Corporate & Commercial

Monthly Newsletter

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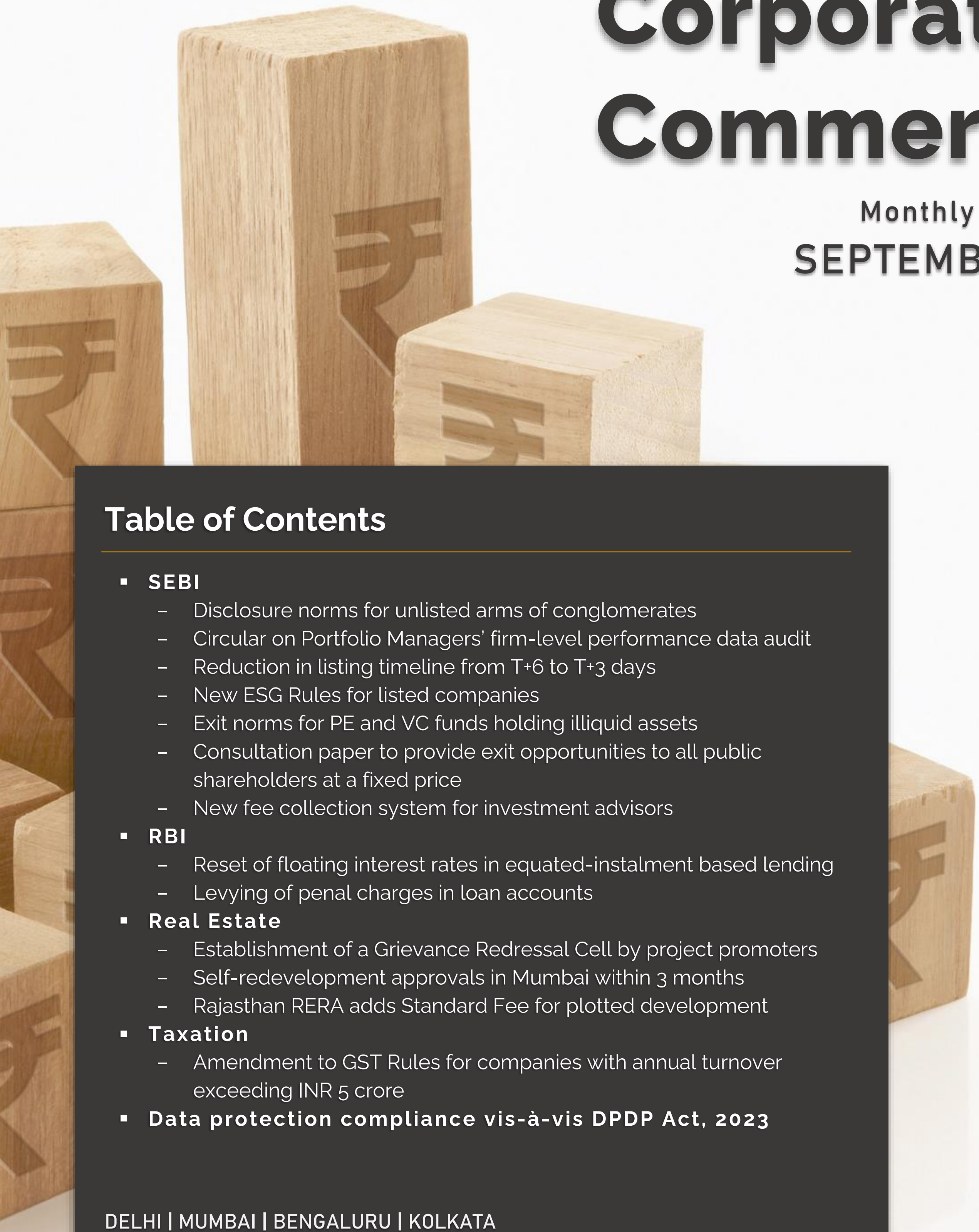

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SEBI | Disclosure norms for unlisted arms of conglomerates

In a significant move aimed at enhancing transparency and accountability in India's corporate landscape, the Securities and Exchange Board of India (**SEBI**) in its annual report for the year 2022–23[1] (**Report**) has proposed to implement comprehensive disclosure norms on unlisted entities of conglomerates. While listed entities have long been subjected to comprehensive disclosure regulations, unlisted companies within conglomerates 'comprising of listed and unlisted entities' have largely been exempted from such stringent reporting standards. SEBI has recognized the need to address this information asymmetry and promote transparency. This strategic step might have implications for businesses operating under such a conglomerate umbrella and, in turn, the broader financial market.

