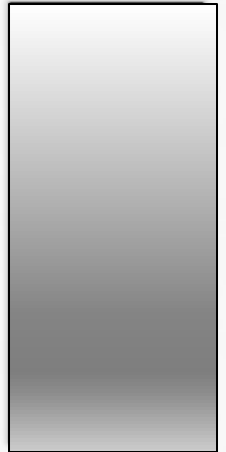


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR AUGUST, 2024



Ministry of Corporate Affairs

- ❑ **Notification No.** G.S.R. 492(E). (“**Notification**”)
- ❑ **Notification Date.** August 12, 2024
- ❑ **Notification Effective Date.** August 12, 2024
- ❑ **Notification Subject.** The Companies (Indian Accounting Standards) Amendment Rules, 2024
- ❑ **Analysis.**
 - The Companies (Indian Accounting Standards) Rules, 2015, have been amended *vide* this Notification containing therein introduction of certain Indian Accounting Standard(s); amendment to the existing ones; and withdrawal, either in part or full, of some of the standard(s).
 - The Notification can be accessed through the below link.
- ❑ **Link to the Notification.** [The Companies \(Indian Accounting Standards\) Amendment Rules, 2024](#)

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No.** G.S.R. 491(E). (“**Notification**”)
- ❑ **Notification Date.** August 12, 2024
- ❑ **Notification Effective Date.** September 09, 2024
- ❑ **Notification Subject.** The Companies (Registration of Foreign Companies) Amendment Rules, 2024 (“**Amendment Rules**”)
- ❑ **Analysis.**
 - The Companies (Registration of Foreign Companies) Rules, 2014 (“**Principal Rules**”) are amended to the effect that the documents for registration of a foreign company required to be filed in accordance with the provisions of Rule 3(3) and Rule 8(1) of the Principal Rules in Form FC-1 (*within 30 days of establishing a place of business in India*) be delivered to the Registrar, Central Registration Centre (“**CRC**”), instead of the jurisdictional Registrar. CRC was introduced to provide expeditious incorporation services for all the companies.
- ❑ **Link to the Notification.** [The Companies \(Registration of Foreign Companies\) Amendment Rules, 2024](#)

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No.** G.S.R. 476(E) (“**Notification**”)
- ❑ **Notification Date.** August 05, 2024
- ❑ **Notification Effective Date.** September 16, 2024
- ❑ **Notification Subject.** The Companies (Adjudication of Penalties) Amendment Rules, 2024 (“**Amendment Rules**”)
- ❑ **Analysis.**
 - The Ministry of Corporate Affairs *vide* this Notification has further amended the Companies (Adjudication of Penalties) Rules, 2014 (“**Rules**”) to introduce rule 3A in the Rules.
 - *Vide* Rule 3A, it is hereby introduced and notified that the Central Government has developed an e-adjudication platform *vide* which all the steps involved in the entire the adjudication proceedings viz. (i) the issuance of notices; (ii) submission of replies and evidences; (iii) hearing; (iv) passing orders and payment of penalty levied by the adjudicating officer or the regional director under the Rules shall with effect from September 16, 2024 take place through the e-adjudication platform. Further, the persons to whom the notices or summons are required to be issued or served shall be uploaded on the e-adjudication platform and in absence of such e-mail address, the adjudicating officer shall dispatch the notice or summons at the latest intimated address and copy of the notice or summons whereof shall be preserved on the e-adjudication platform.

Ministry of Corporate Affairs (Contd...)

- The e-adjudication platform has been introduced by the Central Government to streamline the process of the adjudication proceedings and every step involved thereunder, to minimize the delay, reduce the administrative process to avoid risk of loss of documents and effectively conduct all the adjudication proceedings of the companies.
 - *Further*, vide the Amendment Rules, the format of Form ADT '*Memorandum of Appeal*' that can be filed by the Companies to appeal against the order passed under the Rules has been substituted, the format whereof is available in the link below.
- ❑ **Link to the Notification.** [The Companies \(Adjudication of Penalties\) Amendment Rules, 2024](#)

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification No.** G.S.R. 475(E). (“**Notification**”)
- ❑ **Notification Date.** August 05, 2024
- ❑ **Notification Effective Date.** August 27, 2024
- ❑ **Notification Subject.** Limited Liability Partnership (Amendment) Rules, 2024
- ❑ **Analysis.**
 - In order to ease the processing of applications filed by the Limited Liability Partnerships (“**LLPs**”) for striking off its name under Rule 37 of Limited Liability Partnership Rules, 2009 (“**Principal Rules**”), the Ministry of Corporate Affairs (“**MCA**”) *vide* this Notification has authorised Centre for Processing Accelerated Corporate Exit (“**C-PACE**”) along with Registrar of Companies for timely disposal of the aforesaid matters.
 - C-PACE was established by the Central Government of India, *vide* MCA notification no. S.O. 1269(E), dated March 17, 2023, in order to provide hassle-free filing, timely and process-bound striking off of companies. In the light of the aforesaid, this Notification has been issued to accelerate exit process of LLPs along with the companies under the Companies Act, 2013.

