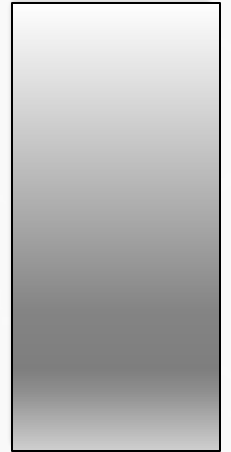


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR OCTOBER, 2023



Ministry of Corporate Affairs

- ❑ **Notification No:** S.O. 4744(E) (“**Notification**”).
- ❑ **Notification Date:** October 30, 2023
- ❑ **Subject of the Notification:** Commencement notification dated October 30, 2023 (“**Commencement Notification**”).

- **Key Highlights of the Commencement Notification are as follows:**

Vide the Commencement Notification, the Central Government has appointed October 30, 2023, as the effective date for Section 5 of the Companies Act, 2023 (“Act”) i.e. the date from which the provisions of Section 5 of the Act, which details with the Articles of Association of a company, shall come into force.

- **Link of the Notification:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=flA9%252BFLpJeScxnEXI0xncQ%253D%253D&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No:** G.S.R. 802(E) (“**Notification**”).
- ❑ **Notification Date:** October 27, 2023
- ❑ **Effective Date of Notification:** October 27, 2023
- ❑ **Subject of the Notification:** the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (“**Amendment Rules**”).

- **Key Highlights of the Amendment Rules are as follows:**

- ✓ the Ministry of Corporate Affairs (“**MCA**”) has *vide* the Notification further amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 (“**Principal Rules**”) wherein Rule 9 has been amended (to introduce the concept of demat of share warrants by public companies) and further rule 9B has been introduced afresh (to make the demat of securities mandatory for the private companies which are not small companies).
- ✓ **Rule 9 in the Principal Rules.**

The amended Rule 9 specifies that every public company which issued share warrants prior to the commencement of the Companies Act, 2013 (18 of 2013) and not converted into shares shall intimate the details of such warrants to the Registrar of Companies in form PAS-7 within a period of three months of the commencement of the Amendment Rules.

Ministry of Corporate Affairs (Contd...)

Further, the bearers of the share warrants shall within a period of six months from the commencement of the Amendment Rules, surrender such warrants to the company and the subsequent issuance of the shares shall be dematerialized to the respective demat accounts of the warrant bearers. In order to facilitate the warrant bearers to surrender their warrants the company shall place a notice on its website in form PAS-8 and publish the same in the newspaper (both in English and in the vernacular language in the newspaper, widely circulated in the district). If the bearer does not surrender the warrants within the aforementioned period to the company, the company shall dematerialize the warrants and transfer it to Investor Education and Protection Fund established under section 125 of the Companies Act, 2013.

✓ Rule 9B in the Principal Rules.

Compliance Requirement.

All the private companies (which are not falling within the definition of small company as defined in section 2(85) of the Companies Act, 2013) as per the audited financial statement of the Company as on March 31, 2023 (“FY 23”) are **mandatorily** required to:

- (a) Issue the securities only in dematerialized form; and
- (b) Facilitate dematerialization of its securities.

Ministry of Corporate Affairs (Contd...)

Time-Line.

Within 18 months from the closure of the FY23 viz. on or before September 30, 2024 (“**Prescribed Time**”).

Corporate Actions by the Company.

The Company is responsible to ensure the following:

- Offer for issue of any securities by private placement; preferential basis; or rights issue in demat form after the Prescribed Time;
- Ensure all its securities are in demat mode before any Buy-back of securities after the Prescribed Time;
- Issue of bonus shares in demat mode after the Prescribed Time; and
- Ensure that all its existing securities are dematerialized before the Prescribed Time.

Obligations of the holder of securities.

The holder of every security shall ensure that:

- Any security intended to be transferred after the Prescribed Time is being held in demat mode; and
- All securities held in a private company by a security holder shall be held in demat mode by such security holder before subscription to any securities through private placement, bonus,

Ministry of Corporate Affairs (Contd...)

issue or rights issue in such private company.

