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Amendments to the Non-Convertible Securities (NCS) Regulations

The Securities Exchange Board of India (SEBI) issued amendments to the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) through a notification dated 2 February 2023. The key considerations from the amendments are as follows:

a. **Expansion of definition of 'Green Debt Security' (GDS)**: The amendment has expanded the scope of the definition of GDS. The definition of GDS now also includes the following:

- **Projects/activities under pollution prevention and control sectors:** Projects/activities under pollution prevention and control sectors (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, waste reduction, waste recycling and energy efficient or emission efficient waste to energy) and sectors mentioned under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change
- **New products:** Circular economy adapted products, production technologies and processes
- **Blue bonds:** These are funds raised for sustainable water management including clean water and water recycling, and sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping
- **Yellow bonds:** It comprises of funds raised for solar energy generation and the upstream industries and downstream industries associated with it
- **Transition bonds:** It comprises of funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions ((INDCs)[1].

Furthermore, SEBI has also issued a circular on 3 February 2023, to specifies the dos and don'ts that an issuer of GDS should ensure for avoiding greenwashing. Greenwashing refers to the practice of making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation by an issuer of GDS.

b. **Recall or redemption prior to maturity:** An issuer of NCS has the right to recall or redeem the securities prior to the maturity date subject to certain conditions specified in the regulation. The notification has amended the provisions pertaining to dissemination of information for recall or redemption of securities prior to the maturity date. As per the amendment, issuers are now required to send a notice for recall or redemption prior to maturity of NCS to all the eligible holders and debenture trustees at least 21 days prior to the date on which such a right is exercisable.

c. **Appointment of a director:** The amendment requires the Articles of Association (AoA) and the trust deed to include a provision that the debenture trustee(s) should nominate a person as a director on the board of directors of the issuer. However, an issuer whose debt securities are already listed should ensure compliance with this provision by 30 September 2023 by amending the AoA and trust deed. Further, in case the issuer has defaulted in the payment of interest or repayment of principal amount, then appointment of director should be within one month from the date of receipt of nomination from the debenture trustee(s) or within one month from 2 February 2023, whichever is later.

d. **Period of subscription:** The NCS public issue should be kept open for a minimum period of three working days and a maximum of 10 working days. In case of revision in the price band or yield, the issuer should extend the bidding issue period disclosed in the offer document for a minimum period of three working days subject to a maximum cap of 10 working days.

e. **Regulatory fee:** The amendments have also prescribed a regulatory fee required to be paid at the time of filing the draft offer document.

The abovementioned amendments are applicable from 2 February 2023.

(Source: SEBI notification no. No. SEBI/LAD-NRO/GN/2023/119 dated 2 February 2023 and circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 dated 3 February 2023.

1. Intended Nationally Determined Contributions (INDCs) refer to the climate targets determined by India under the Paris Agreement at the Conference of Parties 21 in 2015, and at the Conference of Parties 26 in 2021, as revised from time to time.

SEBI prescribes the manner of achieving Minimum Public Shareholding

As per the provisions of the SEBI LODR Regulation, every listed entity is required to comply with the Minimum Public Shareholding (MPS) requirements as prescribed in the Securities Contracts (Regulation) Rules, 1957 (SCRR).

Additionally, SEBI had issued a circular in February 2018 specifying different methods that can be used to achieve compliance with the MPS requirements. However, SEBI received representations for providing relaxation from the conditions specified in the existing methods and instead permit certain other methods to achieve the MPS compliance.

In this regard, on 3 February 2023, SEBI issued a circular to rationalise existing methods and introduces two additional methods for MPS compliance. Accordingly, a listed entity could adopt any of the following methods to comply with the MPS requirements:

i. Issuance of shares to public through prospectus

ii. Offer for sale of shares held by promoter(s)/promoter group to the public through a prospectus

iii. Offer for sale of shares held by promoter(s)/promoter group through the stock exchange mechanism i.e., the secondary market

iv. Sale of shares held by promoter(s)/promoter group in the open market in the manner as prescribed in the circular and subject to stipulated conditions.

v. Rights issue to public shareholders, provided the promoter(s)/promoter group shareholders forgo their entitlement to equity shares that may arise from such an issue

vi. Bonus issue to public shareholders, provided the promoter(s)/promoter group shareholders forgo their entitlement to equity shares that may arise from such an issue

vii. Allotment of equity shares under Qualified Institutions Placement (QIP) in accordance with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations)

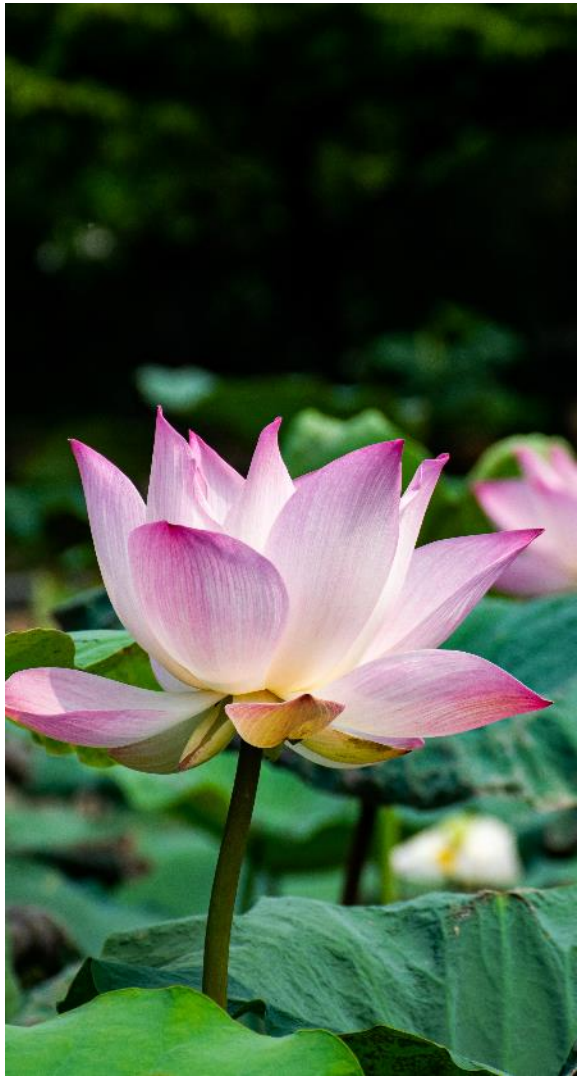
viii. Increase in public holding in accordance with the exercise of options and allotment of shares under an Employee Stock Option (ESOP) scheme, subject to a maximum of two per cent of the paid-up equity share capital of the listed entity. However, the ESOP scheme should comply with the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 and the promoter(s)/promoter group must not be allotted any shares

