August 2023

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Framework for voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares

The SEBI, *vide* notification dated August 23, 2023 ("**Notification**"), has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**") and introduced a specific framework for voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares.

Prior to the Notification, neither SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**") nor the LODR had any specific provisions dealing with the voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares. In the absence of any specific provisions, Regulation 59 of the LODR which deals with restructuring of non-convertible debt securities was used by certain issuers for delisting of non-convertible debt securities.

The Notification seeks to address that concern and provides for a specific framework in relation to voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares and specifically provides for exclusion of Regulation 59 of LODR for voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares under the new chapter. A new Chapter VIA has been added to the LODR which deals with the voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares from any or all the stock exchanges where they are listed. The broad framework contemplated by the Notification (along with timelines) is as under:

Sr. No.	Nature of event	Timeline (in working days) latest by
1.	Approval of proposal for delisting of non-convertible securities by board of directors of the listed entity	X
2.	Application for seeking in-principle approval from the stock exchange	X+15

Sr. No.	Nature of event	Timeline (in working days) latest by
3.	Grant of in-principle approval by the stock exchange	(X+15) + 15
4.	Disclosure of the prescribed information on the website of the listed entity as well as to the stock exchanges	[(X+15)+15] + 2
5.	Notice of delisting to be sent to holders of non-convertible debt securities	[(X+15)+15] +3
6.	Receipt of approval from all holders of non-convertible debt securities/ no-objection letter from the Debenture Trustee	{[(X+15)+15] +3} +15
7.	Final application to the stock exchange for delisting	({[(X+15)+15] +3} +15) + 5
8.	Disposal of final application by the stock exchange	({[(X+15)+15] +3} +15) +5) + 15
9.	Intimation to the stock exchange in the event of failure of delisting proposal	1 day from the date of event of failure

The above framework is not applicable in the following cases :

1. a listed entity that has outstanding listed non-convertible debt securities or non-convertible redeemable preference shares issued by way of a public issue; or
2. a listed entity has more than 200 (two hundred) security holders (other than qualified institutional buyers); or
3. non-convertible debt securities or non-convertible redeemable preference shares have been delisted by the stock exchanges as a consequence of any penalty or action initiated against the listed entity or on any grounds as specified under Rule 21 of the Securities Contracts (Regulation) Rules, 1957; or
4. non-convertible debt securities or non-convertible redeemable preference shares have been delisted by the stock exchanges pursuant to redemption of such securities or shares; or
5. non-convertible debt securities or non-convertible redeemable preference shares have been delisted pursuant to a resolution plan as per Section 31 of the of the Insolvency and Bankruptcy Code, 2016.

Provisions relating to enhanced transparency in ownership of Foreign Portfolio Investors ("FPIs")

SEBI, *vide* notification dated August 10, 2023 ("**August 10 Notification**"), has amended the SEBI (FPI) Regulations, 2019 ("**FPI Regulations**"), to enhance transparency in ownership of FPIs.

August 10 Notification seeks to address the concerns in relation to:

1. Certain FPIs hold concentrated portion of their equity portfolio in a single investee company/ corporate group. Such concentrated investments raise the possibility that promoters of such investee companies/ corporate groups, or other investors acting in concert, could be using the FPI route for circumventing regulatory requirements like

disclosures required under Substantial Acquisition of Shares and Takeovers Regulations, 2011 or maintaining Minimum Public Shareholding in the listed company.

2. Entities with large Indian equity portfolios potentially disrupting the orderly functioning of Indian securities markets by utilizing the FPI route to circumvent Press Note 3 dated April 17, 2020 (Press Note 3 dated April 17, 2020, is not applicable to FPI investments).

3. Non identification of natural persons as Beneficial Owners ("**BO**") of several FPIs. While the thresholds for identification of BOs of FPIs are specified in Prevention of Money Laundering (Maintenance of records) Rules, 2005 ("**PMLR**"), it is often observed that no natural person is identified as the BO of several FPIs based on economic interest or ownership interest, since each investor entity in the FPI may be below the threshold prescribed in the PMLR. However, there is a possibility that the same natural person may hold a significant aggregate economic interest in the FPI via various investment entities, each of which are individually below the threshold for identification as a BO as prescribed in PMLR.

