

Newsletter
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SNG & PARTNERS

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AND GOVERNANCE (ESG)**

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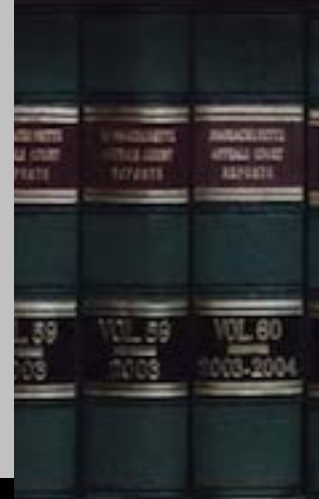
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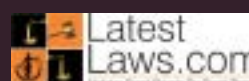
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This newsletter has been developed by SNG PARTNERS in exclusive collaboration with







Editor's note

Dear Readers,

The November, 2022 newsletter contains important information related to ESG, various important matters dealt with under IBC by the High Courts and other judicial forums as well as circulars and notifications issued by RBI, MCA and SEBI.

On PMLA issue, on the liability of the person giving bribe, Hon'ble Supreme Court has held that it is with the active participation of the person offering the bribe that the money becomes tainted and qualifies as "proceeds of crime" and therefore, it is only fair to prosecute the said person under the Prevention of Money Laundering Act, 2002.

Concept note on Central Bank Digital Currency issued by RBI on October 7, 2022 is a significant development. Several important circulars issued by SEBI shall keep the compliance officers on their toes.

As 2022 comes to an end, I wish all the readers and their family members a very happy and prosperous 2023.

Best wishes,

Rajesh Narain Gupta

Mr. Rajesh Narain Gupta

**Managing Partner,
SNG & Partners**

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG):

Issue of Green Debt Securities by an issuer under the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015 -

Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (hereinafter referred to as “ILMDS Regulations”) does not define green debt securities. Green Debt Securities are defined in SEBI (Issue and Listing of Non- Convertible Securities) Regulations, 2021 (hereinafter referred to as “NCS Regulations”), and the initial and continuous disclosure requirements for entities issuing or proposing to issue these securities are provided in Chapter IX of the Operational Circular dated August 10th, 2021.

Green debt Securities are debt securities issued for raising funds that are to be utilized for projects and/or assets falling under any of the below-mentioned categories:

- a. Renewable and sustainable energy including wind, solar, bioenergy, and other sources of energy that use clean technology,
- b. Clean transportation including mass/public transportation
- c. Sustainable water management including clean drinking water, water recycling
- d. Climate change
- e. Energy efficiency
- f. Sustainable waste management
- g. Sustainable land use including agriculture and afforestation
- h. Biodiversity conservation
- i. Or any other category as specified by Board

As per the circular, green debt security can be issued by the issuer if it falls within the definition and in addition to the ILMDS Regulations, the issuer has to comply with the NCS regulations and circulars too.

INSOLVENCY AND BANKRUPTCY CODE (IBC):

1.Revised format of Annual Compliance Certificate for Insolvency Professional Agencies ²

A revised format of the Annual Compliance Certificate for Insolvency Professional Agencies has been issued by the Insolvency Board. All the registered Insolvency Professional Agencies are required to submit the annual compliance certificate to the Board in the revised format within 45 days of the end of the financial year.

2.Delhi High Court: Interim Moratorium stays all pending legal proceedings ³

A Summary suit was filed by the financial creditors against the ex-promoters of Bhushan Steel Ltd. and a right was given to the creditors to recover financial debt from the guarantors concerning their personal guarantee.

The High Court ruled that the adjudicating authority in the case of personal guarantors of corporate persons would be NCLT. With respect to Section 96 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"), it was held that Section 96 puts a stay on all pending legal proceedings as soon as the application is filed.

It was contended that the Defendants were jointly and severally liable and hence, the incapacity of one Defendant will not affect the remedies against the other guarantor.

The Delhi High Court opined that the language of Section 96 is such that merely because Section 96 applies to one of the co-guarantors, the same would not ipso facto apply to all other co-guarantors. The Court also ruled that the Section only talks about all debts of that particular corporate debtor and does not include all co-guarantors.

