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CORPORATE LEGAL DEVELOPMENTS

NEWSLETTER JUNE 2022

Weekly Insights & Updates

9 June 2022

MCA

MCA notifies Companies (Appointment and Qualification of Directors) Amendment Rules, 2022.

June 1, 2022: Ministry of Corporate Affairs (“MCA”) vide its notification G.S.R.410 (E) dated June 1, 2022 notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 to amend the Companies (Appointment and Qualification of Directors) Rules, 2014 (“**Appointment Rules**”) wherein the below amendments are brought out:

- New Proviso to Rule 8 of the Appointment Rules: Clause 5 of Section 152 (*Appointment of Directors*) of the Companies Act, 2013 (“**Companies Act**”) provides that a person shall act as a director only after the person has given his consent to hold the office as a director and such consent has been filed with the Registrar of Companies (“**ROC**”) within thirty days of his appointment. Rule 8 (*Consent to act as a director*) of the Appointment Rules provides that the written consent to act as a director has to be filed with the company in Form DIR-2 and the company after receiving such consent letter has to file the consent letter with the ROC in Form DIR-12 alongwith the fees as provided in the Companies (Registration Offices and Fees) Rules, 2014. A new proviso has been inserted in Rule 8 of the Appointment Rules which provides that in case the person seeking appointment as a director is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Government of India shall also be attached alongwith the consent.
- New Proviso to Rule 10(1) of the Appointment Rules: Rule 9(1) of the Appointment Rules elaborates on the procedure to obtain Director Identification Number (“**DIN**”) by filing an electronic application in Form DIR-3 to the Central Government alongwith such fees as provided under the Companies (Registration Offices and Fees) Rules, 2014. Further Rule 10(1) of the Appointment Rules specifies that on submission of Form DIR-3 and payment of requisite amount of fees through online mode, an application number shall be generated by the online portal. A new proviso has been inserted in Rule 10(1) of the Appointment Rules which provides that in case the person applying for DIN is a national of a country which shares land border with India, an application number shall be generated only after submitting necessary security clearance from the Ministry of Home Affairs, Government of India alongwith the application for DIN.
- Further, consequential changes in Forms DIR-2 (Consent to act as a director of the Company) and DIR-3 (Allotment of DIN) have been brought out accordingly.
- The Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 are effective from June 1, 2022.

Link [here](#).

Provisioning for Standard assets by Non-Banking Financial Company – Upper Layer (NBFC-UL).

June 6, 2022: The Reserve Bank of India ("RBI") vide its notification RBI/2022-23/61 DOR.STR.REC.40/21.04.048/2022-23 issued guidelines on differential provisioning to be maintained by Non-Banking Financial Companies (NBFCs) classified as NBFC-UL towards different classes of standard assets as stipulated under its earlier circular [DOR.CRE.REC.No.60/03.10.001/2021-22](#) dated October 22, 2021 on "*Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs*".

NBFC-UL shall maintain provisions in respect of 'standard' assets at the following rates for the funded amount outstanding:

Category of Assets	Rate of Provision
Individual housing loans and loans to Small and Micro Enterprises (SMEs) (definition of the terms Micro Enterprises, Small Enterprises, and Medium Enterprises shall be as per the circular on ' Credit flow to Micro, Small and Medium Enterprises Sector '))	0.25 per cent
Housing loans extended at teaser rates (means housing loans having comparatively lower rates of interest in the first few years after which the rates of interest are reset at higher rates)	2.00 per cent, which will decrease to 0.40 per cent after 1 year from the date on which the rates are reset at higher rates (if the accounts remain 'standard')
Advances to Commercial Real Estate – Residential Housing (CRE - RH) Sector (CRE-RH is a sub-category of CRE that consist of loans to builders/ developers for residential housing projects (except for captive consumption). Such projects should ordinarily not include non-residential commercial real estate. However integrated housing project comprising of some commercial spaces (e.g., shopping complex, school etc.) can also be specified under CRE-RH, provided that the commercial area in the residential housing project does not exceed 10 per cent of the total Floor Space Index (FSI) of the project. In case the FSI of the commercial area in the predominantly residential housing complex exceed the ceiling of 10 per cent, the entire loan should be classified as CRE and not CRE-RH.)	0.75 per cent
Advances to Commercial Real Estate (CRE) Sector (other than CRE-RH) (Commercial Real Estate (CRE) would consist of loans to builders/ developers/ others for creation/acquisition of commercial real estate (such as office building, retail space, multi-purpose commercial premises, multi- tenanted commercial premises, industrial or warehouse space, hotels, land acquisition, development and construction etc.) where the prospects for repayment, or recovery in case of default, would depend primarily on the cash flows generated by the asset by way of lease/rental payments, sale etc. Further, loans for third dwelling unit onwards to an individual will be treated as CRE exposure.)	1.00 per cent
Restructured advances	As stipulated in the applicable prudential norms for restructuring of advances
All other loans and advances not included above, including loans to Medium Enterprises (definition of the terms Micro Enterprises, Small Enterprises, and Medium Enterprises shall be as per	0.40 per cent

Current credit exposures arising on account of the permitted derivative transactions shall also attract provisioning requirement as applicable to the loan assets in the 'standard' category, of the concerned counterparties. All conditions applicable for treatment of the provisions for standard assets would also apply to the aforesaid provisions for permitted derivative transactions.

