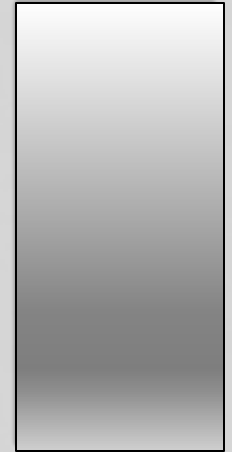


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR MAY, 2019



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 351 (E) on National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019 (“NFRA Rules”) dated May 22, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has introduced the NFRA Rules, which shall come into force from the date of publication in the official gazette i.e. May 23, 2019.
 - The said NFRA Rules encapsulates definitions; meetings of NFRA for transaction of business and procedure thereof; powers vested with the chairperson to regulate procedure in certain circumstances; effect of any irregularities of procedure.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules1_23052019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 376 (E) on the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 dated May 22, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has amended rule 9 A (i.e. issue of securities in dematerialised form by unlisted public companies) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (“**Principal Rules**”), which shall come into force from September 30, 2019.
 - The Notification has introduced Form PAS-6 (i.e. reconciliation of share capital audit report (half-yearly). The said form is required to be filed by every unlisted public company within 60 (sixty) days from the conclusion of each half year i.e. for each half year ended September 30 and March 31 in every financial year for each ISIN separately and duly certified by a company secretary in practice or chartered accountant in practice.
 - The format of Form PAS-6 has been appended to the Principal Rules, after Form PAS-5 and the same has also been appended in the enclosed Notification.
 - Further, every company shall immediately bring to the notice of the depositories in case there is any difference observed in its issued capital and the capital held in dematerialized form.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules_23052019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 368(E) on the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019 dated May 16, 2019 (“Notification”).**
 - The MCA *vide* amendment(s) to the Companies (Incorporation) Rules, 2014, had introduced e-Form INC 22A ACTIVE mandating the companies to file particulars of the company and its registered office on or before June 15, 2019. If any company fails to file the said form within the due date, the status of the company will be marked as ‘ACTIVE non-compliant’.
 - Now, the MCA, *vide* the Notification, has inserted Rule 12 A in the Companies (Appointment and Qualification of Directors) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette. i.e. May 16, 2019.
 - Per the said insertion in the Principal Rule, a director’s DIN will be marked as non-compliant, on the failure of the company to file e-Form INC 22A ACTIVE within the prescribed period.
 - In the supra instance, where the DIN of a director has been marked as ‘Director of ACTIVE non-compliant company’, such director shall take all necessary steps to ensure that all companies, where such director has been so appointed, files e-Form INC 22A ACTIVE. On the requisite filing, the DIN of such director shall be marked as ‘Director of ACTIVE compliant company’.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/CompaniesRules_16052019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 06/2019 on clarification for e-form ADT-1 filed through e-form GNL-2 under the Companies Act, 2013 (“Act”) dated May 13, 2019 (“Circular”).**
 - The MCA *vide* the Circular, has given a new deadline to file e-form ADT-1, without any additional fee, for notifying the appointment of auditor, for those companies who had filed e-form ADT-1 through e-form GNL-2 between 01.04.2014 and 20.10.2014 (“**Period**”) for notifying the appointment of auditor for the period 01.04.2014 to 31.03.2019 due to non-availability of e-form ADT-1 during the said Periods.
 - The companies can now file e-form ADT-1 for appointment of auditor for the said Period by June 15, 2019, without any additional fee since the requisite had been paid already while filing GNL-2 for the same purpose.
 - **Link of the Circular.**
<http://www.mca.gov.in/Ministry/pdf/GeneralCircular13052019.pdf>

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notice on annual returns to be filed by the auditors under the National Financial Reporting Authority Rules, 2018 (“Principal Rules”).**
 - The MCA *vide* the Notice, has requested the auditors to file annual return, as required under rule 5 of the Principal Rules in the prescribed format only, which is underway.
 - **Link of the Notice.**
http://www.mca.gov.in/Ministry/pdf/Notice_08052019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 357(E) on the Companies (Incorporation) Fifth Amendment Rules, 2019 (“Amendment Rules”) dated May 10, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Incorporation) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette. i.e. May 11, 2019.
 - In the Principal Rules, rule 8 (i.e. names which resemble too nearly with name of existing company) has been substituted and the major highlights of the Notification are as under:
 - ✓ Sub-rule (1) states that a name applied for shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.
 - ✓ Sub-rule (2), provides a list of those matters which are to be disregarded while comparing the names under sub-rule (1), as enclosed in the Notification. The said sub-rule attempts to prescribe examples for each even when the differences between two names, i.e. name of the proposed company and existing company are not to be considered and the name of the proposed company shall be rendered identical with that of the existing company. The erstwhile sub-rule (2) did not have example for each event.

