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SEBI's Amendments to the Rumour Verification Framework – No Smoke without a Fire?

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Main stories

Welcome to this issue of ***Insight***.

In the lead article, we have covered the amendments to the Securities and Exchange Board of India (**SEBI**) (Listing Obligations and Disclosure Requirements) Regulations, 2015, and the guidance note issued by the stock exchanges/ industry associations, in relation to the requirement imposed on specified listed entities to verify certain market rumours reported in mainstream media.

Apart from the above, we have also captured key notifications and orders issued by the Ministry of Corporate Affairs (**MCA**) in relation to the Companies Act, 2013 (**Act**), the circulars and notifications issued by the Reserve Bank of India (**RBI**) and SEBI for the period under review.

Any feedback and suggestions would be valuable in our pursuit to constantly improve Insight and ensure its continued success among readers. Please feel free to send them to cam.publications@cyrilshroff.com.

Regards,

CYRIL SHROFF

Managing Partner
Cyril Amarchand Mangaldas

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SEBI's Amendments to the Rumour Verification Framework – No Smoke without a Fire

Background

In June 2023, the Securities and Exchange Board of India introduced a proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**), requiring specified listed entities to verify certain market rumours reported in the mainstream media. Our earlier blog analysing the rumour verification requirement *(published in July 2023)* is available here - *Market Rumours: SEBI's New Prescription and India Inc's Dilemma | India Corporate Law (cyrilamarchandblogs.com)*. The rumour verification requirement for the top 100 listed entities (based on market capitalisation) was originally set to take effect from October 1, 2023 and that for the top 250 listed entities from April 1, 2024. However, this timeline was extended twice because of the ongoing finalization of industry standards *(formulated by the Industry Standards Forum, in consultation with SEBI)* for compliance and the need for certain amendments to the LODR Regulations to implement the aforesaid provision.

Two recent developments have established a framework for implementing rumour verification requirements under Regulation 30(11), effective **June 1, 2024** for the top 100 listed companies based on market capitalisation, and t **December 1, 2024** for the top 250 listed companies based on market capitalisation (**Covered Listed Entities**). These developments are:

i) SEBI's notification of significant amendments to the rumour verification requirement under Regulation 30(11) on May 17, 2024 (**Rumour Verification Amendments**); and

ii) Issuance of an "Industry Standards Note" *(available at – https://ficci.in/Market- Rumours-Amendment-SEBI-Guidance-Note.pdf)* (**Guidance Note**) by the stock exchanges and the three industry associations *(FICCI, CII and ASSOCHAM)* prepared in consultation with SEBI, which sets out standards for implementing the Rumour Verification Amendments through guidance and illustrations, pursuant to the SEBI Circular dated May 21, 2024 .

The Rumour Verification Amendments, read with the Guidance Note, have sought to address some of the interpretational challenges and implementation difficulties. These include the materiality criteria that would trigger rumour verification, the impact that price volatility (post rumour verification) would have on deal viability, and clarifying the regulator's expectations in respect of compliance with this provision in various situations.

We are pleased to provide you with an overview of the Rumour Verification Amendments and the Guidance Note, along with key considerations for Covered Listed Entities.

1. The Rumour Verification Amendments

Initially, the proviso to Regulation 30(11) required Covered Listed Entities to verify market rumours reported in the mainstream media within 24 hours, that are (i) material; (ii) impending; and (iii) specific.

SEBI has now, by way of the Rumour Verification Amendments, amended this provision to provide the following:

a) ***Material Price Movement being the trigger for the rumour verification requirement:*** Previously, the test for determining "materiality" was based on whether the event/ information referred in the rumour satisfied general materiality criteria under Regulation 30. Now the verification of the rumour will be required only if there is a "material price movement" in the scrip, as per the price movement framework notified by the stock exchanges on May 21, 2024 *(available at the following link - Circulars, Exchange Communication - NSE India)* (**Material Price Movement Framework**).

   - The Material Price Movement Framework sets out a percentage-based threshold for evaluating the extent of movement in the stock price, and benchmarks this with the movement in the index (i.e. NIFTY 50 and SENSEX) on the same trading day. This parameter is met only when the share price movement equals or exceeds the percentage-based threshold.
   - By linking the trigger for rumour verification with the Material Price Movement Parameters, these amendments have introduced a more objective standard for triggering the rumour verification requirement.

b) ***Price Protection for transactions upon rumour confirmation:*** If a rumour is confirmed within 24 hours of the trigger of material price movement of a listed entity, then the Rumour Verification Amendments allows exclusion of rumour's effect on the stock price while calculating the transaction price, in accordance with the

mechanism set out in SEBI's circular dated May 21, 2024 *(available at - SEBI | Framework for considering unaffected price for transactions upon confirmation of market rumour)* (**Price Protection Circular**).

- SEBI has also notified amendments to the Takeover Regulations, ICDR Regulations and Buyback Regulations to provide such price protection upon rumour verification for open offers, preferential issue of securities, qualified institutions placement and buyback.

