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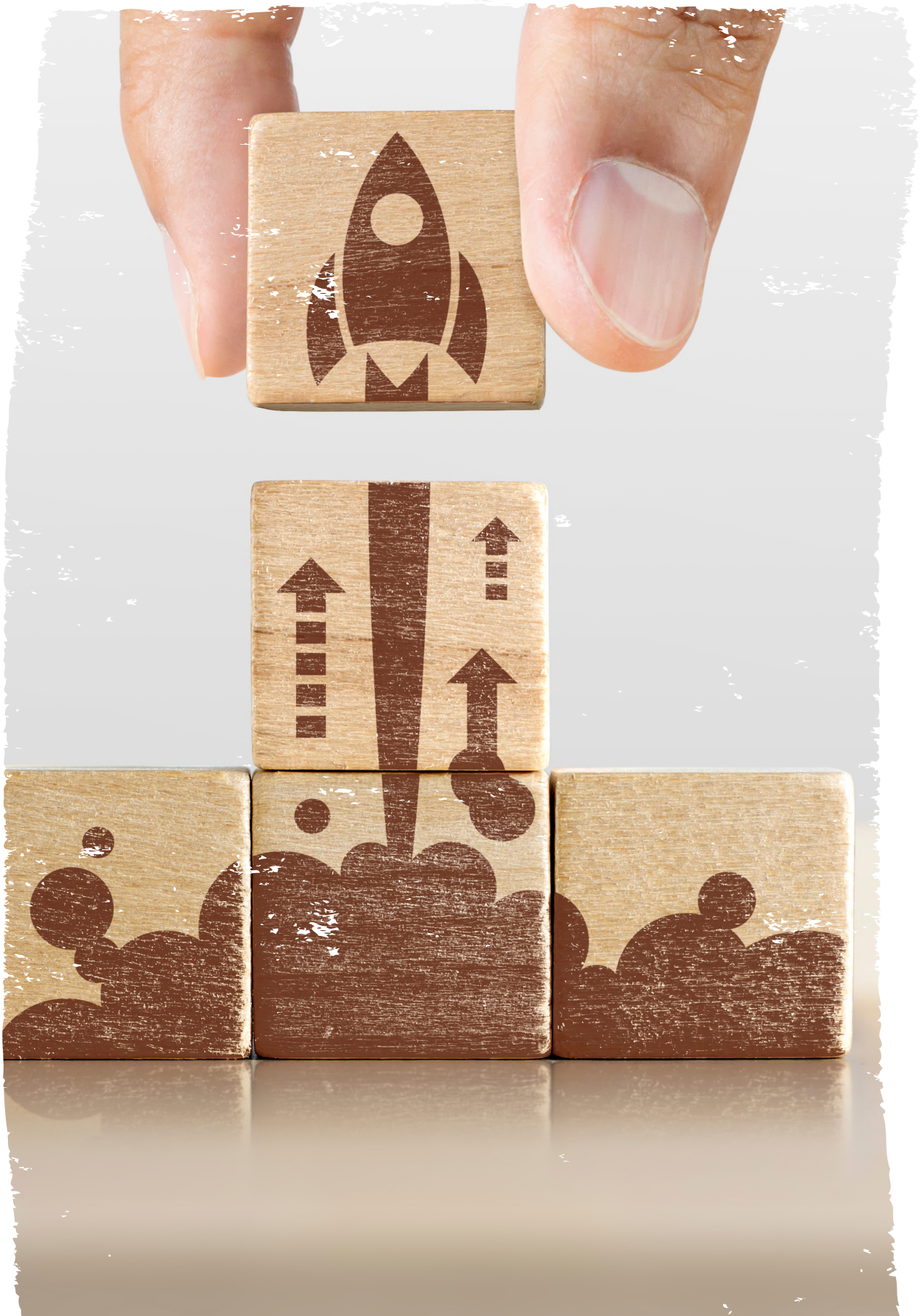

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Changes to Form DPT 3: Precautions auditor needs to keep in mind while affixing the DSC

I. Introduction:

Companies presently are in process for closing annual statements for the financial year 2022-23. Before audited financials are filed, parallel to this exercise, there is a requirement to file return on deposit i.e., E-Form DPT 3 which basically is amounts received by company and are outstanding as on 31st March, which are excluded from the definition of deposits. The due date for filing form DPT-3 is 30th June of every year (for financial year ending on 31st March). This form has been shifted to V3 portal of MCA with effect from 31st August 2022. As a part of this transition some modifications were made to the form. Since this is the initial year when companies will be filing form DPT-3 via V3 portal, we shall walk through the modifications made to form DPT-3.

II. Background:

Rule 16 of Companies (Acceptance of Deposits) Rules 2014, requires every company to file a Return of Deposit who has accepted and repaid deposits from public or from members. Further as per explanation to sub-rule 1 of Rule 16, there is another condition of giving information about amounts received by the company and outstanding with the company as at end of financial year but are exempt from being considered as deposits. For intimation of these details, a common form is prescribed, i.e., form DPT-3. Based on selecting the purpose of form, different fields would be displayed.

