AUGUST 2022

NEWSLETTER

REGULATORY

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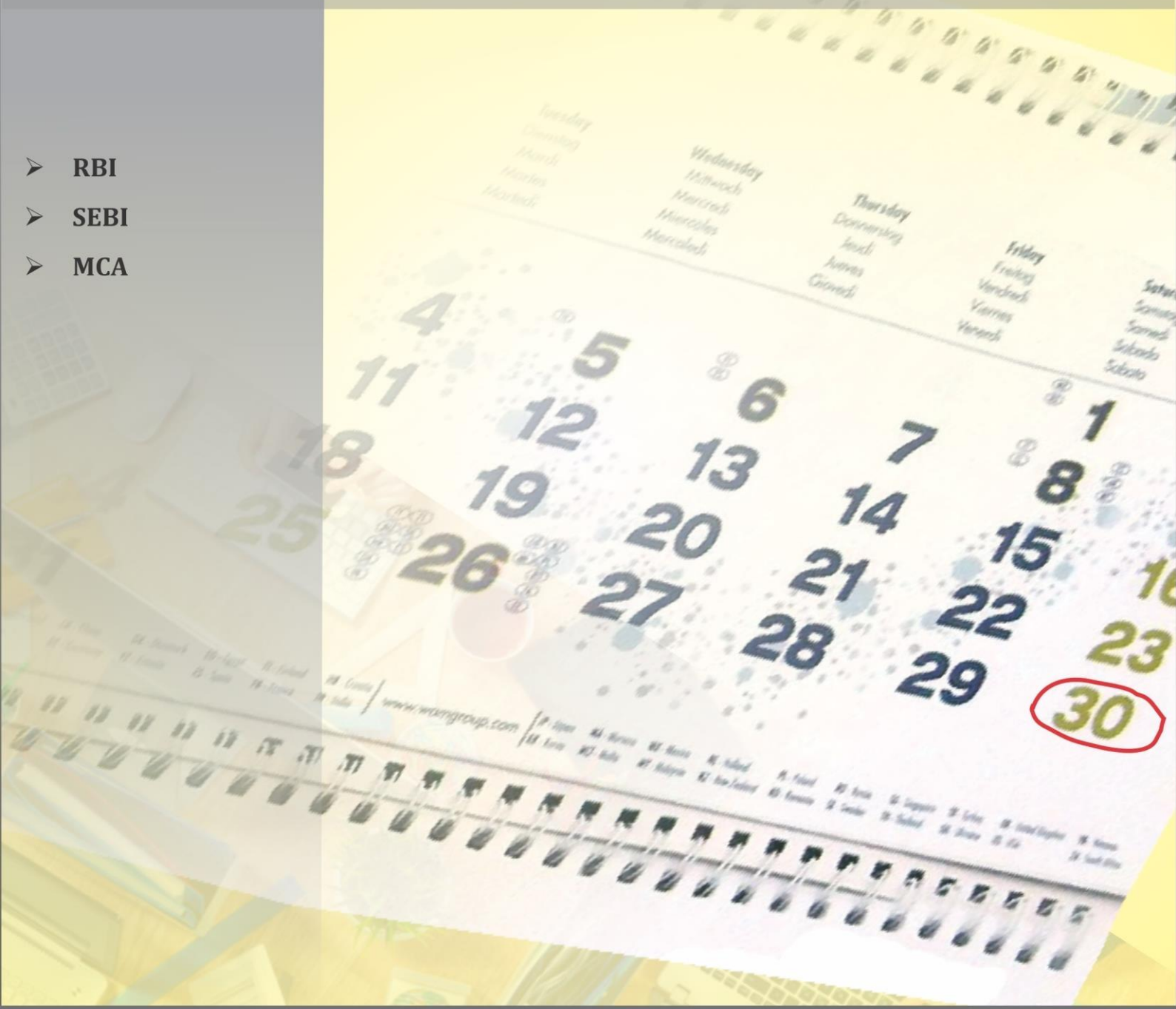

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RBI

1. External Commercial Borrowings (ECB) Policy – Liberalisation Measures

RBI/2022-23/98 A.P. (DIR Series) Circular No. 11
Dated: 1st August, 2022

Reference is drawn to

- paragraph 2.2 of FED Master Direction No.5 on External Commercial Borrowings, Trade Credits and Structured Obligations, dated March 26, 2019 (as amended from time to time), in terms of which eligible ECB borrowers were allowed to raise ECB up to USD 750 million or equivalent per financial year under the automatic route, and
- paragraph 2.1.vi. ibid, wherein the all-in-cost ceiling for ECBs has been specified.