- **Link of the Notification:**

<https://www.mca.gov.in/bin/dms/getdocument?mcs=ZvNqoKdfvPrRcgeoGzGdDg%253D%253D&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No:** G.S.R. 803(E) (“**Notification**”).
- ❑ **Notification Date:** October 27, 2023
- ❑ **Effective Date of Notification:** October 27, 2023
- ❑ **Subject of the Notification:** the Limited Liability Partnership (Third Amendment) Rules, 2023 (“**Amendment Rules**”).
 - **Key Highlights of the Amendment Rules are as follows:**
 - ✓ **Introduction of Rule 22A- Register of Partners**

Every Limited Liability Partnership (“**LLP**”) existing as on the date of the commencement of the Amendment Rules shall maintain register of partners in Form 4A within a period of thirty days from such commencement. The details to be prescribed in the register of partners are available in the link of the Notification provided hereunder. Further the entries in the register maintained under this rule shall be made within seven days pursuant to any change made in the contribution amount, or in name and details of the partners in the Limited Liability Partnership agreement, or in cases of cessation of partnership interest.

Ministry of Corporate Affairs (Contd...)

Any rectification made in any entry in the register of members pursuant to an order passed by any competent authority shall have reference to the order passed and the reasons for the same should be recorded in writing.

✓ Introduction of Rule 22B-Declaration in respect of beneficial interest in any contribution

Any person whose name is entered in the register of partners of LLP and who does not hold beneficial interest either wholly or partly in the contribution shall furnish a declaration to that effect with the LLP in Form 4B within a period of 30 days from the date on which his/her name is entered in the register of partners along with the details of the persons holding beneficial interest in the contribution.

Any person whose name is not entered in the register of partners of LLP and who holds beneficial interest in the contribution shall furnish a declaration to that effect with the LLP in Form 4C within a period of 30 days from the date of holding or acquisition of the beneficial interest in the contribution of the LLP along with the details of the persons whose name the contribution stand registered in the books of the LLP.

Where any change occurs in the beneficial interest in such contribution, the registered partner and the beneficial partner shall, within a period of thirty days from the date of such change, make a declaration of such change to the LLP in Form 4B and Form 4C, respectively.

Ministry of Corporate Affairs (Contd...)

Once the LLP is in receipt of the declarations of the interest in Form 4B and/or Form 4C, then the LLP shall record such declaration in the register of partners and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in Form 4D to the Registrar of Companies in respect of such declaration with fees.

Every LLP shall specify a designated a partner who shall be responsible for furnishing of and extending co-operation for providing, information with respect to beneficial interest and until a designated partner is specified every designated partner shall be deemed to be responsible for furnishing of, and extending co-operation for providing, information with respect to beneficial interest in contribution.

The updated format of Form 4 is available in the link of the Notification provided hereunder.

- **Link of the Notification:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=VYVpE7YcJovnhBqcW9gtsw%253D%253D&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No:** G.S.R. 801 (E) (“**Notification**”).
- ❑ **Notification Date:** October 27, 2023
- ❑ **Effective Date of Notification:** October 27, 2023
- ❑ **Subject of the Notification:** The Companies (Management and Administration) Second Amendment Rules, 2023 (“**Amendment Rules**”).
 - **Key Highlights of the Amendment Rules are as follows:**
 - ✓ *Vide* the Notification the Ministry of Corporate Affairs has further amended the Companies (Management and Administration) Rules, 2014 (“**Rules**”) and introduced rules 4, 5, 6, 7 and 8 after sub-rule 3 of rule 9 of the Rules.
 - ✓ Rule 9 deals with the ‘Declaration in Respect of Beneficial Interest in Any Shares’ and *inter alia* furnishing of declaration in Form MGT-4 and MGT-5 by the persons (i) who hold shares of a company and whose name is recorded in the register of members of the company but does not hold any beneficial interest therein i.e. a registered owner; and (ii) by a person acquiring a beneficial interest in shares of a company not registered in his name, respectively.

Ministry of Corporate Affairs (Contd...)

