

VINOD KOTHARI & COMPANY

VINOD KOTHARI CONSULTANTS PRIVATE LIMITED

August, 2022

CORPORATE
AND
SECURITIES
LAWS

FINANCIAL
SERVICES

RESOLUTION
AND
INSOLVENCY
LAWS

SAMAGRATA

COLLECTION OF REGULATORY UPDATES

WHAT'S INSIDE?

We are always on our fore front to apprise our clients, associates as well as those seeking knowledge with all the recent updates on various regulatory framework that are being changed rampantly. In doing so, we try and excel our own performance. In this issue we aim at consolidating all the regulatory changes and amendments brought by respective regulators, along with our analysis of same along with other reference materials from compliance point of view, for the month of August, 2022.

The issue also covers articles on other contemporary or otherwise relevant areas of corporate interest.

We have further added a new section, for all that's recently happening in the real corporate environment and relevant to our readers.

Help us improve!

Feedback/suggestions invited –

Feel free to drop a mail to neha.malu@vinodkothari.com

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Section 1: Corporate and Securities Law

Companies (Accounts) Fourth Amendment Rules, 2022

- Notification can be viewed [here](#)

MCA by way of the Companies (Accounts) Fourth Amendment Rules, 2022 has amended rule 3 of the Companies (Accounts) Rules, 2014 that deals with 'Manner of books of account to be kept in electronic mode'. The highlights of the amendment are as follows:

1. Back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India (if any) shall be kept in servers physically located in India on a daily basis (earlier periodic basis) [proviso to sub-rule 5].
2. In case the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India must be intimated to the ROC on an annual basis at the time of filing of financial statement. [new sub-rule 6 (e)].

The Companies (Incorporation) Third Amendment Rules, 2022

- Notification can be viewed [here](#)

MCA by way of the Companies (Incorporation) Third Amendment Rules, 2022 has amended the Companies (Incorporation) Rules, 2014 pursuant to which Rule 25B has been added. The highlights of the amendment are as follows:

- i. If the ROC has reasonable cause to believe that the company is not carrying on any business or operations from its registered office, he may visit the registered office of the company and may cause the physical verification in the presence of two independent witnesses of the locality and may also seek the assistance of the local police for such verification, if required.
- ii. For the purpose of physical verification of the registered office, ROC shall-
 - a. cross verify the documents filed on MCA 21 in support of the registered address of the company with the documents collected during the physical verification
 - b. take photographs of the registered office during the physical verification
 - c. prepare a report of the physical verification

If it is found that the company is not carrying on business or operations from its registered office, then the ROC shall send a notice to the company and all the directors of the company, for the removal of the name from the register of companies in accordance with the provisions of section 248 of the Act.

Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022

- Notification can be viewed [here](#)

MCA by way of Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022 has amended in the Companies (Appointment and Qualification of Directors) Rules, 2014. Pursuant to the said amendment, format of e-Form DIR-3 KYC and web-form DIR-3 KYC-WEB has been substituted. Under the new format of the e-Form DIR-3 KYC, some additional information is required to be provided, under the heads "permanent residential address" and "present residential address" of the e-Form. Additional fields of information, as required to be filled, are as follows:

- i. Area/ locality (to be provided mandatorily);
- ii. District;
- iii. Jurisdiction of police station (to be provided mandatorily).

The Companies (Acceptance of Deposits) Amendment Rules, 2022

- Notification can be viewed [here](#)
- Write up on the topic can be accessed [here](#)

MCA by way of the Companies (Acceptance of Deposits) Third Amendment Rules, 2022 has amended rule 16 and annexures to the Companies (Acceptance of Deposits) Rules, 2014. The highlights of the amendment are as follows:

- i. In form DPT-3, declaration of the statutory auditor certifying that the amount specified in "particulars of deposits" and "particulars of liquid assets" is correct and is in line with the relevant provisions of Companies Act, 2013 is to be given instead of attaching a separate certificate.
- ii. Following additional changes have been notified in form DPT-3 w.r.t. particulars of deposits
 - a. Whether deposits have been accepted from public
 - b. Particulars of charge shall now include no. of charges and SRN of form filed for creation of such charge
 - c. SRN of GNL form in which DPT-1 is filed
 - d. The attachments shall now include copy of trust deed and list of depositors
- iii. The particulars of exempted deposits to include complete movement of funds during the year, viz., opening balance, additions and repayments, adjustments if any and closing balance. An ageing schedule w.r.t the exempted deposits to be also provided.
- iv. Form DPT-4 (Statement regarding deposits existing on commencement of the Act) has also been substituted.

