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SEBI amends Scheme of Arrangement by listed entities

Formerly, all listed companies intending to participate in any type of Scheme of Arrangement had to first obtain the approval of the relevant stock exchange(s). This situation changed in 2013, when SEBI mandated that all listed companies were to obtain a No Objection Certificate (**NOC**) from SEBI.

Pursuant to this, the SEBI in 2020 issued its Master Circular on filing of Schemes of Arrangement by listed entities, which is a compilation of operational circulars issued by SEBI dealing with the Schemes of Arrangement (**Scheme**) by listed entities. SEBI vide its circulars dated November 16, 2021 and November 28, 2021 (collectively **Circulars**) amended certain provisions of the 2020 Master Circular. In addition to the Master Circular, the stock exchanges also released a Standard Operating Procedure (**SOP**) for listed companies to follow when they are requesting the NOC.

Key aspects

- **Valuation report:** Listed entity participating in the Scheme shall be required to give an undertaking to the stock exchanges stating that no material event impacting the valuation has occurred during the intervening period of filing the scheme documents with stock exchange and period under consideration for valuation.
- **Declaration of past defaults:** Listed entities to submit a declaration stating all past defaults (if any) with respect to their listed debt obligations. Additionally, if there have been no previous defaults, then the listed entities shall be required to submit an undertaking/declaration to its effect.
- **Obtain NOC:** The listed entity implementing a Scheme shall be required to submit an NOC from its lending scheduled commercial banks/financial institutions/debenture trustees in addition to filing an application under Regulation 37 of the Listing Regulations.
- **Fractional entitlements:** Several provisions in relation to fractional entitlements have been inserted, which are as follows:
  - The fractional entitlements (if any) shall be aggregated and held by the trust, nominated by the Board in that behalf, who shall subsequently sell such shares in the market, within a period of 90 days from the date of allotment of shares, in accordance with the draft Scheme submitted to SEBI.
  - Submission of 2 reports by the listed company – from Audit Committee and Independent Directors – certifying that the listed entity has compensated the eligible shareholders. Both the reports need to be submitted within 7 days of compensating the shareholders.
- **Punitive action:** In case the listed entity makes any misstatement or furnishes false information with regard to the information related to fractional entitlements, such listed entity shall be held liable for punitive action as per the provisions of applicable laws and regulations.

These amendments have clarified several queries pertaining to requisite declarations, NOCs, procedures, and timelines for filing the Scheme of Arrangement, by a listed entity. Moreover, the timelines set by SEBI for submitting of approvals and documents are short and strict, thereby leading a path of speedier approvals and confirmations to such Schemes.

Stricter norms for Related Parties, Related Party Transactions and Disclosure Requirements

With the aim to strengthen regulatory norms in relation to Related Party Transactions (**RPT**s), SEBI has introduced the following key amendments to the extant listing regulations on November 22, 2021.

Key aspects

- **Widened definitions**
  - **Related Parties (RPs):** Earlier, only those members of the promoter group of a listed entity, who held 20% or more of its shareholding were deemed to be its RPs. However, irrespective the shareholding, any person or entity forming part of the promoter group of the listed entity will now be deemed an RP. Additionally, any person or entity holding 20% or more (reduced to 10% or more from FY 2023) of the shareholding of the listed entity (directly or on beneficial basis) at any time in the immediately preceding FY will also be considered RP. Given the revisions it seems that transaction with shareholders in the current year who held 10% shares in the previous FY, but do not hold so in the current year of the transaction, may qualify as the RPTs. At the same time, transactions with shareholders in the current year, who hold 10% of the shareholding in the current year but did not hold 10% in the previous FY, may not be RPTs. Thus, the rationale behind defining RP by linking it to shareholding in the previous FY is unclear.
  - **Related Party Transactions (RPTs):** Previously, regardless of whether a price is charged or whether the transaction is singular or a group of transactions, the definition of RPT covered only transfer of resources, services and obligations between a listed entity and a RP. However now RPTs include transactions between listed entities or any of its subsidiaries and RP of the listed entity or any of its subsidiaries. The scope will further increase with effect from April 01, 2023 as RPTs will include transactions between a listed entity or any of its subsidiaries and any other person or entity, where the purpose and effect is to benefit a RP of the listed entity or its subsidiaries.
    Moreover, the materiality threshold for RPT as mentioned under Regulation 23 of LODR has been revised to include transaction(s) to be entered into individually or taken together with previous transactions during a financial year, which exceeds

rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower. It is to be noted that rights issues, buybacks, issue of securities on preferential basis and payment of dividend, etc. have been excluded from the ambit of the definition of RPTs.

