

## Framework for operationalizing Gold Exchange – Stock exchanges allowed to apply for trading in EGR | EGR and BDR notified as “securities” | Special Situation Funds (SSF) launched by SEBI for distressed assets | Other changes by SEBI for debt listed companies, IPO, preferential issue, and MCA relaxation

Dear Reader

Following significant changes have been recently introduced:

- A. [EGR, bullion spot delivery contract and bullion depository receipt specified as “securities” under SCRA | Paving the way for gold / bullion exchange](#): In respect of bullion depository receipts, Ministry of Finance (**MoF**) has notified “Electronic Gold Receipt” (**EGR**), bullion spot delivery contract and bullion depository receipt with underlying bullion as “securities” under the Securities Contracts (Regulation) Act, 1956 (**SCRA**). Further to this, on January 10, 2022, SEBI has allowed stock exchange/s desirous of trading in EGRs to apply to SEBI for approval of trading of EGRs in new segment.
- B. [Regulation for Vault Managers | Another step towards Gold Exchange in Domestic Market](#): SEBI has released regulations for vault managers in domestic market, detailing norms and obligations for vault managers.
- C. [Submission of NOC from financial institution for a scheme of arrangement](#): In order to bring more clarity to the procedure for obtaining approval of stock exchange for scheme of arrangement, SEBI has clarified that the no-objection certificate (**NOC**) from lending scheduled commercial banks/ financial institutions/ debenture trustees required to be submitted along with other documents for approval of scheme of arrangement, is to be submitted to the stock exchange before the stock exchange gives its no-objection letter under Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) regulations, 2015 (**LODR Regulations**).
- D. [MCA exempts fees for filing of financial statements and annual returns](#): In a relief to the stakeholders, MCA has relaxed levy of additional fees on submission of forms related to financial statements and annual returns.
- E. [High value debt listed companies to comply with additional norms on related party transactions](#): Recently, SEBI had notified that Regulation 15 to 27 of LODR Regulations will be applicable to high value debt listed companies on a “comply or explain” basis. Further to this notification, certain additional norms were introduced for related party transactions. SEBI has now clarified that such additional norms will also be applicable to high value debt listed companies.
- F. [Decision at SEBI board meeting](#): SEBI has taken following major decisions in its board meeting held on December 28, 2021 ([available here](#)):
  - [Revised conditions for objects of the issue and earmarked limits where issuer company has not identified any acquisition or investment target in its offer documents; Credit Rating Agency \(CRAs\) appointed as monitoring agencies and norms on reporting on utilization of issue proceeds](#);
  - [Revised floor prices, lock-in provisions for promoters and non-promoters, pledge of locked-in shares, permissible preferential issue for consideration other than cash and timelines for seeking in-principal approval in case of preferential issue](#);
  - [Prior approval of shareholders required for appointment/ re-appointment of persons failing to get elected as directors](#);
  - [Introduction of “Special Situation Funds” \(SSFs\) as a sub-category under Category I Alternative Investment Funds \(AIFs\)](#);
  - [Consent of unitholders of mutual funds required by simple majority in case of winding up a scheme or prematurely redeeming the units of a close ended scheme](#);
  - [KYC Registration Agencies \(KRAs\) to carry out independent validation of KYC records and maintain an audit trail for any changes in KYC records of clients](#);
  - [Revised networth requirement for Trading Members \(TMs\), Self-Clearing Members \(SCMs\), Clearing Members \(CMs\), Professional Clearing Members \(PCMs\), Depository Participants \(DPs\)](#);

- [Deposit & Fees requirements for members in Electronic Gold Receipts \(EGR\) Segment;](#)
- [Unique registration numbers of Foreign Portfolio Investors \(FPIs\);](#)
- [Revision in timelines and clarificatory changes to provisions of the Settlement Proceedings Regulations](#)

The above changes have been analyzed below:

#### **EGR, bullion spot delivery contract and bullion depository receipt specified as “securities” under SCRA | Paving the way for gold / bullion exchange**

MoF has notified “Electronic Gold Receipt” (EGR) as securities for the purpose of the Securities Contracts (Regulation) Act, 1956 (SCRA). EGR has been defined as an electronic receipt issued on the basis of deposit of underlying physical gold in accordance with the regulations issued by SEBI from time to time. This amendment has been introduced vide notification dated December 24, 2021 ([available here](#)).

