

VINOD KOTHARI & COMPANY

VINOD KOTHARI CONSULTANTS PRIVATE LIMITED

January, 2023

CORPORATE
AND
SECURITIES
LAWS

FINANCIAL
SERVICES

RESOLUTION
AND
INSOLVENCY
LAWS

SAMAGRATA

COLLECTION OF REGULATORY UPDATES

WHAT'S INSIDE?

We are always on our forefront to apprise our clients, associates as well as those seeking knowledge with recent updates on various laws and regulations. We have consolidated various regulatory announcements and amendments by respective regulators, along with our analysis, for the month of January, 2023. This is supported with reference materials and our write ups on the same.

This issue also covers articles on other contemporary and 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

Limited relaxation – dispatch of physical copies of financial statements etc. – Regulation 58 of SEBI LODR Regulations, 2015

- [Circular can be viewed here](#)

Applicability	Amendment	Actionables and timelines, if any
Entities with listed non-convertible securities	<p>MCA <i>vide</i> its circular dated December 28, 2022 had extended the relaxations regarding dispatching of physical copies of financial statements, till September 30, 2023.</p> <p>Pursuant to the same, SEBI <i>vide</i> this circular dated January 05, 2023 has now relaxed the requirement of sending the hard copies of statement containing salient features of all the documents as specified in section 136 of the Companies Act, 2013 (<i>financial statements including consolidated financial statements, auditors report if any or such other document</i>) to those holders of non-convertible securities who have not registered their email address(es) either with the listed entity or with any depository.</p>	Companies to take note of the said relaxation being extended till September 30, 2023.

Relaxations from sending hard copy of annual report and proxy forms under SEBI LODR Regulation, 2015

- [Circular can be viewed here](#)

Applicability	Amendment	Actionables and timelines, if any
Equity listed entities	<p>SEBI <i>vide</i> circular dated May 13, 2022, had provided certain relaxations with respect to compliances pursuant to regulation 36 and 44 of LODR Regulations.</p> <p>Further <i>vide</i> this circular dated January 05, 2023, SEBI has further extended the relaxations provided in the erstwhile circular basis the representation received from listed entities.</p> <p>Thus, pursuant to the circular the following relaxations stand extended till September 30, 2023;</p> <ol style="list-style-type: none"> 1. The requirement of Regulation 36, which requires sending hard copy of annual report containing salient features of all the 	Companies to take note of the said relaxation being extended till September 30, 2023.

	<p>documents prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses. Further the AGM notice advertisement made in terms of regulation 47 shall contain the weblink of the Annual report so as to enable shareholders to have access to the full annual report.</p> <p>2. Requirement of sending proxy forms under regulation 44 is dispensed with in case of general meeting held through electronic mode only.</p> <p>However, the listed entities shall also ensure compliance of the following conditions:</p> <ol style="list-style-type: none"> 1. To send hard copy of full annual reports to those shareholders who have requested for the same. 2. AGM notice as published shall disclose the web-link to the annual report so as to enable shareholders to have access to the full annual report. 	
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Extension of timelines for entering details of the outstanding non-convertible securities in 'Security and Covenant Monitoring' system

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Entities with listed non-convertible securities	<p>SEBI vide the circular dated October 03, 2022 had provided an extension for recording of details in the system in case of existing outstanding non-convertible securities, where the issuer shall enter the details on or before October 31, 2022 and the same shall be verified by the Debenture Trustees ('DTs') by November 30, 2022.</p> <p>Now vide the present circular, it has been decided that for existing outstanding non-convertible securities, issuers shall ensure that they enter the details into the system on or before January 31, 2023 and DTs shall verify the same by February 28, 2023</p> <p>Further, the DT shall furnish a progress report on fortnight basis, of status compliance regarding entry of the details pertaining to existing outstanding non-convertible securities in the DLT system and the verification of the same by DTs, continuing till the</p>	Companies to take note of the said extension and ensure that it enters all the details regarding the existing non-convertible securities on or before January 31, 2023.

	period of said extension. The said report shall be submitted within 5 days of the end of the fortnight.	
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Monitoring and Periodical reporting of the compliance relating to 'Security and Covenant Monitoring' system

- Notification can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Entities with listed non-convertible securities	SEBI vide the present circular has prescribed that the depositories shall ensure periodic monitoring regarding compliance with the requirements of various circulars pertaining to 'Security & Covenant Monitoring System' issued by SEBI from time to time, including the circulars dated August 13, 2021 and March 29, 2022. Further the depositories shall also bring to the notice of SEBI any instances of non-compliances, on a quarterly basis, being not later than one month from the end of the quarter in the format as specified in the said circular.	No immediate actionable since this circular is directed towards depositories for highlighting instances of non-compliances by the issuers.