III. Changes in Form on V3 portal of MCA:

During the shift from V2 portal to V3 portal, the form was modified to include an **ageing schedule for each category of money received and outstanding**, which is excluded from deposit. This ageing schedule requires the applicant to bifurcate the amount in 3 categories, that is,

i. Amounts repayable within 1 year,
ii. Amount repayable after 1 year but within 3 years &
iii. Amount repayable after 3 years.

Another essential change made in the form is with respect to certification of form DPT-3 by statutory auditor of the company. Initially, when the form was filed for return of deposit, then the statutory auditor had to attach the certificate stating that information provided in the form is correct and true. But if the same form was being filed for amounts excluded from deposits, the form didn't require statutory auditor's certificate. However currently there has been an overhaul in V3 portal and the scenario stands changed. Now, if DPT-3 is being filed for amounts excluded from definition of deposits, the statutory auditor is mandated to digitally sign and certify the form authenticating and validating that the figures quoted in the form are accurate.

IV. Figures mentioned in form DPT-3 shall be audited or unaudited?

While filing form DPT-3 i.e., return of deposit, the figures must be taken from audited financial statements for FY 2022-23 whereas, while filing DPT-3 for amounts excluded from deposits, the figures need not necessarily be obtained from the audited financial statements.

V. Challenge for the Auditor:

As discussed above, when DPT-3 is being filed for amounts received and outstanding but excluded from the definition of deposits, there is no prerequisite on companies to provide audited figures. Under Companies Act, companies have timeline upto 30th September for convening annual general meeting for adoption of audited financials. Hence majority of unlisted companies generally get their accounts audited by months of July or August. However, the due date of filing this form DPT-3 is 30th June. Hence, every year, many unlisted companies have been providing unaudited figures outstanding as on 31st March in this form. Currently due to migration on V3 portal, the auditor will have to validate and authenticate correctness of these figures even before the audit is completed. In such a scenario, there is a high possibility that the auditor may not have completed the audit till the due date of this form, will he be able to accredit the exact figures is food for thought.

VI. Solution:

To find a feasible solution to this challenge, either the timelines fixed for completion of audit will have to be preponed ***OR*** the company will have to devise a mechanism which will enable the auditor to confirm the appropriate figures even before finishing the statutory audit. This solution-oriented approach may include, taking assistance of company's internal control systems, processes, and other methodologies.

VII. Conclusion:

To conclude, we suggest that the companies and their statutory auditors should work in sync with each other in this regard well before the stipulated due date of filing to avoid any last-minute hassles and ensure that the filing happens in a seamless manner, as there is no possibility for any revision in the form once it gets filed on V3 portal. Hence planning of all these aspects well in advance can lead to uninterrupted filing and that compliance is done in true letter and spirit.

Hasti Vora – Research Associate – hastivora@mmjc.in

Online Gaming - Skill or Gambling

Recently the Indian Government has also begun to recognise the gaming industry as one of the pillar of the Indian economy. According to the report released by KPMG in 2022, India's online gaming market had revenue of INR 136 billion ($1.80 billion) and is predicted to expand at a CAGR of 21% over the next five years leading up to INR 290 billion ($3.84 billion). The industry estimates that it has the potential to attract FDI of more than INR 10,000 crore over the next few years.

India gaming companies have achieved unicorn status, but there has been also a greater scrutiny of the industry w.r.t online offering of games will fall under gambling and potential violations of various laws including GST, foreign exchange laws etc. Gambling and betting are a prohibited activity under foreign exchange laws.

Indian courts have recognised that the offerings of game of skill is protected business activity. The same view is reiterated by Karnataka High Court in recent order in matter of Gameskraft Technologies Private Limited where the question before court for consideration was "whether offline/online games such as Rummy which are mainly/preponderantly/substantially based on skill and not on chance, whether played with/without stakes tantamount to 'gambling or betting? "The question was posed to ascertain GST related matter.

The court held that "There is a distinct difference between games of skill and games of chance; games such as rummy whether played online or physical, with or without stakes would be games of skill.

"A game of chance whether played with stakes is gambling.

A game of skill whether played with stakes or without stakes is not gambling.

A game of mixed chance and skill is gambling, if it is substantially and preponderantly a game of chance and not of skill."

To summarise, the games which consist purely of chance or skill, and as such a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is one in which the element of skill predominates over the element of chance. It is the dominant element — "skill" or "chance" — which determines the character of the game."

Therefore whether foreign investment is allowed or prohibited will depends upon the factor whether such offering of game involves game of chance or game of skill.

Chandani Balraja – Associate - chandanibalraja@mmjc.in

Vrushali Bhave Athavale – Senior Manager - vrushalibhave@mmjc.in

This article is already published on taxguru.in. It has been made part of MMJC Insights for easy reference to our readers. This article can also be accessed at below mentioned link:

https://taxguru.in/goods-and-service-tax/online-gaming-skill-gambling.html

Form OPI for reporting Overseas Portfolio Investment

I. Background:

To promote ease of doing business Government of India and RBI in their joint efforts to simplify and rationalise the processes, came up with a new framework for Overseas Investment (OI). The notification was issued on 22nd August 2022 under Foreign Exchange Management (Overseas Investment) Regulations, 2022, in suppression of previous Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 and Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015

II. Introduction of Form OPI

Under the new OI Framework, a person resident in India, other than a resident individual, making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end. The Form is to be filed only when there is a change in the holding i.e. either investment or disinvestment and it should not be considered as continuous half-yearly reporting.

