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LKS | CORPORATE PRACTICE

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FOREWORD

We are pleased to present the latest edition of our quarterly newsletter, where we have covered significant amendments under company law, foreign exchange laws, securities laws and environmental laws.

On the corporate law front, on one hand, significant amendments were brought about to provide certain relaxations for entities seeking registration as a company, including easing certain procedural requirements for obtaining registration as a company and easing compliances in respect of filings to be made for the of appointment of key managerial personnel. On the other hand, certain amendments have been geared towards tightening scrutiny and increasing disclosure requirements including disclosures relating to disqualification of directors, conversion of companies from one type to another, information to be provided by foreign companies in relation to its directors and related information.

Amendments brought about under foreign exchange laws include streamlining the reporting of foreign investments in India and imposing stricter timelines for verification on AD banks, to ensure efficient and timely reporting of foreign investments. A new set of guidelines were also issued to ensure that the ownership and control of banking companies is diversified and any person seeking to acquire majority stake in a banking company would be subject to a prior 'fit and proper' assessment by the RBI.

The Securities and Exchange Board of India ("SEBI") has also brought in a number of amendments. Some of the key changes include introduction of the concept of 'credit default swaps' under the Alternative Investment Funds Regulations, establishing separate corporate governance norms for REITs and InvITs and widening the definition of 'green debt security' to align it with internationally accepted and recognized standards, as a step towards its sustainable development goals. Further, in line with the objective of facilitating disinvestment by the government in various listed entities, SEBI has brought about amendments for easing the process and regulatory hurdles faced by the government in this regard.

The Ministry of Environment, Forest and Climate Change has issued certain draft rules to counter and mitigate the problem of ineffective treatment and disposal of waste water and to counter the problem of increased air pollution resulting from stubble burning and excessive use of coal for electricity generation. Amendments have also been made to the E-Waste Management Rules notified recently in 2022, in line with its objective of reducing the use of hazardous substances in the manufacturing of electronic goods.

Our team has curated this publication to provide an overview of the key amendments that have a bearing on Indian businesses, investors and other stakeholders.

Do reach out to us with your feedback and/or suggestions.



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Key Updates under the Companies Act, 2013

1. Annual General Meeting ("AGM") and Extraordinary General Meeting ("EGM") can be held through video-conferencing or other audio-visual means till 30 September 2023.

The Ministry of Corporate Affairs ("MCA") through General Circular No. 10/2022 and General Circular No. 11/2022 dated 28 December 2022, clarified that AGMs and EGMs can be held through video-conferencing or other audio-visual means till 30 September 2023.

AGMs can be held through video-conferencing or other audio-visual means if the conditions laid down in General Circular 20/2020 issued on 5 May 2020 are followed. EGMs can be held through video-conferencing or other audio-visual means in accordance with the conditions laid down in General Circular No. 14/2020 and General Circular No. 3/2022. These conditions include, inter alia, the requirements to be fulfilled for conduct of AGM by: (a) companies which are required to or have opted to provide the facility of e-voting under the Companies Act, 2013 ("CA 2013"), and (b) those companies which are not required to provide the facility of e-voting under the CA 2013.



LKS COMMENT

Through these circulars the MCA has allowed the companies to hold AGM and EGM through video-conferencing or other audio-visual means, if they comply with the provisions/condition prescribed under the previous circulars issued in this regard. It is important to note that MCA has merely extended the time for holding AGM and EGM through video conferencing, however, the due date for conducting the AGM has not been extended.

2. Companies (Authorised to Register) Amendment Rules, 2023

The MCA vide notification dated 19 January 2023, amended the Companies (Authorised to Register) Rules, 2014 which lays down the pre-registration and post-registration requirements and compliances to be undertaken by entities such as trusts, Limited Liability Partnerships and Section 8 companies to obtain registration from the Registrar of Companies ("ROC").

This amendment has brought about the following changes to the extant rules:

- a. Limited liability partnerships seeking registration as a company limited by shares, or limited by guarantee or an unlimited company, are no longer required to submit the following documents:
 - i. written consent towards the registration by the secured creditors;
 - ii. written consent obtained from a majority of the members at a general meeting;
 - iii. undertaking of the proposed directors towards due compliance with the provisions of the Stamp Act, 1899.

- b. A society seeking registration as a company limited by guarantee under Section 8 of the CA 2013 is no longer required to submit the following documents:
 - i. written consent towards the registration by the secured creditors;
 - ii. written consent obtained from a majority of the members at a general meeting;
 - iii. undertaking of the proposed directors towards due compliance with the provisions of the Stamp Act, 1899;
 - iv. details of the objects for which the company is proposed to be formed; and
 - v. declaration from all the members that all prohibitions and restrictions under CA 2013 have been duly met.