Ministry of Corporate Affairs (Contd...)

- Accordingly, *vide* this Notification, the authorisations to C-PACE have been given (wherever required) in the Principal Rules, by making the necessary insertions to reflect the same.
- **Link to the Notification.** [Limited Liability Partnership \(Amendment\) Rules, 2024](#)

Reserve Bank of India

- ❑ **Circular No.** RBI/2024-25/63 (“**Circular**”)
- ❑ **Circular Date.** August 16, 2024
- ❑ **Circular Effective Date.** Notification is effective immediately except for the provisions relating to: Funds shall not remain in Escrow Accounts for a period exceeding ‘T+1’ which would be effective from November 14, 2024
- ❑ **Circular Subject. Review of Master Direction** - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017 (“**P2P MD**”).
- ❑ **Background.**
 - The P2P MD contemplates that non-banking financial company – peer to peer lending platform (“**NBFC-P2P**”) should work as an intermediary providing online platform to the participants involved in peer to peer lending and has laid down the clear guidelines regarding various aspects of functioning of NBFC-P2P lending platforms. However, some of the platforms have adopted certain practices which have not been envisaged by the P2P MD thus resulting in violation thereof, viz.:
 - a) violation of the prescribed funds transfer mechanism;
 - b) promoting peer to peer lending as an investment product with features like tenure linked assured minimum returns;

Reserve Bank of India (Contd...)

- c) providing liquidity options and at times acting like deposit takers and lenders instead of being a platform and such practices are violative of the Directions.
- So as to deter the entities being regulated by the P2P MD from violating the provisions thereof, certain provisions are sought to be modified for proper implementation of the P2P MD.

Earlier Position	New Position
NBFC-P2P shall not provide or arrange any credit enhancement or credit guarantee.	In addition, NBFC-P2P shall not <ul style="list-style-type: none">• Assume any credit risk, either directly or indirectly, for transactions carried out on its platform;• The entire loss, if any, in respect of funds lent by lenders to borrowers on the platform shall be borne by the lenders; and• Adequate disclosures to this effect shall be made to lenders as part of fair practices code
An NBFC-P2P can cross sell loan specific insurance products	An NBFC-P2P can cross sell loan specific insurance products, however it may be noted that it can't sell insurance product also which is in the nature of credit enhancement or credit guarantee.

Reserve Bank of India (Contd...)

Earlier Position	New Position
The aggregate exposure of a lender at any point of time, across all P2P platforms, shall be capped at INR 50 Lacs subject to the same being consistent with their net-worth and in case he is investing more than INR 10 Lacs it shall provide certificate to P2P platforms from a practicing Chartered Accountant certifying minimum net-worth of INR 50 Lacs.	The aggregate exposure of a lender at any point of time, across all P2P platforms, shall be capped at INR 50 Lacs subject to the same being consistent with their net-worth and in case amount lent by a lender is more than INR 10 Lacs it shall provide certificate to P2P platforms from a practicing Chartered Accountant certifying minimum net-worth of INR 50 Lacs.
NBFC-P2P to have a board approved policy setting rules for matching lenders with borrowers in an equitable and non-discriminatory manner	NBFC-P2P to have a board approved policy setting rules for matching/ mapping lenders with borrowers in an equitable and non-discriminatory manner

Reserve Bank of India (Contd...)

