2023)

9. ***SEBI issues operational guidance on amendment to Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018***

SEBI has issued a circular, laying out certain operational guidelines in relation to the amendment to the Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018. These have been elaborated upon in our lead article above.

(SEBI Circular No. SEBI/HO/CFD/PoD-2/CIR/2023/35 dated March 8, 2023)

10. ***SEBI issues clarification related to qualified registrars to an issue and share transfer agents***

Qualified registrars to an issue and share transfer agents ("**QRTA**") are the registrars to an issue and share transfer agents ("**RTA**") who service more than two crore folios and are required to comply with enhanced responsibilities through adoption and implementation of an internal policy framework and periodic reporting requirements. SEBI has now, vide its circular dated March 10, 2023, clarified the following:

- *Categorisation of an RTA as QRTA:* An RTA will be categorised as a QRTA if at any time during a financial year, the combined number of physical and demat folios being serviced by the RTA for listed companies exceeds INR 2 Crore. Further, for such categorisation of an RTA as QRTA, an intimation is to be sent by the RTA to the SEBI within five working days.

- ***Period for which an RTA shall be recognised as QRTA:*** An RTA will be considered as a QRTA from the date of categorisation and for the next three financial years, irrespective of subsequent fall in number of folios.
- ***Initial relaxation:*** Considering the various systems and procedures to be put in place by a new QRTA, SEBI has provided a relaxation of 60 days from the date of categorisation as a QRTA for complying with the enhanced requirements mandated for QRTAs.

(SEBI Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/36 dated March 10, 2023)

11. *Framework for Scheme of Arrangement by unlisted Market Infrastructure Institution*

In order to harmonise and bring uniformity in the norms related to the scheme of arrangement for unlisted Market Infrastructure Institutions (including stock exchanges, clearing corporations and depositories) ("**MIIs**") in line with the provisions currently applicable to listed MIIs, SEBI introduced the framework for scheme of arrangement by unlisted MIIs. The key highlights of the framework are given below:

- Unlisted MIIs undertaking a scheme of arrangement under the provisions of the Companies Act will be required to file the draft of the scheme with SEBI, along with a non-refundable scheme for obtaining observation letter or no-objection letter.
- The framework is not applicable for a scheme of merger of a wholly-owned subsidiary or its division with the parent company. However, the scheme needs to be filed with SEBI for disclosure purposes.
- MIIs are required to submit a list of information while filing the draft scheme of arrangement with SEBI. Some of the key information required to be submitted are: (a) the draft scheme of arrangement or amalgamation or merger; (b) approval of the governing board of the unlisted MII; (c) a valuation report and fairness opinion; (d) a report from the Audit Committee; (e) shareholding pattern of the unlisted MII pre and post Scheme; (f) audited financials of the past three years of unlisted entities.
- The framework shall come into effect from the 30th day from the date of issuance of the circular.

(Notification No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/45, dated March 28, 2023)

12. *SEBI extends the compliance period for fund raising by large corporates through issuance of debt securities to the extent of 25% of their incremental borrowings in a financial year*

The NCS Operational Circular on 'Fund raising by issuance of Debt Securities by Large Corporates' (LCs Chapter), *inter-alia*, mandated large corporates to raise minimum 25% of their incremental borrowings in a financial year through issuance of debt securities, which was to be met over a contiguous block of two years from FY 2021-22 onwards. This has now been extended to a block of three years reckoned from FY 2021-22 onwards.

(SEBI Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/049 dated March 31, 2023)

B. Master Circulars

1. *Guidelines on Anti-Money Laundering Standards and Combating the Financing of Terrorism/ Obligations of Securities Market Intermediaries*

SEBI has issued guidelines that stipulate the essential principles for combating Money Laundering ("**ML**") and Terrorist Financing ("**TF**") and provide detailed procedures and obligations to be followed and complied with by all registered intermediaries, branches of stock exchanges and their subsidiaries situated abroad. The key highlights of the framework are given below:

- the senior management of registered intermediaries are required to establish appropriate policies and procedures for the prevention of ML and TF.
- registered intermediaries are required to adopt written procedures to implement the anti-money laundering provisions as envisaged under the Prevention of Money Laundering Act, 2002.
- registered intermediaries are required to conduct client due diligence.
- registered intermediaries are required to develop client acceptance policies and internal mechanisms to identify types of clients that are likely to pose a higher than average risk of ML or TF.
- registered intermediaries are required to adopt appropriate procedures for reporting suspicious transactions.

(SEBI/HO/MIRSD/MIRSD-SEC-5/P/CIR/2023/022, Dated February 03, 2023)

C. Informal Guidance

1. ***Informal Guidance on interpretation of definition of 'employee' under the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021***

An informal guidance was sought from SEBI on whether upon listing, stock options can be granted by a listed company to employees proposed to be employed exclusively by the subsidiary and engaged by the listed company on a contractual basis only, under the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 ("**SEBI SBEBSE Regulations**").

