

CHAPTER 3

Regulatory updates



SEBI updates

Framework for voluntary delisting

On 23 August 2023, the Securities and Exchange Board of India (SEBI) introduced a framework for voluntary delisting of non-convertible debt securities and non-convertible redeemable preference shares by inserting Chapter VIA in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations). This framework is not applicable to the certain listed entities that have issued listed non-convertible debt securities or non-convertible redeemable preference shares. The listed entities to whom framework is not applicable are:

- i. If the above-mentioned securities or sharers are outstanding and are issued through a public issue or
- ii. In case there are more than 200 securities holders excluding qualified institutional buyers in any International Securities Identification Number (ISIN) relating to such securities or shares
- iii. If the above-mentioned securities or

shares have been delisted by the stock exchanges due to any penalty or action initiated against the listed entity or on any other grounds specified under Rule 21 of the Securities Contracts (Regulation) Rules, 1957

- iv. If the above-mentioned securities or shares have been delisted by the stock exchanges due to redemption of such securities or shares
- v. If the above-mentioned securities or shares have been delisted due to a resolution plan as per Section 31 of the Insolvency Code.

The framework also lays down the provisions with respect to:

- In-principle approval of the stock exchanges and approval from the holders and no-objection letter from the Debenture Trustee (DT)
- Obligations of the listed entity
- Procedure for sending a notice for delisting

- Final application to the stock exchange and circumstances for failure of delisting proposal.

The provisions of this framework are applicable from 23 August 2023.

(Source: SEBI notification no. No. SEBI/LAD-NRO/GN/2023/149 dated 23 August 2023)



New format of abridged prospectus

SEBI through its circular dated 4 September 2023, revised the format of abridged prospectus for public issues of non-convertible debt securities and/or non-convertible redeemable preference shares. This has been done with an aim to provide clarity and consistency amongst the disclosures of various documents and to provide additional but critical information. The revised format of the abridged prospectus has been provided in Annexure I of the circular.

The circular requires that a copy of the abridged prospectus should be made available on the website of issuer, merchant bankers, registrar to an issuer. Further, a link for downloading the same should be provided in the advertisement for the public issue. Additionally, the issuer/merchant bankers shall insert a Quick Response (QR) code on the last page of the abridged prospectus which would lead to the prospectus. The QR code should also be placed on the front page of documents such as front outside cover page, advertisement, etc.

The circular further provides that an issuer or merchant bankers should ensure that the disclosures provided in the abridged

prospectus are adequate, accurate and does not contain any misleading information or any misstatement. Further, the qualitative statements provided in the abridged prospectus should be substantiated with the quantitative factors and qualitative statement should not be made which cannot be substantiated with quantitative factors.

The provisions of the circular are applicable to all public issues opening on or after 1 October 2023.

(Source: SEBI circular no. SEBI/HO/DDHS/PoD1/CIR/P/2023/150 dated 4 September 2023)

Clarification on computation of asset allocation limits of mutual funds

In July 2023, SEBI issued a circular on investment by Mutual Fund (MF) schemes and Asset Management Companies (AMCs) in units of Corporate Debt Market Development Fund (CDMF). In this respect, on 6 September 2023, SEBI issued a clarification on the calculation of asset allocation limits of MF schemes.

Accordingly, SEBI has clarified that, for calculation of asset allocation limits of MF schemes, the investment in units of CDMDF should be excluded from base of net assets.

This is effective from 6 September 2023.

