



- THE LAWSPECT -

REGULATORY UPDATES

August, 2022 edition

WHAT WE'LL DISCUSS - PREFACE

We exist in a dynamic and ever-changing business environment. The uncertainty is not limited to the commercial aspects of the business, but the legal and regulatory aspects as well. The legal environment around businesses has been constantly changing as regulators are keen on introducing a well-balanced framework. Thus, as working professionals, it becomes very important that we have a knowledge of updated laws and regulations. In an attempt to achieve the same, we have come up with this newsletter.

The newsletter covers the relevant regulatory updates in the financial and commercial law domain, for the month of August, 2022.

The Securities and Exchange Board of India was established as a statutory body in the year 1992 and the provisions of the SEBI Act, 1992 came into force on January 30, 1992.

The SEBI is the capital markets regulator and is trusted with the responsibility of healthy development of the capital markets and investor protection. SEBI primarily acts as the watchdog of the capital market.

SEBI regularly notifies amendments and circulars in order to effectively discharge its responsibilities. Thus, it is imperative to analyse the prescriptions by the SEBI.

SECURITIES AND EXCHANGE BOARD OF INDIA



भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India

Framework for restricting trading by Designated Persons by freezing PAN at security level

Date of notification: August 5, 2022 Effective Date: September 30, 2022

BACKGROUND

The compliance officer of a listed entity is required to close the trading window, to restrict the designated persons from executing trades in the stocks of the company, after they had access to unpublished price-sensitive information.

ABOUT THE UPDATE

The SEBI vide the above circular introduced the framework for restricting trading by designated persons at the depository level i.e w.e.f September 30, 2022, the trading window shall be closed by the depositories, in addition to the individual entity level. The highlights of the framework are as follows:

- The requirements shall be applicable to the declaration of financial results of the listed company that is or was part of benchmark indices i.e. NIFTY 50 and SENSEX from the effective date;
- The restriction shall be applicable on on-market transactions, off-market transfers and creation of pledge in equity shares and equity derivatives contracts (i.e. Futures and Options) of such listed companies;
- The system formulated by the designated depositories shall auto populate the details (PAN and Name) of the designated persons, which shall be subsequently confirmed by the company alongwith ISIN of the securities and start, end date of trading window closure period;

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Framework for restricting trading by Designated Persons by freezing PAN at security level

Date of notification: August 5, 2022 Effective Date: September 30, 2022

ABOUT THE UPDATE

- The company is required to select/de-select PAN details at least two days prior to closure of trading window;
- The designated depository shall provide relevant data to stock exchanges and other depository by next trading day and on daily basis for any updation in DPs during trading window closure period;
- From the day of closure of the window, the designated persons shall not be able to trade in scrips of the company, as restricted by the depositories and stock exchange;
- Any addition/exemption of/to DP during trading window closure period shall be effected within 2 trading days of intimation by the company;

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IMPLICATIONS:

Regulation of the trading window by a central system will ensure that the window is closed in a timely manner, and will decrease the scope of defaults on closure of such window, by the compliance officers.

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

Date of notification: August 4, 2022

Effective Date: Not Applicable

BACKGROUND

ABOUT THE UPDATE

Debenture Trustees (DT) are appointed to safeguard the interest of debentureholders. Their role include due diligence of the issuer, ensuring that the security is adequate to meet the financial obligations of the issuer at all times.

The SEBI, vide this circular, has introduced enhanced framework for DT w.r.t security creation in case of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities or commercial paper. The highlights for the same are as follows:

- **Manner of change in security/creation of additional security/conversion of unsecured to secured in case of already listed non-convertible debt securities:**
 - The agreement between DT and issuer shall contain minimum clauses as specified by the SEBI;
 - The DT shall carry out the initial due-diligence of the proposed security charge to be created. Upon such due diligence, the DT shall give a no-objection certificate to the issuer, for proceeding with the security structure.
 - The issuer shall create the necessary charge in favour of the DT and shall get the same registered with the relevant government authorities within 30 days of creation of the charge;