Further to this, on January 10, 2022, SEBI has allowed stock exchange/s desirous of trading in EGRs to apply to SEBI for approval of trading of EGRs in new segment. The circular issued by SEBI dated January 10, 2022 is [available here](#).

Further, MoF has also notified bullion spot delivery contract and bullion depository receipt with underlying bullion as securities under the SCRA in respect of issuance and trading of such securities in an International Financial Services Centre (IFSC). This change has been introduced vide notification dated December 24, 2021 ([available here](#)).

#### **Regulation for Vault Managers | Another step towards Gold Exchange in Domestic Market**

SEBI has issued SEBI (Vault Managers) Regulations, 2021 for regulating registration and operation of vault managers in domestic market with respect to gold. Key features of the regulation are as follows:

- **Registration with SEBI:** Any person intending to carry on the business as a Vault Manager on or after the commencement of these regulations is required to make an application to SEBI for grant of a certificate of registration.
- **Obligations of vault manager:** Few of the obligations of vault manager include:
  - Store the gold only in recognized vaults;
  - Ensure the quality specifications of the gold at the time of deposit as per the gold standard;
  - Create EGRs;
  - Maintain records of all transactions or operations pertaining to the recognized vault(s);
  - Adopt appropriate safekeeping measures, as may be specified by SEBI, to ensure that deposits, records and documents are protected at all times;
  - Have Data Recovery System in place to prevent loss or damage of electronic records;
  - Take necessary steps to maintain the quality and quantity of gold stored in the recognised vault(s);
  - Devise procedures for periodic reconciliation of physical gold with the corresponding record of EGRs maintained by it and the depositories;
  - Not to sell, remove, dispose or create any interest, including by way of pledge or hypothecation, in the gold deposited in the vault(s) for the creation of EGR, except in such manner as may be specified by SEBI;
  - Ensure delivery of gold to the beneficial owner as per the gold standard.
- **Indemnification for loss:** The vault manager to indemnify for any loss caused to the depositor or the beneficial owner by the vault manager in the course of providing vaulting services.
- **Creation of EGR:** Upon acceptance of the gold from the depositor, the vault manager shall create an EGR in the name of such depositor as beneficial owner.
- **Withdrawal of gold:** A beneficial owner seeking to withdraw gold from the vault to place a request with the depository. The depository, after satisfying the payment of charges due to the vault manager, to intimate its approval for withdrawal of gold to the concerned vault manager. The Vault Manager to hand over the gold and extinguish the EGR(s), subject to the beneficial owner producing acknowledgement of receipt and such other documents as may be specified by the vault manager.

- **Inspection and audit:** SEBI has a right to undertake inspection of the books of accounts, records and documents and deposits of gold of the vault manager in order to inspect into the affairs of such manager.

The detailed norms and obligations of vault manager are provided under the SEBI (Vault Managers) Regulations, 2021 dated December 31, 2021 ([available here](#)).

#### Submission of NOC from financial institution for a scheme of arrangement of listed companies

Vide circulars dated November 16, 2021 ([available here](#)) and November 18, 2021 ([available here](#)), SEBI had introduced certain changes to the Master Circular on scheme of arrangement, pursuant to which the listed entities are required to submit certain documents to the stock exchanges before the scheme of arrangement is submitted to the National Company Law Tribunal. One of such requirements is the submission of a No-objection certificate (NOC) from the lending scheduled commercial banks/financial institutions/debenture trustees.