- ✓ Sub-rule 3 of Rule 9 of the Rules provides that where a company is in receipt of the declarations in Form MGT-4 and MGT-5, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in Form No.MGT-6.
- ✓ *Vide* introduction of rules 4,5,6,7 and 8, the company is required to designate a company secretary, if there is a requirement of appointment of such company secretary under the Companies Act, 2013 ("**Act**"), or a key managerial personnel other than the company secretary, or every director, if there is no company secretary or key managerial personnel and the said designated personnel shall be responsible for extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.
- ✓ Further, the Amendment Rules also provide that until a person is specifically appointed by the company, ever company secretary, if required to be appointed, managing director or manager in absence of company secretary and every director in absence of company secretary, managing director and manager shall be deemed to be a designated person for the aforesaid purpose.
- ✓ The details of such designated person shall be mentioned in the Annual Return to be filed by a company and any changes in the details of the such designated person shall be intimated to the Registrar in e-form GNL-2.

Ministry of Corporate Affairs (Contd...)

- **Link of the Notification:**

<https://www.mca.gov.in/bin/dms/getdocument?mids=IVo7Nz8E9SMEBo5r07okJw%253D%253D&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No:** G.S.R. 790(E) (“**Notification**”).
- ❑ **Notification Date:** October 20, 2023
- ❑ **Effective Date of Notification:** October 21, 2023
- ❑ **Subject of the Notification:** The Companies (Incorporation) Third Amendment Rules, 2023 (“**Amendment Rules**”).

- **Key Highlights of the Amendment Rules are as follows:**

The Ministry of Corporate Affairs has *vide* the Notification further amended the Companies (Incorporation) Rules, 2014 (“**Rules**”) as under:

- ✓ Rule 30 of the Rules deals with the ‘Shifting of Registered office from one State or Union Territory to another state’ and making an application to the Central Government for the purpose of seeking approval for alteration of the memorandum of association of the with regard to the change of place of the registered office from one State Government or Union territory to another.
- ✓ In sub-rule 9 in rule 30 of the Rules the words “and may include such order as to costs as it thinks proper” have be omitted.

Ministry of Corporate Affairs (Contd...)

- ✓ Prior to the amendment *vide* the Notification, the Central Government could pass an order approving the alteration to the memorandum of association with regard to the change of place of the registered office from one State Government or Union territory to another on such terms and conditions which could include any costs to be paid as the Central Government thinks fit.
- ✓ After the amendment the Central Government can now pass an order approving the alteration to the memorandum of association with regard to the change of place of the registered office from one State Government or Union territory to another on such terms and conditions as it thinks fit however, such order shall not include any order to pay any costs for the said alteration.
- **Link of the Notification:**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc0Nzk4OTM4&docCategory=Notifications&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No:** G.S.R. 644(E) (“**Notification**”).
- ❑ **Notification Date:** September 01, 2023
- ❑ **Effective Date of Notification:** September 01, 2023
- ❑ **Subject of the Notification:** Limited Liability Partnership (Third Amendment) Rules, 2023 (“**Amendment Rules**”).
 - **Key Highlights of the Amendment Rules are as follows:**
 - ✓ *Vide* the Notification, the Ministry of Corporate Affairs has further amended the Limited Liability Partnership Rules, 2009 and the formats of Form 3, filed by the Limited Liability Partnerships for ‘Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein’ and Form 4 filed by the Limited Liability Partnerships ‘for Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner and consent to become a partner/designated partner’ have been substituted and the updated formats whereof are available in the Notification link provided below.

Ministry of Corporate Affairs (Contd...)

- **Link of the Notification:**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzY0NDUyMTIz&docCategory=Notifications&type=open>

Securities Law

- ❑ **Circular No.:** SEBI/HO/DDHS/P/CIR/2023/0164 (“**Circular**”).
- ❑ **Circular Date:** October 06, 2023
- ❑ **Circular Effective Date:** October 06, 2023
- ❑ **Subject of the Circular:** Relaxation from compliance with Regulation 58(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR**”) as issued by the Securities and Exchange Board of India (“**SEBI**”).
- **Key takeaways of the Circular:**
 - ✓ In compliance with the Regulation 58(1)(b) of SEBI LODR Regulations, 2015, the listed entities are required to send hard copy of the financial statement (including Auditor’s report; Board’s report; and such other documents) (“**Relevant Documents**”) or a statement containing salient features of the Relevant Documents (“**Statement**”) (in accordance with the provisions of Section 136 of the Companies Act, 2013), to the holders of the non-convertible securities whose email ids are not registered with it.