- The Price Protection Circular provides the mechanism for calculation of the adjusted VWAP, *(calculated by excluding the WAP variation in the daily VWAP in the look back period from the day of the material price movement until the next trading day after rumour confirmation)* which will apply for the determination of the transaction price under the relevant SEBI regulations. The Price Protection Circular provides a detailed illustration *(in the context of a proposed qualified institutions placement)* for calculation of the adjusted daily VWAP, which is set out below:

Trading Day (A)	Daily WAP (B)	Adjusted Daily WAP (C)	No. of Shares traded (D)	Remarks (E)
20-Jul	1,045.06	1,045.06	47,004	
21-Jul	1,053.26	1,053.26	24,750	
24-Jul	1,047.07	1,047.07	37,262	T-10
25-Jul	1,054.90	1,054.90	15,000	
26-Jul	1,060.76	1,060.76	44,519	
27-Jul	1,164.47	1,060.76	7,60,853	Date of material price movement
28-Jul	1,173.45	1,060.76	2,38,320	Date of rumour confirmation
31-Jul	1,178.90	1,060.76	88,450	Next trading day after rumour confirmation
01-Aug	1,173.16	1,055.02	68,613	
02-Aug	1,165.71	1,047.57	41,954	
03-Aug	1,163.36	1,045.23	56,267	
04-Aug	1,212.36	1,094.23	5,99,197	T-1
07-Aug	1,208.33	1,090.20	1,08,762	Relevant Date (T) – Date Board approval to preferential issue to QIBs

- In case the price variation due to confirmation of the rumour, hits the price band limit on the next trading day post rumour confirmation, the price variation in the subsequent trading days shall be included for adjustment till such day the price does not hit the band limit.

- The same principles (as set out in the above illustration) for considering unaffected price will apply to other kinds of M&A transactions, for which pricing norms specified by SEBI or the stock exchanges are applicable.

- The Price Protection Circular makes this framework applicable to the deal stages set out in the Guidance Note. The Guidance Note distinguishes between ***preparatory stages*** *(where disclosure of the name of the target/ counter-party is not required)* and ***advanced stages*** of an M&A deal *(where disclosure of the name of the target/ counter-party is required)*. While preparatory stages include (i) signing of an NDA/ non-binding term sheet; (ii) due diligence; (iii) engagement of advisors; and (iv) constitution of a Board sub-committee etc, the Guidance Note sets out 4 scenarios which will be considered as advanced stages of an M&A deal:

  a) Multi-party bid process;

  b) Selection of the final bidder and agreement on material deal terms;

  c) Signing of a binding term-sheet; and

  d) When all material commercial terms have been agreed and the deal is taken for final Board approval.

- Price protection will be available if the rumour is confirmed at any of these four advanced stages. If the rumour is confirmed at the multi-party bid stage, price protection will be available for **180 days** *(from the rumour confirmation date)*. In case of the rumour getting confirmed at any of the other three advanced stages *(set out at (b), (c) and (d) above)*, it will be available for **60 days** *(from the rumour confirmation date)*.

  Price protection for the deal is not restricted to the shares of the target, but will also apply to the shares of other listed companies involved in the deal. For instance, if a rumour about Company A (a top 100 listed entity) proposing to acquire Company B (listed target) by way of a share swap and thereafter merge Company B into Company A is confirmed, then price protection will be available:

  - to the shares of Company A, while calculating the floor price for the preferential allotment by Company A (i.e. for the share swap);

- to the shares of Company B, while calculating the open offer price; and
- in case of merger, both Company A and Company B shares would get protection when their fair values get determined under the market price method of valuation.

c) ***Timeline for rumour Verification:*** Previously, the 24-hour window for rumour verification began from the reporting of the rumor. This has now been amended to provide that the 24-hour period will begin from the trigger of material price movement.

d) ***Obligation on promoters/ directors/ key managerial personnel (KMP)/ senior management:*** It is now obligatory for the promoters/ directors/ KMP/ senior management of the listed entity to respond to queries / provide explanations sought by the listed entity regarding compliance with the Rumour Verification Amendments. This is likely to become relevant in scenarios where the listed company is not a party to the rumoured event. The listed entity is also required to disseminate the response received from such individual(s) to the stock exchanges.

2. Key Aspects of the Guidance Note

i) *How to determine whether a news source falls within the purview of 'mainstream media'?*

The Guidance Note sets out a specific list of news sources that fall within the purview of *"mainstream media"*, which must be tracked for rumour verification. With respect to international news sources, the Board of every Covered Listed Entity is required to set out the following in its materiality policy:

- A list of foreign jurisdictions (if any) where the company has material business operations; and
- A list of business news sources from these jurisdictions - that the company shall track for the purposes of rumor verification.
- Concerns relating to the absence of a clear definition of "digital media" have also been addressed by:
  - Providing a specific list of digital news sources that will be covered within the purview of *mainstream media*;
  - Clarifying that the news article carrying the rumour should not be behind a paywall; and
  - Excluding news aggregators and social media from the purview of *mainstream media*.

ii) *How to assess whether a rumour is specific enough to be responded to?*

The Guidance Note also sets out illustrations that would help companies distinguish between a ***specific*** rumour *(that would have to be verified if there is a material price movement and other rumour verification parameters are met)* and a ***general*** rumour *(that does not require verification by the company)*. While the illustrations will serve as useful guidance in comparable scenarios, there is still some subjectivity since this cannot be exhaustive.

iii) *Does a rumour, reported post issuance of a pre-intimation notice for a Board meeting, require verification before the Board meeting concludes?*

It has been clarified that if a market rumour is reported about an event for which a pre-intimation notice of a Board meeting has been issued under Regulation 29(1) of the LODR Regulations, the market rumour need not be confirmed prior to the conclusion of the Board meeting.

iv) *Disclosure Guidance for Conduct-related events*

Additionally, the Guidance Note offers disclosure guidance for rumours concerning events/ information related to conduct of company officials. It does this by covering illustrative scenarios such as whistle-blower complaints, internal reviews, operational/ financial matters investigations, potential changes in key managerial personnel, as well as health condition of the MD/CEO. It also clarifies that similar principles will apply to rumours related to other non-deal scenarios.

