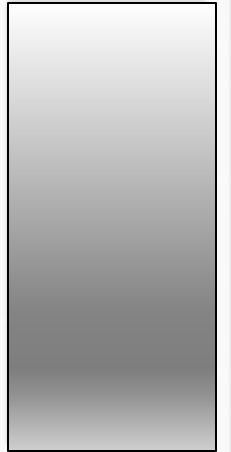


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR JANUARY, 2024



Ministry of Corporate Affairs

- ❑ **Subject:** Provisions in respect of the direct listing of equity shares of companies incorporated in India on international stock exchange (“**Scheme**”).
- ❑ **Introduction of the subject matter:** (i) In the Companies Act, 2013 (“**Act**”) *vide* introduction of the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 (“**CA Rules**”); and (ii) In Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“**NDI Rules**”) *vide* introduction of the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024 (“**NDI Amended Rules**”).
- ❑ **CA Rules notified vide:** Notification issued by the Ministry of Corporate Affairs (“**MCA**”) dated January 24, 2024.
- ❑ **NDI Amended Rules notified vide:** Notification issued by the Ministry of Finance (Department of Economic Affairs) dated January 24, 2024.
- ❑ **Effective Date of the CA Rules and the NDI Amended Rules:** January 24, 2024
 - **Introduction**
 - ✓ The subject matter of the CA Rules is in connection with sub-section (3) of Section 23 of the Act wherein sub-section was inserted *vide* the Companies (Amendment) Act, 2020 and which was made effective from October 30, 2023; wherein provision was made for the class of public companies to issue such class of securities for the purpose of listing on permitted stock

Ministry of Corporate Affairs (Contd...)

exchanges in permissible foreign jurisdiction

- ✓ In reference to the above introduction under the Act, the MCA has now notified the CA Rules prescribing *inter-alia* the applicability; eligibility criteria; and compliance requirement.
- ✓ The subject matter of the NDI Amended Rules is inserted in Chapter X of the NDI Rules read with Schedule XI thereof.
- ✓ The CA Rules and the NDI Amended Rules are introduced in consonance with each other allowing Indian public companies to issue and list their equity shares on permitted international stock exchange(s).

▪ **Key highlights:**

✓ **Modes of issuance on International Exchange:**

- The eligible public companies (as referred below) may issue equity shares on International Exchange;
- the existing shareholders may offer equity shares in such exchange.

✓ **International exchanges permitted as notified in the CA Rules and NDI Amended Rules:**

The International exchange as permitted in the subject matter herein are (i) India International 3

Ministry of Corporate Affairs (Contd...)

Exchange and (ii) NSE International Exchange within the jurisdiction of International Financial Services Centre in India (being the permissible jurisdiction).

✓ Pricing guidelines:

- In case of issuance of equity shares by a listed Indian company or offered by the existing shareholders of equity shares listed on recognised stock exchange in India:

The equity shares shall be issued at a price not less than the price applicable to a corresponding mode of issuance of such equity shares to domestic investors under the applicable laws.

- In case of initial listing of equity shares by a public unlisted Indian company on the International Exchange:

The price shall be determined by a book- building process as permitted by the said International Exchange and shall not be less than the fair market value under applicable rules or regulations under the Foreign Exchange Management Act, 1999.

- In case of subsequent issuance or transfer of shares for the purpose of listing additional shares post initial listing:

It will be based on applicable pricing norms of the International Exchange and the permissible jurisdiction.

Ministry of Corporate Affairs (Contd...)

Applicability:

Specified in the CA Rules	Specified in the NDI Amended Rules
Unlisted public companies; and Listed public companies (<i>in accordance with regulations framed or directions issued in this regard by the Securities and Exchange Board of India or the International Financial Services Centres Authority</i>)	Listed Indian company (as per the norms of Securities and Exchange Board of India)*; Public unlisted Indian company (in compliance with the norms notified by the MCA)

** means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and on an International Exchange.*

Ministry of Corporate Affairs (Contd...)

□ Eligibility criteria as covered under the NDI Amended Rules:

Criteria for the public Indian company	Criteria for existing holders to offer the equity shares
<ul style="list-style-type: none"> ✓ the public Indian company, any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by the appropriate regulator*; ✓ none of the promoters or directors of the public Indian company is a promoter or director of any other Indian company which is debarred from accessing the capital market by the appropriate regulator*; ✓ the public Indian company or any of its promoters or directors is not a wilful defaulter; ✓ the public Indian company is not under inspection or investigation under the provisions of the Act; ✓ none of its promoters or directors is a fugitive economic offender. 	<ul style="list-style-type: none"> ✓ the public Indian company or the holder offering equity shares are not debarred from accessing the capital market by the appropriate regulator*; ✓ none of the promoters or directors of the public Indian company is a promoter or director of any other Indian company, listed or otherwise, which is debarred from accessing the capital market by the appropriate regulator*; ✓ the public Indian company or the holder offering equity shares is not a wilful defaulter; ✓ the public Indian company is not under inspection or investigation under the provisions of the Act; ✓ none of the promoters or directors of the public Indian company or the holder offering equity shares is a fugitive economic offender.