- c. A trust seeking registration as a company limited by guarantee under Section of the CA 2013 is no longer required to submit the following documents:
 - i. written consent towards the registration by the secured creditors;
 - ii. written consent obtained from a majority of the members at a general meeting;
 - iii. undertaking of the proposed directors towards due compliance with the provisions of the Stamp Act, 1899; and
 - iv. a copy of the latest income tax return of the trust.

In addition, in all three cases a no-objection certificate is now required to be furnished from the secured creditors and charge-holders, if any.



LKS COMMENT

This amendment is a welcome move as it has considerably reduced the pre and post-registration compliances and is expected to ease the registration compliance burden on entities looking to register themselves as companies.

3. Companies (Appointment and Remuneration of Key Managerial Personnel) (Amendment) Rules, 2023

The MCA through notification dated 19 January 2023, amended the Companies (Appointment and Remuneration of Key Managerial Personnel) Rules, 2014. The amendment has eased certain procedural compliances, in respect of filing form MR 1 (return of appointment of key managerial personnel) and form MR 2 (application to the Central Government for approval of appointment or reappointment and payment of remuneration to key managerial personnel and commission or remuneration to directors).

This amendment has brought about the following changes to the extant rules:

a. Form No. MR 1:

Copies of: (i) shareholders resolution approving appointment of Managing Director, Whole Time Director or Manager, Chief Executive Officer ("CEO"), Company Secretary and Chief Financial Officer ("CFO"), (ii) central government approval, and (iii) letter of consent to act as a Managing Director/Whole time Director / Manager / CEO/CFO/Secretary are no longer required to be attached to the form. In addition, it is now required to be indicated in the form if the proposed director is a non-resident.

b. Form No. MR 2:

Prior to the amendment, this form was filed to seek approval from the central government towards the appointment / reappointment / payment of remuneration / increase in remuneration / waiver for excess / over-payment to a Managing Director/Whole time Director/Manager/CEO/CFO/Secretary.

Through this amendment, the form will exclusively serve as an application to the central government for approval of the appointment of the managing director / whole time director / manager.

The form is now required to be filed in the following situations:

- a. seeking approval of central government for appointment of a director without complying with Part I of Schedule V of the CA 2013;
- b. seeking central government approval if the proposed director is more than 70 (seventy) years of age and a special resolution has not been passed for his appointment; and
- c. seeking central government approval if the proposed director is a non-resident. In this context, further details, such as, name of the director's country, passport number and validity of the passport, are also to be filled out

In addition, the details pertaining to the financial position of the company as on the date of filing the form and remuneration payable to the concerned key managerial personnel are no longer a part of the form and attachments, such as, copy of sheet of effective capital, company secretary's certificate of no default in repayment of debts, projections of turnover and net profit for the next 3 (three) years, no-objection certificate from financial institutions or banks, etc. are no longer required to be affixed to the form. However, a company is still required to attach an auditor's report and indicate if its application is pending before the National Company Law Tribunal or the National Company Law Appellate Tribunal under the Insolvency and Bankruptcy Code, 2016.



LKS COMMENT

This is yet another amendment in a series of similar efforts by MCA to relax procedural compliances. By streamlining the number of mandatory attachments to be annexed to forms for filing return of appointment of managerial personnel or applying to central government for approval of their appointment, it is expected that this move would further boost ease of doing business.

In addition, the additional details sought in relation to non-resident directors also shows that the government is becoming increasingly cautious of the appointment of non-resident persons as directors in Indian companies.

4. Companies (Appointment and Qualification of Directors) (Amendment) Rules, 2023

The MCA through a notification dated 20 January 2023, amended the Companies (Appointment and Qualification of Directors) Rules, 2014. These rules give effect to matters relating to the procedure of appointment, qualification, and disqualification of different types of directors such as, independent directors, women directors, small shareholders' director, etc.

This amendment has brought about the following changes to the extant rules:

- a. This amendment has made it mandatory for a director to inform the company of his/her disqualification under Section 164(1) of the CA 2013 in Form DIR-8, before he can be appointed/re-appointed as a director. Prior to this amendment, the requirement of intimating the company of any disqualification was only required in the event of disqualification of a director under Section 164(2) of the CA 2013.
- b. Rule 1A has been added requiring a company receiving intimation of disqualification of its director under Section 164(1) or 164(2) to convey the same to the ROC in Form DIR 9 within 30 (thirty) days from the date on which Form DIR 8 is received.