Compilation of existing circulars w.r.t. CRAs into an Operational Circular

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Entities with listed non-convertible securities	In order to have access to all the circulars issued for Credit Rating agencies ('CRAs'), SEBI has issued this operational circular. The said operational circular is a compilation of all existing circular issued till December 31, 2022 along with any consequential changes.	No actionable. Since the said operational circular is a compilation of all existing circulars on the subject

Amendment in LODR Regulations - Senior Management | Re-appointment of directors | Disclosure w.r.t. Material subsidiary

- Circular can be viewed [here](#)

Applicability	Amendment	Actionables and timelines, if any
Equity listed entities & High Value Debt listed entities	SEBI has <i>vide</i> this regulation has amended certain provisions of the LODR Regulations. The following is the summary of the amendments notified: 1. Regulation 16 (1) (d) - Definition of "Senior	Companies to: 1. take note of inclusion of 'Functional Heads' in the

	<p>Management”</p> <p>The term senior management shall now also include the ‘Functional Heads’ by whatever name as they are called.</p> <p>2. Regulation 17 (1C) - Shareholders’ approval within 3 months required for re-appointment</p> <p>Existing provision for seeking shareholders’ approval for appointment of directors within 3 months are now also applicable in case of re-appointment. Further, the said provisions shall not be applicable to Public Sector Undertakings (PSUs).</p> <p>3. Schedule V (C) (10) (n)</p> <p>SEBI vide circular on Resignation of statutory auditors from listed entities and their material subsidiaries had laid down obligations of material subsidiaries in case of resignation of auditors. However, the details of material subsidiaries are not disclosed in the Annual Report and hence regulatory check of the circular becomes challenge.</p> <p>For this purpose, from FY 2022-23 onwards, the listed entities are now required to disclose details of material subsidiaries, including date and place of incorporation and name and date of appointment of statutory auditors in their Annual Reports.</p>	<p>definition of Senior Management</p> <p>2. Ensure the compliance of Regulation 17 (1C) in cases of re-appointment of directors</p> <p>Disclose the details of the material subsidiaries along with such other details as required in its Annual Report on and from FY 2022-23 onwards</p> <p>Refer to our snippet on this topic here.</p>
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Filing of SEBI SAST Regulations, 2011 disclosures to Exchange

- **Circular can be viewed [here](#)**

Applicability	Amendment	Actionables and timelines, if any
Equity listed entities	In furtherance to launch of the New Digital Portal which is operational for filing of certain disclosures with the NSE, starting January 07, 2023 the disclosures under the SEBI SAST Regulation, 2011 will be required to be filed on Takeover email id: takeover@nse.co.in	Companies to take note of the email id and ensure that while filing disclosures related to SAST Regulations, 2011 with NSE. Further, contact details of the Exchange Officers are available on the NEAPS Portal.

Standard Operating Process under SEBI (PIT) Regulations, 2015 for ensuring compliance with Structured Digital Database

- [SOP can be viewed here](#)

Applicability	Amendment	Actionables and timelines, if any
All listed entities	<p>Regulation 3(5) and 3(6) of SEBI (PIT) Regulations, 2015 <i>inter alia</i> require listed entities to maintain a Structured Digital Database ('SDD'). BSE vide circular dated November 4, 2022 and NSE vide circular dated November 04, 2022 had notified that where a listed entity does not comply with the provision of maintaining SDD, the Exchanges will initiate following action:</p> <ol style="list-style-type: none"> 1. Under the "Get Quote" page of the Exchange Website of the listed entity, it would be display that the entity is non-compliant with SDD, 2. The said information will appear from the next trading day till the Exchanges have satisfactorily verified that the company has completely complied with the provisions of maintaining SDD. <p>Through the current circular, in addition to the above, the <u>details of the compliance officer will also be displayed on the "Get Quote" page of the Exchange website where the above information is disseminated.</u></p> <p>Kindly note that the earlier BSE circular no. 20230125-9 and NSE circular no. NSE/CML/2023/09 has been recalled/ superseded by the Exchanges</p>	Companies to take note of the consequences in case it does not comply with the provision of maintaining SDD.

