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Company Secretaries



LEGAL NEWSLETTER FOR THE MONTH OF OCTOBER 2023

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I. Ministry of Corporate Affairs

1. **The Companies (Management & Administration) Amendment Rules, 2023**

- a. **Date of Applicability**-October 27, 2023
- b. **Applicable Companies**: All Companies to whom Section 89 & 90 of the Companies Act, 2013 applies.
- c. **Brief on Amendment**: All Applicable Companies shall be required to designate a person who shall be responsible for furnishing & cooperating with the respective authorities to render information in relation to the beneficial interest in the shares of the Company. Such a Designated Person can either be:
- a. Company Secretary; or
 - b. Key Managerial Personnel; or
 - c. Any director, if there is no company secretary or KMP.

However, until the Applicable Companies specifically appoints the designated person any of the following persons shall be deemed to confer the responsibilities of such obligation:

- i. Company Secretary, or
- ii. every Managing Director or Manager; or
- iii. every director.

The Applicable Companies shall also furnish details of such designated person in the Annual Return and where there is any change in details of such change, the same shall be intimated in the e-form GNL-2.

- d. **SGA View**: In furtherance to the efforts of the Government of India to prevent money laundering through Companies, the Ministry of Corporate Affairs ('MCA') from time-to-time issues advisories in the form of notifications or alerts. This amendment came at the right time when many companies had started receiving alerts from the MCA for giving details of the beneficial interest in the shares of the Company. With a Designated Person in place, it is intended that the companies will be in a better position to handle and respond to such alerts issued by the MCA.
- e. **Actionable, if any**:
- i. Appoint a Designated Person for handling and furnishing information *vis a vis* beneficial interest in the company shares.
 - ii. Furnish the details of Designated Person, if appointed, in the Annual Return of the Company.



2. The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023: ('Share Warrants')

- a. **Date of Applicability**: October 27, 2023
- b. **Applicable Companies**: All Public Companies who have issued their share warrants in terms of erstwhile provisions of the Companies Act, 1956.
- c. **Brief on Amendment**: The Applicable Public Companies who have issued their share warrants in terms of the erstwhile provisions of the Companies Act, 1956 and have not converted their warrants into shares shall comply within the following time period:
- i. **Within 3 months** from the date of applicability, inform the Registrar about the details of such warrants in Form PAS 7;
 - ii. **Within 6 months** from the date of applicability, require the bearers of such share warrants to surrender their warrants and convert the shares into dematerialized form;
 - iii. In cases where such dematerialization does not take place, the Applicable Entities shall be mandated to dematerialize into shares and transfer such shares to the IEPF;
 - iv. For undertaking such exercise, all the Applicable Companies shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the Company, if any, and shall also publish the same in Vernacular language newspaper and English language newspaper.
- d. **SGA View**: The present amendment seeks to eliminate the presence of share warrants that were issued under the erstwhile the Companies Act, 1956. Such issuance led to widespread malpractice as it allowed any bearer of the instrument (which was physical in nature) to exercise rights for the warrants issued by the Companies.
- e. **Actionable if any**: The Applicable Companies shall take note of the following Immediate Action Steps:

S. No	Actionable	Timeline
1.	Placing of Form PAS 8 on the website of the Company & shall also publish the same in a vernacular language newspaper and an English language newspaper.	October 27, 2023
2.	Filing of Form PAS 7 with ROC	January 27, 2024
3.	Mandate the bearers of such warrants to surrender & convert their warrants into dematerialized shares	April 27, 2024
4.	In cases where the bearer fails to convert such warrants, the Company shall dematerialize and transfer the same to IEPF	IEPF provisions are also to be complied with.