In addition, Forms DIR 3, DIR 3C, DIR 5, DIR 6, DIR 8, DIR 9, DIR 10, DIR 11, and DIR 12 have been amended to reflect these changes.



LKS COMMENT

By way of this amendment, MCA has added to the responsibilities of directors to inform their companies of personal grounds of disqualification, as provided under Section 164(1), apart from the company-related grounds of disqualification under Section 164(2). This is a step taken by the government to ensure that a company is fully aware of all relevant grounds of disqualification, before it appoints or re-appoints a person as its director.

5. Companies (Registration Offices and Fees) Amendment Rules, 2023

The MCA through a notification dated 20 January 2023, amended the Companies (Registration offices and Fees) Rules, 2014. The amendment inserted Rule 8A which provides for authentication of documents or forms using digital signatures of authorised signatories of a company, including insolvency resolution professional or resolution professional or liquidator of a company under insolvency or liquidation.

In addition, forms GNL 2, GNL 3 and GNL 4 have been amended to reflect this and related changes.



LKS COMMENT

Ordinarily, a managing director, director, company secretary or other key managerial personnel are authorised to authenticate electronic forms and vouch for their correctness. However, the law was silent in this regard

in relation to companies undergoing liquidation. This amendment helps to shed light on who can act as authorised signatories for a company being liquidated. It clarifies that a liquidator/insolvency resolution professional/resolution professional can act in the capacity of the authorised signatory of a company under financial distress.

6. Companies (Incorporation) Amendment Rules, 2023

The MCA, vide notification dated 19 January 2023, amended the Companies (Incorporation) Rules, 2014 which governs matters in relation to the procedure for incorporation or conversion of different types of companies.

The amendment has brought about the following changes:

- a. In relation to one-person companies:
 - i. The name and details of the nominee member of a one-person company are required to be mentioned in the memorandum and such memorandum and articles, along with the consent of the nominee member are required to be filed with the ROC in Form INC 32 (SPICe+) at the time of incorporation of the company.
 - ii. The nominee member of a one-person company may withdraw his consent to act as a nominee by filing form INC 4 with the sole member and the one-person company.
 - iii. Any change in the name of the nominee may be intimated to the ROC along with the nominee's consent by the sole member or the one-person company by filing form INC 4.
 - iv. A one-person company seeking to convert to a private or public company may do so by filing e-form INC 6 with the ROC, along with altered memorandum and articles.
- b. A private company seeking to convert to a one-person company may do so by making an application in form INC 6 and attaching to the form copies of altered memorandum and articles, no objection certificates from the creditors, and affidavit from director that all members have given their consent for conversion.
- c. A limited company can apply for license to convert to a Section 8 company by virtue of form INC 12, along with attachments, such as, e-memorandum and e-articles, declaration from an advocate/chartered accountant/cost accountant/company secretary that the memorandum and articles have been drafted in conformity with the CA 2013, a statement of assets and liabilities of the company, certified copy of the resolution passed to approve such registration, and declaration by applicants.
- d. A company seeking to change its registered office address from one state or union territory to another is no longer required to file separate applications with the ROC and the regional director. The application filed with the regional director in Form INC 23 shall be shared with the ROC through the MCA system.
- e. A public company seeking to convert to a private company is required to file with the ROC the Service Request Number or SRN containing the order of the regional director approving the conversion within 15 (fifteen) days of receipt of such order.

In addition, forms RUN, INC 4, INC 6, INC 9, INC 12, INC 13, INC 18, INC 20, INC 20A, INC 22, INC 23, INC 24, INC 27, INC 28, INC 31, INC 33, INC 34, INC 35, RD 1 and SPICe+ have been revised to reflect the changes above.



LKS COMMENT

While on one hand this amendment serves to simplify the compliance requirements on part of one-person companies by allowing them to file nominee member's consent in SPICe+ form itself, on the other hand it has tightened certain disclosure requirements for companies seeking to convert from one type to another.

In addition, the move enabling the sharing of Form INC 23 with the ROC directly through the MCA system itself facilitates ease of doing business and is expected to speed up the process of approval and reduce the overall time taken for effecting a change in the registered office of a company.

7. Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023

The MCA through a notification dated 20 January 2023 amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. The amendment primarily does away with Rule 12(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, and inserts additional details to be provided in Forms PAS 3 and PAS 6 in relation to reporting on allotment of securities.