Key aspects:

- At the heart of this SEBI's initiative lies the recognition of the increasingly complex and interconnected web of corporate entities within conglomerates. In recent years, conglomerates have expanded their operations across diverse sectors through varied legal entities and structures, making it challenging for regulators, investors, and even stakeholders within these entities to have a clear understanding of their accurate financial position and operations, especially given the fact that many of these conglomerates comprise both listed and unlisted entities under the same group.
- SEBI aims to curtail this lack of transparency, where though the listed entities are subject to disclosures, unlisted entities do not have such obligations under law. This not only poses risks to investors but also has the potential to undermine market stability. The opacity and lack of disclosure regime surrounding unlisted entities within conglomerates can allow for diversion of funds, financial improprieties, and conflicts of interest, which could have consequences for other listed and unlisted entities in the group, the overall health of the conglomerate entities.
- SEBI intends to facilitate this transparency in conglomerates by mandating group-level reporting of transactions and other financial activities, which would require the unlisted entities within such a group to disclose details of crossholdings and material financial transactions within the conglomerate on an annual basis. Such disclosures will enable regulators and investors to gain better insights into the financial and operational aspects of the companies, which are relevant to them as stakeholders.
- Given the foregoing, SEBI's proposal to enforce disclosure norms on unlisted entities of conglomerates appears to be multifaceted, which includes disclosure of financial statements that shall provide a clear picture of the financial health of the listed and unlisted entities of the group, improvised corporate governance practices, and robust risk management frameworks within these entities. We must clarify here that SEBI's proposal, in our view, may not be applicable to conglomerates which comprise of only unlisted entities. SEBI's disclosure norms are proposed to be made applicable to conglomerates which have both listed and unlisted entities.
- SEBI's plan to implement disclosure norms on unlisted entities of conglomerates has several potential benefits as well. First and foremost, it will empower investors with critical information needed to make informed decisions, and the regulators with sufficient disclosures to prevent any major fraud or activities detrimental to the interest of the public. Greater transparency can attract more investments, fostering economic growth. Moreover, improved corporate governance and risk management practices can enhance the overall stability of these entities. This, in turn, can reduce systemic risks in the financial market.
- However, implementing these norms is not without challenges. For such unlisted entities, compliance could mean increased administrative and compliance costs. Further, the time period to ensure such disclosures and compliances is also a relevant consideration, as companies will need sufficient time to put in place the required processes and policies to ensure compliances.
- SEBI's plan to boost investor confidence and promote India as an attractive destination for investments, might bring in challenges and adjustments required by conglomerates to meet these new requirements. However, the long-term benefits of increased transparency and improved governance are likely to outweigh the initial hurdles. Additionally, there is no need for extensive concern from unlisted entities as the scope of such disclosures is limited to conglomerates that have both listed and unlisted entities.

SEBI's plans to implement disclosure norms on unlisted entities of conglomerates represent a significant step towards a more transparent and accountable corporate landscape in India. By ensuring that these entities adhere to higher standards of disclosure, governance, and risk management, SEBI aims to protect investors, enhance market stability, and promote sustainable economic growth. However, it remains to be seen how this plan will unfold.

SEBI | Circular on Portfolio Managers' firm-level performance data audit

SEBI had earlier released the SEBI Master Circular dated March 20, 2023 (**Master Circular**). As per Paragraph 5.3.1 of the Master Circular, Portfolio Managers are required to audit firm-level performance data on an annual basis and submit the confirmation of compliance with Paragraph 4.5.3 of the Master Circular to SEBI within 60 days of the end of each Financial Year.

As per the aforesaid requirement, Portfolio Managers are required to consider all clients' portfolios managed i.e., clients of both discretionary and non-discretionary portfolio

[1] SEBI: Annual Report 2022-23, Clause 1.3.2 B: Conglomerate Disclosures. https://www.sebi.gov.in/reports-and-statistics/publications/aug-2023/annual-report-2022-23_74990.html

management services for the purpose of audit of firm-level performance data.

Following the Master Circular, SEBI recently issued a new Circular dated August 2, 2023 stating that Association of Portfolio Managers in India, in consultation with SEBI, shall specify standardized Terms of Reference (**ToR**) for audit of firm-level performance data. This will help bring in uniformity in the performance audit of the Portfolio Managers.

Key aspects:

- Standard ToR shall inter-alia include requirement for Portfolio Managers to consider clients' portfolios under all services for the purpose of auditing firm-level performance data.
- Performance of advisory clients may be excluded only if performance of such clients, either individually or cumulatively, is not reported or published in any marketing material or website.
- The standard ToR specified by APMI shall be applicable with effect from October 01, 2023, and shall be mandatorily followed by all Portfolio Managers for the purpose of annual audit of firm-level performance data[2].
- The Portfolio Managers shall submit the confirmation of compliance with the requirement of annual audit of firm-level performance data in line with the standard ToR specified by APMI, to SEBI within 60 days from the end of each Financial Year.
- The aforesaid report on confirmation of compliance to SEBI shall be certified by Directors and Partners of the Portfolio Manager or by persons authorized by the Board of Directors and Partners of the Portfolio Manager.

SEBI | Reduction in listing timeline from T+6 to T+3 days

The Securities and Exchange Board of India (SEBI) through its circular dated August 09, 2023 (SEBI Circular), has shortened the time period needed for listing of securities after an initial public offering closes from 6 working days to just 3 working days. The move offers advantages for both companies issuing shares and investors, bolstering the ease of doing business in India's capital markets.

Key aspects:

- **Applicability**
  - **Voluntary:** For public issues opening on or after September 01, 2023.
  - **Mandatory:** For public issues opening on or after December 01, 2023.
- **Scope:**
  - The securities will now need to be listed on T+3 day as opposed to the present T+6 day, provided T is the issue-closing date.
  - The revised timelines and activities involved in the process are specified in the annexure to the SEBI Circular.
  - As per SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**) the T+3 timelines for listing shall be disclosed in the offer documents and allotment of securities, unblocking of public application monies must be included in pre-issue, issue opening, and issue closing advertisements.