3. The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 ('Private Placement')

- a. **Date of Applicability:** October 27, 2023
- b. **Applicable Companies:** Every Private Company other than a Small Company and Government Company
- c. **Brief on Amendment:** The Ministry of Corporate Affairs vide this amendment has obligated all Applicable Companies to:
- i. dematerialize all its securities i.e., any prospective issuance of shares and/or any outstanding shares with the promoters, directors, key managerial personnel within a period of 18 months from March 31, 2023;
 - ii. secure an international security Identification Number ('ISIN') for each type of security;
 - iii. comply with the provisions of Depositories Act, 1996 & the SEBI (Depositories and participants), Regulations, 2018 and SEBI (Registrars to an Issue and share Transfer Agents) Regulations, 1993;
 - iv. File half yearly Form PAS-6 with ROC;
- d. **SGA View:** With this amendment the Ministry of Corporate Affairs has majorly mandated all companies in India to dematerialise their securities. A similar amendment was also introduced vide [Rule 9A](#) of the Companies (Prospectus & Allotment of Securities) Rules, 2014. Accordingly, this will certainly reduce the risk of money laundering and thereby curb black money. Further, post September 30, 2024, no private company can raise capital by way of issue of any security/ies including issue of bonus shares and/ or do buyback of securities unless entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised.
- e. **Actionable if any:** The Applicable Companies shall take note of the following actionable:

S. No	Actionable	Timeline
1.	Dematerialize all its securities i.e., any prospective issuance or outstanding with the promoters, directors, key managerial personnel.	On or before September 30, 2024
2.	Secure an International security Identification Number ('ISIN') for each type of security by informing the security holders about such facility.	On or before September 30, 2024
3.	Transfer of Securities can only be allowed in demat form.	After September 30, 2024
4.	Filing of Form PAS-6 with ROC.	Half Yearly Return

II. SECURITIES EXCHANGE BOARD OF INDIA

1. **SEBI (Listing Obligations & Disclosure Requirements) (Fifth Amendment) Regulations, 2023**

- a. **Date of Applicability:** October 01, 2023
- b. **Applicable Companies:** Top 100 Equity Listed Companies and High Value Debt Listed Companies as per market capitalization.
- c. **Brief on Amendment:**
 - i. The SEBI *vide* this present notification has merely mandated the Applicable Companies to confirm, deny, or clarify, any rumour that is material in terms of the materiality thresholds specified, which is in the mainstream media and are circulating amongst the investigating public within 24 hours from the reporting of the event or information.
 - ii. Further it has granted relaxation to the top 250 Equity & High Value Debt Listed Companies from the requirement of this sub-regulation (dealing with clarifications on market rumours) by delaying the obligation from April 01, 2024, to as may be specified by SEBI.
- d. **Actionables, if any:**
 - i. The **Applicable Companies** are required to either confirm, deny, or clarify **any material rumour** in the mainstream media that is circulating amongst the investigating public **within 24 hours from the reporting of the event or information**

2. **Limited Relaxation from Compliance with certain provisions of the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015**

- a. **Date of Applicability:** October 06. 2023
- b. **Applicable Companies:** Issuers who have listed Non-Convertible Securities.
- c. **Brief on Amendment:** In furtherance to the MCA Circular dated September 25, 2023, *inter alia* relaxing companies from the requirement of dispatching physical financial statements (including Board's Report, Auditor's Report, or any other prescribed document), the SEBI has also *vide* this Circular extended the relaxation to Applicable Companies up to September 30, 2024.
- d. **SGA View:** This amendment portrays the resolve of the government towards digital India which is more inclusive and efficient.
- e. **Actionable, If any:** No actionable, the Applicable Company may take note of this relaxation.

3. **Relaxation from Compliance with Certain Provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

- a. **Date of Applicability:** October 07, 2023
- b. **Applicable Companies:** Listed Entities that have listed their Specified Securities.
- c. **Brief on Amendment:** In furtherance to the MCA Circular dated September 25, 2023, *inter alia* relaxing companies from the requirement of dispatching physical financial statements (including Board's Report, Auditor's Report, or any other prescribed document), the SEBI has also *vide* this Circular extended the relaxation to Applicable Companies up to September 30, 2024.
- d. **SGA View:** This amendment portrays the resolve of the government towards digital India which is more inclusive and efficient.
- e. **Actionables, If any:** No actionable, the Applicable Companies may take note of this relaxation

4. **Ease of doing business and development of corporate bond markets- revisions in the framework for fund raising by issuance of debt securities by Large Corporates (LCs)**

