

Corporate & Commercial

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Government of India allows 100% FDI in India in the telecom sector

The Department of Promotion of Industry and Internal Trade (**DPIIT**), Government of India vide Press Note 4 of (2021 Series), dated October 06, 2021, permitted 100% Foreign Direct Investment (**FDI**) in telecom sector through the automatic route. The amendment was made pursuant to the Press Release dated September 15, 2021 regarding 'Reforms in Telecom Sector'. Some of the addressed reforms were rationalization of adjusted gross revenue, rationalization of bank guarantee, removal of penalty and interest on penalty, spectrum tenure, spectrum charge and 100% FDI in telecom sector. Under the amendment, all telecom services including telecom infrastructure providers have been allowed 100% FDI through the automatic route.

Prior to the release of Press Note 4, 49% FDI was allowed through the automatic route. However, the provisions of Press Note 3 will continue to be applicable, which mandates that all foreign investments from countries with which India shares land borders or where the beneficial owner of an investment into India is situated in such a country, are allowed to invest only under the government route and upon government's prior approval.

This amendment of 2021 shall benefit several market contributors such as Vodafone Idea, Tata Communication, Bharti Infratel, etc., for raising capital, or foreign investment. The instant amendment lays a foundation step for ease of business and broadens the scope for entire telecom sector and the industry. For market contributors and the industry, this permit to allow 100% FDI may create a massive boost in raising capital. The effectiveness of the amendment will be examined at a later stage, and hopefully more reforms for upliftment of the telecom sector are under assessment.

MCA allows LLPs to file Form 8 without additional fees till 30 December 2021

The Ministry of Corporate Affairs (**MCA**) vide General Circular No. 16/2021 dated October 26, 2021 allowed a relaxation in payment of additional fees in case of delay in filing Form No. 8 (Statement of Account and Solvency) (**Form**) by Limited Liability Partnerships (**LLPs**) up to December 30, 2021.

All enrolled LLPs are required to submit the Form, containing their profit statements, account statements, and other financial data of their business, every year. The due date for the Form filing is 30 October of every financial year and any delay in filing the same leads to payment of fine, as prescribed. Owing to the challenges faced as a result of Covid-19, the MCA received several representations from affected LLPs seeking extension of timeline for filing the Form No. 8. Pursuant to these requests, upon due consideration and in its efforts to

promote ease of compliance for the Micro, Medium and Small Enterprises doing their business through the LLP model, the MCA has granted this relaxation/extension for the Financial Year 2020-2021.

The MCA in the present year, due to the challenges faced by several entities and LLPs has relaxed/waived payment of additional fee for other form filings and this move is in line with the same.

SEBI merges Debt Securities Rules into a single regulation - SEBI Issue and Listing of Non-Convertible Securities

To ease the compliance burden on listed entities, SEBI considered and approved proposals to introduce a single regulation with the title of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (**NCS Regulation**).

The NCS Regulation is a blend of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013. It came into effect from August 16, 2021 and will empower entities which propose to list debt securities on a private placement basis, but do not have a three-year existence history to issue the same.

The NCS Regulations shall be applicable on:

- Public issuances of non-convertible debt securities and non-convertible redeemable preference shares
- Private placements of non-convertible securities
- Listing of commercial paper according to RBI guidelines

Key highlights

- **Issuers:** Issuers, other than unlisted Real Estate Investment Trusts (**REITs**) or an Infrastructure Investment Trusts (**InvITs**), which have been in existence for less than 3 years, can now tap the bond market, provided:
 - Issuance of their debt securities is made only on a private placement basis
 - The issue is made on the 'Electronic Book Mechanism' platform irrespective of the issue size
 - The issue is open for subscription only to Qualified Institutional Buyers
- **Call and put options:** The period for the exercise of call and put options has been brought down to a year (from the earlier requirement of two years) to give expanded adaptability, both to guarantors and financial investors. This will provide greater freedom to issuers and investors of debt securities and non-convertible redeemable preference shares as well.
- **Maintaining credit rating:** No minimum rating is required to be maintained in case of public issue of debt securities. This will provide an additional layer of protection for retail investors who get attracted towards such securities, which though on one side

pay higher coupon but on the other side have a below investment grade credit rating.