- **Exclusions**
  - By the circular dated November 22, 2021, SEBI has also enhanced disclosure obligations of listed entities by prescribing information to be placed before audit committee and shareholders for consideration of RPTs.
  - Prior to the amendment, the only exclusions provided to RP and RPT provisions were transactions between two government companies and those between a holding company and wholly owned subsidiary, where the accounts were consolidated with such holding company and placed before the shareholders at the general meeting for approval.
  - However, pursuant to the amendment, a third exclusion has been added with regards to transactions entered between two wholly owned subsidiaries of the listed holding company, where the accounts are consolidated with such holding company and placed before the shareholders for approval at the general meeting.
- **Requirement of approval of audit committee and shareholders**
  - Previously, all RPTs required approval of the audit committee provided that only independent directors of the audit committee were eligible to approve such transactions. Now, all RPTs along with any subsequent material modifications require prior approval from the audit committee of the listed entity. In terms of regulation 23 of the LODR, audit committees are mandated to define 'material modifications' and disclose it as a part of the policy on materiality of RPTs.
  - Prior approval of the audit committee is also required for RPTs entered into by subsidiaries of a listed company (even though the listed company itself is not a party to the RPT) if the value of the RPT exceeds 10% of the annual consolidated turnover as per the last audited financials of the listed entity (will be revised with effect from April 01, 2023 to 10% of the consolidated turnover of the subsidiary). Prior approval of the audit committee is not required for which the listed subsidiary is a party, but the listed entity is not a party in regulation 23 and regulation 15 (2) of the LODR are applicable to such listed subsidiary.
  - Approval of shareholders is also required for all material RPTs and subsequent modifications except for RPTs of the unlisted subsidiaries of the listed subsidiary. Prior approval of shareholders of the listed subsidiaries shall be sufficient in such cases.
- **Disclosure requirements**
  - Prior to the amendment and the circular, the disclosure requirements were restricted to that of RPTs on a consolidated basis, within 30 days from the date of publication of the financial results of half year. However, after the amendment, the enhanced disclosure of information related to RPTs for all listed entities must be placed before the audit committee, provided in the notice to the shareholders for material RPTs and should also be provided to the stock exchanges every 6 months in the format specified by the Board, within 15 days from the date of publication of financials, simultaneously with the financials w.e.f. April, 2023.

Conclusion

It is noteworthy to mention that the ambit of RPTs has not only included transactions which have a direct nexus with a RP but also those transactions which would indirectly benefit the RP. While the widening of the definition of RP and RPTs and enhanced disclosure requirements attempt to plug in gaps within the regulatory net around RPTs, the is also likely to encounter and bring in cumbersome secretarial and disclosure requirements including the need for consistent exchange of information between subsidiaries and holding entity. Given the shareholding of listed entities is not static, ensuring the above will pose its own set of implementational challenges. Further, the codification of materiality in RPT policy will limit the discretion of the audit committees considering any transaction as an RPT.

ESG Funds may have to keep 80% in sustainable companies

SEBI has proposed that Environment, Social and Governance-based funds (**ESG funds**) should have at least 80% of their total assets in securities following the sustainable theme, since these funds fall under the thematic category. The regulator also proposed that the rest 20% assets should not be in stark contrast with the ESG philosophy.

Key aspects

- Asset management companies should only invest in securities with Business Responsibility and Sustainability Report (**BRSR**) disclosures.
- AMCs must monitor and evaluate the investments in terms of key performance indicators, real-world outcomes, active engagement, and stewardship activities with investee companies.
- The existing investments in the schemes for which there are no BRSR disclosures would be grandfathered by SEBI until September 30, 2023. In ESG investing, a fund manager picks companies whose operations are considered socially responsible.
- Schemes, which invest in overseas securities, could choose any global equivalent of the BRSR specified by the Association of Mutual Funds in India (**AMFI**). Currently, these schemes fall under the thematic sub-category.