3. What you need to do?/ How to go about the rumour verification exercise?

a) Track relevant publications/ websites as set out in the Guidance Note for any leakage concerning the relevant Covered Listed Entity;

b) If there is a leakage, check whether it results in a "material price movement";

c) If so, assess whether the rumour is "specific" in terms of the regulatory requirements, including the Guidance Note, which provides illustrations to determine whether a rumour is specific, along with draft illustrative responses for rumours in certain deal and non-deal scenarios;

d) If so, prepare a rumour confirmation disclosure that addresses regulatory requirements, including those covered in the illustrations set out in the Guidance Note. If required, seek explanations from or send queries to promoters, directors, KMPs or senior management, as relevant;

e) Issue rumour confirmation disclosure within 24 hours of the "material price movement" (including disclosure of any responses received from promoters, directors, KMPs or senior management, as relevant);

f) Track any follow on rumours;

g) Give updates on material developments with respect to the event/ information;

h) Keep in mind the availability of price protection timelines (whether 60 days or 180 days) in deal scenarios;

i) To understand that the provision is relevant not only for all Covered Listed Entities, but also all entities proposing to undertake any transactions with or in relation to Covered Listed Entities, as any rumour verification by Covered Listed Entities will result in disclosure of their proposals/ interests as well;

j) Keep in mind that the non-top 250 listed companies would benefit in certain situations even though they do not have the obligation to confirm rumours. Further, these requirements will not be applicable if the rumour is not in the mainstream media;

k) Be aware that it is also relevant for promoters of the Covered Listed Entity in relation to group or shareholder-level matters, since the provision will also cover any rumours relating to matters not initiated within the Covered Listed Entity but impacting the Covered Listed Entity. SEBI has now obligated promoters to specifically provide responses to queries raised/ explanation sought by the listed entity and mandated disclosure of the same by the listed entity.

1. ***Establishment of Central Processing Centre for discharging central government functions under the Companies Act, 2013***

   - The Ministry of Corporate Affairs has established a Central Processing Centre (**CPC**) at the Indian Institute of Corporate Affairs, Gurgaon (Haryana), with effect from February 6, 2024.
   - The CPC has been established per Section 396(1) for discharging the powers of the Central Government under the Companies Act, 2013. It has been vested with the responsibility of processing and disposing off e-forms filed along with the prescribed fee.
   - Pursuant to the Companies (Registration Offices and Fees) Amendment Rules, 2024, effective February 16, 2024, the Registrar of CPC has territorial jurisdiction pan India for examining applications, e-forms or documents prescribed thereunder (these are: e-Form no. MGT-14, SH-7, INC-24, INC-6, INC-27, INC-20, DPT-3, MSC-1, MSC- 4, SH-8, SH-9, and SH-11).
   - For other matters, the jurisdictional Registrar of Companies continues to have jurisdiction over Companies.
   - The Registrar of CPC is required to examine applications, forms or documents within thirty days from the date of filing, except where the approval of the Central Government, Regional Director or any other competent authority is required.

   (MCA Notification S.O. 446(E), dated February 2, 2024, and MCA Notification G.S.R. 107(E), dated February 14, 2024)

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I. Amendments

1. ***Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024 (REIT Amendment Regulations)***

   - SEBI notified the REIT Amendment Regulations on March 08, 2024, to introduce a regulatory framework to facilitate Small & Medium Real Estate Investment Trusts (**SM REITs**). By way of the REIT Amendment Regulations, SEBI has, *inter alia*, amended the definition of 'Real Estate Investment Trust' or 'REIT' in the SEBI (Real Estate Investment Trusts) Regulations, 2014 (**REIT Regulations**), to include SM REITs. SM REITs has been defined as a REIT that pools money from investors under one or more schemes, in accordance with the applicable provisions of the REIT Regulations.

   - Further, Chapter VIB has been inserted in the REIT Regulations to introduce the regulatory framework for SM REITs, which includes requirements in relation to, *inter alia*, (i) the registration of SM REITs; (ii) migration of existing persons, entities or structures that own real estate assets or properties to SM REITs; (iii) investment conditions applicable to SM REITs; (iv) initial offer of units by SM REITs; (iv) borrowings that may be availed by SM REITs; and (v) distributions payable by SM REITs.

   (Notification No. SEBI/LAD-NRO/GN/2024/166 dated March 8, 2024)

II. Circulars

1. ***Repeal of circulars outlining procedure to deal with cases where securities are issued prior to April 01, 2014, involving offer/ allotment of securities to more than 49, but up to 200 investors in a financial year***

   - *Vide* a circular dated March 13, 2024 (**2024 Circular**), SEBI repealed the circulars issued on December 31, 2015 (**2015 Circular**), and May 03, 2016 (**2016 Circular**), with effect from six months from the date of the issue of the 2024 Circular, to protect investor interests in securities and to promote the development of, and regulate the securities markets, given that considerable time had passed since the repeal of the Companies Act, 1956.

   - The 2015 and 2016 Circulars enabled companies to avoid penal action if securities were issued to more than 49 persons, but up to 200 persons in a financial year, under the Companies Act, 1956, by providing investors with an option to surrender securities and receive the refund amount at a price not less than the amount of subscription money paid, along with 15% interest per annum thereon or such higher return as promised to the investors. This opportunity to avoid penal action was provided to the issuer companies because of the higher cap on private placement provided in the Companies Act, 2013.

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- The above option will only be available to those companies that have completed the entire procedure and submitted certificates in accordance with the 2015 and 2016 Circulars, within six months from the date of issue of the 2024 Circular. Accordingly, all cases involving an offer or allotment of securities to more than the permissible number of investors in a financial year shall be dealt with in line with the provisions contained under the extant applicable laws.

(Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/ 016 dated March 13, 2024)

2. ***Revision in pricing methodology for Institutional Placements of Privately Placed Infrastructure Investment Trusts (InvITs)***

- *Vide* a circular dated February 08, 2024, SEBI amended Chapter 7 (Guidelines for Preferential Issue and Institutional Placement of Units by Listed InvITs) of the SEBI Master Circular on Infrastructure Investment Trusts, dated July 06, 2023, and notified separate pricing guidelines for pricing of institutional placement of units by privately placed InvITs.
- SEBI has prescribed that an institutional placement by a privately placed InvIT shall be made at a price not less than the net asset value (NAV) per unit, based on the full valuation of all the existing assets of the InvIT, conducted in terms of SEBI (Infrastructure Investment Trusts) Regulations, 2014.

(SEBI Circular No.SEBI/HO/DDHS/DDHS-PoD/P/CIR/2024/10 dated February 8, 2024)

3. ***Guidelines for return and resubmission of draft offer documents***

- *Vide* a circular dated February 6, 2024, SEBI has issued certain guidelines for the return and resubmission of draft offer documents and draft letters of offer filed for public issuances and rights issues (**Circular**). The Circular is intended to ensure completeness and timely processing of draft offer documents, providing greater clarity and consistency in disclosures. Some of the key guidelines under this Circular are:
  - i) **Return of Draft Offer Document:** The draft offer document shall be returned to the issuer and lead managers for resubmission if, *inter alia*, (a) there is repetition of disclosures, which may increase the size of the offer document but does not improve the quality or efficacy of information; (b) there is inconsistency in numbers/ data/ facts provided in different sections of the offer document or between the offer document and subsequent submission(s); (c) the draft offer document requires substantial revisions or corrections to key disclosures, as per clarifications sought; and (d) any regulatory authority or enforcement agency expresses material concern with respect to the draft offer document, or if there is any pending litigation that could impact an issuer's eligibility to undertake the offering, as prescribed under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**SEBI ICDR Regulations**).
  - ii) **Resubmission of Draft Offer Document:** The issuer is required to make a public offer in accordance with the SEBI ICDR Regulations and include a disclosure to this effect within two days of resubmission. Further, the issuer is required to make a written intimation to its sectoral regulator, if any, informing about the return and resubmission of the draft offer document, as applicable.

(Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/009 dated February 6, 2024)

4. ***Framework for offer for sale (OFS) of shares to employees through stock exchange mechanism (SEM)***

- Currently, the existing OFS procedure for employees of an eligible company is undertaken outside the SEM, which is time consuming and involves additional costs. *Vide* a master circular dated October 16, 2023, SEBI had specified a comprehensive framework on OFS of shares through SEM. Now, SEBI, by way of its circular dated January 23, 2024 (**Circular**), has introduced a framework allowing promoters to offer shares to employees through the SEM, to enhance efficiency and reduce costs. The SEM route is in addition to the existing OFS procedure for employees outside the exchange mechanism.
- Below are some of the key features of the Circular:
  - i) The maximum bid amount shall be ₹5,00,000;
  - ii) Each employee is eligible for allotment of equity shares up to ₹2,00,000. However, in the event of under-subscription in the employee portion, the unsubscribed portion may be allotted to such employees whose bid amount is more than ₹2,00,000,

on a proportionate basis, for a value in excess of ₹2,00,000, subject to the total allotment to an employee not exceeding ₹5,00,000; and

iii) Employees shall pay upfront the margin to the extent of 100% of the order value in cash or cash equivalents.

(Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/6 dated January 23, 2024)

5. *Framework for Short Selling*

- *Vide* a circular dated January 5, 2024, SEBI has modified the framework on *'Short Selling and Securities Lending and Borrowing Scheme'* to include the following additional points:

  i) Institutional investors shall disclose upfront at the time of placement of order whether the transaction is a short sale. However, retail investors would be permitted to make a similar disclosure by the end of the trading hours on the transaction day.

  ii) Brokers shall be mandated to collect details on scrip-wise short sell positions, collate data and upload it to the stock exchanges before the commencement of trading on the following trading day. The stock exchanges shall then consolidate such information and publish it on their websites on a weekly basis.

(Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/1 dated January 5, 2024)

IV. Informal Guidance

1. *Informal guidance on contra trade under SEBI (Prohibition of Insider Trading) Regulations, 2015*

- Share India Securities Limited (**SISL**) had undertaken a rights issue by way of issuance of equity shares, along with seventeen detachable warrants each (**Rights Issue**) to its existing shareholders and its designated persons (**DP**). Post the allotment of the shares pursuant to the Rights Issue, the holders of the detachable warrants, had a right to convert their warrants into equity shares within 18 months from the date of allotment.

- SISL sought informal guidance under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations**), in relation to (i) whether the act of conversion of warrants into equity shares within six months of the date of allotment would be classified as a contra trade; (ii) whether selling equity shares by the DP in the open market within six months from the date of allotment (pursuant to the conversion); and (iii) whether a transaction involving DP selling its shares in the open market post six months of allotment of Rights Issue, and using the sale proceeds to convert the warrants into equity shares of the company, would be classified as contra trade.

- Against this backdrop, SEBI stated the following:

  i) In relation to query (I), the conversion of warrants is a voluntary act by the warrant holder and will be deemed to be an acquisition of securities and will not be considered as contra-trade since there is no corresponding transaction of sale/ disposal of securities.

  ii) In relation to query (ii), since the act of conversion is deemed to be acquisition of securities of the company, any sale of such securities before six months from the date of allotment of securities (pursuant to the conversion of warrants) will be classified as contra trade and will be subject to restrictions under the applicable law.

  iii) In relation to point (iii), the act of conversion is deemed to be acquisition of securities of the company and is between the holder of the warrant and the company, at a pre-determined price at the option of the holder. Hence, any conversion of warrants, prior to passing of six months from the previous sale transaction would not attract the restriction of contra-trade. But any subsequent sale of equity shares of the company by the DP, post such conversion will not be exempted from contra trade restrictions under the applicable law.

