



- THE LAWSPECT -

REGULATORY UPDATES

June, 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 June, 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



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

Date of notification: June 1, 2022

Effective Date: June 1, 2022

BACKGROUND

As per Rule 8 of Companies (Appointment and Qualification of Directors) Rules, in case a company is appointing a director, it is required to submit the appointing directors' consent to act as such, in form DIR 12 to the MCA.

Further, Rule 10 of the Rules specify the manner of application for Director Identification Number (DIN) by a prospective director.

ABOUT THE UPDATE

Pursuant to this amendment, the company shall be required to submit a security clearance from the Ministry of Home Affairs along with the aforesaid consent in case the appointing director is a national of a country which shares land border with India.

Further, a person who is such a national, intends to apply for a DIN, shall submit a copy of security clearance obtained from the Ministry alongwith the application for allotment of DIN.

IMPLICATIONS:

Enhanced documentation requirements in case the director is from a country sharing a land border with India. Directorship in a company gives great authority to a director, thus, the Amendments aim at curbing control of companies in India to residents of neighbouring countries.

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

Date of notification: June 10, 2022

Effective Date: June 10, 2022

BACKGROUND

An independent director included in the MCA's database of independent directors has to clear the proficiency self-assessment test within two years from his inclusion in the data bank. In case the independent director did not do the needful, his name was permanently struck off from the database and was then required to apply for his inclusion afresh.

ABOUT THE UPDATE

Pursuant to this Amendment, the independent directors are given an opportunity to restore their name in the database, without making a fresh application altogether. Defaulting independent directors now, on cancellation of their name, may apply to the Ministry for restoration of their name alongwith fee of Rs. 1000. In such a case, they are temporarily moved to a separate category and are required to pass the proficiency self-assessment test within one year of restoration in order to move into the general category.

IMPLICATIONS:

The Amendment facilitates restoration of names in the independent director database by giving a benefit of doubt to independent directors, thereby saving time and expenditure of the concerned directors.

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

Extension of facility for conducting annual meeting and other meetings of unitholders of REITs and InvITs through Video Conferencing or through Other Audio-Visual means

Date of notification: June 3, 2022

Effective Date: Not Applicable

BACKGROUND

The SEBI, has permitted REITs and InvITs to conduct meetings through video conference or through audio-visual means.

ABOUT THE UPDATE

The timeline permitting the same has now been extended to December 31, 2022 from the earlier timeline of June 30, 2022.

IMPLICATIONS:

REITs and InvITs will now, be eligible to hold the meetings through video conference and other audio visual means till December 31, 2022.

Introduction of Unified Payments Interface mechanism for Infrastructure Investment Trusts

Date of notification: June 24, 2022

Effective Date: August 1, 2022

BACKGROUND

Currently, investors investing in REITs and InVITs use the 'application supported by blocked amount' facility, by submitting their bid-cum-application to the schedule commercial banks or any registered intermediary.

ABOUT THE UPDATE

The SEBI through this circular, has mandated the provision of UPI as a mode of payment for public issue of units of InVITs opening on or after August 1, 2022. The investors, can now block funds through the UPI facility, for an application amount upto Rs. 5 lakhs.

IMPLICATIONS:

The introduction of UPI as a mode of payment will facilitate faster and efficient payment system, in the IPO process.

Reduction of timelines for listing of units of privately placed Infrastructure Investment Trust

Date of notification: June 24, 2022

Effective Date: August 1, 2022

BACKGROUND

Regulation 16(8) of the SEBI (Infrastructure Investment Trusts) Regulations, 2015 provides for a timeline of 30 days for listing of units of an InVIT issued by it by way of private placement.

ABOUT THE UPDATE

The aforesaid timeline of 30 days, w.e.f August 1, 2022, has been reduced to a period of 6 trading days from the date of closure of the issue.

IMPLICATIONS:

The reduction of timeline for listing of units indicates efficient trading and listing mechanisms.

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



Provisioning for Standard assets by Non-Banking Financial Company – Upper Layer

Date of notification: June 6, 2022

Effective Date: October 1, 2022

BACKGROUND

The RBI, vide notification dated October 22, 2021 notified the Scale Based Regulatory Framework for NBFCs. Pursuant to the new framework, the NBFC-UL were required to hold a differential provision toward the assets.

ABOUT THE UPDATE

The RBI, vide this notification, prescribed the differential asset provisioning norms for NBFC-UL. It has been clarified that NBFCs with net worth of Rs. 250 crore or above that are required to comply with Indian Accounting Standards for the preparation of their financial statements, shall continue to hold impairment allowances as required under Ind AS, subject to the prudential floor.

IMPLICATIONS:

NBFCs in the Upper Layer shall be guided by the aforesaid prescriptions of the RBI, w.e.f October 1, 2022.

Extension of timeline for implementation of certain provisions of Master Direction – Credit Card and Debit Card – Issuance and Conduct Directions, 2022

Date of notification: June 21, 2022

Effective Date: October 1, 2022

BACKGROUND

The RBI, vide notification dated April 21, 2022 notified the Master Direction – Credit Card and Debit Card – Issuance and Conduct Directions, 2022 regulating credit, debit and co-branded cards. The Directions were effective from July 1, 2022.

ABOUT THE UPDATE

The RBI, through this notification, deferred the implementation of some provisions of the Directions to October 1, 2022. The deferred provisions are as follows:

- Paragraph 6(a)(vi) - Card issuers will be required to seek an OTP confirmation for activation of credit card in case the card is not activated by the customer within 30 days of the issue. In case consent is not given, the account of the customer shall be closed within 7 working days from seeking such confirmation.
- Paragraph 6(b)(v) - Card-issuers shall ensure that the credit limit as sanctioned and advised to the cardholder is not breached at any point in time without seeking explicit consent from the cardholder.
- Paragraph 9(b)(ii) - The unpaid charges/levies/taxes for charging/ compounding of interest should not be capitalised.

IMPLICATIONS:

Deferred application of specified provisions

Provisioning Requirement for Investment in Security Receipts

Date of notification: June 28, 2022

Effective Date: Not Applicable

BACKGROUND

Para 77 of the Master Directions -Transfer of Loan Exposures (MD-TLE) provides for valuation of security receipts purchased by lenders/transferors of the underlying loans.

ABOUT THE UPDATE

The RBI vide this notification introduced norms for valuation of investments in security receipts which are outstanding on the date of introduction of the MD-TLE. For this purpose, the difference between:

- The current carrying value of the security receipts and;
- The valuation of security receipts in accordance with Para 77 of the MD-TLE, on the next reporting date after the notification of the MD -TLE;

Is to be provided for over a period of five years (commencing from the financial year 2021-2022).

It has also been specified that the provision for each year shall not be less than one-fifth of the difference arrived at hereinabove. The security receipts issued post the notification of MD-TLE shall be governed by provisions of Para 77 of the MD- TLE from their initial valuation.

IMPLICATIONS:

The notification clarifies the valuation norms for security receipts issued prior to notification of MD-TLE.

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