ix. Transfer of shares held by promoter(s)/promoter group to an Exchange Traded Fund (ETF) managed by a SEBI registered mutual fund, subject to a maximum of five per cent of the paid-up equity share capital of the listed entity. The listed entity is also required to comply with certain conditions stipulated in the circular with respect to this method

x. Any other method as may be approved by SEBI on a case to case basis.

Further, the stock exchange(s) would monitor the methods adopted by the listed entities to increase their public holding and comply with the MPS requirements, as specified in this regard.

(Source: SEBI circular no. SEBI/HO/CFD/PoD2/P/CIR/2023/18 dated 3 February 2023.



SEBI issues amendments to buy-back regulations

The SEBI (Buy-back of Securities) Regulations, 2018 (Buy-back Regulations) prescribes the regulatory requirements for buy-back of securities.

On 7 February 2023, SEBI issued certain amendments to the buy-back regulations.

The key amendments are as follows:

a. Conditions for buy-back: The notification has amended the basis of computation of the limit of buy-back and the ratio of the debts to paid-up capital and free reserves post buy-back. The revised limits are as follows:

i. The maximum number of equity shares that can be bought back in any financial year shall be 25 per cent or less of the aggregate of paid-up capital and free reserves of the company **based on the standalone or consolidated financial statements of the company, whichever is lower.**

ii. The ratio of the aggregate of secured and unsecured debts owed by the company to the paid-up capital and free reserves after buy-back would be less than or equal to 2:1 based on either of the following:

a. Standalone or consolidated financial statements of the company, whichever sets out a lower amount. However, if a higher ratio of the debt to capital and free reserves has been notified under the Companies Act, 2013 (2013 Act), then such higher ratio shall prevail; or

b. Standalone or consolidated financial statements of the company, whichever sets out a lower amount, after excluding financial statements of all subsidiaries that are NBFCs and HFCs[2] regulated by the Reserve Bank of India (RBI) or National Housing Bank, as the case may be.

However, buy-back of securities shall be permitted only if all such excluded subsidiaries have their ratio of aggregate of secured and unsecured debts to the paid-up capital and free reserves of not more than 6:1 on standalone basis.

iii. The buy back is required to be authorised by a company's articles and a special resolution is also required to be passed.

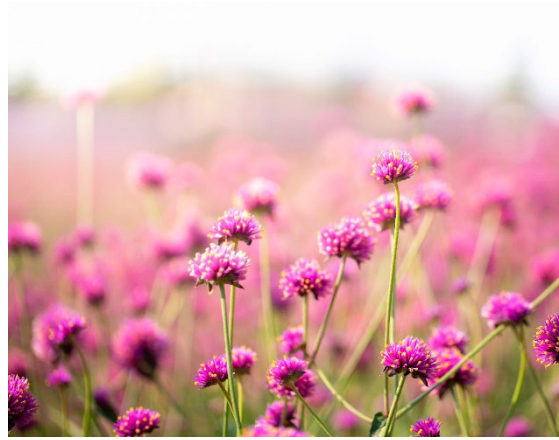
However, the regulation provides exemption to this rule in case the buy-back is 10 per cent or less of the total paid-up equity capital and free reserves, **based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount,** and a resolution to that effect has been passed by the board of directors.

(Emphasis added to highlight the change)

b. Authorisation from lenders: The amendment now requires companies to also obtain a prior consent of their lenders in case of a breach of a covenant with such lenders. Such a consent should be included in the letter of offer prepared by the company.

c. Buy-back from open market: SEBI has amended the following regulations pertaining to buy-back from the open market:

i. Minimum amount to be utilised: The limit for minimum amount to be utilised for buy-back has been increased from 50 per cent to 75 per cent of the amount earmarked for buy-back. Accordingly, the listed entity shall ensure that at least 75 per cent of the amount earmarked for buy-back, as specified in the resolution of the board of directors or the special resolution, is utilised for buying-back shares or other specified securities. Further, a minimum of 40 per cent of the amount earmarked for the buy-back should be utilised within the initial half of the specified duration.