Circular on use of DSC for announcements submitted by listed companies

- Notification can be viewed [here](#)

In wake of covid-19 pandemic, SEBI vide its circular dated April 17, 2020; circular dated July 31, 2020 and circular dated April 29, 2021 permitted the use of Digital Signature Certification ('DSC') for authentication/certification of filings/ submissions made to Stock Exchanges.

Considering the merits of using DSC for authentication of documents/ filings, Stock Exchanges, in consultation with SEBI, have decided to make it mandatory to file announcements under various SEBI regulations using DSC except for the following disclosures/ events:

- i. Outcome of Board meeting which includes only financial result.
- ii. Any disclosure in which documents issued by entity/ies other than listed company is/are included (For e.g., Auditors certificate, NCLT / other court's order, Credit Rating, etc.);
- iii. Newspaper advertisement.

Any other disclosure as specified by Stock Exchanges from time to time.

Trading Window closure period under reg. 9 of SEBI (PIT) Regulations, 2015 – Framework for restricting trading by Designated Persons by freezing PAN at security level

- Notification can be viewed [here](#)
- Write up on the topic can be accessed [here](#)

In order to reduce the inadvertent or unintentional non-compliance of PIT regulations, SEBI, vide the present circular, has come up with a system to restrict trading by the Designated Persons ('DPs') during the trading window closure period.

The circular deals with freezing of PAN at security level during the trading window closure period, the same will be carried out in the following manner:

- i. The Designated Depository ('DD') will enable login access to listed companies to the portal as per SEBI circular dated May 28, 2018.
- ii. The DD will auto populate the Names of DPs, PAN, Demat Account number (in case of PAN exempt cases) as per the last updated or information available under System Driven Disclosure ('SDD') by the listed companies.
- iii. The details w.r.t. listed ISIN of equity shares and the data so auto-populated by the DD shall be confirmed by the company.
- iv. W.r.t. the financial results, the listed company will specify the start date of trading window closure and end date i.e. 48 after declaration of results on the said platform. The aforesaid details are to be provided at least 2 trading days in advance.
- v. The DD will inform such details to the other depository and stock exchanges.
- vi. Basis data received from depositories, the stock exchange shall restrict the on-market transactions of DP in equity shares and equity derivatives of the listed company.
- vii. The off-market transactions and pledges shall be restricted by depositories with the reason code 'trading window closure period'.
- viii. In case of exemption from trading window closure restrictions under clause 4(3) of Schedule to PIT Regs, the restriction shall be removed within 2 trading days from the date of receipt of request from the listed company.

Further Annexure A of the circular can be referred for the procedure of implementation and a process flow chart is also provided in Annexure B of the said circular.

Enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence

- Notification can be viewed [here](#)

SEBI has issued enhanced guidelines for Debenture Trustees ('DT') and listed issuer companies on security creation and initial due diligence w.r.t to issuance of Non-Convertible Securities ('NCS'), Securitized Debt Instruments, Security Receipts, Municipal Debt Securities or Commercial Paper.

SEBI has laid down the following:

i. Manner of change in security/creation of additional security/conversion of unsecured to secured in case of already listed non-convertible debt securities:

For harmonizing the process of creation of security pursuant to the listing, the following directions have been issued:

- a. Before initiating due diligence, DT and listed entities must enter into an amended DT agreement after incorporating obligations arising out para 4 to 7 of SEBI circular dated [November 03, 2020](#), SEBI circular dated [November 12, 2020](#) and SEBI circular dated [May 19, 2022](#) for continuous monitoring and any other stipulations.
- b. DT must carry out due diligence for change in security/ additional security as prescribed in para 4 to 7 of SEBI circular dated November 03, 2020 and issue a NOC for the same.
- c. Then the security/ charge has to be created and registered with sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable within 30 days of creation of charge.
- d. Pursuant to the creation and registration of charge, the issuer company and DT shall enter into a supplemental/ amended debenture trust deed to include all the terms and conditions arising out of the due diligence.
- e. The listed company to submit the following to the Depositories and Stock Exchanges
 - i. NOC by DT for change in security or creation of security
 - ii. Executed supplemental/amended debenture trust deed;
 - iii. An undertaking from the DT that the security has been created and registered;
 - iv. Other documents/consents required to be submitted to Stock Exchanges and Depositories in terms of reg. 59 of LODR
- f. Further depository shall assign a new ISIN to the non-convertible debt securities and shall share the information with respect to change in ISIN of debt securities, with the recognized Stock Exchanges.

ii. Encumbrance on securities for issuance of listed debt securities:

The same must be done through the depository system only in accordance with Depositories Act, 1996, the SEBI (Depositories and Participants) Regulations, 2018, Depository bye laws and other applicable regulations and circulars.

iii. Due diligence certificate in case of shelf prospectus/ memorandum:

In cases where security details have not been finalized at the time of filing of a draft shelf prospectus/placement memorandum the DT must undertake due diligence as under:

- a. The DT may furnish a due diligence certificate, confirming that it has carried out due diligence for the clauses other than that related to security creation.
- b. At the time of the issuance of the tranche memorandum/ prospectus when the issue structure including terms related to security has been determined and finalized, the DT shall issue a due diligence certificate covering all clauses of formats prescribed.

iv. Empanelment of External Agencies by DTs:

For the purpose of empanelment of external agencies for carrying out due diligence in terms of SEBI Circular dated November 03, 2020, the DTs shall adopt an empanelment criterion/ policy and formulate a policy on mitigating conflict of interest and disclose the same on their website.

v. Compliance with SEBI Circulars on 'Security & Covenant Monitoring System

Issuers, Depositories, DTs and CRAs shall ensure that they are in compliance of SEBI circulars [August 13, 2021](#), [March 29, 2022](#) and other circulars on DLT system for complying with Security & Covenant Monitoring System.

Section 2: Financial Sector Updates

External Commercial Borrowings (ECB) Policy – Liberalisation Measures

- Press release can be viewed [here](#)

Pursuant to its press release dated [July 06, 2022](#), following relaxations have been provided w.r.t ECBs:

- i. increase the automatic route limit from USD 750 million or equivalent to USD 1.5 billion or equivalent;
- ii. increase the all-in-cost ceiling for ECBs, by 100 bps. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling

Necessary amendments to the relevant regulations have been made through the Foreign Exchange Management (Borrowing and Lending) (Amendment) Regulations, 2022, vide notification dated [July 29, 2022](#).

Recommendations of the Working group on Digital Lending - Implementation

- Report can be viewed [here](#)
- Our FAQs on the topic can be accessed [here](#)
- Our brief coverage on the same can be accessed [here](#)

Reserve Bank of India had constituted a Working group on 'Digital Lending including lending through online platforms and mobile apps, subsequently taking into account the report submitted by the working group and the inputs received from various stakeholders on the report, a regulatory Framework to support the growth of credit delivery through digital lending methods without any compromise on regulatory concerns has been formulated.

RBI further, has divided the digital lenders in 3 categories:

- i. Entities regulated by RBI and permitted to carry out lending business;
- ii. Entities authorized to carry out lending as per other statutory/ regulatory provisions but not regulated by RBI;
- iii. Entities lending outside the purview of any statutory/ regulatory provisions.

RBI has accepted the recommendations for immediate implementation, the same is attached in [Annex-1](#) of the press release. The same shall have several implications for digital lenders and their service providers.

Bilateral Netting of Qualified Financial Contracts - Amendments to Prudential Guidelines

- Circular can be viewed [here](#)

At present, while computing capital requirements for counterparty credit risk, the following exposures, wherever allowed to be undertaken, are exempted or capped:

- i. foreign exchange (except gold) contracts which have an original maturity of 14 calendar days or less are excluded from capital requirements for counterparty credit risk.
- ii. 'Sold options', provided the entire premium / fee or any other form of income is received / realised, are excluded from capital requirements for counterparty credit risk.

