

# MONTHLY CORPORATE NEWSLETTER

## AUGUST 2024

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

In this issue, we bring you the most recent updates and important notifications from key regulatory bodies including SEBI, RBI, and CCI. Stay informed with our comprehensive coverage on the latest circulars, notifications and orders that impact the corporate landscape.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at [mail@lexport.in](mailto:mail@lexport.in).

Regards,  
Team Lexport



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Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website [www.lexport.in](http://www.lexport.in).

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**PART A: LATEST CIRCULARS / NOTIFICATIONS****1. FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) AMENDMENT RULES**

The Department of Economic Affairs (DEA), Ministry of Finance, has amended Foreign Exchange Management (Non-debt Instruments) Rules, 2019 vide notification dated 16.08.2024. The amendments aim to simplify cross-border share swaps and provide for the issue or transfer of Indian company equity instruments in exchange for foreign company equity instruments. This will facilitate the global expansion of Indian companies through mergers, acquisitions, and other strategic initiatives, enabling them to reach new markets and grow their presence worldwide. Another key change brings further clarity on the treatment of downstream investments made by Overseas Citizen of India (OCI)-owned entities on a non-repatriation basis, aligning it with the treatment of Non-Resident Indian (NRI)-owned entities.

**Other changes include:**

- Standardizing the definition of ‘control’ to ensure consistency with other Acts and laws.
- Enabling Foreign Direct Investment (FDI) in White Label ATMs to boost financial inclusion nationwide.

**2. SEBI CONSULTATION PAPER ON STREAMLINING DISCLOSURE IN RESPECT OF APPOINTMENT OF DEBENTURE TRUSTEE (DT) IN THE OFFER DOCUMENT.**

SEBI has issued a Consultation paper on streamlining disclosure in respect of appointment of Debenture Trustee (DT) in the offer document. Based on the recommendations of working group on ease of doing business and subsequent deliberations with Corporate Bonds and Securitization Advisory Committee public comments are invited in respect of the following proposal:

The debenture trustee agreement (DTA) shall be made accessible to investors using ‘QR code’ in the offer document and the DTA shall be used in place of consent letter. The comments/ suggestions should be submitted online through the following mode latest by, 2024

**3. SEBI GUIDELINES FOR BORROWING BY CATEGORY I AND CATEGORY II AIFs AND MAXIMUM PERMISSIBLE LIMIT FOR EXTENSION OF TENURE BY LVFS**

SEBI on August 19, 2024 has issued Guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs. In order to facilitate ease of doing business and provide operational flexibility, it has been decided to allow Category I and Category II AIFs to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies (‘drawdown amount’).

Category I and Category II AIFs may borrow for the purpose of meeting shortfall in drawdown amount, subject to the following additional conditions:

- If AIF intends to borrow funds for meeting shortfall in draw down amount, the same shall be disclosed in the PPM of the scheme.
- Such borrowing shall be done only in case of emergency and as a last recourse, when the investment opportunity is imminent to be closed and the drawdown amount from investor(s) has not been received by the AIF before the date of investment, in spite of best efforts by manager to obtain the drawdown amount from the delaying investor(s).
- The amount borrowed shall not exceed twenty per cent of the investment proposed to be made in the investee company, or ten per cent of the investable funds of the scheme of AIF, or the commitment pending to be drawn down from investors other than the investor(s) who has failed to provide the drawdown amount, whichever is lower.
- The cost of such borrowing shall be charged only to investor(s) who failed to provide the drawdown amount for making investments.
- The flexibility of borrowing to meet shortfall in drawdown amount shall not be used as a means to provide different drawdown timelines to investors.

- The manager shall disclose the details with respect to amount borrowed, terms of borrowing and repayment to all the investors of the AIF/scheme, on a periodic basis as per the terms of agreement with the investors of the AIF.

Further, all Category I and Category II AIFs shall maintain thirty days cooling off period between two periods of borrowing as permissible under AIF Regulations. The cooling off period of thirty days shall be calculated from the date of repayment of previous borrowing.

LVF may extend its tenure up to five years subject to the approval of two-thirds of the unit holders by value of their investment in the LVF and the extension in tenure of any existing LVF scheme shall be subject to such conditions as may be specified by SEBI from time to time.

#### **4. MODALITIES FOR MIGRATION OF VENTURE CAPITAL FUNDS REGISTERED UNDER ERSTWHILE SEBI (VENTURE CAPITAL FUNDS) REGULATIONS, 1996 TO SEBI (ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012**

SEBI has issued Modalities for migration of Venture Capital Funds registered under erstwhile SEBI (Venture Capital Funds) Regulations, 1996 to SEBI (Alternative Investment Funds) Regulations, 2012.

##### **Migration Procedure**

To migrate to the AIF Regulations as a “Migrated VCF,” a VCF must submit an application to SEBI in the specified format. The application requires:

- The original certificate of registration issued under VCF Regulations.
- Relevant information as per the format specified in Annexure I of the notification.
- The flexibility to migrate is available until July 19, 2025.

For VCFs with schemes whose liquidation periods have not yet expired, the tenure of the schemes will be determined based on the Private Placement Memorandum (PPM). If the PPM disclosed a definite tenure, it remains unchanged post-migration. If the PPM did not specify a tenure, the remaining tenure will be determined with the approval of 75% of investors by value.

