Devadhaantu Insights – August 2021

Dear Reader,

Greetings!

We are happy to present the Devadhaantu Insights highlighting important legislative updates in direct taxes and regulatory updates in SEBI, IBC, FEMA and Corporate laws.

We hope that we are able to provide an insight into various updates that you would find to be informative as well as useful. For any deeper discussion as to how the updates covered in this document could affect your transactions, please do not hesitate to contact Devadhaantu.

Happy Reading!
Devadhaantu Advisors

Thank You

Contact@devadhaantu.in

Devadhaantu Advisors

www.devadhaantu.in

Devadhaantu Advisors

Index (1/2)

Index (2/2)

DIRECT TAX UPDATES

AUGUST 2021

Direct tax updates (1/4)

Withdrawal of the retrospective amendment to 'indirect transfers' w.e.f. May 28, 2012[1]

Government of India, pursuant to receiving Presidential asset on August 13, 2021, vide the Taxation Laws (Amendment) Act, 2021, withdrew the retrospectivity of the 'indirect transfers' as was introduced by the Finance Act 2012. The Finance Act, 2012 had made an amendment which sought to "clarify" that gains arising from sale of shares of a foreign company were always taxable in India if such shares, directly or indirectly, derives its value substantially from assets located in India. The new law places an embargo on future tax demands arising out of any indirect transfer of Indian assets undertaken before May 28, 2012. It also provides for nullification of tax demands already raised for indirect transfers made before May 28, 2012 subject to fulfilment of following conditions by the person in whose case such demand has been raised:

i. Withdrawal or an undertaking for withdrawal of appeal filed before an appellate forum or a writ petition filed before a High Court or the Supreme Court of India;

ii. Withdrawal or an undertaking for withdrawal of any proceedings for arbitration, conciliation or mediation initiated by such person such as under a bilateral investment treaty; and

iii. Furnishing of an undertaking waiving their rights to seek or pursue any remedy or any claim in relation to such income whether in India or outside India.

Further, it has been proposed to refund the demand collected /refund adjusted in these cases. However, such refunds would be made without any interest under section 244A of the Income-tax Act, 1961 ("IT Act").

Devadhaantu Comment: The withdrawal has been bought in effect in light of problem faced by Aditya Birla group for operation of its telecom business, Vodafone. The amendment would provide much required relief to the Vodafone group as well as to many other corporate groups having their presence globally. However, removal of interest u/s 144A of the ITA might be a point of disappointment as effectively it will only compensate partially for the financial loss suffered by such corporate groups having impact due to such retrospective amendment.

1 The Taxation Laws (Amendment) Act, 2021 No. 34 of 2021 published in Official Gazette on August 13, 2021

Direct tax updates (2/4)

Allowance of India Mauritius Tax Treaty benefits to off-shore entities upon re-domiciliation from British Virgin Island to Mauritius[1]

Asia Today Limited ('Assessee Company'), is an entity which incorporated in the British Virgin Island ("BVI") as an international business company. Eventually, through a process of re-domiciliation, the Assessee Company shifted its registered office to Mauritius. As a result, registration certificate obtained from the Registrar of Company in BVI was cancelled and parallelly, the Mauritian Revenue Authorities also issued a tax residency certificate ("TRC") to the Assessee Company.

Subsequently, in one of the transactions in India, it claimed India – Mauritius tax treaty benefits, which was denied by tax authority in India. The Assessee Company submitted that even though initially incorporated in BVI, it was registered in Mauritius and hence it is entitled to claim India – Mauritius Tax Treaty benefits. Whilst the Revenue did not challenge the TRC issued by the Mauritian Government, it contended that the Assessee Company, originally being a BVI company, was not entitled to treaty benefits under the India-Mauritius DTAA. Accordingly, a question arose whether re-domiciliation affects the treaty entitlement benefits to off-shore entities.

The Mumbai Income Tax Appellate Tribunal ('Tribunal') observed that corporate re-domiciliation is a process by which a company moves its 'domicile' from one jurisdiction to another by changing the country under whose laws it is registered, whilst maintaining the same legal identity. It is a dynamic and constantly evolving process since the offshore entities face a situation where the rules and regulations then prevailing in the current 'domicile' remain no longer fit for the company's purpose, or the prevailing rules and regulations restrict business prospects which triggers transfer of the domicile by way of continuation from one place to another. Hence, the ITAT held that re-domiciliation of the company by itself cannot lead to denial of treaty entitlements of the jurisdiction in which the company is re-domiciled.