3. Delhi High Court: Interim Moratorium applies when a Suit is filed against a party, not by the party ⁴

A Writ Petition was filed against the invocation of the pledged shares by the Bank. It was contended that the proper notice concerning pledged shares was not given as per Section 176 of the Indian Contracts Act, 1872 (hereinafter referred to as "ICA").

The Delhi High Court opined that the object of the notice under Section 176 of the ICA is to make the Pawnor aware of the intentions of the Pawnee to sell the pawn. It further expounded that to constitute a valid notice, an intimation of invocation followed by a notice is sufficient.

4. NCLAT, New Delhi opines: Sec 9 IBC application liable to be rejected in case of pre-existing dispute ⁵

The Principal Bench, New Delhi, National Company Law Appellate Tribunal expounded that when the issues are contractual in nature, Section 9 application of the Insolvency and Bankruptcy Code, 2016 cannot be accepted. It further held that the application cannot be entertained when there is a pre-existing dispute between the parties.

5. NCLAT, New Delhi enunciates: Members attending the meeting which is held after an adjournment forms quorate ⁶

The NCLAT, Principal Bench, New Delhi opined that if the Resolution Professional had taken all the necessary care and caution in holding the Committee of Creditors meeting and the creditors are absent even in the adjourned meeting, then it cannot be said that the decision taken in that meeting was illegal due to the threshold of votes not being met.

It was held that Regulation 22(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the members attending the meeting which was adjourned are quorate and therefore, the decision will not be illegal.

6. NCLT, Kolkata: Enforceability and execution of foreign awards are under the exclusive jurisdiction of HC ⁷

The NCLT, Kolkata Bench dismissing a Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) petition held that for the enforcement of a foreign award, execution petition has to be filed before the Hon’ble High Court which will adjudicate on the enforceability of the award and then on the execution of the award. It further held that foreign awards fall under the exclusive jurisdiction of the High Court and therefore, Tribunal cannot adjudicate on the same.

The Application was filed as the Corporate Debtor failed to discharge liability as the amount awarded by way of an Arbitral Award was not paid by the Corporate Debtor. However, the Tribunal dismissed the Application and gave liberty to the Operational Creditor to resort to other appropriate remedies.

7. NCLT, Kochi: IBC is a self-contained code focused on maximizing value effectively ⁸

The NCLT, Kochi Bench observed that Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) is a self-contained code that effectively ensures the maximization of value. The Code already contains modes of execution, and therefore, it is irrelevant to go to any other Act for the same. It was expounded that it is ultra vires the IBC to invoke provisions of the Companies Act for execution petition. It was further propounded that Section 231 of IBC ousts the jurisdiction of the Civil Court.

8. NCLAT, New Delhi: Merely on the ground of denying documents to the Liquidator, the clause concerning the 2-year relevant period cannot be invoked ⁹

The NCLAT, New Delhi, opined that even though Sections 43, 45, and 46 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) provide for a relevant period unless the Liquidator has the material to scrutinize and ascertain whether the preferential transactions took place or not, the Liquidator cannot conclude whether the transactions took place during the relevant time. Regarding Section 66 of the IBC, the Tribunal held that there is no period defined, and hence, if any fraud is committed by the Corporate Debtor, the Liquidator can approach the NCLT to seek

necessary directions. It was further propounded that IBC does not provide for any clause concerning the relevant period of 2 years wherein documents/ information can be denied to be given to the Liquidator.

9.NCLAT, New Delhi: Interim Moratorium under Sec 96 does not stay proceedings under Sec 19(2), 66, and 67 [10](#)

The NCLAT, New Delhi Bench has opined that a conjoint reading of Section 96(1)(b) with Section 3(11) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) provides that an interim moratorium shall be for proceedings which relate to a liability or obligation due on date when the interim moratorium has been declared. The Tribunal opined that Section 96 does not put a stay on any future liability or obligation. Therefore, a stay on proceedings under Sections 19(2), 66, and 67 is not provided for under Section 96.

