



- THE LAWSPECT -

REGULATORY UPDATES

September, 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 September, 2022.

The Department of Company Affairs was first constituted in 1950s. It remained either a Department or a part of Ministry of Law, Ministry of Finance or Ministry of Commerce till 2004. It became a Ministry in 2004 and acquired its present name in May 2007.

The MCA is the primary regulator of commercial laws, like the Companies Act, 2013 and the Competition Act, 2002. The Ministry is also posed with the responsibility of administration of Partnership Act, 1932, the Companies (Donations to National Funds) Act, 1951 and Societies Registration Act, 1980.

The Ministry from time to time, notifies operational aspects under the Companies Act and other commercial laws . Thus, it becomes imperative to analyse the notifications by the MCA.

MINISTRY OF CORPORATE AFFAIRS



Amendment in the definition of small companies

Date of notification: September 15

Effective Date: September 15

BACKGROUND

Prior to the amendment, any company (other than a public company) having a paid up capital of Rs. 2 crores and turnover of Rs. 20 crores was classified as a small company.

ABOUT THE UPDATE

However, pursuant to this amendment, the limits have been revised and any company (other than a public company) having a paid up capital of Rs. 4 crores and turnover of Rs. 40 crores is classified as a small company.

IMPLICATIONS:

The revised thresholds will make a greater number of companies eligible to be classified as small companies. Accordingly, the companies qualifying as such will be eligible to avail the exemptions provided to small companies by the Companies Act, 2013 such as exemptions from preparing cash flow statement, exemptions from holding 4 board meetings in a year (and shall be required to hold only 2 board meetings) etc.

Amendment in CSR Norms

Date of notification: September 20

Effective Date: September 20

BACKGROUND

Pursuant to Section 135 of the Companies Act, 2013, companies satisfying the prescribed threshold in the immediately preceding financial year were required to constitute a CSR committee and comply with other provisions of CSR framework. However, Rule 3 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 ('CSR Rules') required compliance of the CSR framework by companies who met the prescribed criteria in any financial year, unless they ceased to meet the prescribed criteria, for a period of three consecutive years from such cessation.

ABOUT THE UPDATE

The condition of minimum three years has now, been done away with. However, companies having unspent CSR account are required to comply with the CSR framework, irrespective of their threshold limits.

IMPLICATIONS:

The CSR Rules and the Companies Act have been aligned.

Amendment in CSR Norms

Date of notification: September 20

Effective Date: September 20

BACKGROUND

Rule 4 of the CSR Rules provides for entities which may be engaged by companies to implement their CSR initiatives. Prior to this amendment, Section 8 companies, registered public trust or a registered society registered under section 12A and were approved under 80 G of the Income Tax Act, 1961 were permitted to function as implementing agencies.

ABOUT THE UPDATE

Post the amendment, Section 8 companies, registered public trust or a registered society exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 and approved under 80 G of the Income Tax Act, are permitted to act as implementing agencies.

IMPLICATIONS:

A wider number of entities will be eligible to participate in the implementation of CSR projects by companies.

Amendment in CSR Norms

Date of notification: September 20

Effective Date: September 20

BACKGROUND

Rule 8 of the CSR Rules provide for impact assessment of the CSR activities of a company, in case it meets the specified criteria. Prior to the CSR Amendment, a company was permitted to book the expenditure on impact assessment upto Rs. 50 lakhs or 5% of the total CSR expenditure for that financial year, whichever was the lower of the two.

ABOUT THE UPDATE

However, pursuant to the CSR Amendment, the impact assessment expenditure may be upto Rs. 50 lakhs or 2% of the total CSR expenditure, whichever is higher.

IMPLICATIONS:

The companies required to undertake impact assessment will be able to book the expenditure on impact assessment as per the revised limits.

