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SECURITIES AND EXCHANGE BOARD OF INDIA

Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 Circular, 2018

Background

The Securities and Exchange Board of India (“SEBI”) vide its *Circular dated June 06, 2018* (“Circular”) had laid down a new rule for Credit Rating Agencies (“CRA”) to withdraw rating as per the regulation enacted by SEBI.

Circular

This Circular is issued in exercise of the powers conferred by Section 11(1) of SEBI Act, 1992, read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999 to protect the interest of investors in securities and to promote the development of, and to regulate the security market.

In view of the same the following amendments for withdrawing ratings have been made by the Circular:

1. In terms of Regulation 16(3) a CRA may withdraw rating on the following grounds:

- a. continuously rated the instrument for the term not less than five (5) years or 50% of the tenure of the instrument whichever is higher.
 - b. received Undertaking from the issuer that credit rating is available on that instrument
2. At the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release, as per the format prescribed vide circular dated November 01, 2016. The press release shall also mention the reason(s) for withdrawal of rating.

Securities and Exchange Board of India (Maintenance of Records)
Rules, 2005

The Securities and Exchange Board of India (“SEBI”) has notified the *Prevention of Money Laundering (“PML”) (Maintenance of Records Rules, 2005) Amendment Circular* on June 06, 2018.

1. By an earlier notification the Government of India (“GOI”) on June 01, 2017 made the filing of Aadhar, PAN and form no. 60 mandatory as notified in Income Tax Rules, 1962 for both new and existing account with financial market intermediaries and security market intermediaries.
2. Subsequently GOI has notified the following:
 - i. The PML (Maintenance of Records) Fifth Amendment Rules, 2017 contained the explanation of the term “*certified copy*” and a list of deem Official Valid Documents (“OVD”) for proof of address.
 - ii. List of OVDs to be accepted in case documents presented by foreign nationals does not contain address details as notified by Sixth Amendment Rules, 2017.
3. The Hon’ble Supreme Court further extended the date of submission of the Aadhar, PAN and form no. 60 submission by the client to the entity till a date to be notified subsequent to pronouncement of final judgment.
4. Further, as per Clause 2(b)(4) of PMI (Second Amendment Rules), in case PAN is not submitted by any client at the time of opening of account based relationship, one certified copy of an OVD shall be submitted.

5. However, in terms of SEBI circular dated April 27, 2007, the requirement of PAN would continue to be mandatory for completing the KYC process for securities markets.
 6. The market regulator has asked stock exchanges and depositories to bring the provisions of this circular to the notice of the stock brokers and depository participants, and also disseminate the same on their websites.
 7. It has also asked them to monitor the compliance of this circular through half-yearly internal audits and inspections and communicate to SEBI the status of the implementation of the directives.
 8. In case of Mutual fund such compliances will be monitor by the Asset Management Companies and trustee and by their Board of Director in case of other intermediaries.
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RESERVE BANK OF INDIA

Liberalised Remittance Scheme – Harmonisation of Data and Definitions

The Reserve Bank of India vide its *notification dated June 19, 2018* made certain modifications to the Liberalised Remittance Scheme (“LRS”).

It will be mandatory to furnish the Permanent Account Number for anyone using LRS for making remittances under permissible current account transactions of up to USD 25,000 (Twenty-Five Thousand).

Further the definition of ‘relative’ has been aligned with the definition given in the Companies Act 2013. This has been done with a view to check the outflow of funds and prevent the misuse of the facility. Henceforth, funds under this category can be sent only to immediate relatives such as parents, spouses, children and their spouses.

Investment by Foreign Portfolio Investors (FPI) in Debt – Review

Reserve Bank of India (“RBI”) vide its *Master Circular dated June 15, 2018* (“Circular”) has made changes to the operational aspects of Foreign Portfolio Investors (“FPI”) investment in debt by revision in the residual maturity for the investment by FPI in Government securities, State Development Loans (“SDLs”) and Corporates Debts.

By the above-mentioned Circular, it has been decided by the RBI to withdraw the minimum residual maturity restriction of three (3) years for the investment by government securities and SDLs. Further, the monitoring of government securities and SDLs will be done by Clearing Corporation of India Limited.

The revised requirements for FPIs investment in corporate debt securities are mentioned below:

1. The minimum residual maturity for the investment in corporate bonds by the FPIs are permitted for above one-year subject to the condition that short-term investments (i.e. investment in securities with residual maturity up to 1 year) in corporate bonds by an FPI shall not exceed 20% of the total investment of that FPI in corporate bonds and this restriction applies for any category on end of day basis.
2. Investment in corporate debt securities by any FPI shall be subject to the below mentioned condition:

- i. Long-term FPIs: 15% of prevailing investment limit.
- ii. Other FPIs: 10% of prevailing investment limit.

