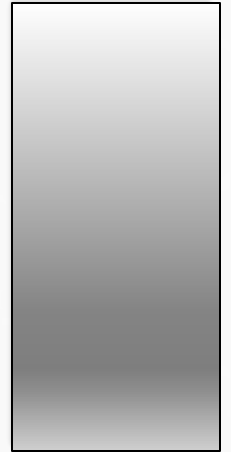


# **LEGALITE** ADVISORS

**IMPORTANT LEGAL UPDATES FOR FEBRUARY,  
2023**



# Ministry of Corporate Affairs

- ❑ **Circular No.** General Circular No. 04/2023 (“**Circular**”).
- ❑ **Circular Date.** February 21, 2023.
- ❑ **Subject of the Circular.** Extension of time for filing of 45 company e-Forms, PAS-03 and SPICE+ Part A in MCA 21 Version 3.0 without additional fee-reg.
- ❑ **Analysis.**
  - The Ministry of Corporate Affairs (“**MCA**”) *vide* the Circular has further allowed the stakeholders to file 45 (Forty Five) e-Forms till 31.03.2023 without additional fees, due to changes in the filing process in MCA 21 Version-3 including fresh process of registration of users on MCA 21 and delay in stabilization of these 45 e-Forms.
  - E-Form PAS 3, wherein the due date for filing falls between 20.01.2023 and 28.02.2023 can be filed till 31.03.2023 without levying additional fees, in view of the fact that the same was closed for filing in MCA Version-2 on 20.01.2023 and launched in MCA Version-3 on 23.01.2023.
  - Also the MCA has extended the reservation period for the names which are reserved under section 4(5) of the Companies Act, 2013 by further period of 20 (Twenty) days. Further, the re-submission period under rule 9 of the Companies (Incorporation) Rules, 2014 falling between 23.01.2023 and 28.02.2023, is also extended by 15 (Fifteen) days.

## Ministry of Corporate Affairs (Contd...)

- The aforesaid extension is in addition to the extension granted by MCA *vide* a general circular no. 01/2023 dated January 09, 2023 (“**January Circular**”) and general circular no. 03/2023 dated February 07, 2023 (“**Feb-I Circular**”).

### □ Links.

- **January Circular.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjM4MzYzNTcx&docCategory=Circulars&type=open>

- **Feb-I Circular.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjUwODkxNTAy&docCategory=Circulars&type=open>

- **Circular.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjU3NzkwODIy&docCategory=Circulars&type=open>

## Ministry of Corporate Affairs (Contd...)

- ❑ **Circular No.** General Circular No. 03/2023 (“**Circular**”).
- ❑ **Circular Date.** February 07, 2023.
- ❑ **Subject of the Circular.** Extension of time for filing of 45 company e-Forms and PAS-03 in MCA 21 Version 3.0 without additional fee-reg.
- ❑ **Analysis.**
  - The Ministry of Corporate Affairs (“**MCA**”) *vide* the Circular has allowed the stakeholders an additional extension of 15 (Fifteen) days to file 45 (Forty Five) e-Forms and e-Form PAS 3 without additional fees, due to changes in the filing process in MCA 21 Version-3.
  - e-Form PAS 3, wherein the due date for filing falls between 20.01.2023 and 06.02.2023 can be filed without levying additional fees for a period of 15 (Fifteen) days, in view of the fact that the same was closed for filing in MCA Version-2 on 20.01.2023 and launched in MCA Version-3 on 23.01.2023.
  - The aforesaid extension is in addition to the extension granted by MCA vide a general circular no. 01/2023 dated January 09, 2023 (“**January Circular**”).

*[Links provided in the next slide]*

# Ministry of Corporate Affairs (Contd...)

## □ Links.

- **January Circular.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjM4MzYzNTcx&docCategory=Circulars&type=open>

- **Circular.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjUwODkxNTAy&docCategory=Circulars&type=open>

# Securities Law

- ❑ **Circular Reference No .** SEBI/HO/DDHS/DDHS-RACPOD1/CIR/P/2023/028 (“**Circular**”).
- ❑ **Circular Date.** February 09, 2023.
- ❑ **Effective Date.** February 09, 2023.
- ❑ **Subject of the Notification.** Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”).

- **Relevant definitions.**

- ✓ **debt securities** (*Regulation 2(1)(k) of the NCS Regulations*)

*“debt securities” means non-convertible debt securities with a fixed maturity period which create or acknowledge indebtedness and includes debentures, bonds or any other security whether constituting a charge on the assets/properties or not, but excludes security receipts, securitized debt instruments, money market instruments regulated by the Reserve Bank of India, and bonds issued by the Government or such other bodies as may be specified by the Board;*

- ✓ **issuer** (*Regulation 2(1)(r) of the NCS Regulations*)’

*“issuer” means a company or a body corporate or a statutory corporation or a multilateral institution or a trust registered with the Board as a Real Estate Investment Trust (REIT) or an Infrastructure Investment Trust (InvIT), authorised to issue non-convertible securities and/or*

## Securities Law (Contd...)

*commercial paper under the relevant laws and in accordance with these regulations and seeks to list its non-convertible securities, with any recognized stock exchange(s).*

- Regulation 23(6) of the NCS Regulations mandates the companies (***being the issuer***) to have in place provision in its articles of association (“**AoA**”) to appoint a person as a director on Board nominated by debenture trustee(s). Where, the company(ies) whose non-convertible debentures (“**NCDs**”) are listed as on the date of the Circular and who do not have provisions in its AoA in respect of compliance stated herein, the said company(ies) shall be required to amend its AoA on or before September 30, 2023.
- The provision in AoA is in reference to the duty obligated on debenture trustee(s) in terms of Regulation 15(1)(e) of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 viz. debenture trustee(s) to appoint a nominee director on the Board of the company in the event of:
  - ✓ 2 (Two) consecutive defaults in payment of interest to the debenture holders; or
  - ✓ default in creation of security for debentures; or
  - ✓ default in redemption of debentures.