The changes are set out in more detail below:

- a. Rule 12(6) has been omitted. This rule required a company issuing bonus shares to file form PAS-3 with the ROC along with the certified copy of resolution passed at a general meeting approving the issue of such bonus shares. With the omission of Rule 12(6), attaching the copy of the resolution authorising the issue of such shares has been dispensed with now.
- b. Form PAS 3 has been further amended to capture details of the valuation report, such as, name and registration number of the valuer, valuation method and amount, etc.
- c. Form PAS 6, which is a half-yearly return of reconciliation of share capital audit required to be filed by unlisted companies, has also been revised to include details of shares, such as, type of security, class of shares, ISIN, etc. In addition, the requirement to disclose details of excess demat shares in the previous half-year has been done away with.



LKS COMMENT

This amendment dispenses with onerous procedural compliance requirements in certain cases while enhancing disclosure requirements in relation to forms PAS 3 and PAS 6.

8. Companies (Registration of Foreign Companies) Rules, 2023

The MCA, vide notification dated 20 January 2023, amended the Companies (Registration of Foreign Companies) Rules, 2014. The amendment seeks to obtain additional information in Forms FC 1, FC 2, and FC 4.

The changes are set out in more detail below:

- a. A foreign company furnishing details of particulars of its directors and secretary to the ROC for registration shall also include the names of the father's name, mother's name, or the spouse's name for the concerned director/secretary.
- b. Form FC 1, containing information to be filed by a foreign company, has been revised to enable procurement of details of the director or secretary from Digilocker.
- c. Form FC 2, for communicating any alteration in a foreign company's document submitted with the ROC, has also been amended to link it with Digilocker. In addition, details pertaining to permission, if any, obtained from an authority to set up office in India are also required to be filled in the form now. Furthermore, a list of authorised representatives of the foreign company, appointed or ceased from appointment, from date of establishment to date of closure, must be attached to the form.
- d. Form FC-4, which pertains to the annual return to be filed by foreign companies every financial year, has been revised to include details or address of a place in India where a part of the register of members or debentures of the foreign company is maintained. In addition, the foreign company is now also required to indicate if it falls under Section 379(2) of the CA 2013, i.e., if at least 50% (fifty percent) of its paid-up share capital is held by Indian citizens or bodies corporate incorporated in India.



LKS COMMENT

This amendment is in line with the government's larger objective to digitise all aspects of governance, including record-keeping. Additionally, the scrutiny over foreign companies has been amped up by asking for additional details in existing forms and returns.

9. Companies (Accounts) Amendment Rules, 2023

The MCA, vide notification dated 20 January 2023, amended the Companies (Accounts) Rules, 2014. These rules lay down the procedure for maintenance of books of account of a company, preparation and filing of financial statement with the ROC, appointment of internal auditor, etc. Through the amendment Form No. AOC 5 has been revised.

Form AOC-5 is a notice sent to the ROC if a company is maintaining its books of accounts at a place other than its registered office address.

In addition to the existing requirements, the amendment prescribes that companies are now required to specify the latitude and longitude of the place other than the registered office where the books of accounts are kept. Proof of address of such location and the utility bills paid pertaining to it are also required to be attached.



LKS COMMENT

The amendment is an attempt by the government to increase scrutiny over companies which maintain their books of account at places other than their registered offices. This move is expected to keep the growing number of shell companies in check.

10. Companies (Share Capital and Debentures) Amendment Rules, 2023

The MCA vide notification dated 21 January 2023, amended the Companies (Share Capital and Debentures) Rules, 2014. The amendment is meant to further fine-tune the process of buy-back of shares as provided for under the CA 2013.

The changes are set out in detail below:

- a. Rule 17(14) has been amended to provide that in the event of buyback of securities, a return is required to be filed with the ROC in Form No. SH 11 on behalf of two directors, including a managing director, if any, to the effect that said buyback has been carried out in due compliance with the provisions of the CA 2013. In light of this change, Form SH 15 has now been omitted.
- b. Form SH 7, which is the form to notify the registrar of any alteration in the share capital of a company, has been revised to provide for filing in the event of cancellation of unissued shares of one class and increase in the shares of another class. In addition, a company can now indicate if under the provisions of Section 62 of the CA 2013, an appeal has been filed before a tribunal and the date of order of the tribunal.
- c. Form SH 8, which is a letter of offer filed by a company with the ROC in the event of buyback of shares, has been amended to provide for details in relation to non-compliance with re-payment of deposits, interest on deposits, term loans or interest on term loans, dividend to shareholders, etc. In addition, the requirement to fill in the objective of the buyback or the expected capital structure before and after the buyback has been dispensed with. Similarly, some attachments, such as details of promoters, audited financial statements, etc. are not required to be annexed to the form anymore.
- d. Form SH 9, which is a declaration of solvency filed on behalf of at least 2 (two) directors of a company making a buyback, has been revised to do away with the requirement to attach the board resolution and special resolution passed in this regard.