Against this backdrop, SEBI provided the following informal guidance:

- The definition of 'employee' under Regulation 2(1)(l) of the SEBI SBEBSE Regulations, *inter alia*, defines an 'employee' as a person who is designated as an employee by the company, who is exclusively working in India or outside India. Further, a person who is designated as an employee by the company/ its group/ subsidiary/ associate companies is also eligible for stock option under the same.
- Since the employees would be employed exclusively by the subsidiary and provide services to the group (i.e., the listed company and its subsidiary) and there shall be no employer-employee relationship with any other entity or company outside the group, the said employees would be eligible for grant of share-based employee benefits under the SEBI SBEBSE Regulations, if designated as exclusively employed with the subsidiary.

(SEBI Informal Guidance No. SEBI/HO/CFD/PoD2/OW/P/2022/53220/1 dated October 19, 2022)

2. ***Informal Guidance on Public Shareholding***

ABM Limited is a listed company and less than 10% of its shares are traded on the stock exchange. Further, 1.32% of ABM shareholding is transferred to Investor Education and Protection Fund Account ("**IEPF**"). In relation to this, an informal guidance was sought on (i) interpretation of Regulation 35(2)(d) of the Delisting Regulations for the purpose of calculating the nature and type of 90% public shareholding and (ii) whether shares transferred to IEPF are excluded while calculating consent of 90% public shareholding.

SEBI was of the view that other than promoter, promoter groups, subsidiaries, and associates of companies, Securities Contracts (Regulation) Rules, 1957, excludes trust set up for implementing employee benefits scheme while calculating public shareholding and shares transferred to IEPF are also included when calculating 90% public shareholding.

(No.: SEBI/HO/CFD/PoD2/OW/P/2023/3466/1, Dated January 27, 2023)

3. ***Informal guidance on minimum subscription in a rights issue***

An informal guidance was sought from SEBI by Dhanlaxmi Bank Limited ("**Bank**"), which is a professionally managed company without any promoter/ promoter group, on requirement of minimum subscription in a rights issue prescribed under Regulation 86 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**SEBI ICDR Regulations**"). The Bank proposed to raise capital through a rights issue, with the objective of increasing tier 1 capital of the Bank.

Against this backdrop, SEBI clarified that for an exemption from minimum subscription requirement under Regulation 86 of the SEBI ICDR Regulations, the twin conditions of the proviso to the aforesaid regulation – the objects of the rights issue shall involve financing other than financing of capital expenditure for a project and the promoters and the promoter group of the issuer shall undertake to subscribe to the rights issue – are required to be met. However, for a professionally managed listed company without identifiable promoters/ promoter group, compliance with the second

condition to the proviso to Regulation 86 (1) of the SEBI ICDR Regulations i.e. promoters and promoter group of a listed company shall undertake to subscribe fully to their entitlements and shall not renounce, except within the promoter group, is not possible. In such cases, compliance with the first condition of the aforesaid proviso shall be considered as sufficient compliance for getting an exemption from the minimum subscription requirement under the rights issue.

(SEBI Informal Guidance No. SEBI/HO/CFD/PoD2/OW/P/2023/5822/1 dated February 10, 2023)

4. ***Informal Guidance on Substantial Acquisition of Shares or Voting Rights***

Aura Securities Private Limited ("**ASPL**") is part of the promoter and promoter group of Arvind Limited ("**Target Company**") and holds 35.93% equity shares in the Target Company. A family Trust ("**SFT**") holds 99.99% shares of ASPL. Further, Aura Weaving Private Limited ("**AWPL**") and Shruti Trade Link Private Limited ("**Shruti**") are the wholly-owned subsidiaries of ASPL and are part of the promoter and promoter group of the Target Company.

It was proposed that: (i) ASPL will transfer its equity holding in AWPL and Shruti to the shareholders of ASPL and after that (ii) ASPL will transfer its holding in the Target Company to AWPL and Shruti equally.

An informal guidance was sought on whether the transaction pertaining to the transfer of shares of the Target Company to AWPL and Shruti will trigger an open offer under the SEBI (Substantial Acquisitions of Shares and Takeover) Regulations, 2011 ("**SAST Regulations**"), or if it will be exempted under Regulation 10(1)(a)(iii) (inter-se transfer between companies, subsidiaries etc.) of the SAST Regulations.

SEBI responded that the conditions stipulated under Regulation 10(1)(a)(iii) of the SAST Regulations would be met, since: (A) the shareholders of AWPL exercise control over AWPL, ASPL and Shruti and (B) the shareholders of AWPL would be/ are persons holding more than 50% shares in these companies. Hence, the proposed transaction will be exempt from open offer, despite Shruti and AWPL acquiring more than 25% shares of the Target Company.