Securities Law (Contd...)

- ✓ It is pertinent to note that the Ministry of Corporate Affairs (“**MCA**”) has *vide* its circular dated September 25, 2023 (“**MCA Circular**”) *inter-alia* allowed the companies whose annual general meetings are due in the year 2023 or 2024 to conduct the same *via* video conference (VC) or other audio visual means (OAVM) upto September 30, 2024.
- ✓ Further, the MCA Circular is *inter-alia* in continuation to (i) the initial General Circular No. 20/2020 dated May 05, 2020 relating to the annual general meeting which is conducted through VC or OAVM (“**Initial MCA Circular**”); and (ii) General Circular No. 17/2020 dated April 13, 2020 wherein a framework is *inter-alia* designed to circulate the notice through electronic mode only (“**MCA Circular A**”).
- ✓ Accordingly, the SEBI Circular is in consonance with the MCA Circular wherein the listed entities have been relaxed with the physical dispatch of the Relevant Documents or the Statement (as the case may be) **upto September 30, 2024**.
- **Reference of the other continuing circulars to the Circular as issued by SEBI:**
 - ✓ Circular no. SEBI/HO/CFD/CMD2/CIR/P/2021/11 dated January 15, 2021, till December 31, 2021;
 - ✓ Circular no. SEBI/HO/DDHS/P/CIR/2022/0063 dated May 13, 2022 up to December 31, 2022 and

Securities Law (Contd...)

- ✓ Circular no. SEBI/HO/DDHS/RACPOD1/CIR/P/2023/001 dated January 05, 2023 up to September 30, 2023.

- **Links:**

SEBI Circular.

[SEBI | Limited relaxation from compliance with certain provisions of the SEBI \(Listing Obligations and Disclosure Requirements\) Regulations, 2015](#)

MCA Circular.

<https://www.mca.gov.in/bin/dms/getdocument?mds=HaKq8Y72SkO5wIQe05fjLQ%253D%253D&type=open>

Initial MCA Circular.

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MTk=&docCategory=Circulars&type=open>

MCA Circular A.

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MjQ=&docCategory=Circulars&type=open>

Securities Law (Contd...)

- ❑ **Circular No.:** SEBI/HO/CFD/CFD-PoD-2/P/CIR/2023/167 (“**Circular**”).
- ❑ **Circular Date:** October 07, 2023
- ❑ **Circular Effective Date:** October 07, 2023
- ❑ **Subject of the Circular:** Relaxation from compliance with Regulation 36(1)(b) and Regulation 44(4) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR**”) as issued by the Securities and Exchange Board of India (“**SEBI**”).
- **Key takeaways of the Circular:**
 - ✓ In compliance with the Regulation 36(1)(b) of SEBI LODR Regulations, 2015, the listed entities are required to send hard copy of the financial statement (including Auditor’s report; Board’s report; and such other documents) (“**Relevant Documents**”) or a statement containing salient features of the Relevant Documents (“**Statement**”) (in accordance with the provisions of Section 136 of the Companies Act, 2013), to all the shareholders whose email ids are not registered with the listed entity or with the depository.
 - ✓ In compliance with the Regulation 44(4) of SEBI LODR Regulations, 2015, the listed entities are required to send proxy forms to its security holders.

Securities Law (Contd...)

- ✓ It is pertinent to note that, the Ministry of Corporate Affairs (“**MCA**”) has *vide* its General Circular No. 09/2023 dated September 25, 2023 (“**MCA Circular**”) allowed the companies to conduct (a) the extra ordinary general meetings; and (b) the annual general meetings which are due in the year 2023 or 2024 *via* video conference (VC) or other audio visual means (OAVM) upto September 30, 2024.
 - ✓ The MCA has provided the framework *vide* various general circulars from time to time in relation to relaxing the mode for convening the general meetings and the manner and mode of issuance of notices.
 - ✓ Accordingly, with the relaxation by MCA on mode of conducting the general meetings (read with the various connected other MCA circulars with respect to mode of issuance of notice), the SEBI has also relaxed the listed entities with the physical dispatch of the (i) Relevant Documents and Statement (as the case may be); and (ii) the proxy forms, as required under Regulation 36(1)(b) and Regulation 44(4) of the SEBI LODR Regulations, 2015, respectively **upto September 30, 2024**.
- **Link of the Circular:**
<https://www.sebi.gov.in/legal/circulars/oct-2023/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-reg-77781.html>

Securities Law (Contd...)

