

VINOD KOTHARI & COMPANY

VINOD KOTHARI CONSULTANTS PRIVATE LIMITED

March, 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

To receive our newsletter and regular updates:

[Subscribe for updates](#)

TABLE OF CONTENTS

REGULATORY UPDATES

MCA

SEBI

RBI

NSE/ BSE

WRITE-UPS AND OTHER

PUBLICATIONS

OUR SESSIONS AND OTHER

EVENTS

ABOUT US

Contents

Section 1: Corporate and Securities Law	3
Framework for adoption of cloud services by SEBI Regulated Entities	3
Operational Guidance - Amendment to SEBI (Buy-back of Securities) Regulations, 2018	4
Common and simplified norms for processing investor’s service requests by RTAs	5
Extension provided for compliance with fund raising requirements by large corporate borrowers.....	6
Operational circular for debenture trustees.....	7
FAQs on SEBI (PIT) Regulations, 2015	7
Extension of timelines for updation of nomination details by trading and demat account holders.....	8
Manner of filing financial results as required under regulation 33 of SEBI (LODR) Regulations, 2015	9
Additional affirmations to be included in Annual Secretarial Compliance Report and revision in format.....	9
Filing of announcements in XBRL format on BSE listing center / NEAPS platform.....	10
Revision of annual listing fees.....	11
Introduction of issue summary document – further issues	11
SOP for ensuring compliance with structured digital database under SEBI (PIT) Regulations, 2015.....	12
Our Articles of Corporate Interest	13
Comparative analysis between Social Sector Entities- Section 8 companies and Trusts	13
Pledge of shares by promoter entities	13
FAQs on Purpose and Effect test for RPTs	13
Melt-down of Market-linked debentures, Debt mutual funds get fatal blow	14
Holding Of Promoter Shares Through Investment Companies: Dividend Restrictions Clog Upstreaming And Create Tax Inefficiency	14
Crowdfunding Platforms – Risks And Concerns In The Indian Context	14
Growing Relevance Of Audit Committee And IDs.....	15
Private Sector Banks To Continuously Monitor Major Shareholders	15
The Triumphs And Tribulations Of Being A Promoter In Listed Entities	15
Section 2: Financial Sector Updates	17
Amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005	17
Updates to UNSC’s Sanctions List (Amendments to 102 entries)	18
Change in the date of closure of residual transactions for agency banks	18
Annual Closing of Government Accounts – Transactions of CG/SG– Special Measures for the Current FY (22-23)Er	
Our articles of financial interest	20
RBI Regulation of Investment Companies: Futile, Counter Productive and Counter-Intuitive	20
Base layer NBFCs amenable to NSI or SI regulations?	20
SVB Collapse: Focus On Risk Of Mbs Investing	20
Melt-Down Of Market-Linked Debentures, Debt Mutual Funds Get Fatal Blow.....	21
At1 bonds: death before it is due?	21

Section 3: Special Mentions..... 22

Section 1: Corporate and Securities Law

Framework for adoption of cloud services by SEBI Regulated Entities

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable and timelines, if any	
Stock Brokers, Depository Participants, AMC, MF, Qualified, RTA, KRA, depositories, clearing corporation, stock exchange	<p>SEBI by way of the present circular introduced a principle-based framework for cloud adoption by SEBI Regulated Entities ('RE').</p> <p>Cloud computing refers to the on-demand delivery of computing services (storing, managing and processing data, running applications and other software) over the internet or a network of remote servers, in place of buying and maintenance of physical computer infrastructure.</p> <p>The objective of introduction of this framework is:</p> <ul style="list-style-type: none"> • To identify and address the critical risks associated with cloud computing ensuring safe usage of cloud services in the securities market and • To establish mandatory control measures that REs must implement before adopting cloud services. <p>The Framework shall be applicable on the public, community and hybrid cloud network excluding the private cloud network as it is considered as on premise infrastructure.</p> <p>The highlights of the framework are:</p> <ol style="list-style-type: none"> 1. Governance, risk and compliance; 2. Selection of cloud service providers; 3. Data ownership and data localization; 4. Due-diligence by REs; 5. Security controls; 6. Legal and regulatory obligations, etc. <p>REs already availing cloud services shall ensure compliance with the framework within 12 months from the date of the circular.</p>	<p>Regulated entities to take note of the framework issued by SEBI.</p> <p>New projects undertaken must comply with this framework. If the bank currently avails cloud services, it will be required to make the following reporting in a phased manner:</p>	
		Particulars	Time limit - from issuance of Framework
		Submission of details of the cloud services currently deployed by them (if any)	1 month
		Submitting a roadmap for implementation of the framework	3 months
		Quarterly progress report as per the roadmap submitted	3-12 months
		Compliance with the framework to be reported	After 12 months

Operational Guidance - Amendment to SEBI (Buy-back of Securities) Regulations, 2018

