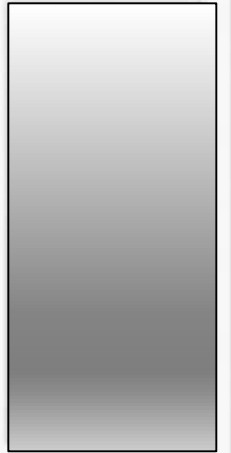


# **LEGALITE** ADVISORS

IMPORTANT LEGAL UPDATES FOR JANUARY, 2022



# Companies Act

□ **The Ministry of Corporate Affairs (“MCA”) notification no. S.O. (E) on the commencement of section 56 of the Companies (Amendment) Act, 2020 (“Amendment Act, 2020”) dated January 11, 2022 (“Notification”).**

- The MCA, *vide* the Notification, has appointed July 01, 2022 as the date on which the provisions of section 56 of the Amendment Act, 2020 shall come into force.
- Section 56 of the Amendment Act, 2020 revises the third proviso of section 403(1) (Fee for Filing, etc.) of the Companies Act, 2013 as under:

*“Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of such document, fact or information, as may be prescribed, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee, as may be prescribed.”*

- **Link of the Notification.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE0ODM=&docCategory=Notifications&type=open>

## Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) notification no. S.O. (E) on commencement of section 80 of the Companies (Amendment) Act, 2017 (“Amendment Act, 2017”) dated January 11, 2022 (“Notification”).**
  - The MCA, *vide* the Notification, has appointed July 01, 2022 as the date on which the provisions of second and third proviso to clause (i) of section 80 of the Amendment Act, 2017 shall come into force.
  - Further, the amendment envisaged by section 80 of the Amendment Act, 2017 to second and third proviso to section 403(i) (Fee for Filing, etc.) of the Companies Act, 2013 is as under:

*“Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:*

## Companies Act (Contd...)

*Provided further that where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies:*

*Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.”;*

- **Link of the Notification.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE0ODQ=&docCategory=Notifications&type=open>

## Companies Act (Contd...)

- The Ministry of Corporate Affairs (“MCA”) notification no. G.S.R. (E) on the Companies (Registration Offices and Fees) Amendment Rules, 2022 (“Rules 2022”) dated January 11, 2022 (“Notification”).
  - The MCA, *vide* Notification, has issued Rules 2022 to further amend the Companies (Registration Offices and Fees) Rules, 2014 (“**Principal Rule**”) which shall come into effect from July 01, 2022. The MCA has, *vide* these Rules 2022, increased additional fees for delay in filing of e-forms as stated hereunder.
  - The Annexure, in the item I (Fee for filing under section 403 of the Companies Act, 2013 (“**CA 2013**”)), sub-item B of the Principal Rule has been substituted as under:

Following Table of additional fee shall be applicable for delay in filing of forms other than for increase in nominal share capital or forms under sections 92/137 of the CA 2013:

*[Table on the next slide]*

## Companies Act (Contd...)

SI No.	Period of delays	Additional fees as a multiple of normal fees	Higher additional fees as multiple of normal fees (for certain cases)
01	Upto 15 days (Section 139 and 157)	One time of normal fees	-
02	More than 15 days and upto 30 days (section 139 and 157) and upto 30 days in remaining forms.	2 times of normal filing fees	3 times of normal filing fees
03	More than 30 days and upto 60 days	4 times of normal filing fees	6 times of normal filing fees
04	More than 60 days and upto 90 days	6 times of normal filing fees	9 times of normal filing fees
05	More than 90 days and upto 180 days	10 times of normal filing fees	15 times of normal filing fees
06	Beyond 180 days	12 times of normal filing fees	18 times of normal filing fees

## Companies Act (Contd...)

- The Notification further clarifies that the belated filing of documents/forms (including increasing in nominal capital and delay caused thereon) which were due to be filed whether under Companies Act, 1956 Act or the CA 2013 i.e. due for filing prior to this Notification, the fee applicable at the time of actual filing shall be applicable.
- The Notification further states the following:
  - ✓ Higher fees shall be payable, if there is a delay in filing e-form INC-22, or e-form PAS-3, as the case may be, on two or more occasions, within a period of 365 days from the date of filing of the last belated e-form for which additional fee or higher additional fee, as the case may be, was payable.
  - ✓ Further, wherever higher additional fee is payable, additional fee shall not be charged.
  - ✓ Further, e-form INC-22, or e-form PAS-3, as the case may be, filed prior to the commencement of Rules 2022 shall not be reckoned for the purpose of determining higher additional fee.
- **Link of the Notification.**  
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE0ODU=&docCategory=Notifications&type=open>

# Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/LAD-NRO/GN/2022/ 63 on the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 (“Amendment Regulations”) dated January 14, 2022 (“Notification”).**
  - SEBI, *vide* the Notification, has further amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, (“**Principal Regulations**”), which shall come into force from the date of publication in official gazette i.e. January 14, 2022, except the amendments made to Regulations 32 (3A), 49,129, 145, clause (10) and (15) of Schedule XIII (Part A) and Schedule XIV which shall come into force from April 1, 2022.
  - The key highlights of the Notification are as under:
    - ✓ SEBI has inserted a new regulation 8A providing additional conditions for an offer for sale for issues under Regulation 6(2) of the Principal Regulations, viz.:
      - shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, more than 20% (Twenty percent) of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than 50% (Fifty percent) of their pre-issue shareholding on fully diluted basis;



## Securities Law (Contd...)

- shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, less than 20% (Twenty percent) of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than 10% (Ten percent) of pre-issue shareholding of the issuer on fully diluted basis;
- for shareholder(s) holding, individually or with persons acting in concert, more than 20% (Twenty percent) of pre-issue shareholding of the issuer based on fully diluted basis, provisions of lock-in as specified under Regulation 17 of Principal Regulations shall be applicable, and relaxation from lock-in as provided under clause (c) of Regulation 17 of Principal Regulations shall not be applicable.
- ✓ Regulation 32 of the Principal Regulations prescribes for the process of allocation in the net offer. A new sub-regulation 3A has been inserted which provides that the allocation in the non-institutional investors' category for in an issue made through the book-building process shall be (a) one-third of the portion available to non-institutional investors shall be reserved for applicants with an application size of more than INR 2,00,000 (Indian Rupees Two Lakhs) and up to INR 10,00,000 (Indian Rupees Ten Lakhs); (b) two-third of the portion available to non-institutional investors shall be reserved for applicants with application size of more than INR 10,00,000 (Indian Rupees Ten Lakhs).
- ✓ *Vide* the Notification, Credit Rating Agency (CRAs) registered with SEBI, shall henceforth be permitted to act as 'Monitoring Agency' instead of scheduled commercial banks (SCBs) and public financial institutions (PFI) as prescribed under Regulation 41.

## Securities Law (Contd...)

- ✓ Regulation 49 of the Principal Regulations which prescribes allotment procedure and basis of allotment has been amended *vide* the Notification. A new sub-regulation 4A has been inserted providing that the allotment of specified securities to each non-institutional investor shall not be less than the minimum application size, subject to the availability of shares in the non-institutional investors' category, and the remaining shares, if any, shall be allotted on a proportionate basis in accordance with the conditions specified in this regard in Schedule XIII of Principal Regulations.
- ✓ Regulation 62 of the Principal Regulations which provides for general conditions has been amended. A new sub-regulation 2A has been inserted which provides that the amount for general corporate purposes and objects where the issuer company has not identified acquisition or investment target, shall not exceed 35% (Thirty-Five percent) of the amount being raised.
- ✓ A new Regulation 166A has been inserted which prescribes other conditions for pricing. Any preferential issue, which may result in a change in control or allotment of more than 5% (Five percent) of the post issue fully diluted share capital of the issuer, to an allottee or to allottees acting in concert, shall require a valuation report from an independent registered valuer and consider the same for determining the price.
- ✓ Further, a new Regulation 167A has been inserted which prescribes provision relating to the pledging of locked-in specified securities, as per Amendment Regulations, specified securities, except SR equity shares, held by the promoters and locked-in under the provisions of these regulations, may be pledged as collateral for a loan granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a

## Securities Law (Contd...)

housing finance company based on the below conditions:

The loan has been granted to the issuer or its subsidiary(ies) for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the conditions for sanction of the loan:

The lock-in on the specified securities shall continue pursuant to invocation of the pledge and the entity invoking the pledge shall not be eligible to transfer the specified securities till the lock-in period stipulated in these regulations has expired.

- ✓ Regulation 164 of the Principal Regulations prescribes for pricing for frequently traded shares. Vide the Notification, 90 (Ninety) trading days will be taken as basis period for determination of pricing of frequently traded shares, instead of 26 (Twenty-Six) weeks.
- ✓ Regulation 103 of the Principal Regulations prescribes for eligibility requirements for further public offer. Pursuant to the amendment an issuer shall be eligible to make a further public offer, if it has not changed its name in the last 1 (One) year period immediately preceding the date of filing the relevant offer document. However, if an issuer has changed its name in the last 1 (One) year period immediately preceding the date of filing the relevant offer document, such an issuer shall make further public offer if at least 50% of the revenue for the preceding 1 (One) full year has been earned by it from the activity indicated by its new name.

If an issuer is not satisfying the above conditions then he shall make a further public offer only if the issue is made through the book building process and the issuer undertakes to allot at least

## Securities Law (Contd...)

75% (Seventy-Five percent) of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

- **Link of the Notification.**

[https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2022\\_55351.html](https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2022_55351.html)

## Deets / Disclaimer

### ❑ Deets.

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**Thank You**



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