Vide this notification RBI has decided the following:

i) to increase the automatic route limit from ***USD 750 million or equivalent to USD 1.5 billion*** or equivalent.
ii) to increase the all-in-cost ceiling for ECBs, by 100 bps. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling, as hitherto.

The above relaxations would be available for ECBs to be raised till December 31, 2022.

Notification

2. Foreign Exchange Management (Overseas Investment) Regulations, 2022

No. FEMA 400/2022-RB
Dated: 22nd August, 2022

Vide this notification, RBI has notified the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

Following is a gist of the regulations:

1. Financial commitment by Indian entity by modes other than equity capital: The Indian entity may lend or invest in any debt instrument issued by a foreign entity or extend non-fund-based commitment to or on behalf of a foreign entity including overseas step down subsidiaries of such Indian entity subject to the prescribed conditions within the financial commitment limit as prescribed in the Foreign Exchange Management (Overseas Investment) Rules, 2022.

2. Financial commitment by Indian entity by way of debt: An Indian entity may lend or invest in any debt instruments issued by a foreign entity subject to the condition that such loans are duly backed by a loan agreement where the rate of interest shall be charged on an arm's length basis.

3. Financial commitment by way of guarantee: The following guarantees may be issued to or on behalf of the foreign entity or any of its step down subsidiary in which the Indian entity has acquired control through the foreign entity, namely:–

i. corporate or performance guarantee by such Indian entity;
ii. corporate or performance guarantee by a group company of such Indian entity in India, being a holding company (which holds at least 51 per cent. stake in the Indian entity) or a subsidiary company (in which the Indian entity holds at least 51 per cent. stake) or a promoter group company, which is a body corporate;
iii. personal guarantee by the resident individual promoter of such an Indian entity;
iv. bank guarantee, which is backed by a counter-guarantee or collateral by the Indian entity or its group company as per i.-iii above, and issued, by a bank in India.

4. Financial commitment by way of pledge or charge: An Indian entity, which has made ODI by way of investment in equity capital in a foreign entity, may—

(a) pledge the equity capital of the foreign entity in which it has made ODI or of its step down subsidiary outside India, held directly by the Indian entity in a foreign entity and indirectly in step down subsidiary, in favour of an AD bank or a public financial institution in India or an overseas lender, for availing fund based or non-fund based facilities for itself or for any foreign entity in which it has made ODI or its step down subsidiaries

outside India or in favour of a debenture trustee registered with SEBI for availing fund based facilities for itself

(b) create charge by way of mortgage, pledge, hypothecation or any other identical mode on its assets in India or the assets outside India as prescribed in these regulations.

5. Acquisition or transfer by way of deferred payment:
(1) Where a person resident in India acquires equity capital by way of subscription to an issue or by way of purchase from a person resident outside India or where a person resident outside India acquires equity capital by way of purchase from a person resident in India, and where such equity capital is reckoned as ODI,

the payment of amount of consideration for the equity capital acquired may be deferred for such definite period from the date of the agreement as provided in such agreement subject to the prescribed terms and conditions.
(2)The buyer may be indemnified by the seller up to such amount and be subject to such terms and conditions as may be mutually agreed upon and laid down in the agreement.

6. Mode of payment: A person resident in India making Overseas Investment may make payment –

i. by remittance made through banking channels;
ii. from funds held in an account maintained in accordance with the provisions of the Act;
iii. by swap of securities;
iv. by using the proceeds of American Depository Receipts or Global Depositary Receipts or stock-swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.

7. Obligations of person resident in India: A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as the case may be, as an evidence of such investment in the foreign entity within six months from the date of effecting remittance or the date on which the dues to such person are capitalised or the date on which the amount due was allowed to be capitalised, as the case may be.

8. Reporting requirements for Overseas Investment: Unless otherwise provided in these regulations, all reporting by a person resident in India, as specified, shall be made through the designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank.

