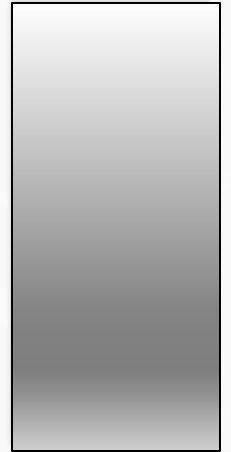


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR AUGUST, 2023



Ministry of Corporate Affairs

- ❑ **Circular No.** General Circular No. 08/2023 (“**Circular**”).
- ❑ **Circular Date.** August 23, 2023
- ❑ **Effective Date of Circular.** September 01, 2023
- ❑ **Subject of the Circular.** Condonation of delay in filing of Form-3, Form-4 and Form-11 under section 67 of Limited Liability Partnership Act, 2008 read with section 460 of the Companies Act, 2013 - reg.
- ❑ **Analysis.**
 - ✓ The Ministry of Corporate Affairs (“**MCA**”) *vide* the Circular has introduced a noteworthy relief measure for Limited Liability Partnership (“**LLPs**”), the LLP Amnesty Scheme (“**Scheme**”). This Scheme is designed to address the challenges faced by LLPs in timely filing of Form-3 (LLP agreement and changes therein), Form-4 (Notice of appointment, cessation, change in name/ address/ designation of designated partner or partner and consent to become a partner/ designated partner) and Form-11 (Annual Return of LLP) (“**LLP Forms**”) and provide one time relaxation from levy of additional fees for those LLPs who could not file the LLP Forms within due date. The silent feature of the Scheme are as follows:

Ministry of Corporate Affairs (Contd...)

- 1. Straight Through Processing (“STP”) for Form-3 and Form-4:** Under the Scheme, Form-3 and Form-4 submissions which was earlier processed by office of Registrar of Companies will be now processed under STP mode, for all purpose except for change in business activities. Further MCA has advised the stakeholders to file all these forms in sequential order only to update the master data of LLP in proper manner.
- 2. Edit of pre-filled data:** At the time of filing LLP Forms, the data will be pre-filled based on the existing master data of the LLP, however MCA will provide the facility to the stakeholders to edit the pre-filled in order to insert the correct details if it is reflected incorrectly and the designated partner of the LLP and the practicing professional who is certifying the LLP Forms may be liable for any mis-representation.
- 3. Filing fees exemption for Form-3 and Form-4:** For event dates from 01.01.2021 onwards, filing of Form-3 and Form-4 will be permitted without any additional fees. However, for event dates prior to 01.01.2021, small LLPs and other than small LLPs can file these forms with 2 times or 4 times of the normal fees as additional fees, respectively.
- 4. Filing fees exemption for Form-11:** For the financial year from 2021-22 onwards, filing of Form-11 will be permitted without any additional fees. However, for the financial years prior to financial year 2021-22, small LLPs and other than small LLPs can file the said Form-11 with 2 times or 4 times of the normal fees as additional fees, respectively.

Ministry of Corporate Affairs (Contd...)

5. Scheme timeline: The Scheme shall be valid and effective from September 01, 2023 until November 30, 2023 (both dates inclusive). Further the LLPs availing the Scheme during this period shall not be liable for any action for delayed filing of the LLP Forms.

□ **Link of the Circular.**

<https://www.mca.gov.in/bin/dms/getdocument?mds=Zt6foWsl%252BABAbU7Pid9NGg%253D%253D&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No.** G.S.R. 584(E) (“**Notification**”)
- ❑ **Notification Date.** August 02, 2023
- ❑ **Effective Date of Notification.** August 02, 2023
- ❑ **Subject of the Notification.** The Companies (Incorporation) Second Amendment Rules, 2023 (“**Amendment Rules**”).
- ❑ **Analysis.**
 - ✓ The Ministry of Corporate Affairs (“**MCA**”) *vide* the Notification has released new web format of **e-Form RD-1** i.e. ‘*Form for filing application to Central Government (Regional Director)*’ on MCA version3 portal, in substitution of the old format.
 - ✓ The said e-Form RD-1 now includes *interalia* details like e-mail id of the company making the said application, an additional purpose for filing the said form viz. ‘Notice of approval of the scheme of merger in CAA-11’; details of the transferor company, encapsulating the CIN of the transferor company and its name. etc. The new format of e-Form RD-1, can be accessed in the link provided below.

Ministry of Corporate Affairs (Contd...)