For the half year ended on 31st March due date would be – 30th May
For the half year ending on 30th September due date would be- 29th November

For the purpose of understanding the word "Overseas Portfolio Investment" or "OPI", means an investment, other than ODI, in foreign securities, but not in any unlisted debt instruments {defined in Foreign Exchange Management (Overseas Investment) Rules, 2022} or any security issued by a person resident in India who is not in an IFSC:

It has been clarified in the regulation that, OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue, to be treated as OPI until any further investment is made in the entity.

When there is an acquisition of shares or interest under an Employee Stock Ownership Plan or Employee Benefits Scheme, the responsibility of reporting such investment will be on

1)the office in India or a branch of an overseas entity or a subsidiary of such overseas entity in India or
2)on the Indian entity in which such overseas entity has a direct or indirect equity holding;

where the resident individual is an employee or director.

An Indian entity may make OPI which shall not exceed fifty percent of its net worth as on the date of its last audited balance sheet.

Form OPI has been divided into 3 sections: A, B & C. The details required to be mentioned in such sections are mentioned below:

Section A
To be filed by a person resident in India, other than a resident individual, making any Overseas Portfolio Investment (OPI) or transferring such investment during the reporting period (Only relevant sections of this form, as applicable, may be used)

Section B
Reporting of the Overseas Portfolio Investment (OPI) by Venture Capital Fund (VCF)/ Alternate Investment Fund (AIF)

Section C
Certificate from Indian entity/ Mutual Fund/AIF/VCF

The Person acquiring equity capital in a foreign entity shall also be required to submit Form APR on a yearly basis on or before 31st December

Nidhi Kulwal – Deputy Manager- ***nidhikulwal@mmjc.in***
Suvarna Padhye - Senior Manager- ***suvarnapadhye@mmjc.in***

Highway to fast track mergers through Companies (Compromises, Arrangements and Amalgamations) Amendment Rules 2023

I. Background

- Corporate restructuring has seen a new trend in recent time across the Globe. With so much of restructuring happening in and around, the speed of Process of Merger/ Amalgamation needs to be faster. Usually, it takes 9 to 12 months for National Company Law Tribunal (NCLT) to approve a scheme of merger or amalgamation prescribed u/s 230 to 233 of Companies Act 2013 (CA2013/Act) read with rule Compromises, Arrangements and Amalgamations) Rules, 2016. This is a lengthy and time-consuming process and administratively difficult.

- To expediate the approvals for the scheme of mergers and amalgamation, the procedure of fast-track merger was designed.

- Section 233 of the CA 2013/Act read with Rule 25 Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 illustrates the concept of Fast Track Merger Process which introduces a slightly simpler procedure for mergers and amalgamations of certain classes of companies including small companies, or between holding and subsidiary companies. This procedure does not require approval of NCLT. Under this process, it enables these companies to undergo merger and amalgamation procedures quickly, simply and within fixed time duration.

- Ministry of Corporate Affairs (MCA), vide notification dated 15th May 2023, has amended Rule 25 (5) and Rule 25 (6) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 through Companies (Compromises, Arrangements and Amalgamations) Amendment Rules 2023.

- With the above amendment Registrar of Companies (ROC) and Official Liquidator (OL) have now been mandated 30 days' time within which they have to raise their objections. Earlier there was no maximum time frame given to raise objections.

II. Point of Change – This amendment has also amended the Rules to the effect that where no objection/ suggestions are received within a period of 30 days of the receipt of the scheme from ROC and OL and Regional Director is of the opinion that scheme is in the public interest or in the interest of creditors, RD shall issue a confirmation order of such scheme of merger or an amalgamation within 15 days. This reduced timeline will provide a highway to fast rack mergers and speed up the process.

For better understanding 3 scenarios are simplified as follows:

Scenario I	No objection/ suggestions from ROC and OL within a period of 30 days RD is of the opinion that scheme is in the public interest or in the interest of creditors	Confirmation order for such scheme may be issued within a period of 15 days after expiry of 30 days.

Scenario II	Objection/ suggestions received from ROC and OL RD is of the view that such objection are not-sustainable and is of the opinion that the scheme is in public interest or in the interest of creditors,	CG may within a period of 30 days after the expiry of 30 days of receipt of scheme issue confirmation order.
Scenario III	Objections/suggestions received from ROC and OL RD based on objection received is of the opinion that the scheme is not in the public interest or in the interest of creditors	Application to NCLT for consideration of scheme u/s 232 within 60 days of the receipt of the scheme

Further, **if the Regional Director does not issue a confirmation order or does not file any application to NCLT** to consider the scheme under section 232 of the act **within a period of 60 days of the receipt of the scheme** under subsection (2) of section 233 of the Act, **it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.**

III. Conclusion:

With this amendment there are now defined timeline for ROC, OL and RD which will enable to complete the entire process of merger and amalgamation around about 120 days. The real purpose of fast-track mergers will now be served with insertion of this new and quick timeline imposed. Further concept of deemed acceptance and confirmation order is certainly a welcome change and a much required one for the purpose of ease of doing business in India.

