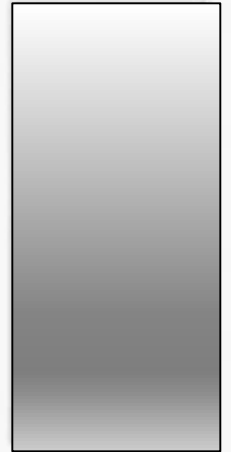


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR AUGUST, 2019



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 574 (E) on Companies (Share Capital and Debentures) Amendment Rules, 2019 (“Amendment Rules”) dated August 16, 2019 (“Notification”).**
 - The Central Government *vide* the Notification has further amended the Companies (Share Capital and Debentures) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette, i.e. from August 16, 2019.
 - The major highlights of the Notification are as under:
 - ✓ In rule 4(1)(c) of the Principal Rules, the existing cap of 26 (twenty-six) per cent of total voting power including voting power in respect of equity shares with differential rights issued at any point of time, has been enhanced to 74% (seventy-four) percent. This amendment will allow Indian companies to raise share capital without diluting the voting rights of all existing shareholders and enable an issue of equity shares with differential voting rights in a manner that the total voting power represented by such shares can constitute 74% (seventy-four) percent of the total voting power of the Company.
 - ✓ Pursuant to omission of rule 4(1)(d) of the Principal Rules, the requirement, that the company shall have consistent track record of distributable profits for the last three years, for issue of shares with differential voting rights, has been done away with.

Companies Act (Contd...)

- ✓ In rule 5(3) of the Principal Rules, in the Explanation, at both the places the word "director", shall be substituted with the words "director or company secretary". This amendment is to align with said rule 5(3).
- ✓ In rule 12(1), pursuant to change in the definition of start-up company, the reference to erstwhile notification GSR 180(E) dated February 17, 2016 issued by the Department of Industrial Policy and Promotion has been substituted with G.S.R. 127(E), dated February 19, 2019 issued by the Department for Promotion of industry and Internal Trade. This substitution allows a start-up company to issue employee stock options to an employee who is a promoter or a person belonging to the promoter group or directors a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10 (ten) percent of the outstanding equity shares of the company, for 10 (ten) years from the date of their incorporation.
- ✓ Vide the Notification, Rule 18 (7) of the Principal Rules has been substituted, stating the requirements to be complied by the company with regard to Debenture Redemption Reserve ("DRR") and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:

Companies Act (Contd...)

<u>S.No.</u>	<u>Class of Companies</u>	<u>Applicability</u>
1.	For All India Financial Institutions regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures.	No need to create DRR.
2.	For other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013	DRR provisions shall be applicable as applies to Non-Banking Finance Companies registered with Reserve Bank of India.
3.	For Listed Companies (other than Co. as specified in S.No. 1. of this table:-	
a) b)	<p>In case of public issue:</p> <p>(i) For NBFCs registered with Reserve Bank of India under section 45- IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;</p> <p>(ii) For other listed Companies.</p> <p>In case of privately placed debentures:</p> <p>(i) Companies specified in sub-point (a) (i), (ii) of Point (3) of this table.</p>	Companies specified in sub-point (a) and (b) of S.No. 3 of this table are not required to create DRR.

Companies Act (Contd...)

<u>S.No.</u>	<u>Class of Companies</u>	<u>Applicability</u>
4.	In Unlisted Companies (other than Co. as specified in S.No. 1. of this table:-	
	(i) For NBFCs registered with Reserve Bank of India under section 45- IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;	(i) No need to create DRR, in case of privately placed debentures.
	(ii) For other unlisted companies	(i) DRR shall be (10) ten percent of the value of the outstanding debentures.

Companies Act (Contd...)