Ministry of Corporate Affairs (Contd...)

**the restrictions shall not apply to the entities or persons, who were debarred in the past by the Government or the appropriate regulator and the period of debarment is already over as on the date of listing of its equity shares on the International Exchange(s).*

▪ Non-eligibility for opting of the direct listing of equity shares on international stock exchange:

- ✓ Section 8 company registered under the Act;
- ✓ Company declared as Nidhi company under section 406 of the Act read with rules;
- ✓ Company limited by guarantee and having share capital;
- ✓ Company having outstanding deposits from the public as per Chapter V of the Act and rules made thereunder;
- ✓ Company having negative net worth;
- ✓ Defaulted in payment of dues to any bank or public financial institution or non-convertible debentures or any other secured creditor* *(the non-eligibility clause shall not apply wherein the company(ies) has made the default good **and** a period of 2 (Two) years has lapsed, since the date of making good the default).*
- ✓ Has made an application for winding up under the Act or for resolution or winding up under the Insolvency and Bankruptcy Code, 2016 and proceedings against the Company is pending in said regards;
- ✓ Is in default of filing of an annual return under section 92 or financial statement under section 137 of the Act **within the specified period.**

Ministry of Corporate Affairs (Contd...)

- **Pre-requisite for an unlisted public company for listing of equity shares on permitted stock exchange in permissible jurisdiction (as referred above).**
 - ✓ An unlisted public company should not fall in any of the non-eligibility criteria (as specified above); and
 - ✓ There should be no partly paid-up shares.
- **Compliances for an unlisted public company:**
 - ✓ An unlisted public company shall file the prospectus in e-Form LEAP-1 as notified in the Schedule of the CA Rules within 7 (Seven) days after the same has been finalised and filed in the permitted exchange.
 - ✓ After listing of the equity shares on permitted International Exchange, the company shall comply with the Indian Accounting Standards in preparation of their financial statement.
- **Compliances for listed Indian company and unlisted public company:**
 - The public Indian company shall ensure that the aggregate of equity shares which may be issued or offered in a permissible jurisdiction, along with equity shares already held in India by persons resident outside India, **shall not exceed the limit on foreign holding as specified under Schedule I to the NDI Rules.**

Ministry of Corporate Affairs (Contd...)

- **Other applicable laws:**

- Compliances with the (i) requirements prescribed in this Scheme; (ii) the Securities Contracts (Regulation) Act, 1956; (iii) the Securities and Exchange Board of India Act, 1992; (iv) the Depositories Act, 1996; (v) the Foreign Exchange Management Act, 1999; (vi) the Prevention of Money-laundering Act, 2002; or (vii) the Companies Act, 2013 and rules and regulations made thereunder, as applicable.

- **Benefits of the Scheme:**

- ✓ Opportunity for an Indian unlisted public companies for marking their presence in the global markets;
- ✓ Accessing capital an international level;
- ✓ Valuation of shares as per global standards.

- **Link of the Notification:**

- **CARules**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE1NzI3NjYy&docCategory=Notifications&type=open>

- **NDI Rules:**

<https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/jan/doc2024124300601.pdf>

Securities Law

- ❑ **Circular No.:** SEBI/HO/AFD/PoD/CIR/2024/5 (“**Circular**”).
- ❑ **Circular Date:** January 12, 2024
- ❑ **Circular Effective Date:** January 12, 2024
- ❑ **Circular Subject:** Guidelines for Alternative Investment Funds (“**AIF**”) with respect to holding their investments in dematerialised form and appointment of custodian.
 - **Key takeaways of the Circular:**
 - ✓ **Background:**
 - Reference to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“**AIF Regulations**”) amended and notified on January 05, 2024 - https://www.sebi.gov.in/legal/regulations/jan-2024/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2024_80608.html
 - Reference to the Master Circular No. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 with respect to the Alternative Investment Funds (“**Master Circular**”) - <https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-alternative-investment-funds-aifs-74796.html>

Securities Law (Contd...)