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
All Equity listed entities	<p>SEBI on February 07, 2023, amended the SEBI (Buy-back of Securities) Regulations, 2018 ('Buy-back Regulations'). SEBI by way of the present circular issued operational guidelines on the same. The highlights of the circular are as follows:</p> <ol style="list-style-type: none"> 1. Applicability of the amendments to the Buy-back Regulations: The amendments to the buy-back regulations shall be effective for all buy-backs approved by the board of directors of the company (by way of resolution) on or after March 09, 2023. 2. Restrictions on buy-back through stock exchange: The following restrictions have been set-out for undertaking buy-back through stock exchange route: <ol style="list-style-type: none"> a. Companies cannot purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made. b. Companies cannot place bids in the pre-open market, first thirty minutes and the last thirty minutes of the regular trading session. c. The purchase order price should be within the range of $\pm 1\%$ from the last traded price. <p>Companies as well as their appointed brokers to ensure the compliance with the aforesaid provisions. In case of any instance of non-compliances, stock exchanges will impose appropriate fines and/or other enforcement actions as deem fit.</p> 3. Margin requirements for deposit in Escrow account <ol style="list-style-type: none"> a. The portion of escrow account that is in the form of 'other than cash' will be subject to appropriate haircut, in accordance with the SEBI Master Circular for Stock Exchange and Clearing Corporations dated July 05, 2021, as amended from time to time. <ol style="list-style-type: none"> 1. Merchant Banker to buy-back to ensure that the adequate amount after the applicable haircut is available in escrow account till the completion of all formalities of buy-back. 	Regulated entities to take note of the operational guidance issued. Also, ensure compliance with the same in case of buyback approved on or after March 09, 2023.

Common and simplified norms for processing investor's service requests by RTAs

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
<p>Entities with listed equity shares and their RTAs, depository participants</p>	<p>SEBI has previously prescribed norms for processing investor service requests by RTAs. Pursuant to investors' representations and varied interpretations, changes have been brought in the erstwhile norms as follows-</p> <ol style="list-style-type: none"> 1. It shall be mandatory for all holders of physical securities in listed companies to furnish PAN, nomination, contact details, bank a/c details and specimen signature for their corresponding folio numbers. 2. RTAs to freeze the folios of those holders who have not furnished their PAN, KYC and nomination details up to October 01, 2023 3. Self-attested copies of documents will be accepted by RTAs for processing of service requests, unless otherwise prescribed in the Companies Act, 2013 or rules issued thereunder or in SEBI Regulations or circulars issued thereunder. 4. The security holder/claimant may provide the documents/details to the RTAs for various service requests by way of 'In Person Verification' ('IPV') or post or electronic mode with e-sign, unless otherwise prescribed in the Companies Act, 2013 or the rules issued thereunder or in SEBI Regulations or circulars issued thereunder. 5. Circular provides for standardized, simplified and common norms for processing investor service requests in Annexure C. 6. Investors holding securities in physical mode interface with the RTAs, inter-alia, for registering/updating the KYC details and for processing of various service requests. The service requests along with requisite forms are provided at Annexure –D of the circular 7. For any service request except transmission and request for issuance for duplicate security certificates, indemnity will not be required unless the same is specifically provided in the Companies Act, 2013 or the rules issued thereunder or in SEBI Regulations or circulars issued thereunder. 8. RTAs to update KYC details across all folios of the holder as maintained by them. 9. RTAs to process any of the aforesaid requests from the holder, within timelines as mentioned in the circular no. SEBI/HO/MIRSD/MIRSD_ RTAMB/P/CIR/2021/670 dated November 26, 2021. 	<p>Companies that are SEBI registered depository participants and listed entities to take note of the given circular.</p> <p>Actionable in case of listed entities:</p> <p>Host the complete contact details (viz. postal address, phone numbers and e-mail address etc.) of their RTAs on their websites and that of the stock exchanges on which they are company listed.</p> <p>Intimate to the security holders directly about the incomplete KYC details provided, on an annual basis within 6 months from the end of FY and for the FY 2022-23, before May 31, 2023.</p> <p>Submit a report to SEBI by May 31, 2023, on the steps taken by them towards sensitizing their security holders regarding mandatory furnishing of PAN, KYC and nomination details.</p>

	<p>10. RTAs to provide their complete contact details (viz. postal address, phone numbers and e-mail address etc.) on their respective websites. The same shall also be provided on the websites of the listed companies and the stock exchanges on which such company is listed.</p> <p>11. While processing service requests and related complaints, the RTAs to raise all objections, if any, in one instance only. Additional information may be sought only in case of any deficiency / discrepancy in the documents / details furnished by the security holder.</p> <p>12. RTAs to have an electronic interface for processing queries and complaints (i.e. through emails) in addition to responding to them through hard copies.</p> <p>13. RTAs to disseminate the requirements to be complied by holders of physical securities on their websites.</p> <p>14. Listed entities must intimate the security holders directly about the incomplete KYC details provided, on an annual basis within 6 months from the end of FY. However, for the FY 2022-23, this intimation shall be given before May 31, 2023.</p> <p>15. RTAs shall provide a certificate of compliance from a practicing Company Secretary certifying the compliance of this circular by April 16, 2023 as per the given format to Division of Policy & Inspection, SEBI.</p> <p>RTAs and Listed entities to submit a report to SEBI by May 31, 2023, on the steps taken by them towards sensitizing their security holders regarding mandatory furnishing of PAN, KYC and nomination details.</p>	
--	--	--