10. NCLT, Mumbai: A successful Resolution Applicant is eligible to have assets of the Corporate Debtor free of encumbrances [11](#)

The NCLT, Mumbai Bench reiterated that the liability of the Corporate Debtor before the Corporate Insolvency Resolution Process, approval of Resolution Plan, and transfer of assets of the Corporate Debtor to the Resolution Applicant stands extinguished. It was opined that the successful Resolution Applicant is eligible to get assets of the Corporate Debtor free of encumbrances after the approval of the Resolution Plan and for the same, the Hon’ble Supreme Court can be approached.

MINISTRY OF CORPORATE AFFAIRS (MCA):

Companies (Registered Valuers and Valuation) Amendment Rules, 2022 [12](#)

Amendments in the Companies (Registered Valuers and Valuation) Rules, 2017 have been introduced by the Ministry of Corporate Affairs. The following are the key amendments:

a. Insertion of Rule 3(2)(f):

“(f) it is not a member of a registered valuer’s organization:

Provided that it shall not be a member of more than one such registered valuers’ organization at a given point in time.

Provided further that the partnership entity or company, already registered as valuers, on the date of commencement of the Companies (Registered Valuers and Valuation) Amendment Rules, 2022, shall comply within six months of such commencement with the conditions specified under this clause.”

b. Insertion of Rule 7A:

According to this Rule, in case of any change in the personal details or modification of partners or directors or any clause the Registered valuer should intimate the authority.

c. Insertion of Annexure – V:

This Annexure has to be read with Rules 7A and 14A and specifies the fees that have to be paid to the Authority in case of a change in the details of a registered valuer.

PREVENTION OF MONEY LAUNDERING ACT (PMLA):

SC opines: A person giving a bribe can be prosecuted under PMLA [13](#)

In a case wherein the allegation was that a bribe has been offered to a public servant, the Supreme Court opined that the amount when in the hands of the bribe giver would not qualify as tainted. However, when there is an intention to hand over the amount as a bribe, then the bribe giver will be said to be involved in the process covered under “proceeds of crime”.

The Supreme Court held that it is with the active participation of the person offering the bribe that the money becomes tainted and qualifies as “proceeds of crime” and therefore, it is only fair to prosecute the said person under the Prevention of Money Laundering Act, 2002.

RESERVE BANK OF INDIA (RBI):

1. Eligibility Criteria for offering Internet Banking Facility by Regional Rural Banks, 2022 [14](#)

RBI has amended the instructions on 'Internet Banking Facility for Customers of Regional Rural Banks' which will be in force from November 01, 2022. It is done to advance digital banking for customers in rural areas. A revised eligibility criterion has been notified which will apply to Regional Rural Banks for offering Internet Banking with a transactional facility to their customers.

2. Operationalization of Central Bank Digital Currency ("CBDC")- Wholesale Pilot (e₹-W) [15](#)

Concept Note on Central Bank Digital Currency for India dated October 07th, 2022 was issued by RBI to discuss important considerations such as technology and design choices, uses of Digital Rupee and issuance mechanisms, etc. [16](#)

With respect to this, from November 01st, 2022, the first pilot in the Digital Rupee-Wholesale segment has commenced. The plan is to launch the segment within a month in select locations in closed user groups.

3. Agency Commission for Direct Tax collection under the TIN 2.0 regime [17](#)

RBI has issued a notification dated November 14th, 2022, to modify Para 21 of the Master Circular issued on Conduct of Government Business by Agency Banks- Payment of Agency Commission.

The modifications are done after the TIN 2.0 regime for the collection of direct taxes has been implemented

4. Basel III Framework on Liquidity Standards- Standing Deposit Facility [18](#)

A circular has been issued by RBI dated November 23rd, 2022 to clarify that the overnight balances held by the banks with RBI under SDF will be eligible as 'Level 1 High-Quality Liquid Assets' for computation of LCR. This will come into force immediately.

SECURITIES EXCHANGE BOARD OF INDIA (SEBI):

1. SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2022 [19](#)

A new chapter (Chapter VIA) for online bond platform providers has been issued by SEBI vide Second Amendment in SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2022.

