

# Corporate & Commercial

Monthly Newsletter  
March 2022

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## SEBI | Timelines extended for market intermediaries

As per the earlier circulars issued on April 13, 2020 and April 29, 2021, the time frame for compliance with the prescribed timelines for processing of investor requests, disclosures, and compliances concerning 12 items, was extended for 21 days and then till June 31, 2021 respectively. On February 25, 2022, SEBI granted further extension to the intermediaries/market participants to adhere to the prescribed timelines till June 30, 2022, in view of the Covid-19 situation.

### Items that were granted extension

- Processing of remat requests
- Processing of transmission requests
- Processing of request for issue of duplicate share certificates
- Processing of requests for name deletion/name change/transposition
- Processing of requests for consolidation/split/replacement of share certificates/amalgamation of folios
- Handling investor correspondence/grievances/SCORES complaints
- Processing of the demat requests

The Circular further clarified that the intermediaries/market participants may take an additional 30 days over the prescribed timelines for completion of service requests of the abovementioned items.

## SEBI | Terms for usage of market data

SEBI came out with a framework for security market intermediaries regarding terms of usage of data provided by data sources. The regulatory intent behind public dissemination of data in a disclosure based regulatory regime was deliberated in detail by Market Data Advisory Committee. Pursuant to regulatory mandates for reporting and disclosure in public domain, data should be made available free to the users for the following functions:

- For viewing the data
- For downloading in the format as specified by regulatory mandate
- For reporting as well as usage for value addition purposes

With the continuous growth of financial markets, which are traditionally data-rich and data-driven, both the volume and variety of data have also increased manifold over the years. Enhancing the ease of accessibility and usability of data will help in addressing information asymmetry and having adequately informed investors and stakeholders.

## SEBI | Guidelines for preparing Ind-AS compliant financial statements

Through a notification dated January 25, 2022, SEBI had mandated all Asset Management Companies (AMCs) to prepare their financial statements and accounts of the Mutual Fund Schemes in accordance with Indian Accounting

Standards (Ind-AS), with effect from April 01, 2023. On February 04, 2022, SEBI issued a circular containing certain guidelines to clarify several points.

### Key features of the guidelines

- Mutual Fund Schemes shall be required to prepare the opening balance sheet as on date of transition and the comparatives as per the requirements of Ind-AS.
- Perspective historical per unit statistics (**Statistics**) mentioned in Clause 6, Eleventh Schedule of the SEBI (Mutual Funds) Regulations 1996 requires disclosure of scheme wise Statistics for the past 3 years. In this regard, it has been clarified in the Guidelines that the mutual fund schemes may not mandatorily be required to restate the previous years' published Statistics as per requirement of Ind-AS for the first 2 year since the first-time adoption of Ind-AS. However, mutual fund schemes are required to mandatorily furnish following additional information in Statistics:
  - Label the previous Generally Accepted Accounting Principles (**GAAP**) information prominently as not being prepared in accordance with Ind-AS
  - Disclose the nature of the adjustments that would be required in compliance with Ind-AS, where Mutual Fund Schemes need not quantify such adjustments
- Brokerage and transaction cost incurred for execution shall be charged to the schemes, as provided under Regulation 52(6A)(a), up to 12 bps and 5 bps for cash market transactions and derivatives transactions respectively.
- Any payment towards brokerage and transaction costs, over and above 12 bps and 5bps for cash market transactions and derivatives transactions respectively, may be charged to the scheme within the maximum limit of total expense ratio as prescribed under Regulation 52 of the SEBI (Mutual Funds) Regulations, 1996.

## SEBI | AMCs to form an audit committee from August 2022

Vide a circular dated February 9, 2022, SEBI directed Asset Management companies (AMCs) to constitute an audit committee from August 01, 2022 on the recommendation of the Mutual Funds Advisory Committee (MFAC).

The audit committee will be mandated to review the financial reporting processes, system of internal controls and audit processes for the mutual fund operations and ensure that any rectifications suggested by internal and external auditors are acted upon.

### Key aspects of the audit committee

- The committee will have minimum three directors as members.
- At least two-third members will be independent directors.
- The members will be appointed by the Board of AMCs.
- The chairperson of the audit committee must be an independent director.
- The chairperson should call at least four meetings in a financial year and not more than one hundred and twenty days must elapse between two meetings.

