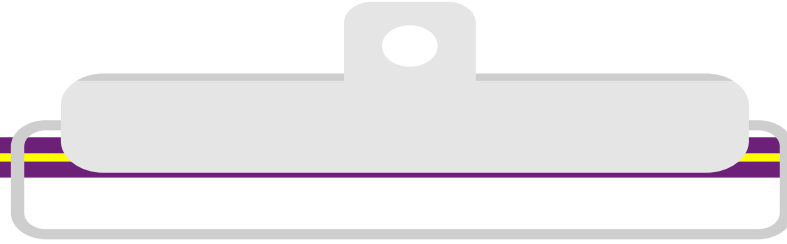


Audit Committee update

Quarter ended 30 September 2022



Agenda



- **BEPS 2.0: Introduction**
- **Social stock exchange**
- **SEBI updates**
 - **Enhanced guidelines for debenture trustees (DT) and listed issuer companies on security creation and initial due diligence**
- **MCA updates**
 - **Corporate Social Responsibility (CSR) amendments**
 - **Amendment to rules relating to electronic records**
 - **Revised definition of Small Company**
- **Annexure**



BEPS 2.0- an Update





Why is it needed?

- To delink taxing rights from physical presence
- To disincentivise tax-driven cross-border structures
- To address harmful tax competition

How is it different?

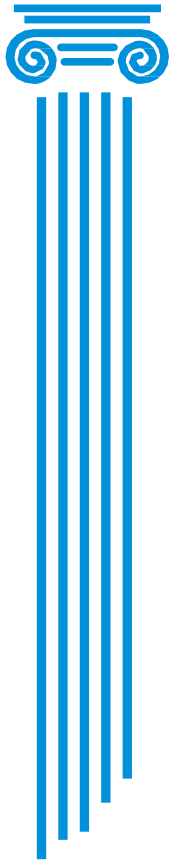
- Financial Statements driven
- Largely formula based
- Global regime

What is it made of?

- **Pillar One**
- **Pillar Two**
 - Global Anti-Base Erosion Rule (GloBE)
 - Subject to Tax Rule (STTR)



Pillar 1



- **Amount A:** New nexus rule without a physical presence
 - Threshold- Consolidated group turnover exceeding **EUR 20 billion** and profitability above **10%**
 - **25% of residual profits (i.e. profits in excess of 10%)** allocated to market jurisdictions based on revenue
 - Exclusions for extractives & regulated financial services
- **Amount B:** Fixed return for certain routine marketing and distribution activities in the market/user jurisdiction
- Removal of Digital Services Taxes (DSTs) and similar levies

Pillar 2



GloBE:

- Threshold- Consolidated group turnover of **EUR 750 million**
- Country of the ultimate parent entity can collect top-up tax if overseas group companies have an **ETR below 15%**. The right shifts to other countries in some cases
- Complex calculations to derive ETR – based on financial statements, but with numerous adjustments

STTR:

- Specified cross-border intra-group payments made to related parties subject to **new withholding tax if the recipient is taxed below 9%**

Timelines and Takeaways



Timelines – decoupling of Pillars 1 and 2?

Pillar 1

- Rules yet to be finalised
- Implementation likely to be pushed to 2024
- Extended applicability of Equalisation Levy?

Pillar 2

- GloBE Rules ready – pending enactment at national level
- STTR Rules pending finalisation – expected in end-2022
- Intended to come into effect in 2023, but is 2024 more likely?