Date of notification	Event
T Day	▪ Electronic applications submission by investors - Before 5:00 PM ▪ Physical application submission – Before 1:00 PM ▪ Bids modifications - Before 5:00 PM ▪ Validation of bid details with depositories - Before 5:00 PM ▪ Reconciliation of UPI mandate transactions - Daily basis ▪ UPI mandate acceptance time - Before 5:00 PM ▪ Issue closure - Qualified Institutional Buyer (**QIB**) and for Non-Institutional Investor (**NII**) categories before 4:00 PM and Retail and other reserved categories before 5:00 PM. ▪ Submission of final certificates - UPI from sponsor bank before 9.30pm, and Direct bank ASBA/SCSBs/syndicate ASBA before 7.30 PM ***Note:*** On T Day, investors will submit their applications, bids will be modified, depositories will confirm the bid information, there will be reconciliation of UPI mandate transactions, the UPI mandate will be accepted, and the issue will be closed.
T+1 Day	▪ Third party check on non-UPI applications - Before 1:00 PM ▪ Finalization of rejections and completion of basis - Before 6:00 PM ▪ Approval of basis by stock exchange - Before 9:00 PM ***Note:*** On T+1 day, all third-party checks on UPI applications, third-party checks on non-UPI applications are conducted, final certificates are submitted, rejections are finalised, bases are finished, and bases approved by the stock exchange are completed.
T+2 Day	▪ Issuance of fund transfer instructions in separate files for debit and unblock. - Initiation: not later than 9:30 AM, completion for fund transfer for Bank ASBA before 2:00 PM and for UPI ASBA before 4:00 PM

[2] Clause 3 of SEBI Circular dated August 02, 2023

	▪ Corporate action execution for credit of shares - Initiation before 2:00 PM, completion before 6:00 PM ▪ Filing of listing application with stock exchanges and issuing of trading notice - Before 7:30 PM ▪ Publish allotment advertisement - On the website of the Issuer, Merchant Banker and RTI before 9:00 PM ***Note:*** On T+1 day, instructions for fund transfer, including debit and unblocking, should be issued and completed separately. On T+2 day, crediting of shares, filing of listing application with the stock exchanges, issue of trading notice, and publication of the allotment advertisement must be done on the website.
T+3 Day	▪ Publish allotment advertisement - In a newspaper ▪ Beginning of stock trading ***Note:*** By T+3 day, but no later than T+4 day, the newspaper advertisement for the allocation can be published on T+3 day stock trading begins. The SEBI Circular added that the T+3 timeline for listing shall be disclosed in the offer documents.

- **Others:**
  - **Lock-in of pre-issue shares:** Lock in shall be in compliance with the ICDR Regulations and further operationalisation shall be in line with the Standard Operating Procedure (SOP) of depositories issued vide circular dated August 08, 2023.
  - **Compensation to investors for delay in unblocking ASBA application monies:** Computation for any such compensation to investors for delay in unblocking ASBA application monies 'if any' shall be done from T+3 day as per circulars dated March 16, 2021 and April 20, 2022.
  - **Linking of PAN:** Before blocking ASBA application funds, both direct bank and syndicate ASBA applications require Self Certified Syndicate Banks (SCSB) to verify that the PAN mentioned in the application matches the PAN linked to the applicant's bank account. SCSBs must also ensure that the PAN linked to the bank account is included in the bidding data on the stock exchange platform 'NSE/BSE' before blocking ASBA application funds in the applicant's bank account.
  - **Third party verifications:** The Registrar shall undertake third-party verification of the applications by matching the PAN in the demat account with the PAN in the applicant's bank account. Applications with mismatch will be deemed invalid for finalising basis of allotment.
- This detailed circular released by SEBI, can be accessed here.

SEBI | New ESG Rules for listed companies

In a significant development aimed at bolstering transparency and sustainability practices, SEBI issued a Circular dated July 12, 2023 (**Circular**). The Circular, which is a result of the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023, was notified on June 14, 2023, and introduces a series of transformative changes to reporting norms for listed companies. Notably, the Circular stipulates timelines for obtaining assurance on the Business Responsibility and Sustainability Report Core (**BRSR Core**), which mandates enhanced disclosures within the value chain, and outlines an updated format for the BRSR.

Key aspects:

- **Timelines for the adoption of BRSR Core**
  - As per the revised BRSR Core, - beginning from the Financial Year (FY) 2023-24, all the top 1000 listed entities 'determined by their market capitalization' will be required to integrate the updated reporting requirement in the prescribed format in their annual reports. The implementation of the BRSR Core, however, will be phased gradually over the subsequent years, as follows:
    - 2023-2024: Top 150 listed entities
    - 2024-2025: Top 250 listed entities
    - 2025-2026: Top 500 listed entities
    - 2026-2027: Top 1000 listed entities
- **Focusing on value chain disclosures**
  - One of the significant aspects of the Circular is that it pertains to disclosures within the value chain. In alignment with global trends emphasizing on interconnectedness and holistic accountability, the Circular mandates the listed entities to report Key Performance Indicators (KPIs) within the BRSR Core, for their principal upstream and downstream partners within the value chain.
  - Crucially, this value chain shall encompass partners whose contributions account for 75% of the listed entity's purchases or sales by value. This directive underscores the imperative of transparently portraying not just internal operations, but the entirety of a company's engagements that influence its sustainability impact.
- **Transitioning to enhanced value chain disclosures**
  - The Circular outlines a phased approach to integrating enhanced value chain disclosures, such as:
    - By FY 2024-25: The top 250 listed entities 'by market capitalization' will need to either comply with the new ESG disclosures for the value chain or provide explanations for non-compliance.
    - By FY 2025-26: Limited assurance for these value chain disclosures will be mandatory on a comply-or-explain basis. This requirement ensures a steady transition toward robust assurance practices.