Companies Act (Contd...)

- ✓ The proviso to sub-rule (2) states that clauses (f) to (h) and clauses (k) and (l), shall not be disregarded while comparing the names, if a no objection by way of a Board resolution has been provided by an existing company. These clauses i.e. clauses (f) to (h) and clauses (k) and (l), referred to in this paragraph are enclosed in the Notification.
 - ✓ The new rule 8A, provides a list of names which shall be considered undesirable, as enclosed in the Notification. The said list of undesirable names was initially clubbed with the erstwhile rule 8 of the Principal Rules and has now been carved out as rule 8A to provide additional instances that may render the name of a proposed company undesirable and rule 8A also specifies examples of such instances.
 - ✓ The new rule 8B, which was earlier sub-rule (6) of erstwhile rule 8 of the Principal Rules, states that in terms clause (b) of sub-section (3) of section 4, the words and combinations as enclosed in the Notification, shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationFifthAmendmentRules_12052019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 350 (E) on Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019 (“Amendment Rules”) dated May 08, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (“**Principal Rules**”) which shall come into force with effect from May 10, 2019.
 - Major highlights of the Notification are as under:
 - ✓ In rule 4(1) of the Principal Rules, the fees for making an application in e-form STK-2 (i.e. application by company to registrar of companies (“**RoC**”) for removing its name from register of companies) has been increased from existing INR 5,000 (Indian Rupees Five Thousand only) to INR. 10,000 (Indian Rupees Ten Thousand only).
 - ✓ The first proviso to rule 4(1) states that, no application in e-form STK-2 shall be filed by a company unless it has filed overdue returns in e-form AOC-4 (i.e. form for filing financial statement and other documents with the Registrar) or e-form AOC-4 XBRL (i.r. form for filing XBRL document in respect of financial statement and other documents with the RoC), as the case may be, and e-form MGT-7 (Form for filing annual return by a company), up to the end of the financial year in which the company ceased to carry its business operations.

Companies Act (Contd...)

- ✓ The second proviso to rule 4(1) states that, if a company intends to file e-form STK-2, after the action under section 248(1) i.e. notice in Form No. STK-1, has been initiated by the RoC, it shall file all pending overdue returns in e-form AOC-4 or e-form AOC-4 XBRL, as the case may be, and e-form MGT-7, before filing e-form STK-2.
- ✓ The third proviso to rule 4(1) states that once notice in Form No. STK-7 (Notice of Striking Off and Dissolution) has been issued by the RoC, pursuant to the action initiated under section 248(1), a company shall not be allowed to file an application in e-form STK-2.
- ✓ In rule 4(3)(ii), after the words, "statement of accounts", the words, letters and figures "in Form No. STK-8" has been inserted. This insertion has provided clarity and specified the format in which the statement of accounts are required to be attached to e-form STK-2, as compared to the earlier provision given under the said rule.
- ✓ In the Annexure to the Principal Rules, in Form No. STK-4 (i.e. an affidavit by every director of the company), in serial Number 2, after item (vii), the following item i.e. (viii) shall be inserted, namely:-

The company has fulfilled all pending compliances, if any (Applicable in case an application under section 248(2) has been filed after the initiation of action under section 248(1) of the Act.

The aforesaid insertion is to align with the amendment prescribed as aforesaid to the Principal Rules.

Companies Act (Contd...)

✓ After Form No. STK-7, Form No. STK-8, prescribing the statement of account has been inserted, as enclosed in the Notification.

▪ **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/AmendmentRules3_08052019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 351 (E) on the National Company Law Tribunal (Second Amendment) Rules, 2019 (“Amendment Rules”) dated May 08, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has amended the National Company Law Tribunal Rules, 2016 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette. i.e. May 08, 2019.
 - After sub-rule (2) of rule 84 of the Principal Rules, sub-rules (3) and (4) have been inserted as under:
 - ✓ Sub-rule (3): This sub-rule prescribes the requisite number of member or members of a company having share capital, who can file an application under section 245(1) of the Companies Act, 2013 (“**Act**”) i.e. an application filed before the Tribunal on behalf of the members or depositors, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors.