(Current credit exposure is defined as the sum of the gross positive mark-to-market value of all derivative contracts with respect to a single counterparty, without adjusting against any negative marked-to-market values of contracts with the same counterparty).

Since NBFCs with net worth of Rs. 250 crore or above are required to comply with Indian Accounting Standards (Ind AS) for the preparation of their financial statements, they shall continue to hold impairment allowances as required under Ind AS, subject to the prudential floor as prescribed under Paragraph 2 of the Annex to the circular [DOR \(NBFC\).CC.PD.No.109/22.10.106/2019-20](#) dated March 13, 2020. The above-mentioned provisions shall, however, be included in the computation of the prudential floor, but shall not be reckoned for calculating net non-performing assets (NPAs).

These guidelines shall be effective from October 1, 2022.

Link [here](#).

SEBI

SEBI smoothen approval process for change in control of Portfolio Manager.

June 02, 2022: The Securities and Exchange Board of India ("SEBI") vide circular no. SEBI/HO/IMD-I/DOF1/P/CIR/2022/77 issued a circular on the procedure for seeking prior approval for change in control of Portfolio Managers by amending circular dated May 12, 2021. The circular aims to further streamline the process of providing approval to the proposed change in control of a Portfolio Manager. The provisions of this Circular shall be applicable with effect from June 15, 2022, to all applications for approval of change in control of Portfolio Manager and erstwhile circular dated May 12, 2021, shall stand superseded with effect from the date of applicability of this circular.

Key points:

1. An online application shall be made by the Portfolio Manager to the SEBI for prior approval through the SEBI Intermediary Portal (<https://siportal.sebi.gov.in>).
2. Prior approval granted by the SEBI shall be valid for a period of six (6) months from the date of such approval.
3. Applications for fresh registration pursuant to change in control shall be made to the SEBI within six (6) months from the date of prior approval.
4. Pursuant to grant of prior approval by the SEBI, in order to enable existing investors/ clients to take well informed decision regarding their continuance or otherwise with the changed management, the Portfolio Manager shall inform its existing investors/ clients about the proposed change prior to effecting the same and give an option to exit without any exit load, within a period of not less than thirty (30) calendar days, from the date of such communication.
5. In matters which involve scheme(s) of arrangement which needs sanction of the National Company Law Tribunal ("NCLT") in terms of the provisions of the Companies Act, 2013, the Portfolio Manager shall ensure the following:

(a) The application seeking approval for the proposed change in control under Regulation 11(aa) of the of the SEBI (Portfolio Managers) Regulations, 2020 shall be filed with the SEBI prior to filing the application with NCLT;

(b) Upon being satisfied with compliance of the applicable regulatory requirements, in-principle approval will be granted by the SEBI;

(c) The validity of such in-principle approval shall be three (3) months from the date of such approval, within which the relevant application shall be made to NCLT;

(d) Within fifteen (15) days from the date of order of NCLT, the Portfolio Manager shall submit an online application in terms of paragraph 2(i) of this circular along with the following documents to the SEBI for final approval:

- Copy of the NCLT Order approving the scheme;
- Copy of the approved scheme;
- Statement explaining modifications, if any, in the approved scheme vis-à-vis the draft scheme and the reasons for the same; and
- Details of compliance with the conditions/ observations mentioned in the in-principal approval provided by the SEBI.

Link [here](#).

Authors

Co-Managing Partner
nusrat@linklegal.in

Tanvi Pande
Senior Associate
tanvi.pande@linklegal.in

Meghna Punjabi
Associate
meghna.punjabi@linklegal.in

Associate Partner
ambuj.sonal@linklegal.in

Abhinav Anand
Associate
abhinav.anand@linklegal.in

Shreyali Srivastava
Associate
shreyali.srivastava@linklegal.in

FIRM'S RECOGNITION



OUR OFFICES

DELHI

Aiwan-e-Ghalib Complex,
Mata Sundri Lane,
New Delhi 110 002, India
Tel: +91 11 4651 1000

MUMBAI

21/22, Second Floor,
Free Press House,
Free Press Journal Road,
215, Nariman Point,
Mumbai – 400 021, India
Tel: +91 22 6633 6791/6625 2222

BENGALURU

#10, First Floor, 12th Main,
Palace Road,
Vasanth Nagar,
Bengaluru – 560 052, India
Tel: +91 80 4123 1072

HYDERABAD

1st Floor, MC Design House,
Plot No. 27, Rohini Layout,
HITEC City, Madhapur,
Hyderabad – 500 081, India
Tel: +91 40 3516 8987, +91 40 3516 8988

CHENNAI

1B, First Floor 17-A,
Diamond Business Center,
Kalakshetra Road,
Chennai – 600 041, India
Tel: +91 44 4271 9731

NEW YORK

57 West, 57th Street,
4th Floor, New York,
NY 10019
Tel: (212) 389-6290/ (212) 389-6281/
(212) 381-1057



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