



September 2023

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Revised format of abridged prospectus for non-convertible debt securities and/or Non-convertible Redeemable Preference Shares

SEBI *vide* circular dated September 4, 2023, has published a new format of the abridged prospectus for public issue of non-convertible debt securities and/or non-convertible redeemable preference shares opening on or after October 1, 2023. The new format provides consistency in disclosure across documents and includes additional critical information.

Investment of mutual fund schemes in units of Corporate Debt Market Development Fund ("CDMDF")

The SEBI had issued an earlier notification regarding the creation of the CDMDF *vide* circular¹ dated July 27, 2023, as a backstop facility for the purchase of investment grade corporate debt securities. The Association of the Mutual Funds in India requested SEBI to exclude investments by any mutual fund in the CDMDF while calculating asset allocation limits of such mutual fund schemes. Consequently, the SEBI has issued circular² dated September 6, 2023, to clarify that, for the calculation of asset allocation limits of mutual fund schemes, in accordance with Part IV (*Categorisation and Rationalisation of Mutual Fund Schemes*) of Chapter 2 (*Conversion and Consolidation Of Schemes, Launch of Additional Plan and Categorization and Rationalization of Mutual Fund Schemes*) of the Master Circular³ for Mutual Funds dated May 19, 2023, the value of investment in units of the CDMDF will be excluded from the base of net assets of the relevant mutual fund scheme. This circular is to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

Board nomination rights to unitholders of REITs/ InvITs

The SEBI, *vide* 2 (two) circulars⁴, both dated September 11, 2023, has prescribed the framework to be followed for the exercise of rights by unitholders to nominate directors to the board of directors of the manager of the REIT/ InvIT ("Board"). Under Regulation 4(2)(h) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and Regulation 4(2)(g) of the SEBI (Real Estate Investment Trusts) Regulations, 2014, unitholders holding not less than 10% of the

¹ SEBI/HO/IMD/PoD2/P/CIR/2023/129

² SEBI/HO/IMD/PoD2/P/CIR/2023/152

³ SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/74

⁴ SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 and SEBI/HO/DDHS-PoD-2/P/CIR/2023/154

total outstanding units of the REIT/ InvIT, either individually or collectively, are entitled to nominate 1 (one) director on the Board. Accordingly, a framework to exercise such right to nominate a director to the Board has been set out in the aforementioned circulars. Some of the key provisions of the framework are as follows:

- eligible unitholders will have the right, but not the obligation, to nominate any person for appointment as unitholder nominee director;
- the Board must formulate and adopt a policy in relation to the qualification and criteria for appointment and evaluation parameters of individuals nominated by a unitholder as a director;
- the trust deed and investment management agreement shall stand amended or be deemed to incorporate provisions to provide such rights of nomination;
- the manager must send a written intimation to all unitholders within 10 (ten) days from the end of each financial year requesting unitholders to inform the manager if any eligible unitholders wish to exercise the right to nominate a nominee director; and
- eligible unitholders will be determined based on the unitholding pattern of the REIT/InvIT as on March 31st of the relevant financial year.

Listing of subsequent issuances of non-convertible debt securities

The SEBI *vide* notification dated September 19, 2023, has issued the SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2023, to amend the LODR Regulations. This amendment has introduced Regulation 62A which provides for the listing of subsequent issuances of non-convertible debt by listed entities. Some of the key provisions are as follows:

1. a listed entity, whose non-convertible debt securities are listed must list all non-convertible debt securities, proposed to be issued on or after January 1, 2024;
2. a listed entity, whose subsequent issues of unlisted non-convertible debt securities made on or before December 31, 2023, are outstanding on the said date, may list such securities, on the stock exchange(s);
3. a listed entity that proposes to list the non-convertible debt securities on the stock exchange(s) on or after January 1, 2024, must list all outstanding unlisted non-convertible debt securities previously issued on or after January 1, 2024, on the stock exchange(s) within 3 (three) months from the date of the listing of the non-convertible debt securities proposed to be listed; and
4. a listed entity is not required to list the following securities:
 - bonds issued under section 54EC of the Income Tax Act, 1961;
 - non-convertible debt securities issued pursuant to an agreement between the listed entity of such securities and multilateral institutions, provided these securities are locked in, held till maturity by the investors and are unencumbered; and
 - non-convertible debt securities issued pursuant to an order of any court or tribunal or regulatory requirement as stipulated by a financial sector regulator, provided these securities are locked in, held till maturity by the investors and are unencumbered.

Further, in such event, a listed entity proposing to issue such securities shall disclose to the stock exchanges on which its non-convertible debt securities are listed, all the key terms of such securities, including embedded options, security offered, interest rates, charges, commissions, premium (by any name called), period of maturity and such other details as may be required to be disclosed by the SEBI from time to time.