LKS COMMENT

This amendment is primarily focused on making existing forms more detail-oriented so that overall transparency in the process of buyback of securities by companies is enhanced. This will in turn lead to more transparency in the reporting of companies' share capital structure and any alteration thereof.

11. Companies (Management and Administration) Amendment Rules, 2023

The MCA vide notification dated 21 January 2023, amended the Companies (Management and Administration) Rules, 2014. The amendment has revised Forms MGT 14 and MGT 3 to seek additional details.

The changes are set out in more detail below:

- a. Form MGT 14, which is for filing of company resolutions and agreements with the ROC, as per Section 117 of the CA 2013 and Rule 24 of the Companies (Management and Administration) Rules, 2014, has been revised to provide for some additional details. Companies are now required to furnish details of the resolution, such as, type of allotment of securities carried out pursuant to the resolution, the section of the Insolvency and Bankruptcy Code, 2016, under which the resolution has been passed, etc.
- b. Form MGT 3, which pertains to foreign registers, has also been revised. In accordance with the provisions of Section 88(4) and Rule 7(2) of the Companies (Management and Administration) Rules, 2014, a company can keep part of its register of members or debenture-holders or security-holders at a place outside India, provided it intimates the ROC in this regard. As a result of the amendment, such a company is required to provide additional details in relation to situation, change or discontinuance of office where a foreign register is maintained.



LKS COMMENT

This amendment is in line with other amendments in an attempt on the MCA's part to increase transparency and accountability of companies in reporting their share capital structure, allotment of securities leading to alteration in share capital structure, etc. In addition, the changes brought about in MGT 3 also complement other amendments related to accounts and foreign companies.

12. Centre for Processing Accelerated Corporate Exit ("C-PACE") to be established in Haryana by the Central Government.

The MCA vide notification dated 17 March 2023, established the C-PACE at Gurgaon, Haryana. C-PACE aims to process and dispose of applications filed by companies desirous of having their names removed from the register of companies, in accordance with the provisions of Chapter XVIII of the CA 2013.



LKS COMMENT

Setting up of C-PACE will speed up the process of voluntary winding up of companies. Earlier, the time taken for winding up companies approximately took nearly 18 (eighteen) to 24 (twenty-four) months. Now, the process is sought to be streamlined and completed within a period of 6 (six) months.

Key Updates Under Foreign Exchange Laws

1. Rationalisation of Reporting in Single Master Form ("SMF")

The Reserve Bank of India ("RBI") on 4 January 2023, amended the guidelines for reporting of foreign investment in SMF on Foreign Investment Reporting and management System (FIRMS) portal.

The amendment has brought about the following changes:

- a. The forms submitted on the portal will be auto acknowledged and the Authorised Dealer Bank shall verify the forms within 5 (five) working days.
- b. In cases of delayed reporting, the Authorised Dealer Bank shall either advise on the late submission fee to the applicants, which will be computed by the system or advise the applicants for compounding of contravention, as the case may be.



LKS COMMENT

The amended guidelines will streamline the reporting of foreign investments in India. The obligation on Authorised Dealer Banks to verify the forms within 5 (five) working days will ensure that the foreign investments are reported in an efficient and timely manner. The RBI should consider allowing reporting of overseas direct investment on the FIRMS Portal as well.

2. Issuance of the Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies

The RBI on 16 January 2023, issued the Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies. These guidelines have been introduced to diversify the ownership of the banking companies. These guidelines are applicable to all banking companies (as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949), including Local Area Banks, Small Finance Banks and Payments Banks operating in India.

The key provisions of the guideline are:

- a. A person intending to become a major shareholder in a bank will require prior approval from the RBI. A 'major shareholder' is a person who intends to acquire 5% (five per cent) of the shares or voting rights in a banking company.

- b. The guideline allows the promoters to hold 26% (twenty-six per cent) of the share capital or voting rights of a banking company after the completion of 15 (fifteen) years from the commencement of business of such banking company.
- c. If a person is allowed to hold more than 10% (ten per cent) but less than 40% (forty per cent) of the share capital or voting rights of a banking company, the shares shall be subjected to a lock-in period of 5 (five) years.
- d. If a person is allowed to hold more than 40% (forty per cent) of the share capital or voting rights of a banking company, then only the 40% (forty per cent) of the shares shall be subjected to a lock-in period of 5 (five) years.



LKS COMMENT

The RBI has issued these guidelines to ensure that the ownership and control of banking companies are diversified. Any person who intends to acquire a major stake in a banking company will require prior approval from the RBI and the RBI will undertake due diligence to assess the 'fit and proper' status of the applicant.