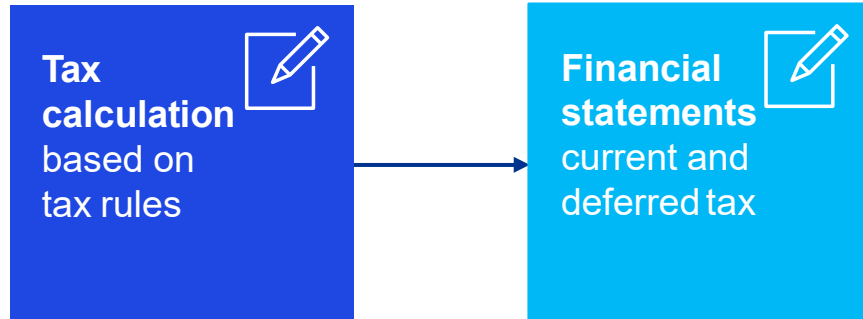
Takeaways

- Monitor developments and assess their financial and administrative impact
- Prepare for significant data collection and compliance challenges
- Collaboration between tax and accounting teams critical for a successful implementation:
 - Accounting expertise essential in BEPS 2.0 tax calculations
 - Tax expertise essential in reflecting BEPS 2.0 impact in financial statements.
- Consider the appropriate level of disclosures in FY 2022-23 interim and annual financial statements.

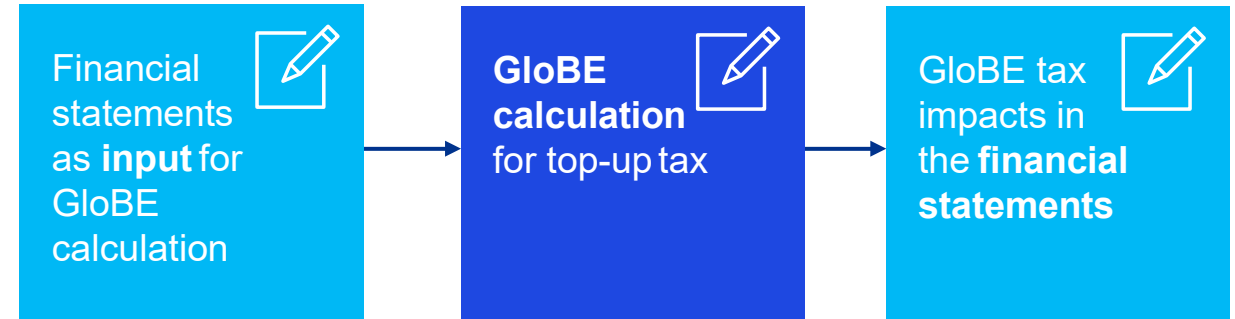
Key accounting considerations under Ind AS 12, *Income Taxes*