(SEBI/HO/CFD/PoD-2/OW/P/2022/56639/1, Dated March 21, 2023)

D. Consultation Papers

1. ***SEBI issues consultation paper on Regulatory Framework for REITs and InvITs to issue Depository Receipts***

By way of consultation paper dated February 1, 2023 ("**Consultation Paper**"), SEBI had invited comments from market participants on the proposed regulatory framework to allow Depository Receipts ("**DRs**") to be issued against units of REITs and InvITs established in India. Under the present framework of Depository Receipts Scheme, 2014, DRs are not allowed to be issued against units of REITs and InvITs. As units of REITs and InvITs are permissible securities, it is proposed that DRs may be issued against units of REITs and InvITs established in India and listed on a recognised stock exchange, or their holders may transfer units, for the purpose of issuance of DRs, subject to norms mandated from time to time. The key changes proposed by SEBI have been set out below:

- **Eligibility Conditions:** REITs and InvITs may be eligible to issue permissible securities for the purpose of DRs if: (a) REITs and InvITs are in compliance with SEBI REIT Regulations and SEBI InvIT Regulations, respectively; (b) its directors and selling unitholders are not debarred from accessing the capital market by SEBI; (c) any of the parties to the REIT/ InvIT or its directors is a promoter or director of any other company or REIT/ InvIT, which is not debarred from accessing the capital market by SEBI; (d) the REIT or InvIT or any party to the REIT/ InvIT or any of its directors is not a willful defaulter or a fugitive economic offender. Similar conditions for eligibility of current unitholders, to the extent applicable, have also been proposed. A REIT or InvIT proposing to list on a recognised stock exchange, and also simultaneously proposing to issue units or facilitate transfer of units of existing unitholders, for issue or listing of DRs on an international exchange, may seek in-principle and final approval from the recognised stock exchange and the international exchange. However, such issue or transfer of units for the purpose of issue of DRs shall be subsequent to the receipt of trading approval from the recognised stock exchange for the public offer.
- **Permissible Jurisdictions and International Exchanges:** REITs and InvITs will be permitted to issue units or facilitate transfer of units of existing unitholders for the issue of DRs only in permissible jurisdictions, which may be notified by the central government from time to time,

and said DRs shall be listed on any of the specified international exchange(s).

- **Obligations of Listed Entity:** REITs and InvITs shall ensure compliance with the extant laws relating to issuance of DRs. For this purpose, REITs or InvITs may also enter into necessary arrangements with the custodian, Indian depository and foreign depository.

  For an initial issue of DRs, REITs and InvITs should, through an intermediary, file with SEBI and the recognised stock exchange(s), a copy of the initial document for their comments and grant of in-principle approval, respectively, within prescribed timelines.

- **Permissible holder:** Permissible holder will mean a holder of DR, including its beneficial owners: (a) who is not a person resident in India; and (b) who is not a non-resident Indian.

- **Voting Rights:** A listed company will ensure that the agreement entered into between the holder of DRs, the listed company and the depository provides that the voting rights on permissible securities, if any, will be exercised by the DR holder through the foreign depository, pursuant to voting instruction only from such DR holder.

- **Pricing:** SEBI proposes that in case of a simultaneous listing of units on recognised stock exchange(s) pursuant to a public offer/ preferential allotment/ institutional placement under SEBI REIT Regulations or SEBI InvIT Regulations and DRs on the international exchange, the price of the issue or transfer of permissible securities for the purpose of issue of DRs by foreign depository, shall not be less than the price of the public offer/ preferential allotment/ institutional placement to domestic investors under the applicable laws. Where units as permissible securities are issued by a REIT or InvIT or transferred by the existing holder, for the purpose of issue of DRs by the foreign depository, the same will be issued at a price not less than the price applicable to a corresponding mode of issue of such permissible securities to domestic investors under the applicable laws.

- **Obligations of Indian Depository, Foreign Depository and Domestic Custodian:**

  i) Indian Depositories will develop a system to ensure that aggregate holding of DR holders, along with their holding, if any, through offshore derivative instruments and holding as a foreign portfolio investor belonging to the same investor group will not exceed the limit on foreign holding under the Foreign Exchange Management Act, 1999, and applicable SEBI regulations.

  ii) The domestic custodian will maintain records in respect of, and report to, Indian depositories all transactions in the nature of issuance and cancellation of depository receipts, for the purpose of monitoring limits.

  iii) Indian depositories will coordinate among themselves and with domestic custodians to disseminate: (a) the outstanding units, as permissible securities, against which the DRs are outstanding; and (b) the limit on units, as permissible securities, that can be converted to DRs.

  iv) The foreign depository will not issue or pre-release DRs unless the domestic custodian has confirmed the receipt of underlying permissible securities.

(Consultation paper on Regulatory Framework for REITs and InvITs to issue Depository Receipts dated February 1, 2023)

2. ***Consultation paper on review of Corporate Governance norms for a High Value Debt Listed Entity***

By way of a consultation paper dated February 8, 2023 ("**Consultation Paper**"), SEBI had invited public comments on the proposed amendments to corporate governance norms for High Value Debt Listed Entity ("**HVDLE**"). The key amendments proposed by SEBI for compliance with corporate governance norms by HVDLEs (only listed non-convertible debt securities), where all shareholders are related parties or where 90-99% of the shareholders are related parties, are set out below:

- **Notice to debenture holders:** Where an agenda item relating to related party transactions is proposed to be placed for approval by shareholders in a general meeting, the company will be required to send a copy of such agenda item to the debenture holders holding listed non-convertible debt securities.

- **Response from debenture holders:** Debenture holders need to submit their objection, if any, in writing or through electronic mode to the Company within seven days from the date of the dispatch of the agenda item.

