



November 2023

## SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

### **Simplification and streamlining of offer documents of mutual fund schemes**

SEBI, *vide* circular dated November 1, 2023, has modified the format of the Scheme Information Document (“SID”) specified through circular dated May 23, 2008, with an aim to streamline the dissemination of relevant information to investors and facilitate periodic updates by mutual funds. The updated format for SID /Key Information Memorandum (“KIM”)/ Statement of Additional Information, will be implemented with effect from April 1, 2024. Further, draft SIDs filed with SEBI on or before March 31, 2024, or SIDs already filed with SEBI (final observations yet to be issued) or SIDs for which the final observations have already been received from SEBI (if launched on or before March 31, 2024), can use the old format of SID, provided that the SIDs are updated as per the prescribed timeline (i.e., by April 30, 2024 with data as on March 31, 2024.). Asset Management Companies are required to disclose the risk-o-meter of the benchmark on various documents, including the SID and KIM.

### **Introduction of procedural framework by SEBI for dealing with unclaimed amounts lying with entities issuing securities**

SEBI has issued 3 (three) circulars all dated November 8, 2023, on procedural framework for dealing with unclaimed amounts lying with (a) entities having listed non-convertible securities, (b) Real Estate Investment Trusts (REITs), and (c) Infrastructure Investment Trusts (InvITs), and also the manner in which such amounts can be claimed by investors / unitholders (collectively the “Circulars”).

According to (a) the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (b) the SEBI (Real Estate Investment Trusts) Regulations, 2014, and (c) the SEBI (Infrastructure Investment Trusts) Regulations, 2014, any unclaimed amount of investors / unitholders lying with listed entities / REITs / InvITs, respectively (collectively the “Issuing Entities”), should be transferred to SEBI’s ‘Investor Protection and Education Fund’ (“IPEF”) in accordance with the provisions of the respective regulations.

Further, the SEBI (Investor Protection and Education Fund) Regulations, 2009, provides that in case any Issuing Entity processes claim of an eligible investor for the entitled amounts which have been transferred to IPEF, then such Issuing Entity may file an application to SEBI for refund of such amount that has been processed out of the IPEF.

By way of these Circulars, SEBI has issued a framework for defining the abovementioned procedures, i.e., (a) for transfer of unclaimed amounts initially to an escrow account, (b) subsequently, for transfer of such amounts to the IPEF, and (c) lastly, for claim thereof by an investor / unitholder. Format has been prescribed by SEBI filing of application for refund by the Issuing Entities to the IPEF. The key provisions for procedural framework dealing with unclaimed amounts lying with entities having listed non-convertible securities are as follows:

- this framework is applicable to entities having listed non-convertible securities with interest/ dividend/ redemption amount which has not been claimed within 30 (thirty) days from the due date of interest/ dividend/ redemption payment;
- the listed entity must, within 7 (seven) days from the date of expiry of the said period of 30 (thirty) days, transfer the unclaimed amounts to an escrow account to be opened by it in any scheduled bank;
- the listed entity must designate a 'Nodal Officer' who may either be a Director, Chief Financial Officer, Company Secretary or Compliance Officer of the listed entity as the point of contact for (a) investors entitled to claim their unclaimed amounts and (b) SEBI, stock exchange(s) and depositories; and
- the listed entity must provide a search facility on its website for investors to verify if there is any unclaimed amount due to them and lying in the escrow account of the listed entity.

The key provisions for procedural framework for dealing with unclaimed amounts lying with REITs/ InvITs are as follows:

1. where a distribution has been made by the manager, but the payment to any unitholders has remained unpaid or unclaimed, up to 15 (fifteen) days from the date of declaration, the manager must, within 7 (seven) working days from the date of expiry of such period of 15 (fifteen) days, transfer such unclaimed amounts to an escrow account to be opened by it on behalf of the InvIT/ REIT in any scheduled bank;
2. the manager, must, within a period of 30 (thirty) days of transferring the unclaimed amount to the 'Unpaid Distribution Account', upload the details on the website of InvIT/ REIT in the prescribed format;
3. the manager must provide a search facility on the website of InvIT/ REIT for unitholders to verify if there is any unclaimed amount due to them and lying in the 'Unpaid Distribution Account' of the InvIT/ REIT; and
4. the manager of the InvIT/ REIT must formulate a policy specifying the process to be followed.

### **Revision in manner of achieving minimum public unitholding requirement**

SEBI, *vide* circular dated October 31, 2023, has provided an additional method for privately placed InvITs to achieve minimum public unitholding requirements. In case of issuance of units through preferential allotment, only units issued to the public will be considered for compliance with minimum unitholding requirement.

