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SEBI | Consultation Paper on changes in Special Situation Funds regulatory framework

Securities Exchange Board of India (**SEBI**) in its meeting dated December 28, 2021 had approved the proposal to introduce Special Situation Funds (**SSFs**) as a new sub-category of Category I Alternative Investment Funds (**AIFs**), which shall invest in special situation assets including stressed loans. Approved proposal has been notified by SEBI via amendments in the SEBI (AIFs) Regulations, 2012 (**AIF Regulations**). SSF may acquire stressed loan in terms of Clause 58 of Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 (**RBI Master Directions**), upon inclusion of SSF in the Annex of RBI Master Directions. Thus, in order to enable SSFs to acquire stressed loans, it is essential that SSFs are included in the Annex of RBI Master Directions by RBI. Accordingly, the aforementioned framework for SSFs was referred by SEBI to RBI for their concurrence/comments for notifying SSFs in Annex of RBI Master Directions. Thereafter, RBI communicated the following requirements in the framework for SSFs to enable RBI to include SSF in the Annex of RBI Master Directions:

- Definition of 'special situation assets'
- Eligibility of investors in SSFs in terms of Section 29A of Insolvency and Bankruptcy Code, 2016 (**IBC**)
- Restrictions with regard to investment in connected entities
- Minimum holding period and subsequent transfer of loans
- Monitoring of SSFs
- Supervision of SSFs

Considering the above-mentioned requirements by RBI, SEBI has issued a Consultation Paper on November 28, 2023 to further amend the AIF Regulations and make changes in the regulatory framework to facilitate SSFs to acquire stressed loans in terms of RBI Master Directions.

Key aspects:

- **Definition of 'Special Situation Asset':** As per Regulation 19I of AIF Regulations, 'Special Situation Assets', inter alia, includes securities of investee companies, whose stressed loans are available for acquisition in terms of Clause 58 of the RBI Master Direction. It has been proposed that the term 'available for acquisition' may be substituted by the term 'are acquired'. Additionally, SSFs having prior investment in securities of stressed companies would not be disqualified/barred from acquiring stressed loans of the said companies
- **Eligibility of investors in SSFs in terms of Section 29A of the IBC:** RBI Master Directions state that a transferee to whom the economic interest in a loan exposure is transferred should not be a person disqualified in terms of Section 29A of IBC and the responsibility for verifying and establishing the same shall be with the transferor. It has been proposed that, AIF Regulations may be appropriately amended to specify that SSFs shall refrain from investing in or acquire a special situation asset if any of its investors is disqualified in terms of Section 29A of IBC concerning such a special situation asset
- **Restrictions with regard to investment in connected entities:** Regulation 19M(1) of AIF Regulations state that SSF shall not invest in its associates. It has been proposed that, Regulation 19M(1) of AIF Regulations may be suitably amended to specify that SSFs shall not invest in their related parties, wherein related party shall hold the same meaning as provided under the Companies Act, 2013
- **Minimum holding period and subsequent transfer of loans:** In terms of the SEBI Circular dated January 27, 2023, stressed loans acquired by SSF in terms of Clause 58 of the RBI Master Directions shall be subject to a minimum lock-in period of 6 months. It has been proposed that AIF Regulations may be suitably amended to specify that SSFs shall transfer/sell stressed loans acquired in terms of Clause 58 of RBI Master Directions, only to the entities enlisted in the Annex of RBI Master Directions
- **Monitoring of SSFs:** As per RBI Master Directions, it has been stipulated that all RBI regulated transferors shall report each loan transfer transaction undertaken under the said directions to a trade reporting platform as notified by the RBI. It has been proposed that upon issuing units to investors, SSF shall share the details of such issuances, including the details of investors, as well as any subsequent change in unit holdings, resolution strategies implemented, recoveries effected, etc. to the RBI-designated reporting platform. Additionally, SSFs shall also submit to RBI any information as may be required by it
- **Supervision of SSFs:** Given that SSFs deal in stressed loans, a dedicated supervisory framework for SSFs may be stipulated in AIF Regulations. It has been proposed that, AIF Regulations may be suitably amended to specify that SSFs who have acquired stressed loans in terms of Clause 58 of RBI Master Directions shall be subject to a dedicated supervisory framework specified by SEBI, in consultation with RBI, from time to time

SEBI | Stockbrokers directed to adopt Most Important Terms and Conditions

Securities and Exchange Board of India (**SEBI**) vide a Circular dated November 13, 2023 (**Circular**) gave directions to the stockbrokers for adoption of a standard Most Important Terms and Conditions (**MITC**) which needs to be acknowledged by the client at the time of opening a trading account.