Esha Tandon – Deputy Manager – eshatandon@mmjc.in
Omkar Dindorkar – Partner – omkardindorkar@mmjc.in

The transition to XBRL Filings w.r.t Schedule III of Sebi LODR Disclosures for Listed Entities

I. Background:

Regulation 30 read with Schedule III of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI LODR] states that a certain list of events mentioned in Part A , Para A are deemed to be material and shall be disclosed to the Stock Exchange within 24 hours of their occurrence. Usually, these disclosures are to be made in PDF format through the Electronic Platform of the Stock Exchange (The Listing Centre for the Bombay Stock Exchange and the NEAPS portal of the National Stock Exchange).

However, the Bombay Stock Exchange ('BSE') and the National Stock Exchange ('NSE') had released a circular on January 27, 2023 mandating a certain list of items that have to be disclosed in XBRL as well as PDF formats which include prior intimation of Board meetings pursuant to Regulation 29, Change in Registrar and Share Transfer Agent, Change in Auditors, Change in Director(s) or Chief Financial Officer or Chief Operating Officer or Company Secretary etc.

The BSE and NSE had released another circular on March 31, 2023, providing an additional list of items under Schedule III that need to be disclosed in XBRL format.
The BSE and the NSE have stipulated in both circulars that the XBRL submissions must be made within 24 hours following the PDF submissions.

II. Stock Exchanges circulars dated May 15, 2023:

The BSE and NSE have now, vide its circular dt: May 15, 2023, released a set of FAQs and list of information that will now be required to be given in XBRL form for each such event of disclosure to be filed under Regulation 30, which is to be filed now in XBRL mode.. The FAQs aim to clarify any ambiguity regarding the details of material event to be disclosed in XBRL format. In this write up we would analyse and check whether there are any additional details that are required to be given in XBRL pertaining to Schedule III disclosures in addition to minimum disclosure requirements prescribed under SEBI Circular September 9, 2015.

III. Additional Information to be given in XBRL:

All new XBRL utilities notified by BSE and NSE ask for certain basic information regarding the listed entity making the announcement such as Name of Listed Entity, BSE Scrip Code, NSE and MSEI Symbol, ISIN etc.

For the purpose of this write up, we shall take examples of two particularly common events i.e. Issuance of Securities and Notice of Shareholder Meeting in order to understand additional disclosures:

A) XBRL filing of Notice of shareholders meeting:

The XBRL Utility pertaining to Notice of shareholder Meeting asks for additional information (over and above the information required as per SEBI Circular September 9, 2015) pertaining to the shareholders meeting which can be obtained from the Notice itself. A brief of the additional information requires is given below:

Sr. No	Particulars of Event	Information required pursuant to SEBI circular dated September 09, 2015	Additional Information Required as per BSE & NSE Circulars dated May 15, 2023
1	Notice of Shareholders Meeting	1. Date of notice/call letters/resolutions etc. 2. brief details viz. agenda (if any) proposed to be taken up, resolution to be passed, manner of approval proposed etc.	1. Details of the Event i.e. AGM/EGM/Postal Ballot/NCLT Meeting. 2. Mode of Meeting (Physical/OAVM/Hybrid). 3. Number of Shareholders Meeting 4. Basic Info such as day. Date, place, Time of Commencement of meeting. 5. Number of Agenda Items. 6. Details of Resolution/Agenda to be undertaken as per the Notice. Point 6 provides you with the option to select the type or resolution(Ordinary/Special/Other) Further, Upon selecting the resolution type, the XBRL asks you to select from a list of agenda items sorted according to the resolution type(such as appointment of Directors, Issue of Shares).

Till now, these additional details pertaining to notice of shareholders meeting were not required. It was easy to submit pdf. copy of the notice. But now with XBRL format specific details needs to be filled in. So, companies have to keep this data handy to expedite filing of notice of shareholders.

B) XBRL filing of details pertaining to Issuance of Securities:

The XBRL utility pertaining to issuance of securities now additionally seeks following basic details for every type of issue (viz. Preferential Issue, Rights issue, Further Public Offer, QIPs etc.):

1. Date of Board Meeting considering the decision with respect to Fund Raising.
2. The Time of commencement and time of conclusion of the Board Meeting.
3. Whether Prior intimation for the Board Meeting has been given and date of making the intimation.
4. Whether decision with respect to fund raising was approved (Yes/No/Deferred) and if not, the reasons.
5. **If the proposal for fund raising has been deferred, the details of the Discussion held regarding deference of the Proposal.**
6. Date of AGM/EGM/Postal Ballot fixed for purpose of approval of issuance of Securities.
7. Details of Book Closure/Record Date such as Start Date and End Date of Book Closure and further a confirmation that the relevant date is as per the provisions of the SEBI(ICDR) Regulations, 2018
8. Whether the Board has decided the Mode through which funds shall be raised and the reason for not deciding the same.