(SEBI Informal Guidance No. SEBI/HO/ISD/ISD-PoD-2/P/OW/2023/0000042307/1 dated October 13, 2023)

2. *Informal Guidance on exemption under Regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011*

- An informal guidance was sought from SEBI on eligibility for grant of specific exemption from the obligation to make an open offer post acquisition of shares under Regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**Takeover Code**), read with SEBI Master Circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/32, dated February 16, 2023 (**Master Circular**).

- Mr. KJ Joseph and Mr. Thomas John (**Applicants**) are the promoters of Thejo Engineering Limited (a listed entity) (**Company**). The Applicants, along with ten other shareholders (family members of the promoters), form the 'Promoter and Promoter Group' of the Company, collectively hold 54.27% of the Company's total shareholding.
- The Promoter and Promoter Group of the Company (except two Promoter Group members who are not the spouse/ lineal descendants of the promoters) contemplated forming a family trust (**Trust**), where 51.75% of their shares (out of the total Promoter and Promoter Group's holding of 54.27%) would be moved to the Trust and the persons not forming part of the Trust would continue to hold the shares in their individual names. The beneficiaries of the Trust would be the same persons as the existing Promoter Group shareholders who are pooling their shares into the Trust and each beneficiary's beneficial interest/ share in the Trust would be proportionate to their existing shareholding in the Company. Further, it was proposed that out of the five trustees of the Trust, one would be a neutral trustee, who shall not belong to the promoter group.
- Against this backdrop, the Applicants sought guidance from SEBI on whether (i) a Trust, with one of the trustees not belonging to the Promoter and Promoter Group; and (ii) with some member of the Promoter Group not included (restricting the Trust only to spouse and lineal descendants of the promoters), be eligible for grant of specific exemption from the obligation to make an open offer for acquiring shares under Regulation 11(1) of the Takeover Code, read with Master Circular.
- SEBI, in its informal guidance, relied on Chapter 8 of the Master Circular, which specifies the conditions for grant of exemption from the obligation to make an open offer in cases involving Trusts as acquirers and observed that exemption from the obligation to make an open offer is granted in cases, *inter alia*, (i) where only individual promoters or their immediate relatives or lineal descendants are trustees and beneficiaries, and (ii) where the Trust is in substance only a mirror image of promoters' holdings and therefore there is no change of ownership or control of the shares or voting rights in the company.
- In the present case, the persons in the promoter group not forming a part of the Trust will continue to hold their respective shareholding in their individual names and therefore there will not be any change in control of the Company. However, the Applicants intend to have one out of the five trustees as a neutral trustee, who does not belong to the Promoter Group and thus, the Trust will not be eligible for specific exemption from the obligation to make an open offer for acquiring shares.

(SEBI Informal Guidance No. SEBI/HO/CFD/PoD/OW/P/2023/47033/1 dated November 30, 2023, published on February 29, 2024)

V. SEBI Board Meeting

1. *SEBI board meeting held on March 15, 2024*

SEBI, in its board meeting approved, *inter alia*, the following:

- **Additional disclosure requirements exempted for certain FPIs:** To facilitate ease of doing business, SEBI approved a proposal to exempt additional disclosure requirements for FPIs having more than 50% of their India equity AUM in a single corporate group, in case the concentrated holdings of the FPIs are in a listed company with no identified promoter, if the following conditions are met: (i) such an FPI does not hold more than 50% of its India equity AUM in the corporate group, after excluding its holding in the parent company with no identified promoter; (ii) the composite holdings of all such FPIs (that hold in excess of the 50% concentration criteria and are not exempted) in the company with no identified promoter, is less than 3% of its total equity share capital.
- **Timelines relaxed for disclosures/ documentation related to material changes by FPIs:** SEBI approved a proposal to relax disclosure timelines for material changes by FPIs. These material changes shall be categorised into two buckets, viz. Type I and Type II. FPIs will have to inform their designatory depository participant (**DDP**) about Type I material changes within seven working days of the occurrence of the change. However, supporting documents for the same (if any) shall now be required to be provided within 30 days of such change. FPIs will inform their DP about type II material changes, along with supporting documents (if any), within 30 days of such change.
- **Enhancing ease of doing business for FPIs by providing them with flexibility in dealing with their securities post expiry of registration:** To facilitate ease of doing

business for FPIs, SEBI has approved the following proposals:

i) FPI registrations that expire due to non-payment of registration fee, shall now be permitted to be reactivated within 30 days of such expiry. Such FPIs shall also be permitted to dispose of their securities holdings during this 30-day period. Further, in cases where the FPI chooses not to re-activate its registration within 30 days, it shall have 180 days to dispose of its securities;

ii) A minimum 180 days or end of registration block, whichever is later, shall be provided to dispose of securities in case of:

a) Adverse change in compliance status of the home jurisdiction of the FPI;

b) Non-submission of documents for reclassification of FPI category from I to II;

iii) If the securities held by an FPI are not disposed even after the lapse of 180 days, the following shall apply:

a) The FPI shall be provided with additional 180 days to dispose of the securities, subject to a financial disincentive of 5% of sale proceeds, which shall be credited by the custodian to the SEBI's Investor Protection and Education Fund (IPEF);

b) Securities remaining unsold after the expiry of the additional 180-day period shall be deemed to have been compulsorily written-off by the FPI;

iv) For existing cases, where securities are lying in the accounts of FPIs whose registration has expired, a one-time opportunity of 360 days (180 days without any financial disincentive, and an additional 180 days with a 5% financial disincentive) shall be provided for disposal of such securities by the FPIs. Securities remaining unsold thereafter shall be deemed to have been compulsorily written-off by the FPI.