## Securities Law (Contd...)

- The Circular has relaxed the time frame to comply with Regulation 23(6) of the NCS Regulations by the first-time issuers (**when issuer is a company**) viz. the first-time issuers can comply within a period of 6 (Six) months from the date of listing of the debt securities (*being NCDs*) basis the undertaking to be given to the stock exchange(s), as required at the time of granting in-principle approval by the stock exchange(s). The issuer shall, within such time, comply and report compliance to the stock exchanges, who shall periodically monitor/ remind such issuers on doing the needful.

### □ Links.

- **Circular.**  
[SEBI | Clarification in respect of the compliance by the first-time issuers of debt securities under SEBI \(Issue and Listing of Non-Convertible Securities\) Regulations, 2021 with Regulation 23\(6\)](#)
- **NCS Regulations.**  
[SEBI | Securities and Exchange Board of India \(Issue and Listing of Non-Convertible Securities\) Regulations, 2021 \[Last amended on February 2, 2023\]](#)
- **The Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.**  
[SEBI | Securities and Exchange Board of India \(Debenture Trustees\) Regulations, 1993 \(Last amended on January 17, 2023\)](#)



## Securities Law (Contd...)

- ❑ **Circular Reference No.** SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/027 (“**Circular**”).
- ❑ **Circular Date.** February 08, 2023.
- ❑ **Effective Date.** February 08, 2023.
- ❑ **Regulation.** Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”).
- ❑ **Subject of the Circular.** Clarification on the characteristics of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments for the purpose of issuance and listing in accordance with Chapter V of the NCS Regulations.
  - **Relevant definitions.**
    - ✓ **non-convertible securities** (*Regulation 2(1)(x) of the NCS Regulations*).

*“non-convertible securities” means debt securities, non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments and any other securities as may be specified.*

## Securities Law (Contd...)

- ✓ **perpetual non-cumulative preference share** (*Regulation 2(1)(aa) of the NCS Regulations*).

*“perpetual non-cumulative preference share“ means a perpetual non-cumulative preference share issued in accordance with the guidelines framed by the Reserve Bank of India.*

- ✓ **perpetual debt instrument** (*Regulation 2(1)(z) of the NCS Regulations*).

*“perpetual debt instrument“ means a perpetual debt instrument issued in accordance with the guidelines framed by the Reserve Bank of India.*

- ✓ **issuer** (*Regulation 2(1)(r) of the NCS Regulations*).

*“issuer“ means a company or a body corporate or a statutory corporation or a multilateral institution or a trust registered with the Board as a Real Estate Investment Trust (REIT) or an Infrastructure Investment Trust (InvIT), authorised to issue non-convertible securities and/or commercial paper under the relevant laws and in accordance with these regulations and seeks to list its non-convertible securities, with any recognized stock exchange(s).*

- Chapter V of the NCS Regulations specifies ‘Issuance and Listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments.’ The instruments that have characteristics as stated herein below, shall mandatorily be required to comply with the provisions of Chapter V of the NCS Regulations:

## Securities Law (Contd...)

### ■ Characteristics:

- (a) The issuer is permitted by RBI to issue such instruments
- (b) The instruments form part of non-equity regulatory capital
- (c) The instruments are perpetual debt instruments, perpetual non-cumulative preference shares or instruments of similar nature and.
- (d) The instruments contain a discretion with the issuer/RBI for events including but not restricted to all or any of the below events:
  - conversion into equity;
  - write off of interest/ principal;
  - skipping/ delaying payment of interest/principal;
  - making an early recall;
  - changing any terms of issue of the instrument.

- The Securities and Exchange Board of India, while dealing with the question around applicability of Chapter V of the NCS Regulations for an issue, wherein the security is proposed to be issued for a fixed maturity and which shall not have features viz. option of conversion to equity, write-off, etc., has clarified *vide* the Circular that, the instruments which have maturity period 'perpetual', however, which is subject to conditions as may be specified by RBI and have characteristics as stated herein, shall mandatorily be required to comply with the provisions of Chapter V of the NCS Regulations by the issuers which are permitted by RBI to issue such instruments.

*[Links are captured in the next slide]*

# Securities Law (Contd...)

- **Links.**

- ✓ **Circular.**

[SEBI | Clarification w.r.t. issuance and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under Chapter V of the SEBI \(Issue and Listing of Non-convertible Securities\) Regulations, 2021](#)

- ✓ **NCS Regulations.**

[SEBI | Securities and Exchange Board of India \(Issue and Listing of Non-Convertible Securities\) Regulations, 2021 \(Last amended on February 2, 2023\)](#)

## Deets / Disclaimer

### ❑ Deets.

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**Thank You**



***There is no wealth like knowledge and no poverty like ignorance - Buddha***