

# BHANDARI & ASSOCIATES

## Company Secretaries

## REGULATORY UPDATES

### May, 2023

#### **ABOUT US:**

Bhandari & Associates was formed in the early 80`s and is one amongst India`s oldest practicing firms.

Our Firm is a full-service corporate law advisory firm. It assists in compliance with the Companies Act, 2013, and a wide array of other corporate laws and regulations for starts-up, medium and large Companies.

Our Regulatory Updates aim to provide an overview of the key Circulars, Notifications and Amendments by regulators/ entities including Ministry of Corporate Affairs (MCA), Securities Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Stock Exchanges (BSE and NSE).



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*“We are what we repeatedly do. Excellence, then is not an act, but a habit.”*

*- Aristotle*

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## Ministry of Corporate Affairs (MCA)

### 1. Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023

*(Circular date: May 10, 2023)*

MCA has notified the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023.

The following provisos has been inserted in the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016:

“Provided that the company shall not file an application unless it has filed overdue financial statements under section 137 and overdue annual returns under section 92, up to the end of the financial year in which the company ceased to carry its business operations.

Provided further that in case a company intends to file the application after the action under section 248(1) has been initiated by the Registrar, it shall file all pending financial statements under section 137 and all pending annual returns under section 92, before filing the application.

Provided also that once notice under section 248(5) has been issued by the Registrar for publication pursuant to the action initiated under section 248(1), a company shall not be allowed to file the application under this sub-rule.”

Accessible here: <https://www.mca.gov.in>

### 2. Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

*(Circular date: May 15, 2023)*

MCA has notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023.

Rule 25(5) and (6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 has been substituted with the following:-

“(5) Where no objection or suggestion is received within a period of thirty days of receipt of copy of scheme under section 233(2), from the Registrar of Companies and Official Liquidator by the Central Government and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within a period of fifteen days after the expiry of said thirty days, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12:

Provided that if the Central Government does not issue the confirmation order within a period of sixty days of the receipt of the scheme under section 233(2), it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(6) Where objections or suggestions are received within a period of thirty days of receipt of copy of scheme under section 233(2) from the Registrar of Companies or Official Liquidator or both by the Central Government and –

(a) such objections or suggestions of Registrar of Companies or Official Liquidator, are not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may within a period of thirty days after expiry of thirty days referred to above, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

(b) the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may within sixty days of the receipt of the scheme file an application before the Tribunal in Form No. CAA.13 stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act:

Provided that if the Central Government does not issue a confirmation order under clause (a) or does not file any application under clause (b) within a period of sixty days of the receipt of the scheme under section 233(2) of the Act, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.”

The amended rules shall come into force with effect from June 15, 2023.

Accessible here: <https://www.mca.gov.in>

### 3. Companies (Accounts) Second Amendment Rules, 2023

*(Circular date: May 31, 2023)*

MCA has notified the Companies (Accounts) Second Amendment Rules, 2023.

In Rule 12(1B) of the Companies (Accounts) Rules, 2014, the following proviso has been inserted after the second proviso:

“Provided also that for the financial year 2022-23, Form CSR-2 shall be separately filed on or before March 31, 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (IND AS), as specified in these rules or Form No. AOC-4 XBRL as specified in these rules or Form No. AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 as the case may be.”

Accessible here: <https://www.mca.gov.in>

## Securities and Exchange Board of India (SEBI) (Regulations)

### 1. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2023

*(Circular date: May 23, 2023)*

SEBI vide this notification has amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 [‘ICDR Regulations’].

Following are the key amendments:

The definition of “qualified institutional buyer” in regulation 2 and the underwriting framework given in the regulation 40 and regulation 136 of ICDR Regulations has been amended.

Further, SEBI has amended the regulation 26, regulation 59C, regulation 72, regulation 124, regulation 187, regulation 246, regulation 293, regulation 294, Schedule VI and Schedule XIII of ICDR regulations.

Following are the key amendments in the underwriting framework:

- If the issuer making an initial public offer or further public offer, other than through the book building process, desires to have the issue underwritten to cover under-subscription in the issue, it shall, prior to the filing of the prospectus, enter into an underwriting agreement with the merchant bankers or stock brokers registered with the Board to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, either by themselves or by procuring subscription, at a predetermined price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.
- If the issuer makes a public issue through the book building process the issue shall be underwritten by lead manager(s) and syndicate member(s). Provided that at least seventy five per cent of the net offer proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 6 in case of initial public offer and specified in sub-regulation (2) of regulation 103 in case of further public offer shall not be underwritten.
- if the issuer desires to have the issue underwritten to cover under-subscription in the issue, it shall, prior to the filing of the red herring prospectus, enter into an underwriting agreement with the lead manager(s) and syndicate member(s) to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, either by themselves or by procuring subscription, at a price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the red herring prospectus.

Below link may be referred for a detailed reading of all the amendments.