❑ **Link of the Notification.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU1NTUxNDZ&docCategory=Notifications&type=open>

Securities Law

- ❑ **Regulations.** Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023 (“**Amendment Regulations**”).
- ❑ **Amendment Regulations Date.** August 23, 2023
- ❑ **Amendment Regulations Effective Date.** August 23, 2023
- ❑ **Purpose of the Amendment Regulations.** Introduction of the framework for voluntary delisting of non-convertible debt securities (“**NCDS**”) or non-convertible redeemable preference shares (“**NCRPS**”) and obligations of the listed entity for such delisting by insertion of new Chapter VI A in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Regulations**”).
- ❑ **Analysis.**
 - ✓ Securities and Exchange Board of India (“**SEBI**”) *vide* Amendment Regulations has further amended the Regulations to incorporate a new Chapter VI A in the Regulations which provides a framework for voluntary delisting of NCDS or NCRPS and obligations of the listed entity of such delisting.
 - ✓ Following are *interalia* the major changes introduced *vide* the Amendment Regulations:

Securities Law (Contd...)

1. Applicability:

The provisions of the Amendment Regulations shall be applicable to voluntary delisting of all listed NCDS or NCRPS from all or any of the stock exchanges where such NCDS or NCRPS are listed except where:

- a) A listed entity that has outstanding listed NCDS or NCRPS issued by way of a public issue; or
- b) a listed entity has more than 200 (two hundred) securities holders excluding qualified institutional buyers in any International Securities Identification Number relating to listed NCDS or NCRPS; or
- c) NCDS or NCRPS have been delisted by the stock exchanges as a consequence of any penalty or action initiated against the listed entity or on any grounds as specified under rule 21 of the Securities Contracts (Regulation) Rules, 1957;
- d) NCDS or NCRPS have been delisted by the stock exchanges pursuant to redemption of such securities or shares;
- e) NCDS or NCRPS have been delisted pursuant to a resolution plan as per Section 31 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”).

Securities Law (Contd...)

In case of delisting pursuant to a resolution plan as per the provisions of the IBC, the details of delisting of NCDS or NCRPS shall be disclosed to the stock exchanges where such securities or shares are listed within one working day of the approval of the resolution plan under the Insolvency Code

2. In-principle approval of the stock exchanges:

The listed entity shall make an application to the relevant stock exchange where the NCDS or NCRPS have been listed for seeking in-principal approval for delisting within a period of 15 (fifteen) working days from the date of passing of the board resolution or the approval received from the statutory authority or regulatory authority, whichever is earlier and the stock exchange shall dispose off such application within a period of 15 (fifteen) working days from the date of receiving such application after verifying the completeness of the application and *interalia* factoring (a) necessary approval of the Board of the company (b) resolution of investor grievances (c) payment of all fines or penalties to the stock exchange, etc.

3. Obligations of the listed entity:

- a) Listed entity to commence the process of obtaining approval from all the holders of NCDS or NCRPS within 3 (three) working days or receipt of in-principle approval.
- b) All the events pertinent to the delisting i.e. commencing from the placing of the agenda before the SEBI till delisting is completed shall be disclosed as material information to stock

Securities Law (Contd...)

exchange and in addition, the listed entity shall upload on its website and intimate the stock exchange within 2 (two) working days from the date of receipt on in-principle approval all the details as mentioned in Regulation 64C of the Regulations.

4. Notice of delisting:

- The listed entity shall send notice of delisting to the holders of NCDS or NCRPS, not later than 3 (three) working days from the date of receipt of in-principle approval from the stock exchanges along with all the details as mentioned in Regulation 64C of the Regulations along with such other material information that enables the holders of NCDS or NCRPS to take an informed decision and the said notice shall be uploaded on the website of the listed entity.
- The notice of delisting shall also contain the provision of e-voting for the holders of the NCDS or NCRPS.

5. Approval from the holders and No-Objection Letter from the Debenture Trustee:

The listed entity shall obtain approval from all the holders of NCDS or NCRPS within 15 (fifteen) working days from the date of the notice of delisting and a no-objection certificate from the debenture trustee in case of delisting of NCDS.

Securities Law (Contd...)

6. Failure of delisting proposal:

The delisting proposal shall be deemed to have failed in case of non-receipt of approval from: (a) stock exchange; or (b) holders of NCDS or NCRPS; or (c) non-receipt of no-objection certificate from debenture trustee and the said failure shall be intimated by the listed entity to the stock exchange within 1 (one) working day from the date of failure of proposal.

7. Final application to the stock exchange:

Once the listed entity is in receipt of the requisite approval and non-objection from the debenture trustee, it shall make a final application to the stock exchange and within 15 (fifteen) working days from the receipt of final application, the stock exchange is required to dispose off the said application and the NCDS or NCRPS shall be deemed to be delisted from the stock exchange.