##### **Conditions for Schemes with Expired Liquidation Periods**

For VCFs that have at least one scheme with an expired liquidation period, migration is allowed only if there are no pending investor complaints regarding non-receipt of funds or securities. A one-time additional liquidation period of one year is available for schemes with expired liquidation periods, allowing them to wind up by July 19, 2025.

##### **Post-Migration Provisions**

Upon migration, the investors, investments, and units of the VCF or its schemes registered under VCF Regulations will be deemed as those of the Migrated VCF under AIF Regulations. Additionally, the applicability of the SEBI Master Circular for AIFs (dated May 7, 2024) and subsequent circulars will extend to Migrated VCFs, as detailed in Annexure II of the notification.

## **Non-Migrating VCFs**

For VCFs that choose not to migrate, Schemes with unexpired liquidation periods will be subject to enhanced regulatory reporting. Schemes with expired liquidation periods will face appropriate regulatory action if they continue operating beyond their original tenure. VCFs that have wound up all their schemes or have made no investments must apply to SEBI to surrender their registration by March 31, 2025. Failure to do so will result in the cancellation of their registration.

## **5. CONSULTATION PAPER ON MEASURES TOWARDS EASE OF DOING BUSINESS AND STREAMLINING COMPLIANCE REQUIREMENTS FOR NON-CONVERTIBLE SECURITIES FOR REVIEW OF LODR REGULATIONS**

SEBI has issued a Consultation paper on measures towards Ease of Doing Business and streamlining compliance requirements for Non-Convertible securities for review of LODR Regulations.

It is proposed to modify regulation 52(2)(b) of the LODR Regulation as follows: The quarterly financial results submitted shall be approved by the board of directors. Further, the financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.

## **6. INTRODUCTION OF LIQUIDITY WINDOW FACILITY FOR INVESTORS IN DEBT SECURITIES THROUGH STOCK EXCHANGE MECHANISM**

SEBI has issued a circular to solicit comments/ views/ suggestions from the public on the draft circular titled “Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism”. The comments/ suggestions should be submitted online latest by September 06, 2024.

The introduction of a Liquidity Window facility framework seeks for inclusion of put options exercisable on pre-specified dates or intervals. This framework is expected to offer greater flexibility and liquidity to investors while balancing the issuer’s discretion and risk management considerations.

### **Issuer’s Choice and Applicability**

The proposal grants issuers the discretion to offer the Liquidity Window facility on an ISIN-specific basis. The issuer can decide at the time of issuance whether to provide this facility for the listed debt securities. This is a key feature, as it allows issuers to cater the liquidity mechanism to the needs of different securities and market conditions.

The Liquidity Window framework is only applicable to future issuances of debt securities. These issuances can occur through either public offers or private placements that are intended to be listed. By limiting the applicability to prospective issuances, the proposal ensures that issuers and investors alike can make informed decisions based on the newly established norms.

## **Features and Conditions of the Liquidity Window Facility:**

### **1. Authorizations and Governance**

The introduction of this facility mandates the issuer to obtain prior approval from its Board of Directors. In the case of listed equity companies, the Stakeholders Relationship Committee (SRC) will monitor the implementation and outcomes of the liquidity window. For pure debt-listed entities where SRCs are not mandatory, the issuer's Board or a designated board-level committee will oversee this function. Importantly, the facility must be objective, transparent, non-discretionary, and non-discriminatory within the eligible investor class.

### **2. Operation Period**

The Liquidity Window can only be activated one year after the debt securities are issued. This buffer period helps manage early volatility and ensures that the securities have matured to a certain extent before the liquidity window is utilized.

### **3. Investor Eligibility and Limits**

Issuers can determine the class of investors eligible for the Liquidity Window facility. Whether the facility is extended to all investors or restricted to retail investors, the eligibility must be specified upfront. Additionally, the debt securities must be held in demat form by eligible investors to participate. Issuers will also establish an aggregate limit (typically 10-15% of the final issue size) for put option exercises across the debt security's tenure. Per-window sub-limits can also be defined, with excess tenders being accepted proportionately.

### **4. Designated Stock Exchange and Liquidity Window Schedule**

Issuers may designate any stock exchange as the 'designated stock exchange' for liquidity purposes. The liquidity window must be open for a minimum of three working days on a monthly or quarterly basis, as determined by the issuer. The schedule and necessary notifications must be provided at the beginning of each financial year.

### **5. Valuation and Payment Mechanisms**

Debt securities tendered under the put option will be valued on the day the liquidity window closes. The valuation methodology will align with SEBI's mutual funds guidelines. Payment to investors must be made within one working day of the window's closure.

### **6. Management of Received Securities**

Within 45 days of the liquidity window's closure (or earlier), issuers can sell the tendered securities via the stock exchange, RFQ platforms, online bond platforms, or extinguish them. Replenishment of the liquidity limit is possible through proceeds from these sales.

## 7. **Reporting and Compliance**

Issuers are required to submit reports to the stock exchange and provide information to depositories and debenture trustees within three working days post-closure of the liquidity window. These disclosures are essential for maintaining transparency and market integrity.

### **PART B: Article**

#### **1. The Role Of Environmental, Social, And Governance (Esg) Factors In Corporate Law**

In this article, our **Partner, Rajiv Sawhney, Junior Associate, Akshita Agarwal and Trainee Associate, Fen Mathew**, highlights the growing importance of Environmental, Social and Governance (ESG) factors in corporate decision-making, particularly within the Indian context.

Click on the below link to read the article:

<https://shorturl.at/UvAHs>

**END OF THE NEWSLETTER**

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