Key Updates Under Securities Law

1. Securities Contracts (Regulation) Amendment Rules, 2022

The Ministry of Finance on 2 January 2023, notified the Securities Contracts (Regulation) Amendment Rules, 2022.

These rules have amended the definition of a 'government company'. Earlier a 'government company' meant any company in which not less than 51% (fifty-one per cent) of the share capital is held by a Central Government, State Government or partly by Central and partly by one or more State Governments.

Now, a 'government company' means a company as defined under clause 45 of section 2 of the CA 2013. Following this amendment, a company which is a subsidiary company of such government company shall also be classified as a 'government company' under these rules.

Further, the amendment rules have amended Rule 19A of the Securities Contracts (Regulation) Rules, 1957. The amendment by inserting a new sub-clause (6) allows the Central Government to exempt any listed company in which the Central Government, State Government, public sector company, individually or in combination, holds direct or indirect majority of shares, voting rights or control in such listed entity from any or all the provisions of the Securities Contracts (Regulation) Rules, 1957. Earlier, the Central Government, in the public interest, had the power to exempt any public sector company from the provisions of Rule 19A.

A new explanation has also been inserted, which clarifies that the exemption shall continue to be valid for the period specified therein, irrespective of any change in control of such listed entity subsequent to issuance of such exemption.



LKS COMMENT

The amendment brings cohesion in the definition of a 'government company' under the CA 2013 and the Securities Contracts (Regulation) Rules, 1957 ("**SCR Rules**") to account for any conflict which may arise due to varying definitions under the CA 2013 and SCR Rules. It also shifts the means of determining the shareholding of the government basis share capital to a determination based on total voting power, thereby accounting for instances where shares are issued by a company with differential voting rights as well.

Further, widening the powers of the Central Government to exempt the application of the SCR Rules to any listed company has been brought about with a view to simplify and boost strategic disinvestments by the Central Government by providing flexibility to exempt adherence with the minimum public shareholding requirement. This has come at a time where the Central Government is looking to sell its stake in public sector undertakings in IDBI Bank, Shipping Corporation of India, and Container Corporation of India, as a move to ease and facilitate these disinvestments.

2. Securities Exchange Board of India ("SEBI") (Alternative Investment Funds) (Amendment) Regulations, 2023

SEBI on 9 January 2023, notified the SEBI (Alternative Investment Funds) (Amendment) Regulations, 2023. The amendment added the definition of 'credit default swaps' and allowed all the categories of alternate investment funds to invest in the credit default swaps.

A 'credit default swap' has been defined as a derivative contract where a protection seller agrees to pay a protection buyer, in the case of a credit event with respect to a reference entity. In return, the protection buyer makes periodic payments to the protection seller until the maturity of the contract or the credit event.

The amended rules also provides that the sponsor or manager of the Category I and Category II Alternative Investment Fund transacting in credit default swaps shall appoint a custodian registered with SEBI.



LKS COMMENT

The Central government has introduced credit default swaps to provide a boost to the Indian bond market. The amendment will allow all categories of alternate investment fund to invest in the credit default swaps which will allow them to manage and transfer their credit risk more efficiently.

3. SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023

SEBI on 17 January 2023, notified the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023.

Through this amendment, SEBI has relaxed certain compliance with corporate government regulations for Real Estate Investment Trusts ("**REITs**") and Infrastructure Investment Trusts ("**InvITs**"). REITs and InvITs will no longer be required to comply with regulations provided under Regulation 15 to 27 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 relating to corporate governance. InvITS and REITs will now have to follow the governance norms provided under SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trust) Regulations, 2014, respectively.

Further, this amendment has widened the definition of 'senior management' by including functional heads within the scope of the definition and has added additional disclosures for material subsidiaries of a listed company.

Under Regulation 17, SEBI has clarified that shareholder approval (at the next general meeting or within 3 (three) months from the date of appointment, whichever is earlier) is applicable in the case of both appointment and re-appointment. Regulation 17 as it stood previously, was silent in relation to shareholders' approval for re-appointment.



LKS COMMENT

Through this amendment, SEBI has streamlined the applicability of corporate governance regulations to REITs and InvITs, as SEBI seeks to establish separate corporate governance norms for REITs and InvITs. Further, aligning the definition of 'senior management' with the definition of 'key managerial personnel' under the SEBI (Issue of Capital and Disclosure Requirements), Regulations 2018 brings about needed uniformity and consistency across regulations.

4. SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2023

SEBI on 2 February 2023 notified, the SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2023.