- A minimum of 80% of the total assets of the scheme are mandated to be invested in securities following the ESG theme. Hence, these guidelines would apply only to the portion of investment towards the ESG them.
- The benchmark should be continuously aligned with each of the environmental, governance and social characteristics followed by the scheme.
- Mutual funds will provide a link to the index methodology.

Globally, the concept of ESG investments is gaining popularity but there are no universal norms and standards. Standard-setting bodies like International Organization of Securities Commissions (**IOSCO**) and Financial Stability Board (**FSB**) are working towards standardized disclosures for ESG funds. As of September end, there are eight ESG thematic equity schemes in India with assets under management of INR 12,085 crore. There is one ESG exchange-traded fund and one ESG ETF fund of fund with AUM of INR 174 crore and INR 144 crore, respectively.

RBI voids 100 redundant circulars

RBI recently withdrew more than 100 redundant circulars following recommendations by the Regulations Review Authority (**RRA**). The circulars relate to certain norms concerning investments by Foreign Portfolio Investors, RTGS, Know Your Customer and Anti-Money Laundering/Combating of Financing of Terrorism – Standards.

The Regulations Review Authority (**RRA 2.0**) was set up by the RBI in April this year. The objective of the RRA 2.0 is to review the regulatory instructions, remove redundant and duplicate instructions, reduce the compliance burden on regulated entities by streamlining reporting structure, revoking obsolete instructions and wherever possible obviating paper-based submission of returns.

The RRA has been engaging in extensive consultations with both internal as well as external stakeholders, on review of the regulatory and supervisory instructions for their simplification and ease of implementation. Based on these consultations and the suggestions of the Advisory Group, the RRA has recommended withdrawal of 150 circulars in the first tranche.

SEBI proposes tightening listing rules amid IPO frenzy

SEBI proposed to tighten rules on how companies can spend cash raised through IPO. The market regulator has sought public comments on the proposal till November 30, 2021. The suggestion comes amid a slew of new-age technology companies that are filing draft papers to raise funds through initial share sales.

Changes proposed by SEBI

- As much as 35% of the IPO issue can be used for inorganic growth initiatives and general corporate purpose.
- Technology companies often need to raise funds for expanding into new markets, acquiring customers or other firms, objectives that are often broadly lumped under the category of 'Funding of Inorganic Growth' that create uncertainty for investor.
- For IPO of firms with no identifiable promoters, a share sale by significant shareholders will be capped at 50% of their pre-issue holding. Any investor holding more than 20% will be deemed a 'significant shareholder.'
- Such shareholders will face a lock-in period of six months after the share sale. This may include venture capital funds, alternate investment funds.
- At least 50% of the anchor investors should be those who are willing to stay invested for at least 90 days. This compares with 30 days currently.
- The regulator has proposed that the issue proceeds earmarked under should be brought under monitoring.
- The utilization of the GCP amount by the issuer company may need to be disclosed in the quarterly monitoring agency report. The regulator observed that companies are coming up with issues, which are very large in size. Thus, with a larger issue size, the GCP amount also becomes very substantial.
- The proposals from SEBI follow the RBI's decision last month to cap lending for investments in new listings at INR 1 crore per borrower, effective from April 01, 2022.

FPIs allowed to surrender their registration to write-off debt securities in their beneficiary account

On November 08, 2021 SEBI permitted Foreign Portfolio Investors (**FPIs**) intending to surrender their registration to write off all debt securities in their beneficiary account that they were not able to sell for any reason. Owing to requests received from various stakeholders, Para 17 of Part C of the Operational Guidelines for FPIs and DDPs under SEBI (Foreign Portfolio Investors) Regulations, 2019 has been modified.

Prior to this circular, as per its September 2020 circular, SEBI permitted write-off of securities held by FPIs who intended to surrender their registration with regard to shares of all companies which they were unable to sell. Even before this, the scope of surrendering the registration was limited to shares of companies which were either unlisted or illiquid or suspended or delisted.