8. Delisting from some of the stock exchanges:

Where the listed entity only intends to delist NCDS or NCRPS from all stock exchanges except one such stock exchange having nationwide trading terminals, then the process mentioned in (2) to (6) above are not required to be followed by the listed entity and is required to comply with the requirements mentioned in (a) to (e) as mentioned in Regulation 64H of the Regulations.

Securities Law (Contd...)

□ **Link of the Amendment Regulations.**

https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2023_75861.html

Securities Law (Contd...)

- ❑ **Circular No.** SEBI/HO/CFD/TPD1/CIR/P/2023/140 (“**Circular**”).
- ❑ **Circular Date.** August 09, 2023
- ❑ **Subject of the Circular.** Reduction of timeline for listing of shares in public issue from existing T+6 days to T+3 days.

- ✓ **Applicability and Effective Date.**

Notwithstanding anything contained in Schedule VI (Qualified Institutions Placement) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, the provisions of this Circular shall be applicable:

- On voluntary basis for the public issues opening on or after September 1, 2023.
- Mandatory for public issues opening on or after December 1, 2023.

- ✓ **Revised trading listing and trading timelines and its benefits.**

- Securities and Exchange Board of India (“**SEBI**”) *vide* the Circular has reduced the timeline for listing and trading from the existing 6 (six) days from the closures of issue to 3 (three) days from the closure of issue.

Securities Law (Contd...)

- Prior to this Circular, if an investor submitted an IPO application using the application supported by blocked amount (“**ASBA**”) method on the first day of the issue period, its funds remained blocked from that day till T+4 i.e. the working day after finalization of the basis of allotment. This implies that the funds of that investor will stay idle for approximately 7 (seven) to 9 (nine) working days.
- The said reduction in the listing timeline is expected to benefit stakeholders as issuers would receive their funds and allottees would receive their securities in a shorter time period and ensures that subscribers who were not allotted shares would receive their money back quickly.
- SEBI has outlined revised timelines for the listing of specified securities and the various steps involved in the public issue process as prescribed in the Annexure forming part of this Circular, link whereof is given below.
- The Circular also prescribes general instructions to be followed by Self Certified Syndicate Banks (“**SCSB**”) prior to blocking of ASBA application monies in the bank account of the applicant, per which the SCSBs shall ensure that the PAN of the applicant mentioned in the application matches with the PAN linked to the bank account and a confirmation in that regard to be provided to registrar to an issue along with the final certificate and the registrar to an issue shall undertake third-party verification of the applications by matching the PAN available in the demat account with the PAN available in the bank account of the applicant.
- Further, the compensation to investors for delay in unblocking of ASBA application monies (if any) shall be computed from T+3 day, ‘T’ being issue closing date.

Securities Law (Contd...)

❑ **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/aug-2023/reduction-of-timeline-for-listing-of-shares-in-public-issue-from-existing-t-6-days-to-t-3-days_75122.html

Securities Law (Contd...)

- ❑ **Circular No.** SEBI/HO/AFD/PoD/CIR/P/2023/137 (“**Circular**”).
- ❑ **Circular Date.** August 04, 2023
- ❑ **Circular Effective Date.** August 04, 2023
- ❑ **Subject of the Circular.** Validity period of approval granted by the Securities and Exchange Board of India (“**SEBI**”) to Alternative Investment Funds (“**AIF**”)¹ and Venture Capital Funds (“**VCF**”)² for overseas investment.
- ❑ **Analysis.**
 - ✓ SEBI had *vide* Circular dated August 09, 2007 (Circular No. SEBI/VCF/Cir no. 1/ 98645 /2007) ‘Guidelines for Overseas Investments by Venture Capital Fund’ (“**Circular No. 1**”), permitted the SEBI registered VCFs to invest only in the equity and equity linked instruments of off-shore venture capital undertaking³ subject to overall limit of USD 500 million and applicable regulations issued by SEBI.

1. “**Alternative Investment Fund**” means any fund established or incorporated in India in the form of trust or a company or a limited liability partnership or a body corporate which is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors.

2. “**Venture Capital fund**” means an Alternative Investment Fund which invests primarily in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business mode.

3. “**Offshore Venture Capital Undertakings**” means a foreign company whose shares are not listed on any of the recognized stock exchange in India or abroad.

Securities Law (Contd...)

- ✓ Further, SEBI had *vide* Master Circular dated July 31, 2023 (Master Circular No. SEBI/HO/AFD/PoD1/P/CIR/2023/130) 'Master Circular for Alternative Investment Funds (AIFs)' ("**Master Circular**") issued a compendium of the circulars issued by SEBI from time to time along with the independent compliance of other requirements to be ensured by AIFs as mentioned therein, which *interalia* contains the guidelines for overseas investments by AIFs in the equity and equity linked instruments of off-shore venture capital undertakings, investment conditions and the related reporting.
- ✓ As per the aforesaid Circular and Master Circular, the VCFs and AIFs had to seek a prior approval from SEBI, by submitting their proposal for making the investments in the off-shore venture capital undertaking and were granted a period of 6 (six) months to make allocated investments in the offshore venture capital undertakings and in case the VCFs and AIFs do not make all the investments as per the limit approved within a period of 6 (six) months from the date of approval then the unutilized limit sanctioned by SEBI shall be allocated to the other applicants whose applications are pending before SEBI.