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

Date of notification: August 4, 2022

Effective Date: Not Applicable

ABOUT THE UPDATE

- **Manner of change in security/creation of additional security/conversion of unsecured to secured in case of already listed non-convertible debt securities (continued):**
 - Upon creation and registration of the charge, the DT and issuer shall enter into a supplemental/amended trust deed;
 - The issuer company shall, thereafter, along with the supplemental trust deed shall submit other prescribed documents to depository and stock exchanges;
 - Upon submission of the requisite documents, the depository shall issue a new ISIN to the debt securities.
- **Encumbrance on securities for issuance of listed debt securities:**
 - Encumbrance for securing non-convertible debt securities shall be by way of the depository system only and in accordance with the laws applicable to the depositories system;
- **Due Diligence Certificate in case of Shelf Prospectus/Memorandum**
 - In case security details have not been finalized at the time of the filing of a draft shelf prospectus/ placement memorandum filed by the issuer, then the DT shall undertake due diligence as under:

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

Date of notification: August 4, 2022

Effective Date: Not Applicable

ABOUT THE UPDATE

- **Due Diligence Certificate in case of Shelf Prospectus/Memorandum (Continued)**

- The DT may furnish a due diligence certificate validating all the security clauses, other than the ones related to security creation;
- When the tranche memorandum is issued and the security clauses have been finalised, the DT shall issue a NOC, validating all the clauses.

- **Empanelment of External Agencies by Debenture Trustee(s)**

The DT shall:

- Formulate a policy on mitigating conflict of interest with the issuer;
- It shall also adopt empanelment criteria for appointment of external agencies for due diligence and continuous monitoring of the issuer.
- The DT shall disclose the same on their website.

Guidelines for overseas investment by Alternative Investment Funds / Venture Capital Funds

Date of notification: August 17, 2022 Effective Date: August 17, 2022

BACKGROUND

The regulatory framework for AIFs permit overseas investment by AIFs, subject to prescribed conditions. The SEBI, vide this circular, has prescribed the conditions for the same.

ABOUT THE UPDATE

The SEBI, vide this circular notified the guidelines for AIFs and VCFs making overseas investment. The highlights of the framework are as follows:

- The concerned AIF/VCF shall make an application to the RBI for allocation of overseas investment limits;
- The investee company need not be mandatorily a company with an Indian connection. However, the investee company should be a company incorporated in a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to the bilateral Memorandum of Understanding with SEBI;
- The company should not be incorporated in a country negatively highlighted by the FATF;
- The AIF/VCF may reinvest the sale proceeds gathered from liquidating existing overseas investments of the AIF/VCF;

Guidelines for overseas investment by Alternative Investment Funds / Venture Capital Funds

Date of notification: August 17, 2022 Effective Date: August 17, 2022

ABOUT THE UPDATE

- AIF/VCFs shall transfer/sell the investment in overseas investee company only to the entities eligible to make overseas investments, as per the extant guidelines issued under the FEMA, 1999.
- The AIF/VCF shall make the following disclosures to the SEBI:
 - Sale/disinvestment: Within 3 days of sale/disinvestment in the specified format, by mailing it to the SEBI;
 - Sale/disinvestment till date: Within 30 of the circular in the specified format, by mailing it to the SEBI;

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IMPLICATIONS:

The conditions , upto an extent, liberalise the overseas investment regime for AIFs. The AIFs will be able to invest in more attractive and return producing avenues.

The Reserve Bank of India Act, 1934 provides the statutory basis of the functioning of the Bank, which commenced operations on April 1, 1935.

The RBI is India's central bank and one of the financial sector regulator in the Indian economy.

The RBI is the primarily responsible for regulating the banking sector, and the non-banking financial sector.

The RBI actively notifies prescriptions in accordance with the dynamic legal environment.

In the upcoming segment, we discuss about the regulatory prescriptions by the RBI.

RESERVE BANK OF INDIA



External Commercial Borrowings (ECB) Policy – Liberalisation Measures

Date of notification: August 1, 2022

Effective Date: Not Applicable

BACKGROUND

The RBI, vide notification dated July 06, 2022 indicated need for a liquid and resilient forex market, amidst clouding recession in the global economy. Accordingly, the RBI introduced measures which will facilitate suitable modifications to the market to make it more resilient and stable.

ABOUT THE UPDATE

The RBI, through this notification, brings out relaxations in the regulatory framework for ECBs (till 31st December, 2022):

- The automatic route limit from USD 750 million or equivalent to USD 1.5 billion or equivalent;
- Increase the all-in-cost ceiling for ECBs, by 100 bps for eligible borrowers of investment grade rating from Indian Credit Rating Agencies.