The amendment has made it mandatory for the online bond platform providers to obtain a certificate of registration from the Board as a stockbroker under the Securities and Exchange Board of India (Stock Broker) Regulations, 1992. Any person who is acting as an online bond platform provider without the registration certificate may continue for 3 months from the date of this regulation or any other time as notified by the Board or if an application has been filed for grant of certificate till such application is disposed of by SEBI.

2. Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2022 [20](#)

SEBI has introduced 2 amendments which will take effect from January 01, 2023, to the Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2022. The two amendments are:

a. Regulation 11(3) has been substituted with another regulation.

“The sponsor(s) and sponsor group(s) shall collectively hold a minimum of 15% of the total units of the REIT for a period of at least 3 years from the date of listing of such units pursuant to initial offer on a post-issue basis:

Provided that any holding of the sponsor(s) and sponsor group(s) exceeding the minimum holding, shall be held for a period of at least 1 year from the date of listing of such units.”

b. A new regulation has been inserted; Regulation 11(4)

“Notwithstanding anything contained in any contract or agreement, the sponsor(s) and the sponsor group(s) shall continue to be liable to the REIT, trustees, and unit holders for all acts of commission or omission, representation or covenants related to the formation of the REIT and the sale or transfer of assets or holding company or SPV to the REIT.”

3. Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2022 [21](#)

Various amendments have been made to the Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2022 which will come into force from January 01, 2023. Some of the key amendments are:

- a. Sub-Regulation (5A) has been inserted in Regulation 14 which deals with the issue of units and allotments. The inserted provision prohibits InvIT from undertaking any activity under Chapter VIA i.e., Framework for Private Placement of Units of InvIT which are not listed.
- b. The Proviso to Regulation 17(6) dealing with the Delisting of units and winding up of the InvIT and Regulation 22(5B) dealing with Rights and meetings of unit holders have been omitted.

4. Handling of Clients' Securities by Trading Members (TM)/ Clearing Members (CM) [22](#)

To protect the funds and securities of clients, SEBI has issued a circular with some modifications to streamline the process of handling unpaid securities by TM/CM.

- a. All the securities received in pay-out are to be transferred to the Demat account of the clients directly from the pool account within one working day.
- b. In case of unpaid securities (securities that are not paid in full by the clients), an auto-pledge will be created in favour of the separate account titled "client unpaid securities pledges account".
- c. If funds are transferred within 5 trading days then the pledge will be released.
- d. In case the funds' obligation is not discharged, the unpaid securities will be disposed of in the market after giving an intimation to the client.

5. Applicability of GST on fees remitted to SEBI [23](#)

SEBI has issued a circular with immediate effect for the applicability of Goods and Services Tax on the fees remitted to it. The procedure to be followed for payment of fees is the same as per the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, and SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008.

In this circular, the SEBI has issued a format and dedicated email ID for payment of the fees.

6. The framework of Protection of interest of public equity shareholders in the case of listed companies undergoing CIRP under the IBC [24](#)

SEBI has issued a framework to protect the interests of the public equity shareholders in case of listed companies undergoing the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC).

A proposal has been put forward by SEBI for public consultation, taking into account the interest of all stakeholders, including the minority public shareholders. The comments on the said proposal can be sent via email.

7. Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2022 [25](#)

SEBI has made amendments that will come into effect from November 01, 2022. The regulations that have been amended are:

- a. Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019
- b. Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000

8. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2022 [26](#)

The following amendments have been made to the Takeover Code:

a. New Proviso i.e., Regulation 8(2)(d) is added which deals with the offer price.

“In the case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares or voting rights in, or control over the target company, the offer price shall be the highest of the volume-weighted average market price of such shares for a period of 60 trading days immediately preceding the date of the public announcement.

Provided that the price determined as per clause (d) shall not apply in the case of disinvestment of a public sector undertaking by the Central Government or a State Government, as the case may be.

Provided further that this proviso shall apply only in case of a change in control in the public sector undertaking.”

b. Regulation 22(2) related to the Completion of the acquisition has been amended and now, the acquisition can be completed by providing an irrevocable bank guarantee in favour of the manager by a scheduled commercial bank, subject to the approval of the RBI.

c. Regulation 29 pertaining to Disclosure of Acquisition has been amended.

“Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a target company, which has taken together aggregates to 5% or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such forms as may be specified.”

9. Master Circular on the issuance of NOC for release of 1% of Issue Amount [27](#)

SEBI has modified Regulation 38(1) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 vide the master circular. As per the amendment, 1% of the issue size that is available for the public subscription has to be deposited with the designated stock exchange. This 1% of the issue size shall be released to the issuer after the No objection Certificate is obtained from the SEBI.

10. Master Circular on the redressal of investor grievances through the SEBI Complaints Redress System (SCORES) platform [28](#)

SCORES was launched in June 2011 as a centralized web-based complaints redress system. The platform can be used to submit a complaint or grievance directly to the listed companies/intermediaries/MIs for resolution. The complaint shall be lodged within one year from the date of the cause of action and the entity shall redress the complaint within 30 days without any intervention of SEBI.

To seek help for filing complaints on SCORES, Investor Associations can be contacted, details of which are there on the SEBI website.

11. Registration and regulatory framework for Online Bond Platform Providers [29](#)

(Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) with immediate effect.

To streamline the operations of the Online Bond Platforms and to facilitate the participation of investors in the bond market, SEBI has introduced a regulatory framework for the functioning of Online Bond Platforms under Regulation 51A of the SEBI

With the introduction of this framework, the Online Bond Platforms will now have to register as stock brokers in the debt segment of the stock exchange. Moreover, the entity acting as an Online Bond Platform on or before the circular comes into force, should not offer products, services, or securities on its platform except:

- a. Listed debt securities
- b. Debt securities are proposed to be listed through a public offering.

12. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (6th Amendment) Regulations, 2022 ³⁰

Various amendments have been made by SEBI in the Listing Obligations and Disclosure Requirements. Some key ones are:

a. Regulation 25(2A) is inserted

“Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made under sub-regulation (2A). Provided further that an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the vote cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.”

b. Regulation 32(6), (7), (7A)

Following the amendment, comments or report received from the monitoring agency has to be submitted to the stock exchange by the listed entity in case a monitoring agency has been appointed to monitor the utilisation of proceeds of public issue or rights issue or preferential issue, or qualified institutional placement.

c. Regulation 52

After the amendment, the listed entity shall submit unaudited or audited quarterly and yearly data on a standalone basis within 60 days from the end of the quarter to the recognized stock exchange.

d. Regulation 59A

A new regulation has been added vide which the applicability of stock exchanges' NOC is negated for mergers with wholly owned subsidiaries with equity listed companies. However, for NCD/NCPS-listed companies, it would still be applicable.



13. Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2022 ³¹

SEBI has introduced an amendment in the Mutual Fund Regulation 53. Regulation 53 which deals with the Transfer of dividends and redemption proceeds is substituted with the following:

a. "Every mutual fund and asset management company shall, transfer to the unitholders the dividend payments within such period as may be specified by the Board from time to time; transfer to the unitholders the redemption or repurchase proceeds within such period as may be specified by the Board from time to time; in the event of failure to transfer the redemption or repurchase proceeds specified in clauses (a) and (b), the asset management company shall be liable to pay interest to the unitholders at such rate as may be specified by the Board for the period of such delay; notwithstanding payment of such interest to the unitholders under clause (c), the asset management company may be liable for action for failure to transfer the redemption or repurchase proceeds or dividend payments within the stipulated time:

Provided that physical despatch of redemption or repurchase proceeds or dividend payments shall be carried out only in exceptional circumstances and asset management companies shall be required to maintain records along with reasons for all such physical despatches."

14. Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Second Amendment) Regulations, 2022 [32](#)

SEBI has inserted a new regulation after Regulation 44 in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018.

The new Regulation 44A will be covering orderly winding down and is as follows:

“44A (1) Every clearing corporation shall devise and maintain a framework for an orderly winding down of its critical operations and services covering both voluntary and involuntary scenarios.

(2) Every clearing corporation shall ensure that the framework provides for:-

- a. the timely and orderly settlement or cessation or transfer of position(s), and/or;
- b. the transfer of the collateral(s) or deposit(s) or margin(s) or any other asset(s) of the members to another recognized clearing corporation that would take over the operations of the clearing corporation, and/or;
- c. such other related matters.