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 Social Stock Exchange

Date of notification: September 19, 2022

ABOUT THE UPDATE

The SEBI, vide the aforesaid circular, notified the regulatory framework for social stock exchanges (SSE) in India. The highlights of the framework are as follows:

- Criteria to be satisfied by an NPO for registration on the SSE has been specified. The eligibility criteria includes:
 - The entity should be registered as a charitable trust under the relevant state act or under Societies Registration Act, 1860 or Indian Trusts Act, 1882. Or, it may be incorporated as a Section 8 company under the Companies Act, 2013. The Registration certificate should be valid at least for next 12 months at the time of seeking registration with SSE.
 - The NPO should be in existence for a minimum period of 3 years;
 - The annual spending in the past financial year should be at least Rs. 50 lakhs;
 - The funding received in the past year should be at least Rs. 10 lakhs;
- NPOs intending to raise funds by way of zero coupon zero principal instruments should comply with minimum initial disclosure requirements specified by the SEBI and the social stock exchange.
- The NPOs should make annual disclosures, as prescribed by the SEBI, **within 60 days from the end of the Financial Year;**
- All social enterprises will have to provide duly audited Annual Impact Report (AIR) to Social Stock Exchange **within 90 days from the end of financial year.** The AIR shall capture the qualitative and quantitative aspects of the social impact generated by the entity and where applicable, the impact that is generated by the project or solution for which funds have been raised on SSE;
- Listed NPOs shall submit statement of utilisation of funds to SSE, as mandated under Regulation 91F of the LODR Regulations, **within 45 days from the end of quarter.**

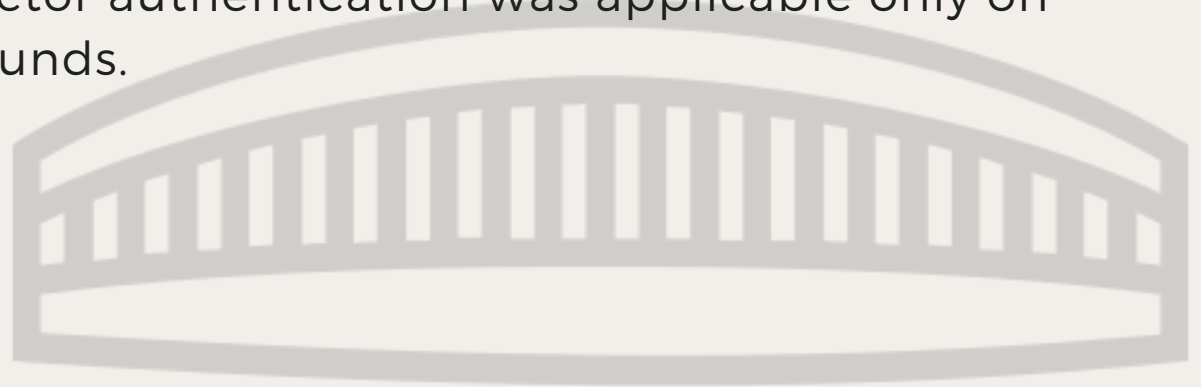
Two factor authentication for transactions in units of Mutual Funds

Date of notification: Sept. 30, 2022

Effective Date: April 1, 2023

ABOUT THE UPDATE

The SEBI, vide the above notification, introduced two factor authentication for subscription of units of mutual funds w.e.f April 1, 2023. Earlier, the two factor authentication was applicable only on redemption of mutual funds.



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



Guidelines on Digital Lending

Date of notification: Sept. 2, 2022

Effective Date: Immediate/ Nov. 30

ABOUT THE UPDATE

The RBI vide this notification, notified the guidelines for digital lending ('Digital Lending Guidelines'), carried out by commercial banks, co-operative banks and NBFCs. The highlights of the guidelines are as follows:

- The Digital Lending Guidelines are applicable for every new loan disbursed, to existing customers or new customers, from the date of notification of the Guidelines. For existing loans, the Regulated Entities are required to comply with the Digital Lending Guidelines by November 30, 2022.
- The Guidelines defined various terms such as annual percentage rate, cooling off period, digital lending, digital lending apps and lending service providers.
- The Guidelines are similar to the prescriptions notified by it vide notification dated 10th August, 2022. Hence, please refer to the August Edition of the newsletter for an insight into the RBI's prescriptions on digital lending.