✓ Holding investments in AIFs in dematerialised form:

- In compliance with Regulation 15(1)(i) of the AIF Regulations, the Circular provides that any investment made by an AIF on or after October 01, 2024 shall be held in dematerialised form only, irrespective of whether the investment is made directly in the investee company or is acquired from another entity.
- Further, the investments made by an AIF prior to October 01, 2024 are exempted from the requirement of securities being held in dematerialised form (“**Exemption**”). However, the said exemption is not available in two circumstances viz., where the investee company of the AIF has been mandated under the applicable law to facilitate dematerialisation of its securities; and where the AIF on its own or along with other SEBI registered intermediaries/entities which are mandated to hold their investments in dematerialised form, exercises control over the investee company.
- The investments made by an AIF prior to October 01, 2024 shall be held in dematerialised form on or before January 31, 2025. However, the said requirement of holding investments in dematerialised form shall not be applicable in two circumstances viz., scheme of an AIF whose tenure (not including permissible extension of tenure) ends on or before January 31, 2025; and scheme of an AIF which is in extended tenure as on date of this circular.

✓ Appointment of custodian for AIFs:

- In compliance with the Regulation 20(11) of the AIF Regulations, the Circular provides that the

Securities Law (Contd...)

custodian for a scheme of an AIF shall be appointed prior to the date of first investment of the scheme. Further, in case of the existing schemes of Category I and II AIFs having corpus less than or equal to INR 500 crore and holding at least one investment as on date of this Circular shall appoint the custodian on or before January 31, 2025.

- Also, in compliance with the Regulation 20(11A) of the AIF Regulations, the Circular provides that the AIFs with custodians that are associates of their manager or sponsor, managers of such AIFs shall ensure compliance with the said Regulation on or before January 31, 2025.

✓ Reporting of Investments of AIFs under Custody:

- In compliance with the Regulation 20(11) of the AIF Regulations, the Circular provides that the pilot Standard Setting Forum for AIFs (“SFA”), in consultation with SEBI, shall formulate implementation standards for reporting data on investments of AIFs that are under custody with the custodian. Such standards shall specify the format and modalities of reporting of data by the manager of AIF to the custodian and subsequently, by the custodian to SEBI.
- Further, the managers of AIFs and custodians shall adopt and adhere to such implementation standards, formulated by the SFA in consultation with SEBI. Such standards shall be published on websites of the industry associations which are part of the SFA, i.e., Indian Venture and Alternate Capital Association (IVCA), PE VC CFO Association and Trustee Association of India, within 60 (sixty) days of issuance of this Circular.

Securities Law (Contd...)

- ✓ In terms of para 15.2 of the Master Circular, the trustee/sponsor of AIF, as the case may be, shall ensure that the Compliance Test Report prepared by the manager, includes compliance with the provisions of this Circular as well.
- ✓ The information necessary to ascertain compliance with the provisions of this Circular shall be incorporated in the format for quarterly reporting by AIFs in SEBI Intermediary Portal (www.siportal.sebi.gov.in). The manager of AIF shall provide the requisite information accordingly while submitting the quarterly report to SEBI.

- **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/jan-2024/guidelines-for-aifs-with-respect-to-holding-their-investments-in-dematerialised-form-and-appointment-of-custodian_80614.html

Reserve Bank of India

- ❑ **Circular No.:** RBI/FMRD/2023-24/109 FMRD.DIRD.09/14.02.001/2023-24.
- ❑ **Circular Date:** January 03, 2024
- ❑ **Circular Effective Date:** April 01, 2024
- ❑ **Circular Subject:** Master Direction – Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024.

- **Key takeaways of the Circular:**

- ✓ **Background.**

- The Directions on Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year have been reviewed based on market feedback and the Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024 are being issued herewith.
- These Directions shall be applicable to all persons/agencies dealing in Commercial Paper and/or Non-Convertible Debentures of original or initial maturity upto one year.

Reserve Bank of India (Contd...)

- These Directions shall apply to transactions in CPs and NCDs entered into from the date the Directions come into effect. Provisions of Section IV of [FMRD.Master Direction No. 2/2016-17 dated July 07, 2016](#), [Notification No. FMD.MSRG.49/02.13.016/2010-2011 dated July 28, 2010](#) and [Direction No. FMRD.DIRD.01/CGM \(TRS\) – 2017 dated August 10, 2017](#) will continue to be applicable to the CPs and NCDs issued in accordance with the said Directions till the maturity of those CPs and NCDs.

✓ **Eligible issuers:**

- a) In compliance with Regulation 15(1)(i) of the AIF Regulations, the Circular provides that any (a) CPs and NCDs may be issued by the following entities subject to the condition that all fund-based facilities availed, if any, by the issuer from banks/ AIFs / NBFCs are classified as Standard at the time of issue:
 - i. Companies;
 - ii. NBFCs, including Housing Finance Companies (HFCs);
 - iii. InvITs and REITs;
 - iv. All India Financial Institutions (AIFIs);
 - v. Any other body corporate with a minimum net-worth of ₹100 crore, provided that the body corporate is statutorily permitted to incur debt or issue debt instruments in India; and
 - vi. Any other entity specifically permitted by the Reserve Bank.

