



## LEGAL NEWSLETTER FOR THE MONTH OF NOVEMBER 2023

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## I. MINISTRY OF CORPORATE AFFAIRS

### 1. MCA: THE LIMITED LIABILITY PARTNERSHIP( SIGNIFICANT BENEFICIAL OWNERS) RULES, 2023

- **Date of Applicability:** November 09, 2023
- **Applicable Entities:** All Limited Liability Partnerships ('LLPs')
  - Apart from LLPs which are controlled or whose contribution is held by Central Government, State Government or Local Authority whether directly or indirectly(through body corporate or an entity).
  - Apart from LLPs which are registered as investment vehicles with SEBI or RBI or IRDAI OR PFRDA
- **Brief on Amendment:** In exercise of the powers conferred under Section 79 of the Limited Liability Partnership Act, 2008, the Ministry of Corporate Affairs has issued the Significant Beneficial Owners ('SBO') Rules for LLPs. The SBO rules were already a part of the framework for companies under the Companies Act, 2013 however vide this amendment, the MCA has extended the SBO framework for LLPs as well.

Accordingly, the MCA has issued various new forms for Applicable Entities which are required to be filed with the Registrar within a prescribed time period from the Applicable Date. Further it has also obligated the Applicable Entities to maintain a register of SBO in a prescribed format.

In cases where a person fails to give information or satisfactory information as required under this amendment, the Applicable Entity has also been empowered with a right to approach the tribunal for necessary restrictive orders against such person.

- **SGA View:** The LLPs as a form of corporate vehicle have become popular over the years and, therefore, through this amendment the MCA is intending to strengthen one of the core principle of corporate governance viz Transparency.
- **Actionable, if Any:**
  - ***Giving Notice to Registered Partner Form No LLP BEN-4:*** Where a Partner (other than an individual) holds not less than 10% contribution or voting rights or right to receive or participate in distributable profits in the LLP, then all such reporting LLPs shall give notice to the Registered Partner and seek information of the SBO in accordance with Section 90(5) of the Companies Act, 2013 as applied to LLPs pursuant to the [notification dated February 11, 2022](#).
  - ***Identifying Individual as a SBO:*** Take necessary steps to identify an individual who is a SBO and cause such individual to file Form No LLP BEN-1 with the Applicable Entity within 90 days from the Applicable Date or 30 days from acquiring such ownership as the case may be.
  - ***Return of Significant Beneficial Owners in Contribution:*** The Applicable Entity shall file a return in Form No LLP BEN-2 with the Registrar within a period of 30 days from the date of receipt of LLP BEN-1 from the respective individual along with the prescribed fees.
  - ***Register of SBO:*** The Applicable Entity shall maintain a register of SBO in Form No. LLP BEN-3 at all times.

## II. SECURITIES AND EXCHANGE BOARD OF INDIA

### 1. SEBI CIRCULAR ON PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH ENTITIES HAVING LISTED NON CONVERTIBLE SECURITIES AND MANNER OF CLAIMING SUCH AMOUNTS BY INVESTORS.

- **Date of Applicability:** March 01, 2024
- **Applicable Entities:** Issuers who has listed their Non-Convertible Securities
- **Brief on Amendment:** The SEBI vide this Circular has intended to streamline the process to be followed by Applicable Entities for transferring the unclaimed amounts (interest/dividend/redemption amount) to the Escrow Accounts and the procedure of making claims by the investors thereof from the Investor Protection and Education Fund ('IPEF') by issuing the following:
  - ***Framework for Transfer of unclaimed amounts by Applicable Entity to Escrow Accounts and Claim thereof by the investors:***

Particulars	Timeline
Applicable Entities with unclaimed amounts for a period of 15 days from the due date:	X
Transfer the unclaimed amount to an Escrow Account	X+7 days

*Any investor claiming to be entitled to any unclaimed amount lying with the Applicable Entity may in the format and manner as prescribed by the Applicable Entity*