Extension provided for compliance with fund raising requirements by large corporate borrowers

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable and timelines, if any
Entities with listed equity shares/ listed NCS	<p>Clause 2.2(c) of Chapter XII of NCS Operational Circular, dated April 13, 2022 made it mandatory for large corporates to raise minimum 25% of their incremental borrowings in a financial year through issuance of debt securities, which had to be met over a contiguous block of two years from FY 2021-22 onwards</p> <p>SEBI has by way of the present circular, extended the period for compliance with this requirement to a contiguous block of three years is reckoned from FY 2021-22 onwards.</p>	Large Corporate Borrowers, shall have an extension of one more financial year to comply with the incremental borrowing requirements.

Operational circular for debenture trustees

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Entities with debt listed securities	<p>Debenture Trustees ('DTs') are regulated by</p> <p>A)SEBI (Debenture Trustees) Regulations, 1993 ('DT Regulations') and</p> <p>b)Various SEBI circulars laying down procedural, disclosure and other operational requirements.</p> <p>SEBI has by way of the present operational circular, consolidated the various applicable circulars on this subject. This circular supersedes all circulars as listed in Annex-1 of the circular.</p>	<p>Debt listed entities shall take note of the amendment.</p> <p>Our FAQs on the topic can be viewed here</p>

FAQs on SEBI (PIT) Regulations, 2015

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
All listed entities	<p>In order to bring clarity on the concepts of Structural Digital Database ('SDD'), Contra trade and other related aspects, SEBI by way of this circular has notified revised, consolidated and comprehensive FAQs on SEBI (PIT) Regulations, 2015. Highlights of the amended FAQs are:</p> <p>1. ESOPs and Contra trade</p> <p>a. Exercise of ESOPs and subsequent sale of such ESOP shares will not be contra trade.</p> <p>b. Sale of ESOP shares within 6 months of buy trade in open market) will be contra trade.</p> <p>c. Open market – transactions other than acquisition/ disposal of shares undertaken through corporate action.</p> <p>2. Computation of 6 months in case of corporate actions:</p> <p>a. Actions where DP voluntarily participates e.g., rights issue, FPO, OFS, buy-back: within 6 months of such acquisition/ disposal.</p> <p>b. Actions where DP does not voluntarily participate, for instance:</p> <ul style="list-style-type: none"> • Merger/ demerger – 6 months to be computed from the date of acquiring securities of entities which were merged/ demerged • If unlisted co. gets merged with listed co.- 6 months to be computed from the first transaction in the entity post merger • Bonus and split - 6 months to be computed from the date of acquiring original securities on which bonus/ split shares were received. 	<p>Listed entities shall take note of the FAQs issued.</p> <p>Our snippet on the said subject can be accessed here –</p> <p>https://vinodkothari.com/2023/04/sebis-pit-faqs/</p> <p>Our FAQs on contra trade restrictions will be released shortly.</p>

	<p>3. Other clarifications on contra trade:</p> <p>a. Trading in rights entitlements is an open market trade. If DP acquires shares and sells the rights entitlements within 6 months, it will be contra trade.</p> <p>b. DP holding securities in different capacities e.g, personal capacity, capacity of trustees and executor of will - contra trade restrictions will apply to all the shares under the PAN, irrespective of capacities.</p> <p>4. Maintaining SDD on cloud server:</p> <p>a. Earlier, SEBI considered database/ servers provided by third party vendors as outsourced. SEs in their FAQs on SDD dated 28th Oct, 2022, clarified that external software can be used but should be maintained internally.</p> <p>b. SEBI has clarified that the Board of Directors and Compliance Officer will be responsible for the confidentiality, integrity and security of data in SDD maintained on cloud or other method.</p> <p>5. Other clarifications</p> <p>a. Disclosures in case of transfer of shares from one demat to another:</p> <ul style="list-style-type: none"> • Not required since beneficial ownership remains same. • If one of the demat A/c has more than single ownership, disclosures will be required. <p>If an entity participated as prospective bidder for listed co. under CIRP, and had access to UPSI during bidding process, it cannot trade in the securities of such company.</p>	
--	--	--

Extension of timelines for updation of nomination details by trading and demat account holders

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Stock Brokers, Depository Participants	SEBI, vide circular dated July 23, 2021 had mandated providing choice of nomination details, for investors opening new trading and or demat account on or after October 01, 2021 and for all existing eligible trading and demat account holders latest by March 31, 2022 failing which the trading accounts shall be frozen for trading and demat account shall be frozen for debits. Thereafter, SEBI circular dated February 24, 2022 extended the timeline to March 31, 2023	Stock Brokers / Depository Participants shall send communication on fortnightly basis by way of m-mail and SMS to all such accountholders whose nomination details are not captured, providing guidance and encouraging them to update their 'choice of nomination'.
	By way of present circular, SEBI has granted an extension with regard to registration of nomination and freezing of	

accounts till September 30, 2023 instead of March 31, 2023.
--

Manner of filing financial results as required under regulation 33 of SEBI (LODR) Regulations, 2015