9. Delay in reporting: A person resident in India who does not submit the evidence of investment within the time specified under sub-regulation (1) of regulation 9 or does not make any filing within the time specified under regulation 10, may make such submission or filing, as the case may be, along with Late Submission Fee within such period as may be advised, and at the rates and in the manner as may be directed by the Reserve Bank, from time to time

10. Restriction on further financial commitment or transfer: A person resident in India who has made a financial commitment in a foreign entity in accordance with the Act or rules or regulations made thereunder, shall not make any further financial commitment, whether fund-based or non-fund-based, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting is regularised.

Notification

SEBI

1. Enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence

Circular No.: SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/106
Dated 4th August, 2022

The SEBI Board, in its meeting on September 28, 2020, had approved changes to the regulatory framework relating to debenture trustees (DTs), enhancing their role. Resultant amendments were made in the SEBI (Debenture Trustees) Regulations, 1993, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) and erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008, pursuant to which a circular (Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020) on the creation of security and due diligence by DTs was issued.

Vide this circular, SEBI tweaked some aspects of the above circular and has laid down the following revised requirements relating to encumbrance, creation of security and related due diligence by DTs:

A. Manner of change in security/creation of additional security/conversion of unsecured to secured in case of already listed non-convertible debt securities:

1. Regulation 59 of SEBI LODR Regulations provides for a change in terms of listed non-convertible debt securities. A change in the structure of non-convertible debt securities, inter-alia, may include:

- A change in security,
- Creation of additional security in case of already secured debt securities
- Creation of security in case of unsecured debt securities.

2. Directions as prescribed in the circular are issued in order to harmonize the process of creation of security pursuant to listing.

B. Encumbrance on securities for issuance of listed debt securities:

Creation of encumbrance on the securities for securing the non-convertible debt securities shall be through the depository system only in accordance with the Depositories Act, 1996, the SEBI (Depositories and Participants) Regulations, 2018, Depository bye laws and other applicable regulations and circulars.

C. Due Diligence Certificate in case of Shelf Prospectus/Memorandum:

In case security details have not been finalized at the time of the filing of a draft shelf prospectus/placement memorandum filed by an issuer company, then the DT shall undertake due diligence as under:

- DT may furnish a due diligence certificate, confirming that it has carried out due diligence for the clauses other than that related to security creation.
- At the time of the issuance of the tranche memorandum/ prospectus when the issue structure including terms related to security has been determined and finalized, the DT shall issue a due diligence certificate covering all clauses of formats as prescribed.

D. Empanelment of External Agencies by Debenture Trustee(s):

For the purpose of empanelment of external agencies for carrying out due diligence in terms of SEBI Circular dated November 03,2020, continuous monitoring in terms SEBI Circular dated November 12, 2020 as well as this circular, DTs shall:

- Adopt an empanelment criterion/ policy as approved by their board of Directors and shall disclose the same on their website.
- Formulate a policy on mitigating conflict of interest and shall disclose the same on their website; the policy shall, inter-alia, include a requirement that the empaneled agency would have no pecuniary relationship with the issuer company 3 years prior to the issue.

E. Compliance with SEBI Circulars on 'Security & Covenant Monitoring System':

In order to ensure efficient recording of details regarding creation of security and monitoring of covenants via the

system hosted by Depositories using the Distributed Ledger Technology (DLT), various stakeholders, viz. Issuers, Depositories, DTs and CRAs shall ensure that they are in compliance of various circulars issued by SEBI from time to time.

Circular

2. Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 – Framework for restricting trading by Designated Persons by freezing PAN at security level

Circular No.: SEBI/HO/ISD/ISD-SEC-4/P/CIR/2022/107
Dated 5th August, 2022

Effective Date: Quarter ending September 30, 2022

Vide this Circular, SEBI has decided that Stock Exchanges and Depositories shall develop a system to restrict trading by DPs of listed company during trading window closure period.

The provisions of this circular shall be applicable to declaration of financial results of the listed company that is or was part of benchmark indices i.e. NIFTY 50 and SENSEX from the date of implementation of this circular. Further, the restriction on trading shall be for on-market transactions, off-market transfers and creation of pledge in equity shares and equity derivatives contracts (i.e. Futures and Options) of such listed companies.

The procedure for implementation of the system is enclosed at *Annexure- A* to the Circular. The flow chart of the same is enclosed at *Annexure – B* to the Circular.

Further, the Compliance Officer and DPs of listed companies shall continue to independently comply with the obligations under PIT Regulations, as applicable to them, till further communication.