- **Scrutiny by a Practicing Company Secretary ("PCS"):** To ensure independent scrutiny of the responses received from debenture holders, the company needs to get the

responses scrutinised by a PCS and also obtain a certificate from a PCS on the said responses within three days from the last day by which the responses from the debenture holders are to be received. This certificate is required to be uploaded on the Company's website.

- **Procedure to be followed by Board of Directors:** If objections are received from debenture holders holding 75% or more in value, based on the number of responses received, then the board of directors will have to withdraw the agenda item pertaining to the related party transactions.
- **Approval by Shareholders:** All shareholders, including the shareholders who are related parties, can vote on such related party transactions.

Further, SEBI has proposed that once the regulations become applicable to a HVDLE, they will continue to remain applicable till such time the outstanding value of listed non-convertible debt securities of such entity reduces and remains below the specified threshold for a period of three consecutive financial years.

Public comments on the Consultation Paper were invited till February 22, 2023.

(Consultation Paper on Review of Corporate Governance norms for a High Value Debt Listed Entity dated February 8, 2023)

3. ***Consultation paper on proposal for introduction of the concept of General Information Document and Key Information Document, mandatory listing of debt securities of listed issuers and other reforms under the SEBI NCS Regulations***

By way of a consultation paper dated February 9, 2023 ("**Consultation Paper**"), SEBI had invited public comments on the proposed amendments to the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**SEBI NCS Regulations**"). The key amendments proposed by SEBI are:

- **Introduction of disclosure requirements in respect of prospectus for public issuances of debt securities/ NCRPS and placement memorandum for private placement of non-convertible securities proposed to be listed:** SEBI has proposed to introduce a common set of disclosure requirements (as detailed in Annex-I to the Consultation Paper) applicable to prospectuses for public issuances of debt securities/ non-convertible redeemable preference shares ("**NCRPS**") and placement memoranda for private placement of non-convertible securities. The proposed disclosure requirements integrate the requirements of the present Schedule I (applicable to public issuances of debt securities and NCRPS) and Schedule II of the SEBI NCS Regulations (applicable to private placements of non-convertible securities).

- **Introduction of GID and KID for private placement of non-convertible securities and commercial papers proposed to be listed:** SEBI has proposed to introduce a general information document ("**GID**") and key information document ("**KID**") for issuers making multiple private placements of non-convertible securities and commercial papers proposed to be listed. The GID, having a validity of one year, shall be filed with the stock exchanges at the time of the first issuance of non-convertible securities/ commercial papers, and thereafter, for any subsequent private placements of non-convertible securities/ commercial papers within the validity period of the GID, the issuer shall be required to only file the KID.
- **Introduction of provisions necessitating listed issuers to list subsequent issuances of debt securities:** SEBI has proposed that listed entities having outstanding listed debt securities, which propose to make further issuances of debt securities, shall be necessarily required to list these debt securities on the stock exchange(s), by taking in-principle listing approval under Regulation 28 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**SEBI LODR Regulations**"). Additionally, SEBI has also proposed that listed entities having outstanding unlisted debt securities shall be required to list the same, within a specified time period, as a one-time measure.
- **Disclosure of issue expenses, for issuance of debt securities:** SEBI has proposed that issuers proposing to issue debt securities or non-convertible redeemable preference shares, whether on a private placement basis or through a public issue, shall be mandated to disclose a break-up of various categories of expenses, as a percentage of total issue expenses and total issue size, respectively.
- **Financial Regulators:** SEBI has proposed to amend Regulation 50 of the SEBI NCS Regulations, to replace the words *"Reserve Bank of India"* with *"other financial sector regulators"*, in order to cover issuers who come under the purview of financial sector regulators other than the RBI.

Public comments on the Consultation Paper were invited till February 24, 2023.

(Consultation paper on Proposal for introduction of the concept of General Information Document (GID) and Key Information Document (KID), mandatory listing of debt securities of listed issuers and other reforms under the NCS Regulations dated February 9, 2023)

4. ***Consultation paper on streamlining disclosures by listed entities and strengthening compliance with SEBI Listing Regulations***

By way of consultation paper dated February 20, 2023 ("**Consultation Paper**"), SEBI had invited comments on certain proposed amendments to the SEBI LODR Regulations. Some of the key amendments are:

- **Timeline for submission of first financial results by a newly-listed entity:** SEBI has proposed to insert a new clause, which would require listed entities to submit their first financial results, quarterly or annual as the case may be, immediately after the periods for which financial statements have been disclosed in their offer document for initial public offer, as per the following timelines: (i) quarterly and year-to-date standalone financial results within 45 days of end of each quarter, other than the last quarter or annual audited standalone financial results for the financial year, within 60 days from the end of the financial year, as applicable; or (ii) within 15 days from the date of listing, whichever is later.
- **Timeline to fill up vacancy of directors, Compliance Officer, CEO and CFO in listed entities:** SEBI has proposed deletion of Regulation 25(6) of the SEBI Listing Regulations which specifies the timeline for replacement of an independent director who resigns or is removed from the board of directors of the listed entity, but does not prescribe any timeline for filling up vacancies of independent directors arising out of reasons other than resignation and removal, such as death, disqualification, etc., and for the vacancies of directors other than independent directors. Further SEBI has proposed to insert regulations which will provide for filling up of any intermittent vacancy of a director, compliance officer, CEO and CFO by the listed entity at the earliest, but not later than three months from the date of such vacancy.
- **Freezing of demat accounts of the Managing Director(s), Whole-time director(s) and CEO(s) of a listed entity for continuing non-compliance:** SEBI has proposed that the demat accounts of whole-time directors, including the managing director, and CEO(s) will be frozen for continuing non-compliance and/ or non-payment of fines by a listed entity.