Key aspects:

- SEBI has, as per Clause 20 of the Master Circular for Stockbrokers dated May 17, 2023 (**Master Circular**), prescribed uniform documents for formalizing the broker-client relation:
  - Account opening form
  - Rights and obligations
  - Risk disclosure documents
  - Guidance note
  - Policies and procedures
  - Tariffs sheets

- These set of documents which the stockbroker needs to provide to the client in terms of Clause 20 of the Master Circular are voluminous and the clients may lose focus on critical aspects of the relationship with the broker. In order to alleviate this concern and for the ease of understanding of the client, SEBI vide the Circular has given directions to stockbrokers for the implementation of a standard MITC.
- The form, nature of communication, documentation and detailed standards for implementation of MITC shall be published on or before January 1, 2024, by the Brokers' Industry Standard Forum (**BISF**) in consultation with SEBI.
- Under the Circular, certain amendments are proposed to the Master Direction taking into view the implementation of MITC by the stockbroker pursuant to the publication of the detailed standards for implementation of MITC. The proposed amendment are as follows:
  - Insertion of a new Clause 20.1.6 in the Master Circular under the head Most Important Terms and Conditions
  - Addition of the statement *'....in the future. The client would also be required to give acknowledgement of Most Important Terms and Conditions (MITC)'* in Clause 20.4.
- In case of onboarding new clients, the date of implementation and compliance by the market participants shall be April 1, 2024, and for the existing clients MITC shall be informed by the market participant through any suitable mode of communication by June 1, 2024.
- Directions were also issued to the stock exchanges to:
  - Bring the provisions of the Circular to the notice of stockbrokers, and disseminate the same on their websites
  - Make amendments to the relevant bye-laws, rules and regulations for the implementation of the provisions related to MITC
  - Publish the implementation standards on the websites of the stock exchange
  - Communicate to SEBI, the status of the implementation of the provisions of the Circular in the monthly development report
- This Circular exemplifies SEBI's commitment to enhance investor convenience by reducing the voluminous documentation process as the voluminous nature of the documentation involved in the process of opening a trading account might overwhelm investors and divert their attention from crucial aspects of the broker-client relationship. Further, involvement of the BISF in framing and deciding upon key elements such as formulating the document, setting detailed standards, and determining the nature of communication and documentation ensures a coordinated industry effort between SEBI and BISF.
- As we navigate toward the implementation dates, questions such as what will constitute the Most Important Terms and Conditions and how the adopted standards will unfold, remain in the minds of stakeholders. This step by SEBI is a significant milestone in shaping a more transparent, accountable, and investor-friendly regulatory environment.

SEBI | Crackdown on finfluencers

There have been several instances of late of finfluencers (a term used to describe financial influencers who are individuals having a large follower base on social media and regularly share advice/information on topics relating to finance) misusing their position of influence. As an instance, Securities Exchange Board of India (**SEBI**) recently barred Mohammad Nasiruddin Ansari, a popular social media influencer from the securities market and ordered him to refund around INR 17.20 crore collected from his followers after it was found that he gave stock recommendations in the garb of providing educational training. Similarly, SEBI also cracked down on Sadhna Broadcast Limited and Sharpline Broadcast Limited wherein the promoters of these companies had colluded with finfluencers to disseminate misleading content and created an artificial exponential growth in share prices of these companies.

Currently, there is no specific legal framework to address the misinformation that may be shared by a finfluencer. In the present scenario, finfluencers can only be held liable for any malpractice/manipulation under the existing legal provisions such as Section 12A of the SEBI Act, 1992 which deals with prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control and Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 which deals with Prohibition of manipulative, fraudulent and unfair trade practices. While SEBI does have specific guidelines and regulations for investment advisers and research analysts, the lack of any such specific regulations for finfluencers helps them to keep functioning in the grey area.

However, SEBI is trying to change this and had partnered with Advertising Standards Council of India (ASCI) to come up with Guidelines for Influencer Advertising in Digital Media

Key aspects:

- In the area of BFSI related to stock or investments, finfluencers should be registered with SEBI and their SEBI registration number should be stated with their name & qualifications.
- For other financial advice, the influencer must have suitable qualifications such as an IRDAI insurance license, CA, CS etc.
- In addition, they must abide by all disclosure requirements as mandated by financial sector regulators from time to time.
- The guidelines further mention that the influencer must disclose such qualifications and registration details prominently and also mention the ways to do it.
- Additionally, SEBI also released a consultation paper earlier this year which included following proposals:
  - No SEBI registered intermediaries/regulated entities or their agents/representatives shall directly or indirectly, have any association/relationship in any form whether monetary or non-monetary, for any promotion or advertisement of their services/products, with any unregistered entities (including finfluencers)
  - Entities registered/regulated by SEBI or stock exchanges or AMFI shall not share any confidential

information of their clients with any unregistered entities

- Finfluencers registered with SEBI or stock exchanges or AMFI in any capacity shall display their appropriate registration number, contact details, investor grievance redressal helpline, and make appropriate disclosure and disclaimer on any posts. They shall also fully adhere to the code of conduct under the terms of their relevant registration
- Such entities shall comply with the advertisement guidelines issued by SEBI, stock exchanges and SEBI recognized supervisory body from time to time.
- SEBI registered intermediaries/regulated entities shall not pay any trailing commission based on the number of referrals as referral fee
- SEBI registered intermediaries shall take active measures to dissociate themselves from any unregistered entity using their name, product or service. They shall take necessary action to bring it to the notice of enforcement agency concerned to take appropriate action, including filing case under Section 420 of the Indian Penal Code, 1860 for impersonation and fraud, etc. as may be applicable.

This crackdown on finfluencers by market regulators is not exclusive to India as market regulators across the globe are doing some blue skies thinking on ways to keep in check the activities of finfluencers that disrupt financial markets and especially target first-time investors.

SEBI | New regulatory framework for Micro, Small and Medium REITs

On September 26, 2014, Securities and Exchange Board of India (**SEBI**) introduced the SEBI Real Estate Investment Trusts Regulations, 2014 (**REITs Regulations**)[1] to provide an additional avenue for investors to participate in the real estate sector. Real Estate Investment Trusts (**REITs**) are set up as a trust under the Indian Trust Act, 1882 and registered under the REITs Regulations, are collective investment vehicles that own, manage, and operate income-generating real estate properties, offer investors an opportunity to possess these high value properties and enable them to earn dividend income to boost their capital.

In existence since 2015, Fractional Ownership Platforms (**FOPs**) (protech platforms such as YOURS, ALYF, hBits, and WiseX)[2] are web-based platforms offering fractional ownerships of real estate to small investors. It is an investing strategy in which the cost of acquisition of real estate is split among several investors, who invest in securities issued by a Special Purpose Vehicle (**SPV**) established by the FOPs. Such SPV purchases the real estate asset and the costs of acquisition are divided among the investors in SPVs, who also share the returns from the assets, subject to management and maintenance fees levied by the FOPs. Thus, FOPs allow investors to own a certain percentage/fractional share in the real estate asset through the securities issued by the SPVs.

SEBI floated a Consultation Paper[3] earlier this year with a proposal to regulate these FOPs and bring them under a new regulatory framework for Micro, Small and Medium REITs (**MSM REITs**). The Consultation Paper identified several concerns of the investors associated with the FOPs, not being within the purview of any financial sector regulator. These include ambiguity and lack of transparency in the mode and manner of completion of acquisition of the real estate asset and issuance of the securities; lack of uniformity in disclosures of valuation, title diligence, rental, or tenancy document; dependency on the FOPs in dealing with their own property; issues of due valuation and liquidity; lack of redressal mechanism; etc.

Key aspects:

- **Mandatory registration and regulation of FOPs:** Any person or entity (including FOPs) which facilitate fractional investment in real estate shall be required to register with SEBI as MSM REITs and comply with the REITs Regulations. Existing FOPs will be required to fulfil eligibility criteria as specified by SEBI and migrate their existing structures to MSM REITs within specified timelines or wind up their operations and give due exit option to the aggregated investors within a pre-specified period.
- **Structure of MSM REIT:** MSM REITs shall establish separate schemes for owning real estate assets through wholly owned SPVs. MSM REITs scheme shall have full control and hold 100% equity share capital in all SPVs. The SPVs shall have full control and hold 100% ownership of the underlying property.
- **Mandatory listing of units:** The MSM REITs shall raise funds initially through an initial offer of units of a scheme. The listing of units of such a scheme on a stock exchange shall be mandatory. The units of this scheme and the investments of MSM REITs in SPVs shall be held in dematerialized form.
- **Valuation of assets:** Valuation of assets shall be carried out by a valuer as defined under REITs Regulations. Also, a full valuation including a physical inspection of the properties shall be carried out on a quarterly basis for each scheme.
- **Distribution of income:** Not less than 95% of net distributable cash flows of the SPV shall be distributed to the scheme of MSM REITs subject to applicable provisions in the Companies Act, 2013. Additionally, 100% of net distributable cash flows of the MSM REITs shall be distributed to the scheme wise unit holders.
- **Disclosure and reporting requirements:** Minimum disclosure requirements in the offer document and the annual and half yearly reports are required to be sent to the investors.