- Assurance Provider Selection and avoidance of conflict
  - Notably, the Circular emphasizes the importance of a prudent approach to assurance provider selection. It stresses the need to engage providers possessing the requisite expertise to ensure accurate evaluation and verification of the disclosed information. Moreover, a key consideration is the avoidance of conflicts of interest, reinforcing the integrity and objectivity of the assurance process.

SEBI | Exit norms for PE and VC funds holding illiquid assets

SEBI is set to introduce measures aimed at simplifying exit norms for Private Equity (**PE**) and Venture Capital (**VC**) funds that hold illiquid assets. This strategic move is intended to enhance flexibility and efficiency for these investment vehicles operating in the Indian market.

Key aspects:

- **Extension of fund tenure:** The potential extension of the tenure for PE and VC funds holding illiquid assets. This extension will provide fund managers with additional time to manage and exit their investments, thereby avoiding rushed or suboptimal exit decisions.
- **Promoting efficient asset disposal:** Encourages fund managers to prioritize efficient disposal of illiquid assets. By allowing funds more time to exit such investments, it reduces the pressure to offload assets at unfavourable valuations, which can ultimately benefit both the fund and its investors.
- **Aligning regulations with market realities:** The proposal acknowledges that illiquid assets often require a longer gestation period for value realization. By aligning regulations with market realities, SEBI aims to provide PE and VC funds with the flexibility to adapt to changing market conditions.
- **Investor protections:** While facilitating easier exits for PE and VC funds, SEBI's approach also incorporates measures to protect the interests of investors. The proposal emphasizes the importance of transparency in the exit process, ensuring that investors are well-informed about the fund's exit strategy and its implications.
- **Improved liquidity management:** SEBI's move encourages PE and VC fund managers to develop more effective liquidity management strategies. This will help them navigate challenging market conditions while maintaining a focus on long-term value creation.
- **Encouraging investment in illiquid assets:** The proposal may encourage more PE and VC funds to invest in illiquid assets, as the regulatory environment becomes more accommodating. This could potentially boost investment in sectors or companies that require patient capital and long-term commitment.
- **Regulatory clarity:** SEBI aims to provide clear and comprehensive guidelines regarding the extension of fund tenures and exit norms for illiquid assets. This clarity will assist fund managers in making informed decisions and complying with regulatory requirements.
- **Flexibility for fund managers:** SEBI's proposal recognizes the need for fund managers to have the flexibility to adapt to unique circumstances. By allowing extensions of fund tenures in specific cases, it provides a tailored approach to managing illiquid assets.

SEBI's efforts to ease exit norms for PE and VC funds holding illiquid assets demonstrate a proactive approach to aligning regulations with the complexities of the Indian investment landscape. These measures are poised to enhance the efficiency, transparency, and flexibility of fund operations while safeguarding the interests of investors and promoting the growth of long-term investments in the Indian market.

SEBI | Consultation paper to provide exit opportunities to all public shareholders at a fixed price

As the first step towards a potential change in applicable policy, SEBI released a consultation paper proposing the option of providing an exit opportunity to all public shareholders at a fixed price, albeit only for those companies that have their shares frequently traded.

Key aspects:

- The fixed price for delisting cannot be less than the floor price, which should be set keeping in mind the fair market value of a company's assets.
- The floor price will be the minimum price at which investors can place bids or offer their shares.
- Public shareholders have the right to not offer their shares during the tendering period.
- There are adequate safeguards in place for public shareholders, such as a proposal for delisting requiring approval of the shareholders through a special resolution. The proposal can be acted upon only if the votes cast by public shareholders in favor of the plan are at least two times the votes cast against it.
- The reverse book-building can also continue.

SEBI's proposal represents a significant step towards enhancing the delisting process in Indian stock markets. By focusing on key aspects such as a two-stage delisting process, robust price discovery, transparency, and investor protection measures, this innovative approach aims to strike a balance between the interests of promoters and minority shareholders, ultimately strengthening the integrity of India's capital markets.

SEBI | New fee collection system for investment advisors

SEBI on August 25, 2023 proposed introducing a new mechanism for the collection of fee for Investment Advisors (**IAs**) and Research Analysts (**RAs**).

Key aspects:

- **Investor-centric fee collection:** This initiative shifts the focus of fee collection in the investment advisory industry towards the well-being of investors. By mandating that fee be collected directly from clients, it ensures that investors' interests are at the forefront of the advisory process.