## **MINISTRY OF COMMERCE AND INDUSTRY (MCI)**

### **Hybrid working outside Special Economic Zones ("SEZ") permitted until December 2024**

MCI, *vide* notification dated November 7, 2023, has issued the SEZ (Fourth Amendment) Rules, 2023, to amend the SEZ Rules, 2006. The key provisions are as follows:

- 'Hybrid working' means a unit may, as per its requirements, permit its employees, to work from any place outside the SEZ in accordance with this rule. The facility for hybrid work may cover all the employees of the unit and the following employees are also covered under the same: (i) employees of Information Technology Units and Information Technology enabled services; (ii) employees, who are temporarily incapacitated; (iii) employees, who

are travelling; and (iv) employees, who are working offsite. This permission granted shall be applicable up to December 31, 2024;

- where a unit permits its employees for hybrid work, it must intimate the same to the Development Commissioner through an e-mail on or before the date on which the facility for hybrid work is permitted; and
- the unit will not be required to submit the lists of employees who are allowed hybrid work but must maintain the lists of employees who have been permitted hybrid work in the unit and it must be submitted for verification whenever is required by the Development Commissioner.
- The expression “employees” shall include all persons employed on the rolls of the Unit or under a direct contract or where the unit is the principal employer under a contract with another organisation where such persons are expected to report on a day-to-day basis for work to the unit and the unit administers the control on their attendance.

## JAN VISHWAS ACT

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

- Ministry of Electronics and Information Technology, *vide* notification dated October 31, 2023, declares that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 with respect to the Information Technology Act, 2000 have come into force with effect from November 30, 2023.
- Ministry of Health and Family Welfare, *vide* notification dated November 7, 2023, declares that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 with respect to the Food safety and Standards Act, 2006, have come into force with effect from November 7, 2023.
- Ministry of Finance, *vide* notification dated November 14, 2023, states that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 with respect to the Government Securities Act, 2006 have come into force with effect from December 1, 2023.

## RESERVE BANK OF INDIA (RBI)

### RBI's new guidelines to govern payment aggregator in cross-border transactions

On October 31, 2023, the RBI notified new guidelines (“PA-CB Guidelines”) to regulate entities that process online cross-border payments. Payment Aggregator- Cross Border (“PA-CB”) are entities that facilitate cross-border payment transactions for import and export of permissible goods and services in online mode. Until now, these entities were called online payment gateway service providers (“OPGSP”). Now, they will be regulated as PA-CB. . Most notably, PA-CBs will need RBI’s license to operate. Existing OPGSPs need to apply for the license by April 30, 2024. Interestingly, non-bank PA-CBs (existing as on the date of PA-CB Guidelines) are also required to register with the Financial Intelligence Unit-India before registering with the RBI. The PA-CB Guidelines replace the draft Online Export Import Facilitators Directions issued in April 2022 which was abandoned by RBI post consultations with industry stakeholders. Further, entities, including Authorised Dealer banks, PAs and PAs-CB, involved in processing/ settlement of cross-border payment transactions for import and export of goods and services, must comply with the PA-CB Guidelines.

For a detailed analysis, please refer to the [JSA Prism of November 7, 2023](#).

## Opening of additional current account for exports proceeds

RBI, *vide* circular dated November 17, 2023, has allowed the settlement of India's international trade in rupee. In this regard, the Authorised Dealer Category – I banks maintaining a Special Rupee Vostro Account are permitted to open an additional special current account for its exporter constituent exclusively for settlement of their export transactions.

## MINISTRY OF CORPORATE AFFAIRS (MCA)

### Flexibility to public companies to list their securities on foreign stock exchanges

MCA, *vide* notification dated October 30, 2023, has notified the provisions of Section 5 of the Companies (Amendment) Act, 2020 with effect from October 30, 2023, pursuant to which public companies may now issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions.

