MCA clarifies on offsetting excess CSR expenses in FY 2019-20 for contribution towards PM CARES Fund | SEBI proposes NCS Regulations

INSIGHTS

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We would like to bring to your attention two recent updates from the Ministry of Corporate Affairs (**MCA**) and The Securities and Exchange Board of India (**SEBI**).

1. MCA clarifies on offset of excess CSR expenses for financial year 2019-20 towards PM CARES Fund

An appeal was made in the last year on March 30, 2020, requesting India Inc. to generously contribute to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (**PM CARES Fund**) and allowing its offset in subsequent years. MCA has now clarified that where a company had contributed any amount to PM CARES Fund on March 31, 2020, which is over and above the minimum amount prescribed under section 135(5) of the Companies Act, 2013 for FY 2019-20, and such excess amount or part thereof is offset against the requirement to spend under section 135(5) for FY 2020-21 in terms of the aforementioned appeal, then the same shall not be viewed as a violation subject to the conditions that:

- The amount offset as such shall have factored the unspent CSR amount for previous financial years;
- The Chief Financial Officer (**CFO**) shall certify that the contribution to PM-CARES Fund was indeed made on March 31, 2020 in pursuance of the appeal and the same shall also be so certified by the statutory auditor of the company; and
- The details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21 in terms of section 134 (3) (o) of the Act.

Afore-mentioned clarification has been issued vide circular dated May 20, 2021 (E-file no. CSR-01/4/2021-CSR-MCA)

2. SEBI moves to consolidate regulatory framework dealing with issuance and listing of debt securities and non-convertible preference shares

In a move to streamline the regulatory framework dealing with issuance and listing of debt securities and non-convertible preference shares, SEBI has issued a consultation paper proposing consolidation of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (**ILDS Regulations**) and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (**NCRPS Regulations**) into a single regulation to be named as SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (**NCS Regulations**).

The proposed shift to a single regulation is expected to ensure that there is ease of reference and language and also remove redundancies which would entail following objectives:

- To simplify and to align the existing regulations in line with the various circulars/guidance and various provisions of the regulations, issued by SEBI and improve the structure of the regulations in order to enhance readability;
- To identify policy changes in line with the present market practices and the prevailing regulatory environment and to ease doing business;
- To separate the chapters on the basis of type of issuance- public/private placement and instruments- debt securities/NCRPS/PNCPS/PDIs/Commercial Papers, so that all relevant information is sorted and are available at one place;
- To align the regulations with the amendment in the Companies (Share Capital and Debentures) Rules, 2014 and Companies (Prospectus and Allotment of Securities) Rules, 2014 etc.;
- To merge all the existing circulars into a single operational circular.

Key proposals have been analyzed in the update. The detailed proposals and recommendations for the framework of issuance and listing of debt securities and non-convertible preference shares are provided under the SEBI Consultation Paper on Review and Merger of ILDS Regulations and NCRPS Regulations dated May 19, 2021 (available here). Public comments are to be provided within 21 days from the May 19, 2021.

Click here to read the detailed update.

For any queries or comments on this update, please feel free to contact us at insights@elp-in.com