Circular

3. Guidelines for overseas investment by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs)

Circular No.: SEBI/HO/AFD-1/PoD/CIR/P/2022/108
Dated 17th August, 2022

In terms of Regulation 12(ba) of erstwhile SEBI (Venture Capital Funds) Regulations 1996 and Regulation 15(1)(a) of SEBI (Alternative Investment Funds) Regulations, 2012, AIFs/VCFs may invest in securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and SEBI from time to time.

In this regard, SEBI has specified the following vide this circular:

1. AIFs/VCFs shall file an application to SEBI for allocation of overseas investment limit in the format specified at *Annexure A* to the circular.

2. The requirement of the overseas investee company to have an Indian Connection, as specified in para 3(ii) of SEBI Circular dated August 09, 2007 and para 2(A)(e)(i) and para 2(B)(c)(iv) of SEBI Circular dated October 01, 2015, has been done away with.

3. AIFs/VCFs shall invest in an overseas investee company, which is incorporated in a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories)or a signatory to the bilateral Memorandum of Understanding with SEBI.

4. AIFs/VCFs shall not invest in an overseas investee company, which is incorporated in a country identified in the public statement of Financial Action Task Force (FATF) as:

(a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
(b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with FATF to address the deficiencies.

5. If an AIF/VCF liquidates investment made in an overseas investee company previously, the sale proceeds received from such liquidation, to the extent of investment made in the said overseas investee company, shall be available to AIFs/VCFs (including the selling AIF/VCF) for reinvestment.

6. AIFs/VCFs shall transfer/sell the investment in overseas investee company only to the entities eligible to make overseas investments, as per the extant guidelines issued under the Foreign Exchange Management Act, 1999.

7. AIFs/VCFs shall furnish the sale/divestment details of the overseas investments to SEBI in the format given at Annexure B within 3 working days of the divestment, by emailing to aifreporting@sebi.gov.in, for updating the overall limit available for overseas investment by AIFs/VCFs.

8. All the overseas investments sold/divested by AIFs/VCFs till date, shall also be reported to SEBI in the format given at Annexure B within 30 days from the date of this circular, by emailing to aifreporting@sebi.gov.in.

The Trustee/Board/Designated Partners of the AIFs/VCFs shall submit an undertaking to SEBI as specified at *Annexure A* with respect to the proposed overseas investment.

Circular

4. Block Mechanism in demat account of clients undertaking sale transactions

Circular No.: SEBI/HO/MIRSD/DoP/P/CIR/2022/109
Dated 18th August, 2022

Effective Date: November 14, 2022

SEBI, vide circular dated July 16, 2021, introduced block mechanism in the demat account of clients undertaking sale transactions, for ease of operations in Early Pay-in mechanism.

Clause 5 of the circular states the following:
"5. The proposed facility of block mechanism is on optional basis and Early Pay-in mechanism shall also continue."

Vide this circular, SEBI has amended the above clause 5 as below:
"5. The facility of block mechanism shall be mandatory for all Early Pay-In transactions."

All other provisions in the circular dated July 16, 2021 shall continue to remain applicable.

Circular

5. Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2022

No. SEBI/LAD-NRO/GN/2022/94
Dated 22nd August, 2022

Effective Date: 20th September, 2022

Following is the gist of amendments:

1. Insertion of definition of related party as under:

"related party" in relation to a portfolio manager, means—
(i) a director, partner or his relative;
(ii) a key managerial personnel or his relative;
(iii) a firm, in which a director, partner, manager or his relative is a partner;
(iv) a private company in which a director, partner or manager or his relative is a member or director;
(v) a public company in which a director, partner or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
(vi) any body corporate whose board of directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director, partner or manager;
(vii) any person on whose advice, directions or instructions a director, partner or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
(viii) any body corporate which is—
(A) a holding, subsidiary or an associate company of the portfolio manager; or
(B) a subsidiary of a holding company to which the portfolio manager is also a subsidiary;
(C) an investing company or the venturer of the portfolio manager;
Explanation.—For the purpose of this clause, ―investing company or the venturer of a portfolio manager means a body corporate whose investment in the portfolio manager would result in the portfolio manager becoming an associate of the body corporate.
(ix) a related party as defined under the applicable accounting standards;
(x) such other person as may be specified by the Board:
Provided that,
(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or
(b) any person or any entity, holding equity shares:
(i) of twenty per cent or more; or
(ii) of ten per cent or more, with effect from April 1, 2023;
in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;
shall be deemed to be a related party;

2. *Insertion of sub-regulation 1A in Regulation 22 pertaining to contracts with clients and disclosures*: The portfolio manager may make investments in the securities of its related parties or its associates only after obtaining prior consent of the client in such manner as may be specified by the Board from time to time.
Provided that the requirement for obtaining consent shall not apply to such portfolio managers as may be specified by the Board.