- ❑ **Notification No.:** SEBI/LAD-NRO/GN/2023/155 (“**Notification**”).
- ❑ **Notification Date:** October 09, 2023
- ❑ **Notification Effective Date:** October 01, 2023
- ❑ **Notification Subject:** Introduction of the SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2023 amending first proviso to Regulation 30(11) of the of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Principal Regulation**”).
- **Key takeaways of the Notification:**
 - ✓ Regulation 30 of the Principal Regulation deals with disclosure of material events or information before the stock exchange(s) wherein Regulation 30(11) of the Principal Regulation is in relation to the confirmation/ denial/ clarification by the listed entities (as specified below) (“**Listed Entities**”) of the events or information which are available/ reported in the media and which is not general in nature. The information or events which are considered material in nature in accordance with Regulation 30 of the Principal Regulation and which indicates the prospects of occurrence of such event which is circulating amongst the public; in such a case the Listed Entities are required to clarify/ deny/ confirm the said event/information within 24 hours from the reporting of such event/information.

Securities Law (Contd...)

- ✓ The compliance with the above requirement was made effective to top 100 listed entities with effect from October 01, 2023 and to top 250 listed entities with effect from April 01, 2024 (*the listed entities collectively referred as “**Listed Entities**”*). The same was introduced *vide* the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023.
- ✓ Further, after introduction of the Notification the above timelines (effective dates) have been removed and substituted as “with effect from the date as may be specified by the Board”. Meaning, the Listed Entities shall be required to comply with Regulation 30(11) from such date as may be specified by the Securities and Exchange Board of India (which is yet to be notified).

- **Links:**

Notification

[SEBI | Securities and Exchange Board of India \(Listing Obligations and Disclosure Requirements\) \(Fifth Amendment\) Regulations, 2023](#)

Principal Regulation

[SEBI | Securities and Exchange Board of India \(Listing Obligations and Disclosure Requirements\) Regulations, 2015 \[Last amended on October 23, 2023\]](#)

Reserve Bank of India

- ❑ **Circular No.:** CO.DPSS.POLC.No.S-786/02-14-008/2023-24 (“Circular”).
- ❑ **Circular Date:** October 31, 2023
- ❑ **Circular Effective Date:** October 31, 2023
- ❑ **Subject of the Circular:** Regulation of Payment Aggregator – Cross Border (PA - CB).
 - **Key highlights of the Circular:**
 - ✓ **Background:**
 - Reference to the past circulars of the Reserve Bank of India (“RBI”)
 - a. ‘Guidelines on Regulation of Payment Aggregators and Payment Gateways’ –
 - i. [DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020](#) and
 - ii. [CO.DPSS. POLC.No.S33/02-14-008/2020-2021 dated March 31, 2021](#),
 - b. ‘Processing and Settlement of Export related receipts facilitated by Online Payment Gateways’ - [A.P. \(DIR Series\) Circular No. 17 dated November 16, 2010](#),

Reserve Bank of India (Contd...)

- c. 'Processing and Settlement of Export related 'Processing and Settlement of Export related receipts facilitated by Online Payment Gateways – Enhancement of the value of transaction' - [A.P. \(DIR Series\) Circular No. 109 dated June 11, 2013](#),
 - d. 'Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers' – [A.P. \(DIR Series\) Circular No.16 dated September 24, 2015](#), and
 - e. 'Processing and settlement of small value Export and Import related payments facilitated by Online Export-Import Facilitators (OEIF) (erstwhile OPGSP)' – [draft circular issued on April 7, 2022](#) for seeking feedback from banks and other stakeholders.
- All Payment Aggregators (PAs) which facilitate processing of domestic transactions in online mode are covered within the scope of the circulars referred to above at paragraph 1(a). Further, instructions for cross-border payment transactions are provided for in the circulars mentioned above at paragraphs 1(c) to 1(e) as well as through specific approval given by the RBI to banks for their collection agent arrangements.
 - Keeping in view the developments that have taken place in the area of cross-border payments, the RBI has decided to bring all entities facilitating cross-border payment transactions for import and export of goods and services under direct regulation of the RBI. Such entities shall be treated as Payment Aggregator-Cross Border (PA-CB).