[1] Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations 2014- https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-real-estate-investment-trusts-regulations-2014-last-amended-on-october-23-2023-_78924.html

[2] https://economictimes.indiatimes.com/markets/stocks/news/fractional-ownership-of-property-as-investment-tool-to-get-boost-from-sebi-regulation-experts/articleshow/105539025.cms

[3] Consultation Paper on Regulatory Framework for Micro, Small and Medium REITs (SM REITs)- https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/regulatory-framework-for-micro-small-and-medium-reits-msm-reits-_71149.html.

- **Rights of investors:** Right to remove the investment manager, auditor, principal valuer, seek winding up of the scheme, etc. and a mandatory approval of investors for change in investment manager/sponsor, change in investment strategy, etc shall be available. To ensure that a related party does not influence the decision, any person who is a party to any transaction shall not participate in voting on the specific issue.
- **Cap on total expense ratio:** To further safeguard the interest of the investors, SEBI will specify the cap on total expense ratio for MSM REITs.

SEBI in its 203rd Board Meeting held on November 25, 2023[4] approved the amendments to the REITs Regulations to create a regulatory framework for MSM REITs, with an asset value of at least INR 50 crore vis-à-vis minimum asset value of INR 500 crore for existing REITs. MSM REITs shall have the ability to create separate scheme(s) for owning real estate assets through SPVs constituted as companies. Pursuant to the above-Board Meeting, the amendments/new regulatory framework is not released by SEBI yet.

With mandatory registration of FOPs falling within the purview of MSM REITs under the REITs Regulations, the platforms will be subject to standard KYC requirements, net worth and deposit criteria, code of conduct, regulatory inspection, and tax benefits. MSM REITs have the potential to transform the real estate sector and create a new asset class for the investor ensuring orderly development of this sector and market.

SEBI | Transfer of 'fit and proper' criteria of the transferor entity in case of amalgamation

An order under Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (**Intermediaries Regulations**) was passed by Securities and Exchange Board of India (SEBI) on November 6, 2023 against Aditya Birla Commodities Broking Limited (**ABCBL**), an erstwhile registered stockbroker and member of National Spot Exchange Limited (**NSEL**).

The proceedings in the present matter originated from an enquiry report dated July 27, 2020, submitted by the Designated Authority (**DA**) in terms of the of the erstwhile Regulation 27 of the Intermediaries Regulations prior to its substitution vide an amendment dated January 21, 2021. The enquiry report recommended cancellation of registration of ABCBL and Aditya Birla Money Limited (**ABML**), with whom ABCBL had merged, as commodity derivatives brokers. After which a post enquiry show cause notice was issued by DA to ABCBL and a reply and additional reply to the show cause notice and supplementary show cause notice was filed by ABCBL. The reply and additional reply filed by ABCBL inter-alia stated that the proceedings initiated by issuance of show cause notice and supplementary show cause notice should be disposed of since proceedings initiated against ABCBL gets abated on the ground that ABCBL ceased to exist post its merger with ABML w.e.f. December 14, 2018.

The issues that SEBI considered in this matter pertained to:

- Whether the instant enquiry proceedings for determining the 'fit and proper' status of ABCBL is maintainable, given that it has been amalgamated with ABML?
- Whether the consequences of determination of the 'fit and proper' status may be applied to ABML?
- If the consequences of determination 'fit and proper' status are applied to ABML, whether the ABCBL satisfies the 'fit and proper' criteria as laid down in Schedule II of the Intermediaries Regulations?

At the outset, SEBI took note of the fact, that the ABCBL merged with ABML and thereafter ABCBL ceased to exist or have any independent identity with effect from the date of the National Company Law Tribunal order dated December 14, 2018. SEBI further placed reliance upon the settled position and the observations of the Supreme Court (SC) in the case of ***General Radio and Appliances Co Ltd & Ors v. MA Khader (dead) by LRs***[5]. The judgement stated that during a merger, the identity of the transferor company effaces, and the company ceases to be in existence. The Court also observed that the amalgamated company acquires a new status. With regard to the implication of the amalgamation, the SC enunciated that the successor-in-interest of the resulting amalgamation is subject to all rights and liabilities of the transferor company in accordance with the Scheme of Merger[6].

