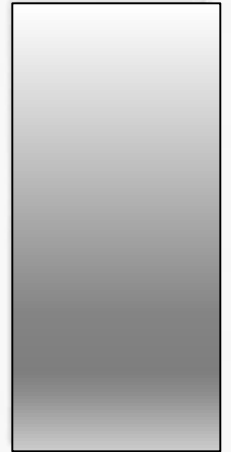


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR FEBRUARY, 2021



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 123(E) on the Companies (Specification of definitions details) Second Amendment Rules, 2021 dated February 19, 2021 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Specification of definitions details) Rules, 2014 which shall come into force on April 01, 2021.
 - The Notification introduces a new rule 2A, which liberalizes the definition of listed companies under the Companies Act, 2013 to give compliance relief to public limited companies and private limited companies having listed debt securities.
 - The following classes of companies shall not be considered as listed companies, namely: -
 - a) The public companies which have not listed their equity shares on a recognized stock exchange but have listed their:
 - i. non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - ii. non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
 - iii. both categories of (i) and (ii) above.

Companies Act (Contd...)

- b) The private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
 - c) The public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013”.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules_22022021.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 644(E) on enactment of provisions of Companies (Amendment) Act, 2020 (“Amendment Act”), dated February 11, 2021 (“Notification”).**
 - The Notification provides that the provisions of section 52 (Insertion of a new chapter XXIA for Producer Companies) and 66 (Repeal of Certain Enactments and Savings) shall be notified *w.e.f.* February 11, 2021.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/CommencementNotification_16022021.pdf

Companies Act (Contd...)

□ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 113(E) on Companies (Share Capital and Debentures) Amendment Rules, 2021 (“Amendment Rules”) dated February 11, 2021 (“Notification”).**

- The MCA, *vide* the Notification, has further amended the Companies (Share Capital and Debentures) Rules, 2014 (“**Principal Rules**”) which shall come into force on April 01, 2021.
- After rule 12 of the Principal Rules, the following new rule has been inserted, namely: -

12A. Period for notice under sub-clause (i) of clause (a) of sub-section (1) of section 62. For the purposes of sub-clause (i) of clause (a) of sub-section (1) of section 62, the time period within which the offer shall be made for acceptance shall be not less than seven days from the offer.

Pursuant to the aforesaid insertion, the minimum offer period for rights issue is now 7 (seven) days as against the erstwhile mandatory requirement of 15 (fifteen) days or such lesser number of days as may be prescribed.

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/CompaniesShareCapitalDebenturesRules_16022021.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 93(E) on the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 (“Amendment Rules”) dated February 01, 2021 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette i.e. February 01, 2021.
 - In, rule 25 of the Principal Rules, after sub-rule (1), the insertion of new sub-rule viz. (1A), now specifically provides the “other class of classes of companies” between which a scheme of merger or amalgamation may be entered under section 233 of the Companies Act, 2013 (“**Act**”). This insertion and amendment to Principal Rules thus, adds the merger or amalgamation between the following companies in the list of “other class or classes of companies” under section 233 of the Act:
 - i. two or more start-up companies; or
 - ii. one or more start-up company with one or more small company.
 - **Explanation:** *For the purposes of this sub-rule, “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.*

Companies Act (Contd...)

- **Rationale:** By adding the merger or amalgamation between the aforesaid class of companies under section 233 of the Act, the Government has attempted to make life easier for the start-up and small companies and the rigorous requirements prescribed under section 230 (Power to Compromise or Make Arrangements with Creditors and Members) and section 232 (Merger and Amalgamation of Companies), mainly being the need to approach the National Company Law Tribunal is not required for the merger or amalgamation of the aforesaid companies.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 92(E) on the Companies (Specification of Definitions Details) Amendment Rules, 2021 dated February 01, 2021 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Specification of Definitions Details) Rules, 2014 (“**Principal Rules**”) which shall come into force on April 01, 2021.
 - In the rule 2 of the Principal Rules, in sub-rule (1), after clause (s), the following clause shall be inserted:

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively”.
 - The said amendment to Principal Rules, now prescribes the upper limit for paid up capital as INR 2,00,00,000 (erstwhile being INR 50,00,000) and turnover of INR 20,00,00,000 (erstwhile being INR 2,00,00,000) of the small company.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 91(E) on the Companies (Incorporation) Second Amendment Rules, 2021 dated February 01, 2021 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Incorporation) Rules, 2014 (“**Principal Rules**”) which shall come into force on April 01, 2021.
 - The Notification eases the requirement for setting up and conversion of an One Person Company (“**OPC**”).
 - Major highlights of the Notification are as under:
 - ✓ In rule 3(1) of the Principal Rules, for the words ‘*and resident in India*’ the words ‘*whether resident in India or otherwise*’ is substituted. Thus, the mandatory criteria of being an Indian resident for being eligible to incorporate an OPC has been done away with by this substitution. This means that *w.e.f.* 1st April, 2021, even a Non-Resident Indian (“**NRI**”) can set up an OPC in India.
 - ✓ The norms for setting up OPC has been eased out considerably by reducing the residency limit for an Indian citizen to set up an OPC to 120 (One Hundred and Twenty) days as against the erstwhile requirement of 182 (One Hundred and Eight-Two) days.

Companies Act (Contd...)

- ✓ With the omission of Rule 3(7):
 - the restriction for OPC *w.r.t.* voluntary conversion into any kind of company unless 2 (two) years is expired from the date of incorporation of OPC, has been done away with. Thus, this omission allows OPCs to convert into any other type of company except section 8 company, at any time at their own will without any sort of restriction.
 - Further, the aforesaid sub-rule also provided a fetter that if the paid up share capital of an OPC exceeds INR 50,00,000 (Indian Rupees Fifty Lakhs) or its average annual turnover during the relevant period exceeds INR 2,00,00,000 (Indian Rupees Two Crores) at any time including even in the first 2 (two) years of its incorporation, OPC has to mandatorily convert into a private company or a public company. However, this provision has completely removed *w.e.f* April 01, 2021 and OPCs shall no longer be required to compulsorily go for conversion upon breaching the aforesaid thresholds.
- ✓ Rule 6 of the Principal Rules has been entirely substituted, which envisages that OPCs will now be allowed to convert into any other kind of company other than section 8 companies by applying in e-Form INC 6 (One Person Company- Application for Conversion) after altering its memorandum and articles, increasing the minimum number of members and directors to the minimum number as provided in the statute for that kind of company and maintaining the minimum paid-up capital as per the requirements of the Companies Act, 2013 (“**Act**”) for such class of company and by making due compliance of section 18 of the Act for conversion.

Companies Act (Contd...)

- ✓ Consequent amendments have been made in Rule 7, upon omission of sub-rule (7) of Rule 3.
- ✓ In the Annexure of the Principal Rules:
 - the e-Form No.INC-5 (One Person Company- Intimation of exceeding threshold) is omitted and;
 - e-Form No.INC-6 (One Person Company- Application for Conversion), is substituted as enclosed in the Notification.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules_16022021.pdf

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/ISD/ISD/CIR/P/2021/19 on revised disclosure formats under regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“Regulations”), dated February 09, 2021 (“Circular”).**
 - SEBI on the basis of feedback received from market participants and stock exchanges and in light of amendments to the Regulations effecting the inclusion of member of the promoter group, and designated person in place of employee, *vide* the Circular, has amended the formats for disclosures under regulation 7 of the Regulations (Disclosures by certain persons) and the same have been appended to the Circular, link of which is provided hereunder. The other conditions stipulated in the Regulation shall remain unchanged.
 - **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/feb-2021/revised-disclosure-formats-under-regulation-7-of-sebi-prohibition-of-insider-trading-regulations-2015_49068.html.

Insolvency And Bankruptcy Code

- **Insolvency and Bankruptcy Board of India (“IBBI”) – circular no. No. IBBI/II/39/2021 on providing copy of application to the IBBI, as mandated under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, dated February 02, 2021 (“Circular”).**
- Pursuant to Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 an applicant has to mandatorily serve a copy of the application filed under sub-section (1) of section 94 or sub-section (1) of section 95 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) for initiation for insolvency resolution process of a personal guarantor to a corporate debtor, to IBBI for its record.
- For convenience of applicants, IBBI has made available a facility on its website at <https://ibbi.gov.in/intimation-applications/iaaa-personal-one> for providing a copy of the aforesaid application online to them. The format for submission is in Annexure A of the Circular and a step-by step guide for submission of the application is in Annexure B A of the Circular. On submission of the application online, the applicant shall get an acknowledgement.
- **Link of the Circular.**
<https://www.ibbi.gov.in/uploads/legalframework/8d38ca4dc37264636b22daa2a3c637ba.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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