2. Non-Banking Financial Companies (NBFCs) and Housing Finance Companies (HFCs)

ii. **Buy-back from the open market through stock exchanges:** The following amendments have been made for buyback through stock exchange

- Only frequently traded[3] shares should be bought back from the stock exchange.
- A separate window would be created on the stock exchange for undertaking buyback through this route.
- The amendment has also revised the limit for buy-back and the time period for completion of buy-back through the stock exchange as follows:

Parameter	Buy-back till 31 March 2023	Buy-back till 31 March 2024	Buy-back till 31 March 2025
Maximum limit based on the standalone or consolidated financial statements, whichever sets out a lower amount, shall be less than	15 per cent of the paid up capital and free reserves	10 per cent of the paid up capital and free reserves	5 per cent of the paid up capital and free reserves
Time Period for completion of buyback offer	6 months	66 working days	22 working days

Further, with effect from 1 April 2025, the buy-back from the open market through the stock exchange would not be allowed.

iii. **Buy-back through book building process:** The procedure for buy-back under the book-building process has been revised. The amendment lays down the revised provisions for disclosure requirements, timelines for public announcement, offer procedure, methodology for acceptance of bids, etc. for buy-back under the book building process.

3. Frequently traded shares' shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

d. Other key amendments:

- The amendments eliminated the provisions pertaining to buy-back from odd-lot holders. Accordingly, buy-back from odd lot holders is now not permitted
- The procedure for filing Draft Letter of Offer (DLOF) has been removed. The amendments states that within two working days from the record date, the company is required directly file the letter of offer and the other documents with SEBI in an electronic mode. Merchant bankers are required to certify compliance with the buy-back regulations
- The amendment has also revised the timelines for creation of escrow account and the modes of deposit.

The abovementioned amendments are applicable from 9 March 2023

(Source: SEBI notification no. No. SEBI/LAD-NRO/ GN/2023/120 dated 7 February 2023 and circular no. SEBI/HO/CFD/PoD-2/P/CIR/2023/35 dated 8 March 2023.

Amendments to REIT and InvIT Regulations

SEBI has issued amendments to the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations) (amendments) through notifications dated 14 February 2023.

The key takeaways are as follows:

a. Revised definition of 'change in control': The amendment has revised the definition of 'change in control' in InvIT Regulations and REIT Regulations, respectively. As per the revised definition, 'change in control' refers to:

i. In case of a body corporate –

- If shares are listed on any recognised stock exchange, it shall be construed with reference to the definition of control in terms of regulations framed under Section 11(2)(h) of the SEBI Act, 1992
- If shares are not listed on any recognised stock exchange, it shall be construed with reference to the definition of control as provided in Section 2(27) of 2013 Act

ii. In a case other than that of a body corporate, it shall be construed as any change in its legal formation or ownership or change in controlling interest. The term 'controlling interest' means an interest, direct or indirect, to the extent of not less than 50 per cent of voting rights or interest.

b. Definitions of 'independent director' and 'senior management': The amendment has inserted the definition of Independent Director (ID) and senior management in the REIT and InvIT Regulations. The definition of independent director is in line with the SEBI LODR Regulations. The amendment lays down requirements for eligibility, appointment and other governance requirements relating to independent directors. Further, as per the amendment, senior management would include the following:

- Members of the core management team (excluding the board of directors)
- Members of management one level below the CEO, MD, whole-time director, manager
- Specifically include compliance officer and chief financial officer

c. Appointment of an auditor: The amendment has provided certain clarifications pertaining to the reappointment of auditor. As per the amendments, the investment manager/manager should appoint an individual or a firm as the auditor. The auditor would hold office from the date of conclusion of the annual meeting in which he/she has been appointed till the date of conclusion of the sixth annual meeting of the unitholders. Further, it has been stated that an InvIT/REIT should not appoint or reappoint:

- An individual as auditor for more than one term of five consecutive years, and
- An audit firm as auditor for more than two terms of five consecutive years.

The cooling off period for re-appointment for the auditor is five years from the date of completion of the term.

d. Limited review: As per the notification, the auditor is required to undertake a limited review of the audit of all the entities or companies whose accounts are to be consolidated with the accounts of the InvIT/REIT as per the applicable Ind AS, and any addendum thereto as defined in Rule 2(1)(a) of the Companies Ind AS Rules, 2015 (Ind AS Rules).

e. **Obligation of the investment manager/manager:** A new chapter has been inserted which stipulates the obligations of the investment manager/manager. The notification states that certain corporate governance provisions prescribed in the LODR Regulations would not be applicable to InvITs and REITs. It further states that:

- The Board of Directors should consist of a minimum of six directors and have at least one-woman ID
- Quorum must be one-third of its total strength or three directors, whichever is higher, including at least one ID
- Board of Directors should review compliance reports every quarter pertaining to all the applicable laws and initiate steps to rectify instances of non-compliances, if any.
  The amendment also prescribes the minimum information to be placed before the Board of Directors of the investment manager/manager and information to be included in the compliance certificate.

f. **Vigil Mechanism:** The investment manager/manager should formulate a vigil mechanism, including a whistle blower policy for directors and employees to report genuine concern(s). An independent service provider may be engaged for providing or operating the vigil mechanism who should report to the audit committee. Further, the audit committee must review the functioning of the vigil mechanism.

g. **Submission of reports to stock exchange:** The investment manager/manager should submit the following:

- *Secretarial compliance report:* The secretarial compliance report given by a practicing company secretary is required to be annexed to the annual report of the InvIT/REIT and submitted to the stock exchange within 60 days from the end of each financial year.
- *Quarterly compliance report:* The investment manager/manager should submit a quarterly compliance report on governance in the specified format within 21 days from the end of each quarter. This report shall be signed either by the compliance officer or the chief executive officer of the investment manager/manager

(Source: SEBI notification no. No. SEBI/LAD-NRO/ GN/2023/122 and SEBI/LAD-NRO/GN/2023/123 dated 14 February 2023

Consultation papers issued by SEBI

i. Consultation paper on review of corporate governance norms for a High Value Debt Listed Entity (HVDLE)

In September 2022, SEBI issued amendments to LODR Regulations to make the corporate governance norms applicable to a High Value Debt Listed Entity (HVDLE) i.e. a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of INR500 crore and above. Such entities are required to comply with the corporate governance provisions within six months from the date of such trigger. The said provisions were made applicable on a 'comply or explain' basis until 31 March 2023 and on a mandatory basis thereafter.