Devadhaantu Comments: The ruling by Tribunal is very much in line with the global concepts and removes any undue controversy which can impact ease of doing business in India. It is clarificatory in nature and much appreciated by global MNCs and institutional investors.

1 Asia Today Limited [2021] 129 taxmann.com 35 (Mumbai - Trib.)

Direct tax updates (3/4)

Long term capital loss on sale of shares acquired in phase manner at different prices but at its FMV is not artificial loss[1]

Swiss Reinsurance Company Ltd, a Swiss company and a tax-resident of Switzerland had acquired 26% shareholding in TTK Healthcare Services Pvt. Ltd. ('TTK') between 2007-2010 under the FDI route, at a premium ranging from INR 35 to INR 5,140 per share. After ~ 5-7 years, during AY 2014-15, the assessee sold all its shares in TTK to Vidal Healthcare Services Pvt. Ltd. ('VHS') at an agreed price of INR 5 per share and incurred a long-term capital loss of ~ INR 50 Cr, which was carried forward as per return of income.

The Revenue authorities contended that the transaction was a sham using colourable device to create artificial loss since the assessee had purchased the shares at huge premium and the assessee subsequently sold the shares at below par value.

The Mumbai Tribunal observed that no doubts were raised by the Revenue authorities in the preceding years wherein the assessee had purchased the shares. It further noted that investment made by assessee at a high premium was a commercial decision and did not violate any rules or regulations. It further noted that the explanation of the assessee that even after infusion of such capital, the revenue of TTK continued to decline, necessitating Assessee's decision to dispose of its shareholding, has not been countered with strong and valid reasoning by the Revenue Department. Accordingly, the ITAT held the transaction to be genuine and allowed carry forward and setoff of long-term capital loss to the assessee.

1 Swiss Reinsurance Company Ltd [TS-588-ITAT-2021(Mum)]

Direct tax updates (4/4)

Allowance of deduction under section 43B of the ITA for issuance of debentures in lieu of outstanding interest liability construing it as o "actual payment" of interest [1]

M.M. Aqua Technologies Ltd ('Assessee Company') was facing financial problem, owing to which it was not able to pay the interest and liquidation damages. Thus, it approached the lead financial institution which approved a rehabilitation plan wherein it was agreed that the assesses would issue convertible debentures in lieu of outstanding interest and other charges. Accordingly, Assessee Company issued debentures in favour of the financial institutions in lieu of the outstanding dues. Assessee Company claimed deduction u/s 43B(d) of the ITA for discharge of interest on such outstanding dues in the mode of issue of debentures as actual payment. Section 43B(d) of the ITA provides that any sum payable by the assessee as interest on any loan or borrowing from any specified lender is allowed as a deduction only on actual payment basis.

During scrutiny assessment, AO did not agree with the view of the assessee and disallowed the deduction claimed in the income-tax return. Matter went into various stages of tax litigation. At the level of Supreme Court ('SC'), it was observed that, as per the rehabilitation plan the debentures were accepted by the financial institution in discharge of the debt on account of outstanding interest.

Further, the SC also held that introduction of Explanation 3C to Section 43B with retrospective effect from April 1, 1989 is not applicable in the present case since Explanation 3C, which was introduced for the 'removal of doubts', only made it clear that interest that remained unpaid and has been converted into a loan or borrowing shall not be deemed to have been actually paid. In the present case, issue of debentures by the taxpayer was, under a rehabilitation plan, to extinguish the liability of interest altogether. Thus, the SC held that the Delhi High Court had erroneously concluded that 'interest', on facts of instant case had been converted into a 'loan' and allowed the assesses contentions.

1 M.M. Aqua Technologies Ltd vs CIT (Delhi) [Civil Appeal No. 4742-4743 of 2021]

MINISTRY OF CORPORATE AFFAIRS ('MCA') UPDATES

AUGUST 2021

MCA - Regulatory updates (1/6)

Government notifies the Limited Liability Partnership (Amendment) Act, 2021 – decriminalization of certain provisions (1/2)

The Limited Liability Partnership (Amendment) Act, 2021 was published in the Official Gazette on August 13, 2021 seeking to facilitate greater ease of doing to law-abiding corporates and to decriminalize certain provisions of the LLP Act.