*In case the Applicable Entity fails to comply with the above-mentioned process, it shall be liable to pay interest on the amount not transferred at the rate of 12% from the date of default till the date of transfer to the Escrow Account.*

- ***Framework for transfer of unclaimed amounts from the Escrow Account of the Applicable Entity (other than Company) to IPEF and claim thereof by the investors.***

Particulars	Timeline
Any amount which remains in the Escrow Account for a period of 7 years from the due date of such transfer	X
Such amount along with interest shall be transferred to the IPEF in the manner prescribed vide <a href="#">SEBI Circular dated September 04, 2023</a> :	X+30 days

*Any investor claiming to be entitled to any unclaimed amount lying with the IPEF may apply in the format and manner as prescribed by the Applicable Entity.*

*In cases where the Applicable Entities do not comply with the abovementioned framework they shall be liable to pay a penalty of 1 lakh rupees and in case of continuing failure a further penalty of 500 hundred rupees for each day that the failure continues.*

- **SGA View:** The framework prescribed under this Circular comes right after the SEBI in its Board Meeting had approved amendments to the IPEF Rules in order to streamline the process and make it easier for the investors of non-convertible securities. Furthermore vide this Circular, the SEBI has also intended to address the vacuum for other types of entities (other than companies) by mandating such entities to transfer the unclaimed amount to the IPEF.
- **Actionable, if Any:** The Applicable Entities shall comply with the procedure prescribed above and further they shall in order to put in place such framework comply with the following requirements:
  - ***Designation of Nodal Officer:*** The Applicable Entity shall designate as ‘Nodal Officer’, a person who may either be a Director, Chief Financial Officer, Company Secretary or Compliance Officer.
  - ***Website Related Compliances:***
    - The Applicable Entity shall display the name of the Nodal Officer on its website
    - The Applicable Entity shall upload the details of such unclaimed amount in the specified format under this Circular:
    - The Applicable Entity shall render a search facility on its website for investors to verify the details of their unclaimed amount lying in the Escrow Account by incorporating the search criterion which may be based on the following combinations:
      - PAN & Date of Birth
      - Name and Depository Participant Identification (DP ID)/ Client Identification (Client ID).
    - Upon such search, the Applicable Entity shall display the following information to the investor:
      - Amount due to the investor on the date of payment (in INR)
      - Category - interest/ dividend/ redemption amount;
      - Date when amount became due (dd/mm/yyyy);
      - Amount (in INR) transferred to Escrow Account (including penal interest, if any, for delay in transfer by the listed entity);
      - Date when unclaimed amount was transferred to Escrow Account (dd/mm/yyyy);
      - Interest, if any, in the Escrow Account, that accrues to the investor in proportion to his/ her unclaimed amount.
    - The Applicable Entity shall also **upload the Policy** it has put in place for processing claim from the investors.
  - ***Policy for filling Claim: The Applicable Entity shall put in place a Policy which shall include the following:***
    - the format in which claim has to be submitted by the investor;
    - the procedure and documentation for making claim, depending on whether the claim is being submitted by the investor – self or by the legal heir/ nominee/ etc. of the investor
    - the documents required to be submitted in support of the claim e.g. proof of identity, proof of address, proof of holding, etc.

- manner of submission of claim by the investor;
  - timeline within which the investor can submit documents, provide clarifications, etc.
  - conditions for rejection of claim and option of re-filing of a claim by the investor
  - timeline within which the claim shall be processed by the listed entity;
  - contact details (email ID and phone number) wherein investor can raise their queries or grievances, if any, relating to their claim.
- **Maintenance of Records:** The Applicable Entity shall preserve the information with respect to the unclaimed amounts of the investors including relevant documentation.