- **Facilitating ease of doing business for IPO/ fund raising bound companies:** SEBI has approved amendments to the SEBI ICDR Regulations in respect of the following:

i) Doing away with the requirement of 1% security deposit in public/ rights issue of equity shares;

ii) Promoter group entities and non-individual shareholders holding more than 5% of the post-offer equity share capital to be permitted to contribute towards minimum promoters' contribution (**MPC**) without being identified as promoters;

iii) Equity shares from the conversion of compulsorily convertible securities held for a year before DRHP filing, to be considered for meeting MPC requirement;

iv) The increase or decrease in OFS size, requiring fresh filing, shall be based on one criteria only, i.e. either issue size in rupees or number of shares, as disclosed in the draft offer document;

v) Flexibility in extending the bid/ offer closing date on account of force majeure by minimum one day instead of present requirement of minimum three days.

- **Facilitating ease of doing business for listed companies–on–going compliance requirements:** SEBI has approved amendments to SEBI Listing Regulations in respect of the following:

i) Market capitalisation based compliance requirements for listed entities to be determined basis average market capitalisation of six months ending December 31, instead of single day's (March 31) market capitalisation. Further, to ease compliance requirements, a sunset clause of three years for cessation of applicability of market capitalisation based provisions is also being introduced;

ii) Extending the timeline from three months to six months for filling up vacancies of key managerial personnel, which require approval of statutory authorities;

iii) Harmonising and reducing timelines for prior intimation of board meetings to two working days;

iv) Increasing the maximum permitted time gap between two consecutive meetings of the risk management committee from 180 days to 210 days to provide flexibility to listed entities to schedule the meetings.

- **Facilitating a uniform approach for verification of market rumours by listed entities:** SEBI has proposed: (a) specifying the objective and uniformly assessing the criteria for rumour verification in terms of material price movement of equity shares of a listed entity; (b) considering unaffected transaction price wherever pricing norms have been prescribed under the SEBI regulations, provided that the rumour pertaining to such transaction has been confirmed within twenty-four hours

from the trigger of material price movement; (c) promoters, directors, key managerial personnel and senior management to provide timely response to the listed entity for verifying market rumour; (d) unverified event or information reported in print or electronic media not to be considered as 'generally available information' under the PIT Regulations. This has now been implemented.

- **Flexibility provided to Category I and II alternative investment funds (AIFs) to create encumbrance on their equity holding in infrastructure sector investee companies:** SEBI has allowed Category I and II AIFs to create an encumbrance on the equity shares of its investee companies in infrastructure sector to facilitate raising of debt/ loan by such investee companies, subject to certain conditions, including compliance with the RBI regulations. For this purpose, these infrastructure companies are engaged in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonised Master List of Infrastructure sub-sectors, as issued by the Government of India.
- **Enhancing trust in the AIF ecosystem by introducing due diligence measures for investors and investments:** The SEBI now requires AIFs, their managers and key management personnel, to carry out specific due diligence of their investors and investments, to ensure that these AIFs do not inadvertently facilitate circumvention of specified regulations issued by financial sector regulators.
- **Timeline extended for mandatory applicability of Listing Norms for High Value Debt Listed Entities (HVDLEs):** SEBI has approved the extension of timeline for mandatory applicability of listing norms (i.e. Regulation 16 to 27 of SEBI Listing Regulations) and compliance thereof for HVDLEs till March 31, 2025.
- **Framework for issuance of subordinate units by a privately placed InvIT to facilitate purchase of infrastructure assets:** SEBI has, *inter-alia*, approved amendments to InvIT Regulations to provide a framework for issuance of subordinate units by privately placed InvITs.

(SEBI Press Release No. 05/2024 dated March 15, 2024)

VI. Consultation Papers

1. ***Consultation paper on interim recommendations of the expert committee for facilitating ease of doing business and harmonisation of the provisions of the SEBI ICDR Regulations and the SEBI Listing Regulations***

   - *Vide* a press release dated October 4, 2023, SEBI had invited suggestions from the public and regulated entities to simplify, ease and reduce the cost of compliance under various SEBI regulations, including the SEBI Listing Regulations and SEBI ICDR Regulations, to facilitate ease of doing business. The expert committee has submitted its report containing interim recommendations, including, *inter alia*, recommendations on the following:

   i) **SEBI Listing Regulations**

      a) Applicability of the regulations to listed entities on the basis of average market capitalisation;

      b) Cap on membership and chairmanship of committees for a director; and

      c) Maintaining uniformity in timeline for prior intimation of board meetings.

   ii) **SEBI ICDR Regulations**

      a) Non-individual shareholders to be permitted to contribute towards minimum promoters' contribution without being identified as promoters; and

b) Thresholds for increase or decrease in issue size triggering re-filing of draft offer documents.

- Subsequently, SEBI issued an addendum dated February 2, 2024, to the consultation paper dated January 11, 2024, in relation to an additional recommendation issued by the expert committee on ease of doing business under the SEBI ICDR Regulations. In terms of the current provisions of the SEBI ICDR Regulations, an issuer is required to deposit an amount calculated at 1% of the issue size available for subscription to the public, with the designated stock exchange. However, considering various reforms and the present framework for public/ rights issue, the concerns relating to post-issue investor complaints do not arise and therefore there is no requirement for the issuer to utilise the security deposit towards such issues. Further, SEBI has already prescribed a mechanism to deal with such complaints (delay in unblocking of application amounts) under Application Supported by Blocked Amount. Therefore, since the removal of the requirement would result in ease of doing business for issuers accessing the primary market, the expert committee has recommended deleting Regulations 38, 80, 135, 197 and 259 of the SEBI ICDR Regulations.