The key changes introduced are as under:

i. Introduction of Small LLPs:

The provisions amend the LLP Act to introduce the concept of "Small Limited Liability Partnership" in line with the concept of "Small Company" under the Companies Act, 2013. The salient features of a Small LLP are as under:

- Contribution from partners is up to Rs 25 lakh (may be increased up to INR 5 Cr);
- Turnover for the preceding financial year is up to Rs 40 lakh (may be increased up to INR 50 Cr);
- The Central government may also notify certain LLPs as start-up LLPs (as recognized through notifications);
- Small LLPs to be subject to fewer compliances, reduced fee or additional fee, and smaller penalties in the event of default.

ii. Decriminalisation of certain offences:

A total of 12 offences are to be decriminalized under LLP Act which will get shifted to an Internal Adjudication Mechanism to help unclog criminal courts from routine cases.

iii. Standards of accounting:

In order to align with the Companies (Accounting Standards) Rules, the Act requires the Central Government may prescribe the standards of Accounting and Auditing for a class of LLPs in consultation with the National Financial Reporting Authority.

1 The Limited Liability Partnership (Amendment) Act, 2021 No. 31 of 2021

MCA - Regulatory updates (1/6)

Government notifies the Limited Liability Partnership (Amendment) Act, 2021 – decriminalization of certain provisions (2/2)

iv. **Compounding of offences:** Under the erstwhile LLP Act, the Central Government may compound any offence under the Act which is punishable only with a fine. The new provisions allow the Regional Director or any other officer not below the rank of Regional Director to compound any offence under the LLP Act which is punishable with a fine only.

v. **Non-compliance of Tribunal orders:** The new provisions remove non-compliance of NCLT order as an offence which was earlier punishable with imprisonment up to six months and a fine up to INR 50,000.

vi. **Punishment for fraud:** Increases in the maximum term of imprisonment from two years to five years for every person party to it knowingly if an LLP or its partners carry out an activity to defraud their creditors, or for any other fraudulent purpose. A fine between INR 50,000 and INR 5 lakh may also be imposed.

Devadhaantu Comments:

These reforms are in line with the ease of doing business specially for new-age startups / tech startups. As LLP structures are more common among startups and small businesses, the above reforms would help boost their ecosystems.

1 The Limited Liability Partnership (Amendment) Act, 2021 No. 31 of 2021

MCA - Regulatory updates (2/6)

MCA amends Companies (Specification of definitions details) Rules, 2014 vide Gazette Notification dated August 05, 2021

In the Companies (Specification of definitions details) Rules, 2014, in clause (h) of sub-rule (1) of rule 2 relating to definition of 'electronic mode, the following explanation shall be inserted, namely:

'Explanation. - For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under Section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as 'electronic mode' for the purpose of clause (42) of Section 2 of the Act.'

MCA amends Companies (Registration of Foreign Companies) Rules, 2014 vide Gazette Notification dated August 05, 2021

In the Companies (Registration of Foreign Companies) Rules, 2014, in clause (c) of sub-rule (1) of rule 2 relating to definition of "electronic mode", the following explanation shall be inserted, namely:

'Explanation. - For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under Section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as 'electronic mode' for the purpose of clause (42) of Section 2 of the Act.'

MCA - Regulatory updates (3/6)

MCA exempts Foreign companies from the provisions of Section 387 to Section 392 of the Companies Act, 2013 vide Gazette Notification dated August 05, 2021

Central Government hereby exempts, from the provisions of Sections 387 (Dating of Prospectus and Particulars to be Contained Therein), 388 (Provisions as to Expert's Consent and Allotment), 389 (Registration of Prospectus), 390 (Offer of Indian Depository Receipts), 391 (Application of Sections 34 to 36 and Chapter XX relating to criminal liability in prospectus and punishment for Fraudulently Inducing Persons to Invest Money) and 392 (Punishment for Contravention) the following:

- Foreign companies;

- Companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under Section 18 of the Special Economic Zones Act, 2005 (28 of 2005).