To allay the above concerns, August 10 Notification has added certain additional obligations in the Regulation 22 of FPI Regulations. The additional obligations provide for provision of such information or documents in relation to the persons with any ownership, economic interest or control, as specified by SEBI, by certain objectively identified FPIs. While August 10 Notification laws down the substantial law, the procedural law including the criteria of FPIs and the documents has been detailed *vide* circular dated August 24, 2023 ("**Circular**"), which will come into effect from November 1, 2023. The Circular provides that granular details of all entities holding any ownership, economic interest, or exercising control in the FPI must be provided by FPIs that fulfil any of the following criteria:

1. FPIs holding more than 50% of their Indian equity Assets Under Management ("**AUM**") in a single Indian corporate group;

2. FPIs that individually, or along with their investor group hold more than INR 25,000 crore (Indian Rupees twenty five thousand crore) of equity AUM in the Indian markets;

The following FPIs are not required to make the disclosures:

1. government and government related investors registered as FPIs under Regulation 5 (a) (i) of the FPI Regulations;

2. public retail funds as defined under Regulation 22(4) of the FPI Regulations;

3. exchange traded funds (with less than 50% exposure to India and India-related equity securities) and entities listed on specified exchanges of the permissible jurisdictions as may be notified by the SEBI; and

4. pooled investment vehicles registered with/ regulated by a Government/ regulatory authority in their home jurisdiction/ country of incorporation/ establishment/ formation.

Special rights to unitholders and role of sponsor in Real Estate Investment Trusts ("REITs") and Infrastructure Investment Trusts ("InvITs")

SEBI (Real Estate Investment Trusts) Regulations, 2014 ("**REIT Regulations**") and SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations**") were notified on September 26, 2014. The underlying principle of various provisions in both the Regulations is that the units of REIT and InvIT are equal in all respects and hence all unitholders should have equal rights and no special rights should exist with any unitholder based on the units held in REIT/InvIT. It was noted by SEBI that certain REITs/InvITs have provided the right to nominate directors on the board of Manager/Investment manager to unitholders holding certain percentage of units of REIT/InvIT. Such rights provided to the unit holders above certain percentage of units were not envisaged in the REIT Regulations and InvIT Regulations and appears to be unequal. In this context, it has been represented before SEBI that the special rights are required by institutional investors to protect their investments in the REIT/InvIT. It was further argued that these rights are in the nature of protective rights typically sought by minority unitholders to protect their investment and would not impact the day-to-day functioning, business or operations of the REIT/InvIT. It has also been represented that such investors do not seek to control the manager/investment manager or REIT/InvIT in any manner. Taking the

above into consideration, SEBI issued the following notifications amending the REIT and InvIT Regulations to provide regulatory framework for the special rights in REITs and InvITs:

1. SEBI (REIT) (Second Amendment) Regulations, 2023 dated August 16, 2023. The key amendments are as follows:
   a) new definitions, such as, "group entities of the Manager", "Self-Sponsored Manager", have been added;
   b) unitholders holding at least 10% of the total outstanding units can nominate a director on the board of directors of the Manager;
   c) Schedule IX inserted which specifies the stewardship code. Unitholders with substantial holdings are now obligated to act in the best interests of the REIT and its unitholders, formulate stewardship policies, manage conflicts of interest, and periodically monitor and intervene when necessary;
   d) the sponsor(s) and sponsor group(s) collectively must hold a specified percentage of units for varying periods, ensuring a sustained commitment to the REIT's success; and
   e) transition from a Manager to a Self-Sponsored Manager is allowed.
2. SEBI (InvIT) (Second Amendment) Regulations, 2023 dated August 16, 2023. The key amendments are as follows:
   a) new definitions, such as, "group entities of the Investment Manager", "Self-Sponsored Investment Manager", "sponsor group", have been added;
   b) "Self-Sponsored Investment Manager" is now recognized, referring to an Investment Manager with dual responsibilities as the Investment Manager and sponsor;
   c) unitholders holding at least 10% of the total outstanding units can nominate a director on the board of directors of the Investment Manager;
   d) units held to fulfil the minimum unitholding requirements will be locked in and cannot be encumbered;
   e) Schedule VIII inserted which specifies the stewardship code. This code is applicable to unitholders holding a minimum of 10% of the outstanding units and are obligated to act in the best interests of the InvIT and its unitholders, formulate stewardship policies, manage conflicts of interest, and periodically monitor and intervene when necessary; and
   f) transition from a Manager to a Self-Sponsored Investment Manager is allowed.