(Consultation paper on interim recommendations of the expert committee for facilitating ease of doing business and harmonisation of the provisions of SEBI ICDR Regulations and SEBI ICDR Regulations dated January 11, 2024 and addendum dated February 2, 2024)

2. ***Consultation paper on additional proposals regarding framework for issuance of subordinate units – InvITs and REITs***

- By way of a consultation paper, dated December 9, 2023, SEBI had invited public comments on the framework for issuance of subordinate units by REITs and InvITs, to sponsor(s), their associates and sponsor group. Subsequently, SEBI invited further public comments on certain additional proposals by way of a consultation paper dated January 10, 2024 (**Consultation Paper**), including:

i) **Specification of a ceiling on subordinate units that can be issued by a REIT/ InvIT:** At the time of acquisition of an asset, the amount of subordinate units that can be issued shall not exceed 10% of the acquisition price of such asset. Further, the total number of outstanding subordinate units shall not exceed 10% of the total number of outstanding ordinary units.

ii) **To bring uniformity in the nature of rights conferred by subordinate units:** The subordinate units shall only carry inferior voting rights or inferior distribution rights or both. Further, there shall not be multiple classes of subordinate units.

iii) **Dealing with changes in terms and conditions of subordinate units post issuance:** The performance benchmark defined and specified in an offer document, placement memorandum or placement document for conversion of, or reclassification of subordinate units to ordinary units should not be subject to any change, post the issuance of subordinate units.

Consultation paper on additional proposals regarding framework for issuance of subordinate units InvITs and REITs dated January 10, 2024)

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RBI AND FOREIGN INVESTMENT UPDATES

I. Notifications

1. ***RBI revises fixed remuneration granted to Non-Executive Directors (NEDs)***

- The RBI had earlier issued a circular dated April 26, 2021, specifying INR 20 lakh p.a. as the remuneration for NEDs on bank boards, other than the Chair of the board, for private sector banks and subsidiaries of foreign banks. To enable banks to attract competent individuals on their boards, the ceiling has now been revised to INR 30 lakh p.a., *vide* a circular dated February 9, 2024.
- Banks are now required to have suitable criteria for granting fixed remuneration to their NEDs. The review of any extant remuneration is only permitted through board approval. A ceiling limit lower than Rs 30 lakhs can be fixed depending upon the size of the bank, experience of the NED and other factors.
- Banks no longer have to obtain regulatory approval for payment of remuneration to part time chairman.
- Banks are also required to disclose the remuneration paid to directors on an annual basis in their Annual Financial Statements.

(Circular No. RBI/2023-24/121 DoR.HGG.GOV.REC.75/29.67.001/2023-24 dated February 9, 2024)

2. ***RBI releases Omnibus Framework for recognising Self-Regulatory Organisations for its Regulated Entities***

- In view of the potential role of Self-Regulatory Organisations (**SROs**) in strengthening compliance culture among their members and also providing a consultative platform for policy making, the RBI had issued a draft omnibus framework for recognising SROs for various Regulated Entities (**REs**) of the RBI in December 2023. The same has been revised to include the following:
- It provides that other sector-specific guidelines like number of SROs, membership, etc., shall be issued separately by the respective RBI departments, wherever a sectoral SRO is intended to be set up.

a) It mandates SROs to establish minimum benchmarks and conventions for professional market conduct among its members, including framing code of conduct, developing a reasonable fee-structure, establishing grievance redressal framework and educating the public about regulation of Regulated Entities.

b) It prescribes eligibility criteria for entities to function as an SRO to ensure its independence and integrity, including the requirement of the applicant to be a Section 8 company, meeting of prescribed net worth, shareholding of the company to be diversified, adequate representation of the sector by the SRO, etc.

c) The omnibus framework contains broad parameters, viz., objectives, responsibilities, eligibility criteria, governance standards, application process and other basic conditions for grant of recognition, which will be common for any SRO proposed to be recognised by the RBI.

*(Omnibus Framework for recognising Self-Regulatory Organisations (**SROs**) for Regulated Entities (**REs**) of the Reserve Bank of India, Department of Regulation, dated March 21, 2024)*

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II. Draft Circular

1. ***Draft Circular on declaration of dividend by banks and remittance of profits to Head Office by foreign bank branches in India***

   - The RBI had granted general permission to all scheduled commercial banks, except regional rural banks (**RRBs**), to declare dividends and also permitted foreign banks operating in India in branch mode to remit profits to their head office without prior RBI approval.
   - By way of a circular dated January 2, 2024, RBI has now set eligibility criteria to declare dividends or remit profits and the criteria is inter-alia based on capital adequacy of net non-performing assets (net NPA).
   - Certain restrictions on quantum of dividend pay-out have also been proposed, such as ceilings on dividend pay-out ratios based on net NPA ratios of banks and conditions such as payment of dividend only on equity shares.
   - A foreign bank operating in India in branch mode, that satisfies the eligibility criteria, may remit net profit arising out of its Indian operations, without prior RBI approval, provided that the accounts of the bank are audited. In the event of excess remittance, the head office of the foreign bank must immediately make good the shortfall.
   - Banks declaring dividend or remitting profits to head office are also required to report the details of the dividend/ profits to the department of supervision of the RBI or the National Bank for Agriculture and Rural Development (for RRBs) within a fortnight of such declaration or remission.