MCA - Regulatory updates (4/6)

MCA amends Schedule III of Companies Act on disclosure norms in financial statements vide Press release dated August 10, 2021

To bring in greater transparency in reporting of financial statements, the Ministry of Corporate Affairs (MCA) vide notification dated March 24, 2021 has amended the Schedule III to the Companies Act, 2013 effective from April 01, 2021 to mandate various disclosures by companies in their financial statements. The following new disclosures with respect to the virtual currency/crypto currency transactions and CSR spending undertaken by companies during a financial year are:

- **Details of Crypto Currency or Virtual Currency:** Where the Company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed:
  - Profit or loss on transactions involving Crypto currency or Virtual Currency;
  - Amount of currency held as at the reporting date; and
  - Deposits or advances from any person for the purpose of trading or investing in Crypto Currency/virtual currency.
- **Details of Corporate Social Responsibility ("CSR"):** Where the company covered under Section 135 of the Companies Act, 2013, the following shall be disclosed with regard to CSR activities
  - amount required to be spent by the company during the year;
  - amount of expenditure incurred;
  - shortfall at the end of the year;
  - total of previous years' shortfall;
  - reason for shortfall;
  - nature of CSR activities;
  - details of related party transactions;
  - contribution to a trust controlled by the company in relation to CSR expenditure as per relevant Accounting Standard and
  - where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.

MCA - Regulatory updates (5/6)

MCA amends Companies (Appointment and Qualification of Directors) Rules, 2014 vide Gazette Notification dated August 19, 2021

Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the compliances required by a person eligible and willing to be appointed as an independent director. One of the requirements was to pass an online proficiency self-assessment test conducted by the institute within a period of two years from the date of inclusion of individuals name in the independent director's data bank.

MCA has now notified Companies (Appointment and Qualification of Directors) Amendment Rules, 2021, to inter alia amend proviso to Rule 6 to state that an individual is not required to pass the online proficiency self-assessment test when he has served for a total period of not less than 3 years as on the date of inclusion of his name in the Independent Director data bank, in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central or any State Government, and having experience in handling the following:

i. Matters relating to commerce, corporate affairs, finance, industry or public enterprises; or

ii. Affairs related to Govt. companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities;

Further, the amendment also provides that individuals who are or have been, Advocates of a Court, in practice as a Chartered Accountant or Cost Accountant or Company Secretary, for at least 10 years, shall not be required to pass the online proficiency self-assessment test.

MCA - Regulatory updates (6/6)

MCA issues Frequently Asked Questions ('FAQ's') on Corporate Social Responsibility ('CSR') vide General Circular No 14/2021 dated August 25, 2021

The general framework of CSR has been provided in Section 135 of the Companies Act, 2013 (herein after referred as 'the Act'), Schedule VII of the Act and Companies (CSR Policy) Rules, 2014 (herein after referred as 'the CSR Rules'). Further, Ministry had also issued various clarifications including FAQs from time to time on various issues concerning CSR.

A number of important developments have taken place since then. The Ministry has notified the amendments in Section 135 of the Act as well in the CSR Rules on January 22, 2021 with an aim to strengthen the CSR ecosystem, by improving disclosures and by simplifying compliances. In response to such amendments, Ministry has received several references and representations from stakeholders seeking clarifications on the various issues related to CSR.

Accordingly, in supersession of clarifications and FAQs issued vide General Circular no. 21/2014, 36/2014, 01/2016 ,05/2016, (clarification issued vide letter dated January 25, 2018 and General Circular no. 06/2018, a set of FAQs along with response of the Ministry has been provided on the Annexure to the Circular for better understanding and facilitating effective implementation of CSR.

INTERNATIONAL FOREIGN SERVICES CENTRE ('IFSC') UPDATES

AUGUST 2021

IFSC Regulatory updates (1/1)

International Financial Services Centers Authority ("IFSCA") introduces regulations governing issuance, listing of securities by start-ups, SPACs in IFSC (1/3)

The IFSCA notified that International Financial Services Centers Authority (Issuance and Listing of Securities) Regulations, 2021 which will serve as an all-encompassing unified regulatory framework specifying the requirements for issuance and listing of various types of securities, and disclosures. The key aspects are as under:

Sr. No.	Particulars	Regulations
1	Applicability	An initial public offer of specified securities (i.e., equity shares and convertible securities) by an unlisted issuer; • A follow–on public offer of specified securities by a listed issuer; • Listing of specified securities by a start–up company or an SME company; • Secondary listing of specified securities; • An initial public offer of specified securities by a Special Purpose Acquisition Company ('SPAC'); • Rights issue and/or preferential issues by a listed issuer; • Listing of depository receipts; • Listing of debt securities; • Listing of Environment, Social and Governance ('ESG') debt securities; and • Issuance and/or listing of any other securities as may be specified by the Authority from time to time
2	General Eligibility Criteria	• A company incorporated in an IFSC; • A company incorporated in India; and • A company incorporated in a Foreign Jurisdiction.