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Equity listed entities	<p>Pursuant to regulation 33 of the Listing Regulations, listed entities are required to file with the exchange the outcome of board meetings held to consider and approve financial results.</p> <p>In this regard, the stock exchanges have directed that the PDF of outcome of board meeting held to consider and approve financial results must only include financial results, auditor's report and other statements as prescribed under regulation 33, part A of schedule IV of the Listing Regulation and related circulars.</p> <p>In case the company is desirous of filing any other information, the same may be filed as a separate announcement.</p>	Listed entities to take note of the directions issued by the stock exchange and ensure compliance with the same.

Additional affirmations to be included in Annual Secretarial Compliance Report and revision in format

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Equity listed entities and HVDLEs	<p>As per regulation 24A (2) of the SEBI (LODR) Regulations, 2015 ('Listing Regulations'), the Annual Secretarial Compliance Report ('ASCR') to be obtained and filled annually by a listed entity from a PCS confirming the compliances of all SEBI regulations, circulars and guidelines.</p> <p>The present circular, prescribes the following additional affirmations that the PCS shall be required to include in the ASCR of listed entities-</p> <ol style="list-style-type: none"> 1. Compliance by the listed entity with the Auditing Standards issued by the ICSI- CSAS-1 and CSAS-3; 2. Ensuring that all applicable policies under SEBI Regulations have been approved by the Board, reviewed and timely updated; 3. Maintenance of a functional website by the listed entity and timely disclosure of information as prescribed; 4. None of the Directors are disqualified under section 164 of the Companies Act, 2013; 5. Identification of material subsidiaries and compliance 	Listed entities to take note of the additional affirmations to be provided by the PCS in the ASCR and ensure that the ASCR in the revised format is submitted to the stock exchanges, within 60 days from end of the financial year.

	<p>with disclosure requirements thereof;</p> <ol style="list-style-type: none"> 6. The maintenance and preservation of documents by the listed entity in accordance with SEBI Regulations and disposal of records as per ‘Policy of Preservation of Documents’ and ‘Archival Policy’ prescribed under the Listing Regulations; 7. The listed entity has conducted performance evaluation in accordance with SEBI Regulations; 8. The listed entity has obtained prior approval of audit committee for all related party transactions, including their subsequent approval, ratification or rejection, if any; 9. The listed entity has provided all the required disclosures under regulation 30 alongwith schedule III of the Listing Regulations within the time limits prescribed thereunder; 10. Compliance with regulation 3(5) and 3 (6) of the SEBI (Prohibition of Insider Trading) Regulations, 2015; 11. To take note of any non-compliance of any regulation, circular or guidance note as prescribed by SEBI. <p>The format of the ASCR has been revised accordingly.</p>	
--	---	--

Filing of announcements in XBRL format on BSE listing center / NEAPS platform

- Circular can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Equity listed entities	<p>The Stock Exchanges (‘SEs’) have notified that the below-mentioned corporate announcements under reg. 30 of the LODR regulations will be available for XBRL filing w.e.f. April 01, 2023:</p> <ol style="list-style-type: none"> 1. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc. 2. Agreements (viz. shareholder agreements, joint venture agreements, family settlement agreement (to the extent that it impacts management and control of the listed entity), agreements/treaties/contracts with media companies which are binding and not in normal course of business, revisions or amendments and termination(s) thereof. 3. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter. 4. One time settlement with a bank 	Listed entities to ensure that with effect from April 01, 2023 all filings for the corporate announcements as mentioned herein are made in both PDF and XBRL mode as specified by the SEs.

	<p>5. Resolution plan/ Restructuring in relation to loans/borrowings from banks/financial institutions (Inter-Creditors Agreement).</p> <p>6. Corporate Debt Restructuring.</p> <p>7. Notices of Shareholders Meeting</p> <p>At the initial stage, the PDF filings will be considered by the SEs as compliance under reg. 30 of the LODR regulations. All listed entities would be required to also submit the filings in XBRL mode within 24 hours of submission of the said PDF filing. At a later stage (date to be informed separately) SEs will shift to only XBRL submission.</p> <p>XBRL utility for the above is available in XBRL section of the Listing Centre.</p>	
--	---	--

Revision of annual listing fees

- Notification can be viewed [here](#)

Applicability	Amendment	Actionable, if any
All entities listed on BSE	<p>BSE has by way of the present circular has notified the revised Annual Listing Fees to be paid by the listed entities for listing of its securities on the Exchange.</p> <ul style="list-style-type: none"> • The Listing fee structure based on the paid-up share capital and market capitalization is brought in line with the nationwide stock exchange by way of this revision. 	The listed companies on BSE shall take note of the revision in the annual listing fees and timely payment of the same.