- a. **Date of Applicability:** April 01, 2024 for LC's following April-March (Financial Year)
January 01, 2024 for LCs following Jan- Dec (Financial Year)
- b. **Applicable Companies:** All Listed Entities who satisfy the following requirements:
- i. Have their specified securities or non-convertible securities listed, and
 - ii. Have **Outstanding Long-term borrowings** of INR 1000 crore or more, and
 - iii. Have a credit rating of "AA"/"AA+/"AAA" with respect to unsupported bank borrowings or plain vanilla bonds that have no structuring/support built in.
- c. **Brief on Amendment:**
- i. The Applicable Companies shall be mandated to raise at least 25% of the Outstanding Long-Term Borrowings by way of issuance of debt securities in the financial years subsequent to the financial year in which it satisfies the above requirement.
 - ii. This obligation shall be met over a continues block of three years i.e., once the listed entity satisfies the aforementioned requirements it shall have a period of 3 years from the end of the financial year in which it satisfies the criteria to satisfy the aforesaid obligation .
 - iii. In cases, where as at the end of the 3 years if the Applicable Companies have surplus in the specified obligation (i.e. more than 25% is raised through issuance of debt securities), the following incentives will be available with the Applicable Companies:
 - Reduction in Annual Listing Fees (as specified in [Annex I of the Circular](#)) pertaining to non-convertible securities for block of 3 years.



- Credit in the form of reduction in contribution to the Core Settlement Guarantee Fund of LPCC (as specified in [Annex I of the Circular](#)).
- iv. However in cases where there is a shortfall in the aforesaid obligation, the Applicable Companies shall be mandated to fund an additional contribution to the core of SGF as specified in [Annex I of the Circular](#)
- v. For the purpose of this obligation, the term Outstanding Long-Term Borrowings ('OLTB') shall mean any incremental borrowing (having a tenure of more than 1 year) between two balance sheet dates. However, the following shall be excluded from the purview of the term OLTB:
- External Commercial Borrowings;
 - Inter Corporate Borrowings involving its holding company and/or subsidiary and/or associate companies;
 - Grants, deposits or any other funds received as per the guidelines or directions of the Government;
 - Borrowings arising on account of interest capitalization;
 - Borrowings for the purpose of schemes of arrangement involving mergers, acquisitions and takeovers.
- vi. The Listed Entities who satisfied the erstwhile requirement under Chapter XII of the [Operational Circular](#) shall endeavour to comply with the requirement of this Circular by March 31, 2025 or December 31, 2024 as the case may be.
- vii. Furthermore, by virtue of this Circular, the erstwhile following requirement shall stand deleted:
- Monetary penalty for shortfalls in the obligation; and
 - Disclosure for the incremental borrowings done during the financial years within 45 days from the end of the financial year.
- d. **SGA View:** As mentioned in the [Consultation Paper dated July 20, 2018](#), the bond market in India was required to be developed and deepened, therefore, the identified corporates were nudged to access bond markets for their borrowing needs. However, the erstwhile framework was perceived to be on the negative side by the corporates (as decided in the [SEBI Board Meeting](#)) since they were conferred with penalties in the event of shortfall in the mandatory requirement. Moreover, there were as such no incentives rendered to the identified corporates in cases of surplus in the mandatory requirement. The SEBI *vide* this present amendment seeks to address this negative perception by prescribing certain incentives and removing the mandatory penalty in cases of shortfall.
- e. **Actionable, if any:** The following are the actionable for the Applicable Companies:

S. No	<u>Actionable</u>	<u>Timeline</u>
1.	In order to determine the applicability of this framework the Applicable Company shall take note of the list released by stock exchanges on their website.	June 30 or March 31 as the case may be of the FY.
2.	Once Identified, the Applicable Companies shall be mandated to issue at least 25 of their	Within a block of 3 years from the end of the FY

incremental borrowings by way of debt issuances.	(where it was classified as Large Corporate).
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III. RESERVE BANK OF INDIA