Further, if the FPI has investments in excess of the concentration limit on the effective date, it will be allowed the following relaxations, subject to availability of overall limits, as a one-time measure:

- a. If an FPI has investments in excess of the concentration limit on the effective date, it will be allowed to undertake additional investments such that its portfolio size at the end of any day does not exceed plus 2.5% of investment limit on the effective date.
 - b. If an FPI has investments within the concentration limit, but in excess of 7.5% (12.5% in case of FPIs in the 'Long-term' sub-category) of the investment limit on the effective date, that FPI shall be allowed to undertake additional investments such that its portfolio size at the end of any day does not exceed plus 2.5% of the investment limit on the effective date.
 - c. All the other FPIs will be allowed to invest up to the applicable concentration limit.
3. FPI investment in corporate bonds shall be subject to the following requirements:

5. No FPI shall invest in partly paid debt instruments.
 6. Appropriate action may be initiated against FPIs who are not in compliance with the requirements specified here.
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MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

Champatlal Jain & Ors. Versus Surti Developers Private Limited

The Hon'ble Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") delivered its Order on June 04, 2018 in the matter of Champatlal Jain & Ors. ("**Complainants**") Versus Surti Developers Private Limited ("**Respondent**"). MahaRERA adjudicated on the question of unilateral cancellation of agreements for sale by the Respondent.

Background:

The Complainants had purchased apartments in the Respondents project 'Universal Paradise D Wing' situated at Santacruz, Mumbai via registered agreements for sale / letters of allotment in the period 2007-2013 and the Respondent in February 2017 unilaterally cancelled the agreements/ letters of allotment forcing the Complainants to approach the Hon'ble MahaRERA against this unjust termination. The Respondent contended that since the agreements/ allotment letters were cancelled prior to the Real Estate (Regulation and Development) Act, 2016 ("**Act**") coming into force, there was no cause of action subsisting on the date when the Act came into force.

Decision:

The Hon'ble MahaRERA inter alia held that though the cancellation of the agreements/ allotment letters were executed prior to the Act coming into force, as money paid by the Complainants is still lying with the Respondent, the Hon'ble

MahaRERA has jurisdiction to adjudicate the complaints.

MINISTRY OF CORPORATE AFFAIRS

Companies (Significant Beneficial Owners) Rules, 2018

The Ministry of Corporate Affairs has notified the *Companies (Significant Beneficial Owners) Rules 2018* (“**Rules**”) w.e.f. June 14, 2018.

The Rules have been issued under Section 90 read with Section 469(1) of the Companies Act, 2013 (“**Act**”).

The Rules state that “significant beneficial owner” means an individual referred to in Section 90 of the Act, holding ultimate beneficial interest of not less than ten per cent (10%) and whose name is not entered in the register of members of a company as the holder of such shares.

1. The determination of significant beneficial ownership in case of persons other than individuals or natural persons shall be as under:

- i. Beneficial interest through a partnership firm: The significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent (10%) of capital or has entitlement of not less than ten per cent of profits of the partnership;
- ii. Beneficial interest through a company: where no natural person is identified under (i) or (ii), the significant beneficial owner is the relevant natural person who holds the position of senior managing official;

iii. Beneficial interest through a Trust: where the member is a trust (through trustee), the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than ten per cent (10%) interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership;

2. Declaration to be made by significant beneficial owners:

Every significant beneficial owner shall file a declaration in **Form No. BEN-1** to the Company on the date of commencement of these rules within ninety (90) days from such commencement and within thirty (30) days in case of any change in his significant beneficial ownership.

3. Return of significant beneficial owners in shares:

Where any declaration in Form No. BEN-1 is received by the Company, it shall file a return in **Form No. BEN-2** with the Registrar in respect of such declaration, within a period of thirty (30) days from the date of receipt of declaration by it, along with the fees as prescribed.

4. Register

The Company shall maintain a register of significant beneficial owners in **Form No. BEN-3**.

5. Notice seeking information about significant beneficial owners:

A Company shall give notice seeking information in accordance with under sub-section (5) of section 90, in **Form No. BEN-4**.

6. Application to Tribunal

The Company may apply to the Tribunal for order directing that the shares in question be subject to certain restrictions which are:

- i. restrictions on the transfer of interest attached to the shares in question;
- ii. suspension of the right to receive dividend in relation to the shares in question;
- iii. suspension of voting rights in relation to the shares in question;
- iv. any other restriction on all or any of the rights attached with the shares in question.

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Warm Regards,

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