Introduction of issue summary document – further issues

- Notification can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Entities with listed equity shares	<p>SEBI vide circular dated February 15, 2023 has introduced the Issue Summary Document ('ISD') in order to make available relevant information/ data points to the SEs and Depositories in a structured manner.</p> <p>In furtherance of the same, NSE by way of present circular has introduced ISD, in XBRL format, for the following issues.</p> <ol style="list-style-type: none"> 1. Preferential issue; 2. Qualified institutions placement; 3. Rights issue; 4. Issue of american depository receipts; 5. Issue of global depository receipts and 6. Issue of foreign currency convertible bonds. <p>The XBRL utility for facilitating the filing of ISD is given in</p>	The Listed entity shall take note of the circular and ensure compliance.

	<p>Annexure A of the circular and the manner of filing the details with NSE are specified in Annexure B.</p> <p>Submission of details as per the ISD is mandatory for the following applications being submitted on or after April 03, 2023:</p> <ol style="list-style-type: none"> 1. Applications obtaining in-principle approval under reg 28(1) of SEBI (LODR) regulations, 2015 <ol style="list-style-type: none"> a. Applications obtaining in-principle listing approval post the allotment of securities b. Applications obtaining in-principle listing approval post the allotment of securities 	
--	---	--

SOP for ensuring compliance with structured digital database under SEBI (PIT) Regulations, 2015

- Notification can be viewed [here](#)

Applicability	Amendment	Actionable, if any
All listed entities	<p>Regulation 3(5) and 3(6) of SEBI (PIT) Regulations, 2015 ('PIT Regulations') require listed entities to maintain a Structured Digital Database ('SDD').</p> <p>Further the SEs vide notice dated October 28, 2022 required listed entities to submit a SDD compliance certificate on a quarterly basis.</p> <p>By way of the present Circular, the SEs have directed that the listed entities to whom the provisions of regulation 24A of the LODR Regulations on secretarial audit and secretarial compliance report, are not applicable, will be required to continue to submit SDD compliance certificate on quarterly basis, within 21 days from end of each quarter.</p> <p>The listing path for the same is as follows:</p> <ol style="list-style-type: none"> a. For BSE: BSE Listing Centre > Listing Compliance > Compliance Module > Structured Digital Database (SDD) Compliance Certificate <p>For NSE: mail to be sent to sdd_pit@nse.co.in.</p>	Listed entities to take note of the circular and ensure compliance with the same if applicable.

Our Articles of Corporate Interest

Comparative analysis between Social Sector Entities- Section 8 companies and Trusts

- Team Corplaw

Social sector entities can be of various types like a section 8 company, trust, societies, etc. The common idea behind these entities is the promotion of social welfare activities. Even with the common objective in place, there are various differentiating features between them.

This write up is a comparative analysis between two types of social sector entities – Section 8 company and a trust.

Pledge of shares by promoter entities

- Anushka Vohra, Manager

It is common for promoter / promoter companies (HoldCo) to raise funds by way of pledging their shares held in operating companies (OpCo). This is known as loan against securities (LAS). LAS enables borrowers to raise funds from banks / NBFCs by keeping shares, mutual funds or life insurance policies as collateral. There are specific regulations issued by RBI with respect to LAS. As on March 6, 2023, 239 companies have reported promoter pledge on BSE. Pledging of shares by promoter companies held in operating companies does not raise a red flag per-se, however one has to know,

- (i) the percentage of shareholding pledged by promoters / promoter companies viz-a-viz the paid up share capital held, that is to say the unencumbered shares,
- (ii) leverage at the group level;
- (iii) Impact of default.

In this article, the author tries to highlight the concerns arising from pledging of shares held in Op Co by HoldCo, the disclosure provisions currently prevailing w.r.t. the pledged shares, and the need for additional disclosures.

FAQs on Purpose and Effect test for RPTs

- Team Vinod Kothari and Company

SEBI's definition of RPT, effective 1st April, 2023, will change and include all transactions done with any party, with the purpose and effect [P&E] of benefiting a related party. In this regard, the listed entities are faced with puzzling questions such as:

- a) While a company may have a list of 'related parties', how does it identify such unrelated parties with whom there might be transactions fitting under P&E test?
- b) What should be the right approach to identifying transactions engineered with the purpose, and having the effect of benefiting related parties?
- c) How does the audit committee or the compliance officer satisfy itself/herself that transactions were not done with the P&E of benefiting related parties?

What kind of controls may be needed to identify such transactions 'at source'?

Our Comprehensive FAQs on the topic of Purpose and Effect covering the answers to the above questions have been published [here](#).

In addition, our PPT on the same can be accessed [here](#).