Subsequently SEBI received various concerns of the companies impacted by the above provisions. Accordingly, on 8 February 2023, SEBI issued a consultation paper on review of corporate governance norms for a HVDLE (the consultation paper), summarising the concerns raised and the related clarifications specified. Some of the issues addressed include:

- **Approval of Related Party Transactions (RPTs):**

  As per the provisions of the LODR Regulation, all material RPTs and subsequent material modifications are required to be approved by the shareholders through a resolution and a related party shall not vote to approve such resolutions in case the related party is a shareholder. In certain HVDLEs, it was observed that in case the shareholders are related parties, such HVDLEs are unable to comply with the provisions of the LODR Regulations for approval of RPTs.

  In this regard, SEBI has proposed that in case of a HVDLE having only listed non-convertible debt securities and 90 per cent or more of the shareholders in number are related parties, then an approval must be first obtained from debenture holders, following which it should obtain the approval of the shareholders. Further, the approval of debenture holders should be vetted by the company secretary. However, if objections received from debenture holders holding 75 per cent or more in value then the agenda item pertaining to RPT should be withdrawn.

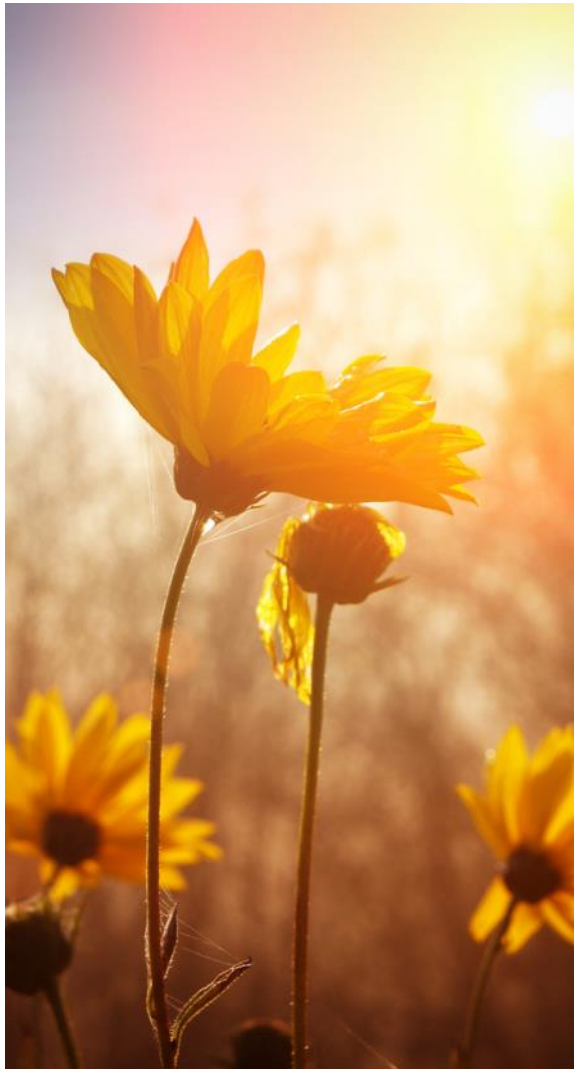
- **Applicability of corporate governance norms**

  In the case of a HVDLE, corporate governance provisions continue to apply even if the value of outstanding listed debt securities falls below the threshold of INR500 crore. The current provision does not provide the period of applicability of the corporate governance provisions once the value of outstanding listed debt securities falls below the specified threshold of INR500 crore.

  Considering this, SEBI proposed that once the regulations become applicable to a HVDLE, they shall continue to remain applicable till such time the outstanding value of the listed non-convertible debt securities of such an entity reduces and remains below the specified threshold of INR500 crore for a period of three consecutive financial years. Additionally, outstanding amount may be reviewed on the last day of every financial year (i.e. cut-off date).

  The comment period for the above consultation paper ended on 22 February 2023

(Source: SEBI communication under reports for public comments issued on 8 February 2023)



ii. Consultation paper on ESG Disclosures, Ratings and Investing

SEBI constituted the ESG Advisory Committee (EAC) in May 2022, to make recommendations for streamlining the regulatory framework for ESG disclosures, ratings and investing. Subsequently, on 20 February 2023, SEBI issued a consultation paper on ESG Disclosures, Ratings and Investing (the consultation paper). The consultation paper is based on the recommendations of the EAC and internal deliberations. It is divided into three parts –

- Part A – ESG Disclosures,
- Part B – ESG Ratings, and
- Part C – ESG Investing.

Part A – ESG disclosures

- **Assurance of sustainability disclosures:** Business Responsibility and Sustainability Reporting (BRSR) is becoming mandatory from F.Y. 2022-23 for top 1,000 listed companies (by market capitalisation). With an aim to improve the credibility of ESG disclosures and limit the cost of compliance, the consultation paper proposes to develop BRSR Core framework (comprising of select Key Performance Indicators (KPIs) under E, S and G attributes) for reasonable assurance.

