Lakshmikumaran & Sridharan attorneys

LKS | CORPORATE PRACTICE

QUARTERLY UPDATE 2023

APRIL - JUNE

WWW.LAKSHMISRI.COM

FOREWORD

We are pleased to present the latest edition of our quarterly newsletter, where we have covered significant amendments under company law, foreign exchange laws, securities laws and environmental laws.

On the corporate law front, significant amendments were brought about, such as streamlining and centralising the process of removing the name of a company from the register of companies and introducing additional criteria to be met before a company can make an application for the removal of its name, thereby tightening the norms for closure of companies to prevent companies from evading their duties. Further, the types of companies that may opt for fast-track mergers through a scheme of merger or amalgamation have been specified and a provision of deemed acceptance of the scheme of merger or amalgamation has been introduced which is a move towards enhancing ease of doing business.

Under foreign exchange laws, a new set of guidelines were issued on Default Loss Guarantee ("**DLG**") in Digital Lending. Through these guidelines RBI has permitted arrangements between regulated entities and lending service providers or between two regulated entities involving DLG and has prescribed certain requirements to be fulfilled in this regard. Further, RBI in line with its objective of liberalising the foreign exchange law regime in India amended the circular on 'Remittances to International Financial Services Centres in India under the Liberalised Remittance Scheme', withdrawing the condition of repatriating any funds lying idle in the foreign currency account for a period of up to 15 (fifteen) days from the date of its receipt to domestic INR account of the investor in India.

The Securities and Exchange Board of India ("**SEBI**") has introduced a slew of amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, which inter alia include the introduction of disclosure requirements for certain types of agreements binding listed entities and disclosure requirements related to special rights to shareholders imposing disclosure requirements on shareholders' agreements, approval for special rights and other arrangements impacting management or control of the listed entity, etc. in addition to this, changes have also been made to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, inter alia modifying the underwriting arrangement applicable to public offerings through the book building process.

The Ministry of Environment, Forest and Climate Change ("**MoEFC**") has also brought about significant amendments to environmental laws. For instance, the MoEFC has now allowed for splitting of environmental clearances and has set out the procedure for the same. This amendment has been brought in with the intention to facilitate ease of doing business. Amendments were also made to further flesh out the concept of extended producer responsibility which was introduced through the Plastic Waste Management Rules in 2016 to enhance accountability on part of manufacturers or recyclers of plastic carry bags. The ministry has also invited suggestions on the Green Credit Programme Implementation Rules, 2023, which are primarily aimed at setting up a market-based

incentive mechanism in the form of green credits to individuals, farmer producer organisations, cooperatives, forestry enterprises, sustainable agriculture enterprises, urban and rural local bodies, etc. This will go a long way in achieving the goals of climate change mitigation, energy efficiency, and overall environmental conservation.

Our team has curated this publication to provide an overview of the key amendments that have a bearing on Indian businesses, investors and other stakeholders.

Do reach out to us with your feedback and/or suggestions.

CONTENTS

Key Updates Under Companies Act, 2013

1. Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023

The Ministry of Corporate Affairs ("**MCA**") through notification dated 17 April 2023 amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, which provide the procedure for removing the name of a company from the register of companies under Section 248 of the Companies Act, 2013 ("**CA 2013**").

This amendment has brought about a change in the authority responsible for disposing off applications for removal of the name of a company from the register of companies. Prior to this amendment, the application under Section 248(2) of the CA 2013 for removal of the name of a company from the register of companies was made to the Registrar of Companies ("**ROC**").

As a result of this amendment, such an application shall now be made to the Registrar, Centre for Processing Accelerated Corporate Exit, which was established in Gurgaon through notification dated 17 March 2023.

Forms STK 2, STK 6 and STK 7 have been revised to reflect the change of authority. In addition, the amendment has dispensed with the requirement of attaching a special resolution certified by each director or the consent of at least 75% (seventy-five per cent) of the members of the company with the application for removal of the name of company in Form STK 2.