1. **Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023**

- a. **Date of Applicability:** October 19, 2023.
- b. **Applicable Entities:** All Types/Classes of Non Banking Financial Companies.
- c. **Brief on Amendment:**
 - i. The RBI vide this [Notification](#) has consolidated all the applicable Master Directions to the extent issued separately. This comes right after the RBI revised the regulatory framework applicable to Non Banking Financial Companies by making it Scale Based from the erstwhile activity based regulatory framework.
 - ii. Before the issuance of this Master Directions, the October 22, 2021 RBI Circular was applicable in addition to the Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 (Updated as on August 29, 2023) & Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 (Updated as on August 29, 2023) (Repealed on October 19, 2023).
 - iii. However pursuant to these Master Directions, the RBI has consolidated all these aforementioned Directions into one consolidated Master Directions.
- d. **SGA View:**
 - i. Looking at the growth of these Non Banking Financial Companies this move from the RBI would certainly create a compliance friendly environment for NBFCs.
 - ii. The Scale Based Regulatory Framework consists of four layers namely Base, Middle, Upper and Top Layer. The Upper and Top Layer would mostly be populated by RBI looking at the systematic risk and the other set of parameters and scoring methodology as provided in [Annex I](#).
 - iii. At present as per the [RBI data](#) it can be seen that the Base Layer is the most populated with more than 8900 registered NBFCs, thereafter comes the Middle layer with more than 400 NBFCs and lastly the Upper Layer consists of 10 NBFCs. The Top Layer is at present unpopulated however with the increase in the systematic risk the RBI may populate it in times to come.
 - iv. Coming to the delineation of these layers, the most important factor for such classification is the asset size of these NBFCs which by virtue of Para 2.2 read with 2.3 & 2.4 must be below INR 1000 crore for an NBFC to be classified in the Base Layer whereas if the asset size is above INR 1000 crore the said NBFC will be classified in the Middle Layer.
 - v. Furthermore, for certain NBFCs such as P2P, Account Aggregators and Non operative financial holding companies and NBFCs not availing Public Funds and not having any customer interface there is a deeming fiction that such NBFCs will

always be classified in the Base Layer. Similarly for other certain NBFCs namely Deposit taking, Core Investment Companies, Housing Finance Companies & Infrastructure Finance Companies, the deeming fiction of being classified in the Middle Layer will apply.

- e. **Actionables, if any:** At present there seems to be no actionable as this is merely a consolidation of the previously issued directions/ notifications by RBI.

2. Strengthening of customer service rendered by Credit Information Companies and Credit Institutions

- a. **Date of Applicability:** April 24, 2024.
- b. **Applicable On:** All types of Credit Institutions ('CI') & Credit Information Companies ('CIC').
- c. **Brief on Amendment:** In furtherance to the announcement with respect to strengthening and improving the efficacy of the grievance redressal mechanism and customer services rendered by credit institutions and credit information companies, the RBI *vide* this Notification has introduced certain measures, the brief of which is as follows:
- i. **Sending SMS/Email Alerts to Customers:** CIC's have been mandated to alert the customers via SMS/Emails where the Credit Information Report is accessed & reflected by a Specified User. Similarly, CI have also been obligated with the responsibility to alert the customers via SMS/Email while submitting information regarding Days Past Default to CICs. In regard to the format, the RBI has unified credit reporting format in the [Annex](#).
 - ii. **Setting up Nodal Points:** CI's shall appoint a dedicated officer or a nodal point for CICs in order to redress customer grievances, the details of which shall be intimated to the CICs.
 - iii. **Root Causes Analysis:** For efficient redressal of customer grievances, CI's & CICs have been obligated to undertake a half yearly Root Cause Analysis of all the customer grievances. This analysis shall be based on a number of factors including information on data rejected by the CICs and Data Quality Index. Moreover, such analysis shall be reviewed by the top management at least on an annual basis.
 - iv. **Furnishing of reasons for rejection of data correction request:** Customers who have requested for a data correction in their Credit Information Reports shall be justified with specific reasons in cases where the CICs have rejected their request. Such complaints shall also be disclosed on the websites of the CICs as per the format given in [Annex](#).
 - v. **Periodic review of match logic algorithm:** CICs shall put in place a board approved policy for undertaking at least a half yearly periodic review of the 'Search & Match' logic algorithm implemented by them to render Credit Information Report of a borrower. The results of the periodic review and the Root Cause analysis undertaken shall be placed before the board for review.
 - vi. **Ingestion of Credit Information data by CICs:** The credit information received by CICs shall be ingested in their database within a period of 7 calendar days from the

receipt of such information from CIs. In cases where the CICs have not updated their database, they shall communicate the reasons for such action to the CIs.

vii. **Easy Access to Free Full Credit Report for the individuals by CICs:** The CICs shall prominently display a link on their website in order to make the credit information report easily accessible to the individuals whose credit history is available with the CICs. This report shall be rendered free of cost to the customers at least once a calendar year.