Tax and accounting – Business as usual



Tax and accounting – GLoBE rules



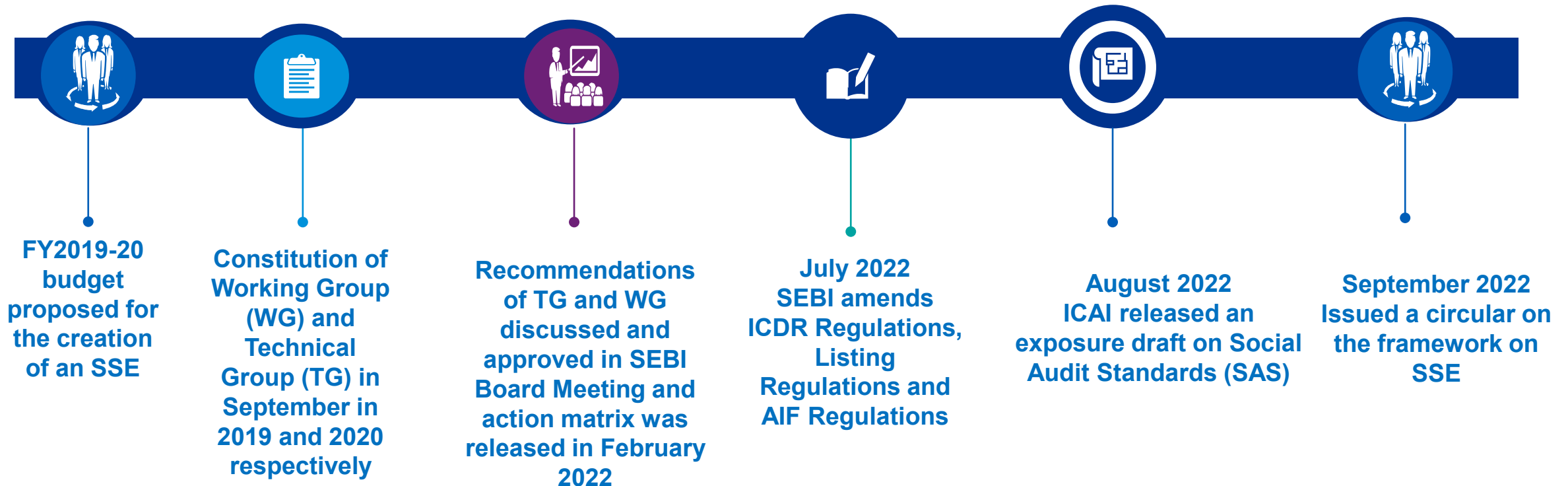
Key considerations



Social Stock Exchange

Formation of Social Stock Exchange (SSE)

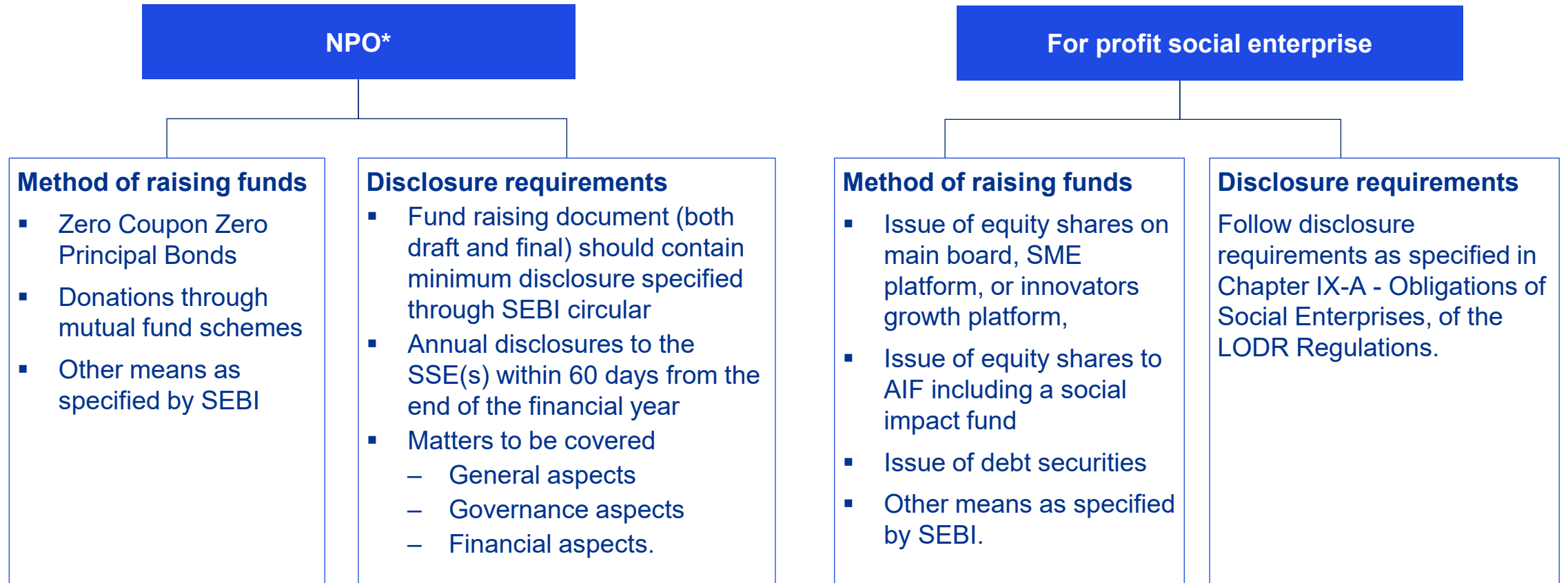
Social Stock Exchange (SSE) means a separate segment of a recognised stock exchange having nationwide trading terminals.



Overview of Social Enterprise (SE)

Social Enterprise (SE)

- An SE (eligible to participate in an SSE) would be an entity (Non-Profit Organisation (NPO) and for-profit social enterprise having social intent
- Engage in at least one of the social activity out of the of 16 eligible social activities.