9. The Utility further asks whether disclosure pursuant to SEBI circular dated September 09, 2015 (referring to the circular pertaining to Continuous Disclosure Requirements under Regulation 30) have been made and if not, the reasons thereof.

The XBRL now requests for specific details in addition to minimum disclosures required under SEBI Circular September 9, 2015 with respect to each type of issuance such as the share capital and number of shares, before and after the issue of Shares etc. A brief of what all additional details are required to be given for particular type of issue is as follows:

Sr. No.	Type of Issue	Details Required
1	Rights Issue	1. Total Number of securities proposed to be issued 2. Issue Price 3. Ratio of issue
2	Qualified Institutional Placement	1. Whether the Company has already made Qualified Institutional Placements 2. Date of Previous QIPs 3. Is QIP through offer for sale by promoters or promoters group for compliance with minimum public shareholding 4. Details of Pre and Post Public Shareholding
3	Preferential Issue (with respect to certain types of securities)	1. Date of conversion 2. Date of conversion of securities (exact date) 3. In case of convertibles - Date on which the the tenure of the instrument lapsed 4. Whether any change made in the date of conversion of securities. 5. Intimation of change in the Date of conversion of securities submitted to the Stock Exchange.

For making disclosure in XBRL format, it is necessary to keep all of these details on hand. The FAQs also mention that the PDF filing will be taken into consideration for Compliance purposes, but they also specify that the XBRL filing must be done within 24 hours following the PDF submission.

However, since the subject of the issue of securities is dynamic in itself and the facts would differ for each Company, it is therefore advised to glance through the Excel utilities that have been released in order to understand and collate all necessary data.

IV. Conclusion

XBRL based filing though having enormous benefits, both for the purpose of data collection and also for the investors and researchers who require data in the form of statistics for their analysis and to make informed decisions. But it has some constraints in terms of flexibility and convenience for the Company. The XBRL utilities, for example, do not allow Companies to disclose data over and above what is required or asked in the XBRL utility. Although in the present scenario, the PDF filings which are being considered for the purpose of Compliance can be used for disclosure of such information, it would be difficult to include such information if a transition is made to a complete XBRL based disclosure.

A question arises whether the additional information asked in the XBRL format over and above those prescribed by the SEBI Circular dated September 09, 2015 can be requested by the Exchanges and whether they would be having the authority to ask so?
Regardless, it must be noted that XBRL Utilities would immensely help in standardization of disclosures and making data processing for Exchanges seamless.

Link for BSE Circular:
https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230516-36

Link for NSE Circular:
https://static.nseindia.com//s3fs-public/inline-files/Circular%20XBRL%20FAQs%2024042023_0.pdf

Aayush Paranjape - Deputy Manager - aayushparanjape@mmjc.in
Vallabh Joshi - Senior Manager - vallabhjoshi@mmjc.in

Dematerialization of securities of Hold Cos and SPVs held by Infrastructure Investment Trusts (InvITs)

I. Background:

Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, does not mandate Hold Cos and SPVs for having its securities held by InvITs in dematerialized form only.

II. Amendment:

SEBI, in exercise of powers conferred to it under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the InvIT Regulations, vide its **circular no. SEBI/HO/DDHS-PoD-2/P/CIR/2023/76 dated May 22, 2023**, has now stated that securities held by Infrastructure Investment Trusts (InvITs) in Hold Cos and SPVs shall be held in demat form. This circular further states that in case of existing shareholdings by InvITs in Hold Cos and SPVs in physical form, the Investment manager of the InvIT has to ensure to dematerialize the securities of Hold Cos and SPVs of the InvIT **on or before June 30, 2023**.

The **Investment Manager (IM) of the InvIT** is directed to dematerialize the securities of Hold Cos and SPVs held by the InvIT. Therefore, IM of InvIT shall ensure that the physical securities held by the InvITs in its Hold Cos and SPVs are dematerialised within the stipulated time period as mentioned in the circular.

III. Analysis on Circular:

After perusing various current InvIT models in India, it is observed that the Hold Cos and SPVs of the InvITs are generally incorporated as private limited companies. As per the provisions of the Companies Act, 2013, private companies are not mandated to issue its securities in dematerialised form only and private companies can do any corporate actions even if all their securities are held in physical form.

So in case of such private companies which are Hold Cos or SPVs of InvITs even if Companies Act, 2013 does not mandate dematerialisation of its securities, but as SEBI has now mandated InvITs to hold shares in demat form, such hold cos and SPVs which are private companies will have to mandatorily take International Security Identification number (ISIN) so as to facilitate the InvIT to hold shares in demat form.

In context of the above, now the question may arise that whether the **shares of Hold Cos and SPVs which are Private Companies and held by InvIT in demat form will become freely transferable** by merely getting their securities dematerialised for the compliance of this circular?

In accordance with the provisions of Section 2(68) of the Companies Act, 2013, the Private Company, by virtue of its Articles, restricts the right to transfer its shares except by way of approval of Board to that effect. Hence, mere dematerialization of shares of Private Company shall not be construed as free transferability of shares. Even if InvIT proposes to transfer its shareholding in Hold Cos / SPVs to someone else, it will require approval of Board of Directors and shall be subject to the restrictions imposed in the articles of association of such Hold Cos / SPVs.