Public comments on the Consultation Paper were invited till March 6, 2023.

(Consultation Paper on streamlining disclosures by listed entities and strengthening compliance with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 dated February 20, 2023)

5. ***Consultation paper on ESG disclosures, ratings and investing***

By way of a consultation paper dated February 20, 2023 ("**Consultation Paper**"), SEBI had invited public comments on a regulatory framework for environmental, social and governance ("**ESG**") disclosures by listed entities, ESG ratings in the securities market and ESG investing by mutual funds. The key changes suggested are:

- **BRSR Code for reasonable assurance of sustainability disclosures:** Pursuant to SEBI mandating the top 1000 listed companies (by market capitalisation) to make filings as per the Business Responsibility and Sustainability Reporting ("**BRSR**"), SEBI has proposed to introduce BRSR Code. The BRSR Code submitted by companies is required to be updated to incorporate select key performance indicators ("**KPIs**"), i.e., the 'E', 'S' and 'G' attributes, as per the methodology specified for reporting and verification of data. SEBI has proposed a timeline for assurance of these KPIs, i.e., reasonable assurance on BRSR Code mandatory for top 250 companies in Fiscal 2023-24, for top 500 companies in Fiscal 2024-25 and for top 1,000 companies in Fiscal 2025-26.
- **ESG disclosures for supply chain:** SEBI has proposed to introduce a limited set of ESG disclosures as per the BRSR Code for the supply chain in a gradual manner and on a 'comply-or-explain' basis. The timeline for implementation of this approach for the top 250 companies to make such ESG disclosures for their supply chain on a 'comply-or-explain' basis with non-mandatory assurance is Fiscal 2024-2025 and with assurance on 'comply-or-explain' basis is Fiscal 2025-2026.
- **ESG ratings with Indian context:** SEBI has proposed a list of 15 ESG parameters with an Indian context that are required to be factored in by ESG rating providers ("**ERPs**").
- **ESG ratings on assured indicators:** SEBI has proposed that since the BRSR Code provides for disclosure of assured KPIs, ERPs will provide a Core ESG rating.
- **Enhanced stewardship reporting for ESG schemes by mutual funds:** SEBI has proposed that asset management companies ("**AMCs**") should disclose if the resolution was or was not supported due to any environmental, social or governance reason. In cases where the voting approach for ESG and non-ESG schemes is different, AMCs should provide details and rationale for 'in favour' and 'against' votes cast on resolutions for ESG schemes and non-ESG schemes separately. Such voting disclosures will be mandatory from fiscal 2023-24, that is for annual general meetings held from April 1, 2023 onwards.
- **Mitigation of risks of mis-selling and greenwashing:** SEBI has proposed that in order to mitigate greenwashing at a scheme level, an ESG scheme will invest at least 65% of its assets under management (AUM) in companies that are reporting on comprehensive BRSR. The remaining investments of the scheme will be in companies reporting on BRSR. These investment norms may be made effective from October 1, 2024. Non-compliant schemes will be provided one year until September 30, 2025.
- **Other recommendations:** SEBI has also proposed that (i) AMCs may be mandated to include the name of the ESG strategy in the name of the concerned fund or scheme from April 1, 2023; (ii) ESG schemes may be mandated to disclose the name of the ERP, along with their ESG scores in their monthly portfolio disclosures from April 1, 2023; and (iii) fund disclosures should annually include a section of 'fund managers' commentary' from April 1, 2024.

Public comments on the Consultation Paper were invited till March 6, 2023.

(Consultation Paper on ESG disclosures, ratings and investing dated February 20, 2023)

6. ***Consultation paper on strengthening corporate governance of listed entities by empowering shareholders***

By way of a consultation paper dated February 21, 2022, SEBI had invited public comments on the proposed amendments to the SEBI Listing Regulations. The key amendments proposed by SEBI to different modes of buyback are set out below:

- **Binding agreements for listed entities:** In addition to the disclosure requirement of the agreements (other than in the normal course of business) that bind listed entities, it is proposed to disclose such agreements to which listed entity may not be a party, but the terms of such agreement may impact the management or control of the listed entity.
  i) *Future agreements:* The SEBI has proposed to make it obligatory for shareholders, promoters, promoter group, related parties, directors, key managerial personnel or any other officer of a listed entity or of its holding, subsidiary, associate company ("**Parties**"), who are party(ies) to such agreement, to inform the listed entity about such agreements within two

working days for onward disclosure by the listed entity. Further, such agreements, among others, will have to be approved by shareholders through a special resolution and by majority of minority shareholders.

ii) *Subsisting agreements:* The agreements that are subsisting as on March 31, 2023, are required to be disclosed to the stock exchanges on or prior to June 30, 2023, and in the Financial Year 2023 annual report of the listed entity. Existence of such agreement will have to be intimated by the Parties on or prior to May 31, 2023, and it will have to be placed before the board of directors for their opinion and the shareholders in the first general meeting after April 1, 2023, for ratification.