SEBI has now clarified that the aforesaid NOC from the lending scheduled commercial banks/financial institutions/debenture trustees is to be submitted to the stock exchanges before the receipt of the No-objection letter from stock exchange under Regulation 37(1) of the LODR Regulations.

The aforesaid clarification has been issued by SEBI vide circular dated January 3, 2022 ([available here](#)).

#### MCA exempts fees for filing of financial statements and annual returns

MCA has provided that no additional fees shall be levied upto 15.02.2022 for the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and upto 28.02.2022 for filing of e-forms MGT-7 / MGT-7A in respect of the financial year ended on 31.03.2021 respectively. The relief has been provided vide General Circular No. 22/2021, dated December 29, 2021 ([available here](#)).

#### High value debt listed companies to comply with additional norms on related party transactions

Recently, SEBI had notified that Regulation 15 to 27 of LODR Regulations will be applicable to high value debt listed companies on a “comply or explain” basis. Further to this notification, SEBI, vide circular no. SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated November 22, 2021 had specified following disclosure obligations of listed entities in relation to Related Party Transactions (RPTs) with respect to specified securities:

- Information to be reviewed by the Audit Committee for approval of RPTs;
- Information to be provided to shareholders for consideration of RPTs; and
- Format for reporting of RPTs to the Stock Exchange.

Since the provisions of Regulation 23 of the LODR Regulations would be applicable to high value debt listed companies also, SEBI has now clarified that aforementioned additional norms will also be applicable to high value debt listed companies.

#### Amendments approved in the SEBI Board Meeting

SEBI, in its board meeting held on December 28, 2021 ([available here](#)), approved significant amendments to the following regulations:

| Amendments  | Details  |
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| <b>SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations)</b>   |  |
| <b>Filing of Draft Red Herring Prospectus (DRHP)   Conditions for Objects of the Issue if issuer company has not identified any acquisition or investment target.</b> | <p><b>Conditions for Objects of the Issue:</b></p> <ul style="list-style-type: none"> <li>▪ Where the issuer company sets out an object for future inorganic growth but has not identified any acquisition or investment target in its offer documents, the amount for such objects and amount for general corporate purpose (GCP) shall not exceed 35% of the total amount being raised.</li> <li>▪ The amount so earmarked for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects</li> </ul> |

| Amendments   | Details   |
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| <p>Threshold for offer for Sale (OFS) to public in an IPO where DRHP is filed by issuer without track record.</p> <p>CRA as monitoring agency and reporting on utilization of issue proceeds</p> | <p>of the issue in the draft offer document and the offer document, shall not exceed 25% of the amount being raised by the issuer.</p> <p><b>Exclusion:</b> Above limits will not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.</p> <p><b>Threshold for offer for Sale (OFS):</b></p> <ul style="list-style-type: none"> <li>▪ <b>Selling shareholders holding more than 20% of pre-issue shareholding of the issuer individually, or with persons acting in concert:</b> Shares offered for sale to not exceed more than 50% of their pre-issue shareholding.</li> <li>▪ <b>Selling shareholders holding less than 20% of pre-issue shareholding of the issuer individually, or with persons acting in concert:</b> Shares offered for sale to not exceed more than 10% of pre-issue shareholding of the issuer.</li> </ul> <p><b>Monitoring agency and reporting on utilization of issue proceeds:</b></p> <ul style="list-style-type: none"> <li>▪ CRAs registered with SEBI, permitted to act as Monitoring Agency instead of Scheduled Commercial Banks and Public Financial Institutions.</li> <li>▪ Monitoring by CRAs will continue till 100% of the issue proceeds are utilized, compared to the earlier limit of 95%.</li> <li>▪ Amount raised for GCP also to be brought under monitoring and utilization of same to be disclosed in monitoring agency report.</li> <li>▪ Monitoring agency report to be placed before the audit committee of the listed entity for consideration on a quarterly basis instead of annual basis.</li> </ul> |
| <p>Minimum price band in case of book built issues</p>   | <p>A minimum price band of at least 105% of the floor price will be applicable for all issues opening on or after notification of amendments to the ICDR Regulations in the official gazette.</p>   |
| <p>Lock-in for Anchor Investors</p>  | <p>The existing lock in of 30 days for anchor investors to continue for 50% of the portion allocated to such anchor investor. For the remaining portion, lock in of 90 days from the date of allotment will be applicable for all issues opening on or after <b>April 1, 2022</b>.</p>  |
| <p>Revised allocation methodology for Non-Institutional Investors (NIIs)</p>   | <ul style="list-style-type: none"> <li>▪ For book built issues opening on or after <b>April 1, 2022</b>, the allocation in the NII category to be revised as follows: <ul style="list-style-type: none"> <li>– one third of the portion available to NIIs shall be reserved for applicants with application size of more than INR 2,00,000 and up to INR 10,00,000;</li> <li>– two third of the portion available to NIIs shall be reserved for applicants with application size of more than INR 10,00,000:</li> </ul> </li> <li>▪ Allotment of securities in case of NII category will be on 'draw of lots', as is currently applicable for retail individual investors (RIIs) category.</li> </ul>   |
| <p>Preferential Issues   Factors for determination of floor prices, including in case of change of control.</p>  | <p><b>Determination of floor price:</b></p> <ul style="list-style-type: none"> <li>▪ Factors to be considered for determining the floor price for all preferential issues: <ul style="list-style-type: none"> <li>– <b>For frequently traded security:</b> The floor price for preferential issue</li> </ul> </li> </ul>  |