This modification has broadened the scope of type of securities of companies and is reformative and inclusive in nature. The effectiveness of this modification will be examined at a later stage, and it will be interesting to see the upcoming trends/modifications for FPIs intending to surrender their registrations.

Lowest cost is no longer the only way to select bidder

On October 29, 2021, significant reforms in public procurement policy and project management were announced wherein the Government revised tendering guidelines by allowing selection of bidders through other procurement methods like 'Quality cum Cost Based Selection' (**QCBS**). As per earlier stipulations, contracts used to be awarded to the lowest bidder (**L1 approach**).

The need to revise the public procurement strategy was felt after different agencies including the Central Vigilance Commission, Comptroller and Auditor General, and NITI Aayog flagged concerns that the L1 system is not the most effective when it comes to selecting bidders for products or services, especially for executing infrastructure projects, which require a high level of technical expertise. The agencies felt that the L1 system could result in compromising the quality of work, delays, and cost overruns, since the bidder is selected based on the lowest cost quoted.

The new guidelines have expanded the ambit of selecting bidders for executing government projects, procuring goods and services in ministries and government offices.

Procurement reforms

- The guidelines issued by the Department of Expenditure's Public Procurement division have now allowed the selection of bidders for works and non-consultancy services through alternative procurement methods like the QCBS.
- QCBS evaluates a bidder based on a combination of technical and quality scores. However, the maximum weightage for non-financial parameters should not exceed 30%.
- The procurement should have been 'declared to be a quality-oriented procedure by the competent authority' where the estimated value of procurement does not exceed INR 10 crore.
- QCBS is the preferred mode for international competitive bidding and is already used for selecting bidders for transport infrastructure projects and roads where the bidder possesses both technical skills and is competent.

Simplified norms for processing investor service requests

SEBI recently notified the simplified norms for processing investor's service requests by the Registrar and Share Transfer Agents (**RTAs**). These norms are simplified, common and standardized across all investors' service requests. The regulator has put in place a framework for furnishing PAN, KYC, details, and nomination by holders of physical securities.

The eligible service requests are as follows:

- Change in or updating of PAN, nominee, signature, contact as well as bank detail
- Issue of duplicate securities certificate, consolidation of securities certificates
- Change in status from minor to major and resident to NRI and vice versa through depository participants for demat
- RTA will process the same through emails address of the holder registered with them
- The folios wherein any one of the documents or details are not available on or after April 01,2023, will be frozen by the RTA
- RTAs and stock exchanges will disseminate the requirement of the holders of physical securities of all listed companies to furnish valid PAN, KYC details and nomination on the respective website
- RTAs will have to provide a certificate of compliance from a practicing Company Secretary within 45 days of this circular, certifying the changes carried out systems put in place or new operating procedures implemented to comply with the provisions of this circular

RBI enables retail investors to invest in government stocks

On November 12, 2021 the PM launched the RBI Retail Direct Scheme (**Scheme**). The Scheme allows retail investors to buy and sell government bonds online. The portal for buying and selling of government securities can be accessed at www.rbiretaildirect.org.in.

Key aspects

- **What is RBI Retail Direct Scheme?**
  RBI Retail Direct Scheme allows retail investors to buy and sell government securities (**G-sec**) online, both in the primary and secondary markets. According to details provided by RBI, these small investors can now invest in G-Secs by opening a gilt securities account with the RBI. The account opened will be called Retail Direct Gilt (**RDG**) Account.
- **Who can open the RDG account?**
  As per the notification issued by the RBI on July 12, 2021, a retail investor can open the RDG account if they have following:
  - Rupee savings bank account maintained in India
  - PAN issued by the Income Tax Department
  - Any official valid document such as Aadhaar, Voter ID for KYC purpose
  - Valid email ID
  - Registered mobile number
- **Buying and selling of government securities via online portal**
  Once the account is opened, retail investors can buy government securities in the primary market, where government bonds are issued for the first time or buy/sell the existing government bonds in the secondary market.
- **Buying government securities in primary market**
  - Participation and allotment of securities will be as per the non-competitive scheme for participation

in the primary auction of government securities and procedural guidelines for sovereign government bond issuance