IFSC Regulatory updates (1/1)

International Financial Services Centers Authority ("IFSCA") introduces regulations governing issuance, listing of securities by start-ups, SPACs in IFSC (2/3)

Sr. No.	Particulars	Regulations
3	Public Offer of Specified Securities	An issuer shall be eligible to make an initial public offer only if: • It has an operating revenue of at least USD 20 million in the preceding financial year; or • It has an average pre–tax profit, based on consolidated audited accounts, of at least USD 1 million during the preceding three financial years; or • any other eligibility criteria that may be specified by IFSCA.
4	Listing of Start-Up and SME Companies	A start-up company can list its "specified securities" on a recognised stock exchange, with or without making a public offer, if it meets the following criteria: • The offer document of the company should be filed within a period of ten years from the date of incorporation/ registration; • The annual turnover of the company for any of the financial years since incorporation/ registration should not have exceeded USD 20 million; and • The company is working towards innovation, development or improvement of products or processes or services, or it is a scalable business model with a high potential of employment generation or wealth creation.
5	Listing of SPACs	SPAC issuer to raise capital through initial public offer of specified securities on the recognised stock exchange, only if: • Target business combination has not been identified prior to the IPO; and • The SPAC has the provisions for redemption and liquidation in line with these Regulations.

IFSC Regulatory updates (1/1)

International Financial Services Centers Authority ("IFSCA") introduces regulations governing issuance, listing of securities by start-ups, SPACs in IFSC (3/3)

Sr. No.	Particulars	Regulations
6	Secondary Listing of Specified Securities	**I. Listing without Public Offer:** Any company which is having its specified securities listed in India (outside IFSC) or in a Foreign Jurisdiction may list its specified securities on a recognised stock exchange, without public offer, subject to the following conditions: • The company shall file listing application, in the manner specified by the stock exchange(s); and • The company shall comply with the listing requirements of the stock exchange(s) and other conditions as may be specified by IFSCA. **II. Listing with Public Offer:** Any company which is having its specified securities listed in India (outside IFSC) or in a Foreign Jurisdiction may list its specified securities on a recognised stock exchanges by undertaking public offer.

Devadhaantu Comments:

The Regulations in relation to SPACs are gaining popularity amongst startups. The global scenario for SPACs is highly visible and wealth creating. With the allowability of SPACs in IFSC, it will be interesting to see how it gains momentum considering various other regulatory factors.

FOREIGN EXCHANGE MANAGEMENT ACT 1999 ('FEMA') UPDATES

AUGUST 2021

Fema Regulatory updates (1/1)

Reserve Bank of India ('RBI') issues draft proposals to liberalize overseas investment regulations (1/2)

In order to further liberalize the regulatory framework governing overseas investments with a view to promote ease of doing business, the RBI has issued draft Foreign Exchange Management (Non-debt Instruments - Overseas Investment) Rules, 2021 and draft Foreign Exchange Management (Overseas Investment) Regulations, 2021 for public comments.

The key proposals made by RBI in the FEM (Non-debt Instruments – Overseas Investment) Rules, 2021 are as under:

A. New Definitions:

i. The following activities shall be treated as 'Overseas Direct Investment' ('ODI') by way of equity capital as under:

- Investment by way of acquisition of equity capital of an unlisted foreign entity; or
- Subscription to the Memorandum of Association of a foreign entity; or
- Investment in 10% more of the paid-up equity capital of a listed foreign entity; or
- When a person resident in India making such investment has or acquires "control", directly or indirectly, in the "foreign entity"; or
- Any sponsor contribution made, directly or indirectly, by an Indian Entity to an Alternative Investment Fund or Investment vehicle set up in an overseas jurisdiction as per the laws of such host jurisdiction; or
- Any acquisition outside India of 'participating interest or right' in the energy sector; or
- Investment outside India in agricultural operations as provided in the aforesaid Rules.

ii. 'Overseas Portfolio Investment' ('OPI') means investment, other than ODI, in foreign securities, including units of Exchange-traded Funds and depository receipts, which are listed, unless stated otherwise, on a recognized stock exchange outside India but not in any securities issued by a person resident in India (outside an IFSC).