| Amendments  | Details  |
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| <p>Reduced lock-in period for promoters and non-promoters pursuant to a preferential issue.</p> <p>Promoters permitted to pledge lock-in shares pursuant to preferential issue where it is one of the terms of loan sanctioned by financial institution</p> <p>Preferential Issue for consideration other than cash permitted for share swaps backed with valuation report</p> <p>In-principle approval from stock exchange to be applied on the same day as date of dispatch of AGM/EGM Notice</p> | <p>to be higher of 90/10 trading days' volume weighted average price of the scrip preceding the relevant date or as per any stricter provision in the Articles of Association of the issuer company.</p> <ul style="list-style-type: none"> <li>– <b>For infrequently traded security:</b> A valuation report by a registered independent valuer will be required.</li> <li>▪ <b>Change in control:</b> In case of change in control/ allotment of more than 5% of post issue fully diluted share capital of the issuer company to an allottee or to allottees acting in concert, an additional requirement for a valuation report from a registered independent valuer will be applicable. The same will be considered for determination of floor price in addition to the methodology discussed above. Further, in case of change in control, a committee of independent directors will be required to provide a reasoned recommendation along with their comments on all aspects of preferential issuance including pricing. The voting pattern of the committee shall also be disclosed to shareholders/public.</li> </ul> <p><b>Lock-in provision for promoters:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Lock-in requirement for allotment upto 20% of the post issue paid up capital:</b> 18 months (reduced from the existing 3 years).</li> <li>▪ <b>Lock-in requirement for allotment exceeding 20% of the post issue paid up capital:</b> 6 months (reduced from the existing 1 year).</li> </ul> <p><b>Lock-in provision for non-promoters:</b></p> <ul style="list-style-type: none"> <li>▪ Lock-in requirement for allotments reduced from existing requirement of 1 year to 6 months.</li> </ul> <p><b>Pledge of locked-in shares:</b></p> <p>Promoters would be permitted to pledge the shares locked-in pursuant to a preferential issue provided if pledge of such specified securities is one of the terms of sanction of the loan granted by certain financial institutions and the said loan is to be sanctioned to the issuer company or its subsidiary(ies) for the purpose of financing one or more of the objects of the preferential issue.</p> <p><b>Preferential Issue for consideration other than cash:</b></p> <p>Consideration for preferential issue, "other than cash" will be permitted only for share swaps backed by a valuation report from an independent registered valuer.</p> <p><b>Timelines for seeking in-principle approval from stock exchanges by issuer company:</b></p> <p>Issuer company to necessarily apply for in-principle approval from stock exchanges on the same day as the date of dispatch of notice for AGM/ EGM to shareholders.</p> |