- Only one bid per security is permitted
- On submission of the bid, the total amount payable will be displayed
- Payment to the aggregator/receiving office can be made through using the net-banking/UPI facility from the from the linked bank account, whereby funds will be debited at the time of submission of bids on the portal
- Retail investors can also use ASBA facility where funds in the linked bank account can be blocked at the time of submission of bids on the portal, which will be debited from this account on successful allotment in the auction; similar facility through banks will be made available in due course
- Refund, if any, will be credited to the investor's bank account as per the timelines specified by the aggregator
- Allotted securities will be issued to the investors by credit to their RDG Account on the day of the settlement

- **Buying and selling of government bonds in secondary market**
  - Registered investors can access the secondary market transaction link on the online portal to buy or sell G-secs through NDS-OM
  - For buying of government bonds, payment can be made through the following ways:
    - Before start of trading hours or during the day, the investor should transfer funds to the designated account of Clearing Corporation using net-banking/UPI from the linked bank account
    - Based on actual transfer/success message, a funding limit (**Buying Limit**) will be given for placing 'Buy' orders
    - At the end of the trading session, any excess funds lying to the credit of the investor will be refunded
    - Another method is using the UPI facility, whereby funds in the linked bank account can be blocked at the time of placing order which will be debited from this account on the day of settlement; similar facility through banks will be made available in due course

New registration requirements for Cat I & II AIF managers facilitating co-investment

As per the new SEBI guidelines, fund managers who desire to facilitate co-investments for the contributors, sponsors or for themselves that falls in Category I or Category II of the SEBI (Alternative Investment Funds) Regulations, 2012, shall register themselves as 'Co-investment Portfolio Managers' with SEBI. This classification of Portfolio Managers, which is enumerated under the SEBI (Portfolio Managers) Regulations, 2020 (**PM Regulations**), shall be effective from December 09, 2021.

Definitions

As per the PM Regulations, a Portfolio Manager is 'a body corporate who, in pursuance of a contract or arrangement with a client, provides advisory services or directs or undertakes on behalf of the contracted client, the control, management or administration of a portfolio securities or the funds of the client'. As per the SEBI (Alternative Investment Funds) Regulations, 2012, 'Co-investment' is said to be an investment initiated by a manager or sponsor or an investor of Category I & II Alternative Investment Funds (**AIF**) in the investee company, where Category I & II AIF makes investments.

Salient features

- The previous criteria of the clients of Portfolio Managers requiring at least INR 0.5 crore investment, is not made applicable to the Co-investment Portfolio Manager. This allows investors of Category I & Category II AIF to invest lower than the fixed limit.
- Investors that are participating in the co-investments pertaining to Category I & II AIFs will not have a regulatory right to withdraw from co-investments, owing to voluntarily or mandatory terminating the portfolio management services with the Co-investment Portfolio Manager. This is because Category I & II AIF are close-ended funds that have a defined tenure.
- The provision to appoint a separate custodian for the co-investments by the Co-investment Portfolio Manager has been waived off because the investments are only permitted in the unlisted securities. Only those AIFs which have an aggregation of investments of more than INR 500 crore must appoint a custodian.

SEBI launches two-tiered structure for benchmarking of MF Schemes

SEBI decided to bring in a two-tiered structure for benchmarking of certain categories to standardize benchmarks of mutual fund schemes. The performance of a mutual fund scheme is assessed with reference to a benchmark, which could be a Total Return Index (**TRI**) of CNX Nifty or BSE Sensex. TRIs considered the prices of the stocks and the dividend pay-out, while the price return index such as Nifty and Sensex are based on the price of the stocks.

Major tiers

- The first-tier benchmark will be according to the category of the scheme. For first-tier benchmarks of income/debt-oriented and growth/equity-oriented schemes, the regulator has suggested one broad market index per index provider for each category.
- The second tier should be reflective of the investment style or strategy of the fund manager within the category. For this tier, there should be a bespoke benchmark according to the investment style or strategy of the index.