For Credit Default Swap transaction where bank is protection seller, the exposure is capped at the amount of premium unpaid by the protection buyer.

RBI has issued the following clarifications w.r.t. applicability of the above exemptions/ caps under the 'Bilateral Netting framework':

- i. The exemption for foreign exchange (except gold) contracts which have an original maturity of 14 calendar days or less shall be applicable to entities calculating the counterparty credit risk under Original Exposure Method without taking the benefit of bilateral netting. Accordingly, the exemption would be applicable only to Regional Rural Banks, Local Area Banks and Co-operative Banks, where the bank has not adopted the bilateral netting framework. For other entities, the exemption shall stand withdrawn.
- ii. 'Sold options', provided the entire premium / fee or any other form of income is received / realised, can be excluded only when such 'sold options' are outside the netting and margin agreements.

For Credit Default Swaps where the bank is the protection seller and that are outside netting and margin agreements, the exposure may be capped to the amount of premium unpaid. Banks have the option to remove such credit derivatives from their legal netting sets in order to apply the cap.

Outsourcing of Financial Services - Responsibilities of regulated entities employing Recovery Agents

- Circular can be viewed [here](#)

The RBI has advised Regulated Entities ('REs') that the ultimate responsibility for their outsourced activities vests with them and hence they are responsible for the actions of their Recovery Agents.

Following is required to be ensured:

- i. Recovery agents shall not resort to sending inappropriate messages either on mobile or through social media, making threatening and/ or anonymous calls, persistently calling the borrower.
- ii. Not call the borrower before 8:00 a.m. and after 7:00 p.m. for recovery of overdue loans, not make false and misleading representations, etc.

Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Rules, 2022

- Circular can be viewed [here](#)
- Our write ups on the same can be accessed here –
 - [Revised ODI Norms: A step towards greater clarity & liberalization?](#)
 - [Lost in Layers: lower threshold for subsidiaries under ODI norms raises concern](#)

RBI has combined erstwhile FEMA (Transfer or Issue of Foreign Security) Regulations, 2004 and FEMA (Acquisition and Transfer of immovable property outside India) Regulations, 2015 into FEMA (Overseas Investment) Rules, 2022 ('OI Rules') and FEMA (Overseas Investment) Regulations, 2022 ('OI Regulations') and the erstwhile regulations stand superseded.

The **OI rules** provide the regulatory framework for making of overseas investment covering the permissions, conditions for making overseas investment, restrictions from making Overseas Direct Investment ('ODI'), pricing guidelines, transfer, liquidation and restructuring of ODI. While the OI Rules have been framed by CG, however, the same will be administered by the RBI as per rule 3 (1).

OI Regulations, on the other hand, provide only the operational part covering conditions for undertaking financial commitment, investment in debt instruments, consideration in case of acquisition or transfer of equity capital of a Foreign Entity ('FE'), mode of payment, obligations of Persons Resident in India ('PRII'), reporting requirements, consequence of delay in reporting and restrictions on further FC/ transfer.

Foreign Exchange Management (Overseas Investment) Directions, 2022

- Circular can be viewed [here](#)

As stated above, RBI has on issued FEMA (Overseas Investment) Rules, 2022 and FEMA (Overseas Investment) Regulations, 2022.

In furtherance to the same RBI has issued the Foreign Exchange Management (Overseas Investment) Directions, 2022 and provided operational directions to AD-1 Bank for the same.

The instructions contained in these operational directions shall supersede the list of the circulars/ master direction contained in Annex-II of the circular.

Further, RBI has also revised the reporting forms and instructions for filling up the forms as prescribed on Part VIII of the Master Direction no. 18 on '[Reporting under Foreign Exchange Management Act, 1999](#)' dated January 01, 2016.

Section 3: Our other articles of interest

Social Stock Exchanges: Philanthropy on the bourses

- Payal Agarwal, Senior Executive

Social stock exchanges approved in India has a “donation” based funding model with a feature of trading the donations by linking them with a security instrument. These SSEs will operate as a separate segment within the existing stock exchanges, and entities permitted to be listed within the SSEs are “Social Enterprise”. The Social Enterprise can be either a for-profit enterprise or a not-for-profit organization. In this write-up, we focus on understanding the basic concept of SSEs in India, how the Indian version of SSEs is different from the global counterparts, whether SSEs will be used for investing by impact investors or for those searching for avenues of responsible philanthropy, and what are the potential benefits of listing and participation in SSEs.