### Limited Liability Partnership (“LLP”) to report about significant beneficial owners to the Registrar of Companies (“Registrar”)

MCA, *vide* notification dated November 9, 2023, has issued the LLP (Significant Beneficial Owners) Rules, 2023 (“Rules”). The key provisions are as follows:

- every reporting LLP (i.e. an LLP required to comply with Section 90 of the Companies Act, 2013) must take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting LLP, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN- I;
- every individual who is a significant beneficial owner in a reporting LLP, must file a declaration in Form No. LLP BEN-I to the reporting LLP within 90 (ninety) days from the commencement of the Rules. Subsequent changes in significant beneficial ownership must be reported within 30 (thirty) days;
- on receiving declarations, reporting LLPs must file a return in Form No. LLP BEN-2 with the Registrar within 30 (thirty) days. Additionally, LLPs are required to maintain a register of significant beneficial owners in Form No. LLP BEN-3;
- every reporting LLP must in all cases where its partner (other than an individual), holds not less than 10% of its (i) contribution; or (ii) voting rights; or (iii) right to receive or participate in the distributable profits or any other distribution payable in a financial year, give notice to such partner in Form no. LLP BEN -4; and
- these Rules do not apply to specific entities, such as contributions held by the Central Government, State Government, local authorities; or reporting LLP, body corporate or an entity controlled by Central Government or by one or more State Government or party by Central and party by one or more State Government; or certain regulated investment vehicles.

## JSA Updates

### Exercise of powers by the Supreme Court under Article 142 cannot ignore substantive statutory provisions

A 2 (two) judge bench of the Hon’ble Supreme Court of India (“Supreme Court”) in the case of *Union Bank of India v. Rajat Infrastructure Pvt. Ltd and Sunview Assets Pvt Ltd.*, held that the powers of the Supreme Court under Article 142 of the Constitution of India, 1950, being inherent in nature, are complementary to those powers which are specifically conferred by statute.

For a detailed analysis, please refer to the JSA Prism of [November 8, 2023](#).

## **In the 'dominant purpose' test to hold that if goods are purchased for a profit motive, the purchaser will not be a consumer**

Supreme Court in the case of *Rohit Chaudhary & Anr. V. M/s. Vipul Ltd.*, has upheld the 'dominant purpose' test and held that if the dominant purpose for purchasing the goods or services is for a profit motive and this fact is evident from the record, such purchaser will not fall within the definition of the term 'Consumer'.

For a detailed analysis, please refer to the [JSA Prism of November 9, 2023](#).

## **A consumer cannot be compelled to arbitrate; Consumer Protection Act, 2019 is a special legislation and provides a special remedy**

Supreme Court, in the case of *Smt. Hemalatha Devi & Ors. v. B. Udayasri*, has held that the Consumer Protection Act, 2019 ("CPA 2019") is a special legislation and the remedies provided therein are special remedies. After analyzing various precedents, the Supreme Court has held that if a consumer forum was mandated to refer matters to arbitration simply based on the presence of an arbitration agreement, then the very purpose of a beneficial legislation such as the CPA 2019 would be defeated.

For a detailed analysis, please refer to the [JSA Prism of November 9, 2023](#).

## **Supreme Court holds that rent receivables assigned to a lender would not be assets of the borrower and fall outside the scope of the National Company Law Appellate Tribunal's ("NCLAT") order freezing IL&FS's assets and security**

In a recent decision in the case of *Infrastructure Leasing and Financial Services Ltd. v. HDFC Bank Ltd. and Another*, the Supreme Court has held that the rents receivable by a borrower which was assigned to a lender of a lease rental discounting facility would not be treated as an asset of the borrower, and thus fall outside the purview of the asset and security freeze order of the NCLAT.

For a detailed analysis, please refer to the [JSA Prism of November 16, 2023](#).

## **Supreme Court has indicated the evidence required for awarding claims for loss of profit and overheads**

Supreme Court, in 2 (two) judgments i.e., *M/s Unibros v. All India Radio*, ("Unibros Judgement") and *Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited*, ("Batliboi Judgement") has indicated the evidence required to be proved by a contractor for being entitled to a claim for loss of profit and overheads (due to delayed completion of a contract). The Supreme Court further held that in the absence of such evidence, the arbitral awards that grant claims for loss of profit or overheads (based merely on a formula), would be liable to be set aside under Section 34[3] of the Arbitration & Conciliation Act, 1996.

For a detailed analysis, please refer to the [JSA Prism of November 21, 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.

**This Newsletter has been prepared by:**



**Trisheet Chatterjee**

Partner











**Bharati Joshi**

Partner



**Zarish Ali**

Associate

		
<p>17 Practices and 24 Ranked Lawyers</p>	<p>16 Practices and 11 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>11 Practices and 39 Ranked Partners <b>IFLR1000 APAC Rankings 2022</b></p> <p>-----</p> <p>Banking &amp; Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring &amp; Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>10 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Banking &amp; Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p>
		
<p>7 Practices and 2 Ranked Lawyers</p>	<p><b>Ranked #1</b> <b>The Vahura Best Law Firms to Work Report, 2022</b></p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>	

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

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