d. **SGA View:** The framework for uploading credit information has been in the limelight for quite some time for certain negative reasons, the RBI vide this Notification has rightly streamlined the system by mandating sending email/sms alerts and further by obligating CIs to appoint a nodal officer/ or set a nodal point for better redressal of customer grievances.

e. **Actionables, if any:**

Actionable for CIs			
Para No	Heading	Actionable	Remarks
2.1	Alerting Customers	CIs shall alert the customers via SMS/Emails while submitting information with respect to default/days past default	The format of such alerts has been specified in Annex
2.2	Nodal Points	CIs shall appoint dedicated nodal points for CICs in order to redress customer grievances. Such information shall also be intimated to the CICs	-
2.3	Root Cause Analysis	CIs shall undertake a Root Cause Analysis of the customer grievances on half yearly basis which shall be reviewed by the top management on an annual basis	This analysis shall be based on a number of factors including information on data rejected by the CICs and Data Quality Index.
2.4	Data Correction	CIs shall inform the customers for reasons for the rejection of their request for data correction	

Actionable for CICs			
Para No	Heading	Actionable	Remarks
2.1	Alerting Customers	CICs shall alert the customers where their Credit Information is accessed and reflected by the Specified User	The format of such alerts has been specified in Annex
2.3 r/w 2.5	Root Cause Analysis	CICs shall undertake a Root Cause Analysis of the customer grievances on half yearly basis which shall be reviewed by the top management on an annual basis	This analysis shall be based on a number of factors including information on data rejected by the CICs and Data Quality Index.
2.5	Board Approved Policy	CICs shall put in place a board-approved policy for undertaking at least a half-yearly periodic review of the 'Search & Match' logic algorithm implemented	The results of the periodic review and the Root Cause analysis

		by them to render the Credit Information Report of a borrower.	undertaken shall be placed before the board for review
2.4	Data Correction	A list of reasons for rejection of requests shall be circulated by CICs to all CIs. CIs shall use the same while communicating the rejections of the request for data correction made by customers/ CICs during the grievance redress process	Such complaints shall also be disclosed on the websites of the CICs as per the format given in Annex
2.8	Free Full Credit Report	The CICs shall prominently display a link on their website in order to make the credit information report easily accessible to the individuals whose credit history is available with the CICs.	This report shall be rendered free of cost to the customers at least once a calendar year.
2.6	Ingestion of Credit Information	The credit information received by CICs shall be ingested in their database within <u>a period of 7 calendar days from the receipt of such information from CIs</u> . In cases where the CICs have not updated their database, they shall communicate the reasons for such action to the CIs <u>within a period of 7 calendar days</u>	

3. [Framework for compensation to customers for delayed updating/ rectification of credit information](#)

- a. **Date of Applicability:** April 24, 2024
- b. **Applicable Entities:** All types of Credit Institutions ('CI') & Credit Information Companies ('CIC')
- c. **Brief on Amendment:** The RBI *vide* this notification has mandated the CIs and the CICs to put in place a compensation mechanism by virtue of which in case where there are complaints regarding inaccurate information are not resolved within a period of 30 days from the date of receipt of information of any inaccurate information, the CIs or CICs as the case may be will have to compensate the complainant.
 - i. The CIs shall be mandated to forward the correct particulars of any credit information to either the CICs or complainant within a **timeline of 21 days from the date** they were informed of the inaccuracy in the credit information.
 - ii. Whereas the CICs will have effectively have **9 days from the receipt of any information from CIs** to address the inaccuracy.
 - iii. In cases where the above timeline is not complied with, the CIs or CICs as the case may be shall compensate INR 100 per calendar day for each day of delay caused.
- d. **SGA View:** To address the increase in customer complaints regarding credit information reporting and the functioning of credit information companies (CICs), this framework is certainly a step in the right direction as it will assist in faster resolution of complaints with respect to credit information.

e. **Actionables, if any:**

S. No	Actionable	Timeline
1.	The Applicable Entities shall be required to amend their respective Fair Practice Codes to incorporate this framework.	
2.	The Applicable Entities shall be mandated to forward the correct particulars of any credit information to either the CICs or complainant	Within a period of 21 days from getting aware of any inaccuracy in the credit information.
3.	The Applicable Entities shall make appropriate provision in their complaint submission format for enabling the customer to submit requisite payment details	-

[For More Information on this or any further enquiries:](#)

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