**SEBI through its circular dated 19 September 2022 specified minimum requirements to be met by an NPO for registration with an SSE in terms of ICDR Regulations and annual disclosures in terms of LODR Regulations..*

Intimations and disclosures by an SE

Materiality Assessment



Details of KMPs



Annual Impact Report (AIR)



General requirements for NPOs*

- To be submitted within 90 days from the end of a financial year
- Audited by a social audit firm employing social auditor(s).
- Provide qualitative and quantitative aspects of the social impact generated or solution for which funds are raised
- Specific requirement for a social impact fund to disclose details of all investee/guarantee organisations.

Disclosure requirements for NPO*

- Strategic intent and planning
- Approach
- Impact score card

Statement of utilisation of funds*



To be submitted by a listed NPO within 45 days from the end of each quarter in the following manner:

- Category-wise amount of monies raised,
- Category-wise amount of monies utilised, and
- Balance amount remaining unutilised.

*SEBI through its circular dated 19 September 2022 provided specific requirements to be met by an NPO.

Social Audit Standards (SAS) – an exposure draft

SAS will apply to an independent social audit of a social enterprise.

Five elements of a social audit engagement are:

- A three-party relationship involving a social auditor, a responsible party (generally SE), and the intended user
- Project/programme/intervention to be covered
- Project monitoring framework
- Evidence
- A written report.



To whom does the SAS framework apply

- NPOs seeking to only get registered with an SSE
- NPOs seeking to get registered and raise funds through an SSE, and
- For profit social enterprises seeking to be identified as an SE under the provisions of the ICDR Regulations.



MCA Updates

Corporate Social Responsibility (CSR) amendments

On 20 September 2022, MCA issued certain amendments to the provisions of the Companies (CSR Policy) Rules, 2014.

Key amendments relate to:



Constitution of a CSR committee

New proviso added under Rule 3(1)

- If there is an unspent CSR amount as per Section 135(6) in a company, then it will continue to constitute a CSR Committee and comply with the provisions of Section 135(2) to 135(6) relating to CSR.

CSR rules now apply (Rule 3(2))

- Even if a company ceases to be covered under Section 135(1) of the 2013 Act, i.e. a company whose net worth, turnover, or net profit falls below the specified threshold, then it would continue to constitute a CSR Committee and comply with the provisions of Section 135(2) to 135(6) relating to CSR.



CSR impact assessment – change in limits

Criteria under Rule 8(3)

- Every company having an average CSR obligation of INR10 crore or more in the three immediately preceding financial years are required to undertake an impact assessment through an independent agency of CSR projects having outlays of INR1 crore or more.
- Such a company may book the expenditure incurred towards the impact assessment towards CSR for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or INR50 lakh, whichever is less.

New limit



The expenditure incurred should not exceed

- Two per cent of the total CSR expenditure for that financial year, or
- INR 50 lakh, whichever is higher.

MCA updates (cont.)

Amendment to rules relating to electronic records

On 5 August 2022, MCA issued certain amendments to the provisions of Rule 3 of Companies (Accounts) Rules, 2014 relating to the manner in which books of accounts are to be kept in an electronic form.

Availability of books of accounts (Rule 3(1))

- Books of account and other relevant books and papers maintained in an electronic mode should be accessible in India, **at all times**.



Maintaining of backups (Rule 3(5))

- Back-ups in electronic mode should be maintained on servers physically located in India **on a daily basis (earlier periodic basis)** even in cases where such backups are maintained at a place outside India.



Service provider (Rule 3(6))

- Additional disclosure by a company to the Registrar of Companies (ROC) relating to the name and address of the person in control of the books of account and other books and papers in India, where the service provider is located outside India.



Revised definition of 'Small Company'

MCA, vide notification dated 15 September 2022, has issued the Companies (Specification of definition details) Amendment Rules, 2022 to further amend the definition of small company.