- **End to pooling of fee:** Under the new system, pooling of client funds is prohibited, eliminating the risk associated with mismanagement of funds. Investment advisors are required to maintain a clear demarcation of client accounts, fostering transparency and accountability.
- **Enhanced accountability and transparency:** This innovative approach reinforces the importance of accountability and transparency in the investment advisory space. Advisors are now obligated to disclose their fee directly to clients, ensuring that investors are fully aware of the cost of services rendered.
- **Reduction in conflicts of interest:** By eliminating the practice of collecting fee through pooling, SEBI's move mitigates potential conflicts of interest that may arise when advisors handle a consolidated pool of funds, leading to better ethical standards within the industry.
- **Investor protection measures:** SEBI's fee collection system enables clients to directly oversee their financial transactions and monitor the fee charged by their advisors, enhancing their overall financial security.
- **Streamlined regulatory compliance:** This initiative simplifies the regulatory compliance process for investment advisors by establishing a clear and direct fee collection mechanism. It ensures that advisors adhere to SEBI's guidelines and meet their obligations towards clients.
- **Prevention of unauthorized activities:** SEBI's system also serves as a deterrent against unregistered or unscrupulous investment advisors who may engage in unauthorized activities. By requiring direct fee collection, it helps in identifying and curbing such practices.
- **Industry-wide accountability:** SEBI's move creates a more accountable and responsible ecosystem for investment advisors. It encourages advisors to operate ethically and within the regulatory framework, thereby strengthening the integrity of the financial advisory sector.
- **Simplification of fee calculations:** The new fee collection system simplifies the process of fee calculations, making it easier for clients to understand the charges associated with their investments. This transparency fosters trust between advisors and investors.

RBI | Reset of floating interest rates in equated-instalment based lending

The Reserve Bank of India (**RBI**) issued a circular dated August 18, 2023 bearing number notification no. DOR.MCS.REC.32/01.01.003/2023-24 (**Notification**) to introduce a set of reforms pertaining to reset of floating rate of interest in equated-instalment based loans. These reforms are introduced to enhance transparency and consumer protection in all equated-instalment based loans of all periodicities and not just limited to EMI-based personal loans.

During the tenor of an equated-instalment based loan, when external benchmark rate increases, it can directly impact the tenor or the equated-instalment or a combination of both. To meet such scenarios, all RBI-regulated entities (**Regulated Entities**) – banks, NBFCs and payment system providers – are required to ensure sufficient margin, based on the repayment capacity of the loan applicant, for the possibility of the elongation of the tenor or the possibility of an increase in the equated-instalment. However, RBI has of late received several grievances from borrowers that the interest in EMI or elongation of tenor was brought about without proper communication and consent from the borrowers. While the consequent impact from an increase in floating interest rate cannot be avoided, a more transparent process appears to be the need of the hour. Therefore, RBI has advised all the Regulated Entities to bring about appropriate policy framework meeting the following requirements:

- At the time of sanction, Regulated Entities should clearly communicate with borrowers about the possible changes in benchmark interest rate on the loan leading to consequently changes in tenor and/or equated-instalment and disclose in the loan sanction letter, the charges applicable for switching of the loan from floating rate of interest to a fixed rate of interest and any other service charges/administrative costs.
- Subsequently, during the tenor of the loan, any increase in the tenor or the instalment must be communicated to the borrowers immediately.
- At the time of reset of interest rates, Regulated Entities should allow the borrowers to opt to switch over to a fixed rate of interest.
- During the tenor of the loan, the borrowers should also be able to opt for enhancement in the equated-instalment or extension of tenor or both.
- During the tenor of the loan, the borrowers should also be able to opt for prepayment of the loan, either in part or in full.
- The Regulated Entities must ensure that any extension of tenor in case of floating interest-rate loans does not result in negative amortization.
- The Regulated Entities should provide a quarterly statement to the borrowers, which should, at the bare minimum, include the following important details, in a simplified manner: “principal and interest recovered till date, EMI amount, number of EMIs left and annualized rate of interest/Annual Percentage Rate for the entire tenor of the loan”.

It is heartening to see that the advice in the Notification applies to the loans during it entire tenor and not just at the time of sanction. While RBI has advised Regulated Entities to ensure that the aforementioned requirements are extended all new and existing loans by December 31, 2023, it will be interesting to see the lenders send intimations as early possible, to all the existing borrowers, with the options available to them.

RBI | Levying of penal charges in loan accounts

RBI has issued a circular dated August 18, 2023 bearing number notification no. DoR.MCS.REC.28/01.01.003/2023-24 (**Notification**) in the context of fair lending practices in levying of penal charges in loan accounts. The Notification states that the intent of levying penal interest/charges is essentially to inculcate a sense of credit discipline and that such charges are not meant to be used as a revenue enhancement tool over and above the contracted rate of interest.

Under the existing framework, lending institutions possess operational autonomy to formulate policy for levy of penal rate of interest. Hence, many Regulated Entities impose penal interest rate over and above the applicable interest rates, in the event of a default of sanctioned terms by the borrowers. RBI has also issued various guidelines, in the past, to ensure reasonableness and transparency in the disclosure of penal interest. However, RBI's supervisory reviews have indicated divergent practices amongst the Regulated Entities with regard to levy of penal interest/charges leading to customer grievances and disputes.