Melt-down of Market-linked debentures, Debt mutual funds get fatal blow

- Vinod Kothari, Managing Partner and Aanchal Kaur Nagpal, Manager

As expected, the Finance Bill, 2023 was passed on March 24, 2023 by Lok Sabha within minutes. With a huge amount of changes including several newly inserted provisions, the so-called amendments were actually a Bill in itself, minus any “notes on clauses” or “memorandum of delegated legislation”, and given the amending document that refers to page numbers and line numbers of the Bill, it is a hard to read document, more so to realize the long term impact it has for the capital markets.

For capital markets, the amended Bill confirms that there will be no grandfathering for market-linked debentures (MLDs), as it specifically provides for a grandfathering only for debt mutual funds. Thus, the future of an approximately Rs. 20 lakh crore non-equity-oriented mutual funds in the country, going forward, will be questionable.

Let us dive deeper into the changes brought about and their impact on issuers by way of this article.

Holding of promoter shares through Investment Companies: Dividend restrictions clog upstreaming and create tax inefficiency

- Team Corplaw

Most of the promoter holdings in India, in companies large and small, are funneled through group investment companies. These companies, often with a complicated network of cross holdings, were created historically with multiple motives – from lowering of capital gains on holdings by not offering the market value of the listed operating entity, to camouflaging beneficial holdings or defying the definition of “promoter group”, etc etc. In short, there have existed multiple reasons for networked holdings through layers of investment companies, with natural persons or groups of natural persons (HUFs, family trusts, etc) sitting somewhere at the end of the spectrum. Over time, these practices have become increasingly unviable, and tough.

Among the compliance costs of maintaining investment companies is the burden of being classified as an NBFC. While it may be counterintuitive to regard a pure investment company as a financial sector entity (as also discussed in our write-up, RBI Regulation of Investment Companies: Futile, counter-productive and counter-intuitive), the fact is that the RBI gives an NBFC classification based on the preponderance of financial income and financial assets in the books of the entity.

We can understand in detail the Clog on pass-through of dividends and the unavoidable consequence of NBFC classification by way of this article.

Crowdfunding Platforms – Risks and Concerns In The Indian Context

- Timothy Lopes, Manager

Crowdfunding as a concept has been in the limelight for quite some time now. Globally several crowdfunding platforms exist. These crowdfunding platforms essentially allow almost anybody to raise funds for any cause, ideas or business ventures. Interestingly, the first online crowdfunding platform was launched back in 2001. However, with the advent of online crowdfunding platforms also

comes the inherent risks associated with it.

Through this article, the author aims to highlight the inherent risks associated with crowdfunding along with the legal permissibility and restraints in India

Growing Relevance of Audit Committee and IDs

- Pammy Jaiswal, Partner

In the era where the regulators are constantly bringing amendments to secure the stake and protect the interest of shareholders (including the stakeholders), it becomes imperative to understand the role, function and relevance of one such board committee being the 'Audit Committee' (hereinafter referred to as the 'AC') which has been given the responsibility to oversee and monitor several crucial matters after the board of directors.

These functions are in the nature to ensure transparency and accountability (pillars of corporate governance) to a large extent. It has been seen in several cases in the past that lapses on the part of this committee often leads to major scams and corporate scandals. In this paper, the author has tried to explain the idea and intent of the law makers behind introducing the concept of the AC, its expected role and function in ensuring and boosting corporate governance given the terms of reference suggested under applicable laws in India with a brief global comparison.

The entire Paper as was published by SSRN can be read [here](#).

Private Sector Banks to continuously monitor major shareholders

- Vinita Nair, Senior Partner

Given their systemic significance, ensuring that ownership of banks neither gets concentrated, nor falls into wrong hands, has always been important. Therefore, acquisition of shares or voting rights is strictly regulated by Section 12B of Banking Regulation Act, 1949, supplemented by RBI Directions issued from time to time. RBI has issued Directions dated January 16, 2023 which require banks to ensure revisiting the existing F&P requirement and have a board approved policy, establish mechanism for continuous monitoring, seeking information from shareholders, place requisite information before its Board...and others.

This article discusses the possible pain points likely to be faced by the banks, other requirements under the new regime and actionable arising therefrom.

The Triumphs and Tribulations Of Being A Promoter In Listed Entities

- Team Corplaw

There are several other implications of being a promoter or promoter group entity, transactions by such entities with the listed entity are mandatorily treated as related party transactions, public disclosures on sale of shares. There are several sections of the Companies Act, 2013 ("Act") as well, which impose liabilities, including criminal liabilities, on promoters. Some of these provisions are section 7 (imposing criminal liability for incorporation related offenses), of the Act, if it is found that the company has been incorporated by furnishing any false information or representation or by suppression of any material information, the promoters would be held liable for action under section 447.

Securities regulator, and our own SEBI too, has been fastening several obligations of listed entities on

the promoters, including the recent 'Consultation paper on strengthening corporate governance at listed entities by empowering shareholders' proposal to block the personal shareholdings of the promoters for continued lapses by the listed entity.

This article focuses on who is a promoter/promoter group entity (PGE), what are the implications of being either, how does one get out of the classification, having been into either, both in case of listed and unlisted companies.