The timelines for compliance for providing reasonable assurance on KPIs is as follows:

F.Y. 2022-23	F.Y. 2023-24	F.Y. 2024-25	F.Y. 2025-26
Assurance not a mandatory requirement	Reasonable assurance on BRSR Core mandatory for top 250 companies	Reasonable assurance on BRSR Core mandatory for top 500 companies	Reasonable assurance on BRSR Core mandatory for top 1,000 companies

- **ESG disclosures for supply chain:** The supply chain metrics forms part of the leadership indicators in the BRSR and are reported on a voluntary basis. However, for many companies, significant ESG footprints may exists in their supply chain. Therefore, the consultation paper has proposed to introduce a limited set of ESG disclosures for the supply chain of companies i.e., BRSR Core in a gradual manner on a 'comply or explain' basis. This proposed implementation is as below:

F.Y. 2024-25	F.Y. 2025-26
ESG disclosures for supply chain of top 250 companies (Assurance not mandatory)	ESG disclosures for supply chain of top 250 companies (Assurance on comply or explain basis

Part B – ESG Rating

The consultation paper also proposes broad parameters which if adopted by ESG Rating Providers (ERPs), would make ESG ratings comprehensive and contextual. Following is an overview of the key proposals:

- **ESG rating parameters:** The consultation paper provides a unique set of metrics that are critical and that can be applied in Indian context. Annexure II of the consultation paper provides a set of ESG parameters. However, there would be no restriction on the ERPs to evolve additional customised ratings for specific user groups, depending on user needs.
- **ESG ratings on assured indicators:** It is proposed that ERPs should provide a Core ESG rating based on information/reports that are assured/audited/verified.

Part C – ESG Investing

The consultation paper proposes enhanced disclosures for ESG fund schemes to enable stakeholders to make informed investment decision and prevent greenwashing.

The period to provide comments on the proposals ended on 6 March 2023.

(Source: SEBI communication under reports for public comments issued on 20 February 2023.

iii. Consultation paper on regulatory framework for ESG Rating Providers (ERPs) in securities market

In January 2022, SEBI had published a consultation paper on ESG Rating Providers (ERPs) for securities market, specifying proposals on regulation/accreditation of ERPs. Based on the responses received, discussions held with various stakeholders, and other global regulatory developments, SEBI had proposed to introduce a regulatory framework for the ERPs.

On 22 February 2023, SEBI issued a consultation paper on regulatory framework for ERPs in securities market (the consultation paper). The consultation paper contains proposals with respect to the following aspects:

- **Regulatory framework:** ERPs would be registered with SEBI under the SEBI (Credit Rating Agencies) Regulations, 1999 (CRA Regulations) and accordingly, the CRA Regulations would be amended to include a chapter for ERPs.
- **Additional commentary in rating rationale:** ERPs would be allowed to provide additional commentary/ outlook/observations on data that may not be verified/assured.
- **Minimum disclosures in ESG report:** In order to provide greater transparency in the ESG rating process, SEBI proposed minimum disclosures to provide in ESG report, which would include following:
  - Current ESG rating/score
  - Change in rating/score from the previous evaluation (direction)
  - Last review date
  - Summary of key drivers both - qualitative and quantitative factors
  - Pillar wise E, S and G scores – key drivers
  - Weights of E, S and G scores
  - Brief explanation of rating intent to clarify if it represents unmanaged risks/performance against risks/impact etc., and
  - Summary or link to methodology used.

  The ERPs would be required to articulate the ESG rating rationale in detail. This will enable a stakeholder to assess the reasons behind an assigned ESG rating.
- **ESG Transition score:** While providing ratings, ERPs to provide following two additional ratings:
  1. *Transition scores*: This should reflect the incremental changes that the company has made in its transition story over recent years or concrete plans/targets to address the risk and opportunities involved in transitioning to more sustainable operations. The transition score would track changes in quantitative metrics in trend-lines or change in revenues from environmental/social services and products or any quantitative assessments, as per the model of the ERP.
  2. *Combined score*: This should provide a combination of ESG rating and transition rating, and it may be provided in the following two manners:
     a. ESG Score + Transition or Parivartan Score = Combined Score
     b. Core ESG Score + Core Transition or Parivartan Score = Core Combined Score
- **Business Model:** The ERPs would be allowed to have either an issuer-pays or a subscriber-pays business model. However, in order to mitigate potential conflict of interests, it is proposed that an ERP would not be allowed to have hybrid business models i.e. - assign certain ESG rating based on issuer-pay model while assigning another ESG rating based on a subscriber-pays business model.

The period to provide comments on the proposals ended on 15 March 2023.

(Source: SEBI communication under reports for public comments issued on 22 February 2023

iv. SEBI consultation paper on strengthening corporate governance

On 21 February 2023, SEBI issued a consultation paper proposing certain amendments to the LODR Regulations with an aim to strengthen the corporate governance at listed entities by empowering shareholders. The key takeaways are as follows:

- **Disclosure and approval requirements for certain types of agreements**

  Following disclosure has been proposed Part A of Schedule III[4] of the LODR Regulations:

  a. **Disclosure of agreements:** All the agreements which, impact the management or control of an entity or impose any restriction or create any liability on the entity. Further, if there are any existing and subsisting agreements, as on 31 March 2023, they should be disclosed to the stock exchange(s) on or before 30 June 2023.

  b. **Disclosures in the Annual Report:** Disclosure of details of the specified agreements entered during the F.Y. should be provided in the Annual Report from F.Y. 2023-24 onwards. In case there are any existing and subsisting agreements as on 31 March 2023, then the details should also be disclosed in the Annual Report for F.Y. 2022-23.

  c. **Obligation to inform the entity:** In cases where the entity is not a party to such agreements, then the shareholders, promoters, promoter group, related parties, directors, key managerial personnel or any other officer of the entity or its holding, subsidiary, associate company who are the parties to such agreement, should inform the entity within two working days from the date of entering into such agreement. In case of any existing or subsisting agreements, the entity should be informed about such agreements on or before 31 May 2023.

  d. **Board's opinion:** The Board of Directors should provide their opinion, along with a detailed rationale stating that whether such agreement is in the economic interest of the entity. This provision would also be applicable in case of any existing or subsisting agreements.

  e. **Shareholders' approval:** Approval of the shareholders through special resolution and 'majority of minority' is required to be obtained for such agreements to be effective. The existing and subsisting agreements have to be placed before the shareholders in the first general meeting (AGM or EGM) of the listed entity held after 1 April 2023, for ratification.