Reduction in time limits to make investments after SEBI approval.

- ✓ SEBI has, after taking into consideration the recommendations of the 'Alternative Investments Policy Advisory Committee', *vide* this Circular, reduced the time limit from a period of 6 (six) months to a period of 4 (four) months for making an overseas investment by AIFs and VCFs in offshore venture capital undertakings from the date of prior approval by SEBI failing which SEBI may allocate unutilised limit to other AIFs/VCFs.

Securities Law (Contd...)

❑ **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/aug-2023/validity-period-of-approval-granted-by-sebi-to-alternative-investment-funds-aifs-and-venture-capital-funds-vcfs-for-overseas-investment_74979.html

❑ **Link of the Circular No. 1.**

https://www.sebi.gov.in/legal/circulars/aug-2007/guidelines-for-overseas-investments-by-venture-capital-funds_8308.html

❑ **Link of the Master Circular.**

<https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-alternative-investment-funds-aifs-74796.html>

Reserve Bank of India

- ❑ **Notification.** Fair Lending Practice - Penal Charges in Loan Accounts.
- ❑ **Notification Date.** August 18, 2023
- ❑ **Notification Effective Date.** January 01, 2024
- ❑ **Purpose of the Notification.** Regulation of penal charges/interest on loans advanced by the regulated entities (“REs”)
- ❑ **Analysis.**
 - ✓ The Reserve Bank of India (“RBI”) has issued various guidelines to the REs to ensure reasonableness and transparency in disclosure of penal interest. Under the extant guidelines, lending institutions have the operational autonomy to formulate Board approved policy for levy of penal rates of interest.
 - ✓ RBI has observed that many REs use penal rates of interest, over and above the applicable interest rates, in case of defaults / non-compliance by the borrower with the terms on which credit facilities were sanctioned and RBI does not want the REs to use it as a revenue enhancement tool which leads to enhanced consumer disputes and grievances.
 - ✓ The RBI has hence reviewed the situation and given the following directions through this Notification:

Reserve Bank of India (Contd...)

- a) Penalty, if charged, for non-compliance of material terms and conditions of loan contract by the borrower shall be treated as 'penal charges' and shall not be levied in the form of 'penal interest' that is added to the rate of interest charged on the advances. There shall be no capitalisation of penal charges i.e., no further interest computed on such charges. However, this will not affect the normal procedures for compounding of interest in the loan account.
- b) The REs shall not introduce any additional component to the rate of interest and ensure compliance to the provisions of this Notification in both letter and spirit.
- c) The REs shall formulate a Board approved policy on penal charges or similar charges on loans, by whatever name called and the quantum of penal charges shall be reasonable and commensurate with the non-compliance of material terms and conditions of loan contract without being discriminatory within a particular loan / product category.
- d) The penal charges in case of loans sanctioned to 'individual borrowers, for purposes other than business', shall not be higher than the penal charges applicable to non-individual borrowers for similar non-compliance of material terms and conditions.
- e) The quantum and reason for penal charges shall be clearly disclosed by REs to the customers in the loan agreement and most important terms & conditions / Key Fact Statement (KFS) as applicable, in addition to being displayed on REs website under 'Interest rates and Service Charges.'

Reserve Bank of India (Contd...)

- f) Whenever reminders for non-compliance of material terms and conditions of loan are sent to borrowers, the applicable penal charges shall be communicated. Further, any instance of levy of penal charges and the reason therefor shall also be communicated.
- g) These instructions shall come into effect from January 1, 2024. REs may carry out appropriate revisions in their policy framework and ensure implementation of the instructions in respect of all the fresh loans availed/ renewed from the effective date. In the case of existing loans, the switchover to new penal charges regime shall be ensured on next review or renewal date or 6 (six) months from the effective date of this circular, whichever is earlier.
- h) The list of amendments to the Master Directions / Master Circulars has been provided as an annexure to the Notification which is appended in the link below.
- i) These provisions of this Notification shall, however, not apply to Credit Cards, External Commercial Borrowings, Trade Credits and Structured Obligations which are covered under product specific directions.

□ Link of the Notification.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12527&Mode=0>

Deets / Disclaimer

❑ Deets.

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❑ Disclaimer.

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Thank You



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