Section 2: Financial Sector Updates

Amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005

- Notification can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Banks, financial institutions, SEBI intermediaries registered with SEBI / PFRDA	<p>Ministry of Finance has notified amendments in Prevention of Money-laundering (Maintenance of Records) Rules, 2005. The following are the highlights of the amendments:</p> <ol style="list-style-type: none"> 1. Insertion of new definitions: <ol style="list-style-type: none"> a. <u>Definition of ‘group’:</u> ‘group’ shall have the same meaning assigned to it in clause (e) of sub-section (9) of section 286 of the Income-Tax Act,1961. <i>As per the IT Act: ‘group’ includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes —</i> <ol style="list-style-type: none"> i. <i>is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or</i> ii. <i>would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident.</i> b. <u>Definition of ‘Politically Exposed Person’ (‘PEPs’):</u> PEPs are individuals who have been entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials. 2. Lowering of threshold for identification of Beneficial Owner: Prior to the amendments, the term ‘beneficial owner’ meant with the entitlement of more than 25% of shares or capital or profit of the company. The threshold has now been to reduced 10% to bring the provisions in line with the Companies Act, 2013 and Income-tax Act, 1961. 3. Due diligence documentation requirements: Until now the same were limited to obtaining the basic 	<p>Our detailed analysis on the impact of the amendment is available here - https://vinodkothari.com/2023/03/pml-act-and-rules-recent-changes-may-have-new-compliance-requirements/</p>

	<p>KYCs of clients such as registration certificates, PAN copies etc. It now includes the submission of details such as names of persons holding senior management positions, names of partners, details of the registered office address and principal place of business.</p> <p>4. Registration of NPO client on DARPAN: Reporting entities are now required to register details of clients that are Not for Profit Organizations ('NPOs') on the DARPAN portal of NITI Aayog. Such registration records are required to be maintained for a period of five years after:</p> <ol style="list-style-type: none"> the business relationship between a client and a reporting entity has ended or the account has been closed, whichever is later. <p>5. For Cryptocurrencies: Virtual digital assets trade has been brought under PMLA: The amended rules require crypto exchanges and intermediaries dealing in virtual assets to maintain the KYCs of their clients and report suspicious transactions to financial intelligence units.</p>	
--	---	--

Updates to UNSC's Sanctions List (Amendments to 102 entries)

- Notification can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Regulated Entities (i.e., NBFCs, PPI issuers, banks, AIFI, payment system participants)	<p>Pursuant to the KYC Master Directions, Regulated Entities are required to ensure that in terms of Section 51A of the Unlawful Activities (Prevention) (UAPA) Act, 1967 and amendments thereto, they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (UNSC).</p> <p>Amendments have been brought about in 102 entries on its ISIL (Da'esh) and Al Qaida sanctions list of individuals and entities subject to the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2610 (2021).</p>	Regulated entities should ensure that its list of such suspected individuals/entities is updated as per the amended entries.

Change in the date of closure of residual transactions for agency banks

- Notification can be viewed [here](#)

Applicability	Amendment	Actionable, if any
Regulated entities	RBI vide circular on Reporting and Accounting of Central Government transactions of March 2022 dated February 24, 2023 provided that in case of agency banks, the date of closure of residual transactions for the month of March 2023 has been fixed as April 10, 2023.	Regulated entities to take note of the same.

	<p>RBI has by way of the present circular, advised receiving branches to adopt special arrangements such as courier service for passing on challans/scrolls etc. for the purpose of ensuring the closure of Government accounts by the said date. Further, procedure for reporting transactions of March 2023 by nodal/focal point branches has also been prescribed.</p>	
--	---	--

Our articles of financial interest

RBI Regulation of Investment Companies: Futile, counter productive and counter-intuitive

- Vinod Kothari, Managing Partner

The RBI has launched a major base-layer study of “base-layer NBFCs”, whereby audit firms will be surveying these NBFCs. Apparently, the audit firms will visit their offices to see if there is a physical office (which means a name plate outside the office), whether that physical office houses other offices too (an anachronistic objective in the age of co-working spaces), track the directors and the beneficial owners of such companies. The RBI’s definition of “beneficial owners” is remarkably different from the very same concept under section 90 of the Companies Act, which, after huge rounds of discussion, settled on certain rules for determination of such beneficial owners, and given the fact that the Companies Act is already tracking beneficial owners, it is interesting to note that the RBI would do its own enquiry into such beneficial owners.

We can understand in detail about the RBI Regulation of Investment Companies by way of this article.

Base layer NBFCs amenable to NSI or SI regulations?

- Rhea Shah, Executive

Prior to the implementation of the SBR Framework, NBFCs were classified into Systemically Important (SI) and Non-Systemically Important (NSI) on the basis of the overall risk involved in their operations and the economic importance of the operations that they undertake. NBFCs with asset size upto 500 crores were classified as NSI, and those with Rs. 500 crores and above, were classified as SI and are respectively governed by Master Direction – ‘NSI Directions’ and Master Direction – ‘SI Directions’.

