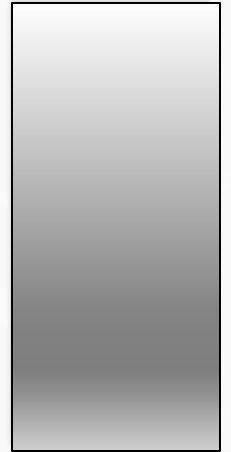


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR MAY, 2023



Ministry of Corporate Affairs

- ❑ **Notification Reference No.:** G.S.R. 408(E) (“**Notification**”).
- ❑ **Notification Date:** May 31, 2023
- ❑ **Effective Date of Notification:** June 02, 2023 as published in the Official Gazette.
- ❑ **Subject:** The Companies (Accounts) Second Amendment Rules, 2023 (“**Amendment Rules**”).
- ❑ **Analysis:**
 - ✓ *Vide* introduction of the Amendment Rules, the Ministry of Corporate Affairs has introduced third proviso to Rule 12(1B) of the Companies (Accounts) Rules, 2014, which clarifies the **mode of furnishing** a report on corporate social responsibility (“**CSR**”) in Form CSR-2 (web based) for the financial year 2022-2023 in compliance with the provisions of the Companies Act, 2013 (“**Act**”).
 - ✓ The report on CSR as required to be furnished in accordance with the provisions of the Act is to be filed **separately** in Form CSR-2 (web based) after filing of Form AOC-4, Form AOC-4 NBFC (Ind AS); Form AOC-4 XBRL (herein referred to as the “**Form**”) (as applicable) instead of an addendum to the Form.
 - ✓ **Time-Line.** Form CSR-2 for the financial year 2022-2023 to be filed on or before March 31, 2024.

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Ministry of Corporate Affairs

□ **Link of the Official Gazette website:**

[The Companies \(Accounts\) Second Amendment Rules, 2023](#)

Ministry of Corporate Affairs

- ❑ **Notification Reference No:** G.S.R 367 (E) (“**Notification**”).
- ❑ **Notification Date:** May 15, 2023
- ❑ **Notification Effective Date:** June 15, 2023
- ❑ **Subject of the Notification:** The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 (“**Amendment Rules**”).
- ❑ **Analysis:**
 - ✓ The Ministry of Corporate Affairs, *vide* introduction of the Amendment Rules has categorically substituted sub-rule 5 and sub-rule 6 of rule 25 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by prescribing the timelines for providing the objection/suggestion (“**Comments**”) by the Registrar of Companies (“**RoC**”) and Official Liquidator (“**OL**”) to the Central Government (*powers delegated to the Regional Director*) (“**RD**”) on the Scheme.
 - ✓ The substituted sub-rules introduce provisions regarding objections, suggestions, and confirmation orders related to schemes of merger or amalgamation (“**Scheme**”) through fast track method under section 233 of the Companies Act, 2013 (“**Act**”), brief analysis whereof is provided hereinunder:

Ministry of Corporate Affairs (Contd...)

- A. Situation 1 (Sub-rule 5) - Wherein Comments are not received from the RoC and OL on the Scheme**, within a period of 30 days from the date of receipt of the Scheme filed in accordance with the provisions of section 233(2) of the Act; the RD shall within a period of 15 days after the expiry of the said 30 days, issue a confirmation order on the Scheme in Form No CAA.12 , when it is of the opinion that the said Scheme is in the public interest or in the interest of the creditors.

Deemed Approval. If the RD does not issue confirmation order on the Scheme within a period of 60 days of receipt of the Scheme filed in accordance with the provisions of section 233(2) of the Act, it shall be deemed that it has no objection and a confirmation order shall be issued accordingly.

Amendment introduced. The substituted sub-rule 5 introduces the timelines as provided above which were earlier not existing and also provides for a 'deemed approval' concept so that the RD is bound with a specific timeline to approve the Scheme and the purpose of fast track merger is not defeated.