●●●

LKS COMMENT

This amendment is in line with the MCA's efforts to streamline and centralise the process of striking off company's names from the register of companies. The establishment of C-PACE for handling matters related to strike-off is expected not only to reduce the stress on the ROC but also to ensure a hassle-free and timely experience for companies filing for voluntary strike-off of their names.

2. Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2023

The MCA through notification dated 15 May 2023 amended the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, which sets out the procedure for companies desirous of undertaking compromises or arrangements under Chapter XV of the CA 2013.

Under Section 233 of the CA 2013, fast-track mergers can be affected through a scheme of merger or amalgamation ("**Proposed Scheme**") between the following types of companies:

a. 2 (two) or more small companies;

b. 2 (two) or more start-up companies;

c. 1 (one) or more start-up company with one or more small company; and

d. a holding company and its wholly-owned subsidiary company.

The Proposed Scheme is required to be filed before the ROC and official liquidator of the jurisdiction where the registered office of the transferor and transferee companies are situated. The Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2023 seeks to significantly reduce the timelines involved in securing the authorities' approval towards the Proposed Scheme.

The changes are set out in detail below:

a. Prior to this amendment, Rule 25(5) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, provided only for a discretionary timeline within which the ROC and official liquidator could convey to the Central Government their objections, if any, in relation to the Proposed Scheme. Now, a strict timeline of 30 (thirty) days has been imposed within which the ROC and official liquidator are required to submit their objections in relation to the Proposed Scheme.

b. Prior to this amendment, Rule 25(5) did not prescribe a timeline for the Central Government to approve the Proposed Scheme if no objections to it are received from the ROC or official liquidator. Now, a time limit of 15 (fifteen) days (counted from the expiry of the 30 (thirty) days allowed to the ROC and official liquidator to submit their objections) has been set within which the Central Government may confirm the Proposed Scheme if no objections from authorities are forthcoming.

   On the other hand, if objections from the ROC and official liquidator have been received but the Central Government is convinced that they are unsustainable and the Proposed Scheme is in the interest of the public and company creditors, it may issue an order to this effect under Rule 25(6), confirming the Proposed Scheme within 30 (thirty) days (counted from the expiry of the 30 (thirty) days allowed to the ROC and official liquidator to submit their objections).

c. Finally, if the Central Government is convinced that the Proposed Scheme is not in the interest of the public or the company creditors, it may file an application under Rule 25(6) for consideration of the Proposed Scheme before the National Company Law Tribunal ("**NCLT**"), within 60 (sixty) days from the receipt of the Proposed Scheme.

d. This amendment also provides for deemed acceptance of the Proposed Scheme in the event that the Central Government fails to issue an order confirming it or to file an application for its consideration before the NCLT within 60 (sixty) days from the receipt of the Proposed Scheme.

●●●

LKS COMMENT

This amendment brings in much-needed accountability and timely decision-making in the process of securing governmental approval for corporate mergers and amalgamations. The timelines of the processes involved

in corporate mergers and amalgamations have been expedited and a provision for deemed approval has also been created. By doing so, the amendment is geared towards providing a swift and simplified mechanism for restructuring businesses.

3. Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023

The MCA through notification dated 10 May 2023 amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, which provide the procedure for removing the name of a company from the register of companies under Section 248 of the CA 2013.

This amendment has introduced additional provisos to be considered before a company can make an application under Rule 4(1) to the Registrar, Centre for Processing Accelerated Corporate Exit for the removal of its name from the register of companies ("**Rule 4(1) Application**").

The changes are set out in detail below:

a. Before a company can submit its Rule 4(1) Application, it is required to file the following, up to the end of the financial year in which it ceased its business operations: : (i) overdue financial statements under Section 137 of the CA 2013 and (ii) overdue annual returns under Section 92 of the CA 2013;

b. In the event that a company decides to file its Rule 4(1) Application under Section 248(1) of the CA 2013), of its intention to strike off its name, the company may do so only after it had filed: (i) overdue financial statements under Section 137 of the CA 2013 and (ii) overdue annual returns under Section 92 of the CA 2013;

c. A company shall not be allowed to file its Rule 4(1) Application if the Registrar has already struck off its name from the register of companies and ordered for the publication of notice to this effect in the official gazette.