- **Pending fines imposed by SEBI:** The issuer shall pay any pending fine or penalty imposed by SEBI or a stock exchange at the time of filing the offer document.
- **Self-placement memorandum:** The validity of a self-placement memorandum for a private placement of debt securities has been increased from 180 days to 1 year.
- **Risk factors:** The NCS Regulation prescribes certain parameters for identification and disclosure of risks in the offer document, such as:
 - Risks in relation to the NCDs
 - Risk in relation to the security created
 - Refusal by the stock exchange for the listing of any security in the previous three years
- **Creation of charge:** The provision of creation of charge on the assets and properties of the issuer has been harmonized with the Companies Act, thereby allowing the issuer to have an option to create a charge over its properties or assets, shares or any interest thereon of the issuer or its subsidiaries or its holding/associate companies, which will provide greater flexibility to issuers.
- **Operational framework:** SEBI has issued an operational framework for the requirement of additional disclosures by NBFCs, housing finance companies, and public financial institutions as well as for transactions in defaulted debt securities post maturity date/redemption date.
- **Electronic Book Platform (EBP):** The threshold for mandatory applicability of EBP for private placement issuances of debt securities has been reduced to INR 100 crore from the previous requirement of INR 200 crore.

Modalities for filing of Placement Memorandum through a Merchant Banker

On October 21, 2021 SEBI approved a framework to file Private Placement Memorandum (PPM) of Alternative Investment Fund (AIF) with SEBI through registered Merchant Bankers (MBs) inter alia requiring MBs to conduct due diligence for new schemes and confirm changes in terms of PPM as prescribed. This decision is likely to expedite the process, smoothen implementation of documentation and add professional expertise in preparation of terms of the PPM. The due diligence process as stipulated will not only provide comfort to the investors from a compliance perspective but also support investors in taking informed decisions by relying on a due diligence certificate issued by the MB.

AIF is a privately pooled investment vehicle established in India under SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations) that collects funds from investors, whether Indian or foreign, for investment in accordance with a defined investment policy, as

prescribed under AIF Regulations, for the benefit of the investors. SEBI in its August 2021 Board Meeting had improvised the AIF Regulations for adoption of best practices in India which aimed to simplify the applicability of the AIF Regulations in relation to the PPM for operational and compliance ease for the fund managers.

With an objective to delegate the operational provisions of the PPM to the registered intermediaries, SEBI had prescribed filing of PPM with SEBI through a registered MB by the AIF. It also stated that the SEBI may communicate its comments to the MB and as a process MB is obligated to ensure that changes proposed by SEBI in the PPM are duly incorporated before launching the Fund. Vide Circular, SEBI has further prescribed modalities in relation to filing the PPM through the MBs.

Key aspects of the framework for PPM formalities and filings

- **New scheme launch:** MBs to exercise due diligence of all the disclosure in the PPM to satisfy the adequacy of disclosures and issue a due diligence certificate on examination of draft PPM with supporting documents submitted by AIF/proposed AIF, discussion with AIF/proposed AIF, its manager, sponsor, trustee, etc. The due diligence certificate shall include the following:
 - Independent declaration on information in the PPM including the veracity and adequacy of disclosure
 - AIF, its sponsor, and manager are fit, and proper persons based on the specified criteria
 - Complete material disclosures regarding fund raising, investment by scheme and management as per latest information
 - Confirmation that the proposed activities of the scheme fall within the objectives of the fund as specified in the constitution document of the AIF and meet with the investment objective
 - Disclosures made in the PPM are true, fair, and necessary to enable the investors to make an informed decision with respect to the investment in the proposed scheme
 - Satisfaction of the capability of the sponsor or manager to fulfil the requirement of maintaining continuing interest in the scheme

The confirmation of the disclosures in the PPM shall be supported with the relevant documents and clause by clause confirmation of the compliance and reference of the material disclosure provision to be submitted along with the due diligence certificate. Importantly, in filing the draft PPM at the time of registration or prior to launch of new scheme on SEBI portal, the due diligence certificate issued by the MBs shall also be submitted along with other necessary documents.

- **Amendments to the PPM:** AIFs are obliged to intimate SEBI about any changes in terms of PPM on a consolidated basis, within 1 month of the end of each financial year. Such intimation is also delegated through the MBs to be furnished with the due

diligence certificate and the format of due diligence certificate for intimating the changes in the PPM shall include the following:

- Independent due-diligence pursuant to the changes carried out in the PPM during a particular financial year
 - Confirmation that the adequate disclosure on the respective sections of the PPM wherein changes are undertaken
 - Confirmation that all changes in PPM are latest based on available information and in compliance with SEBI AIF provisions
 - Disclosures in the respective sections of PPM wherein the changes are undertaken are true, fair, and adequate and such disclosures are in accordance with SEBI AIF provisions
- The MBs appointed for filing the PPM shall not be an affiliate of the AIF, its sponsor, the manager, or trustee.
 - The amended provision for appointment of MB will be effective on or after November 11, 2021.

