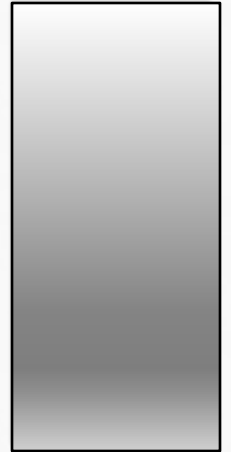


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR SEPTEMBER,
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 September 05, 2019 (“Notification”).**
 - The Central Government *vide* the Notification has amended the National Financial Reporting Authority Rules, 2018 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette, i.e. September 05, 2019.
 - The major highlights of the Notification are as under:
 - ✓ The definition of ‘Division’ under the Principal Rules has been amended to mean the ‘division ***including the one headed by the chairperson or a full-time member established by the National Financial Reporting Authority*** for the purpose of organising and carrying out its functions and duties’.
 - ✓ The Amendment Rules have added an explanation to rule 3(1)(c) of the Principal Rules and defined the term banking company as under:
 - **Explanation.-** For the purpose of rule 3(1)(c), “banking company” includes ‘corresponding new bank’ as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking

Companies Act (Contd...)

Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and 'subsidiary bank' as defined in clause (k) of section 2 of the Stat Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959).

- ✓ Form NFRA-2 (i.e. Annual Return to be filed by Auditor with the National Financial Reporting Authority) has been newly introduced.
- ✓ The last date for filing the said Form NFRA-2 has been extended from 30th April every year to 30th November every year.
- ✓ The Amendment Rules provide for an extension of 90 (ninety) days to the Division to dispose of the show-cause notice, if the same has not been disposed within a period of 90 (ninety) of the assignment through a summary procedure. The Division has to record the reasons for not disposing off the show-cause notice within the said period, and the chairperson, may, after taking into account the reasons so recorded, provide for the said 90 (ninety) days extension. The Amendment Rules further provides powers to the chairperson to grant the said extension of period more than once.

▪ **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/NFRA_05092019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 10/2019 on filing of e-form BEN-2 under the Companies Act, 2013 dated September 24, 2019 (“Circular”).**
 - MCA *vide* the Circular has extended the last date for filing e-form BEN-2 (i.e. Return to be filed with the Registrar of Companies in respect of declaration by significant beneficial owners), upto December 31, 2019 without payment of additional fee. An additional fee shall be payable in case of any further delay.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircular_24092019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R.(E) (yet to be published in the official gazette) on the Companies (Registration Offices and Fees) Fifth Amendment Rules 2019 and Companies (Appointment and Qualification of Directors) Fourth Amendment Rules 2019 (collectively “Amendment Rules”) dated September 30, 2019 (“Notifications”).**
 - MCA *vide* the Notifications has extended the last date for filing e-Form DIR-3 KYC or DIR-3 KYC-WEB (i.e. forms for Director’s KYC) to be filed for the financial year ended March 31, 2019 upto October 14, 2019 (as opposed to erstwhile deadline of September 30, 2019) without payment of additional fee. An additional fee shall be payable in case of any further delay. Consequential amendments have been made to the Amendment Rules.
 - **Link of the Notifications.**
http://www.mca.gov.in/Ministry/pdf/Companies5thAmendtRules_30092019.pdf
http://www.mca.gov.in/Ministry/pdf/Companies4thAmendtRules_30092019.pdf