LKS COMMENT

The emphasis on fulfilling obligations related to financial reporting indicates that the MCA is tightening the norms for closure of companies to prevent companies from evading their duties under the CA 2013 by simply filing an application for name removal. This is expected to ensure financial integrity and safeguard the interests of all stakeholders.

4. Limited Liability Partnership (Amendment) Rules, 2023

The MCA through notification dated 2 June 2023 has amended the Limited Liability Partnership Rules, 2009, which govern the incorporation and working of limited liability partnerships ("**LLP**").

This amendment seeks to revise and provide for additional disclosures in LLP Form No. 3 which is required to be filed under Rule 21(2) of the Limited Liability Partnership Rules, 2009, in relation to an LLP agreement and any changes thereto.

By virtue of this amendment, if the nominee of a body corporate is proposed to be made the designated partner of an LLP, the following additional disclosures are required to be made in LLP Form No.3:

a. the DPIN/ PAN/ Passport Number of the nominee is to be provided along with details;

b. name of the nominee along with the name and type of the body corporate is to be provided;

c. LLPIN/ CIN/ FCRN/ FLLPIN (in case the nominee is a body corporate) / other identification number of the nominee is to be provided along with details;

d. designation of the nominee of the body corporate along with the form and monetary value of his contribution and percentage of profit sharing is to be provided; and

e. any changes to details in (a) to (d) have to be indicated.

LKS COMMENT

This amendment is primarily aimed at transparency by seeking details in relation to nominees of body corporates and ensuring that such information is updated. This will also encourage better record-keeping and facilitate regulatory oversight.

5. Companies (Accounts) Second Amendment Rules, 2023

The MCA through notification dated 31 May 2023 amended the Companies (Accounts) Rules, 2014, which set out the procedure for maintaining books of accounts of companies, preparing, and filing financial statements, etc.

This amendment specifically focuses on Rule 12 of the Companies (Accounts) Rules, 2014, in relation to filing of financial statements and the fees to be paid thereon. It provides that Form CSR 2 (used to report on the company's corporate social responsibility obligations under Section 135 of the CA 2013) shall be filed separately for financial year 2022-23, either on or before 31 March 2024, after filing Form AOC 4/Form AOC 4 XBRL (used to file financial statements with the ROC) or Form AOC-4 NBFC (used to file financial statements in case of non-banking financial companies, their subsidiaries, holding or associate companies or joint ventures having a net worth of INR 500 (five hundred) crore or more).

LKS COMMENT

This amendment seeks to allow the qualifying companies with flexibility to file their corporate social responsibility report until 31 March 2024 for this financial year. This is expected to come as a relief to companies already holding their annual general meetings and filing their annual returns for this financial year.

Key Updates Under Foreign Exchange Laws

1. Amendment to the Remittances to International Financial Services Centres ("IFSCs") under the Liberalised Remittance Scheme ("LRS")

The Reserve Bank of India ("**RBI**") on 26 April 2023, amended paragraph 2 (ii) of the circular dated 16 February 2021 titled 'Remittances to International Financial Services Centres in India under the Liberalised Remittance Scheme' ("**2021 Circular**"), allowing resident individuals to open a Foreign Currency Account in IFSCs.

With a view to provide an opportunity to resident individuals to diversify their portfolio, the RBI circular dated 16 February 2021 inter alia permitted resident individuals to open a non-interest bearing Foreign Currency Account ("**FCA**") in IFSCs, for making permissible investments under LRS. Any funds lying idle in the account for a period upto 15 (fifteen) days from the date of its receipt into the account was required to be immediately repatriated to domestic INR account of the investor in India.

Following this, with an objective to align the LRS for IFSCs set up under the International Financial Services Centres Authority Act, 2019 vis-à-vis other foreign jurisdictions, RBI decided to amend the directions under para 2 (ii) of the 2021 Circular, withdrawing the condition of repatriating any funds lying idle in the account for a period of up to 15 (fifteen) days from the date of its receipt with immediate effect. The same shall now be governed by the provisions of the scheme as contained in the Master Direction on LRS.