- **Special rights of shareholders:** In order to avoid perpetual special right available with a shareholder, it was proposed that the special right will only continue if it is approved by the shareholders every five years from the date of grant of such special right.
- **Transfer of assets outside the scheme of arrangement framework:** In terms of the Companies Act and the SEBI LODR Regulations, interests of minority shareholders are not taken into consideration for undertaking transfer of assets outside the scheme of arrangement framework. Accordingly, it is proposed to include provisions of such transfer in the SEBI LODR Regulations, mandating disclosure of the objects and commercial rationale to the shareholders and requiring more favourable votes of public shareholders than unfavorable ones.
- **Overcoming board permanency:** SEBI has proposed to introduce a shareholders' approval process for all directors of listed entity, wherein every director will be subject to the approval of shareholders once in every five years, irrespective of the nature of such directors (i.e. executive/ non-executive), barring a director appointed by a court or the NCLT.

Comments from the public were invited till March 7, 2023.

(Consultation paper on Strengthening corporate governance at listed entities by empowering shareholders dated February 21, 2023)

7. ***Consultation Paper on certain amendments to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018***

By way of a consultation paper dated February 22, 2023, SEBI had sought views/ comments/ suggestions on various amendments proposed to be introduced to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**SEBI ICDR Regulations**"), which have been enumerated as follows:

- **Underwriting in public issue:** Presently, SEBI ICDR Regulations do not demarcate between hard underwriting (*underwriting for covering shortfall in demand*) ("**Under-subscription Risk**") and soft underwriting (*underwriting for covering technical rejections of the applications*) ("**Payment Risk**") and provide for an underwriting agreement ("**UWA**") to be entered into prior to filing of the prospectus. Accordingly, an amendment is proposed whereby only the UWA for covering the Payment Risk may be entered into prior to filing of the prospectus. The UWA to be entered into for covering the Under-subscription Risk will have to be entered into prior to filing of the red herring prospectus,

along with details of maximum number of securities underwritten.

- **Issuance of bonus shares:** It has been proposed that the issuance of shares through bonus issue will only be undertaken if (a) the issuer has obtained an in-principle approval from the stock exchanges for all the pre-bonus securities, excluding employee stock options or convertible securities, and (b) the shares to be allotted are in dematerialised form. This has been proposed to avoid a mismatch between listed capital and issued capital of an issuer and to avoid damage or theft of physical shares.
- **Pension funds associated with lead managers:** In terms of the SEBI ICDR Regulations, associates of lead managers are prohibited from applying under the anchor investor category. However, mutual funds, insurance companies, alternative investment funds and foreign portfolio investors, which are sponsored by associates of lead managers, are exempted. Similar to REITs, pension funds (registered with the Pension Fund Regulatory and Development Authority), which are sponsored by the associates of lead managers, are proposed to be permitted to apply under the anchor investor category.
- **Hosting of documents online:** SEBI has proposed to include a legal requirement for hosting all material contracts and documents, including industry reports, online, in addition to physical inspection. Further, SEBI has also sought views on hosting of offer documents on the issuer's website.

Comments from the public were invited till March 8, 2023.

(Consultation Paper on Certain Amendments to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, with the objective of increasing transparency and streamlining certain processes dated February 22, 2023)

8. *Consultation Paper on Holding of Sponsor in REITs and InvITs*

By way of a consultation paper, dated February 23, 2023 ("**Consultation Paper**"), SEBI had invited public comments on the proposal to review norms with respect to sponsor(s) of REITs and InvITs, in order to ensure alignment of interest between Sponsors and unit holders. As per the InvIT Regulations, sponsor(s) of the InvIT, together, should hold not less than 15% (subject to certain conditions) of the total units of the InvIT for a period not less than three years from the date of listing. Similarly, as per the REIT Regulations, sponsor(s) and sponsor group of the REIT, together, should hold not less than 15% (subject to certain conditions) of the total units of the REIT for a period not less than three years from the date of listing.

For alignment of interest between the sponsor and unitholder, SEBI has proposed the following:

- The sponsor will be required to mandatorily hold certain percentage of total unit capital in the manner as proposed below, at all points in time as follows:

S. No.	Time Period	In Percentage
1.	Up to 3 years	15% of total unit capital
2.	3-5 years	5% of total unit capital
3.	5-10 years	3% of total unit capital
4.	10-20 years	2% of total unit capital
5.	Post 20 years	1% of total unit capital

- The units required to be mandatorily held by sponsors or sponsor groups cannot be encumbered.
- Further, it is proposed to review norms for declassification as follows:

  The sponsor(s) of a REIT/InvIT whose units have been listed on the stock exchanges for a period of three years is permitted to declassify as the sponsor, subject to compliance with the following conditions:

  i) There shall be a new inducted sponsor in place of the existing declassifying sponsor.