3. *Insertion of clause (da) & (db) in sub-regulation 4 of Regulation 22 pertaining to contracts with clients and disclosures:* The disclosure document shall include the details of investment of client's funds by the portfolio manager in the securities of its related parties or associate. It shall also include the details of diversification policy of the portfolio manager

4. Insertion of following sub-regulations after sub-regulation (3) of regulation 24 pertaining to Management or administration of clients' portfolio.
(3A) The portfolio manager shall ensure compliance with the prudential limits on investments as may be specified by the Board.
(3B) The prudential limits, as specified under sub-regulation (3A), shall be applicable at the client level at the time of making investments by the portfolio managers.
(3C) The portfolio manager shall not be allowed to invest clients' funds in unrated securities of their related parties or their associates
(3D) The portfolio manager shall put in place an alert based system to monitor compliance with the prudential limits on investments.
(3E) The portfolio manager shall ensure investment of its clients' funds on the basis of the credit rating of securities as may be specified by the Board:

5. Insertion of following clauses in the Disclosure Document under Schedule V:
The details of investment of client's funds by the portfolio manager in the securities of its related parties or associates.
The details of the diversification policy of the portfolio manager for the portfolio of the clients.

Regulation

6. Disclosure requirement for Asset Management Companies (AMCs)

Circular No.: SEBI/HO/IMD/DOF2/P/CIR/2022/111
Dated 25th August, 2022

SEBI had amended the definition of "associate" as per clause (c) of Regulation 2(1) of SEBI (Mutual Funds) Regulations, 1996 vide Gazette Notification dated August 03, 2022.

Vide this circular, SEBI has decided that AMCs shall ensure scheme wise disclosure of investments, as on the last day of each quarter, in securities of such entities that are excluded from the definition of associate.

Disclosure of Investment shall include ISIN wise value of investment and value as percentage of AUM of scheme. Such disclosure shall be made on the websites of respective AMCs and on the website of AMFI, within one month from the close of each quarter.

Circular

7. Enhanced Disclosures by CRAs and Norms on Rating Withdrawal

Circular No.: SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2022/ 113
Dated 25th August, 2022

SEBI (Credit Rating Agencies) Regulations, 1999 ("CRA Regulations") provide for a principle-based regulation of CRAs focusing inter alia on enhanced transparency and disclosures by CRAs. Over time, SEBI has prescribed various disclosures under different circulars under the CRA Regulations.

In order to allow investors and other stakeholders to properly use such disclosures in a fair assessment of CRAs, SEBI vide this circular has suggested changes in disclosures made by CRAs:

1. **Applicability**: This circular shall be applicable to credit ratings of securities that are listed, or proposed to be listed, on a recognized stock exchange, and other credit ratings that are required under various SEBI Regulations or circulars thereunder.
The date or time period of applicability of sections in which changes in disclosures made by CRAs has been suggested shall be as provided below:

Section of the Circular	Date of Applicability
Methodology for Computation of Sharp Rating Action	Disclosures for H1of Financial Year2022-23
Issuers Not Cooperating (INC) and information required for rating	Latest by March 31, 2023
Withdrawal Norms	Ratings withdrawn after September 30, 2022
Rating Withdrawal of Perpetual Debt Securities	Ratings withdrawn after September30, 2022
Disclosure of Average Rating Transition Rates for Long-Term Credit Ratings	Disclosures for Financial Year 2022-23
Enhanced Disclosures by CRAs	Website Disclosures made after March 31, 2023

Circular

8. Circular for Portfolio Managers

Circular No.: SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2022/112
Dated 26th August, 2022

Effective Date: 20th September, 2022

The amendment to SEBI (Portfolio Managers) Regulations, 2020 ("PMS Regulations") notified on August22, 2022 (available at link), inter-alia mandated prudential limits on investments in associates/related parties of Portfolio Manager, the requirement of taking prior consent of client for such investments and restrictions based on the credit rating of securities. The definitions of the terms "related party" and "associate" have been provided in the PMS Regulations.