Through this amendment, SEBI has widened the definition of 'green debt security' to align it with the green bond principles which were published by the International Capital Market Association. Debt securities issued for the following purpose has been included in the amended definition:

- a. pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, reduction and recycling, and energy or emission efficient waste to energy) and sectors specified under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change;
- b. circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/or eco efficient products;
- c. blue bonds, i.e., funds raised for sustainable water management including clean water and water recycling, and sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping;
- d. yellow bonds which comprise of funds raised for solar energy generation and the upstream industries and downstream industries associated with it; and
- e. transition bonds, i.e., funds raised for transitioning to a more sustainable form of operations in line with India's intended climate targets under the Paris Agreement at the CoP 21 in 2015 and at the CoP 26 in 2021, as revised from time to time.

Further, this amendment has removed the requirement of publishing in the newspapers a notice of recall or redemption prior to maturity. This amendment has also introduced Regulation 33A to the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, which prescribes the subscription period for the public issue of debt securities or, non-convertible redeemable preference shares. The subscription period shall be kept open for a minimum of 3 (three) working days and a maximum of 10 (ten) working days.

This amendment also amended Regulation 18 and Regulation 23 of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. The above-mentioned regulations have been amended as follows:

- a. As per SEBI (Debenture Trustee) Regulations, 1993, the debenture trustee has a duty to appoint a nominee director to the board of director of the issuer in case of (i) 2 (two) consecutive defaults in payment of interest, (ii) default in security creation for the debentures, or (iii) default in redemption of debentures.
- b. The issuer is now mandated to appoint the nominee director nominated by the debenture trustee, at the earliest and no later than 1 (one) month from the date of receipt of nomination.
- c. Issuing companies will have to amend their article of association to provide for appointment of the nominee director nominated by the debenture trustee to the board of directors of such company. Existing issuers need to amend their article of association by 30 September 2023.



LKS COMMENT

Amongst easing certain procedural compliances, the amendment has been introduced to align the Indian regulations with the international standards. Introduction of 'green debt security' will aid the Indian economy in achieving its sustainable development goals.

5. SEBI (Buy-Back of Securities) (Amendment) Regulations, 2023

SEBI on 7 February 2023 notified the SEBI (Buy-Back of Securities) (Amendment) Regulations, 2023. Through the amendment SEBI has done away with the requirement of filing a draft letter of offer for buy-back with SEBI. Instead, the new requirement stipulates that a merchant banker shall certify that the buy-back is in compliance with the SEBI (Buy-Back of Securities) Regulations, 2018.

Further, the amendment prescribes that with effect from 1 April 2025, the option of open market buy-back through the stock exchange shall not be available to any company except in cases where the buy-back offer has opened on or before 31 March 2025.

Additionally, listed companies undertaking buy-back through a tender offer will be able to increase the maximum buy-back price and decrease the number of securities proposed to be bought back 1 (one) working day before the record date as long as there is no change in the aggregate size of the buy-back.



LKS COMMENT

Through this amendment the process of buy-back and the completion of compliance by listed companies will be simplified and overall timelines will be reduced.

6. Master Circular for Substantial Acquisition of Shares And Takeovers

SEBI vide a circular dated 16 February 2023, issued a master circular for SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Master Circular**").

The directions/instructions contained in the circulars listed out in Annexure-V of the Master Circular, to the extent they relate to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, shall stand rescinded.

Anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in Annexure-V, shall be deemed to have been done or taken under the corresponding provisions of this master circular.



LKS COMMENT

The issuance of this master circular is keeping in line with the RBI's approach of having master circulars/directions collating all the amendments at one place to ensure ease of access.

7. SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023

SEBI on 15 March 2023, notified the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023. The amendment has reduced the timeline for reporting key changes by the Foreign Portfolio Investors ("**FPIs**").

For FPIs, the timeline for reporting, (a) any material changes in the information previously furnished and (b) any direct or indirect change in structure, ownership or control of FPI, has been reduced to 7 (seven) working days.

For the Designated Depository participants ("**DPP**"), the timeline to update SEBI,

- a. on finding that any information previously submitted are false or misleading in any material respect,
- b. about any material change in the information previously furnished and
- c. about any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by any regulator against the DDP, has been reduced to 2 (two) working days.



LKS COMMENT

The short timeline to report the above-mentioned information has been introduced by SEBI to maintain stringent oversight and ensure that overall transparency is maintained. The amendment will increase the overall cost of compliance as the FPIs would need to be more pro-active to ensure timely compliance with the new prescribed reporting timelines.

Key Updates Under Environment Laws

1. Issuance of the Draft Rules on Common Effluent Treatment Plant (“CETP”).

The CETP mechanism of effluent treatment was introduced to provide for collective treatment of effluents from medium and small-scale industries located in clusters. The idea behind these plants is to cut down on the cost of effluent treatment for individual industries, thereby addressing both the lack of space in individual industries and aiding in homogenizing of waste-water from individual industries.