In light of the observations of the SC, SEBI held that the 'fit and proper criteria' mentioned in Clause 7 of Schedule II of the Intermediary Regulation cannot be treated as an asset or liability which can be transferred by the transferor company to the transferee company on amalgamation. In case the transferee company is desirous of becoming an intermediary under the Intermediary Regulation, it would have to separately fulfil the 'fit and proper' criteria mentioned under the Clause 7 of Schedule II of the said regulations. Hence, fit and proper status of the transferor company does not automatically devolve upon the transferee company on merger and amalgamation. Finally, considering the above discussion, it was observed by SEBI that a determination of the fit and proper status of the transferor company after its dissolution would essentially be fruitless. The proceeding was disposed of without any adverse directions.

Thus, any disqualification of the transferor entity that gets amalgamated would not have a bearing on the fit and proper status of the resultant entity. The true spirit of the fit and proper as provided under Clause 7 of Schedule II of the Intermediary Regulation is that the entity must fulfil the criteria specified while registration and during continuity of registration. Hence if a resulting/transferee entity which so wishes to get registered must fulfil the fit and proper as provided under the Clause 7 of Schedule II of the Intermediary Regulation on its own merits.

[4] SEBI's 203rd Board Meeting dated November 25, 2023 – https://www.sebi.gov.in/media-and-notifications/press-releases/nov-2023/sebi-board-meeting_79337.html

[5] 1986 AIR 1218

[6] Saraswati Industrial Syndicate v C.I.T., 1991 AIR 70; Bhagwan Dass Chopra v. United Bank of India and Others 1987 (Supp) SC 536

RBI | Master Directions on interest rate relating to non-callable deposits

The RBI has reviewed its previous directions wherein banks had been permitted to offer domestic term deposits (**TD**) without premature withdrawal option for an amount above INR 15 lakh and also a differential rate of interest on TDs based on non-callability of deposits in addition to tenor and size of deposits.

Key aspects:

- Banks shall have the freedom to offer term deposits without premature withdrawal option, provided that all term deposits accepted from individuals (held singly or jointly) for amount of INR 1 crore and below shall have premature withdrawal facility.
- Interest rates on Non-Resident (External) Rupee (**NRE**) Deposit/Ordinary Non-Resident (**NRO**) Deposits shall vary only on account of:
  - **Tenor of deposits:** Banks can have the freedom to determine the tenor of the deposit subject to minimum tenor of NRE term deposits being 1 year and that of NRO term deposits being 7 days.
  - **Size of deposits:** Differential interest rate can be offered only on bulk deposits.
  - **Non-availability of premature withdrawal option:** This can be provided only for NRE / NRO term deposits accepted from individuals (held singly or jointly) for amount of over INR 1 crore.
- Co-operative Banks shall have the freedom to offer term deposits without premature withdrawal option, provided that all term deposits accepted from individuals (held singly or jointly) and Hindu Undivided Families for amount of INR 1 crore and below shall have premature withdrawal facility.
- Interest rates on NRE/NRO term deposits with co-operative banks can vary only on account of (i) Tenor of deposits; or (ii) Size of deposits; or (iii) Non-availability of premature withdrawal option as mentioned above.

This step by the RBI to review its earlier direction and increase the minimum amount of deposit for offering non-callable term deposit from INR 15 lakh to INR 1 crore will is pivotal to maintain a balance between providing flexibility to banks and safeguarding the interests of depositors. It will also ensure that retail depositors don't get lured by additional interest rates offered on these deposits and end up getting penalized when they need to break them in case of emergency.

MCA | Limited Liability Partnership (Third Amendment) Rules, 2023

The Ministry of Corporate Affairs (**MCA**) vide its notification dated October 27, 2023 notified the Limited Liability Partnership (Third Amendment) Rules, 2023 (**Third Amendment Rules**) to amend the Limited Liability Partnership Rules, 2009 (**Rules**).

Through this Third Amendment Rules, after Rule 22 of the Rules, Rule 22A and Rule 22B has been inserted.

Key aspects:

- **Register of partners:** A Limited Liability Partnership (LLP) is mandated to maintain a Form 4A partner register at their registered office from the date of incorporation. Further, as per Third Amendment Rules, exiting LLPs must establish this register within 30 days of the Third Amendment Rules coming into effect. This register shall include partner information, including name, address, email, PAN or CIN, UID, parent or spouse's name, occupation, status, nationality, nominee's details, date of becoming a partner, cessation date, contribution details, and other interests. If there will be any update in the existing details that update shall be made within 7 days of changes, and rectifications should reference the competent authority's order.
- **Designated partner responsibility:** A designated partner in the LLP must furnish beneficial interest information, submitting details via Form 4 within 30 days. In the absence of a specified partner, the existing designated partner is deemed responsible until a replacement is appointed.
- **Declaration of beneficial interests:** A partner of the LLP without holding beneficial interest shall submit a declaration in Form 4B within 30 days of entry in the register of partners, specifying the actual holder of beneficial interest. Individuals with beneficial interest in the LLP shall file a declaration in Form 4C declaration within 30 days of acquiring interest, specifying the nature and particulars of the partners. Further, upon receipt of declaration in Form 4B and 4C, the LLP shall record it in the partner register and file a return in Form 4D with the Registrar within 30 days of the receipt of declarations.