Pursuant to the above, the Portfolio Managers shall ensure compliance with the following in terms of this circular:

1. Limits on investment in securities of associates / related parties of Portfolio Managers: Portfolio Manager shall invest up to a maximum of 30 percent of their client's portfolio (as a percentage of the client's assets under management) in the securities of their own associates/related parties. Further, the Portfolio Manager shall ensure compliance with the following limits:

Security	***Limit for investment in single associate/related party (as percentage of client's AUM)***	***Limit for investment across multiple associates/related parties (as percentage of client's AUM)***

Equity	15%	25%
Debt and hybrid securities	15%	25%
Equity + Debt + hybrid securities	30%	

2. Prior consent of the client regarding investments in the securities of associates/related parties: Portfolio Managers shall obtain a one-time prior positive consent of client in the format specified at Annexure A(consent form),as a part of the agreement mandated under Regulation 22(1) of the PMS Regulations. Portfolio Managers shall also comply with other prescribed requirements.

3. Minimum credit rating of securities for investments by Portfolio Managers: Portfolio Managers offering discretionary portfolio management services shall not make any investment in below investment grade securities. Portfolio Managers offering non-discretionary portfolio management services shall not make any investment in below investment grade listed securities.

4. Disclosure of details of investments by Portfolio Managers: Portfolio Managers shall disclose the following in the periodical report required to be furnished to clients
i. Details of investment of client's funds in the securities of associates/related parties of the Portfolio Manager.
ii. Details of instances of passive breach of investment limits, if any, and steps taken to rectify the same.
iii. Details of credit ratings of investments in debt and hybrid securities.

Circular

9. Corrigendum to Master Circular for Depositories dated February 05, 2021 on Opening of demat account in case of HUF

Circular No.: SEBI/HO/MRD/MRD-POD-2/P/CIR/2022/114
Dated 26th August, 2022

Reference is drawn to SEBI Master Circular for Depositories No. SEBI/HO/MRD2/DDAP/CIR/P/2021/18 dated February 05, 2021 and Corrigendum to Master Circular for Depositories dated February 05, 2021 on Opening of demat account in case of HUF dated February 17, 2021.

In partial modification, Subsection 1.2(a) of Section 1.4 of the Master Circular for Depositories dated February 05, 2021 is replaced with the following:

"In the event of death of Karta of HUF, the name of the deceased Karta in the Beneficial Owner (BO) account shall be replaced by the new Karta of the HUF who in such a case shall be eldest coparcener in the HUF or a coparcener who is appointed as Karta by an agreement reached amongst all the coparceners of the HUF"

The other provisions of the Master Circular for Depositories SEBI/HO/MRD2/DDAP/CIR/P/2021/18 dated February 05, 2021 shall remain unchanged.

Circular

10. Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT

Circular No.: SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/0115
Dated 26th August, 2022

SEBI issued circular SEBI/HO/DDHS/DDHS/CIR/P/2019/143dated November 27, 2019 providing guidelines for preferential issue and institutional placement of units by listed InvITs ("Guidelines").

The guidelines for preferential issue and institutional placement of units by listed InvITs stand modified as under:

1. Clause 3.5 of above circular (as amended) is modified as under:
Post allotment, the InvIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within two working days *(previously seven working days)* from the date of allotment:
Provided that where the InvIT fails to list the units within the specified time, the monies received shall be refunded

through verifiable means within four working days *(previously twenty working days)* from the date of the allotment, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT, investment manager of the InvIT and its director or partner who is an officer in default shall, on and from the expiry of the fourth working day *(previously twentieth working day)*, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.

2. Sub-paragraph (A) of paragraph 2 of Annexure-I of above circular (as amended) is modified as under:
Where the units of the InvIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:

a) the 90 trading days' volume weighted average price of the related units quoted on the recognised stock exchange preceding the relevant date; or
b) the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.

A preferential issue of units to "institutional investors" not exceeding five in number, shall be made at a price not less than the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.