- B. Situation 2 (Sub-rule 6) - Wherein Comments are received from the RoC and OL on the Scheme**, within a period of 30 days from the date of receipt of the Scheme filed in accordance with the provisions of section 233(2) of the Act and the RD is of the opinion that:
- i. the Comments are not sustainable and the Scheme is in the public interest or in the interest of the creditors, it may within a period of 30 days after expiry of 30 days referred to above, issue a confirmation order of such Scheme in Form No. CAA.12. ("**Case 1**").

Ministry of Corporate Affairs (Contd...)

- ii. is of the opinion (whether on the basis of Comments or otherwise) that the Scheme is not in the public interest or in the interest of the creditors, it may within 60 days of the receipt of the Scheme file an application before the Hon'ble Tribunal in Form No. CAA.13 stating the objections or opinion and requesting that Hon'ble Tribunal may consider the Scheme under section 232 of the Act ("**Case 2**").

Deemed Approval. If the RD does not issue a confirmation order under Case 1 or does not file any application under Case 2 within a period of 60 days of the receipt of the Scheme under section 233(2) of the Act, it shall be deemed that it has no objection to the Scheme and a confirmation order shall be issued accordingly.

Amendment introduced. The substituted sub-rule 6 introduces the provision which empowers the RD to disregard the Comments of the RoC or OL regarding proposed adversities in the Scheme if it considers the Scheme to be in public interest and accordingly envisages timelines within which the RD shall issue the confirmation order. Accordingly, it is envisioned that the RD is not bound by the Comments of the RoC or OL and can process the order if it finds merit in the Scheme.

✓ Practical Issues:

Although the Amendment Rules benefits the party to the Scheme in a way that the Scheme is processed in a time framed manner, there are some misses which lead to ambiguity as summarized hereunder:

Ministry of Corporate Affairs (Contd...)

1. The amendment does not clarify how the parties will proceed in case of deemed approval and during the entire process of the under section 233 of the Act, the copy of order is inevitable in terms of filing the same with the RoC and also determining the effective date of the Scheme;
2. The newly introduced 'deemed approval' suggests that if the RD does not issue the confirmation order then the '*order shall be issued accordingly*'. However, it does not spell out a process on how the parties can seek such order.
3. In case of absence of clarity around the availing of the order and the effective date, the further actions to complete the merger/amalgamation process would be left to interpretation, which is undesirable.

□ **Link of the Notification:**

[The Companies \(Compromises, Arrangements and Amalgamations\) Amendment Rules, 2023](#)

Ministry of Corporate Affairs (Contd...)

- ❑ **Notification Reference No:** G.S.R 354 (E) (“**Notification**”).
- ❑ **Notification Date:** May 10, 2023
- ❑ **Notification Effective Date:** May 10, 2023 as published in the Official Gazette.
- ❑ **Subject of the Notification:** The Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 (“**Amendment Rules**”).
- ❑ **Analysis:**
 - ✓ The Companies Act, 2013 (“**Act**”) provides an exit/closure opportunity to the companies by way of striking off its (company’s) name registered with the Ministry of Corporate Affairs (“**MCA**”) in accordance with the provisions of section 248 of the Act. The striking off may either be - voluntary by the companies or *suo-moto* by the authority (viz. by the jurisdictional Registrar of Companies) (“**RoC**”). While there are few conditions prescribed by the MCA under section 248 of the Act, which can be ground/(s) for striking off by the authority or upon satisfaction of all/any of the condition(s) the companies may also opt for voluntary striking off its name.
 - ✓ *Vide* introduction of the Amendment Rules, the MCA has introduced 3 (three) new provisions in rule 4(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (“**Rules**”) which prescribes certain pre-compliance filings by the companies (i) who wish to opt for voluntary strike off; or (ii) when a mandatory strike off notice is received from the RoC. The same is detailed herein:

Ministry of Corporate Affairs (Contd...)

- an application for voluntary strike off cannot be filed unless the company has filed its overdue financial statements under section 137 of the Act **and** overdue annual returns under section 92 of the Act, up to the end of the financial year in which the company ceased to carry its business operations;
- in case a company files an application for strike off after the initiation of action by the RoC, the company is required to file all its pending financial statements under section 137 of the Act **and** all pending annual returns under section 92 of the Act, before filing the application.
- in case the RoC strikes off the company's name from its register and publishes the notice in the official gazette regarding the same, the company shall not be permitted to file the application under rule 4 (1) of the Rules for removal of the name.