(3) The framework referred to in sub-regulation (1) above, shall be in accordance with the guidelines specified by the Board in this regard from time to time.”

15. Securities and Exchange Board of India (Alternative Investment Funds) (Fourth Amendment) Regulations, 2022 [33](#)

SEBI has introduced amendments to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012. Certain significant ones are:

a. Insertion of new sub-regulations after Regulation 12(3) “(4) The first close of the scheme shall be declared by an Alternative Investment Fund in the manner as may be specified by the Board from time to time

(5) Notwithstanding the proviso to sub-regulation (2), if the Alternative Investment Fund fails to declare the first close of the scheme in a specified manner, it shall be required to file a fresh application for the launch of the scheme by paying the requisite scheme fee under the Second Schedule.”

b. Insertion of new sub-regulation after Regulation 13(3)

“(4) The manner of calculating the tenure of a close-ended scheme of an Alternative Investment Fund, including the manner of modification of the tenure, may be specified by the Board from time to time.”

c. Insertion of new sub-regulation after Regulation 20(15)

“(16) The Manager and either the trustee or the trustee company or the Board of Directors or designated partners of the Alternative Investment Fund, as the case may be, shall ensure that the assets and liabilities of each scheme of an Alternative Investment Fund are segregated and ring-fenced from other schemes of the Alternative Investment Fund; and bank accounts and securities account of each scheme are segregated and ring-fenced.”

16. Scheme of Arrangement by entities who have listed their Non-convertible Debt securities (NCDs)/ Non-convertible Redeemable Preference shares (NCRPS) ³⁴

On November 14th, 2022, SEBI inserted Regulations 59A and 94A in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide which it was made mandatory for the entities to file the draft scheme with Stock Exchange(s) for obtaining No-Objection Letter and further forwarding of such draft scheme to SEBI.

This Circular issued is in connection with the operational aspects with reference to schemes of arrangement by entities who have listed their NCDs/NCRPS. The Circular states that it is mandatory for the entities listing only NCDs/NCRPS to file the draft scheme of arrangement as per Regulation 59A. Further, the disclosure of such a scheme of arrangement has to be done by the entity on its website for ensuring transparency in the securities market.

More details of the mandatory requirements are provided in Annexure I of the Circular. The provisions of the circular are also inserted as Chapter VIA of the LODR Operational Circular dated July 29th, 2022.

**17. Guidelines for AIFs for
decaation of the first close,
calculation of tenure, and
change of sponsor/manager or
change in control of sponsor/
manager ³⁵**

On November 15th, 2022, SEBI amended SEBI (Alternative Investment Funds) Regulations, 2012. Certain clarifications concerning the amendments have been provided vide this circular which will come into effect immediately.

a. Regulation 12(4) of AIF Regulations

In terms of Regulation 12(4), the first close of the scheme will be declared by an AIF in the manner provided by SEBI. The following is specified:

- i. The First Close of a scheme will declare in a maximum period of 12 months from the date of SEBI communication for taking the PPM of the scheme on record.
- ii. The First Close will refer to the close of the initial offer period in the case of open-ended schemes of Category III AIFs.
- iii. The Corpus of the scheme at the time of declaration of the First Close cannot be less than the minimum corpus prescribed in AIF Regulations.

b. Regulation 13(4) of AIF Regulations

In terms of Regulation 13(4), SEBI may specify the manner of calculating and modification of the tenure of a close-ended scheme of an AIF. The following is specified:

- i. The tenure will be calculated from the date of declaration of the First Close.
- ii. AIF may modify the tenue any time before the declaration of its First Close.

c. Regulation 20(13) of AIF Regulations

In terms of Regulation 20(13), SEBI may specify the levy of fees and/or any other conditions concerning the change of Sponsor or Manager, change in control of AIF, Sponsor or Manager for which prior approval from the Board must be taken by AIF. The following is specified:

- i. The fee levied will be equal to the registration fee applicable to the respective category/sub-category in

case of a change in control of the Manager/Sponsor.