In addition to the above, on 22 June 2023, the RBI permitted authorised persons to facilitate remittances by resident individuals under purpose of 'studies abroad' as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign institutions in IFSCs for pursuing courses mentioned in the gazette notification dated 23 May 2022 which include courses offered in Financial Management, FinTech, Science, Technology, Engineering and Mathematics by foreign universities or foreign institutions in the International Financial Services Centre.

●●●

LKS COMMENT

This initiative by the RBI is in line with its continued efforts towards the liberalisation of the foreign exchange law regime in India.

2. Guidelines on Default Loss Guarantee in Digital Lending

The RBI on 8 June 2023, issued guidelines on Default Loss Guarantee ("**DLG**") in Digital Lending. Through these guidelines RBI has permitted arrangements between REs and Lending Service Providers ("**LSPs**") or between two REs involving DLG which is commonly known as First Loss Default Guarantee ("**FLDG**").

Following are the key highlights of the guidelines:

a. Structure of DLG Arrangements

There must be a specific legally binding and enforceable contract between the RE and the DLG provider. The contract must *inter-alia* provides for:

i. The scope of DLG coverage;
ii. The manner in which DLG coverage is to be maintained by the RE;
iii. The timeline for invoking DLG; and
iv. The disclosure requirements as specified in paragraph 11 of these guidelines.

b. Cap on DLG

The DLG cover on all outstanding portfolio specified upfront is capped at 5% (five per cent). In the case of implicit guarantee arrangements, the DLG provider shall not bear performance risk of more than the equivalent amount of 5% (five per cent) of the underlying loan portfolio.

c. Form of DLG

RE shall accept DLG only in one or more of the following forms:

i. Cash deposited with the RE;
ii. Fixed deposits maintained with a Scheduled Commercial Bank with a lien marked in favour of the RE; or
iii. Bank guarantee in favour of the RE.

d. Non-Performing Asset ("NPA") treatment and treatment of DLG for regulatory capital

i. RE shall be only responsible for classifying the individual loan assets in the portfolio as NPA and consequent norms and classification thereof irrespective of any DLG cover available at the portfolio level;
ii. The amount of DLG invoked shall not be set off against the underlying individual loans;
iii. Recovery by the RE from the loans on which DLG has been invoked and realised, can be shared with the DLG provider in terms of the contractual arrangement; and

e. Disclosure Requirements

The RE shall put in place a mechanism to ensure that LSPs with whom they have a DLG arrangement shall publish on their website the total number of portfolios and the respective amount of each portfolio on which DLG has been offered.

f. Due Diligence

REs shall put in place a board approved policy before entering into any DLG arrangement. Such policy shall include, at the minimum, the eligibility criteria for DLG provider, nature and extent of DLG cover, process of monitoring and reviewing the DLG arrangement, and the details of the fees, if any, payable to the DLG provider. Further, every time an RE enters into or renews a DLG arrangement, it shall obtain adequate information to satisfy itself that the entity extending DLG would be able to honour it. Such information shall, at a minimum, include a declaration from the DLG provider, certified by the statutory auditor, on the aggregate DLG amount outstanding, the number of REs and the respective number of portfolios against which DLG has been provided.

g. **Customer protection measures and grievance redressal issue for DLG arrangements**
Same shall be guided by the Digital Lending Guidelines of 2 September 2022, and other applicable norms.

●●●

LKS COMMENT

Through these guidelines, the RBI has permitted FLDG arrangements under the DLG guidelines subject to the above-mentioned conditions. Further, the RBI has clarified that DLG arrangements shall not attract the provisions of 'loan participation'.

Key Updates Under Securities Law

1. SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2023

SEBI on 24 May 2023, notified the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2023 ("**ICDR Amendment**") which amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

The ICDR Amendment mandates that if the issuer making an initial public offer, other than through the book building process, desires to have the issue underwritten either to cover (i) under-subscription on account of demand shortfall ("**Hard Underwriting**") or (ii) under-subscription on account of rejection of applications ("**Soft Underwriting**"), then the issuer shall, prior to the filing of the prospectus, enter into an underwriting agreement with the merchant bankers or stock brokers, indicating therein the maximum number of specified securities they shall subscribe at a predetermined price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.