The requisite number of member or members who can file application, as mentioned in the immediately preceding paragraph, is as under:

- at least 5% (five percent) of the total number of members of the company; or
- 100 (one hundred) members of the company,

Companies Act (Contd...)

whichever is less; **or**

- member or members holding not less than 5% (five percent) of the issued share capital of the company, in case of an unlisted company;
 - member or members holding not less than 2% (two percent) of the issued share capital of the company, in case of a listed company.
- ✓ Sub-rule (4): The said sub-rule prescribes the requisite number of depositor or depositors, who can file an application under section 245(1) of the Act.

The requisite number of depositor or depositors, who can file application, as mentioned in the immediately preceding paragraph, is as under:

- at least 5% (five per cent) of the total number of depositors of the company; or
- 100 (one hundred) depositors of the company,

whichever is less; **or**

- depositor or depositors to whom the company owes 5% (five percent) of total deposits of the company.
- In the Principal Rules, in the schedule of fees, serial No. 28 shall be omitted, which prescribed a fees of INR 1,000 (Indian Rupees One Thousand only) for making an application for compounding of certain offences.

Companies Act (Contd...)

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/AmendmentRules1_08052019.pdf

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – circular no. RBI/2018-19/191 on extension of relaxation on the guidelines to NBFCs on securitisation transactions, dated May 29, 2019 (“Circular”).**
 - The RBI, *vide* the Circular has referred to the circular no. DNBR (PD) CC.No.95/03.10.001/2018-19 dated November 29, 2018 on ‘relaxation on the guidelines to NBFCs on securitisation transactions’ and based on a review thereof, has decided to extend the dispensation provided therein, till December 31, 2019.
 - **Link of the Circular.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11567&Mode=0>

Reserve Bank of India (Contd...)

- ❑ **The Reserve Bank of India (“RBI”) – circular no. RBI/2018-19/187 on ‘voluntary retention route’ (“VRR”) for foreign portfolio investors (“FPIs”) investment in debt, dated May 24, 2019 (“Circular”).**
 - The RBI, *vide* the Circular has referred to the following regulations and the directions issued thereunder:
 - ✓ Foreign Exchange Management (Permissible Capital Accounts Transactions) Regulations, 2000 notified vide [Notification No. FEMA 1/2000-RB dated May 03, 2000](#);
 - ✓ Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 notified vide [Notification No. FEMA 3\(R\)/2018-RB dated December 17, 2018](#);
 - ✓ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 notified vide [Notification No. FEMA.20\(R\)/2017-RB dated November 07, 2017](#); and
 - ✓ Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 notified vide [Notification No. FEMA 25/RB – 2000 dated May 03, 2000](#).
 - The RBI has also referred to [A.P.\(DIR Series\) Circular No. 21 dated March 01, 2019](#) on VRR for FPIs investment in debt and based on the feedback received, the directions have been revised as given in the annexure to the Circular.

Reserve Bank of India (Contd...)

- The Circular has, *inter alia*, prescribed the following changes:
 - ✓ Introduction of a separate category, viz., 'VRR-Combined' which means voluntary retention route for FPI investment in instruments eligible under both, i.e. VRR-Government securities and VRR-Corporate debt instruments.
 - ✓ The requirement to invest at least 25% (twenty-five percent) of the committed portfolio size within 1 (one) month of allotment has been removed.
 - ✓ FPI are provided with an additional option at the end of the retention period, viz., continue to hold their investment until the date of maturity or the date of sale, whichever is earlier.
- FPIs that were allotted investment limits under the 'tap' open during March 11, 2019 - April 30, 2019 may, at their discretion, convert their full allotment to VRR-Combined.
- These directions shall be applicable with immediate effect.
- **Link of the Circular.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11561&Mode=0>

Securities Law

- ❑ **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/ HO/ MIRSD/ DOS3/CIR/P/2019/68 on enhanced disclosure in case of listed debt securities dated May 27, 2019 (“Circular”).**
 - SEBI in its endeavour to safeguard the interest of investors of listed debt securities, vide the Circular has tightened the disclosure norms for debenture trustees (“DT”), that serves as the holder of a debenture stock.
 - The DTs shall undertake the following:
 - ✓ disclose the nature of compensation arrangement with its clients on their websites, including the minimum fee to be charged (in absolute terms or as a percentage of the issue size) and factors determining the same.
 - ✓ display on their website the ISIN wise details of interest/ redemption due to the debenture holders in respect of all issues during a financial year within 5 (five) working days of start of financial year.
 - ✓ update such details for any new issues handled during the financial year within 5 (five) days of closure of the issue

Securities Law (Contd...)