## SEBI | Relaxation of compliance needs of FPIs

In a notification dated February 25, 2022, SEBI declared, it can grant exemption to Foreign portfolio Investors (**FPIs**) from strict enforcement of the regulations in other cases. Regulated by SEBI, the FPI regime is a route for foreign investment in India and now SEBI can apply special powers to relax compliance requirements to give overseas investors leeway in the event of inadvertent lapses while investing in the country.

The FPI regime came as a harmonized route of foreign investment in India, merging the two existing modes of investment, that is, Foreign Institutional Investor and Qualified Foreign Investor. SEBI may now suo motu grant relaxation from the strict enforcement of any of the provisions through an FPI application as well as reasons recorded in writing.

This is subject to such conditions as the SEBI deems fit to impose in the interests of investors and development of the securities market. If the regulator is satisfied that the non-compliance is caused due to factors beyond the control of the entity, or the requirement is procedural or technical in nature, SEBI can relax the compliance needs under such circumstances.

## SEBI | Preferential allotment rules relaxed

SEBI recently relaxed pricing norms and lock-in requirements to make it easier for companies to raise funds through preferential allotment of shares. The regulator also allowed pledging of shares allotted to promoter or promoter group under preferential issue during the lock in period:

### Key aspects

- The lock-in requirement for allotment up to 20% of the post-issue paid-up capital has been reduced to 18 months from the existing 3 years.
- The lock-in requirement for allotment exceeding 20% of the post-issue paid-up capital has been cut to 6 months from the existing time period of 1 year.
- Any preferential issue resulting in a change in control or allotment of more than a 5% stake will require a valuation report from a registered valuer.
- Any preferential issue allotment resulting in a change in control will be required to provide a reasoned recommendation from a committee of independent directors along with their comments on all aspects of preferential issuance, including pricing.
- Voting pattern of the committee needs to be disclosed to shareholders.
- To determine the floor price for frequently traded security, the floor price for the preferential issue should be higher of 90/10 trading days' Volume-weighted Average Price (**VWAP**) of the scrip preceding the relevant date.
- For infrequently traded security, a valuation report by a registered independent valuer will be required.

## SEBI | Voluntary separation of posts of Chairperson and MD of listed companies

SEBI had earlier amended its listing agreement on April 6, 2021 to specify that from April 01, 2022, the posts of Chairman and Managing Director of listed companies should be separated, and the Chairman should only hold a non-executive post. On February 15, 2022, SEBI revised this requirement and made the requirement for separation of the two posts voluntary, based on multiple representations received from industry bodies and constraints posed by the prevailing pandemic situation.

It is also noteworthy that a review of the compliance status showed that the compliance level stood at 50.4% amongst the top 500 listed companies as of September 2019, which progressed to only 54% as on December 31, 2021. Thus, there has been barely a 4% incremental improvement in compliance by the top 500 listed companies over the last two years. SEBI seems to have concluded that expecting the remaining about 46% of the top 500 listed companies to comply with these norms by the target date would be a tall order.

## RBI | Monetary Policy Committee meeting highlights

RBI conducted the 6<sup>th</sup> and the last Monetary Policy Committee (**MPC**) meeting for 2021-22 between February 8-10, 2022. RBI MPC, headed by RBI Governor Shaktikanta Das, had taken certain decisions at this meeting which indicated that lending and deposit rates are expected to remain unchanged in the banking system.

### Key aspects

- RBI has projected the real GDP growth as per fiscal mentioned below:
  - 2022-23 at 7.8%
  - 2021-22 at 9.2%
- For the current fiscal year, RBI retained its retail inflation projection at 5.3%
- MPC has been given the mandate to maintain annual inflation at 4% until March 31, 2026, with an upper tolerance of 6% and lower tolerance of 2%
- Following Marginal Standing Facility (MSF) rates and bank rates remain unchanged:
  - Policy Repo Rate at 4.00%
  - Reverse Repo Rate at 3.35%
  - Marginal Standing Facility Rate at 4.25%
  - Bank Rate at 4.25%
  - CRR at 4%
  - SLR at 18%

For RBI, ensuring economic recovery is of paramount importance. Despite higher global crude oil prices, and risks of high generalized inflation, it has opted for an accommodative monetary policy and the implicit belief is that growth will bring jobs and increased incomes, which will help address the remaining concerns.