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular no .SEBI/HO/CFD/DIL1/CIR/P/2019/192 on schemes of arrangement by listed entities and relaxation under rule 19(7) of the Securities Contracts (Regulation) Rules, 1957 dated September 12, 2019 (“Circular”).**
 - To promote development of, and to regulate the securities market, SEBI has decided to amend its circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017, which laid down the framework for schemes of arrangement by listed entities and relaxation under rule 19(7) of the Securities Contracts (Regulation) Rules, 1957 (“**Erstwhile Circular**”). To streamline the processing of draft schemes, SEBI has now decided seek additional information at one go.
 - The amendment to the Erstwhile Circular states that all listed entities should ensure that all dues of, and/or fines/penalties imposed by SEBI, stock exchanges and depositories, respectively have been paid/settled before filing the draft scheme with the designated stock exchange, and that in case the dues / fines / penalties are unpaid, the listed entity shall submit to stock exchanges a ‘Report on the Unpaid Dues’ (“**Report**”) which shall contain the details of such unpaid dues in a specified format as given in annexure to the Circular. The Report on unpaid dues will then be submitted by listed entity to the stock exchanges along with the draft scheme.
 - On receipt of the Report, the stock exchanges will then forward the same to SEBI before SEBI communicates its comments on the draft schemes to the Stock Exchanges.

Securities Law (Contd...)

- Any misstatement or furnishing of false information in the Report will make the listed entity liable for punitive action as per the provisions of applicable laws and regulations.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/sep-2019/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_44209.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2019 dated September 23, 2019 (“Amended Regulations”).**
 - SEBI in its board meeting held on June 27, 2019 inter alia decided upon the framework for issuance of differential voting rights (“**DVRs**”) in case of listed entities. The framework was thereafter incorporated in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**Regulations**”).
 - The Regulations now define DVRs as ‘SR equity shares’ which shall mean the equity shares having superior voting rights as compared to all other equity shares of the issuer entity (“**SR equity shares**”).
 - Further, as an eligibility requirement for an initial public offer (“**IPO**”), if an issuer has issued SR equity shares to its promoters/ founders, the said issuer shall be allowed to do an IPO of only its ordinary shares for listing on the main board, subject to the following compliances:
 - ✓ the issuer company should be intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition;

Securities Law (Contd...)

- ✓ the SR shareholder shall not be part of the promoter group whose collective net worth does not exceed INR 500,00,00,000 (Indian Rupees Five Hundred Crores). For determining the collective net worth, the investment of SR shareholder in the shares of the issuer company shall not be considered;
- ✓ the SR equity shares are issued only to the promoters/ founders who hold an executive position in the issuer company;
- ✓ the issuance of SR shares is authorised by a special resolution passed at a general meeting of the shareholders of the issuer wherein the notice calling such a meeting specifically state:
 - size of issue of SR equity shares;
 - ratio of voting rights of SR equity shares vis-à-vis the ordinary shares;
 - rights as to differential dividends, if any;
 - sunset provisions, which provide for a time frame for the validity of such SR equity shares; and
 - matters in respect of which the SR equity shares would have the same voting right as that of the ordinary share.

Securities Law (Contd...)

- ✓ The SR equity shares should have been held for a period of atleast 6 (six) months prior to the filing of the red herring prospectus for the proposed issue by the issuer.
 - ✓ The SR equity shares shall have voting rights in the ratio of a minimum of 2:1 upto a maximum of 10:1 compared to ordinary shares and such ratio is required to be in whole numbers only;
 - ✓ The SR equity shares shall have the same face value as the ordinary shares and the issuer shall have only one class of SR equity shares;
 - ✓ Lastly, the SR equity shares shall be equivalent to ordinary equity shares in all respects, except for having superior voting rights.
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- The minimum promoters' contribution of 20% (twenty percent) of post issue capital as stipulated under the Regulations shall include SR equity shares held, if any.
 - The SR equity shares shall be under lock-in until conversion into equity shares having voting rights same as that of ordinary shares or shall be locked-in for a period as specified in clause 16(1) of the Regulations, whichever is later.
 - Transfer of SR shares between the promoters inter-se is not permitted and no pledge/ lien is allowed on SR shares.

Securities Law (Contd...)

- In case SR equity shares are issued to the promoters/ founders by the issuer company, then such SR shareholder shall not renounce their rights and the SR shares received in a rights issue shall, along with existing SR equity shares, remain under lock-in until conversion into equity shares having voting rights same as that of ordinary equity shares.
- **Link of the Regulations which includes amendments specified by the Amended Regulations.**
<https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-september-23-2019-41542.html>

Deets / Disclaimer

❑ Deets.

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Thank You



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