Reserve Bank of India (Contd...)

- Entities, including Authorised Dealer (AD) banks, PAs and PAs-CB, involved in processing / settlement of cross-border payment transactions for import and export of goods and services, shall comply the provisions of the Circular (as updated from time to time).
- ✓ **Key Definitions**
 - **Who are PA-CBs** - PAs-CB are entities that facilitate cross-border payment transactions for import and export of permissible goods and services in online mode.
 - **What is an escrow account on context of PAs** - Escrow account shall refer to an account wherein PAs pool / aggregate the amount collected on behalf of the merchants on-boarded by them.
- ✓ **Requirement of authorization**
 - AD Category-I banks do not require separate approval from the RBI for undertaking PA-CB activity.
 - Non-bank entities which provide PA-CB services as on the date of the Circular, shall apply to the RBI for authorisation by April 30, 2024 in the format provided in the [circular dated March 17, 2020](#) (“**March Circular**”) and they shall be allowed to continue such services until the time they receive communication from the RBI regarding the decision on their application.

Reserve Bank of India (Contd...)

Authorisation for PA-CB activity may be sought for any one of the following categories:

- i. Export only PA-CB (PA-CB-E);
- ii. Import only PA-CB (PA-CB-I); and
- iii. Export and Import PA-CB (PA-CB- E&I)

✓ **Requirement of compliance by existing entities**

- The entities, currently carrying out the PA-CB activity should ensure adherence to the guidelines on governance, merchant on-boarding, customer grievance redressal and dispute management framework, baseline technology recommendations, security, fraud prevention and risk management framework (provided in the March Circular) within a period of 3 months from the date of the Circular and the same should be complied with on an ongoing basis thereafter. Non-adherence to these instructions may lead to the application for authorisation being refused.
- Non-bank PAs – authorised as well as those whose applications for authorisation are pending with the RBI – shall advise the Department of Payment and Settlement Systems (DPSS), RBI, Central Office (CO) within 60 calendar days from the date of the Circular, about their existing PA-CB activity and elect to continue it or abstain. If they wish to continue, they shall seek an approval from RBI for the same.

Reserve Bank of India (Contd...)

- Any authorised PA looking to commence PA-CB activity in future shall seek approval from DPSS, RBI, CO prior to commencement of such business. This shall also be applicable for any authorised non-bank PA-CB which wants to commence PA activity. A single authorisation will be required by a non-bank to undertake PA and PA-CB activity.
 - If an authorised PA-CB desires to change its activity category as mentioned above, (i.e. PA-CB-E, PA-CB; and PA-CB E&I) it shall inform DPSS, RBI, CO atleast 60 calendar days prior to commencement of business in such new activity category. It shall commence the new business only after approval from RBI for the same.
 - As a pre-requisite for seeking authorisation from the RBI, all non-bank PA-CBs (existing as on the date of the Circular) shall register themselves with the Financial Intelligence Unit-India (FIU-IND).
- ✓ **Networth criterion**
- Non-banks providing PA-CB services as on the date of the Circular, shall have a minimum networth of INR 15 crore at the time of submitting application to the RBI for authorisation and a minimum networth of INR 25 crore by March 31, 2026.
 - New non-bank PA-CBs (i.e. entities which have not commenced operations before the date of the Circular) shall have a minimum networth of INR 15 crore at the time of submitting application to the RBI for authorisation and shall attain a minimum networth of INR 25 crore by end of the third financial year of grant of authorisation.

Reserve Bank of India (Contd...)