- ✓ Through the aforesaid amendment, the provisions relating to creation of DRR has been revised with the objective of:
 - eliminating the requirement for creation of DRR of 25 (twenty-five) percent of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, in respect of listed companies, NBFCs registered with RBI and for Housing Finance Companies registered with National Housing Bank, both for public issue as well as private placements.
 - reduction in the DRR for unlisted companies to 10 (ten) percent of the value of outstanding debentures from the existing level of 25 (twenty-five) percent.
- **Link of the Notification**
http://www.mca.gov.in/Ministry/pdf/ShareCapitalRules_16082019.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R..... (E) (To be published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i)] on the Companies (Incorporation) Seventh Amendment Rules, 2019 (“Amendment Rules”) dated August 28, 2019 (“Notification”).**
 - The Central Government *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.
 - New versions of e-forms RD-1 and RD GNL-5 as appended in the enclosed Notification have been prescribed *vide* therein:
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/SeventhAmendmentRules_28082019.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 09/2019 on clarification under section 232(6) of the Companies Act, 2013 (“Act”), dated August 21, 2018. (“Circular”).**
 - The MCA, *vide* the Circular, has prescribed guiding principles for interpreting section 232(6) of the Act, which specifies the concept of ‘appointed date’ to be stated in the scheme of merger and amalgamation.
 - The following concerns were addressed while clarifying the aforesaid position:
 - ✓ If it is mandatory to indicate a specific calendar date as ‘appointed date’ in the schemes as referred to under section 232(6); and
 - ✓ If the acquisition date mentioned in Ind-AS 103 (business combinations) would have the same meaning as ascribed to ‘appointed date’ under section 232(6).
 - The MCA, after scrutinizing the relevant provisions and relevant precedents, spelt out the following clarifications:
 - ✓ Companies have the flexibility to choose the ‘appointed date’, either as a specific calendar date or a date linked to the occurrence of an event.

Companies Act (Contd...)

- ✓ If 'appointed date' is a specific calendar date, it may precede the date of filing of the application for the scheme with the National Company Law Tribunal.
 - ✓ If the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the scheme will have to provide a suitable rationale for it.
 - ✓ The 'appointed date' can be based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties thereto. This event would have to be indicated in the scheme itself, upon occurrence of which the scheme would become effective. However, in case of such event-based date being a date subsequent to the date of filing the order with the Registrar under section 232(5) of the Act, the company is required to file an intimation of the same with the Registrar within 30 days of such scheme coming into force.
 - ✓ The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of accounting standards
-
- **Link of the Circular**
http://www.mca.gov.in/Ministry/pdf/GeneralCircular_21082019.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R 571(E) on the Investor Education and Protection Fund Authority (“IEPF”) (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019 (“Amendment Rules”) dated August 14, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (“**Principal Rules**”);
 - The provisions of the Amendment Rules shall be brought into force in a staggered manner, i.e. while some of the provisions of the Amendment Rules have been made effective from August 20, 2019, the others have shall be made effective from September 20,2019. A list of such provisions has been provided in the Amendment Rules.
 - The summary of important amendments is captured hereunder:
 - ✓ Certain forms such as IEPF-1, IEPF-2 and IEPF–4 have been revised, while a new form, viz. IEPF–1A has been introduced.
 - The Companies which have transferred any amount to IEPF under the Companies Act, 1956 but have not filed the statement or have filed the statement in any format other than in the specified excel template, shall file the same in Form No- IEPF- 1A along with excel template within sixty days of this notification.

Companies Act (Contd...)

- ✓ Every company shall now send a statement to the Authority in Form No. IEPF- 4 within 30 (thirty) days of transferring the shares to IEPF for which dividend is not claimed or paid for 7 (seven) consecutive years or more.
 - ✓ Upon submission for refund to claimants in Form IEPF- 5 the same shall be transmitted online to the Nodal Officer of the company for verification of claim. The rule now specifies that the Nodal Officer shall be a Director or Chief financial Officer or Company Secretary of the company.
 - ✓ The Schedule II (documents to be submitted to the IEPF authority to register transmission of securities), Schedule III (documents to be submitted to the IEPF authority in case of loss of securities held in physical mode) and Schedule IV (procedure to be followed while disposing the claims) have been inserted to the Principal Rules.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/IEPF2Rule_23082019.pdf

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/DCR1/CIR/P/2019/90 on disclosure of reasons for encumbrance by promoter of listed companies, dated August 07, 2019 (“Circular”).**
 - In order to bring about greater transparency *wrt* reasons for encumbrance of significant shareholding by promoter along with persons acting in concert (“**PACs**”) with him, SEBI *vide* the Circular has prescribed additional disclosure requirements under Regulation 31(1) read with Regulation 28(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
 - Per the Circular, the promoter of a listed company shall now specifically disclose detailed reasons for encumbrance in the format prescribed under Annexure II of the Circular thereto, within 2 (two) working days from creation of such encumbrance, in case the combined encumbrance by the promoter along with PACs with him, exceeds any of the following threshold limit:
 - ✓ 50% of their shareholding in the company; or
 - ✓ 20% of the total share capital of the company.
 - The aforesaid disclosure will be in addition to the disclosures mandated under Annexure I of SEBI circular no. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015, and will be required on every occasion, when the extent of encumbrance further exceeds the aforesaid limits.