New regime of distinguish between penal interest and penal charges

Based on review of the industry existing practices, RBI has instructed the Regulated Entities to adopt the following for loan accounts 'excluding Credit Cards, ECBs, Trade Credits and Structured Obligations which are subject to their respective specific directions':

- When penalty is charged for non-compliance by the borrower, of material terms of the loan contract, shall be treated as 'penal charges' and shall not be levied in the form of 'penal interest' which is added to the rate of interest charged on loan amount. Moreover, there shall be no capitalization of such 'penal charges'. Thus, the Regulated Entities must not introduce any additional component to the interest rate such that the instructions from RBI are complied in both, letter and in spirit.
- The Regulated Entities must formulate a policy on such 'penal charges'. The quantum of penal charges must be reasonable and commensurate with the degree of non-compliance of the terms. Moreover, it must not be discriminatory within a particular loan/product category.
- The 'penal charges' levied to 'individual borrowers, for purposes other than business' shall not be higher than the penal charges applicable to non-individual borrowers for similar non-compliance of terms.
- The quantum and reason for 'penal charges' shall be clearly disclosed to the borrowers in the loan agreement and MITC/KFS 'as applicable' and displayed on the website of the Regulated Entities.
- Communication or reminders for non-compliance of terms sent to borrowers must be accompanied with 'penal charges' so applicable. Similarly. Upon levy of 'penal charges', the reason for the same must also be communicated.

Roadmap for implementation

RBI has instructed Regulated Entities to implement the aforementioned instructions w.e.f. January 01, 2024 for all fresh/renewed loan facilities from such date. In so far the existing loans are concerned, RBI has permitted a road map for switchover to this new regime of 'penal charges' on next review date or the next renewal date or six months from January 01, 2024, whichever is earlier. This will surely bring an end to an era of malpractices in the sector, such as levy of interest on penal charges.

Real Estate | Establishment of a Grievance Redressal Cell by real estate project promoters

- The Maharashtra Real Estate Regulatory Authority (MahaRERA), vide a Circular dated August 24, 2023 (Circular) has recommended Promoters to establish a Homebuyer/Allottee Grievance Redressal Cell (Redressal Cell).
- The Circular recommends the Promoters to undertake the following steps for effective and timely grievance redressal of the homebuyers/allottees:
  - Establishing a Redressal Cell which shall be responsible for receiving and responding to complaints or grievances of the homebuyers/allottees. The Circular lays emphasis of prompt and expeditious response and resolution of such complaints and grievances.
  - Appointing at least one Grievance Redressal Officer. The contact details of such an officer are to be made available to the homebuyers/allotees and have also been recommended to be posted conspicuously on the Promoter's webpage.
  - The Promoter's webpage should also display the number of grievances/complaints received and those which are resolved or settled.
- Abidance of the aforesaid recommendations of the Circular shall be considered by the authority for grading of the Projects.
- Statutory genesis of the Circular can be traced to Section 37 of the Real Estate Regulatory Authority Act, 2016 (**Act**) which grants powers to the authority to issue directions to promoters or allottees or real estate agents, in furtherance of discharging its functions under the Act. This power is also enshrined in Clause 38 of the Maharashtra Real Estate (General) Regulations, 2017 (**Regulations**). Such directions are binding upon the concerned persons, with commensurate repercussions that may be subsumed under Section 38 of the Act, which enumerates the powers of the authority.
- In line with the Circular, various news agencies have discussed that similar orders and directions are also being contemplated by the Delhi Real Estate Regulatory Authority. However, no official Circular/order/direction is available in the public domain till date.
- The effects of the Circular and the extent of abidance by the promoters, which is currently in a nascent stage, are yet to be evaluated. However, there is no denying that the Circular is an appreciable attempt not just at providing an effective redressal system but also towards promoting alternative dispute/grievance resolution amongst the Promoter and the homebuyers/allottees.
- A similar approach has also been adopted by the Haryana Real Estate Regulatory Authority, which provides for institutional mediation of disputes. Alternative dispute resolution mechanisms, if implemented properly, can significantly reduce the time and cost involved in the resolution of disputes, whilst ensuring that the continuity of the Project is not impeded or hampered.

Real Estate | Self-redevelopment approvals in Mumbai within 3 months

- With several projects stalled at various stages in Mumbai, the concept of 'self-redevelopment' has gained a lot of impetus. The process of self-redevelopment not only provides safety to the residents of the co-operative housing societies but also aids in mitigating the risks associated with redevelopment of buildings such as delays in possession of flats, misuse of funds, etc. Self-redevelopment reduces the involvement of the developer which enables the residents of the society to undertake the process on a fast-track basis resulting in a smooth mechanism providing clarity to the residents of the society.
- In order to ease the process of self-development and encourage residents of co-operative housing societies, the Government of Maharashtra (**GOM**) has been proactive in issuing various guidelines from time to time. Recently, the GOM has by virtue of Government Resolution (**GR**) dated August 29, 2023, instructed all the concerned authorities to approve the proposals for self-development projects within a period of 3 months.
- It may be recalled that, the GOM had announced a single window clearance scheme for self-redevelopment of old deteriorated buildings in Mumbai which is part of the self-redevelopment GR dated September 13, 2019. The GR of 2023 further stated that all the concerned authorities shall act expeditiously and dispose of the proposals through a single window scheme within the prescribed period.
- Furthermore, in order to provide financial support to such co-operative housing societies, the GOM have appointed district co-operative banks as its nodal agency and for Mumbai Region, the Mumbai District Co-operative Bank shall cater to financial services. The said nodal agencies should publish detailed information about the complete procedures, processes etc. Regarding the self-redevelopment through various media.
- It is pertinent to note that, in a bid to make self-redevelopment projects more lucrative, the GOM have by virtue of GR dated July 14, 2023, declared that the flat owners of co-operative housing societies who undertake to initiate self-redevelopment of their building shall be levied only INR 1000 stamp duty instead of current rate value on property.
- It is significant to obtain deemed conveyance or land ownership of housing societies since the lands are still owned by the builder even after a decade or more. In the absence of deemed conveyance the co-operative societies cannot undergo the process of self-development.
- Thus, as per recent GR dated May 31, 2023, the co-operative housing societies will have to pass the resolution for self-redevelopment in majority pursuant to which, the society can apply for deemed conveyance before the concerned Deputy Registrar who shall issue notices to such landowners and builders on receipt of such application or resolution. Further as per the GR, the officials are directed to grant conveyance to co-operative societies undergoing self-redevelopment within a period of 1 month instead of a cumbersome period of 6 as mentioned in earlier GR.
- This GR has come in the wake of a long set out promise by the GOM. It was before the pandemic, in the year 2019, that the GOM had approved the policy on self-redevelopment which provided various concessions such as reductions on premium rates, exemption on levy of GST, subsidy in interest rate of loan, open space deficiency development charges, period of completion of self-redevelopment plan, benefit on FSI, rebates on TDR etc.
- In pursuance of these series of guidelines and privileges bestowed by the GOM, it has backed societies undergoing self-redevelopment which has gained momentum and has emerged as a revolutionary move. The successful Self-Redevelopment projects in areas of Mumbai shall gain more and more impetus in lieu of such attractions or concessions offered by the GOM thereby making the city a safe and habitable place to live.