MCA | Limited Liability Partnership (Significant Beneficial Owner Rules), 2023

Initially, the applicability of Section 90 of the Companies Act, 2013 (**Act**) to Limited Liability Partnerships (**LLPs**) was introduced through the Ministry of Corporate Affairs (**MCA**) notification dated February 11, 2022 (**Notification**).[7] The Notification involved the substitution of terms such as shares, company, member and officer within the provisions of the Act. These terms were replaced with contribution, LLP, partner and designated partner, respectively in the context of LLPs.

Subsequently, the MCA vide gazette notification dated November 9, 2023, has promulgated/notified the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (**SBO Rules**). The MCA through its SBO Rules has further detailed out compliances for procuring declarations from the SBOs for LLP structures. The SBO Rules, a consequential extension of this regulatory framework, are designed to bolster transparency and accountability within LLP structures. By specifically targeting the identification and disclosure of Significant Beneficial Owners

[7] Ministry of Corporate Affairs, G.S.R.110(E) dated February 11, 2022, available at, https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE3OTE3MTA=&docCategory=Notifications&type=open

(**SBO**), these rules aim to fortify measures against illicit financial activities within the realm of LLPs.

Key aspects:

- Uncovering and divulging information about SBOs holds considerable significance due to several reasons. The Financial Action Task Force (**FATF**) Guidance for Transparency and Beneficial Ownership also provides such reasons which shall help to prevent the misuse of LLP structures for money laundering, tax evasion, fraud, or other illegal activities[8]. Additionally, this process plays a pivotal role in upholding accountability and responsibility among the ultimate proprietors of LLPs, who might otherwise conceal themselves behind the protective veil of corporate anonymity. Furthermore, adhering to this practice aligns LLPs with internationally recognized standards and optimal practices concerning the disclosure of beneficial ownership, as advocated by the FATF.[9]
- The SBO Rules specify that every individual who is an SBO in an LLP or becomes one after the commencement of these rules must submit a declaration to the LLP within 30 days of acquiring such status or any subsequent change[10]. The declaration should contain the individual's particulars, the nature of significant beneficial ownership, and other prescribed information. LLPs are obligated to file a return of SBOs with the registrar within 30 days of receiving the SBOs' declarations.[11] The return should include particulars of the SBOs, any changes thereto, and other prescribed information. LLPs must also maintain a register of SBOs to record and update the particulars of SBOs, which is accessible to LLP partners upon payment of prescribed fees.[12]
- Section 90(5) of the Act imposes an obligation on the LLP[13] to dispatch a notice to any person whom the LLP knows or has reasonable cause to believe:
  - To be a significant beneficial owner of the company
  - To be having knowledge of the identity of a significant beneficial owner or another person
  - Likely to have such knowledge
  - To have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued
- Non-compliance by SBOs pursuant to issue of such notice or unsatisfactory information provided by SBOs may induce the LLP to petition the National Company Law Tribunal (**NCLT**). Such an application could seek an order instructing the LLP to impose restrictions on the interests held by SBOs in the LLP.
- The applicability of the SBO Rules does not extend to the contribution of an LLP when it is either held by the Central or State Government or any local authority. This exemption also encompasses holdings by a reporting LLP or a body corporate/entity under the control of the Central or State government. Furthermore, the SBO Rules do not apply to contributions held by investment vehicles registered with and regulated by the Securities and Exchange Board of India (**SEBI**) or those overseen by regulatory bodies such as the Reserve Bank of India (**RBI**), the Insurance Regulatory and Development Authority of India (**IRDA**), or the Pension Fund Regulatory and Development Authority (**PFRDA**).[14]
- The new mandate has certain implications for the stakeholders. It imposes increased compliance requirements on LLPs, as they must navigate with the new reporting and disclosure requirements. The SBO Rules also require the LLP to ensure the accuracy and completeness of information obtained from SBOs. Further, maintaining a register of SBOs and allowing partner inspections during business hours also adds to the LLPs' responsibilities.
- Additionally, the provisions outlined in Section 90(7) of the Act are subject to potential misuse, especially in scenarios marked by conflicts between majority and minority shareholders. In instances of disagreement, the majority shareholder may resort to petitioning the NCLT under Section 90(7), alleging that the minority shareholder has failed to furnish a SBO declaration or that the provided information is inadequate. However, there are safeguards provided towards the misuse of such provision which shall be adjudicated by the NCLT to mitigate the allegations by the majority shareholders to prevent adverse impacts on the minority shareholders.