- **Review of special rights conferred to certain shareholders as per the AoA of a listed entity**

  As per the existing provisions, special rights granted to certain specific shareholders prior to listing of securities are put up for approval of all the shareholders in the first general meeting post-listing. However, SEBI observed that the Shareholder Agreements (SHAs) were drafted in a manner such that the special rights continue to be available to certain shareholders despite of a significant dilution of their respective shareholding. Thus, it has been proposed that:

  a. Special rights (existing/proposed) granted to a shareholder should be subject to shareholders' approval **once in every five years** from the date of grant of such rights

  b. The existing special rights available to the shareholders, if any should be renewed within a period of five years from the date of notification of the amendments to the LODR Regulations.

4. Part A - Disclosure of events or information: Specified securities of Schedule III

- **Sale, disposal or lease of assets of a listed entity outside the 'scheme of arrangement' framework**

  The 2013 Act and the LODR Regulations lay down the provisions governing the scheme of arrangement framework. However, at present there is no explicit framework prescribed for the sale of business, being undertaken outside the scheme of arrangement. Thus, with a view to strengthen the framework of such slump sale transactions and to protect the interest of the minority shareholders, the consultation paper has proposed to:

  a. Introduce the provisions of LODR Regulation to such arrangements

  b. Mandate the disclosure of the objects and commercial rationale for such sale, disposal or lease to the shareholders

  c. Undertake such transactions only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast against it. This requirement would be in addition to the requirement to pass a special resolution, as provided in the 2013 Act.

- **Addressing the issue of board permanency**

  SEBI observed that the certain category of directors of a few companies enjoy permanency on the board, thereby giving them undue advantage which could be prejudicial to the interest of the public shareholders as they do not get an opportunity to evaluate the performance of such directors. Therefore, the following has been proposed:

  a. As on 31 March 2024, if there is any director serving on the board of a listed entity without his/her appointment or re-appointment being subject to shareholders' approval during the last 5 years, then an approval of the shareholders should be obtained in in the first general meeting to be held after 1 April 2024 for such a director's continuation on the board of the listed entity.

  b. From 1 April 2024, subject to the other applicable provisions of law, the directorship of all directors serving on the board or appointed to the board would be put up before the shareholders for their approval at least once in every five years.

  c. The abovementioned provisions would not be applicable to cases wherein the director is appointed pursuant to the orders of a court or a tribunal.

The comment period on the consultation paper ended on 7 March 2023.

(Source: SEBI communication under reports for public comments issued on 21 February2023)

v. Consultation paper on streamlining disclosures by listed entities and strengthening compliance with LODR Regulations

On 20 February 2023, SEBI issued a consultation paper which proposes to amend the LODR Regulations to include provisions with respect to:

- **Submission of first financial results by newly-listed entities**

  It has been proposed that a newly-listed entity would be required to disclose its first financial results post its listing, for the period immediately succeeding to the periods for which financial statements were disclosed in its offer document for initial public offer, within 15 days from the date of listing or as per the applicable timeline under LODR Regulations, whichever is later.

- **Timeline to fill up vacancy of directors, compliance officer, Chief Executive Officer (CEO) and Chief Financial Officer (CFO) in listed entities**
  Regulation 17(1) of LODR Regulations stipulates the composition of board of directors for the listed entities including minimum number of directors, independent directors, non-executive directors, woman director and independent woman director. The following has been proposed with respect to filling up of vacancy of directors, CEO, CFO etc.:

  - Any intermittent vacancy of a director should be filled-up by the listed entity at the earliest but not later than three months from the date of such vacancy.
  - In case the listed entity has become non-compliant with the requirement under Regulation 17(1) of the LODR Regulations due to appointment of a non-independent director or change in designation of an existing director or cessation of an existing director due to completion of his/her tenure, the vacancy of such a director shall be filled-up by the listed entity not later than the date of such vacancy.
  - Any vacancy of a Compliance Officer/Chief Financial Officer (CFO)/ CEO/ MD/ WTD/manager shall be filled-up 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) (WTD) and CEO(s) of a listed entity for continuing non-compliance with the LODR Regulations and/or non-payment of fines by a listed entity.**

  It is proposed that the demat account of the WTDs, including the MD, and CEO(s) would also be frozen in case continuing non-compliance and/or non-payment of fines by a listed entity.

The comment period ended on 6 March 2023.

(Source: SEBI communication under reports for public comments issued on 20 February 2023)

vi. Consultation paper – Consultation paper on certain amendments to SEBI (ICDR Regulations, 2018, with the objective of increasing transparency and streamlining certain processes

SEBI issued a consultation paper on 22 February 2023 which would result in certain amendments to SEBI ICDR Regulations with the objective of increasing transparency and streamlining certain processes.