Real Estate | Rajasthan RERA adds Standard Fee to Registration Fee for plotted development

- The Rajasthan RERA (**Raj-RERA**) has introduced a new 'Standard Fee' in addition to the registration fee to be paid by the Developers of plotted and commercial schemes, applicable from August 1, 2023.
- Ever since RERA has come into force RERA has shown some significant benefits more particularly to the buyers i.e. standardized carpet area, reduced risk of developer's insolvency or bankruptcy, more enforceable rights to buyers, limits on advance payment, better rights to buyers in case of defects after receiving possession, more rights to buyers in case of delay in project, in case of defect in title and most importantly is the right to information at all times. Apart from providing these benefits to buyers, RERA also provides for establishment for grievance redressal.
- Rajasthan State Government constituted the Raj-RERA on March 06, 2019 along with the RERA Appellate Tribunal. Similar to many other states, Rajasthan too faces the problem of unauthorized colonies. In fact, as per Government Data, from February 7, 2023 to May 30, 2023, a total of 114 unauthorized colonies were demolished as per data from the Jaipur Town Planning Development. From November 03, 2022 to January 06, 2023, a total of 74 colonies were demolished. Thus, unauthorized colonies are indeed a very major problem in the State of Rajasthan. In order to address this issue, Raj-RERA increased the registration fee that is to be paid by the Developers. Thus, in an order dated July 28, 2023, the Raj-RERA authority has levied an additional 'Standard Fee' other than the registration charges. To be implemented from August 01, 2023, the fee is to be levied by considering the proposed land use of the plotted development project.
- Registration fee shall be levied:
  - For Residential, Institutional and Governmental Reserved use of Land: The registration fee is INR 5 per square meter and the standard fee that will now be

implemented will also be INR 5 per meter. Therefore, a total fee of INR 10 per square meter will be charged.

  - For Commercial, Mixed or Industrial Use of Land: The registration fee is INR 5 per square meter, however an additional fee of INR 10 per square meter will now be charged. Therefore, from August 01, 2023, a total fee of INR 15 per square meter will be charged.

- According to RERA, this new 'Standard Fee' shall not only be applicable on schemes launched by private Developers but also on schemes initiated by Government agencies like municipalities, local area development authorities etc. The effects of Raj-RERA's decision of increasing registration fee shall be seen in the coming few months, whether it achieves the aim of control unauthorized colonies or if it deters Developers from registering their projects due to increase in registration costs, time shall tell.

Taxation | Amendment to GST Rules for companies with annual turnover exceeding INR 5 crore

In a move aimed at bolstering tax compliance and fostering business efficiency, the Central Board of Indirect Taxes and Customs (**CBIC**) issued certain amendment in the GST Rules. The new amendment requires companies with an annual turnover exceeding INR 5 crore to adopt Electronic Invoicing (e-invoicing) for their Business-to-Business (**B2B**) transactions and exports. This basically means that all companies having annual turnover exceeding INR 5 crore will generate invoices electronically for credit notes by supplies, supplier invoices, supplier debit notes and certain other documents using e-invoicing software that is introduced by the Government under the GST Regulation. The said change has come into effect from August 01,2023.

Key aspects:

- The decision to revise the e-invoicing threshold from INR 10 crore to INR 5 crore aligns with the Government's dual strategy of enhancing tax revenue generation while tackling tax evasion more effectively. The said change is expected to have far-reaching consequences and implications, both in terms of tax collection improvements and the benefits it brings to the companies having turnover exceeding INR 5 crore and above and thereby including many small and medium enterprises within its ambit.
- The extension of e-invoicing requirements to businesses having turnover of INR 5 crore and above is being viewed as a welcome change that can greatly contribute to the growth of small and medium enterprises. It is anticipated that this extension will lead to enhanced flow of input tax credit and a reduction in credit-related challenges for suppliers. The phased introduction of e-invoicing has already demonstrated its effectiveness in minimizing disruptions, enhancing compliance, and contributing to overall revenue growth.
- With the said change, companies that have a turnover of INR 5 crore will have to switch to e-invoicing and this will automate the process of generation of invoices for GST for such companies. E-invoicing will help such companies to speed up the process, significantly reduce the likelihood of data reconciliation and mismatch errors due manual data entry at various stages.
- The said amendment will lead to a unified system format across companies having turnover exceeding INR 5 crore since they will have to generate e-invoices. This will help in enhancement of business process and thereby improving relationship between businesses and banks, auditors, and investors, who can now access the said data without first needing to convert it into the format that they are using.
- One of the most prominent and major implications of e-invoicing is the reduction of fake invoices that used to be generated. The said amendment will also increase transparency and efficiency in GST collections as well as reduce tax evasion and ensure a more accurate and prompt reporting of transactions.