Reduction in validity period of approval granted by SEBI to Alternative Investment Funds ("AIFs") and Venture Capital Funds ("VCFs") for overseas investment

The SEBI, *vide* circular dated August 4, 2023, has reduced the time limit for making overseas investments by AIFs/VCFs from 6 (six) months to 4 (four) months from the date of prior SEBI approval. In case the applicant AIF/VCF does not utilize the investible fund limits allocated to them within the prescribed time, then SEBI may allocate such unutilized limit to other applicant AIFs/VCFs. The reason for the change is to ensure that the allocated limit is utilised efficiently and, if unutilised, the same is again available to the AIF industry in a shorter time span.

RESERVE BANK OF INDIA (RBI)

Penal charges in loan accounts

The RBI, *vide* circular dated August 18, 2023 ("**Guidelines**"), has issued guidelines for Regulated Entities ("**REs**"), to ensure reasonableness and transparency in disclosure of penal interest. The prevailing issues of high penal interest rates being used by the REs as a revenue enhancement tool has been recognized by the RBI. Concerns with such penal interest rates have led to numerous disputes and grievances. The Guidelines focus on preventing REs from capitalizing

on penal interest/ charges as a means of enhancing the interest rate beyond what was agreed. The following instructions are issued for adoption from January 1, 2024:

1. penalty for non-compliance of material terms and conditions of a loan contract by the borrower will be treated as 'penal charges' and will not be levied in the form of 'penal interest' that is added to the rate of interest charged on the advances;
    a) the REs will not introduce any additional component to the rate of interest;
    b) the penal charges in case of loans sanctioned to 'individual borrowers, for purposes other than business', will not be higher than the penal charges applicable to non-individual borrowers for similar non-compliance of material terms and conditions; and
    c) the quantum and reason for penal charges will be clearly disclosed by REs to the customers in the loan agreement and most important terms and conditions / key fact statement, will be displayed on REs website.

For a detailed analysis, please refer to the JSA Prism of August 23, 2023.

Review of regulatory framework for Infrastructure Debt Fund ("IDF") – Non-Banking Financial Company ("NBFCs")

The RBI, *vide* circular dated August 18, 2023, has introduced framework for IDF-NBFCs with the objective of empowering them to play a more substantial role in financing the infrastructure sector and to harmonise the regulations governing financing of infrastructure sector by the NBFCs. The main aspects of the revised regulatory framework are:

1. IDF-NBFC to maintain a minimum NOF of INR 300,00,00,000 (Indian Rupees three hundred crore) and a capital-to-risk weighted assets ratio ("**CRAR**") of at least 15%, with a minimum Tier 1 capital of 10%;
2. For computing CRAR, the assets of IDF-NBFCs will be risk-weighted as per the risk-weights applicable to NBFC-Investment and Credit Companies;
3. IDF-NBFC have to raise funds through issue of either rupee or dollar denominated bonds of minimum 5 (five) year maturity. With a view to facilitate better asset-liability management, IDF-NBFCs can raise funds through shorter tenor bonds and commercial papers from the domestic market to the extent of up to 10% of their total outstanding borrowings;
4. IDF-NBFCs can also raise funds via loans under external commercial borrowings with minimum tenor of 5 (five) years, where the loans should not be sourced from foreign branches of Indian banks. IDF-NBFCs were earlier allowed to raise funds through rupee or dollar-denominated bonds of minimum 5 (five) year maturity, to the extent of up to 10% of their total outstanding borrowings;
5. The exposure limits for IDF-NBFCs have to be 30% of their Tier 1 capital for single borrower/ party and 50% of their Tier 1 capital for single group of borrowers/ parties;
6. Under the earlier guidelines, an IDF-NBFC was required to be sponsored by a bank or an NBFC-Infrastructure Finance Company (NBFC-IFC). The requirement of a sponsor for an IDF-NBFC has now been withdrawn and shareholders of IDF-NBFCs shall be subjected to scrutiny as applicable to other NBFCs, including NBFC-IFCs; and
7. Earlier, IDF-NBFCs were required to enter into a tripartite agreement with the concessionaire and the project authority for investments in the Public Private Partnership infrastructure projects having a project authority. The requirement of the tripartite agreement has now been made optional.