(Source: SEBI circular no. SEBI/HO/IMD/PoD2/P/CIR/2023/152 dated 6 September 2023)

Consultation paper regrading registration of NPOs with SSE

SEBI issued a regulatory framework for Social Stock Exchange (SSE) in 2022 and corresponding amendments were made in the respective SEBI Regulations. As per the framework, a Not for Profit Organisation (NPO) is required to be registered with an SSE to raise funds. However, NPOs encountered certain challenges. Thus, the following recommendations have been proposed:

- **Minimum issue size for NPOs issuing Zero Coupon Zero Principal Instruments (ZCZP):** The minimum issue size is INR1 crore as per the existing provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018 (ICDR Regulations). It is proposed to reduce the limit to INR50 lakh on account of the difficulty faced by NPOs to raise funds from a limited set of investors.
- **Minimum application size for NPOs issuing ZCZP:** The current framework

states that the minimum application size should be INR2 lakh. It has been proposed to reduce the same to INR10,000.

- **Expansion of scope:** As per the existing regulatory provisions, entities that are registered under Section 12A/12AA/12AB under the Income-tax Act, 1961 (IT Act) and which have valid 80G registration are eligible for registration as an NPO with an SSE. It has been proposed to also permit NPOs having registration certificate under Section 10(23C) (i.e. education institutes) and Section 10(46) of the IT Act (i.e. body/authority/board/trust/commission established or constituted by or under a Central/State/Provincial Act or constituted by the Central/State Government with the object of regulating or administering any activity for the benefit of general public). However, the requirement for valid 80G certificate for such NPOs to register with SSE may not be mandated.

- **Relaxation - pending notice or ongoing scrutiny by income tax:** As per the existing provisions, an NPO having pending notice or ongoing scrutiny by income tax is ineligible for registration with an SSE. It has been proposed that, NPOs having notice or ongoing scrutiny by IT would be permitted on an SSE subject to certain conditions as stipulated in the consultation paper.
- **Social Impact Assessor:** It has been proposed to substitute the term 'Social Auditor' with 'Social Impact Assessor' as it was observed that the term 'audit' gives a negative connotation. Thus, it is proposed to change the nomenclature but the scope of work would remain the same.
- **Disclosure of past social impact:** The existing regulation requires disclosure of past social impacts as per the format specified by SEBI in the fund raising document. As many NPOs would have already carried out social impact assessment in the past and it would not be in the format prescribed by SEBI, it has been proposed that the format of the past

social impact could be provided based on past practice of the NPO.

The comment period on the above proposal ended on 19 September 2023

(Source: SEBI reports for public consultation on 'Flexibility in the framework on Social Stock Exchange (SSE)' dated 29 August 2023)

Board nomination rights for unitholders of Infrastructure InvITs and REITs

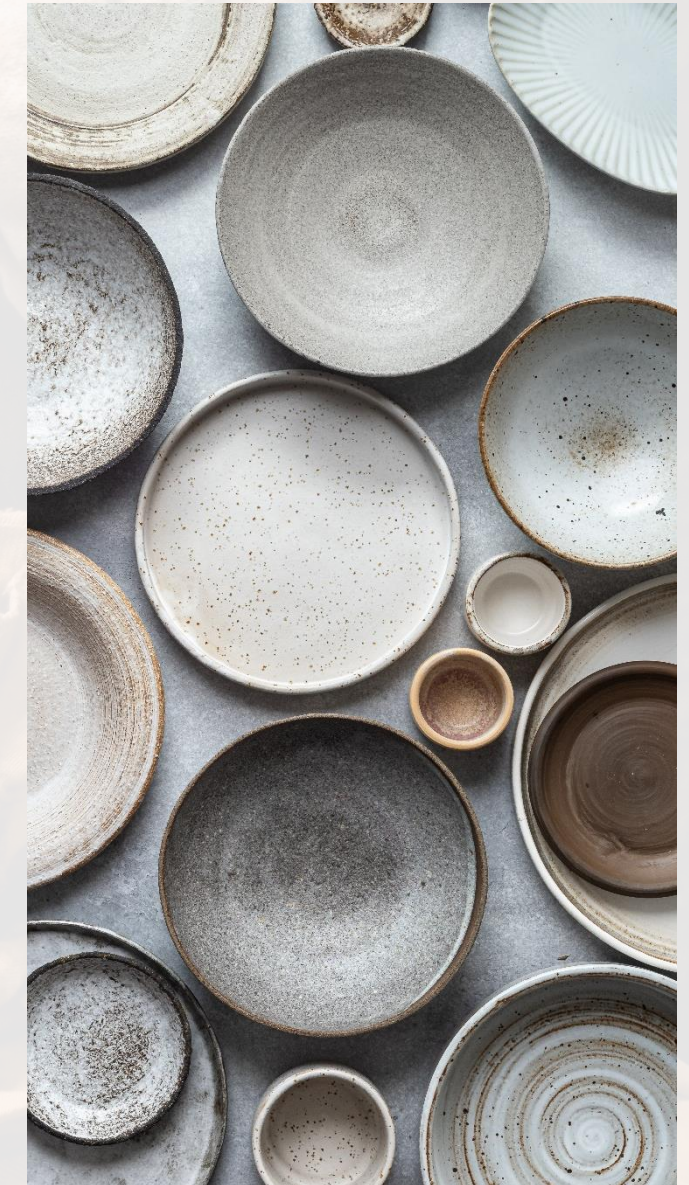
As per the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations), eligible unitholder(s) i.e. unitholders holding not less than 10 percent of the total outstanding units of the InvIT/REIT, either individually or collectively, are entitled to nominate one director on the board of directors of the investment manager/manager.