| Amendments   | Details   |
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| <b>SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations)</b>   |   |
| <b>Prior approval of shareholders required for appointment/ re-appointment of persons failing to get elected as directors</b>                                    | SEBI has approved a proposal to introduce provisions relating to appointment or re-appointment of persons who fail to get elected as directors, including as Whole-time directors or Managing Directors or Managers, at the general meeting of a listed entity. Such appointment/ re-appointment will be done only with the prior approval of the shareholders.   |
| <b>Issue of securities in dematerialized form in compliance with investor requests</b>   | With a view to improve ease, convenience and safety of transactions for investor, issuance of securities in dematerialized form has been approved, in the event of a request from investor for issue of duplicate shares, etc.  |
| <b>SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations)</b>   |   |
| <b>Introduction of “Special Situation Funds” (SSFs) as a sub-category under Category I AIFs   Permitted investments and features of SSF regulatory framework</b> | <p>SSFs have been approved as a sub-category under Category I AIF, which will invest only in ‘stressed assets’ such as:</p> <ul style="list-style-type: none"> <li>▪ Stressed loans available for acquisition in terms of Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 or as part of a resolution plan approved under Insolvency and Bankruptcy Code, 2016;</li> <li>▪ Security receipts issued by Asset Reconstruction Companies;</li> <li>▪ Securities of companies in distress;</li> <li>▪ Any other asset/security as may be prescribed by SEBI from time to time</li> </ul> <p>Other significant features of the regulatory framework for SSFs include the following. It will need to be seen as to SSF framework will find takers in the AIF industry, considering the already existing ARC market:</p> <ul style="list-style-type: none"> <li>▪ Exemptions from investment concentration norm in a single investee company;</li> <li>▪ No restriction on investing their investible funds in unlisted or listed securities of the investee company;</li> <li>▪ Minimum investment by an investor to be INR 10 crore and INR 5 crore in case of an accredited investor;</li> <li>▪ Minimum corpus of INR 100 crore;</li> <li>▪ Initial and continuous due diligence requirements mandated by RBI for Asset Reconstruction Companies’ investors shall also be applicable to SSFs while acquiring stressed loans in terms of Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021.</li> </ul> |
| <b>SEBI (Mutual Funds) Regulations, 1996 (Mutual Fund Regulations)</b>   |   |
| <b>Mutual fund schemes to follow Indian Accounting Standards</b>   | Mutual Funds schemes to follow Indian Accounting Standard (IND AS) from <b><u>Financial Year 2023-24 onwards</u></b> .  |
| <b>Consent of unitholders required by simple majority in case of winding up a scheme or prematurely</b>  | <ul style="list-style-type: none"> <li>▪ <b><u>Consent of unitholders required</u></b>: In the event majority of the trustees of the mutual fund decide to wind up a scheme or prematurely redeem the units of a close ended scheme, trustees are mandated to obtain the consent of the unitholders.</li> </ul>   |