Existing

Small company means a company, other than a public company whose:

- Paid-up share capital **does not exceed INR2 crore; and**
- Turnover as per profit and loss account for the immediately preceding financial year **does not exceed INR20 crore**



Modified

Small company means a company, other than a public company whose:

- Paid-up share capital **does not exceed INR4 crore; and**
- Turnover as per profit and loss account for the immediately preceding financial year **does not exceed INR40 crore**



SEBI Updates

Enhanced guidelines for debenture trustees (DT) and listed issuer companies on security creation and initial due diligence

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

- Before initiating due diligence, DT and listed entity to enter into an amended debenture trust agreement to incorporate the obligations
- DT to carry out due diligence for change in security, creation of security/ additional security in the manner as prescribed
- DT to issue a no-objection certificate (NOC) to issuer company for going ahead with proposed change in the structure/ creation of security
- Issuer company to create the proposed security and the charge in favour of DT
- Issuer company, pursuant to execution of supplemental/ amended debenture trust deed, to submit prescribed documents to Depositories and Stock Exchanges:

Encumbrance on securities for issuance of listed debt securities

- Creation of encumbrance on the securities for securing the non-convertible debt securities would be through the depository system
- Encumbrance would mean:
 - Pledge, hypothecation, lien, negative lien, non-disposal undertaking or non-disposal agreement
 - Any restriction on the free and marketable title to securities
 - Any covenant, transaction, condition or arrangement in the nature of encumbrance

Due Diligence Certificate in case of Shelf Prospectus/ Memorandum

DT to undertake due diligence as under where security details not finalised at time of filing of draft shelf prospectus/ placement memorandum, :

- Furnish due diligence certificate confirming it has carried out due diligence for clauses other than that related to security creation
- DT to issue a due diligence certificate covering all clauses of applicable formats prescribed at the time of issuance of tranche memorandum/ prospectus



Empanelment of external agencies by Debenture trustees

- Adoption of an empanelment criterion/ policy as approved by board of Directors and disclosure on website
- Formulation of policy on mitigating conflict of interest and disclose of policy on website



RBI Updates

Guidelines on digital lending

***The Working Group on Digital Lending was established in January 2021 and submitted its report in November 2021
The RBI issued Press Release “Recommendations of the Working Group on Digital Lending – Implementation” on 10 August 2022.***

The RBI, vide circular dated 2 September 2022, issued guidelines on digital lending (guidelines) basis recommendations of the Working Group on Digital Lending

Applicability and effective date

- Guidelines applicable for Banks and Non-Banking Financial Companies (‘Regulated entities’ ‘REs’)
- LSPs* and DLAs# of the REs and LSPs are also required to comply with the guidelines
- Guidelines applicable for existing customers availing fresh loans and to new customers getting onboarded from the date of the circular (i.e. 2 September 2022)
- However, for a smooth transition, REs would be given time till 30 November 2022 to put in place adequate systems and processes to ensure that existing digital loans (sanctioned as on the date of the circular) are also in compliance with these guidelines

* Lending Service Providers

Digital Lending Applications



Guidelines

- Define digital lending as a remote and automated lending process, largely by use of seamless digital technologies for customer acquisition, credit assessment, loan approval, disbursement, recovery, and associated customer service
- Lenders to ensure compliance with extant guidelines on outsourcing
- Circular provides detailed guidance on:
 - Customer protection and conduct requirements
 - Technology and data requirements, and
 - Regulatory framework



Guidelines on digital lending (cont.)

Customer protection and conduct requirement

- Loan disbursements and repayments to be done directly into borrower/RE account
- Enhanced disclosures to borrowers vide:
 - Key Fact Statement
 - Disclosure of APR
 - Other information and documents
- Guidance on grievance redressal mechanism for borrowers
- Due diligence of LSPs required
- Economic profile of borrowers to be captured
- Cooling-off/look-up period for loans



Technology and data requirement

- Need-based data collection
- DLAs' access to borrower's mobile phone resources restricted
- Borrowers to be able to manage data to be collected/stored on DLAs
- Borrower's consent required for sharing personal information with a third party
- Comprehensive privacy policy of DLAs and LSPs should be publicly available
- Compliance with various technology standards
- Guidance and restrictions on storage of data prescribed