In order to specify the framework to exercise board nomination rights by such eligible unitholders, SEBI issued a circular on 11 September 2023. The circular stipulates conditions for nomination of a unitholder

nominee director. It also stipulates the procedure for first time nomination after the issuance of this circular and subsequent nomination by unitholders on an annual basis. Further, within 10 days from the end of each calendar month, the investment manager/manager should review whether the eligible unitholder(s) who have exercised the board nomination right, continue to have/hold the required number of units of InvIT/REIT and should make a report of the same. This report should be submitted to the Trustee of the InvIT/REIT. The circular also prescribes the manner for change in unitholder nominee director or withdrawal of nomination and procedure for vacating of office of a unitholder nominee director.

The provisions of this circular are applicable from 11 September 2023.

(Source: SEBI circular no. SEBI/HO/DDHS-PoD-2/P/CIR/2023/154 and SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 dated 11 September 2023)



RBI updates

Revised regulatory framework for investment portfolio

The existing regulatory framework on classification and valuation of investment portfolio for commercial banks is based on a framework introduced in October 2000. However, considering the significant development in global financial reporting standards, the linkages with the capital adequacy framework as well as progress in the domestic financial markets, the Reserve Bank of India (RBI) issued a discussion paper in 2021 to revise the regulatory framework for the investment portfolio.

Subsequently on 12 September 2021, RBI issued the Classification, Valuation and Operation of Investment Portfolio of Commercial Banks, Directions, 2023. The revised regulatory framework is applicable from 1 April 2024 to all commercial banks excluding regional rural banks. These revised norms majorly consist of the following:

- It updates the regulatory guidelines with

global standards and best practices while introducing a symmetric treatment of fair value gains and losses

- Requirement for a clearly identifiable trading book under Held for Trading (HFT)
- Removes the 90-day ceiling on holding period under HFT
- Removal of ceilings on Held to Maturity (HTM)
- Detailed disclosures on the investment portfolio
- Illustrative guidance on the revised framework for delisting

(Source: RBI notification no. RBI/DOR/2023-24/104 DOR.MRG.36/21.04.141/2023-24 dated 12 September 2023)

NBFCs in the upper layer under Scale Based Regulation

In October 2021, RBI had issued the Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs (the

framework). The framework categorises Non-Banking Financial Companies (NBFCs) in Base Layer (NBFC-BL), Middle Layer (NBFC-ML), Upper Layer (NBFC-UL) and Top Layer (NBFC-TL) and gives the methodology to identify the NBFCs in the upper layer as per their asset size and scoring methodology. In this regard, on 14 September 2023, RBI issued the list of NBFC-UL under SBR for the year 2023-24 on its website.