## RBI | NBFCs to implement CFSS by Sept 30

RBI directed certain class of Non-Banking Financial Companies (**NBFCs**) to mandatorily implement Core Financial Services Solution (**CFSS**) by September 30, 2025.

### Implementation timeline

NBFC Level	Definition	Deadline
Upper Layer	This layer comprises those NBFCs which are specifically identified by RBI as warranting enhanced regulatory requirement based on a set of parameters and scoring methodology	CFSS to be implemented at least in 70% of 'fixed point service delivery units' on or before September 30, 2024
Middle Layer	This consists of the following: <ul style="list-style-type: none"> <li>▪ Deposit taking NBFCs (<b>NBFC-Ds</b>), irrespective of asset size</li> <li>▪ Non-deposit taking NBFCs with asset size of INR 1,000 crore and above</li> <li>▪ Standalone primary dealers</li> <li>▪ Infrastructure debt fund</li> <li>▪ NBFCs core investment companies</li> <li>▪ Housing finance companies</li> <li>▪ Infrastructure finance companies</li> </ul>	CFSS to be implemented at least in 10% or more 'fixed point service delivery units' as on October 1, 2022, on or before September 30, 2024
Base Layer	Comprises of non-deposit taking NBFCs below the asset size of INR 1000 crore	Implementation of CFSS is not mandatory

Further, a quarterly progress report on implementation of CFSS, along with various milestones, shall be furnished by the NBFCs starting from the quarter ending March 31, 2023.

## MCA | CSR disclosure requirements for companies

On February 11, 2022, MCA amended the Companies (Accounts) Amendment Rules, 2022 (**Amendment**), effective immediately. As per the Amendment, every company covered under Section 135 of the Companies Act, 2013 shall furnish a report on Corporate Social Responsibility (**CSR**) with MCA in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards.

The newly introduced Form CSR-2 is required to be filed by the following companies falling under the purview of Section 135, Companies Act, 2013:

- Companies having net worth of INR 500 crore
- Companies with turnover of INR 1000 crore or more
- Companies with net profit of INR 5 crore or more in the immediately preceding financial year
- Companies that have constituted a CSR Committee as per the provisions of the section

Under the new 11-page form, as part of the Amendment, companies will have to provide the following information:

- Details of the CSR amount spent in three preceding financial years and details of all ongoing projects
- Details of CSR Committee
- Details of CSR disclosed on the website of the company in pursuance of Rule 9 of Companies (CSR Policy) Rules, 2014
- Net profit and other details of the company for the preceding financial years
- If any capital assets have been created or acquired through CSR spending, companies will have to provide relevant details, including the address, location, pin code of the property, along with amount spent and its registered owner

As per the Amendment, Form CSR-2 for the preceding financial year shall be filed by March 31, 2022 and thereafter after filing the Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (**Ind AS**) (collectively **Addendums**), as the case may be. Prior to release of this Amendment, there was no prescribed form to furnish a report on CSR. The only mandate was to annex details of CSR in the board Report and disclose on the company's website as per Companies Act, 2013 and Companies (Corporate Social Responsibility Policy) Rules, 2014.

## MCA | Fee payment provisions relaxed for delay in filing of annual return for FY 2020-21

On February 14, 2022, Ministry of Corporate Affairs (**MCA**) relaxed rules regarding levy of additional fee payable upon a delay in filing of the annual returns and annual financial statements for the financial year 2020-2021 ending on March 31, 2021 (**Notification**). As per the Notification, no additional fee shall be levied for the filing of e-forms for annual financial statement and return filings under forms AOC-4 and MGT-7 (and others) up to March 31, 2022. With this notification, the relaxation has been granted by MCA for the third time after receiving several requests from stakeholders.