Emission law amendments to trigger carbon credit trading in India

- Payal Agarwal, Senior Executive

The Energy Conservation (Amendment) Bill, 2022 has been passed in the Lok Sabha and it seeks to bring the mandatory carbon credit markets in India. The Bill provides a legislative inclusion to the formulation of a carbon credit trading scheme. The aforesaid is a short note on the same.

Emission law amendments: Laying the framework for carbon trading market in India

- Payal Agarwal, Senior Executive

The Energy Conservation (Amendment) Bill, 2022 (“Bill”) seeks to provide a regulatory framework for carbon markets in India. The Bill was passed in the Lok Sabha on 8th August, 2022. There is still a long way to go before carbon markets are recognised in the statutory framework of India, since the Bill will also be required to be passed by the Rajya Sabha and the President’s assent thereafter. Further, the carbon markets in other countries are still developing in a phased manner, identifying the gaps in the existing system and modifying accordingly. India cannot be an exception to the same. However, the concept of “carbon credits” is not unknown to India since there are several entities in the country which are already generating tons of carbon credits. This article seeks to delve upon the legal aspects of carbon credits markets around the world, the consequences of not exporting the same, and the tax implications upon sale of the generated credits. As we study the existing carbon markets around the world, some learnings from these markets may be taken into consideration for the developing carbon market in India.

This article has been written for the August edition of Windpro magazine.

Governance by technology: The future of corporate governance

- Pammy Jaiswal, Partner and Payal Agarwal, Senior Executive

This write-up is directed towards unfolding the immense potential of the information technology in rewriting the corporate governance standards and norms for changing the face of it as it looks to be. We have discussed the various forms of IT based tools and use of blockchain technology for establishing higher, seamless and improvised CG practices under the Indian corporate framework where one can easily transit from human powered functions to IT based functions and softwares.

The article has been published in the August, 2022 edition of ICSI Chartered Secretary journal and can be accessed on the link [here](#), from Page 61 onwards.

Structured Digital Database: some emerging concerns

- Team Vinod Kothari & Company

Maintenance of Structured Digital Database (“SDD”) has been mandatory since April 1, 2019 in view of Reg 3(5) and 3(6) of SEBI (PIT) Regulations, 2015. The entities have been maintaining for the last 3 years, however, since quarter ending June 30, 2022 the entities are additionally required to submit a compliance certificate, based on the email received from the stock exchanges where its securities are listed, duly certified by the Compliance Officer. We have been given to understand that this submission will be mandated on a quarterly basis and the same will henceforth be required to be submitted duly certified by a practising company secretary. In this write up, we intend to highlight certain points of concerns/ issues, thereby suggesting appropriate changes in the said compliance certificate for the upcoming quarters.

Hike in repo rate: How to modify loan installments

- Vinod Kothari, Managing Partner

Based on the decision on the Monetary Policy Committee, the RBI, on 5th August, 2022, hiked the repo rate by 50 bps, to 5.4%. This brings the policy rate to the level where it was before the Pandemic. Thus, while the impact of COVID-19 may still be long and persisting, but the COVID-19 reliefs are all gone. A brief coverage of the same is provided in the article.

Section 4: Special Mentions



Mr. Vinod Kothari
Managing Partner



Ms. Vinita Nair
Senior Partner



Ms. Pammy Jaiswal
Partner

- Discussion on Structured Digital Database on August 09, 2022 in the Youtube channel of Vinod Kothari & Company. Same can be viewed [here](#)



Ms. Anita Baid
Vice President

- Workshop on Digital Lending Regulation: Issues and implementations in August 18, 2022
- Session on “NBFC- Emerging Changes in Regulatory Compliance” on August 07, 2022, organized by VIP Road Chartered Accountants Study Circle EIRC

Section 5: Conference on Secondary Markets on Distressed Loans



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Our Credo

“Focus on capabilities, opportunities follow”