3. Clause 4.1 of Annexure-I (as amended) is modified as under and the explanation stands deleted:
Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the 90 trading days *(previously 6 months)* preceding the relevant date. Further, where any person belonging to the sponsor(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date, all sponsors shall be ineligible for allotment of units on a preferential basis.

Provided that this restriction on preferential issue of units shall not apply to a sponsor(s), in case any asset is being acquired by the InvIT from that sponsor(s), and preferential issue of units is being made to that sponsor, as full consideration for the acquisition of such asset.

Circular

11. Amendments to guidelines for preferential issue and institutional placement of units by a listed REIT

Circular No.: SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/0116
Dated 26th August, 2022

SEBI issued circular SEBI/HO/DDHS/DDHS/CIR/P/2019/143dated November 27, 2019 providing guidelines for preferential issue and institutional placement of units by listed REITs ("Guidelines").

The guidelines for preferential issue and institutional placement of units by listed REITs stand modified as under:

1. Clause 3.5 of above circular (as amended) is modified as under:
Post allotment, the REIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within two working days *(previously seven working days)* from the date of allotment:
Provided that where the REIT fails to list the units within the specified time, the monies received shall be refunded through verifiable means within four working days *(previously twenty working days)* from the date of the allotment, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the REIT, investment manager of the REIT and its director or partner who is an officer in default shall, on and from the expiry of the fourth working day *(previously twentieth working day)*, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.

2. Sub-paragraph (A) of paragraph 2 of Annexure-I of above circular (as amended) is modified as under:
Where the units of the REIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:

c) the 90 trading days' volume weighted average price of the related units quoted on the recognised stock exchange preceding the relevant date; or
d) the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.

A preferential issue of units to "institutional investors" not exceeding five in number, shall be made at a price not less than the 10 trading days' volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.

3. Clause 4.1 of Annexure-I (as amended) is modified as under and the explanation stands deleted: Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the 90 trading days *(previously 6 months)* preceding the relevant date. Further, where any person belonging to the sponsor(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date, all sponsors shall be ineligible for allotment of units on a preferential basis. Provided that this restriction on preferential issue of units shall not apply to a sponsor(s), in case any asset is being acquired by the REIT from that sponsor(s), and preferential issue of units is being made to that sponsor, as full consideration for the acquisition of such asset. Circular

MCA

1. Companies (Accounts) Fourth Amendment Rules, 2022

G.S.R. 624(E)
Dated 5th August, 2022

Vide this notification, MCA has amended the Companies (Accounts) Rules, 2014.

The following amendments have been made to Rule 3 pertaining to manner of Books of Account to be kept in Electronic Mode:

(i) Sub Rule 1: The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India ***at all times*** (previously accessible in India) so as to be usable for subsequent reference

(ii) Proviso to sub-rule (5), the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a ***daily basis*** (previously periodic basis).

(iii) Insertion of the following clause in sub-rule (6), after clause (d):-

"(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.".

Notification

2. Companies (Incorporation) Third Amendment Rules 2022

G.S.R. 643(E)
Dated 18th August, 2022

Vide this notification, MCA has amended the Companies (Incorporation) Rules, 2014:

Amendment has been made to insert the following new Rule 25B after Rule 25A:

"25B. Physical verification of the Registered Office of the company.-

(1) The Registrar, based upon the information or documents made available on MCA 21, shall visit at the address of the registered office of the company and may cause the physical verification of the said registered office for the purposes of sub-section (9) of section 12, in presence of two independent witness of the locality in which the said registered office is situated and may also seek assistance of the local Police for such verification, if required.

(2) The Registrar shall carry the documents as filed on MCA 21 in support of the address of the registered office of the company for the purposes of physical verification and to check the authenticity of the same by cross verification with the copies of supporting documents of such address collected during the said physical verification, duly authenticated from the occupant of the property whereat the said registered office is situated.

(3) The Registrar shall take a photograph of the registered office of the company while causing physical verification of the same.

(4) The report on physical verification of the registered office of the Company shall be prepared by the Registrar in the prescribed format.

(5) Where the registered office of the company is found to be not capable of receiving and acknowledging all communications and notices, the Registrar shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of relevant documents, if any, within a period of thirty days from the date of the notice before taking further actions in accordance with the provisions of section 248 of the Act.".

Notification

Disclaimer:

This is not a complete listing of all circulars/notifications issued during the month.
Instead it is only a listing of some of the circulars/notifications that we considered important.

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