It also needs to be checked whether going forward **whether the entire shareholding of the Hold Cos and SPVs are to be in dematerialized form or dematerialization of securities is mandated to the extent of holding of InvIT in such Hold Co and SPV only?**

The fine width of the referred circular states that *"for existing securities holdings by InvITs in Hold Cos and SPVs in physical form, the Investment manager of the InvIT is directed to dematerialize the securities of Hold Cos and SPVs of the InvIT"*. Hence, it is amply clear that the circular is only applicable to the extent of shareholding of InvIT in its Hold Cos and SPVs and not the entire shareholding of the Hold Cos and SPVs. Therefore, it would be construed as proper compliance to this circular if the shareholding of the InvIT in the Hold Cos and SPVs are only in dematerialized form and the shares held by other shareholders of Hold Cos and SPVs, if any, are in demat form.

IV. Conclusion:

So, it can be seen that Investment Managers of the InvITs will have to ensure that the existing physical securities held by the InvITs in its Hold Cos and SPVs are dematerialised on or before June 30, 2023. Since hardly one month time is left for ensuring compliance of this circular, Hold Cos and SPVs will have to hurry up and appoint Registrar & Transfer Agents (RTAs) and apply for ISIN with either NSDL or CDSL, wherever the InvIT prefers to hold the securities. Further, non- dematerialization of existing shareholding of InvITs in Hold Cos and SPVs by the above timeline might be considered as non-compliance of circular.

Link of circular:
https://www.sebi.gov.in/legal/circulars/may-2023/dematerialization-of-securities-of-hold-cos-and-spvs-held-by-infrastructure-investment-trusts-invits-_71449.html

Isha Kaushik - Deputy Manager – ishakaushik@mmjc.in
Vallabh Joshi - Senior Manager – vallabhjoshi@mmjc.in

Introduction of Legal Entity Identifier ('LEI') in Securities Market

I. Background:

The RBI, vide notification no. RBI/2017-18/82 DBR.No.BP.BC.92/21.04.048/2017-18 dated November 02, 2017, introduced the Legal Entity Identifier (LEI) code which is conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the 2008 Global Financial Crisis. LEI is a 20-digit unique code to identify parties to financial transactions worldwide. The requirement was introduced for **large corporate borrowers** having total exposures of ₹ 50 crore and above to obtain LEI. Borrowers who do not obtain LEI were not to be granted renewal / enhancement of credit facilities. A separate roadmap for borrowers having exposure between ₹ 5 crore and upto ₹ 50 crore was to be issued in due course. Further RBI, vide circular no. RBI/2022-23/34 DOR.CRE.REC.28/21.04.048/2022-23 dated April 21, 2022, **extended** the requirement **for non-individual borrower** having an aggregate exposure of Rs. 5 crore and above to obtain LEI code in a phased manner. Presently, RBI directions, *inter alia*, mandate non-individual borrowers having aggregate exposure of above Rs. 25 crores, to obtain LEI code.
The timeline for obtaining LEI is mentioned as below:

Timeline for obtaining LEI by borrowers

Total Exposure	LEI to be obtained on or before
Above ₹25 crore	April 30, 2023
Above ₹10 crore, up to ₹25 crore	April 30, 2024
₹5 crore and above, up to ₹10 crore	April 30, 2025

II. Amendment by SEBI:

Now, SEBI vide Circular No.: SEBI/HO/DDHS/DDHS_Div1/P/CIR/2023/64 dated May 3, 2023 introduced LEI for issuers **having outstanding listed non-convertible securities** as on August 31, 2023, irrespective of the value of these securities to report/ obtain and report the LEI code in the Centralized Database of corporate bonds, on or before September 1, 2023. **Similarly, issuers having outstanding listed securitised debt instruments and security receipts** as on August 31, 2023, irrespective of the value of these instruments, have also been mandated to report/ obtain and report the LEI code to the Depository(ies), on or before September 1, 2023.

Further, issuers proposing to issue and list non-convertible securities, on or after September 01, 2023, irrespective of the value of securities, shall report their LEI code in the Centralized Database of corporate bonds at the time of allotment of the ISIN. Similarly, issuers proposing to issue and list securitised debt instruments and security receipts, on or after September 01, 2023, irrespective of the value of these instruments, shall report their LEI code to the Depositories at the time of allotment of the ISIN. SEBI has already been seeking LEI code from issuers proposing to list their non-convertible securities under "*The list of data fields to be submitted by issuer to depositories at the time of allotting of ISIN is as under*: (Annex XIV-A) of Updated Operational Circular for issue and listing of non-convertible securities,

securitised debt instruments, security receipts, municipal debt securities and commercial paper". SEBI has now mandated issuers to update the same corporate bonds database as per the timeline mentioned below:

Category of security	Relevant Regulation	Applicability	Timeline
Non-convertible Securities	SEBI (Issue and listing of Non-convertible Securities) Regulations, 2021	Issuer proposing to issue and list non-convertible security	On or after September 1, 2023
		Issuer having outstanding listed non-convertible security as on August 31, 2023	On or before September 1, 2023
Securitised Debt Instruments and Security Receipts	SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008	Issuer proposing to issue and list Securitised Debt Instruments or Security Receipts	On or after September 1, 2023
		Issuer having outstanding listed Securitised Debt Instruments and Security Receipts as on August 31, 2023	On or before September 1, 2023

III. Some questions related to LEI:

In this backdrop there are certain questions that arise with respect to LEI:

1. **Within how much time LEI codes are allotted?**
   Specific timeline for allotment of LEI is not provided but generally it takes 1-2 working days to review application after receipt /upload of complete application form and payment.