Securities Law (Contd...)

- If the existing combined encumbrance by the promoter along with PACs with him, is per the aforesaid limits as on September 30, 2019, then he shall make the first disclosure for the detailed reasons thereof, by October 04, 2019. The disclosure on reasons for encumbrance in the prescribed format shall be made to every stock exchange where the shares of the company are listed and to the listed company.
- Further the Circular puts onus on the listed company to disclose the contents under Annexure II of the Circular on their website within 2 (two) working days from the date of receipt of disclosure from the promoter along with PACs.
- Link of the Circular.
https://www.sebi.gov.in/legal/circulars/aug-2019/disclosure-of-reasons-for-encumbrance-by-promoter-of-listed-companies_43837.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/IFSC/CIR/P/2019/91 on permissible investments by Alternative Investment Funds (“AIFs”) operating in International Financial Services Centres (“IFSCs”), dated August 09, 2019 (“Circular”).**
 - SEBI *vide* the circular no. SEBI/HO/MRD/DSA/CIR/P/2017/45 dated May 23, 2017 (“**Principal Circular**”) amended clause 22(3) of SEBI (International Financial Services Centres) Guidelines, 2015, pertinent to securities in which an AIF operating in IFSCs can invest.
 - Based on consultations with various stakeholders, SEBI has now taken a step towards harmonizing the provisions governing investments undertaken by AIFs incorporated in IFSCs with those applicable to domestic AIFs. Accordingly, the AIFs operating from IFSCs shall be allowed to make investments per the provisions of the SEBI (Alternative Investment Fund) Regulations, 2012, and the guidelines and circulars issued thereunder, including the operating guidelines for AIFs in IFSC.
 - All other conditions of the Principal Circular shall remain unchanged.
 - **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/aug-2019/circular-on-investments-by-aifs-incorporated-in-ifsc_43867.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/DIL2/CIR/P/2019/94 on non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”), dated August 19, 2019 (“Circular”).**
 - In supersession to SEBI’s circular number CIR/CFD/DIL/57/2017 dated June 15, 2017, SEBI, *vide* the Circular has specified the fines to be imposed by the stock exchanges for non-compliance with certain provisions of ICDR Regulations, as under:

Sl. No.	Non-compliance/ Violation	Regulation/ Schedule	Fine
1.	Delay in completion of a bonus issue: <ol style="list-style-type: none"> i. Within 15 days from the date of approval of the issue by its board of directors – in cases where shareholders’ approval for issue of bonus shares is not required. ii. Within 2 months from the date of board meeting wherein the bonus issue was declared, subject to shareholders’ approval, i.e. in cases where shareholders’ approval is required to issue bonus shares by a listed entity. 	295(1)	INR 20,000 per day of non-compliance till the date of compliance.

Securities Law (Contd...)

Sl. No.	Non-compliance/ Violation	Regulation/ Schedule	Fine
2.	Listed entities not completing the conversion of convertible securities and allotting the shares, within 18 months from the date of allotment of convertible securities.	162	INR 20,000 per day of non-compliance till the date of compliance.
3.	As per schedule XIX - Para (2) under heading application for listing, in case the Issuer does not make an application for listing in case of further issue of equity shares within 20 days from the date of allotment (unless otherwise specified).	schedule XIX – listing of securities on stock exchanges	INR 20,000 per day of non-compliance till the date of compliance.
4.	In case the listed entity fails to make an application for trading approval to the stock exchange/s within 7 working days from the date of grant of listing approval by the stock exchange/s.	-	INR 20,000 per day of non-compliance till the date of compliance.

Securities Law (Contd...)