Benchmarking as per schemes

- Debt oriented schemes will be benchmarked by Nifty Ultra Short Duration Debt Index or the Crisil Ultra Short-Term Debt Index for the ultra-short duration fund category.
- There would be a single benchmark for thematic/sectoral and Exchange-Traded Fund (**ETF**) schemes.
- If a Fund of the Fund (**FoF**) scheme is investing in a single fund, the benchmark of the underlying scheme shall be used for the corresponding FoF. However, in case an FoF scheme invests in multiple schemes, then broad market index shall be applied.
- For hybrid and solution-oriented schemes, there would be a single benchmark. This would be a broad market benchmark wherever available or bespoke to be created for schemes, which would then be applicable across the industry.
- For other schemes, a broad market benchmark may be arrived at depending on the underlying asset allocation.

SEBI has also advised the Association of Mutual Funds in India is to publish benchmarks intended to be used by asset management companies as first-tier benchmarks within a month. Second-tier benchmarks for open-ended debt schemes must be published by December 01, 2021.

US backs India-UK led solar Green Grids Initiative

The US has partnered with the UK and India-led Green Grids Initiative. The International Solar Alliance (**ISA**) under India's presidency and the UK's COP26 Presidency had launched GGI-OSOWOG during the World Leaders' Summit of COP26. The Steering Committee of GGI-OSOWOG comprises five members – India, UK, USA, Australia, and France – and has been set up to deliver the vision of One Sun One World One Grid under which 80 countries have resolved to combine their efforts to create more interconnected grids. US is focusing on next-generation technologies to ensure solar panels and grids are consistently efficient across markets and geographies.

The One Sun Declaration for GGI-OSOWOG will be focused on building new transmission lines crossing frontiers and connecting different time zones, creating a global ecosystem of interconnected renewables that are shared for mutual benefit and global sustainability. This will be combined with expanded and modernized national and regional grids which are complemented with the rapid scale-up of mini-grids and off-grid solar solutions.

The World Bank has also expressed its support as it expects this initiative to help leverage the benefits of complementarity between renewable generators and non-centres across continents by getting them interconnected.

The ISA, launched at COP21 in Paris and recently expanded to include all UN member states, aims to help mobilize USD 1 trillion of funding by 2030 to assist developing countries in expanding their solar power grids. The initiative is widely seen as a big and bold move in ISA's ongoing efforts to realize a global solar transition.

RBI introduces internal ombudsman mechanism for select NBFCs

RBI introduced the Internal Ombudsman mechanism for select Non-Banking Finance Companies (**NBFCs**) and has directed Deposit-taking NBFCs (**NBFCs-D**) with 10 or more branches and Non-Deposit taking NBFCs (**NBFCs-ND**) with asset size of INR 5,000 crore and above having public customer interface to appoint Internal Ombudsman (**IO**) at the apex of their internal grievance redress mechanism within a period of six months from the date of issue of the direction. The IO shall deal only with the complaints that have already been examined by the NBFC but have been partly or wholly rejected by the NBFC. In other words, the IO shall not handle complaints received directly from the customers or members of the public.

NBFCs, including stand-alone primary dealer, NBFC-Infrastructure Finance Company, core investment company, Infrastructure Debt Fund – NBFC, NBFC – Account Aggregator, NBFCs under Corporate Insolvency Resolution Process, NBFCs in liquidation and NBFCs having only captive customers, have been excluded from the directive.

The implementation of the IO mechanism will be monitored by the NBFC's internal audit system apart from regulatory oversight by RBI. The person appointed as the IO shall be either a retired or a serving officer, not below the rank of Deputy General Manager or equivalent in any financial sector regulatory body or any other NBFC, bank, with necessary skills and experience of minimum of seven years. Further, the person should not have worked or be working in the NBFC or companies in the Group to which the NBFC belongs, and he or she should not be above the age of 70 years at any point of time during the tenure as IO. The NBFC may appoint more than one IO depending on the number of complaints received per branch network. In such a case, the NBFC shall define the jurisdiction of each IO. The NBFC shall put in place a system of periodic reporting of information to RBI on a quarterly and annual basis.

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