2. **Whether LEI number needs to be renewed?**
   Yes. LEI number is valid for one year and needs to be renewed thereafter.

3. **Whether there would be different LEI number for compliance with RBI and SEBI circular?**
   LEI is a number allotted to an entity. So once a number is allotted it needs to be renewed every year. As LEI is a company specific number same number can be shared with RBI and SEBI.

4. **As per SEBI circular LEI number is required to be taken from whom?**

Entities can obtain the LEI code from any of the Local Operating Units (LOUs) accredited by the Global Legal Entity Identifier Foundation (GLEIF). In India, the LEI code may be obtained from Legal Entity Identifier India Ltd (LEIIL), a subsidiary of the Clearing Corporation of India Limited (CCIL), which has been recognised by the Reserve Bank of India as issuer of LEI under the Payment and Settlement Systems Act, 2007 and is accredited by the GLEIF as the LOU in India for issuance and management of LEI codes.

5. **Whether LEI circular is required to be disclosed to stock exchange?**
   LEI number is not required to be disclosed to stock exchange. As per SEBI Circular dt: May 3, 2023 LEI is required to be reported to centralised database on corporate bonds. Issuers having outstanding listed securitised debt instruments and security receipts as on August 31, 2023, shall report/ obtain and report the LEI code to the Depository(ies), on or before September 1, 2023. Further, issuers proposing to issue and list non-convertible securities, on or after September 01, 2023, shall report their LEI code in the Centralized Database of corporate bonds at the time of allotment of the ISIN. Similarly, issuers proposing to issue and list securitised debt instruments and security receipts, on or after September 01, 2023, shall report their LEI code to the Depositories at the time of allotment of the ISIN. So going forward before while applying for ISIN to the depository issuers will have to specify their LEI number.

6. **Is LEI required for central government or state government or department and ministries thereunder?**
   It is not necessary for government or their departments / Ministries to obtain LEI or mention LEI number for payment transactions in NEFT and RTGS. However, corporations /undertakings, including those fully owned by the government shall need to obtain LEI. All single payment transactions of Rs 50 crore and above of government undertakings and corporations, through NEFT / RTGS, shall include remitter and beneficiary LEI information.

Source:

1. https://www.sebi.gov.in/legal/circulars/may-2023/introduction-of-legal-entity-identifier-lei-for-issuers-who-have-listed-and-or-propose-to-list-non-convertible-securities-securitised-debt-instruments-and-security-receipts_70875.html.
2. https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11154&Mode=0
3. https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12301
4. https://indialei.in/apply-for-a-lei-to-a-company/
5. https://www.ccilindia-lei.co.in/Documents/FAQs.pdf

Ruchira Pawase - Associate – ruchirapawase@mmjc.in
Vallabh Joshi - Senior Manager – vallabhjoshi@mmjc.in

Bombay High Court clears the air on enforceability of Put Options

I. Introduction:

The Hon'ble Bombay High Court in Percept Finserve Pvt Ltd (**Percept**) v. Edelweiss Financial Services Ltd (**Edelweiss**) in its judgement dt. February 2, 2023, *upheld* enforceability of a put option clause (an option to sell the underlying stock or security at an agreed price on or before a particular date) in a Share Purchase Agreement. This agreement was executed in those times (in 2007-08) when all contracts for sale or purchase of securities except spot delivery contracts or derivate contracts were prohibited vide SEBI's notification dt. March 1, 2000.

II. Background:

Initially, much before SEBI came into existence, under Section 16 of the Securities Contracts (Regulation) Act, 1956 (**SCRA**), the Govt. of India had issued a notification on June 27, 1969, which prohibited entering into contracts for the sale or purchase of securities other than spot delivery contract or contract for cash or hand delivery or special delivery in any securities as is permissible under the said act and the rules, bye laws and regulations of a recognized Stock Exchange Thereafter, SEBI issued a notification dt. March 1, 2000 (**March 2000 notification**) which replaced this 1969 notification and this March 2000 notification prohibited all contracts for sale or purchase of securities, except spot delivery contracts (i.e., a contract for actual delivery of securities and payment of price either on same day of contract or on the next day) or contract in derivatives.

Resultantly, put and call options contract were not permitted in mergers and acquisitions of listed companies as such options were construed as being forward contracts (contracts not involving spot delivery). The SCRA which originally made illegal, any options in securities, thereafter, permitted contracts in derivatives to be legal and valid, if traded on a recognized stock exchange and settled in its clearing house. Even in informal guidance[1] issued by it, SEBI held that the transaction for purchase / sale of securities at a future date at a pre-agreed price would not qualify as 'spot delivery contract' nor would it qualify as legal and valid derivative contract as it is exclusively entered between two parties and is not a contract traded on stock exchanges and settled on the clearing house of recognised stock exchange. Hence, the put/call options were not permissible under SCRA.