The model of doing business through LLP structures has progressively gained popularity in India. The inclusion of LLPs in the regulatory framework concerning the identification and reporting of SBOs, mirroring the obligations already applicable to companies, signifies a strategic move by the government. This shift highlights the government's commitment to elevate transparency levels regarding the ultimate beneficial ownership within LLP structures.

MCA | Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

Ministry of Corporate Affairs (**MCA**) on October 27, 2023 issued the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (Rules) wherein it has asked private companies with the exception of small companies and government companies to dematerialize their securities by September 2024.

The Ministry had earlier mandated public companies to transact shares only in demat form from October 2, 2018, but private companies were not covered by the ruling. This notification will have a vast impact as over 1.4 million private companies are registered with the MCA.

[8] FATF Guidance, Transparency and Beneficial Ownership, available at, https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-transparency-beneficial-ownership.pdf.coredownload.pdf
[9] *Id.*, Article 34, p.16, available at,
[10] Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023, Rule 5
[11] *Id.*, Rule 6
[12] *Supra note 4*. Rule 7
[13] Supra note 4. Rule 8
[14] *Supra note 4*. Rule 10

Key aspects:

- Every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall inform the Registrar about the details of such share warrants and require the bearers to surrender such warrants to the company and get the shares dematerialized in their account within specified timelines.
- In case any bearer of the share warrant does not surrender the same within the said timelines, the company shall convert such share warrants into dematerialized form and transfer the same to the Investor Education and Protection Fund
- Every private company, other than a small company, shall also issue the securities only in dematerialized form and facilitate dematerialization of all its securities within specified timelines.
- A private company, which as on last day of a financial year, ending on or after March 31, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months of closure of such financial year, comply with the provisions of the Rules.
- Every private company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when the Rules come into force shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized in accordance with the provisions of the Depositories Act, 1996 and regulations made thereunder.
- Every holder of securities of the private company covered under the Rules shall get the securities dematerialized before transferring the same and in case of subscription to any securities of the private company by way of private placement or bonus shares or rights offer shall ensure that all his securities are held in dematerialized form before such subscription.

This amendment is likely to bring an end to physical share certificates and enhance transparency. These Rules will help in reducing risks associated with physical shares such as costs of printing share certificates, costs of RTA handling registered post dispatches, theft of share certificates in transit, delays in receiving share certificates, forged and fake certificates and signature differences. It will at the same time also streamline the transfer process, thereby making it more efficient.

Real Estate | Landlords cannot be deprived of beneficial enjoyment of their property

Landlord-tenant relationship in the jurisdiction of the NCT of Delhi is governed by the Transfer of Property Act, 1882, and by the Delhi Rent Control Act, 1958 (**DRC**), provided the monthly rental is beneath a certain threshold i.e. INR 3,500.

Under DRC, one of the grounds for vacation of the premises is a '*bonafide requirement/use*', however, the term 'bonafide' has not been defined under the DRC. Historically, through statutory provisions and judicial precedents such as under Section 3(22) of the General Clauses Act, 1897, the term 'bonafide' has been defined as any act in good faith where it is done honestly with proper care and consideration. Bolstering the definition of the term, the Apex Court in ***GC Kapoor v. Nan Kuar Bhasin***[15] held that the term 'bonafide requirement' has been expounded as the requirement which must be honest and not tainted with any oblique motive and is not merely a desire or a wish. Thus, the term 'bonafide' can be understood as a rule of reasonability which can be determined on a case-to-case basis.

The observation(s) of the DHC are in line with the judgment of the Apex Court in ***Prativa Devi v. JV Krishnan***[16] wherein it was held that the landlord is the best judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live. It was observed that bonafide personal need was a question of fact and should not be normally interfered with.

The recent judgment passed by the Delhi High Court (**DHC**) in ***Manmohan Singh v. Arjun Uppal & Ors***[17] relates to the Delhi Rent Control Act, 1958, whereby it has been held that if the landlords not having alternate suitable premises, bonafide require tenanted premises to give practical shape to their need, they cannot be deprived of beneficial enjoyment of their own property. In the present matter, the landlords filed an eviction petition under Section 14(1)(e) of the DRC on the ground that they require the tenanted premises for the bonafide purpose of setting up a plush restaurant. The petition was decreed by the Court of Additional Rent Controller (**ARC**), Tis Hazari Courts as against the tenant. The tenant thereafter filed a Revision Petition under Section 25B (8) of the DRC before the DHC stating that:

- Setting up a plush restaurant is an afterthought which is not bonafide as the landlords are attempting to earn profit either by selling or letting out the property at a higher rent.
- The landlord does not possess the requisite experience to start a plush restaurant.