By virtue of notification dated 4 January 2023, the Ministry of Environment, Forest and Climate Change (“**MoEF**”) has notified draft rules for regulation of CETP. These rules specify the responsibilities of all the stakeholders: (a) the CETP operating agencies; (b) the member industries of a CETP; and (c) governmental agencies.

Key highlights are as follows:

a. Responsibilities of CETP operating agencies

The draft rules provide for the CETP to be managed by a special purpose vehicle or society or trust. It should allocate treatment capacity among the member industries in a rational and transparent manner, preferably in accordance with a legal agreement signed in this regard. It should install an online mechanism to monitor the quality and quantity of effluents. It should also be entitled to collect and assess effluent samples from member industries and take appropriate action, such as cancellation of membership and intimation to relevant state pollution control board, in case of defaulting member industries.

b. Responsibilities of member industries of a CETP

The draft rules provide for the member industries to meet the effluent discharge standards of the primary effluent treatment plant they are associated with. They should pay their share towards the operating and maintenance costs of the CETP. They should maintain leakages, cracks, etc. in valves, pipes, and other equipment to avoid contributing to pollution.

c. Responsibilities of governmental agencies

The draft rules mandate that it shall be the duty of the state pollution control board (“**SPCB**”) to prescribe, in consultation with the CETP, quality standards for effluent discharged from member industries. The SPCB is also required to ensure that all member industries have discharge outlet points leading to CETP inlet. The SPCB must also conduct random physical inspections of CETP's to ensure continuous compliance. In case of non-compliance, SPCB's are authorised to take all suitable actions, such as issuing show cause notices, levying environmental compensation, etc. against defaulting CETP.



LKS COMMENT

The draft rules on CETP have come at a pivotal time when waste-water treatment and disposal is a pertinent problem being faced by small and medium-scale industries. These rules seem targeted at addressing the various issues and bottlenecks of the relevant stakeholders in the waste treatment process.

2. Issuance of the Draft Agro-residue Utilization by Power Plants Rules, 2023.

The Draft Agro-residue Utilization by Power Plants Rules, 2023 have been introduced to counter the problem of increased air pollution that results from the agricultural practice of stubble burning, especially in the regions surrounding the National Capital Region.

The draft rules are applicable to all coal-based or thermal power plants located in the area under the jurisdiction of Commission for Air Quality Management in National Capital Region and adjoining areas. These rules mandate that such power plants should mandatorily use at least 5% (five per cent) blend of pellets made of crop residue along with coal. If a power plant fails to do, environmental compensation shall be levied upon it, as per the amount specified in the schedule to Rule 3 of these draft rules, per unit of electricity generated.

These rules are expected to come into force within 2 (two) months of incorporation of feedback from relevant stakeholders.



LKS COMMENT

These draft rules are being hailed as an effective and well-timed, mechanism to address the twin problem of air pollution and usage of coal for electricity generation. It is expected to go a significantly long way in tackling the seasonal dispersed burning of crop residue which leads to deterioration in air quality in the National Capital Region almost every year. By reducing air pollution and ushering in energy efficiency, these rules shall have an overall positive impact on public health.

3. E-Waste Management (Amendment) Rules, 2023

The MoEF, vide notification dated 30 January 2023, amended the E-Waste Management Rules, 2022.

The amendment has brought about the following changes to the extant rules:

- a. Prior to the amendment, Rule 16(5) required producers of electrical and electronic products to display detailed information about the constituents of the equipment or their parts or spares and provide declaration as to compliance with reduction of hazardous substances provisions in the product user documentation itself. Post the amendment, the requirement has been modified to the effect that such information/declaration is to be provided only when solicited by the Central Pollution Control Board.
- b. 2 (two) new substances have been added to Schedule II of the rules which contains a list of substances exempted from having to conform to the requirement of non-use of lead, mercury,

cadmium, hexavalent chromium, etc. above a certain specified threshold. The 2 (two) new substances are: (i) Cadmium and lead in Solar panels/cells, solar Photovoltaic panels/cells/modules, and (ii) Lead in Medical Devices (except for all implanted and infected products).



LKS COMMENT

This amendment is largely in line with the overall objective of the E-Waste Management Rules, 2022, that is, to bring about a reduction in the use of hazardous substances while manufacturing electrical and electronic equipment, so that the adverse impact on the environment and human health is, in turn, reduced. At the same time, the exemption granted under the rules for lead used in medical devices and cadmium used in solar cells accounts for real life industry practices.

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