Following are some notable introductions in the Guidelines released in September:

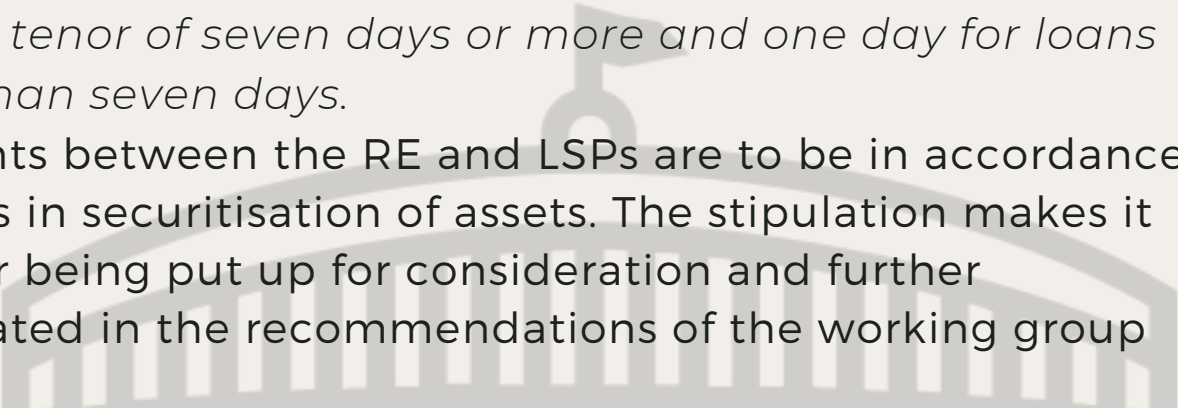
- Penal charges shall be levied only outstanding amount and the rate of such charges shall be disclosed in the key fact statement.
- Format of key fact statement introduced (Annex II of the Guidelines);

Guidelines on Digital Lending

Date of notification: Sept. 2, 2022

Effective Date: Immediate/ Nov. 30

ABOUT THE UPDATE

- The Guidelines have prescribed minimum tenure of cooling period/look up period under which, the borrower may opt to not continue with the loan. Para 8 states that the period so determined *shall not be less than three days for loans having tenor of seven days or more and one day for loans having tenor of less than seven days.*
 - The FLDC arrangements between the RE and LSPs are to be in accordance with Master Directions in securitisation of assets. The stipulation makes it to the Guidelines after being put up for consideration and further examination, as indicated in the recommendations of the working group on digital lending.
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Notification of NBFCs in Upper Layer

Date of notification: 30th September,

Effective Date: Immediate

BACKGROUND

The Reserve Bank had issued the Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs (the framework) on October 22, 2021. The framework categorises NBFCs in Base Layer (NBFC-BL), Middle Layer (NBFC-ML), Upper Layer (NBFC-UL) and Top Layer (NBFC-TL).

ABOUT THE UPDATE

The RBI, *vide* notification dated 30th September, 2022 released a list of entities which shall be classified as NBFCs in the Upper Layer (NBFC - UL). As per the SBR Framework, NBFCs identified by the RBI as per the scoring methodology prescribed in the SBR framework and top 10 NBFCs (classified as such according to the asset size of the NBFC) shall be classified as NBFC -UL. The list may be accessed [here](#).

IMPLICATIONS:

the stipulated NBFCs are required to formulate an implementation plan, for putting in place compliance framework in accordance with the prescriptions by the SBR framework. They are thereafter, required to implement the same within a maximum 24 months from the notification.

LET'S CONNECT

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

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

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