Disclosure by the Stock Exchange and the Clearing Corporations of complaints received against them

The Securities and Exchange Board of India (SEBI) on October 04, 2021, vide Circular No. SEBI/HO/CDMRD/DoC/P/CIR/2021/636 (Circular) mandated the requirement for Stock Exchanges and Clearing Corporations to disclose on their websites, details of the complaints received against them and redressal thereof, latest by the 7th date of the succeeding month. These disclosure requirements are in addition to other disclosure norms already mandated by the SEBI.

Annexure A of the circular provides the format in which these disclosures are required to be made. The data of complaints against the stock exchange(s) and the clearing corporations having commodity derivatives segment has to be displayed, and these include complaints received directly from investors, SEBI SCORES and other sources. The number of complaints received, resolved, and pending during the month and at the end of the month need to be provided in a tabular format. This table containing the data needs to be inclusive of month-wise and year-wise number of complaints received, resolved, and pending.

Key aspects of the Circular

- The requirement for this disclosure has been mandated to ensure transparency in the Investor Grievance Redressal Mechanism, to protect the interests of the investors in securities and to promote the development of and to regulate the securities market.
- The effective date for such mandate to disclose details of complaints and redressals on the website is January 01, 2022.

- To ensure adequate implementation, the Stock Exchanges and Clearing Corporations are required to make necessary amendments to the relevant byelaws, rules, and regulations.
- Further, it is integral that the Stock Exchanges and Clearing Corporations communicate the status of disclosures made regarding this Circular through a Monthly Development Report.

Framework for gold and social stock exchanges

The Indian capital market will witness introduction of two new segments as SEBI has given regulatory nod to Gold Exchange and Social Stock Exchange.

Gold exchange

- After China, India is the second-largest consumer of gold globally and the policymakers have been trying for long to create investment options for gold in digital form. Currently, derivative contracts in gold are available for trading on exchanges but there is no spot market for the precious yellow metal.
- Gold Exchange has been planned to fill that void, as participants will be able to trade in instruments called 'Electronic Gold Receipt' that will have all the characteristics of shares or securities in terms of trading, clearing and settlement. Any SEBI-registered stock exchange can provide a Gold Exchange platform. Other key features of the proposed Gold Exchange are:
 - The Gold Exchange framework will have 'Vault Managers', which are SEBI-regulated entities with a minimum net worth of INR 50 crore who will accept gold deposits, convert physical gold into Exhaust Gold Receipts (EGRs) and withdrawal of gold as well
 - EGRs in various denominations like one kilogram, 100 grams and even five or 1 grams to attract more retail participation
 - Retail investors, foreign portfolio investors (FPIs), banks, jewelers and bullion dealers will participate on the platform
 - While EGRs can again be converted into physical gold through the Vault Managers, the detailed regulations might lay down a minimum quantity for reconversion as allowing even 1 or 5 grams of gold for reconversion could pose logistics and delivery challenges

Social Stock Exchange

- A Social Stock Exchange will allow social enterprises to raise funds on a stock exchange platform that offers transparency and a well-regulated ecosystem.
- On June 2020, a SEBI working group created to lay down the framework for Social Stock Exchange had suggested the segment could help unlock funds from donors, philanthropic foundations and CSR spenders, in the form of zero coupon zero principal bonds, which can be listed on the platform. Some of the key features of this exchange are:

- Social enterprises can include not-for-profit organizations and for-profit enterprises that have a social intent and are engaged in any social activity out of the list of 15 eligible social activities approved by the regulator
- Once registered with the exchange, the not-for-profit enterprises will be able to raise funds on the platform by way of equity, zero coupon zero principal bonds, social impact funds, mutual funds, and developmental impact bonds
- Social venture funds that have already registered with SEBI as Alternative Investment Funds (AIFs) will be recategorized as Social Impact Funds and their minimum corpus requirement for such funds would be reduced from the current INR 20 crore to INR 5 crore
- As part of its monitoring process to ensure that only genuine enterprises tap the segment, the capital market regulator has mandated a social audit for all social enterprises on the platform

Ban on investment advisors from advising on unregulated instruments

On October 21, 2021 SEBI announced that investment advisors are barred from advising on unregulated instruments such as digital gold and cryptocurrencies. On August 26, 2021, exchanges had also prohibited stockbrokers from dealing in digital gold. Investment advisors cannot offer advisory, distribution or execution services for digital gold, and such unregulated activities could attract penal action under the SEBI Act, 1992. National Stock Exchange has also directed its members, including stockbrokers, to discontinue the sale of digital gold on their platforms. The SCRR rules restrict all members from engaging, either as principal or employee, in any business other than that of securities or commodity derivatives, except as a broker or agent, not involving any personal financial liability.