Filing of announcements in XBRL format with the Stock Exchanges

- [Circular can be viewed here](#)

Applicability	Amendment	Actionables and timelines, if any
Equity listed entities	The stock exchanges vide the present circulars have notified that w.e.f. January 28, 2023 the below mentioned filings under the SEBI (LODR) Regulations, 2015 ('Listing Regulations') will have to made in XBRL mode in addition to PDF mode on the BSE listing center/ NEAPS:	Companies to ensure that disclosures as mentioned herein are submitted with the exchanges in PDF and well as XBRL mode.

	<ol style="list-style-type: none"> 1. Disclosures under reg. 29 of the Listing Regulations with respect to the prior intimation of the Board meetings and 2. Disclosures under reg. 30 of the Listing Regulations with respect to: <ol style="list-style-type: none"> a. Change in directors, KMPs, auditor, compliance officer and share transfer agent, b. Outcome of the board meeting held for consideration of dividend, buyback, bonus issue and decision on voluntary delisting by the listed entity c. Acquisitions (including agreement to acquire), scheme of arrangement (amalgamation/ merger/ demerger/ restructuring), or sale or disposal of any units, divisions, or subsidiary of the listed entity or any other restructuring. <p>At present, listed entities will be required to submit the above-mentioned disclosures in both PDF mode as well as XBRL mode until such time as the exchanges notify. Filings in XBRL mode are to be made within 24 hours of submission of the PDF filing. XBRL facility shall be available to the listed entities in the XBRL listing Centre & NEAPS.</p>	
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Migration of certain MCA forms to V3 portal

Applicability	Amendment	Actionables and timelines, if any
All companies	In furtherance to the notification dated December 26 2022, wherein MCA had notified the list of 56 forms which shall, in a phased manner be migrated to V3 portal. PAS-3 (Return of allotment) was also one of the said 56 forms. During the migration, forms would not be available for the purpose of filing	No immediate actionable, Company may note the forms which will now be filed through V3 portal.

Companies (Appointment and Qualification of Directors) Amendment Rules, 2023 and changes in forms thereunder

- **Notification can be viewed [here](#)**

Applicability	Amendment	Actionables and timelines, if any
All companies	<p>MCA vide its notification dated January 20, 2023 amended the Companies (Appointment and Qualification of Directors) Rules, 2014.</p> <p>The highlights of the amendments are as follows: -</p> <ol style="list-style-type: none"> 1. Rule 14 – Earlier directors were required to 	Company may take note of the said amendments and to ensure that in case of any director disqualification the

	<p>provide a declaration with respect to their disqualification under section 164(2) of the Companies Act, 2013 ('the Act'), which has now been made applicable for disqualification under section 164(1) of the Act as well.</p> <ol style="list-style-type: none"> 2. The Company shall be required to file Form DIR-9 with the Registrar of Companies within 30 days from the receipt of Form DIR-8 from the directors. 3. Form DIR 10 (Form for Application for removal of Disqualification of Director) shall be filed with the Regional Director. 4. The following forms have been revised: - DIR-3, DIR-3C, DIR-5, DIR-6, DIR-8, DIR-9, DIR-10, DIR-11 and DIR-12 	<p>same is intimated to the ROC.</p> <p>Our snippet on the same can be accessed here.</p>
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Amendments in various MCA Forms