While the intent of the MCA is to achieve clean up of all the historical compliances and have all the records with the RoC till the time company survives/ exists, the exit mode has been made difficult for the companies in a way that the strike off process will become cost & compliance burden for the companies.

❑ Link of the Notification:

[The Companies \(Removal of Names of Companies from the Register of Companies\) Second Amendment Rules, 2023](#)

Reserve Bank of India

- ❑ **Notification Reference No:** G.S.R 369 (E) (“**Notification**”).
- ❑ **Notification Date:** May 16, 2023
- ❑ **Notification Effective Date:** May 16, 2023
- ❑ **Subject of the Notification:** The Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023.
- ❑ **Analysis:**
 - ✓ The Ministry of Finance (Department of Economic Affairs) (“**MOF**”) *vide* the Notification has amended the Foreign Exchange Management (Current Account Transactions) Rules, 2000 (“**Rules**”), wherein rule 7 (*as stated hereunder*) has been omitted:

‘Use of International Credit Card while outside India - Nothing contained in rule 5 shall apply to the use of International Credit Card for making payment by a person towards meeting expenses while such person is on a visit outside India.’
 - ✓ Rule 5 of the Rules provides that for withdrawing any foreign exchange for a transaction included in Schedule III, prior approval of Reserve Bank of India (“**RBI**”) is required. However, the said rule 5 shall not be applicable for the payments made out of funds held in Resident Foreign Currency Account of the remitter.

Reserve Bank of India (Contd...)

- ✓ Now, with omission of rule 7, all the spends made in foreign exchange through international credit card will be governed by the 'Liberalised Remittance Scheme (LRS)', wherein the foreign remittances above US\$ 250,000 p.a. made through a credit card will require prior approval from RBI.

❑ **Link of the Notification:**

[The Foreign Exchange Management \(Current Account Transactions\) \(Amendment\) Rules, 2023](#)

SECURITIES LAW

❑ **Subject:** Consultation paper on streamlining the regulatory framework for registration of Foreign Venture Capital Investors (FVCIs) (“**Consultation Paper**”).

❑ **Date:** May 18, 2023.

✓ **Introduction:**

Securities and Exchange Board of India (“**SEBI**”) *vide* the Consultation Paper released on May 18, 2023, has proposed to streamline the regulatory framework for registration of Foreign Venture Capital Investors (“**FVCI**”) under SEBI (Foreign Venture Capital Investor) Regulations, 2000 (“**Regulations**”), in a process similar to the registration of the Foreign Portfolio Investors (“**FPI**”), by appointing Designated Depository Participants (“**DDPs**”), who shall be entrusted with the responsibility to carry out an effective due diligence process, registration of FVCI with SEBI under the Regulations and also carry out the post registration approvals.

✓ **Rationale:**

To ensure that the process of registration, determining eligibility criteria, renewal, surrender, holding of assets by FVCI and other aspects relating to its regulation becomes more practical and is also brought in line with the regulation of FPI.

SECURITIES LAW (Contd...)

✓ **Premise:**

- The premise for proposing the aforesaid is that since the process of registration of FVCI is almost similar to the registration of FPIs, appointment of DDP's shall expedite and smoothen the entire process of registration of the FVCI, due diligence process and post registration approvals. Presently, the processing of applications for granting registration to FVCIs and related due diligence is carried out by SEBI.
- The FVCIs are required to appoint a domestic custodian for the regulation and the administration of the investments made in India and furnishing of periodic returns and reports to SEBI. By appointing the DDP's, the FVCIs are not required to appoint domestic custodian separately and the DDP's and domestic custodian shall be the same entity.

□ **Link of the Consultation Paper:**

[SEBI - Consultation paper on streamlining the regulatory framework for registration of FVCIs.](#)

Deets / Disclaimer

❑ Deets.

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❑ Disclaimer.

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Thank You



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