Earlier Position	New Position
Loan can be disbursed only after lender approves the individual recipient and after execution of contract	Loan can be disbursed only: <ul style="list-style-type: none">• after lender & borrowers have been matched/ mapped as per the board approved policy;• Individual lender approves the individual recipient; and• after full execution of contract
Fund transfer between P2P shall be through escrow account operated by a bank promoted trustee. For this purpose two escrow accounts to be created one for lenders other for borrower. All fund transfers shall happen through bank.	<p>Fund transfer between P2P lender and borrower shall be through escrow account. For this purpose both shall open a separate account, i.e lender will open account called “Lenders Escrow Account”, and similarly borrower will open account called “Borrowers Escrow Account”, with these escrow accounts being managed by bank promoted trust promoted and all the transactions routed through the said bank account only.</p> <p>The funds transferred into these Escrow Accounts shall not remain therein for a period exceeding ‘T+1’ day. (‘T’ is the date on which the funds are received in these Escrow Accounts)</p>

Reserve Bank of India (Contd...)

Earlier Position	New Position
NBFC-P2P shall disclose to lender details about the borrower/s including personal identity, required amount, interest rate sought and credit score.	NBFC-P2P can do so only with borrower consent.
NBFC-P2P shall publicly disclose on its website portfolio performance including share of NPA on a monthly basis and segregation by age.	In addition, it shall also include all losses borne by the lenders on principal or interest or both.
NBFC-P2P to obtain explicit declaration from the lender stating they have understood all the risks including likelihood of loss of entire principal in case of default by a borrower and that P2P platform does not assure return of principal/payment of interest.	In addition, P2P platform shall not promote peer to peer lending as an investment product with features like tenure linked assured minimum returns, liquidity options, etc.

Reserve Bank of India (Contd...)

Earlier Position	New Position
NBFC-P2P which outsource financial services shall not outsource core management functions including Internal Audit, Strategic and Compliance functions with KYC norms for opening deposit accounts, according sanction for loans (including retail loans) and management of investment portfolio. However, this restriction is not applicable if NBFC is a conglomerate and such functions are being outsourced within group, Further, while internal audit function itself is a management process, the internal auditors can be on contract.	NBFC-P2P which outsource any of their functions shall not outsource core management functions including internal audit, strategic and compliance functions, pricing of services/ fees to be charged to borrowers/ lenders and decision-making functions such as determining compliance with KYC norms. However, this restriction is not applicable if NBFC is a conglomerate and such functions are outsourced within group.

Reserve Bank of India (Contd...)

- New provisions added in the P2P MD:
 - ✓ NBFC-P2P shall not
 - a. deploy lenders' funds in any manner other than as specified in the P2P MD; and
 - b. shall not utilize funds of a lender for replacement of any other lender(s).
 - ✓ NBFC-P2P shall disclose the fees liable to be charged, at the time of lending itself. Fees can be both a fixed amount or a fixed proportion of the principal amount involved in the lending transaction.
 - ✓ Mapping of participants such as lender or borrower is not permitted within a closed user group. NBFC-P2P shall mention its name as per the certificate of registration along with brand name in all kinds of communications including promotional material with stakeholders.
 - ✓ It shall prominently display the following in all its mobile/web application/ promotional materials:
"It is an NBFC-P2P lending platform registered with the Reserve Bank. However, Reserve Bank does not accept any responsibility for the correctness of any of the statements or representations made or opinions expressed by the NBFC-P2P and does not provide any assurance for repayment of the loans lent on it"

❑ **Link to the Circular.** [RBI | NBFC - Peer to Peer Lending Platform Directions](#)

Reserve Bank of India (Contd...)

- ❑ **Notification No.** S.O. 3492(E), 2024
- ❑ **Notification Date:** August 16, 2024
- ❑ **Notification Effective Date.** August 16, 2024
- ❑ **Notification Subject.** Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2024 (“**NDI Amendment Rules**”) amending the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“**Principal Rules**”)
- ❑ **Summary.**
 - The NDI Amendment Rules have brought about the following amendments to the Principal Rules, detailed analysis whereof was already published, link whereof is provided hereunder.
 - Summary of changes effectuated: **a)** Alignment of the definitions pertaining to ‘*start-up companies*’ and ‘*control*’; **b)** Re-alignment of prior approval of Indian Government for all transfer cases to or from non-resident instead of making the approval sector specific; **c)** introduced swapping of equity instruments of Indian company with equity capital of companies outside India between resident and non-residents; **d)** clarifications as to what will be considered for construing downstream investments by Indian companies; and **e)** allowing 100% foreign direct investment through automatic route in white label ATM operations.
- ❑ **Link to the Notification.** [Updated Non-debt Instruments Rules-2024](#)
- ❑ **Link to the Analysis.** [LA Update I on Foreign Exchange Management \(Non-debt Instruments\) \(Fourth Amendment\) Rules, 2024 \("NDI Amendment Rules"\)](#)

Thank You



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