Applicability	Amendment	Actionables and timelines, if any
All companies	<p>MCA had earlier notified about the migration of various forms on the V3 portal which was to be effective in a phased manner from January 10, 2023 and January 23, 2023 respectively.</p> <p>In furtherance of the same, MCA has revised the formats of various forms being migrated to the V3 portal. The said formats are revised keeping the following points in consideration</p> <ol style="list-style-type: none"> 1. Reducing manual efforts required in the filing. 2. Cross linking of forms basis the purpose of filing 3. Pre-filing of forms basis the common data fields across the forms, ensuring consistency of data and reducing multiplicity. 4. Removal of redundant and duplicate fields 5. Reducing the number of attachments by introducing declarations 6. Putting in place field validations thereby minimizing errors while filing 7. Increasing the overall form size to 10 mb and individual attachments to 2 mb. 	<p>Company may take note of the said changes.</p> <p>Our snippet on the same can be accessed here</p>

Our articles of corporate interest

Stewardship Responsibilities of Institutional Investors in India: Global perspectives and the Way Ahead

- **Sikha Bansal and Neha Malu**

“Stewardship” literally means the act of protecting the rights of the person to whom it is acting as a steward. In the context of shareholders’ governance and capital markets, the institutional investors play the stewardship role for their clients/ beneficiaries as the funds invested by the institutional investors in the companies actually belong to the large pool of diversified investors who had invested in the institutional investors and hence it will not be wrong to say that the institutional investors are the “stewards” and not the “owners” of the funds invested by them. This article elaborately discusses the role and the responsibilities expected from institutional investors as stewards, in view of several sets of codified rules, in India and other jurisdictions and also emphasises the importance that such function carries with it.

Sustainable finance and GSS+ bonds: State of the Market and Developments

- **Vinod Kothari and Payal Agarwal**

The topic of sustainable finance has become as critical as sustainable development, since finance is the prerequisite for sustainable development. “Finance can play a leading role in allocating investment to sustainable corporates and projects and thus accelerate the transition to a low carbon and more circular economy. Moreover, investors can exert influence on the corporates in which they invest. In this way, long-term investors can steer corporates towards sustainable business practices”. Hence, there is momentum towards organising funds and resources to transition from low energy efficiency to high energy efficiency, or renewable energy devices. In this article, the authors have discussed at length the current state of market and the recent developments around the topic of sustainable finance and GSS+ bonds.

Section 2: Financial Sector Updates

Foreign Investment in India - Rationalisation of reporting in Single Master Form (SMF) on FIRMS Portal

- **Notification can be viewed [here](#)**

Applicability	Amendment	Actionables and timelines, if any
AD-1 Bank	<p>RBI <i>vide</i> notification dated June 07, 2018 had notified Reporting in Single Master Form (SMF). Now the following changes are being implemented with respect to the reporting of foreign investment in SMF on FIRMS portal:</p> <ol style="list-style-type: none"> The forms submitted on the portal will be auto-acknowledged. The AD banks shall verify the same within five working days based on the uploaded documents, as specified. In cases of delayed reporting, the AD banks shall either advise the Late Submission Fee (LSF) to the applicants, which will be computed by the system or advise for compounding of contravention, as the case may be. <p>Brief on the manner of process:</p> <ol style="list-style-type: none"> All forms submitted with the requisite documents will be auto-acknowledged on the FIRMS portal with a time stamp and an auto-generated e-mail will be sent to the applicant. The forms shall be verified by AD banks based on the mandatory documents. System shall identify the delays (if any). Forms filed with a delay less than or equal to three years, the AD banks will approve the same, subject to payment of LSF. LSF shall be computed by the system and an e-mail will be sent to the applicant and the concerned Regional Office (RO) of RBI specifying the amount and the timeline within which it is to be paid to the concerned RO of RBI. Once the LSF amount is realised, the concerned RO will update the status in the FIRMS portal and 	<p>The Company may note the revised filing process although there is no actionable on the Company as the changes are with respect to the process to be followed by AD-1 Bank.</p>

	<p>the updated status will be communicated to the applicant through a system generated e-mail, which can also be viewed in the FIRMS portal.</p> <ol style="list-style-type: none">7. The AD bank will approve the forms filed with a delay greater than three years, subject to compounding of contravention. The applicant may thereafter approach RBI with their application for compounding.8. The remarks of the AD Bank for rejection of forms, if any, will be communicated to the applicant through a system generated e-mail and the same can also be viewed in the FIRMS portal.	
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Our article of financial interest

Securitisation of stressed loans: Opportunities and structures

- **Timothy Lopes**

On 12th November, 2021, RBI issued a circular dealing with 'Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Clarifications', which changed the norms for upgradation of Non-Performing Assets ('NPAs') to standard assets. Owing to this change, the norms for upgrading an NPA account to standard has become more stringent.