IMPLICATIONS:

The increase in ECB limits will promote inflow of foreign exchange in the Indian markets. Further, the increase in all in cost ceiling will ensure that ECBs issued by Indian entities is seen as a attractive investment option by foreign investors and will thus, encourage participation from foreign investors.

Integrated Ombudsman Scheme for credit information companies

Date of notification: August 5, 2022 Effective Date: September 1, 2022

BACKGROUND

The RBI, vide notification dated November 12, 2021 notified the Reserve Bank - Integrated Ombudsman Scheme, 2021 (Integrated Ombudsman Scheme) which integrated the ombudsman scheme for banks, NBFCs and system participants to introduce a uniform ombudsman scheme across the financial sector. The scheme is applicable to regulated entities, as defined under Para 3(j) of the Scheme.

ABOUT THE UPDATE

The RBI, vide this notification included credit information companies in the purview of “regulated entities”. As credit information companies are now included in the ambit of “regulated entities”, their grievance redressal system shall be governed by the provisions in the Integrated Ombudsman Scheme. The updated version of the scheme may be accessed here.

IMPLICATIONS:

Credit Information Companies will now, be required to adopt an enhanced grievance redressal mechanism in line with the Integrated Ombudsman Scheme. Credit Information Companies play an integral role in the financial market and are essentially customer facing. A well developed grievance redressal mechanism will ensure a healthy financial market system.

Recommendations of the Working group on Digital Lending - Implementation

Date of notification: August 10, 2022 Effective Date: Annex I - August 10

BACKGROUND

ABOUT THE UPDATE

Digital lending has gained traction in the recent years. The increase in digital lending has brought about innovative instruments and arrangements. The RBI being the financial sector regulator, takes steps to regulate the grey area arising out of regulatory arbitrage.

The RBI, vide this press release indicated its regulatory stance on digital lending in India by factoring in recommendations of the working group on 'digital lending including lending through online platforms and mobile apps', formed by it on January 13, 2021. The highlights of the press release are as follows:

Applicability

- The RBI intends to regulate the residuary category of lenders i.e institutions that undertake lending activities but are not governed by any regulation or regulator.
- Prescriptions in annex I to the notification requires immediate implementation by the Regulated Entities (REs) and their respective Lending Service Providers (LSP). Prescriptions in annex II are to be examined further prior to their implementation and prescriptions in annex III are to be considered by the Government of India.

Recommendations of the Working group on Digital Lending - Implementation

Date of notification: August 10, 2022 Effective Date: Annex I - August 10

ABOUT THE UPDATE

- **Customer Protection and Conduct Issues:**

- The funds shall flow from the bank account of the borrower to the bank account of the balance sheet lender and vice versa. In short, the LSP are not permitted to act as a party in the flow of funds in a lending transaction. There are three exceptions to this norm, notably in the following situations:
 - Disbursals made under a regulatory mandate;
 - Transactions between two REs under a co-lending transactions;
 - Disbursals made for a specific end-use, in case the disbursement is made in accounts of the ultimate beneficiary.
- All the service charges and fees due to the LSP shall be paid by the lender to the LSP i.e the LSP is not permitted to charge any fees directly from the borrower.
- The lenders are required to disclose upfront the all inclusive cost of the loan to the borrower.
- The LSPs shall have a grievance redressal officer, who shall redress complaints against the digital lending services of the LSP as well as digital lending agents engaged by them, within 30 days of receipt of the complaint. The contact details of such grievance redressal officer shall be disclosed on the website of the LSP and DLAs as well as the key fact statement given to the borrowers.

Recommendations of the Working group on Digital Lending - Implementation

Date of notification: August 10, 2022 Effective Date: Annex I - August 10

ABOUT THE UPDATE

- Key fact statement is to be provided prior to execution of contract. The KFS should be in a digital, standardised format and should be formulated for all digital lending products offered by the RE. The KFS is an important document as the lenders cannot charge any fees other than that stated in the KFS. The particulars of the KFS have been incorporated in the Notification.
- The credit limits w.r.t any borrower is to be increased only after his explicit consent;
- The REs are required to publish a list of LSPs and DLAs engaged by them along with the activities performed by each of them;
- REs to capture economic details of the borrowers prior to extending loans , in order to ensure efficient credit checks.
- The REs are required to give pre-payment option to the borrowers during a cooling-off/look up period. They are not permitted to charge penalty on pre-payment of loans during that period i.e in case the loan is prepaid during the cooling-off period, the REs can take only the principal amount and proportionate APRs.
- The LSPs of the REs are required to prominently display the key product features on the boarding stage.