Besides, there are certain other directions [e.g., Master Direction – Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016[3]], which are applicable to NBFC-SIs and not NBFC-NSI. Even the return filing requirements differ for NBFC-SIs and NBFC-NSIs. However, the SBR Framework, with its implementation on October 22, 2021[4], has introduced a layered approach wherein NBFCs are classified as Base Layer (BL), Middle Layer (ML), Upper Layer (UL), on the basis of their asset size, risk perception, size of operations and nature of business.

The article aims to further clarify the applicability of the Directions in regard to the change in the framework and classification of NBFCs.

SVB Collapse: Focus on risk of MBS Investing

- Vinod Kothari, Managing Partner and Timothy Lopes, Manager

The recent collapse of SVB is being called the 'largest bank failure since the global financial crisis. Part of the blame is being placed on the investment decisions made by SVB in long term MBS. The Financial Times talks about how crazy it was that SVB did not hedge its Held-to-Maturity (‘HTM’) portfolio which comprised of very long term agency MBS maturing in 10 years or more. However, are MBS to blame in this case? MBS are associated with an inherent risk of prepayment, as well as, negative convexity.

This article delves deeper into analysing these inherent risks related to Mortgage-backed Investments.

Melt-Down of Market-Linked Debentures, Debt Mutual Funds get fatal blow

- Vinod Kothari, Managing Partner and Aanchal Kaur Nagpal, Manager

As expected, the Finance Bill, 2023 was passed on March 24, 2023 by Lok Sabha within minutes. With a huge amount of changes including several newly inserted provisions, the so-called amendments were actually a Bill in itself, minus any “notes on clauses” or “memorandum of delegated legislation”, and given the amending document that refers to page numbers and line numbers of the Bill, it is a hard to read document, more so to realize the long term impact it has for the capital markets.

For capital markets, the amended Bill confirms that there will be no grandfathering for market-linked debentures (MLDs), as it specifically provides for a grandfathering only for debt mutual funds. Thus, the future of an approximately Rs. 20 lakh crore non-equity-oriented mutual funds in the country, going forward, will be questionable.

Let us dive deeper into the changes brought about and their impact on issuers by way of this article.

AT1 bonds: Death before it is due?

- Abhirup Ghosh, Partner

Additional Tier 1 bonds which are known by many names – AT1 bonds or Contingently Convertible Bonds (CoCo Bonds) or Perpetual Bonds, are capital structure instruments. Every liability instrument in corporate finance is essentially a capital structure instrument, that is, it is somewhere in the order of priority for its loss absorbency feature, but some of the instruments are high in the order of priorities, and therefore, their placing in the capital structure is commonly not a matter of concern. However, AT1 bonds are placed just after common equity, and therefore, if equity has suffered a meltdown, AT1 bonds will be next to be hit.

This article examines the life and death of AT1 bonds.

Section 3: Special Mentions



Mr. Vinod Kothari
Managing Partner

- Session on the topic “Recent amendments in corporate laws “on March 1, 2023 at ICSI-EIRC.



Ms. Vinita Nair
Senior Partner

- CLDP Session on the topic “Insider Trading Regulations” on March 14, 2023. ICSI- CCGRT organized it.
- Publication of article on [“Private Sector Banks To Continuously Monitor Major Shareholders”](#) by Taxmann



Ms. Barsha Dikshit
Partner

- EDP Session on the topic “Basic and Legal Drafting” on March 10, 2023. ICSI- EIRC organized it.



Ms. Aisha Begam Ansari
Manager

- CLDP Session on the topic “Insider Trading Regulations” on 27 February 2023. It was organized by ICSI- CCGRT



**Timothy Lopes,
Manager**

- Session on “Background & Applicability of Regulatory Framework for NBFCs” at ICSI – WIRC on March 15, 2023



**Ms. Aanchal Kaur Nagpal
Manager**

- Session on “Background & Applicability of Regulatory Framework for NBFCs” at ICSI – WIRC on March 15, 2023



Ms. Surbhi Jaiswal

- Session on the topic “Recent amendments in corporate laws” on March 01, 2023 at ICSI-EIRC.

Contact Us

Kolkata

1006-1009, 224,
Krishna Building,
AJC Bose Road,
Kolkata – 700017
Phone: 033-2281 3742/
4001 0157
Email:
info@vinodkothari.com

Delhi

Nukleus, 501 & 501A,
Salcon Rasvilas,
District Centre, Saket, New
Delhi - 110017,
New Delhi -110024
Phone: 011- 4131 5340
Email:
delhi@vinodkothari.com

Mumbai

403-406, 175,
Shreyas Chambers,
D. N. Road, Fort,
Mumbai 400001
Phone: 022- 22614021/
62370959
Email:
bombay@vinodkothari.com

Bengaluru

Rent A Desk
4, Union Street, Infantry Rd,
Shivaji Nagar
Bengaluru- 560001
Phone: 033 2281 3742
Email:
info@vinodkothari.com

Reach us on social media –



Our Credo

“Focus on capabilities, opportunities follow”