The Applicable Entities (other than Companies) shall in addition to the above comply with the following requirements:

- **Information to be submitted along with fund transfer:** The Applicable Entities (Other than Companies) shall provide information about the unclaimed amount transferred to the IPEF in the format as annexed in Form A of this Circular. This shall be shared with the Chief General Manager, Office of Investor Assistance and Education, SEBI both in hard copy as well as in soft copy( via email to [ipef@sebi.gov.in](mailto:ipef@sebi.gov.in)).
- **Website Related Compliances:**
- The Applicable Entities (Other than Companies) shall within a period of 30 days of transferring the unclaimed amount to IPEF upload the the details in the format prescribed under this Circular.
  - Under the search facility rendered by the Applicable Entity(other than Companies) it shall display the following information on its website:
    - Amount lying unclaimed in the Escrow Account of the listed entity as at end of seven years (in INR);
    - Break-up of Interest/ Dividend/Redemption amount
    - Date when amount became due for transfer to IPEF (dd/mm/yyyy);
    - Amount (in INR) transferred to IPEF by the listed entity
    - Date when unclaimed amount was transferred to the IPEF by the listed entity (dd/mm/yyyy).
- **Application for refund by the listed entity to the IPEF:**  
For claiming refund for an investor from the IPEF the Applicable Entity (other than Companies) shall make an application (after processing) in the format as annexed in Form B of this Circular with the Chief General Manager, Office of Investor Assistance and Education, SEBI both in hardcopy as well as in soft copy(via an email to [ipef@sebi.gov.in](mailto:ipef@sebi.gov.in)).

## 2. SEBI RELAXES NORMS ON FREEZING OF FOLIOS FOR PHYSICAL SHAREHOLDERS

- **Date of Applicability:** November 17, 2023
- **Applicable Entities:** All Listed Entities
- **Brief on Amendment:** In exercise of the powers conferred under Section 11(1) of the Securities Exchange Board of India Act, 1992, the SEBI vide this Circular has amended the [Master Circular May 17, 2023](#) which mandated freezing of folios for those physical holders of securities who fail to furnish PAN, Nomination, Contact details, Bank A/c details and Specimen signature for corresponding folio numbers by October 01, 2023 to their respective RTA's. Further such folios were mandated to be referred to the administering authority under the Benami Transactions (Prohibition) Act, 1988 or the Prevention of Money Laundering Act, 2002 if they remain frozen till December 31, 2023. However, basis the representations of the Registrars' Association of India, and the industry feedback, the above stipulations have been done away with.
- **SGA View:** As per a [market study](#) approximately 1-1.5% of the shareholding in the securities market is still in physical form and therefore mandating all of such folios with KYC and other such allied provisions will be a cumbersome task not only at the end of the RTA but also for listed companies. Hence the amendment comes as a relief for the Applicable Entities and the holders of such physical shares.
- **Actionable, if Any:** The Applicable Entities shall undertake the following actionable:
  - Take note of the Circular and amend their relevant bye laws, rules and regulations, operating instructions as the case may be;
  - Update their website in order to disseminate it with the stakeholders.

### 3. SEBI (LISTING OBLIGATIONS & DISCLOSURE REQUIREMENTS) (SIXTH AMENDMENT) REGULATIONS, 2023

- **Date of Applicability:** October 20, 2023
- **Applicable Entities:** All entities who have listed their Non-convertible securities.
- **Brief on the Amendment:** In furtherance to the [e-gazette notification dated October 20, 2023](#), the BSE has disseminated the following information with respect to the SEBI (LODR) (Sixth Amendment) Regulations, 2023 to all the Applicable Entities:
  - *In regulation 61A, sub regulation 3, SEBI has substituted symbol “.”with the symbol “:” after the words“ in terms of Section 11 of the Act;*
  - *Further, SEBI also clarifies that any amount transferred to the Investor Protection and Education Fund (‘IPEF’) shall not bear any interest;*
  - *And after the sub-regulation 3, SEBI has inserted the following sub regulation that “The unclaimed amount of a person that has been transferred to the Investor Protection and Education Fund, may be claimed in such manner as may be specified by SEBI.”*
- **SGA View:** SEBI has, through this amendment expanded the scope pertaining to the obligation of transferring the unclaimed amounts of IPEF by mandating that not just listed companies but also InvITs, and REITs to transfer any unclaimed interest/dividend/redemption amount that has not been claimed within 7 years of transfer into an escrow account to the IPEF in a manner as specified by the Board. Further, SEBI has also clarified that no interest shall be laid on any such unclaimed amount of the Fund.
- **Actionable if any:** The Applicable Entity shall take note of this Amendment and accordingly transfer any unclaimed interest/dividend/redemption to the IPEF.