- The amount of fine collected as aforesaid will be credited to 'Investor Protection Fund' of the concerned stock exchange.
- The recognized stock exchange shall disseminate on their website the names of such non-compliant listed entities that are liable to pay fine for non-compliance, the amount of fine imposed, details of fines received, etc. and such stock exchanges shall issue notices to such listed entities and collect the fine as aforesaid within 15 days from the date of such notice. In case of any failure to pay the fine, the stock exchange may initiate appropriate enforcement action, including prosecution in furtherance of regulation 298 of ICDR, 2018.
- *Wrt* bonus issue delays the approval for listing and trading of promoters' bonus shares will be granted only after payment of requisite fine by the listed entity. However, this condition shall not apply to bonus shares allotted to persons other than the promoter(s), subject to certain requirements being complied with.
- This Circular will be applicable from the date of its issue thereof.
- **Link of the Circular**
<https://www.sebi.gov.in/legal/circulars/aug-2019/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-icdr-regulations-43941.html>

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – circular no. RBI/2019-20/39 on priority sector lending by banks to non-banking financial companies (“NBFCs”) for on-lending, dated August 13, 2019 (“Circular”).**
 - The RBI, in a move to ensure credit to needy segment of borrowers, has decided that bank credit to registered NBFCs (other than Micro Finance Institutions (“**MFIs**”) for on-lending by NBFCs and Housing financing companies (“**HFCs**”), wherever applicable, will now be eligible to be classified as priority sector under respective categories subject to the following conditions:
 - ✓ **Agriculture:** On-lending by NBFCs for 'term lending' component under Agriculture will be allowed up to INR 10,00,000 per borrower.
 - ✓ **Micro & Small enterprises:** On-lending by NBFC will be allowed up to INR 20,00,000 per borrower.
 - ✓ **Housing:** Enhancement of the existing limits for on-lending by HFCs to INR 20,00,000 per borrower as against the erstwhile INR 10,00,000 per borrower.
 - Under the aforesaid on-lending model, banks will now be able to classify only the fresh loans sanctioned by NBFCs out of bank borrowings, except for loans given by HFCs under the existing on-lending guidelines, which will continue to be classified under priority sector by banks.
 - Bank credit to NBFCs for on-lending will be allowed upto a limit of 5% (five percent) of individual bank’s total priority sector lending on an ongoing basis, and loans disbursed under the on-lending model will be classified under priority sector till the date of repayment/maturity.

Reserve Bank of India (Contd...)

- The existing guidelines on bank loans to MFIs for on-lending will continue to be applicable for NBFC-MFIs.
- The guidelines shall be effective from the date of issuance of the Circular and is expected to encourage banks to lend to NBFCs, especially HFCs, which are currently facing a liquidity crunch.
- **Link of the Circular**
<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11659&Mode=0>

Reserve Bank of India (Contd...)

- ❑ **The Reserve Bank of India (“RBI”) – circular no. RBI/2019-20/44 on Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019 – Acceptance of Deposits by issue of Commercial Papers dated August 13, 2019 (“Circular”).**
 - Pursuant to regulation 6(3) of Foreign Exchange Management (Deposit) Regulations, 2019 (“**Principal Regulations**”), a Company which may accept deposits through issue of commercial paper (“**CP**”) has been reviewed *vis-à-vis* other statutes/ regulations, viz.
 - ✓ section 45 U(b) of RBI Act, 1934, wherein CP is described as one of the money market instruments;
 - ✓ section 2(c) of Companies (Acceptance of Deposits), Rules 2014 (under Companies Act, 2013) wherein any amount received on issuance of CPs is exempted from the definition of deposits;
 - ✓ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 – FEMA 20(R), wherein investments in CPs issued by Indian Companies is already allowed.
 - In order to bring in consistency in statutory provisions/regulations relating to CPs, regulation 6(3) of the Principal Regulation has been deleted w.e.f. July 16, 2019.
 - **Link of the Circular**
<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11664&Mode=0>

Deets / Disclaimer

❑ Deets.

Legalite Advisors LLP | LLPIN : AAJ 8514 | E-mail : la.mumbai@legalite.co.in | Corporate office: 503, 5th Floor, Shreeprasad House, Khar (West) 400050, Mumbai, Maharashtra, India | 📞: +91 9769022955/ +91 8454846257.

❑ Disclaimer.

This article is for informational purposes only, and is not intended to provide, and should not be relied on for legal advice. Readers are advised to seek independent legal advice in accordance with their peculiar facts and circumstances.

Legalite
Advisors

Thank You



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