Regulatory reporting by Alternative Investment Funds (“AIFs”)

SEBI, *vide* circular dated September 14, 2023, has directed all AIFs to submit quarterly reports in the specified formats with respect to the activities carried on by them. The quarterly report must be submitted by AIFs online on the SEBI Intermediary Portal within 15 (fifteen) calendar days from the end of each quarter.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

Fund Management Entities (“FMEs”) to seek authorisation for filing scheme

IFSCA *vide* circular dated September 15, 2023, has issued directions for authorisation of scheme filed under the IFSCA (Fund Management) Regulations 2022. All FMEs must seek authorisation from the IFSCA for filing each scheme relating to:

- fund management such as the venture capital schemes, restricted schemes (non-retail schemes) and retail schemes;
- exchange traded funds; and
- environmental, social and governance.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

Amendment to the Corporate Insolvency Resolution Process (“CIRP”)

The Insolvency and Bankruptcy Board of India (“IBBI”), *vide* notification dated September 18, 2023, has issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 (“**Amending Regulations**”) amending the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”). Some of the key provisions of the Amending Regulations are set out below:

1. while filing an application under Section 7 (claims by operational creditors) or Section 9 (claims by workmen and employees) of the Principal Regulations, the financial creditor or the operational creditor, must also submit along with evidence, the chronology of debt and default including the date when the debt became due, the date of default, dates of part payments, if any, the date of last acknowledgment of debt, and the limitation applicable;
2. the interim resolution professional or resolution professional, must take custody and control from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor of: (i) the records of information relating to the assets, finances and operations of the corporate debtor; and (ii) the assets recorded in the balance sheet of the corporate debtor or in any other records;
3. while appointing the authorised representative for any class of creditors, the financial creditors in the class, representing not less than 10% voting share, may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional;
4. increase in the timelines to file claims to the adjudicating authority up to the date of issue of request for resolution plans;
5. committee members may propose an audit of the corporate debtor and include the cost of such audit in the CIRP cost;
6. substitution of Form G (*Invitation for expression of interest*) to provide more information to prospective resolution applicants;
7. changes in Form H (*Compliance certificate*) to include minutes of the meeting of the committee of creditors in which resolution plan is approved to enable the adjudicating authority to understand the rationale of the decision of the committee of creditors; and
8. for assignment of debt by a creditor to another person, the details of such assignment are required to be provided to the resolution professional within 7 (seven) days.

Clarification on liquidators’ fee calculation

IBBI, *vide* circular dated September 28, 2023⁵, has issued clarifications regarding the interpretation and computation of the liquidators’ fee under Regulation 4 (*Appointment and remuneration of liquidator*) of the IBBI (Liquidation Process) Regulations, 2016. While earlier, Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016,

⁵ IBBI/LIQ/61/2023

provided that the liquidator will be entitled to a fee *as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation*, the new regulations have clarified that:

1. the 'amount realised' will mean the amount realised from assets other than liquid assets such as cash and bank balance including term deposits, mutual fund investments, quoted shares available on start of the process after exploring compromise and arrangement, if any, and 'amount distributed to stakeholders' will mean distributions made to the stakeholders, after deducting CIRP and liquidation cost;
2. all components of liquidation costs, except the liquidator's fee, should be considered as part of 'other liquidation costs'; and
3. exclusions for fee calculation should only apply if explicitly authorised by the National Company Law Tribunal, National Company Law Appellate Tribunal, or other courts of law.

RESERVE BANK OF INDIA (RBI)

Secured assets possessed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest ("SARFAESI Act, 2002")

RBI, *vide* circular⁶ dated September 25, 2023, has directed REs acting as secured creditors under the terms of the SARFAESI Act, 2002, to display information in respect of the borrowers whose secured assets have been taken into possession by such REs. The REs must upload the information on the respective websites in the prescribed format by March 25, 2024, and thereafter update such information on a monthly basis.

MINISTRY OF HOME AFFAIRS (MoHA)

Extension in the validity of registration certificates

MoHA has issued public notice dated September 25, 2023, extending the validity of Foreign Contribution (Regulation) Act, 2010 ("FCRA") registration certificates for specific categories of entities. FCRA registered entities eligible for validity extension are:

- entities whose validity was extended till September 30, 2023, and whose renewal is pending, will have their validity extended until March 31, 2024, or until the renewal application is disposed of, whichever comes earlier; and
- entities with FCRA certificates expiring between October 1, 2023, and March 31, 2024, and have applied for renewal before the expiry of their 5 (five) year validity period will have their validity extended until March 31, 2024, or until the renewal application is disposed of, whichever comes earlier.

If the renewal of the application is refused, the certificate's validity (of the FCRA registered associations), will be considered expired from the date of refusal. In such cases, the entity will not be eligible to receive or utilize foreign contributions.