### iii. RESERVE BANK OF INDIA

#### 1. MASTER DIRECTION ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES

- **Date of Applicability:** April 01, 2024
- **Applicable Entities:** All Middle layer and above Non-Banking Financial Companies as per the SBR Framework apart from:
  - Core Investment Companies or NBFC CICs
- **Brief on Amendment:** The RBI *vide* this press release has consolidated the norms pertaining to Information Technology for Applicable Entities. Prior to this in order to seek industry feedback the RBI had published the draft Master Directions in [October 20, 2022](#) and basis the public comments it has consolidated the Information Technology framework for governance, risk, controls, assurance practices and business continuity. The Master Directions have shouldered the responsibility on managing the IT framework by dividing duties and obligations on the following:
  - Board of Directors;
  - IT Strategy Committee;
  - IT Steering Committee;
  - Information Security Committee;
  - Chief Information Security Officer;
  - Head of IT Function;
  - Information System Auditor;
  - Audit Committee;
  - Risk Management Committee;
  - Senior other Management.
- **SGA View:** The relevance of information technology in every organization is growing day by day and accordingly the risk associated with the importance also increases. Thus, it becomes imperative for organizations especially financial organizations having a public interface to equip themselves with the required controls and risk management measures. The Master Directions intends to create this framework of controlling such risk with proper roles and responsibilities being divided across Applicable Entities.
- **Actionable if any:** The Applicable Entities to take note of this press release and accordingly amend their respective policies such as policy IT Governance and further assign the duties on the above mentioned authorities.



## 2. RBI REGULATORY MEASURES TOWARDS CONSUMER CREDIT AND BANK CREDIT TO NBFCs

- **Date of Applicability:** November 16, 2023
- **Applicable Entities:** All Non-Banking Financial Companies including Housing Finance Companies
- **Brief on Amendment:** Taking into consideration the high growth of unsecured consumer credit by Applicable Entities as highlighted in the Governor's Statement dated October 06, 2023, the RBI has decided to increase the risk weight of consumer credit categorized as retail loans excluding housing loans, educational loans, vehicle loans, loans against jewelry and microfinance/SHG loans and credit card receivables from 100% to 125% (including outstanding as well as new loans). Further, it must be noted that all top-up loans extended by REs against movable assets which are inherently depreciating in nature, such as vehicles, shall be treated as unsecured loans for credit appraisal, prudential limits and exposure purposes.

Moreover, given that the Applicable Entities source these funds from Banks, the RBI has decided to increase the risk weight by 25 percentage points of exposures of Banks towards the Applicable Entities wherever the extant risk weight as per external rating of NBFCs is below 100%. However, it must be noted that loans to Applicable Entities which are classified as Housing Finance Companies and Applicable Entities which are eligible for classification as priority sector in terms of the extant instructions shall be excluded.

- **SGA View:** This move by the RBI will certainly increase the input cost of funds to account for the additional cost of capital for Applicable Entities and as a result the cost of output loans disbursed will also increase. However, it must be noted that these risk weights have essentially returned back to the levels which were prior to the pandemic. Thus, it can be understood that this is not a step which has been taken for the first time by the Central Bank.
- **Actionable if any:** The Applicable Entities shall take note of the increased risk weight and accordingly amend their respective credit policies and other such policies governing risk weights.