Regulatory framework

- Any lending done through DLAs (including Buy Now Pay Later) to be reported to Credit Information Companies (CIC)
- FLDG and similar products could be considered as synthetic securitisation and should comply with Master Circular on Securitisation



Miscellaneous RBI updates

New master directions during the quarter

- Foreign Exchange Management (Overseas Investment) Regulations, 2022
- Foreign Exchange Management (Overseas Investment) Directions, 2022

Updated master directions during the quarter

- Master Direction - Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021
- Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016
- Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016
- Master Direction – Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022 (update on FAQ issued)
- Master Directions – Priority Sector Lending (PSL) – Targets and Classification
- Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations
- Master Direction - Lending to Micro, Small & Medium Enterprises (MSME) Sector
- Master circular on Housing Finance for UCBs
- Master direction - Acquisition or Transfer of Immovable Property under Foreign Exchange Management Act, 1999
- Master Direction - Reserve Bank of India (Co-operative Banks - Interest Rate on Deposits) Directions, 2016
- Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016

Annexure

Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT/ REIT

- Clause 3.5: Post allotment, InvIT/ REIT to make an application for listing of units to stock exchange and units to be listed within **2 working days (Earlier: 7 working days)** from the date of allotment:
- Paragraph 2 (A) of Annexure-I:
 - Where units of InvIT/ REIT are frequently traded, the price of units to be allotted pursuant to preferential issue should not be less than higher of:
 - **90 trading days' (Earlier: average of weekly high and low)** volume weighted average price of the related units quoted on **recognised** stock exchange preceding relevant date (**Earlier: during the 26 weeks preceding the relevant date**)
 - **10 trading days' (Earlier: average of weekly high and low)** volume weighted average prices of related units quoted on **recognised** stock exchange (**Earlier: during the 2 weeks**) preceding the relevant date.
 - A preferential issue of units to institutional investors not exceeding five in number, to be made at a price not less than the **10 trading days' (Earlier: average of the weekly high and low)** volume weighted average prices of related units quoted on a recognised stock exchange preceding relevant date. (**Earlier: during 2 weeks preceding the relevant date**)
 - **Relevant stock exchange** would mean the recognised stock exchange in which the units of the InvIT/ REIT are listed and in which the highest trading volume in respect of the units of the InvIT/ REIT has been recorded during the **preceding 90 trading days (Earlier: 26 weeks)** prior to the relevant date
 - Frequently traded units for purposes of the **guidelines (Earlier: circular)** would mean the units of the InvIT/ REIT, in which the traded turnover on any recognised stock exchange during the **240 trading days (Earlier: 12 calendar months)** preceding the relevant date, is at least ten percent of the total number of issued and outstanding units of such class of units of the issuer.

Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT/ REIT

- Clause 4.1 of Annexure-I: Preferential issue of units not to be made to any person who has sold or transferred any units of the issuer during the **90 trading days (Earlier: 6 months)** preceding the relevant date. Further, where any person belonging to the sponsor has sold/ transferred their units of issuer during the **90 days (Earlier: 6 months)** preceding the relevant date, **all** sponsors would 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, in case any asset is being acquired by the InvIT/ REIT from that sponsor and preferential issue of units is being made to that sponsor, as full consideration for the acquisition of such asset.**
- **Earlier: Proviso to clause 2.2 “Provided in case of issuance of units through “institutional placement” the minimum listing period required shall be 12 months”**
- Clause 4.2: No allotment shall be made, either directly or indirectly, to any institutional investor who is a sponsor(s) or manager, or is a person related to, or related party or associate of, the sponsor(s) or the manager

Provided that allotment of units can be made to the sponsor for un-subscribed portion in the institutional placement subject to following conditions:

- **at least ninety percent of the issue size has been subscribed**
- **objects of the issue is acquisition of assets from that sponsor**
- **units allotted to sponsor shall be locked in as per Clause 3 of Annexure I**
- **unitholders approval shall be taken for unsubscribed portion being allotted to sponsor**

Thank you

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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