Some of the key proposals are as follows:

- **Underwriting for public issue (IPO and FPO)**

  a. If an underwriting agreement is entered into cover undersubscription in public issue (IPO and FPO), in such a case, the issuer should enter into underwriting agreement with underwriters, prior to filing the red herring prospectus. The agreement should indicate the maximum number of specified securities which the underwriters shall subscribe to, either themselves or by procuring subscription, at the predetermined price not less than issue price.

  b. Further, before filing the prospectus, the issuer should enter into underwriting agreement with the lead manager(s) and syndicate member(s), indicating the maximum number of specified securities which they shall subscribe to, either themselves or by procuring subscription, at the predetermined price not less than issue price to the extent of rejection of valid bids procured by the lead manager(s) or their respective syndicate member(s).

- **Precondition for announcing bonus**
  a. A listed issuer would be eligible to announce its bonus issue only if it has received in-principal approval from the stock exchanges for listing of all the pre-bonus securities issued by the listed entity excluding Employee Stock options (ESOPs) and convertibles shares/warrants.
  b. Bonus issuance to shareholders should be made in the dematerialised form only.
- **Inclusion of "Pension funds sponsored by entities which are associate of the lead manager", to participate in Anchor Investor category in a public issue.** This proposed amendment is in line with the provisions for participation as anchor investors as stipulated under SEBI (Real Estate Investment Trusts) Regulations, 2014.
- **Inclusion of following requirements in respect to disclosures made in the offer document:**
  a. Providing access to material contracts and material documents (as per the list provided in the DRHP/RHP) for inspection through online means apart from inspection at the registered office.
  b. Providing complete industry report as part of material documents for inspection both through offline and online modes.
  c. Hosting draft offer document and offer document(s) on website of issuer company

The comment period on the consultation paper ended on 8 March 2023.

(Source: SEBI communication under reports for public comments issued on 22February2023)

vii. Consultation paper on certain proposals under the NCS Regulations

With respect to the NCS Regulations, SEBI received inputs from stakeholders to provide ease of doing business, safeguard the interests of the investors and at the same time increase transparency in the market by encouraging issuances of debt securities in the listed space.
In this regard, on 9 February 2023, SEBI issued a consultation paper.

The key proposals highlighted in the consultation paper are as follows:

- Introduce a common schedule which integrates the requirements of prospectus for public issuance of debt securities or Non-Convertible Redeemable Preference Shares (NCRPS) and a placement memorandum for private placement of NCS proposed to be listed.
- Introduction of the concepts of General Information Document (GID) and Key Information Document (KID) for private placement of NCS and Commercial Paper proposed to be listed. The GID would contain information and disclosures in the specified format and it is to be filed with the stock exchanges at the time of first issuance and should be valid for a period of one year. Whereas a KID is to be filed with the stock exchanges for subsequent private placements of NCS and commercial paper within the validity period.
- Provisions for listing of debt securities have been proposed. All issuers having outstanding listed debt securities and proposing to make further issuance of debt securities are required to list the securities on the stock exchange. Additionally, provisions have also been prosed for listing outstanding unlisted debt securities.
- Proposal to mandate disclosure of various expenses incurred in the issuance of debt securities and NCRPS, whether issued on private placement basis or through a public issue process.

The comment period of the consultation paper ended on 24 February 2023.

(Source: SEBI communication under reports for public comments issued on 9 February2023)

FAQs on digital lending guidelines

The Reserve Bank of India (RBI) issued the guidelines on digital lending on 2 September 2022. The guidelines of the circular are applicable to all Regulated Entities (REs) (i.e. all commercial banks, primary (urban) cooperative banks, district central cooperative banks and non-banking financial companies (including housing finance companies)) providing loans through the digital lending platforms.

To provide further clarification on certain aspects of the digital lending guidelines and to enable a smooth implementation of the same, on 15 February 2023, RBI issued Frequently Asked Questions (FAQs) on the digital lending guidelines.

Some of the key clarifications are as follows:

- **Physical interface:** In case of a digital lending transaction, even if some physical interface with the customer is present, the lending would still fall under the definition of digital lending. However, the REs must ensure that the intent behind the guidelines is adhered to.
- **EMI programme:** EMI programmes on credit cards would be governed by the Master Direction on Credit Card and Debit Card – Issuance and Conduct, 2022 (Master Directions), and not by the digital lending guidelines. However, other loan products offered on credit cards which are not covered under the Master Directions, and loans offered on debit card, including EMI programmes would be governed by the digital lending guidelines.
- **Digital loans:** Digital loans offered over any digital platform which meet the definition of digital lending apps or platforms (including mobile apps, websites, etc.) would be subject to the digital lending guidelines.
- **Nodal Grievance Redressal Officer:** Lending Service Providers (LSPs) which have an interface with the borrowers are required to appoint a nodal Grievance Redressal Officer (GRO). It is further reiterated that the REs shall remain responsible for ensuring resolution of complaints arising out of actions of all LSPs engaged by them.
- **Disclosure of APR:** In case of a floating rate loan, the Annual Percentage Rate (APR) would be disclosed at the time of origination based on the prevailing rate as per the Key Fact Statement (KFS) format. However, as and when the floating rate changes, only the revised APR may be disclosed to the customer via SMS/ e-mail each time the revised APR becomes applicable.
- **Insurance charges:** The insurance charges to be included in the computation of APR only for such insurance which is linked/integrated in loan products as these charges are intrinsic to the nature of such digital loans.
- **Penal charges:** Penal charges such as cheque bounce/mandate failure charges, which are necessarily levied on a per instance basis is no required to be annualised. However, these charges must be disclosed separately in the KFS under 'Details about Contingent Charges'.
- The digital lending guidelines require the penal interest/charges levied on the borrower to be based on the outstanding amount of the loan. The FAQ has clarified that the amount under default shall act as the ceiling on which the penal charges can be levied.
- **Control on funds:** The flow of funds between the bank accounts of a borrower and lender in a lending transaction cannot be controlled directly or indirectly by a third-party including LSP. It has been further clarified that while a Payment Aggregator (PA) providing such services would remain out of the ambit of digital lending guidelines, any PA also performing the role of an LSP must comply with the digital lending guidelines.
- **Delinquent loans:** In case of delinquent loans, REs can deploy physical interface to recover loans in cash, where absolutely necessary. In order to afford operational flexibility to REs, such transactions are exempted from the requirement of direct repayment of loan in the RE's bank account. However, any recovery by cash should be duly reflected in the borrower's account and REs shall ensure that any fees, charges, etc., payable to LSPs are paid directly by them (REs) and are not charged by LSP to the borrower directly or indirectly from the recovery proceeds.
- **Loan exits:** In case the customer exists the loan during the cooling-off period, it has clarified that reasonable one-time processing fees paid by the borrower can be retained by the borrower. This should be disclosed to the customer upfront in KFS. However, the processing fee has to be mandatorily included for the computation of APR.
- **Corporate employer:** Loan products where loan is repaid by the corporate employer by deducting the amount from the borrower's salary would be allowed. REs should ensure that LSPs do not have any control over the flow of funds directly or indirectly in such transactions. Also it needs to be ensured that repayment is directly from the bank account of the employer to the RE.