Fema Regulatory updates (1/1)

Reserve Bank of India ('RBI') issues draft proposals to liberalize overseas investment regulations (2/2)

iii. The term 'financial commitment' has been amended to clarify that portfolio investments made overseas shall not be included and all overseas direct investment in equity, debt instruments and non-fund-based facilities shall be considered.

iv. Other terms such as 'control', 'divestment', 'foreign entity', 'listed foreign entity', 'step down subsidiaries', 'write off' etc. have been specifically defined.

B. Other Key Guidelines:

i. Round Tripping: The draft rules also provide that investment by a resident person in a foreign entity that has invested or invests into India (such as ODI-FDI structures) would be prohibited if the transaction is designed for tax evasion or tax avoidance.

ii. Pricing Guidelines: In case of acquisition or divestment of equity capital of an overseas unlisted company by a person resident in India, the transaction price can be within 5% of the fair value arrived on 'arm's length basis' as per any internationally accepted pricing methodology duly certified by a registered valuer under the Companies Act, 2013, or similar valuer registered with the regulatory authority in the host jurisdiction. The valuation certificate should be dated not more than six months before the date of the transaction.

C. Additional reporting requirements:

i. Form ODI to be replaced by Form FC for making financial commitment or undertaking disinvestment

ii. Form OPI introduced for making or transferring Overseas Portfolio Investments which is to be submitted within 30 days from the end of the half year in which such investment or transfer is made i.e., September or March

iii. Form APR to be filed within 6 months from end of the accounting period and is not required to be filed where there is only one Indian resident investor in a foreign entity and such investor neither has control nor holds > 10% equity shares.

SEBI REGULATORY UPDATES

AUGUST 2021

SEBI Regulatory updates (1/6)

SEBI grant exemption from making open offer obligations under Takeover Regulations

Jammu and Kashmir Bank Limited ('Target Company') make an application on behalf of the Government of Jammu and Kashmir ('Proposed Acquirer') to SEBI seeking exemption from the open offer obligation arising under Regulation 3(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Regulations') due to the proposed acquisition of INR 500 Crores (Five Hundred Crore) by proposed acquirer.

SEBI observed that, due to proposed acquisition, public shareholding shall reduce from 31.82% to 25.76% and the target company shall remain compliant in relation to the Minimum Public Shareholding of 25% in a listed company. Further, proposed acquisition will increase the holdings of the promoter and there will be no change in control of the Target Company.

Considering the above facts and powers conferred under SEBI Act, 1992 grant exemption to the Proposed Acquirer, from complying with the requirements of Regulation 3(2) of the Takeover Regulations subject to certain conditions.

SEBI Regulatory updates (2/6)

SEBI amends the lock-in period for minimum promoters' contribution and disclosure requirements for IPOs [Notification No. SEBI/LAD-NRO/GN/2021-45 dt. August 13, 2021] (1/2)

SEBI has notified SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2021 to reduce post Initial Public Offer ('IPO') / Follow on Public Offer ('FPO') lock-in period for minimum promoter's contribution (i.e., 20% of post issue capital) as under:

i. Relaxation in Post IPO / FPO Lock in Period:

Sr. No.	Category	Existing lock-in	Revised lock-in	Condition
1	Promoters / Promoter Group (up to minimum promoters' contribution)	3 years	18 months	a) Object of the issue is only Offer for Sale ("OFS"); b) The IPO does not contemplate more than 50% of the primary raise proceeds being deployed for capital expenditure on a project.
2	Promoters / Promoter Group (excess of minimum promoter's contribution)	1 year	6 months	
3	Pre- IPO securities held by persons other than Promoters / Promoter Group	1 year	6 months	None

Further, no post-IPO lock-in for Venture Capital Funds ('VCFs'), Alternate Investment Funds ('AIFs') and Foreign Venture Capital Investor ('FVCIs') to continue, except that in order to be eligible for the exemption, they must have held the equity securities for at least 6 months prior to the IPO (instead of the existing 1 year).