It is important to note that, as per the framework, once an NBFC is classified as NBFC-UL, it would be subject to enhanced regulatory requirement, for at least five years from its classification, even if it does not meet the parametric criteria in the subsequent years.

(Source: RBI press release no. 2023-2024/923 dated 14 September 2023)



Other updates

Amendments to Re-insurance Regulations

With an aim to promote a favorable business environment and attracting more reinsurers to establish operations in India, the Insurance Regulatory and Development Authority of India (IRDAI) issued amendments to the IRDAI (Re-insurance) Regulations, 2018 (Re-insurance Regulations). These amendments simplify the existing regulations, enhance the competitiveness and align with global financial services trends.

The amendments aim to increase the overall capacity of the reinsurance sector, which could accommodate growing demand and manage larger risks. There is also a reduction of the compliance burden on various entities operating in this sector thereby allowing them to navigate the regulatory landscape more efficiently. The amendment has reduced the minimum capital requirement for Foreign Reinsurance Branches (FRBs) from INR100 crore to INR50 crore with the provision to repatriate any excess assigned capital. Also, the format for reinsurance

programs has been simplified, and regulatory reporting requirements have been rationalised for increased clarity and effectiveness.

The amendments are effective from 23 August 2023.

(Source: IRDAI notification no. F. No. IRDAI/Reg/5/193/2023 dated 23 August 2023)

Clarification on the documents issued by ICAI

Over the years the Institute of Chartered Accountants of India (ICAI) has issued various documents like Guidance Note (GN), Standards on Auditing (SA) etc. The members of ICAI raised concerns regarding the level of authority attached to the various documents issued by the ICAI and the degree of compliance with respect to the same. In this regard, on 19 August 2023, ICAI issued a clarification on this matter.

As per the clarification, a professional accountant who does not consider and apply the guidance stipulated in a relevant GN, should take reasonable and adequate care in

performing the alternate procedures to deal with the objectives and basic principles stipulated in the GN and should also document the rationale in performing such alternate procedures. Similarly, while discharging an attest function, the recommendations in a GN relating to an accounting matter should be followed. If the same have not been followed, the member should consider providing a disclosure in the report in accordance with engagement standards. The clarification further states that Accounting Standard (AS) and Standards on Auditing (SAs) issued by the Accounting Standards Board (ASB) and the Auditing and Assurance Standards Board (AASB) become mandatory on the dates specified in the respective document or as per the notification issued by the Council of ICAI.

(Source: ICAI announcement dated 19 August 2023)

Guidance Note on tax audit issued by ICAI

Section 44AB of the IT Act requires an assessee to get the accounts of his

business/profession audited if the total sales, turnover or gross receipts exceed the prescribed limits. The Direct Taxes Committee (DTC) of ICAI has prepared a Guidance Note (GN) on tax audit which explains the scope the requirements.

On 4 September 2023, ICAI revised the GN on tax audit. The revised publication includes amendments made upto the Finance Act, 2023. The publication aims to address situations faced by Chartered Accountants (CAs) while conducting an audit as it provides explanations that will help in streamlining the tax audit process. Further, it emphasises on the importance of maintaining accurate records and the significance of a proactive approach in meeting statutory obligations.

(Source: ICAI announcement dated 4 September 2023)

Technical guide on audit of NBFCs issued by ICAI

NBFCs play an important role in the Indian financial sector. They are complementary to the banking sector as they cater to the funding requirements of organised as well as unorganised sector like small scale industries, small entrepreneurs, people in self-employment, etc.

On 6 September 2023, ICAI issued the revised edition of the technical guide on audit of NBFCs. This technical guide deals with

various aspects of audit of NBFCs such as introduction of NBFCs, financial reporting framework, auditing framework, areas of audit concern, operations of NBFCs, governance, etc. Additionally, it also contains illustrative templates of audit report/certificate, illustrative audit checklist, illustrative list of master directions, circulars, RBI notifications, illustrative disclosure norms for NBFCs, illustrative list of returns to be submitted by NBFCs, etc.