(Source: RBI notification dated February 2023.)

RBI issued circular on the accounting for unrealised management fee by ARCs

Asset Reconstruction Companies (ARCs) adopted Ind AS for preparation of their financial statements from financial year 2019-20 onwards. Consequent to Ind AS adoption, it was observed that ARCs have been recognising management fees even in cases where such fee had not been realised even after 180 days resulting in continued recognition of unrealised income.

In order to address the prudential concerns arising from continued recognition of unrealised income, RBI issued a clarification through a circular on 20 February 2023. The provisions of this circular are applicable to all ARCs preparing their financial statements as per Ind AS.

The key takeaways from the circular are:

- **Computation of Capital Adequacy Ratio (CAR) and the amount available for payment of dividend:** The ARCs preparing their financial statements as per Ind AS, should reduce the following amounts from their net owned funds while calculating the CAR and the amount available for payment of dividend:
  - Management fee recognised during the planning period[1] that remains unrealised beyond 180 days from the date of expiry of the planning period
  - Management fee recognised after the expiry of the planning period that remains unrealised beyond 180 days of such recognition, and
  - Any unrealised management fee, notwithstanding the period for which it has remained unrealised, where the net asset value of the security receipts has fallen below 50 per cent of the face value.

Further, the amount so reduced should be net of any specific expected credit loss allowances held on unrealised management fee, referred to in the abovementioned points and the tax implications thereon, if any.

- **Reviews performed by Audit Committee of the Board (ACB):** The ACB must review the extent of unrealised management fee and satisfy itself on its recoverability while finalising the financial statements. It should also ensure that the management fee is computed in accordance with the specified regulations.
- **Disclosure of the ageing of unrealised management fee:** As a part of the notes to accounts in the annual financial statements, ARCs are required to disclose the information on the ageing of the unrealised management fee recognised in their books as per the specified format.

(Source: RBI circular no. RBI/2022-23/182 DOR.ACC.REC.No.104/21.07.001/2022-23 dated 20 February 2023)

1. Planning period means a period not exceeding six months, allowed for formulating a plan for realisation of financial assets acquired for the purpose of reconstruction as defined in clause 2(xii) of Master Circular on Asset Reconstruction Companies dated 1 April 2022

Updates on Social Audit Standards

In July 2022, SEBI introduced the regulations pertaining to Social Stock Exchange (SSE) by making amendments to the ICDR Regulations and LODR Regulations.

As per the regulations, a Social Enterprise (SE) (i.e. either a Not for Profit Organisation (NPO) or a for profit social enterprise that meets the eligibility criteria specified in the regulations) shall be eligible to raise funds from an SSE provided such an SE engages in social activity that is listed by the regulator. Further, an SE either registered with or that has raised funds through an SSE is required to submit an annual impact report to the SSE which is to be audited by a social audit firm employing social auditor.

Further, in January 2023, the Institute of Chartered Accountants of India (ICAI) had issued the Social Audit Standards (SAS) which are based on the 16 categories of social activities specified by SEBI. The SASs should be read in conjunction with the 'Preface to the Social Audit Standards' and 'Framework for the Social Audit Standards'.

In this regard, ICAI issued a framework for SAS on 4 February 2023. The framework is applicable to a social audit (i.e., social impact assessment of project/program of social enterprises) which is to be conducted by social auditors using the principles given in SASs. The framework may also be applied to any other engagement(s) conducted by a social auditor e.g. impact assessment required under the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, or any other similar assignment. This framework is mandatory in nature and is applicable from 4 February 2023.

The objective of the framework is as follows:

a. To provide basic principles and elements in relation to social audit of projects/programs/ project-based activities of a social enterprise registered/listed on the SSE and of any other organisation.

b. To provide related guidance on matters relating to preparation of social audit report in accordance with the social auditor's findings based on the procedures performed and evidence obtained.

Further, on 10 February 2023 ICAI also issued **"Primer on the Concept of Social Stock Exchange".** The publication covers key concepts of Social Stock Exchange (SSE), important requirements of the respective SEBI notifications and an overview of SSEs established across the world. The objective of this publication is to assist members and other stakeholders to get insights into the key concepts of social stock exchange.

(Source: ICAI announcement dated 4 February 2023 and 10 February 2023)

Feedback/queries can be sent to in-fmcontact-us@bsraffiliates.com

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