- As part of application, non-bank PA-CBs (existing on the date of the Circular) shall submit a certificate from their statutory auditor (format as prescribed in the March Circular), along with audited statement(s) of financial accounts (latest), to evidence the networth. Newly incorporated non-bank PA-CBs which may not have audited statement of financial accounts shall submit a certificate from their statutory auditor regarding the current networth along with provisional balance sheet.
- All existing non-bank PA-CBs which are not able to comply with the networth requirement or do not apply for authorisation within the stipulated time frame, shall wind up PA-CB activity by July 31, 2024.
- Banks shall close accounts (used for PA-CB activity) of non-bank PA-CBs (existing as on the date of the Circular) by July 31, 2024 unless the PA-CBs produce evidence regarding application for authorisation submitted to the RBI.
- ✓ **Import only PA-CBs**
 - Import only PA-CB shall maintain an Import Collection Account (“ICA”) with an AD Category-I scheduled commercial bank.
 - Payment for imports shall be received in an escrow account of the PA. These payments shall then be transferred to the ICA of the PA-CB. Onward transfer to the foreign merchants shall be carried out only by debit to the ICA.

Reserve Bank of India (Contd...)

- For facilitating import transactions, PA-CBs may directly on-board merchants located abroad, or may enter into agreement with e-commerce marketplaces or entities providing PA services abroad. In all such arrangements, it shall be the responsibility of PA-CBs to ensure that they undertake Customer Due Diligence (as defined in the [Master Direction – Know Your Customer Direction, 2016](#)) of merchants (i.e. directly onboarded merchants, e-commerce marketplaces or entities providing PA services abroad) and that they do not facilitate payment transactions for import of any restricted / prohibited goods and services (not permissible under prevailing Foreign Trade Policy).
- In case per unit goods / services imported is more than INR 2,50,000, then the concerned PA-CB shall undertake due diligence of buyer as well.
- Payments for imports can be carried out using any payment instrument provided by authorised payment systems in India, except small prepaid payment instruments.
- ✓ **Export only PA-CBs**
 - Export only PA-CB shall maintain Export Collection Account (“**ECA**”) – denominated in Indian Rupees (INR) and / or foreign currency (i.e. non-INR) – with an AD Category-I scheduled commercial bank. An ECA for each non-INR currency shall be maintained separately.
 - All export proceeds shall be credited to the relevant currency ECA of the PA-CB.

Reserve Bank of India (Contd...)

- In arrangements where PA-CBs facilitate transactions between merchants / e-commerce marketplaces in India and customers / e-commerce marketplaces abroad, it shall be the responsibility of the PA-CBs to ensure that the transactions for export of any restricted / prohibited goods and services (not permissible under prevailing Foreign Trade Policy) shall not be facilitated.
- Customer Due Diligence (as defined in the [Master Direction – Know Your Customer Direction, 2016](#)) of the merchant (i.e. directly onboarded Indian merchants, e-commerce marketplaces or entities providing PA services) shall be undertaken, and proceeds from ECA shall be settled only in the account of such merchant.
- Settlement in Non-INR currencies shall be permitted only for those merchants which have been directly onboarded by the PA-CB.
- ✓ **Import and Export PA-CBs**
 - Requirements under the preceding 2 paragraphs above shall be applicable to Import and Export PA-CBs. Separate collection accounts – ICA and ECA – shall be maintained for facilitating import and export transactions.

Reserve Bank of India (Contd...)

✓ ICA and ECA

- For the purpose of maintenance of the ICA / ECA, operations of the PA-CBs shall be deemed to be “designated payment systems” under Section 23A of the Payment and Settlement Systems Act, after authorisation is given by the RBI.
- In case a PA-CB also engages in domestic PA activity, ICA and ECA shall be kept separate from the escrow account(s) opened for such PA activity.
- In addition to provisions of the preceding 2 paragraphs above, instructions on debits and credits permissible from escrow account(s) of PAs (defined in paragraph 8.9.1.1 and 8.9.1.2 of March Circular) shall apply mutatis mutandis to ICA and ECA of PA-CBs.

✓ Miscellaneous

- Except as otherwise specified in the Circular:
 - i. AD Category-I banks undertaking PA-CB activity shall ensure compliance with the requirements for PA-CBs by April 30, 2024.
 - ii. In case a non-bank PA-CB also engages in online PA activity for which it is already authorised or its application is pending with the RBI, the instructions on PA-CBs shall become applicable from the date of seeking approval for PA-CB activity.