   (Draft Circular No. DOR.ACC.REC.No.##/21.02.067/2023-24 dated January 2, 2024)

2. ***Draft Circular on review of regulatory framework for Housing Finance Companies (HFCs) and harmonisation of regulations applicable to HFCs and Non-Banking Financial Companies (NBFCs)***

   - RBI has released a draft circular dated January 15, 2024, revising the regulations applicable to HFCs, based on the review of extant regulations applicable to HFCs to harmonise the same with NBFCs.
   - HFCs accepting public deposits are subject to more relaxed prudential parameters on deposit acceptance as compared to NBFCs and considering that the regulatory concerns associated with deposit acceptance is the same across categories of NBFCs, it is proposed to move HFCs towards the regulatory regime on deposit acceptance as applicable to deposit-taking NBFCs.
   - Basis the above, regulations applicable to HFCs *inter alia* in relation to the following aspects are proposed to be revised – maintenance of a minimum percentage of liquid assets, full asset cover for public deposits, rating of deposits, ceiling on quantum of deposits and period of deposits, restrictions on investments in unquoted shares, deposit directions for deposit taking HFCs, participation of HFCs in various derivative products for hedging purposes, diversification into other financial products, and adoption of technical specifications by HFCs under Account Aggregator ecosystem.

   (Draft Circular no. DOR.FIN.REC.No.##/03.10.136/2023-24 dated January 15, 2024)

III Press Note

1. ***Review of Foreign Direct investment (FDI) Policy for the Space Sector***

   - The Department for Promotion of Industry and Internal Trade (DPIIT) has reviewed the extant sectoral restrictions on FDI applicable to space sector.
   - FDI in activity of Satellites: Establishment and operation was permitted only under the government route, subject to sectoral guidelines set out by the Department of Space/ ISRO. This has been amended in the following manner,
     a) For (i) satellites manufacturing and operation; (ii) satellite data products and (iii) ground segment & user segment – FDI is permitted up to 74% via the automatic route. FDI exceeding 74% requires government approval.
     b) For (i) launch vehicles and associated systems or subsystems and (ii) creation of spaceports for launching and receiving spacecraft – FDI is permitted up to 49% via the automatic route. FDI exceeding 49% requires government approval.
     c) For manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment – FDI is permitted up to 100% via automatic route.
     d) The investee entity shall be subject to sectoral guidelines as issued by the Department of Space from time to time.

   (Press Note. No. 1 – 2024 series, Ministry of Commerce and Industry, DPIIT, FDI Policy Section, dated March, 4, 2024)

IV Amendments

1. ***Ministry of Finance notifies Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024***

   - The Ministry of Finance has amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (**NDI Rules**), *vide* a notification dated January 24, 2024, to permit direct listing of shares by eligible Indian companies on permissible international stock exchanges in Gujarat International Finance Tec-City – International Financial Services Centre (**GIFT- IFSC**) in India.
   - Chapter X and Schedule IX, pertaining to investment by permissible holder in equity shares of public companies incorporated in India and listed on International Exchanges, has been included in the NDI Rules.
   - Key highlights of the direct listing scheme include the following:

     a) Eligibility criteria: A public Indian company can issue equity shares on International Exchange; or the existing shareholders can offer equity shares in such exchange, subject to sectoral caps prescribed in Schedule I of the NDI Rules and the shares being dematerialised and ranked *pari passu* with equity shares listed on any another stock exchange in India. Issue of shares is permitted only in exchanges of permissible jurisdictions. Public companies are not eligible when the company or its promoters/ directors are debarred from accessing capital markets, are wilful defaulters, under investigation under the Companies Act, 2013, etc.

     b) Permissible Holder: Non-resident holder of equity shares of the company, which are listed on international exchange, including its beneficial owner is a permissible holder. The purchase or sale of equity shares by the permissible holder will be subject to the limits applicable on foreign portfolio investment under the NDI Rules.

     c) Voting Rights: The companies will have to ensure that the voting rights on shares listed on the international exchange are exercised directly by the permissible holder or through their custodian, pursuant to voting instruction from the permissible holder.

     d) Pricing: The issue price of shares should not be less than the price applicable to a corresponding mode of issuance of such equity shares to domestic investors under law. In case of an IPO, the issue price is to be determined by the book-building process, which should not be less than the fair market value determined under the Foreign Exchange Management Act, 1999.

(Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2024 dated January 24, 2024)

2. ***The Ministry of Finance notifies Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2024***

   - The Ministry of Finance has notified the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024, which amends the NDI Rules by inserting an explanation to clause (aq) of Rule 2, pertaining to the definition of 'unit'.
   - The explanation clarifies that 'unit' shall also include unit that has been partly paid up, which is permitted under the SEBI regulations, in consultation with Government of India.
   - This amendment was carried out to keep up with the evolving nature of financial markets and to align with the approach followed by SEBI in SEBI (Alternative Investment Funds) Regulations, 2012, so that the legal framework applicable on non-debt instruments can also accommodate scenarios where partly paid-up units of any non-debt instrument are issued by investment vehicles such as AIFs.

(Foreign Exchange Management (Non-debt Instruments) (Second Amendment) (Amendment) Rules, 2024 dated March 14, 2024)

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List of Contributors

Cyril Shroff
Managing Partner

Janhavi Seksaria
Partner

Akshay Singh Ralhi
Principal Associate-Designate

Mrudul Desai
Senior Associate

Yash Ashar
Senior Partner

Devaki Mankad
Partner

Nayana Dasgupta
Senior Associate

Rishav Buxi
Senior Associate

Ramgovind Kuruppath
Partner

Megha Krishnamurthi
Principal Associate

Surabhi Saboo
Senior Associate

Shubham Sancheti
Senior Associate

Anchal Dhir
Partner

Archit Bhatnagar
Principal Associate

Nikita Singhi
Senior Associate

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Cyril Amarchand Mangaldas
Advocates & Solicitors

100⁺ years of legacy | **1000** Lawyers | **Over 170** Partners

Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai – 400 013, India
T +91 22 6660 4455 **F** +91 22 2496 3666 **E** cam.mumbai@cyrilshroff.com **W** www.cyrilshroff.com
Presence in Delhi-NCR | Bengaluru | Ahmedabad | Hyderabad | Chennai | GIFT City | Singapore | Abu Dhabi