  ii) The inducted sponsor shall comply with the eligibility conditions prescribed in REIT/ InvIT Regulations.

  iii) The mandatory unit holding of the inducted sponsor shall be as prescribed in the table above.

  iv) The outgoing sponsors and its associates shall not have any equity shares or interest or control in the manager/ investment manager of the REIT/InvIT.

  v) Approval of unit holders has been obtained in accordance with Regulation 22(5) and Regulation 22(4) of REIT and InvIT Regulations, respectively.
- The above-mentioned norms will be applicable to all SEBI registered REITs and InvITs raising fresh funds through the issuance of units on and from coming into force of the amendments in the Regulations. For REITs and InvITs not raising fresh or further funds, this proposal will not be applicable.

(Consultation Paper on Holding of Sponsor in REITs and InvITs, dated February 23, 2023)

E. Board Meeting

1. ***SEBI board meeting held on March 29, 2023***

SEBI, in its board meeting held on March 29, 2023, approved *inter alia* the following key proposals in relation to changes to the extant SEBI regulations:

- **Framework for ESG (Environmental, Social and Governance) Disclosures, Ratings:** To facilitate a balanced approach to ESG, certain decisions were taken by the SEBI, including (a) introduction of Business Responsibility and Sustainability Report Core, which will contain limited key performance indicators; (b) introduction of ESG ratings; (c) focus of investment by mutual funds into ESG; and (d) introduction of framework of ESG ratings to be provided by the credit rating agencies.
- **ASBA-like facility for trading in the secondary market:** SEBI has approved a proposal for introducing a broad framework for an optional ABSA-like facility for traders in the secondary market through UPI.
- **Amendment to Listing Regulations:** SEBI has approved amendments to the SEBI LODR Regulations, which included, *inter alia*, (a) threshold and strict timelines for material disclosures; (b) verification of market rumours by top companies; (c) disclosure of certain agreements; (d) shareholder approval of agendas such as transfer of assets, appointment of directors and special rights; (e) timeline for submission of financial results of newly listed entities; and (f) filling of vacancies of directors and other officials in a timely manner.
- **Amendment to SEBI ICDR Regulations:** The SEBI ICDR Regulations will be amended to include (a) demarcation between 'hard underwriting' and 'soft underwriting' and (b) criteria for announcement of bonus issue.
- **Strengthening Investor Grievance Redressal Mechanism in the Securities Market through amendments to Regulations to operationalise Online Dispute Resolution ("ODR") Mechanism:** SEBI has approved a proposal to aid the ODR mechanism by introducing market infrastructure institutions' conciliation and arbitration mechanism for intermediaries and clients, proceedings in hybrid mode, strengthening of enforcement of awards, etc.

(SEBI Press Release no. 6/2023 dated March 29, 2023)

F. Clarifications

1. ***Comprehensive frequently asked questions on Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015***

In order to provide clarity on various concepts related to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("**SEBI PIT Regulations**"), and highlight the nuances of various requirements of the SEBI PIT Regulations, SEBI had issued a comprehensive frequently asked questions on April 29, 2021, which consolidated all the frequently asked questions and guidance notes issued earlier. Subsequently, in light of the queries and suggestions received, and consultations with market participants, the frequently asked questions have now been revised and updated, particularly in relation to structured digital database and contra-trade.

(Frequently Asked Questions dated March 31, 2023)

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FOREIGN EXCHANGE AND RBI UPDATES

A. Notifications/ Circulars

1. ***Foreign Investment in India - Rationalisation of reporting of foreign investment in India in Single Master Form***

   The RBI has introduced the following changes related to reporting of foreign investment in Single Master Form ("**SMF**") on Foreign Investment Reporting and Management System ("**FIRMS**") portal:

   - The forms submitted on the portal will be auto-acknowledged with a time stamp. The system will identify reporting delays, if any.
   - The Authorised Dealer Banks ("**AD Banks**") will have to verify the forms/ reporting within five working days, basis the mandatory documents uploaded by the applicant. The remarks of the AD Bank for rejection of forms, if any, will be communicated to the applicant through a system generated e-mail, which can also be viewed on the FIRMS portal.
   - Forms filed with a delay, less than or equal to three years, will be approved by AD Banks, subject to payment of Late Submission Fee ("**LSF**"), which will be computed by the system.
   - If delay exceeds three years, AD Banks will approve such reporting, subject to compounding of contravention. The applicant will have to make an application to the RBI for such compounding.

   (Notification No. RBI/2022-23/160 A.P. (DIR Series) Circular No. 22 dated January 04, 2023)

2. ***Inclusion of Sovereign Green Bonds under 'Fully Accessible Route' for Investment by Non-residents in Government Securities***

   The RBI has designated all sovereign green bonds issued by the government in fiscal year 2022-23 as 'specified securities', i.e., specified categories of central government securities opened fully for non-resident investors (apart from being available to domestic investors as well) without any restrictions under the Fully Accessible Route (FAR).