Reserve Bank of India (Contd...)

iii. If a PA-CB changes the activity category as mentioned in 2nd paragraph of the Key Highlights hereinabove, the requirements for the new activity category shall become applicable from the date of seeking approval from the RBI.

- In respect of import and export transactions processed by PA-CBs, the maximum value per unit of goods / services sold / purchased shall be INR 25,00,000.
- All other instructions issued by the RBI regarding PAs shall apply mutatis mutandis to PA-CBs.
- For PA-CB transactions, AD banks maintaining ICA / ECA shall ensure that all requirements under FEMA, including for reporting and reconciliation of entries in EDPMS / IDPMS, are adhered to.

▪ **Link of the Circular:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12561&Mode=0>

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- ❑ **Master Direction No.:** DoR.FIN.REC.No.45/03.10.119/2023-24 (“**MD**”).
- ❑ **MD Date:** October 19, 2023
- ❑ **MD Effective Date:** October 19, 2023
- ❑ **Subject of the MD:** Reserve Bank of India (Non-Banking Financial Company– Scale Based Regulation) Directions, 2023
- **Key highlights of the MD:**
 - ✓ **Historical Legislation**
 - Hitherto, the non-banking financial companies (“**NBFCs**”) were categorized into 2 groups, i.e. Systemically important (“**SI**”) and Non-Systemically Important (“**Non-SI**”).
 - Before the implementation of the MD as above, the Reserve Bank of India (“**RBI**”) had, in October 2022, implemented the scale-based mechanism of classifying the NBFCs by creating 4 layers, viz., the base layer, the middle layer, the upper layer, and the top layer.
 - Despite the layering, where the base layer NBFCs were categorized to have an asset size of < INR 1,000 Crores and the middle layer NBFCs were categorized to have an asset size of > INR 1,000 Crores, the RBI had not de-tagged the SI and NSI categorizations for the NBFCs which created ambiguity as NBFCs under INR 500 Crores were considered Non-

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SI and those above that threshold were considered as SI.

- With the introduction of the MD, the RBI has brought an end to the concept of SI and NSI with the categorization being ensured only with layering as above and as detailed hereunder.
- ✓ **Harmonization of the legislation relating to classification and regulation of the NBFCs**
- In order to ensure that there is practicality and uniformity in terms of classification of the NBFCs, the RBI has issued the MD to categorize the NBFCs into 4 different layers as provided hereunder:
 - I. Base Layer: Includes NBFCs with asset size of \leq INR 1,000 crore. Also includes NBFCs engaged in activities such as Peer-to-Peer Lending Platforms (NBFC-P2P), Account Aggregators (NBFC-AA), Non-Operative Financial Holding Companies (NOFHC), and NBFCs that do not handle public funds or interact with customers.
 - II. Middle Layer: Includes all NBFCs that accept deposits, irrespective of the size of their assets. Also includes non-deposit taking NBFCs with asset size of \Rightarrow INR 1,000 crore. Also includes companies engaging in a range of activities, including Standalone Primary Dealers (SPD), Infrastructure Debt Fund-NBFC (IDF-NBFC), Core Investment Companies (CIC), Housing Finance Companies (HFC), and Infrastructure Finance Companies (NBFC-IFC).

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III. Upper Layer: Includes non-banking financial companies that have been specifically identified by the RBI for increased regulatory requirements, which are determined based on predefined parameters and a scoring methodology. The NBFCs with the highest asset size will appear here.

IV. Top Layer (NBFCs-TL): Will be added as per the discretion of the RBI depending of risk and increased compliance factors.

V. the categorisation of NBFCs based on acceptance of deposits and the nature of activities (from the previous legislation) continues to be operative.

VI. The MD prescribes the method for classification of multiple NBFCs in a group and clarifies that in case of multiple NBFCs in a group, the consolidated asset size will be taken into account for such classification.

○ The detailed explanation and the categorization aspects are further envisaged in the MD.

▪ **Link of the MD:**

https://rbidocs.rbi.org.in/rdocs/content/pdfs/106MDNBFCs19102023_ANN.pdf

Deets / Disclaimer

❑ Deets.

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Thank You



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