While examining the matter, with regard to the aspect of revisional jurisdiction under Section 25B of DRC, the DHC placed reliance upon the Apex Court's stare decisis in ***Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta***[18] and held that the revisional jurisdiction of the High Court is restrictive and can only be exercised sparingly if the order passed by the Rent Controller suffers any illegality. Thus, Section 25B merely confers the power of superintendence upon the High Court. Moreover, the DHC observed that landlords are not required to possess or showcase prior experience to start a new business. Placing reliance upon the Apex Court's precedent in ***Dattatrya Laxman Kamble v. Abdul Rasul Moulali***[19], the Court held that if a person wants to start a business it may be to his advantage if he acquires experience but to say that exploring business field sans experience reflects lack of bonafide is a fallacious and unpragmatic approach.

[15] 2002 1 SCC 610
[16] 1996 5 SCC 353
[17] 2023 SCC Online Del 7530
[18] 1999 6 SCC 222
[19] 1999 4 SCC 1

The DHC upholding the eviction order has rightly opined that the landlord shall not be deprived of their beneficial enjoyment of the property and the eviction of the tenant must follow if the requirements of the landlords is bonafide. Thus, it is a welcome move because the clarification expounded by the DHC that the landlord does not need prior experience to start a new business in his premises will streamline the process of ground of vacation under the sub-head of bonafide requirement/use as enumerated under Section 14 which enumerates the provisions apropos the protection of tenants against eviction, more particularly Section 14(1)(e). As a matter of course, to have maximum clarity on the ground(s) of eviction enumerated by the statute is always a welcome step.

Real Estate | MahaRERA to set framework for quality assurance of real estate projects

On December 4, 2023, the Maharashtra Real Estate Regulatory Authority (MahaRERA) floated a Consultation Paper regarding the 'Framework for Quality Assurance Reporting' (**Framework**) to combat some of the perennial issues endemic to the real estate sector and ensure handover of quality homes to homebuyers. Public comments are invited on this paper and can be submitted by December 31, 2023.

Key aspects:

- MahaRERA Authority is the first in India to develop such a framework.
- As per Section 14(3) of MahaRERA , in case of any structural defects faced by the homebuyers within a period of 5 years of handover of possession of the apartment, it shall be the duty of the developer to rectify such defects without any further charge within 30 days and on failure of the developer to rectify such defects within 30 days, the aggrieved homebuyer shall be entitled to receive fair compensation which will be determined by the RERA Authority.
- The Framework further proposes the appointment of third-party agencies that will determine the quality of construction in the projects and ensure a thorough assessment. These third-party quality inspection agencies shall be appointed by MahaRERA in consultation with the Allotees Association and Developer's Association, pursuant to which the empaneled names of such agencies shall be mentioned on the website of MahaRERA.
- Under the relevant mechanism, the quality of construction shall be audited by the approved third-party quality inspection agencies in the following 3 stages:
  - **Advanced stages of construction:** Under this phase, inspection shall focus mainly on masonry, plumbing issues, weak areas, and other construction elements. During this phase, the developer shall make available test reports and registers which are undertaken by them to the inspectors.
  - **Pre-handover/pre-delivery inspection:** When the developer is ready to handover the possession of the apartment, a comprehensive inspections of living spaces, bathrooms, kitchens, and common areas shall be conducted ensuring that the project meets quality and safety standards.
  - **Verification of rectification of defects:** After addressing the issues identified in inspections, a third-party agency shall verify the rectification undertaken by project teams/contractors in consonance with the rectification memo.
- Initially, this initiative shall be advisory and optional for all the projects, however, as and when the ecosystem evolves, the framework shall be made mandatory for all projects.
- The relevant details of defects in the developer's project shall be prominently featured on the website which shall in turn assist the homebuyers to make a conscious decision relating to the investment in the projects and enhance the credibility of the developers.

It is pertinent to note that, the housing projects of the city registered pursuant to January 2023 shall be qualified for the gradings of the housing projects announced by the MahaRERA known as MahaRERA Grading Matrix every 6 months starting from April 2024, for which the particulars of such projects shall be taken into consideration from October 1 to March 31, 2024.

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