   (RBI Circular No. RBI/2022-23/169, FMRD.FMID.No.07/14.01.006/2022-23 dated January 23, 2023)

B. Master Directions

1. ***RBI's Master Directions on Acquisition and Holding of Shares or Voting Rights in Banking Companies, 2023, and Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies, 2023***

   The RBI has issued the Master Direction – Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023, and Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies (collectively referred to as "**Present Directions**"), with the objective of ensuring that the ultimate ownership and control of banking companies are diversified and the major shareholders of banking companies are 'fit and proper' on a continuing basis.

With the issue of the Present Directions, (a) Prior approval for acquisition of shares or voting rights in private sector banks Directions, 2015, (b) Master Direction on Issue and Pricing of Shares by Private Sector Banks and (c) Master Directions on Issue and Pricing of Shares by Private Sector Banks, 2016 (collectively referred to as "**Erstwhile Directions**") stand repealed.

Following are the key changes introduced by the Present Directions:

- *Applicability:* While the Erstwhile Directions were applicable only to private sector banks, the Present Directions are applicable to, *inter alia*, all banking companies defined in the Banking Regulation Act, 1949. However, in line with the earlier directions of Erstwhile Directions, it will not apply to foreign banks operating in India whether as branches or wholly-owned subsidiaries.
- *Scope of 'acquisition' and 'aggregate holding'*
  - i) Both the Present Directions as well as the Erstwhile Directions relate to the framework in relation to the acquisition of major shareholding (i.e. aggregate holding of five per cent or more of the paid-up share capital or voting rights in a banking company) by a shareholder in a banking company.
  - ii) Acquisition under the Present Directions has been defined as acquiring/ agreeing to acquire shares or voting rights, *directly or indirectly*.
  - iii) Similarly, for determining major shareholding, the aggregate holding is defined to mean total holding, including direct, indirect or beneficial shareholding or otherwise. Further, as part of their continuous monitoring duties, banking companies are required to, *inter alia*, monitor any change in Significant Beneficial Owner (as defined under the Companies (Significant Beneficial Owners) Rules, 2018) or acquisition by a person of 10 per cent or more of paid-up equity share capital of a major shareholder.
  - iv) While the term 'indirectly' was not present in the Erstwhile Regulations, the Present Directions have set out an indicative and non-exhaustive list of indirect acquisitions.
- *Limits on Shareholding:*
  - i) Non promoter shareholding: The Present Directions have revised the shareholding limits. The RBI may approve the acquisition of shares or voting rights in a banking company up to the following limits on shareholding:
    - (a) 10 per cent of the paid-up share capital or voting rights of the banking company in case of natural persons, non-financial institutions, financial institutions directly or indirectly connected with large industrial houses and financial institutions that are owned to the extent of 50 per cent or more or controlled by individuals (including the relatives and persons acting in concert), or
    - (b) 15 per cent of the paid-up share capital or voting rights of the banking company in case of financial institutions (excluding those mentioned above), supranational institutions, public sector undertaking and central/ state government.

ii) Promoter shareholding: Under the Erstwhile Directions, the promoters 'stake was restricted to 15% after completion of 15 years from the commencement of business. The Present Directions have increased this limit to 26%. However, during the period prior to the completion of 15 years, promoters of banking companies may be allowed to hold a higher percentage of shareholding as part of the licensing conditions or as part of the shareholding dilution plan submitted by the banking company and approved by the RBI with such conditions as deemed fit.

iii) The RBI may permit higher shareholding than the limits prescribed above on a case-to-case basis, depending on the circumstances as mentioned in the Present Directions.

- *Subsequent acquisition:* Subsequent to the acquisition of shares by a major shareholder, if at any point, the aggregate holding of such shareholder falls below 5%, the person will be required to seek fresh RBI approval if the person intends to again raise the aggregate holding to 5% or more of the paid-up share capital or total voting rights of the banking company.

- *Lock in Requirement:*

  i) Where the RBI permits a person to have a shareholding of 10% or more, but less than 40% of the paid-up equity share capital of the banking company, the acquired shares will be locked in for five years from the date of completion of acquisition.

  ii) Where the RBI permits any person to have a shareholding of 40% or more of the paid-up equity share capital of the banking company, only 40% of the paid-up equity share capital will be locked in for five years from the date of completion of acquisition.

  iii) The locked-in shares are not to be encumbered under any circumstances.

- *Financial Action Task Force Compliant Jurisdictions:* The Present Directions prohibit persons from Financial Action Task Force (FATF) non-compliant jurisdictions to acquire major shareholding in a banking company. This prohibition is applicable even if the funds for acquiring major shareholding in a banking company are routed through a FATF non-compliant jurisdiction. While existing major shareholders from FATF non-compliant jurisdictions may continue with their investment, any further investment by such major shareholders can only be undertaken with prior RBI approval.

- *Compliance with the Present Directions:* Banking companies (excluding payments banks) that are operational as on date of the issue of the Present Directions (January 16, 2023) and where the aggregate holding of a person is not in conformity with the Present Directions are required to submit a shareholding dilution plan within six months from the date of issue of the Present Directions.

(RBI/DOR/2022-23/95 DOR.HOL.No.95/16.13.100/2022-23 dated January 16, 2023)

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