Thereafter, SEBI issued a further notification on October 3, 2013 **(2013 Notification),** under which SEBI had conceded to the long-standing demand from industry and excluded 'contracts for pre-emption' and 'option contracts' satisfying certain criteria, from the contracts in securities that a person was not allowed to enter, without its permission. The SEBI notification of 2013 is reproduced as under (which stands valid even today):–

"No person shall enter into any contract without the permission of SEBI for the sale or purchase of securities other than a contact that falls under one or more of the following:
(a) spot delivery contract;

[1] SEBI Informal Guidance dated May 23, 2011 in the matter of Vulcan Engineers Ltd

(b) contracts for sale or purchase of securities or contracts in derivatives, as are permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange;

(c) contracts for pre-emption including right of first refusal, or tag-along or drag along rights contained in shareholders agreements or articles of association of companies or other body corporate;

(d) contracts in shareholders agreements or articles of association of companies or other body corporate, for purchase or sale of securities pursuant to exercise of an option contained therein to buy or sell the securities, where-
(i) the title and ownership of the underlying securities is held continuously by the selling party to such contract for a minimum period of one year from the date of entering into the contract;

(ii) the price or consideration payable for the sale or purchase of the underlying securities pursuant to exercise of any option contained therein, is in compliance with all the laws for the time being in force as applicable; and

(iii) the contract is settled by way of actual delivery of the underlying securities:

Provided that the contracts specified in clauses (a) to (d) above, shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and rules or regulations made thereunder:

Provided further that nothing contained in this notification shall affect or validate any contract which has been entered into prior to the date of this notification.

Explanation- It is hereby clarified that the contracts mentioned in clauses (c) and (d) above shall be valid notwithstanding anything contained in section 18 A read with clause (d) of sub-section (1) of section 23 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956):

Provided also that any contract for sale or purchase of government securities, gold related securities, money market securities, contracts in currency derivatives, interest rate derivatives and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with, —
(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992(15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;
(b) the rules made or guidelines or directions issued, under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Management Act, 1999 (42 of 1999), by the Reserve Bank of India;
(c) the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

III. Facts of the Case:

A Share Purchase Agreement dt. 8.12.2007 (**SPA**) (rectified on 21.4.2008 and amended on 23.4.2008) executed between Edelweiss and Percept provided for certain conditions subsequent. This was at the time when SEBI's notification issued in the year 2000 was effective

and the subsequent notification of 2013 was not yet issued. On failure of completion of conditions subsequent, Edelweiss was going to get the right to resell the shares to Percept at an IRR of 10% of the purchase consideration (**Edelweiss Put Option**). Percept defaulted on the conditions subsequent despite extended timelines. Accordingly, Percept was bound to re-purchase the shares from Edelweiss at an IRR of 10% of the purchase consideration. Percept did not honour the Edelweiss Put Option and the matter was referred to arbitration.

The Arbitral Tribunal held that the Edelweiss Put Option was a forward contract that was prohibited u/s 16 of SCRA read with its March 2000 notification and Edelweiss Put Option was an option concerning a future purchase of shares that were not traded on recognised stock exchange. The arbitral award was challenged in the Hon'ble Bombay High Court. A Single Judge Bench of Hon'ble Bombay HC set aside the arbitral award u/s 34 of Arbitration and Conciliation Act, 1996, (**Arbitration Act**) stating the following –

i) Edelweiss Put Option was not a contract for sale/purchase of shares at a future date

ii) contract came into existence only upon failure of Percept Finserve to perform the conditions subsequent under the SPA and Edelweiss in turn deciding to invoke the put option

iii) Edelweiss Put Option was only a right, but not an obligation, to re-sell the shares to Percept upon non-performance of condition subsequent and thus not a 'forward contract' and comes under the category of spot delivery contract.

IV. Held:

The Division Bench of Hon'ble Bombay High Court held that Edelweiss Put Option is enforceable. *It further held a very significant point that law does not prohibit a put/call option, it only prohibits the trading or dealing in such option treating it as a security.* Merely that Percept had an option to complete repurchase of securities with immediate effect and in any case before a future date, it cannot be said that the contract for repurchase is on any basis other than spot delivery and there was nothing to indicate or suggest that there was any time lag between payment of price and delivery of shares.

V. Conclusion:

SEBI's notification in 2013 (reproduced in above paras) was a very instrumental step taken by SEBI which opened the doors for various types of conditionalities to be mentioned in Shareholders' Agreements and Share Purchase Agreements. This judgement issued by the Bombay High Court is also a very important judgement which clears the difference between what was permitted prior to this 2013 notification of SEBI and what was not permitted. This judgement can become a precent for many orders in future.

Nilesh Javkar - Senior Manager - nileshjavkar@mmjc.in
Veerti Shah - Manger - veertishah@mmjc.in
Deepti Jambigi Joshi- Partner – deeptijambigi@mmjc.in