As per the Companies Amendment Act, 2017 and the Companies Amendment Ordinance Act, 2018, a fee of INR 100 per day over and above the normal fee shall be levied for each day of delay which can be further increased based on the number of days of delays as per the table below:

No. of days delayed	Penalty amount for late filing
Up to 30 days	2 times of normal filing fees
More than 30 days and up to 60 days	4 times of normal filing fees
More than 60 days and up to 90 days	6 times of normal filing fees
More than 90 days and up to 180 days	10 times of normal filing fees
More than 180 days and up to 270 days	12 times of normal filing fees

## FEATURED TOPIC | Limited Liability (Amendment) Rules, 2022 – Key takeaways

On February 11, 2022, the Ministry of Corporate Affairs (MCA) released the Limited Liability Partnership (Amendment) Rules, 2022 (Amendment) to amend the Limited Liability Partnership Rules, 2009 (2009 Rules), which were published in consonance with the Limited Liability Partnership Act, 2008 (Act). The Amendment will come into effect from April 01, 2022.

### Key takeaways from the Amendment

- **New proviso added to Rule 19(1) of the 2009 Rules**

Going forward, an application made under Rule 19(1) of the 2009 Rules, which states that a Limited Liability Partnership (LLP) or a company or a proprietor of a registered trademark under the Trade Marks Act, 1999 (47 of 1999) which already has a name or trademark which is similar to or which too nearly resembles the name or new name of an LLP incorporated subsequently, may apply to the Regional Director (RD) in Form 23 to give a direction to that LLP incorporated subsequently to change its name or new name, as the case may be, shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of LLP under the Act.

- **Compliance in case of default under Section 17 of the Act**

In case an LLP fails to change its name in accordance with the directive of the Central Government in accordance with Section 17(1) of the Act within the prescribed period of 3 months from the date of such a directive, the new name of the LLP will be changed to the word 'ORDNC', which is an abbreviation of 'Order of Regional Director Not Compiled', along with the year of the passing of such direction, the serial number and the existing LLPIN of the LLP. The Registrar of Companies (ROC) shall make the necessary entries and issue a fresh certificate of incorporation in FORM 16A. The LLP whose name has been changed by the ROC shall mention the statement 'Order of Regional Director Not Compiled' below its name on all its invoices, official correspondence, and publications.

- **Establishment of an adjudicating authority**

The 2009 Rules did not provide any provision for any adjudicating authority and its functioning for efficient application and disposal of penalties. To address this, Rules 37A, 37B, 37C and 37D of the Amendment were incorporated. As stated in the Amendment, every notice issued by the adjudicating officer under Rule 37A shall indicate the nature of non-compliance or default and reply to such notice shall be filed in electronic mode only within the prescribed period, the adjudicating officer can impose a penalty on any LLP after sending a notice, the LLP shall pay the penalty on MCA portal only.

- **Appeal against the order of adjudicating officer**

Under Rule 37B of the Amendment, an appeal against the order of adjudicating officer can be filed with the RD having jurisdiction over the matter within the prescribed period of 30 days and fees in Form No 33- LLP ADJ. Furthermore, any appeal under this rule shall not seek relief against more than one order unless the reliefs prayed for are consequential. Further, under Rule 37C of the Amendment, it is prescribed that on receipt of such appeal, the RD shall endorse the date on such appeal and shall sign such endorsement and if the appeal appears to be in order, the RD shall register the same and assign a serial number or the RD may allow for more time to the appellant if the said appeal is found to be defective.

- **Admission of an appeal**

Under Rule 37D on the admission of an appeal, the RD shall serve one copy of the appeal on the concerned adjudicating officer on whose order such appeal is sought, and such officer shall file his reply within 21 days. The RD can pass an order after hearing both the parties and recording the reasons for such decision in writing and copies of such order shall be communicated to the appellant and such officer.

### Conclusion

The Amendment is a vital addition to the 2009 Rules as it provides for an elaborate adjudication process with certain added provisions for added scrutiny. It further gives more clarity on the redressal mechanism available in case of grievances arising from the orders of the adjudicating officer. The Amendment will put more accountability on the LLPs, as there will be a platform to impose penalties in case of any default. The Amendment is also set to streamline the process of allotment of names of existing LLP and to provide for compliances in case of any default or failure to follow direction as per the provisions of the Act or orders of the ROC, which did not exist earlier.

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