ii. Exceptions to levying fees in cases of change in sponsor or change in control of sponsor are:

- The manager is acquiring control in or replacing the sponsor and
- The exit of sponsor(s) due to AIF having multiple sponsors

b. Insertion of new sub-regulation after Regulation 13(3)

“(4) The manner of calculating the tenure of a close-ended scheme of an Alternative Investment Fund, including the manner of modification of the tenure, may be specified by the Board from time to time.”

c. Insertion of new sub-regulation after Regulation 20(15)

“(16) The Manager and either the trustee or the trustee company or the Board of Directors or designated partners of the Alternative Investment Fund, as the case may be, shall ensure that the assets and liabilities of each scheme of an Alternative Investment Fund are segregated and ring-fenced from other schemes of the Alternative Investment Fund; and bank accounts and securities account of each scheme are segregated and ring-fenced.”



18. Schemes of AIFs which have adopted priority in distribution among investors [36](#)

As per the circular dated June 19, 2014, issued by SEBI, the sharing of loss by the sponsor/manager shall not be less than pro rata to their holding in the Alternative Investment funds (hereinafter referred to as "AIF") vis-a-vis other unit holders.

It was brought to the attention of SEBI that certain schemes of AIFs adopted a distribution waterfall in a way that one class of investors (other than sponsor/manager) share loss more than pro rata to their holding in AIF vis-a-vis other class of unit holders.

Vide the present circular, SEBI laid down that the schemes of AIFs which have adopted such a distribution waterfall method will not accept any fresh commitment or make an investment in a new investee company, till the examination is completed and a decision is taken by SEBI.

19. Reporting of trades in Non-convertible Securities- Chapter XVI of Operational Circular issued under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 [37](#)

Clarification regarding the reporting of trades procedure at the time of the issue and listing of Non-Convertible Securities is issued by SEBI.

Paragraph 1.3 of Chapter XVI has been replaced: "The Reporting of OTC trades in non-convertible securities shall be made by all person(s) dealing in such securities irrespective of whether they are SEBI registered intermediaries or otherwise, as per the below-mentioned format. Stock Exchanges shall monitor the compliance of this circular/ Chapter XVI of Operational Circular and bring to the notice of SEBI, periodically, discrepancies in reporting of OTC trades by investors.

The provisions of this circular shall come into force from January 01, 2023."

20. Procedure for seeking prior approval for change in control ³⁸

To streamline the process of providing approval to the proposed change in control of stock broker, depository participant, investment adviser, etc., and share transfer agent and KRA(hereinafter referred to as “Intermediary”) SEBI has issued this circular to provide for the same which will come into force from December 01, 2022.

The procedure is that the Intermediary first shall make an online application to SEBI for prior approval through the SEBI Intermediary Portal. The Application has to be accompanied by the designated undertaking/declaration such as the actions taken under the Securities Contracts (Regulation) Act 1956, details of any pending litigation, etc.

To streamline the process of providing approval to the proposed change in control of an intermediary in matters pertaining to the scheme of arrangement requiring the sanction of NCLT, it has been decided that the Application seeking approval for such change shall first be filed to SEBI and then NCLT. The validity of the approval granted by SEBI would be three months within which the application has to be filed to NCLT.



21. Introduction of credit risk-based single issuer limit for investment by mutual fund schemes in debt and money market instruments [39](#)

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A mutual fund scheme shall not invest more than 10% of its NAV in debt instruments as provided under Regulation 44(1) read with 7th Schedule Clause 1 of SEBI (Mutual Funds) Regulations, 1996.

To avoid consistency in investment by mutual funds in debt instruments, SEBI has decided to introduce a similar credit rating-based single issuer limit.

As per the present circular, the mutual fund scheme shall not invest more than:

- a. 10% of its NAV in debt and money market securities rated AAA or
- b. 8 % of its NAV in debt and money market securities rated AA or
- c. 6 % of its NAV in debt and money market securities rated A and below

However, the above limits for investment may be extended by up to 2% of the NAV with prior approval of the Board of Trustees and Board of Directors of the Asset Management Companies.



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