(Source: ICAI announcement dated 6 September 2023)



FASB issued ASU on accounting for Joint Venture (JV) formations

The erstwhile provisions of US Generally Accepted Accounting Principles (US GAAP) did not provide any guidance as to how a JV, on formation, should recognise and initially measure assets contributed and liabilities assumed. In fact, JV formation transactions were explicitly scoped out of Accounting Standards Codification (ASC) 805, *Business Combinations* – even when two existing business were combined – and ASC 845, *Nonmonetary Transactions*. This lack of guidance led to diversity in practice, with some JVs initially measuring their net assets at carryover basis and others at fair value.

To address this diversity in practice, on 23 August 2023, the Financial Accounting Standards Board (FASB) issued an Accounting Standard Update (ASU) by specifying how net assets contributed to a joint venture are accounted for on the joint venture's formation. This ASU is applicable to all entities involved in newly formed and existing joint ventures. The ASU requires joint ventures to:

- Recognise a new basis of accounting for contributed net assets as of the formation date.

- Measure the contributed identifiable net assets at fair value on the formation date using the business combination guidance in ASC 805-20 (with certain exceptions) regardless of whether an investor contributes a business.
- Measure the net assets' fair value based on 100 per cent of the JV's equity immediately following formation.
- Record goodwill (or an equity adjustment, if negative) for the difference between the fair value of the JV's equity and its net assets.
- Provide disclosures about the nature and financial effect of the formation transaction.

The above amendments are effective prospectively for all joint ventures with a formation date on or after 1 January 2025, and early adoption is permitted. Additionally, a joint venture that was formed before the effective date of the ASU could elect to apply the amendments retrospectively if it has sufficient information. The early adoption is permitted in any interim or annual periods for which financial statements have not yet been issued (or made available for issuance).

(Source: FASB media advisory dated 23 August 2023 read with KPMG LLP's article 'ASU 2023-05 requires a joint venture formation transaction to be measured at fair value' dated 24 August 2023)

FASB issues conceptual framework on recognition and derecognition

The Conceptual Framework or Concept Statements is a body of interrelated objectives and fundamentals that enables FASB to develop standards of financial accounting and reporting. It is non-authoritative and does not establish or change the GAAP.

On 30 August 2023, FASB issued a concept statement on recognition and derecognition of an item in financial statements. It stipulates the recognition and derecognition criteria to guide when an item should be incorporated into and removed from the financial statements.

As per the concept paper, an item should be

recognised in the financial statements if the following criteria are met:

- **Definitions:** An item should meet the definition of an element as described in Chapter 4, *Elements of Financial Statements* of the Concepts Statement to be recognised in financial statements. If it does not meet the definition, it would be inconsistent with the fundamental qualitative characteristic of faithful representation by misrepresenting a reporting entity's:
 - i. Resources
 - ii. Claims to those resources or
 - iii. Changes in those resources and claims during the period.

- **Measurability:** An item must be measurable with a relevant measurement attribute to be recognised in the financial statements. Relevance should be evaluated in the context of the objective of the general purpose financial reporting i.e. useful information for decision making should be provided to existing and potential investors, lenders, and other resource providers. The decision usefulness of financial information could also be affected by measurement uncertainty.
- **Faithful representation:** In order to achieve the objective of general purpose financial reporting, an item recognised in financial statements should be depicted and measured with faithful representation.

Faithful representation is a fundamental qualitative characteristic. Financial information that is faithfully represented must be complete, neutral, and free from error.

The concept paper also lays down the derecognition criteria. Derecognition is the process of removing an item from financial statements of a reporting entity as an asset, liability, or equity. As per the concept paper, derecognition should occur when an item no longer meets any one of the above recognition criteria.

(Source: FASB media advisory dated 30 August 2023)