SEBI Regulatory updates (2/6)

SEBI amends the lock-in period for minimum promoters' contribution and disclosure requirements for IPOs [Notification No. SEBI/LAD-NRO/GN/2021-45 dt. August 13, 2021] (2/2)

ii. Relaxation in disclosure requirements at the time of IPO:

- Rationalization of definition of promoter group: The definition of promoter group shall be rationalized, in case where the promoter of the issuer company is corporate body, to exclude companies having common financial investors.
- Top 5 Group Companies: The disclosure requirements in the offer documents, in respect of Group Companies of the issuer company, shall be rationalized to, inter-alia, exclude disclosure of financials of top 5 listed / unlisted group companies. These disclosures will continue to be made available on the website of the group companies.

Devadhaantu Comments:

Recently, many heavily funded tech companies have applied for IPO where financial investors are seeking an exit. IPOs are mode to raise quick capital and provide exit to such financial investors. Shorter lock-in period is surely a much needed requirement from perspective of such financial investors. Further, rationalizing promoter group definition will provide relief to such financial investors (private equity and institutional investors) from unnecessary disclosure in relation to their portfolio companies in IPO documentation.

SEBI Regulatory updates (3/6)

SEBI amends LODR regulations to strengthen the independence of Independent Directors (1/2)

SEBI has notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021 wherein provision related to independent directors are amended in order to further strengthen the independence of Independent Directors ('IDs').

The key amendments include:

i. ID not to have a pecuniary relationship with the listed entity, holding, subsidiary, associates, promoters or directors ('Listed Company Group') during three immediately preceding financial years.

ii. Several restrictions on the relatives of the ID as under:

- To not hold any securities of Listed Company Group in excess of INR 50 Lacs or 2% of paid-up share capital during the specified period;
- Not be indebted to the Listed Company Group;
- No giving guarantee or provide security in relation to indebtedness of third person to the Listed Company Group;
- No pecuniary transaction or relationship with Listed Company Group amounting to 2% or more of its gross turnover or total income

iii. The appointment, re-appointment or removal of an ID of a listed entity shall be subject to approval of the shareholders by way of a special resolution in the next general meeting or within a period of three months from the date of appointment;

iv. At the time of appointment / re-appointment of a director, following additional information to be provided to the shareholders:

- Name of listed entities from which such person has resigned in the past three years;
- In case of an ID, the skills and capabilities required for the role and the manner in which the proposed person meets such requirements

SEBI Regulatory updates (3/6)

SEBI amends LODR regulations to strengthen the independence of Independent Directors (2/2)

v. All related party transactions shall be approved by only IDs who are the members of the audit committee;

vi. Cooling off period of one year from date of resignation for re-appointment of ID as an executive / WTD on the board of any Listed Group Entity or on the board of a company belonging to its promoter group

vii. Vacancy created by ID on resignation or removal to be filled within 3 months;

viii. At least 2/3rd of the directors in the nomination and remuneration committee shall be IDs;

ix. W.e.f 1 January 2022, top 1000 listed entities by market capitalization calculated as on March 31 of the preceding FY, shall undertake Directors and Officers insurance for all the IDs of such quantum and for such risks as may be determined by its BOD.

SEBI Regulatory updates (4/6)

SEBI notifies new norms for issuance and listing of non-convertible securities under SEBI (Issue and Listing of Non- Convertible Securities) Regulation, 2021 [Operational Circular No. SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021] (1/2)

On August 9, 2021, SEBI notifies the SEBI (Issue and Listing of Non-Convertible Securities) Regulations which consolidates erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 into SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 which are effective from August 16, 2021. The key aspects of the Regulations are as under:

i. Applicability of the Regulations:

- Issuance and listing of debt securities (such as debentures, bonds) and non-convertible redeemable preference shares ('NCRPS') by an issuer by way of public and private issuance and listing;
- Issuance and listing of non-convertible securities (such as Perpetual non-cumulative preference shares, perpetual debt instruments) by an issuer issued on private placement basis which are proposed to be listed; and
- Listing of commercial paper issued by an issuer in compliance with the guidelines framed by the RBI.