Recommendations of the Working group on Digital Lending - Implementation

Date of notification: August 10, 2022 Effective Date: Annex I - August 10

ABOUT THE UPDATE

- The REs should partner with the LSPs after proper due diligence of the latter and ensuring they have the capability to execute the services. The REs shall primarily remain responsible for the security of information of the borrowers. Further, the REs should undertake periodic evaluation of the LSPs.

Technology & Data Requirements

- DLAs should have an explicit consent of the borrower prior to collection of any information from them. They should abstain from accessing their phone resources and only one-time access should be taken for microphone, camera etc. for fulfilling the KYC obligations. Further, the borrower should be able to remove personal information from the mobile application of the DLAs, if so required.
- The DLAs should have a stringent privacy policy, in terms with the Press Release and the same should be disclosed publicly. Alongwith, the DLAs should have clearly specified policy for storing data and the same should be published on its website. Storage of biometric data has been specifically prohibited by the Notification.
- The REs should ensure that the technology used is in accordance with the standards prescribed.
- The data servers for storing data should be located in India.

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Recommendations of the Working group on Digital Lending - Implementation

Date of notification: August 10, 2022 Effective Date: Annex I - August 10

ABOUT THE UPDATE

Regulatory Framework

- Lending undertaken through DLAs should be mandatorily be reported to the CICs. The reporting shall include credit products involving deferred payments;
- LSPs associated with deferred payment products offered by the REs should comply with the outsourcing guidelines.

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IMPLICATIONS:

The digital lending guidelines seek to address issues on customer protection, which arise on account of unfair lending practices and lack of transparency. The guidelines are customer centric, and particularly aim at enhanced customer awareness regarding the lending-borrowing transaction s/he is entering into.

The digital lending guidelines will, not restrict but regulate the digital lending transactions to ensure that they are undertaken in a fair manner, which will lead to healthy development of the financial markets.

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

Date of notification: August 12, 2022

Effective Date: Not Applicable

ABOUT THE UPDATE

The RBI periodically, notifies the guidelines for the conduct of recovery agents . The RBI has reiterated the guidelines through this notification.

The RBI vide this notification clarified that in case a financial institution/regulated entity enters into an outsourcing arrangement with any entity, the responsibility of the outsourcing partners ultimately is on the financial institutions/regulated entity.

Accordingly, the following parameters to be kept in mind while outsourcing its operations, in addition to the current guidelines:

- Recovery agents should not harass, either verbal or physical the customers in the course of collection of dues;
- The regulated entity should ensure that the recovery agents do not make threatening or anonymous calls. The calls should not be made before 8 a.m and post 7 p.m;
- The recovery should not make any false representations etc.

The notification applies to all commercial banks, AFIs, NBFCs , co-operative banks and asset reconstruction companies. Micro-finance institutions are specifically excluded from the purview of this notification.

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

Date of notification: August 22, 2022

Effective Date: August 22, 2022

ABOUT THE UPDATE

The ODI framework is bifurcated into two segments, debt instruments and non-debt instruments.

While the RBI regulates the former (by the **Foreign Exchange Management Overseas Investment) Directions, 2022 ('ODI Directions')** and the **Foreign Exchange Management (Overseas Investment) Regulations, 2022 ('ODI Regulations')**, the latter is governed by the Central Government (by **Foreign Exchange Management (Overseas Investment) Rules, 2022 ('ODI Rules')**).

The RBI, pursuant to notification of ODI Directions and ODI Regulations, seeks to liberalise overseas investment by Indian entities in foreign entities thereby facilitating ease of doing business.

LET'S CONNECT

Hope you find the newsletter enriching and worthy of your time.

We welcome constructive feedback, reach us out at our contacts.

CONTACT DETAILS

EMAIL ADDRESS

thelawspect@gmail.com