By reducing the threshold from INR 10 crore to INR 5 crore, the Government had widened the net, resulting in more companies coming into the ambit of mandatorily adopting e-invoicing. The said change of the e-invoicing threshold to INR 5 crore for businesses marks a significant shift in GST Regulations highlighting the Government's commitment to digital transformation, transparency enhancement, and the reduction of tax evasion. This change is expected to foster greater compliance, minimize errors, and enhance the precision of transaction reporting. With the said change the Government is trying to streamline the tax framework and encourage a more transparent and efficient business environment thereby benefiting companies as well as the broader economy.

Data protection compliance vis-à-vis DPDP Act, 2023

- Amidst the evolving landscape of data protection in India, the Digital Personal Data Protection Act, 2023 **(DPDP Act)** stands as a landmark development. From the inception of the Srikrishna Committee on data protection in 2017 to the enactment of DPDP Act, the path has been marked by anticipation. The DPDP Act was passed by both houses of parliament and received Presidential assent on August 11, 2023.
- **Enforcement**
  - While the DPDP Act has been legally enacted, the provisions have not yet been brought into force. The timeline for enforcement remains contingent on notification in the Official Gazette. Till the provisions of the DPDP Act are brought into effect, the relevant provisions of Information Technology Act, 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, continue to regulate the collection, use, processing, and transfer of sensitive personal data or information.
  - To ensure a seamless transition from existing statutory framework to newly enacted DPDP Act, a phased implementation approach should be followed. This interim period presents a unique opportunity for businesses, who collect, store and process personal data digitally (**Data Fiduciaries**) of individuals (**Data Principals**) to diligently prepare themselves and align

their practices with the DPDP Act before it comes into full effect.

- **Interim compliance obligations of data fiduciaries**
  - Identify and prepare a list of third-party entities (**Data Processors**) who process digital personal data on behalf of the Data Fiduciaries.
  - Conduct a comprehensive review of present data privacy policies and processes, including purpose of data collection and data retention periods.
  - Adopt a novel consent management mechanism, offering an accessible, transparent, and interoperable platform to the Data Principals, managed by a registered Consent Manager. Data Fiduciaries should also ensure that such consent mechanism facilitates seamless withdrawal of consent as well.
  - Prepare notice for consent required to be given to each Data Principal, including inter alia the purpose for which personal data is proposed to be processed; various rights with respect to withdrawal of consent and grievance redressal mechanism; and the manner in which one can make a complaint to the Data Protection Board of India. Since, DPDP Act's applicability is retrospective with respect to notice for consent, Data Fiduciaries should give a notice to all existing Data Principals, as soon as reasonably practicable, for data already processed before the date of commencement of the DPDP Act.
  - Establish a robust mechanism to address the various grievances of Data Principals. Proactively establish systems and procedures for handling requests for accessing, correcting, and erasing personal data.
  - Strengthen data security measures to protect personal data from breaches by including encryption, access controls, employee training on security practices, and regular security audits. Develop and formalize procedures for managing data privacy breaches effectively and in compliance with legal requirements.
  - Implement stringent data access controls within the organization and actively engage employees in data management practices.
  - Conduct internal assessments to determine whether Data Fiduciaries might qualify as significant data fiduciaries. If a business qualifies as a 'Significant Data Fiduciary' based on the volume of personal data being processed, risk of harm to the consumers, public order, etc., such a business must undertake additional obligations like data impact assessments, appointment of Data Protection Officer based in India to represent the Significant Data Fiduciary, appointment of an independent data auditor to carry out data audit. Starting this process early will streamline compliance once it becomes a mandate.
  - Develop technical capabilities to give option to the Data Principals to access the contents of the notice in English or any constitutionally recognized Indian language they are comfortable with and maintain records of these notices.
  - Adhere to purpose limitation and data minimization principles as fundamental aspects of data processing. Only required personal data should be collected, and it should only be collected and processed for specified, explicit, and legitimate purposes and not for any other purpose.
  - Adhere to the storage limitation principle, which will require Data Fiduciaries to regularly review data in their possession and methodically cleanse their databases, once the purpose for which it was collected is served.

In this digital age, where data is critical for innovation, embracing data protection is not just a legal requirement—it's a commitment to a secure digital future. Data Fiduciaries can begin with adopting the above measures to ensure a strong foundation for compliance. In addition to the above compliances, by harmonizing Indian data protection standards with international benchmarks (such as the EU-GDPR), by cultivating productive partnerships with key stakeholders and showcasing unwavering dedication to fortify data security while upholding legal responsibilities, Data Fiduciaries can pave the way for seamless cross border processing of data and gain global trust.

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