Accessible here: <https://www.sebi.gov.in>

## Securities and Exchange Board of India (SEBI) (Circulars)

### 1. Introduction of Legal Entity Identifier (LEI) for issuers who have listed and/ or propose to list non-convertible securities, securitised debt instruments and security receipts

*(Circular date: May 03, 2023)*

Legal Entity Identifier (LEI) is a unique global identifier for legal entities participating in financial transactions. LEI is designed to create a global reference data system that uniquely identifies every legal entity, in any jurisdiction, that is party to a financial transaction. It is a unique 20-character code to identify legally distinct entities that engage in financial transactions. Presently, RBI directions, inter alia, mandate non-individual borrowers having aggregate exposure of above Rs. 25 crores, to obtain LEI code.

In view of the above, issuers having outstanding listed non-convertible securities as on August 31, 2023, shall report/ obtain and report the LEI code in the Centralized Database of corporate bonds, on or before September 1, 2023. Similarly, issuers having outstanding listed securitised debt instruments and security receipts as on August 31, 2023, shall report/ obtain and report the LEI code to the Depository(ies), on or before September 1, 2023.

Further, issuers proposing to issue and list non-convertible securities, on or after September 01, 2023, shall report their LEI code in the Centralized Database of corporate bonds at the time of allotment of the ISIN. Similarly, issuers proposing to issue and list securitised debt instruments and security receipts, on or after September 01, 2023, shall report their LEI code to the Depositories at the time of allotment of the ISIN.

The requirement of LEI for issuers proposing to list/ having outstanding municipal debt securities shall be specified later.

This circular shall come into force with immediate effect.

Accessible here: <https://www.sebi.gov.in>

### 2. Additional requirements for the issuers of transition bonds

*(Circular date: May 04, 2023)*

'Transition bonds' is one of the sub categories of the revised definition of 'green debt security' notified in the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ["NCS Regulations"] on February 2, 2023. On February 6, 2023, SEBI had issued the revised disclosure requirements for such issuances. As per NCS Regulations, transition bonds comprise of "funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions."

In order to facilitate transparency, SEBI vide this circular has prescribe certain additional requirements for issuance and listing of transition bonds and therefore an issuer desirous of issuing transition bonds shall make the following additional disclosures:

- Issuer of transition bonds shall use a denotation 'GB-T' to differentiate transition bonds from other categories of green debt security. The denotation shall be disclosed in the offer documents on the cover page and in type of instrument field in the term sheet.

- Issuer shall make a Transition Plan which shall contain the details of interim targets, brief of the project implementation strategy, details regarding the usage of technology for the project implementation and mechanism to oversee the utilization of the funds raised through transition bonds and the implementation of the transition plan. Issuers may form a committee to oversee the implementation and ensure timely completion of the defined targets.
- An issuer shall disclose the denotation in the Centralized Database for corporate bonds/ debentures by filling the denotation i.e. GB-T in sub point 6 i.e. Others (Please specify) of point 10 i.e. Type of Instrument of Annex-XIV-A to Chapter XIV (Centralized Database for corporate bonds/ debentures) of the Operational Circular dated August 10, 2021 (and as amended from time to time).
- The Depositories shall update the denotation i.e. GB-T as prefix in “instrument details” field in Centralized Database for corporate bonds/ debentures
- Issuer of transition bonds, during the year, shall disclose to the stock exchanges the revised transition plan along with an explanation for any such revision to the already disclosed plan; if applicable.
- The Issuer, shall disclose in the Annual Report the transition plan along with a brief on the progress of the implementation of the transition plan.

The provisions of this circular shall come into force with immediate effect and shall be appended as new Chapter IX-B of the Operational Circular.

Accessible here: <https://www.sebi.gov.in>

### 3. Registration with the FINNET 2.0 system of Financial Intelligence Unit – India (FIU-India) (Circular date: May 09, 2023)

FIU-India, vide its letter dated April 19, 2023 has specified guidelines including red flag indicators for detecting suspicious transactions by the Debenture Trustees under Rule 7(3) of Prevention of Money Laundering (Maintenance of Records) Rules, 2005.

It has been informed by FIU-India that:

- a) all Reporting Entities falling under Debenture Trustee segment registered in FINNET 1.0 system of FIU-India are required to re-register themselves in FINNET 2.0 system/ module1 ; and
- b) those reporting entities who have not yet registered themselves with FIUIndia are required to be registered in FINNET 2.0 system/ module of FIUIndia immediately in light of the FATF mutual evaluation.

In view of the above, SEBI vide this circular has advised the registered debenture trustees to register/ re-register themselves in FINNET 2.0 system of FIU-India as soon as possible.

Accessible here: <https://www.sebi.gov.in>

**4. Investment in units of Mutual Funds in the name of minor through guardian  
(Circular date: May 12, 2023)**

SEBI Circular no. SEBI/HO/IMD/DF3/CIR/P/2019/166 dated December 24, 2019 had prescribed the uniform process to be followed across Asset Management Companies (AMCs) in respect of investments made in the name of a minor through a guardian.

SEBI vide this circular has modified the above SEBI circular and provided the following:

- i. Para 1(a) shall read as under:  
“Payment for investment by any mode shall be accepted from the bank account of the minor, parent or legal guardian of the minor, or from a joint account of the minor with parent or legal guardian. For existing folios, the AMCs shall insist upon a Change of Payout Bank mandate before redemption is processed”
- ii. Irrespective of the source of payment for subscription, all redemption proceeds shall be credited only in the verified bank account of the minor, i.e. the account the minor may hold with the parent/ legal guardian after completing all KYC formalities.
- iii. All other provisions mentioned in the aforesaid circular shall remain unchanged.