JSA Updates

Jan Vishwas (Amendment of Provisions) Act, 2023 ("Jan Vishwas Act")

Amendments sought to be made to certain enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business. The main objective of the Jan Vishwas Act is to decriminalize minor offences that do not involve any harm to the public interest or national security and replace them with civil penalties or administrative actions. Jan Vishwas Act proposes to introduce revised monetary penalties and decriminalise certain penalties under the Information Technology Act, 2000 and has introduced new monetary penalties under the Payment and Settlement Systems Act, 2007. In the pharmaceutical sector, the Jan Vishwas Act proposes revisions to the Drugs and Cosmetics Act, 1940 and the Pharmacy Act, 1948.

For a detailed summary please refer to the JSA Prism of August 10, 2023 and JSA Prism of August 11, 2023.

Impact of the Data Protection Law on Mergers & Acquisitions and Corporate Restructurings

The President of India gave her assent to the Digital Personal Data Protection Act, 2023 ("**Data Protection Act**") on August 11, 2023. The Data Protection Act will come into force once the Central Government issues a notification. The Data Protection Act gives the Central Government the power to notify different provisions of the Data Protection Act on different dates. All indicators point to a swift notification of the law, given that it has been in the offing for several years. As organizations ramp up their internal processes and systems, the impact of the new law on mergers and acquisitions and corporate restructuring also needs to be analysed.

For a detailed analysis, please refer to the JSA Prism of August 24, 2023.

Delhi High Court upholds contractors' rights: Supplementary Agreements ("SA") signed under pressure not a barrier to claims for damages

The Delhi High Court in the case of *National Highways Authority of India v. M/s T.K. Toll Road Private Limited*, has inter alia held that a SA executed between parties to an infrastructure project whereby the contractor has relinquished his claim to damages, does not prevent it from seeking damages against the employer, especially if the SA was executed as a pre-requisite to obtain a Provisional Completion Certificate, which is crucial for toll collection in Build, Operate, Transfer contracts.

For a detailed analysis, please refer to the JSA Prism of August 23, 2023.

Constitution of an arbitral tribunal is not a fetter on the court to hear an application under Section 9(1) of the Arbitration and Conciliation Act, 1996 if the court has already 'entertained' such application prior to the constitution

The Calcutta High Court, in *Jaya Industries v. Mother Dairy Calcutta & Anr* , has held that though Section 9(3) of the Arbitration and Conciliation Act, 1996 ("**Act**") bars a court from entertaining an application for interim measures under Section 9(1) of the Act (on constitution of an arbitral tribunal), the court can still proceed to adjudicate the application if it has already applied its mind to the issues raised.

For a detailed analysis, please refer to the JSA Prism of August 18, 2023.

A Special Leave Petition to the Supreme Court against an order passed by the National Consumer Disputes Redressal Commission pursuant to its appellate jurisdiction, is not maintainable

The Supreme Court of India, in *M/s. Universal Sompo General Insurance Company Limited v. Suresh Chand Jain & Anr*, has held that a petition filed before the Supreme Court under Article 136 of the Constitution of India seeking special leave to appeal against an order passed by the National Consumer Disputes Redressal Commission pursuant to its appellate jurisdiction, is not maintainable.

For a detailed analysis, please refer to the JSA Prism of August 4, 2023.

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affair We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys provide innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also provide assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

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17 Practices and
24 Ranked Lawyers

16 Practices and
11 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

Among Top 7 Best Overall Law Firms in India and
9 Ranked Practices

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11 winning Deals in IBLJ Deals of the Year

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10 A List Lawyers in IBLJ Top 100 Lawyer List

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Equity Market Deal of the Year (Premium) 2022

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