SEBI amends investor grievance redressal system

SEBI has amended the framework for investor grievance redressal system and arbitration mechanism at stock exchanges. On October 22, 2021 it was announced that the new framework will come into effect from January 1, 2022 and is aimed at enhancing the effectiveness of investor grievance redressal and arbitration mechanism, after receiving feedback from the stock exchanges.

Key features

- Forming of exclusive panel for appellate arbitration is not required and members can serve on both the panels, arbitration, and appellate arbitration.
- Exchanges will have to ensure that in the same matter, the members of arbitration panel are not considered for constituting the appellate arbitration panel if the matter goes to appeal.
- In relation to place of arbitration if the award amount is more than INR 50 lakh, the next level of proceedings (arbitration or appellate arbitration) may take place at the nearest metro city, if so desired by any of the parties involved. The additional statutory cost for arbitration, if any, will be borne by the party desirous of shifting the place of arbitration.
- In respect of threshold limit for interim relief paid out of the Investors Protection Fund (IPF) in stock exchanges, SEBI has laid out a procedure that needs to be undertaken by the bourses in case the order is in favor of a client and the member opts for arbitration wherein the claim value admissible to the client is not over INR 20 lakh.

SEBI imposes restrictions on trading by MF employees

On November 28, 2021 SEBI introduced a new set of guidelines for trading by employees, trustees, and board members of Asset Management Companies (AMCs) or mutual funds. These guidelines cover transactions for purchase or sale of any securities such as shares, debentures, bonds, warrants, derivatives, and units of schemes floated by mutual funds/AMCs where the concerned persons are employed. The market regulator also imposed curbs on buying or selling units of overnight schemes of their mutual fund wherein any information available to the MF is not yet communicated to the unitholders. This circular will be applicable from December 1, 2021.

The markets regulator also created a category of 'access persons' on whom restrictions shall be applicable and they include the following:

- Head of the AMCs
- Executive directors
- Chief investment officer
- Chief risk officer
- Fund managers
- Dealers
- Research analysts
- Employees in the operations department
- Compliance officer
- Non-executive directors of the AMC/trustee company or trustees who are in possession of/have access to any non-public information that could materially impact the price of the securities, NAV of the schemes or interest of the unit holders

Compared to the SEBI restrictions in 2016, the latest circular provided certain relaxations for access persons wherein a compliance officer can issue relaxations for not more than two times in a financial year per access persons and only for the sale of securities.

Moody elevates India outlook to 'stable' from 'negative'

US-based rating agency Moody's Investors Service upgraded India's sovereign rating outlook to 'stable' from 'negative' citing an ebbing of the risks from COVID-19 and the negative feedback between the real economy

and financial system. It expects 2021-22 to record 9.3% growth in GDP. However, India's sovereign rating was placed at 'Baa3', the lowest investment grade.

Reasons for this revision

- Higher capital cushions and greater liquidity suggests banks and non-bank financial institutions pose much lesser risk
- Economic environment to allow for a gradual reduction of the fiscal deficit over the next few years, preventing a deterioration of the sovereign credit profile
- Risks that a negative feedback loop between the financial sector and real economy set in have receded, resulting in lower susceptibility to event risk
- Solvency in the financial system has strengthened, improving credit conditions
- Bank provisioning has allowed for the gradual write-off of legacy problem assets over the past few years
- Downside risks to growth from subsequent coronavirus infection waves are mitigated by rising vaccination rates

Moody maintained, while risks stemming from a high debt burden and weak debt affordability remain, it expects that the economic environment will allow for a gradual reduction of the general government fiscal deficit over the next few years, preventing further deterioration of the sovereign credit profile.

RBI's Auto Debit Rules have become effective from October 1

As per the guidelines issued by RBI, only those transactions which have the customers' e-mandate will be successfully executed and customers will need to re-register themselves with each of their payment instruments, whether it is a debit or a credit card. These new rules have been framed to protect customers from online frauds, especially on third party platforms. From October 1 onwards, all kinds of recurring or repetitive payments, especially made through credit and debit cards and which are of value of INR 5,000 and above, are being preceded by a notification 24 hours in advance, informing the customer about the scheduled payment.

This advanced notification is meant for seeking the latter's approval for taking forward any such transaction. If the customer's nod is not received, such transactions will not be executed. Under this new system, for any transaction of more than INR 5,000, banks will send onetime passwords to customers. Those recurring transactions on a customer's credit or debit card, which don't comply to this new rule, will now be declined by banks.

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