All AMCs are advised to make the necessary changes to facilitate the above changes in mutual fund transactions w.e.f. June 15, 2023.

Accessible here: <https://www.sebi.gov.in>

**5. Risk disclosure with respect to trading by individual traders in Equity Futures & Options Segment  
(Circular date: May 19, 2023)**

SEBI vide this circular has introduced the ‘Risk disclosures’ with respect to trading individual traders in equity Futures & Options (F&O) segment. Accordingly, all stock brokers shall display the ‘Risk disclosures’ given at Annexure-I in this circular on their websites and to all their clients in the manner as specified in it.

All Qualified Stock Brokers (QSBs) shall maintain the Profit and Loss (P&L) data of their clients on continuous basis as per the format given at Annexure-II in this circular. The P&L data of the clients shall be retained for at least 5 years.

The provisions of this circular shall come into force with effect from July 01, 2023.

Accessible here: <https://www.sebi.gov.in>

**6. Model Tripartite Agreement between the Issuer Company, Existing Share Transfer Agent and New Share Transfer Agent as per Regulation 7(4) of SEBI (LODR) Regulation, 2015  
(Circular date: May 25, 2023)**

As per regulation 7(4) of SEBI LODR Regulations, 2015, “in case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity, in the manner as specified by the Board from time to time.”



In this respect, SEBI vide this circular has provided a model Tripartite Agreement in consultation with Registrar Association of India (RAIN) and some issuer companies. Format of the Tripartite Agreement is given as Annexure-A in this circular.

RTAs and listed companies are advised to publish the format of tripartite agreement on their respective websites.

RTAs are advised to submit compliance of the direction given in para 4.1 of this circular to SEBI vide email at [rta@sebi.gov.in](mailto:rta@sebi.gov.in) latest by June 01, 2023 along with the link of their website containing the format of tripartite agreement.

Accessible here: <https://www.sebi.gov.in>

## 7. Consultation Paper

During the month, SEBI has issued several consultation papers for public comments out of which following are key consultant papers released by SEBI:

- ❖ Consultation Paper on proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 to bring greater clarity and uniformity of compliance in the ecosystem dated May 18, 2023.
- ❖ Consultation paper on draft SEBI (Prohibition of Unexplained Suspicious Trading Activities in the Securities Market) Regulations, 2023 dated May 18, 2023.

Accessible here: <https://www.sebi.gov.in>

## Stock Exchange(s)

1. FAQ's on filing of announcements in XBRL format on BSE listing centre and NSE Electronic Application Processing System (NEAPS) platform

*(Circular date: May 15, 2023)*

NSE and BSE has released Frequently Asked Questions (FAQs) on filing equity announcements in XBRL format on NSE Electronic Application Processing System (NEAPS) platform and BSE listing centre respectively for guidance purpose which may be accessed through the below links.

Accessible here: <https://static.nseindia.com>  
<https://www.bseindia.com>

## Reserve Bank of India (RBI)

### 1. Formalisation of Informal Micro Enterprises on Udyam Assist Platform

*(Circular date: May 09, 2023)*

RBI vide its circular FIDD.MSME & NFS.BC.No.4/06.02.31/2020-21 dated August 21, 2020 had advised all lenders to obtain 'Udyam Registration Certificate' for classification of entities as Micro, Small and Medium Enterprises (MSME).

The Ministry of Micro, Small and Medium Enterprises ('MSME'), Government of India has launched the Udyam Assist Platform (UAP) to facilitate formalisation of Informal Micro Enterprises (IMEs) through online generation of Udyam Assist Certificate. Registration on the platform is done with the assistance of Designated Agencies which are RBI regulated entities (including scheduled commercial banks, non-banking financial companies, etc.).

The Government of India, vide Gazette Notification S.O. 1296(E) dated March 20, 2023, has specified that the certificate issued on the UAP to IMEs shall be treated at par with Udyam Registration Certificate for the purpose of availing Priority Sector Lending (PSL) benefits. Hence, IMEs with an Udyam Assist Certificate shall be treated as Micro Enterprises under MSME for the purposes of PSL classification.

Accessible here: <https://www.rbi.org.in>

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## Disclaimer

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The contents of this publication comprise information in summary form and is therefore intended for general guidance only. It is not intended to be exhaustive or a substitute for professional advice. No one should act on such information without appropriate professional advice.

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We are happy to receive feedback/queries @[bhandariandassociates@gmail.com](mailto:bhandariandassociates@gmail.com)

### ***Bhandari & Associates***

*Company Secretaries*

Agility | Precision | Quality

#### **Mumbai Office:**

901, Kamla Executive Park,

Off. Andheri-Kurla Road,

Andheri (East)

Mumbai – 400059

Tel: 022-42215300

[www.bhandariandassociates.com](http://www.bhandariandassociates.com)

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