Pursuant to the Statement on Developmental and Regulatory Policies dated September 30, 2022, it had been decided to introduce a framework for securitisation of stressed assets, in addition to the ARC route, similar to the framework for securitisation of standard assets. In light of this, the RBI has issued a Discussion Paper on Securitisation of Stressed Assets Framework ('SSAF') dated 25th January, 2023, inviting comments on the same by February 28, 2023. This article gives a global flavour to securitisation of non-performing loans and also addresses the major questions posed by the discussion paper on SSAF.

Section 3: Resolution Sector

MCA discussion paper on changes being considered to the Insolvency and Bankruptcy Code, 2016

- **MCA discussion paper can be viewed [here](#)**

The Ministry of Corporate Affairs issued a Discussion Paper on 18th January, 2023 on changes being considered to the Insolvency and Bankruptcy Code, 2016. Since the very inception of the Insolvency and Bankruptcy Code, 2016 ('IBC'), it has undergone six amendments besides, several amendments in the respective regulations. However, the proposals in this Discussion Paper seem to be the most comprehensive one – covering almost all major aspects of the law. Our comments on the Discussion Paper can be read [here](#).

Section 4: Budget 2023

We have analysed some of the key segments of the Union Budget 2023 on the following topics:

1. Market Linked Debentures
2. MSMEs
3. REITs and InvITs
4. Information repository
5. Infrastructure
6. Bonds
7. Startups
8. Priority sector lending
9. Corporate Law
10. Bond markets
11. Sustainability
12. Financial Sector
13. IFSC

Our write-up on the abovementioned topics can be viewed [here](#)

Section 5: Special Mentions



Mr. Vinod Kothari
Managing Partner

- Session on the topic “Accessing Bond Markets by Large Corporate Borrowers and Exploring New Opportunities for Company Secretaries” on 7th January, 2023. It was organized by ICSI-EIRC.
- Session on the topic “CS as Preferred Professional for Effective Corporate Governance” on 17th January, 2023. It was organized by Chandigarh Chapter of ICSI-NIRC.
- Session on the topic “Insights on the contemporary issues and debates in the Insolvency & Bankruptcy regime” on 18th January, 2023. It was organized by Centre for Corporate Law, NLUO.
- Round-table Discussion- “Proposed changes to IBC” on 25th January, 2023. It was organized by ICSI-IIP.



Ms. Vinita Nair
Senior Partner

- Session on the topic “Debenture Issuance- Recent developments and applicable compliances” on 12th January, 2023. It was organized by ICSI-WIRC.



Ms. Sikha Bansal
Partner

- Session on the topic “Registration of Security Interest and Rights of Secured Creditors under IBC” on 6th January, 2023. It was organized by ICSI-IIP.
- Session on the topic “Analysing the Current Issues in Liquidation Process and Future Reforms” on 19th January, 2023. It was organized by ICSI-IIP.
- Round-table Discussion- “Proposed changes to IBC” on 25th January, 2023. It was organized by ICSI-IIP.



Ms. Barsha Dikshit
Partner

- Session on the topic “Intricacies of Corporate Restructuring” on 14th January, 2023. It was organized by Pune Chapter of WIRC of ICSI with Symbiosis Institute of Management Studies.
- Session on the topic “Analysing the Current Issues in Liquidation Process and Future Reforms” on 19th January, 2023. It was organized by ICSI-IIP.



Ms. Anushka Vohra
Manager

- Session on the topic “CS as Preferred Professional for Effective Corporate Governance” on 17th January, 2023. It was organized by Chandigarh Chapter of ICSI-NIRC.



Neha Malu
Senior Executive

- Session on the topic “Registration of Security Interest and Rights of Secured Creditors under IBC” on 6th January, 2023. It was organized by ICSI-IIP.

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Our Credo

“Focus on capabilities, opportunities follow”