ii. Definition of Issuer: Means a company or a body corporate / statutory corporation / multilateral institution or a trust registered as a Real Estate Investment Trust or an Infrastructure Investment Trust, authorized to issue non-convertible securities and / or commercial paper and is seeking to list its non-convertible securities, with any recognized stock exchange.

iii. Conditions to access the bond market: Issuers other than unlisted REITs and InvITs who are in existence for less than 3 years, have been facilitated to tap the bond market, provided:

- Issuance of their debt securities is made only on a private placement basis;

SEBI Regulatory updates (4/6)

SEBI notifies new norms for issuance and listing of non-convertible securities under SEBI (Issue and Listing of Non- Convertible Securities) Regulation, 2012 (2/2)

- The issue is made on the Electronic Book Mechanism ("EBP") platform irrespective of the issue size; and
- The issue is open for subscription only to QIBs.

iv. Prospectus: To enable issuers to raise funds quickly without filing a separate prospectus each time, the restriction of not more than 4 issuances of debt securities in a year through a single shelf prospectus has been done away with.

v. Call & Put option: The option for call and put has been introduced in case of debt securities issued on private placement basis. This will provide greater flexibility to the issuers and investors of debt securities and NCRPS as well. Further, the period for exercise of call and put option has been brought down to 12 months from 24 months in order to provide increased flexibility, both to issuers and investors.

vi. Minimum issue size: In order to encourage public issuances of debt securities, the present stipulation that the minimum size of INR 100 crore has been done away with.

Further, pursuant to the above consolidation, SEBI has also notified an operational Circular dated August 10, 2021 which provides for a chapter wise framework for issue and listing of (a) Non-Convertible Securities ("NCS"); (b) Securitised Debt Instruments ("SDI"); (c) Security Receipts ("SR"); (d) Municipal Debt Securities; and (e) Commercial Paper ("CP")

SEBI Regulatory updates (5/6)

SEBI amends Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 vide Gazette Notification Dated August 03, 2021

These Regulations may be called the Securities and Exchange Board of India (Investment Advisers) (Third Amendment) Regulations, 2021.

Some of the changes that have been brought into effect vide this amendment are as follows:

- Definition of an accredited investor has been amended and now is an "accredited investor" shall mean any person who is granted a certificate of accreditation by an accreditation agency who:

  i. In case of an individual, Hindu Undivided Family, family trust or sole proprietorship has:

     A. annual income of at least two crore rupees; or

     B. net worth of at least seven crore fifty lakh rupees, out of which not less than three crores seventy-five lakh rupees is in the form of financial assets; or

     C. annual income of at least one crore rupees and minimum net worth of five crore rupees, out of which not less than two crore fifty lakh rupees is in the form of financial assets.

  ii. In case of a body corporate, has net worth of at least fifty crore rupees;

  iii. In case of a trust other than family trust, has net worth of at least fifty crore rupees;

  iv. In case of a partnership firm set up under the Indian Partnership Act, 1932, each partner independently meets the eligibility criteria for accreditation.

SEBI Regulatory updates (6/6)

SEBI brings modifications in Operational Guidelines for Foreign Portfolio Investors ("FPIs") and Designated Depository Participants ("DDPs") pursuant to amendment in SEBI (Foreign Portfolio Investors) Regulations, 2019 vide Circular dated August 04, 2021

Section 9A relating to a special taxation regime for offshore funds if their fund managers are located in India of the Income Tax Act, 1961 (IT Act) was introduced by the Finance Act 2015 and subsequently amended vide Finance Act 2020 to facilitate setting up of fund management activity in India with respect to offshore funds.

In order to enable Resident Indian fund managers to benefit from the provisions of Section 9A, clause (c) of Regulation 4 relating to Eligibility criteria of Foreign Portfolio Investor of the SEBI (Foreign Portfolio Investors) Regulations, 2019, has been amended.

For operationalizing the aforementioned amendment to the SEBI (Foreign Portfolio Investors) Regulations, 2019, the Explanation provided under Para 2 (ii) (b) of Part A of the Operational Guidelines for FPIs and DDPs, issued vide Circular dated November 05, 2019, stands modified as below:

"Explanation: The contribution of resident Indian individuals shall be made through the Liberalised Remittance Scheme (LRS) notified by Reserve Bank of India and shall be in global funds whose Indian exposure is less than 50%."