Reserve Bank of India (Contd...)

b) Co-operative societies and limited liability partnerships with a minimum net-worth of ₹100 crore, may also issue CPs under these Directions, subject to the condition that all fund-based facilities availed, if any, by the issuer from banks/ AIFs / NBFCs are classified as Standard at the time of issue.

✓ **Eligible investors:**

- a. All residents are eligible to invest in CPs and NCDs.
- b. Non-residents are eligible to invest in CPs and NCDs to the extent permitted under Foreign Exchange Management Act (FEMA), 1999 or the rules/regulations framed thereunder.

Provided that no person, resident or non-resident, can invest in CPs and NCDs issued by related parties either in the primary or through the secondary market.

✓ **General Guidelines:**

The master direction has issued general guidelines for the following:

- Primary issuance
- Discount/Coupon Rate
- Credit enhancement
- End-use
- Rating Requirement
- Primary Market (Other Conditions)

Reserve Bank of India (Contd...)

- Secondary Market – Trading venue and settlement
- Buyback
- Repayments of CPs/NCDs
- Default
- Marketing Practices and Documentation

✓ Reporting Requirements:

- Primary issuances:** Details of all issuances in primary markets of the CPs and NCDs shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the day of issuance.
- Secondary market transactions:** All secondary market transactions in CPs and NCDs, executed in the OTC market and/or on the recognised stock exchanges, shall be reported with time stamp within 15 minutes of execution (the time when price is agreed) on the F-TRAC platform by each counterparty to the transaction.
- Buybacks:** Details of buybacks of CPs and NCDs shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the buyback date.
- Default:** Instances of default and repayment of defaulted obligation shall be reported by the IPA on the F-TRAC platform by 5:30 PM on the day of default or the day of repayment of defaulted obligations, as the case may be.

Reserve Bank of India (Contd...)

- e. **Reporting by depositories**: The depositories shall report to the Reserve Bank, the details of the CPs and NCDs held with them in the dematerialised form, in the prescribed format furnished in Annex II, at fortnightly intervals (on the 15th day and on the last day of the month) or as and when called upon to do so by the Reserve Bank.

- f. **Reporting by Debenture Trustee**: The Debenture Trustee shall report the details of the outstanding amount of NCDs and the particulars of default in repayment of NCD, at quarterly intervals (within 15 days from the end of the quarter), in the format prescribed in Annex III to the Reserve Bank through e-mail (reportfmd@rbi.org.in).

- ✓ **Roles and responsibilities**: The roles and responsibilities of the Issuing and Paying Agent (“IPA”), Debenture Trustee and Credit Rating Agency (“**CRA**”) with respect to the operations in Commercial Papers and Non Convertible Debentures markets are set out the master direction.

- ✓ **Violation of Directions**: In the event of any person violating any provision of these Directions, the Reserve Bank may, in addition to taking any penal or regulatory action in accordance with law, disallow that person from participating in the CP and NCD markets for a period not exceeding one month at a time, after providing reasonable opportunity to the entity to defend its actions, and such action would be made public by the Reserve Bank.

Reserve Bank of India (Contd...)

- ✓ **Applicability of other laws, directions, regulations or guidelines:** Participants in the CP and NCD markets shall abide by the provisions of any direction, regulation, or guideline issued by any other regulator or authority, that may be applicable, in respect of issue of or investment in CPs and NCDs, provided that such directions, regulations or guidelines do not conflict with these Directions. In case of any conflicts, the provisions of these Directions shall prevail.

- ✓ **Non-applicability of Certain Other Directions:** Nothing contained in the [Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits \(Reserve Bank\) Directions, 2016](#), as updated from time to time, shall apply to the raising of funds by issuance of CPs, by any NBFC when such funds are raised in accordance with these Directions.

- **Link of the Circular.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12592&Mode=0>

Deets / Disclaimer

❑ Deets.

Legalite Advisors LLP | LLPIN : AAJ 8514 | E-mail : la.mumbai@legalite.co.in | Corporate office: 705, 7th Floor, Simran Plaza, Hasnabad Lane, Ram Krishna Nagar, Khar West, Mumbai 400052, Maharashtra, India | 📞: +91 9769022955/ +91 8454846257.

❑ Disclaimer.

This article is for informational purposes only, and is not intended to provide, and should not be relied on for legal advice. Readers are advised to seek independent legal advice in accordance with their peculiar facts and circumstances.

Thank You



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