| Amendments   | Details  |
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| redeeming the units of a close ended scheme  | <ul style="list-style-type: none"> <li>▪ <b>Simple majority:</b> Trustees to obtain consent of the unitholders by simple majority of the unitholders present and voting on the basis of one vote per unit held.</li> <li>▪ <b>Publication of voting results:</b> Voting results to be published within 45 days of the publication of notice of circumstances leading to winding up.</li> <li>▪ <b>Failure to obtain consent:</b> In case the trustees fail to obtain the consent, the scheme shall open for business activities from the second business day after publication of results of voting.</li> </ul>  |
| <b>SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 (KRA Regulations)</b>   |  |
| KRAs to carry out independent validation of KYC records and maintain an audit trail for any changes in KYC records of clients                        | <p>KYC Registration Agencies (<b>KRAs</b>) have been made responsible to carry out independent validation of the KYC records uploaded onto their system by the Registered Intermediary (<b>RI</b>) and to maintain an audit trail of the upload / modification / download with respect to KYC records of client.</p> <p>Further, the systems of the RIs and KRAs to be integrated to facilitate seamless movement of KYC documents to and from RIs to KRAs.</p>  |
| <b>SEBI (Stock Brokers) Regulations, 1992 (Stock Broker Regulations) and SEBI (Depositories and Participants) Regulations, 2018 (DP Regulations)</b> |  |
| Revised Network requirement under Stock Broker Regulations and DP Regulations   Deposit & Fees requirements for members in EGR Segment               | <p><b>Amendments to Stock Brokers Regulations:</b></p> <ul style="list-style-type: none"> <li>▪ Definition of Professional Clearing Member has been prescribed;</li> <li>▪ Revised network requirement within prescribed timelines for Trading Members (TMs), Self-Clearing Members (SCMs), Clearing Members (CMs) and Professional Clearing Members (PCMs);</li> <li>▪ For EGR Segment, fees requirements and deposit requirements has been prescribed for the members in such segment.</li> </ul> <p><b>Amendments to the DP Regulations:</b></p> <ul style="list-style-type: none"> <li>▪ Revised network requirement within prescribed timelines for stock broker depository participant.</li> </ul> |
| <b>SEBI (Foreign Portfolio Investors) Regulations, 2019 (FPI Regulations)</b>  |  |
| Unique registration numbers of FPIs  | Amendments to FPI Regulations to enable SEBI to generate unique registration numbers of FPIs on receipt of basic details of the applicants seeking FPI registration from either of SEBI registered depositories.   |
| <b>SEBI (Settlement Proceedings) Regulations, 2018 (Settlement Proceedings Regulations)</b>  |  |
| Revision in timelines, clarificatory changes to provisions of the Settlement Proceedings Regulations, rationalisation of certain amounts             | <p>▪ <b>Revision in the following timelines:</b></p> <ul style="list-style-type: none"> <li>– Time-period for filing a settlement application rationalized to 60 days from the date of receipt of the show cause notice or a supplementary notice, whichever is later.</li> <li>– Time-period for submission of Revised Settlement Terms Form, after the Internal Committee (<b>IC</b>), rationalized to 15 days from the date of the IC meeting.</li> <li>– Time-period for remittance of settlement amount and compliance of all the settlement terms rationalized.</li> </ul>   |

| Amendments | Details   |
|------------|---|
|            | <ul style="list-style-type: none"> <li>▪ Clarification of certain provisions relating to conditions precedent for settlement, non-monetary terms, provisions relating to irregularity in procedure, settlement scheme and legal costs, in the settlement process.</li> <li>▪ All payments to be accepted only through the dedicated payment gateway.</li> <li>▪ Rationalisation of the Proceeding Conversion Factor, the Base Values, the amounts in respect of disclosure violations (in Tables VII and VIII along with the Notes therein) and settlement terms attributable to the nature and extent of violations (in Table X along with the Notes therein).</li> <li>▪ Separate guidelines for dealing with the procedure to be adopted for arriving at suitable terms pursuant to filing of a compounding application to be issued.</li> </ul> |

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

**Manendra Singh, Associate Partner – Email – [ManendraSingh@elp-in.com](mailto:ManendraSingh@elp-in.com)**

**Tanvi Goyal, Principal Associate – Email – [TanviGoyal@elp-in.com](mailto:TanviGoyal@elp-in.com)**

**Aditi Ladha, Associate – Email – [AditiLadha@elp-in.com](mailto:AditiLadha@elp-in.com)**

**Ambareen Khatri, Advocate – Email – [AmbareenKhatri@elp-in.com](mailto:AmbareenKhatri@elp-in.com)**

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