MINISTRY OF LAW AND JUSTICE

Mediation Act, 2023: Salient Features

On September 15, 2023, the Central Government notified the Mediation Act, 2023 ("Act") in India. The Act is introduced to promote and facilitate mediation as a means of dispute resolution (commercial or otherwise), enforcement of mediated settlement agreements, and to provide for a body for registration of mediators. The Act also aims to encourage community mediation and to make online mediation an acceptable and cost-effective process.

For a detailed analysis, please refer to the [JSA Prism of September 18, 2023](#).

⁶ RBI/2023-24/63 DoR.FIN.REC.41/20.16.003/2023-24

MINISTRY OF FINANCE (MoF)

Securities under the Income Tax Act, 1961

MoF *vide* notification dated September 12, 2023, has expanded the class of securities on which any profits or gains arising to a non-resident from the transfer of following capital assets on a recognised stock exchange located in an International Financial Services Centre, where consideration is paid or payable in foreign currency, would not be chargeable to income-tax under the head "Capital gains". The following class of securities have been included:

- unit of investment trust;
- unit of a scheme;
- unit of an Exchange Traded Fund launched under IFSCA (Fund Management) Regulations, 2022.

Real Estate Investment Trusts and Infrastructure Investment Trust are included in the term 'investment trust' for the above purposes. 'Scheme' is defined as a scheme of a fund management entity launched under the International Financial Services Centres Authority (Fund Management) Regulations, 2022.

Determination of fair value of unquoted shares under Income Tax

MoF *vide* notification dated September 25, 2023, has issued the Income-tax (Twenty first Amendment), Rules, 2023 for the determination of fair market value (**FMV**) of unquoted equity shares and compulsorily convertible preference shares as on the valuation date for the purposes of section 56(2)(viib) of the Income Tax Act, 1961.

In a case where the consideration is received from a resident, the FMV of unquoted equity shares is required to be determined based on any one of the following methods, at the option of the assessee:

- net asset value method using the specified formula (**Method 1**);
- as determined by a merchant banker using the discounted free cash flow method (**Method 2**);
- where any consideration is received by a venture capital undertaking for issue of unquoted equity shares, from a venture capital fund or a venture capital company or a specified fund (within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation), the price of the equity shares corresponding to such consideration may, at the option of such undertaking, be taken as the FMV of the equity shares to the extent the consideration from such FMV does not exceed the aggregate consideration that is received from a venture capital fund or a venture capital company or a specified fund (**Method 3**);
- where any consideration is received by a company for issue of unquoted equity shares, from any entity notified section 56(2)(viib) (within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation), the price of the equity shares corresponding to such consideration may, at the option of such company, be taken as the FMV of the equity shares to the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity (**Method 4**).

Where consideration is received from a non-resident, the FMV of unquoted equity shares is required to be determined based on any one of the methods prescribed above for receipts from residents or the following additional methods, at the option of the assessee (**Method 5**):

- Comparable Company Multiple Method;
- Probability Weighted Expected Return Method;
- Option Pricing Method;
- Milestone Analysis Method; and
- Replacement Cost Methods.

The FMV of compulsorily convertible preference shares shall be the value, on the valuation date, as determined:

- in accordance with the provisions of Method 2, Method 3, or Method 4, at the option of the assessee, or based on the FMV of unquoted equity shares as determined in accordance with Method 1 to Method 4 at the option of the assessee, where such consideration is received from a resident; and
- in accordance with the provisions of Method 2 to Method 5, at the option of the assessee, or based on the FMV of unquoted equity shares as determined in accordance with Method 1 to Method 5, at the option of the assessee, where such consideration is received from a non-resident.

JSA Updates

Delhi High Court (“Delhi HC”) delineates the procedure and modalities involving unstamped or insufficiently stamped arbitration agreement(s)

Delhi HC, in *Splendor Landbase Ltd. vs. Aparna Ashram Society & Anr.*, disposed of a batch of petitions under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”), where the arbitration agreement, or the instrument/agreement containing the arbitration agreement, was unstamped or inadequately stamped. The Delhi HC outlined the procedure and modalities that can be followed while dealing with petitions under Section 11 of the Arbitration Act, where appointment of an arbitrator was sought, involving unstamped or insufficiently stamped arbitration agreement(s).

For a detailed analysis, please refer to the [JSA Prism of September 21, 2023](#).

Arbitration clause in a purchase order prevails over a conflicting arbitration clause contained in an invoice

The Bombay High Court in *Parekh Plastichem Distributors LLP vs. Simplex Infrastructure Limited*, has considered 2 (two) conflicting arbitration clauses and held that an arbitration clause contained in a purchase order, which sets out the terms of engagement between the parties, prevails over an arbitration clause contained in an invoice raised by a party.

For a detailed analysis, please refer to the [JSA Prism of September 28, 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

11 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the
Year 2021



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