- ✓ update the status of payment ISIN-wise against such issuers not later than 1 (one) day from the due date. In case the payment is made with a delay by the issuer, DTs shall update the calendar specifying the date of such payment, with a remark 'delayed payment'.
- RTA / issuers shall henceforth forward the details of debenture holders to the DT at the time of allotment and thereafter by the seventh working day of every next month in order to enable DTs to keep their records updated and to communicate effectively with the debenture holders, especially in situations where events of default are triggered.
- In privately placed issues, additional covenants as under, shall be included as part of the issue details in the summary term sheet, as per the agreement between the issuer and investor:
 - ✓ Default in payment: In case of default in payment of interest and/or principal redemption on the due dates, additional interest of atleast 2% (two percent) p.a. over the coupon rate shall be payable by the company for the defaulting period.
 - ✓ Delay in listing: In case of delay in listing of the debt securities beyond 20 (twenty) days from the deemed date of allotment, the company shall pay penal interest of atleast 1% (one percent) p.a. over the coupon rate from the expiry of 30 (thirty) days from the deemed date of allotment till the listing of such debt securities to the investor.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/may-2019/enhanced-disclosure-in-case-of-listed-debt-securities_43118.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/IMD/DF5/CIR/P/2019/63 on reporting for artificial intelligence (“AI”) and machine learning (“ML”) applications and systems offered and used by mutual funds dated May 9, 2019 (“Circular”).**
 - SEBI *vide* the Circular has emphasized on an increase in the use of AI and ML as product offerings such as robo-advisors by market intermediaries and participants. Further, the SEBI is conducting a survey and creating an inventory of the AI and ML landscape in the Indian financial markets to gain in-depth understanding of the adoption of such technologies in the markets and ensure preparedness for any policies that may arise in the future.
 - With effect from June, 2019 quarter, registered mutual funds using AI and ML based applications or systems should make submissions on its usage every quarter within 15 (fifteen) calendar days from the expiry of the quarter to Association of Mutual Funds in India (“**AMFI**”).
 - While maintaining the confidentiality of the information received from mutual funds, AMFI shall consolidate the information and submit to SEBI within 30 (thirty) calendar days of the expiry of the quarter, starting from quarter ending June 2019.
 - As most of these systems are black boxes and their behaviour cannot be easily quantified, SEBI said it is imperative to ensure that any advertised financial benefit owing to these technologies should not constitute misrepresentation.

Securities Law (Contd...)

- SEBI has advised the mutual funds to send details of the computer applications and systems that are offered to investors or used internally by them to facilitate investing, trading, disseminate investment strategies and advice, besides carrying out compliance, operations and other activities.
- In order to make the scope of the Circular inclusive of various AI and ML technologies in use, the scope also covers fintech and reg-tech (management of regulatory process through technology) initiatives undertaken by market participants that involves AI and ML.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/may-2019/reporting-for-artificial-intelligence-ai-and-machine-learning-ml-applications-and-systems-offered-and-used-by-mutual-funds_42932.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. IMD/FPIC/CIR/P/2019/62 on permitting foreign portfolio investors (“FPI”) to invest in municipal bonds dated May 8, 2019 (“Circular”).**
 - The SEBI *vide* the Circular has permitted FPIs to invest in municipal bonds in accordance with the provisions of Regulation 21(1)(p) of SEBI (Foreign Portfolio Investors) Regulations, 2014.
 - The aforesaid permission is in line with circular no. 33 dated April 25, 2019, wherein the Reserve Bank of India had already permitted FPIs to invest in municipal bonds.
 - **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/may-2019/permitting-foreign-portfolio-investors-fpi-to-invest-in-municipal-bonds_42927.html

Deets / Disclaimer

❑ Deets.

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Thank You



There is no wealth like knowledge and no poverty like ignorance - Buddha