Further, the ICDR Amendment has also modified the underwriting arrangement applicable to public offerings through the book building process. The key amendments are:

a. For public offerings through the book building process, in case of Hard Underwriting, the underwriting agreement is required to be executed prior to the filing of the red herring prospectus; for Soft Underwriting, the underwriting agreement shall be executed prior to filing of the final prospectus.

b. ICDR Amendment has clarified that the underwriter need not subscribe to the underwritten securities itself and is allowed to enter into arrangements to procure the subscription.

c. ICDR Amendment has further clarified that the pre-determined price of the underwritten securities shall not be less than the issue price.

●●●

LKS COMMENT

The concept of Soft Underwriting and Hard Underwriting has existed in the market even prior to the ICDR Amendment coming into effect. However, the ICDR amendment has formally introduced the 2 (two) concepts. Further, the ICDR Amendment should result in increasing assurance for the issuer, providing comfort to investors, and assumption of greater risk by the underwriters.

2. SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023.

SEBI on 14 June 2023 notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 ("**LODR Amendment**") which amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Through this amendment, SEBI has brought about a host of changes, inter alia in relation to the criteria for determination of materiality of events/ information by listed entities, disclosure requirements for certain types of agreements binding listed entities and disclosure requirements related to special rights to shareholders, imposing disclosure requirements on shareholders' agreements, approval for special rights and other arrangements impacting management or control of the listed entity, etc.

Initially, for compliance with Regulation 30, SEBI vide a circular dated 9 September 2015 specified details to be provided while disclosing events under Regulation 30 and guidance on when an event / information can be said to have occurred. The circular is now amended by circular dated 13 July 2023, specifying the information and timelines for disclosure of information according to Regulation 30 and Regulation 30A which came into force from 15 July 2023.

Following are the key changes brought about by the LODR Amendment:

a. Thresholds under Regulation 30(4)

Thresholds that are prescribed for disclosures under Para B of Part A of Schedule III, whose value, or the expected impact in value, exceeds the following:

i. 2% (two per cent) of revenue of the last audited consolidated financial statements, or
ii. 2% (two per cent) of net worth of the last audited consolidated financial statements, or
iii. 5% (five per cent) of the average absolute value of profit or loss after tax, as per the last three audited consolidated financial statements. While calculating absolute values, both profit or loss in a given year must be added.

b. Amendment to Regulation 30(6)

Pursuant to the LODR Amendment, listed entities are now required to make statutory stock exchange intimation not later than: (i) 30 (thirty) minutes after the conclusion of the board meeting in which the decision relating to the relevant event was made, (ii) 12 (twelve) hours from the occurrence of the event/information, if the event/information is originating from the listed entity, and (iii) 24 (twenty-four) hours from the occurrence of the event / information, if the event/information is not originating from the listed entity.

c. Disclosure regarding acquisition, scheme of arrangement, sale or disposal of any unit(s), division(s)

Listed entities are now required to disclose if a sale, lease, or disposal of the undertaking is outside the scheme of arrangement and provide the details of such transaction pursuant to Regulation 37A of which was introduced by the LODR Amendment.

d. Agreements entered by the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, employees of the listed entity or of its holding, subsidiary, or associate company

Transactions by shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel and employees of a listed entity or of its holding, subsidiary and associate company ("**Class of Persons**") which: (i) impact the management or control of the listed entity; or (ii) impose any restriction or create any liability upon the listed entity have to be disclosed by the Class of Persons to the listed entity within two working days in instances where the listed entity is not a party to.

Subsisting agreements by Class of Persons impacting listed entities but where they are not a party to are to be informed to the listed entity by Class of Persons on or before 31 July 2023. All such subsisting agreements are to be disclosed to the stock exchange(s) and on the website of the listed entity by 14 August 2023.

e. Increased scope of fraud or default

The regulations limited the disclosure requirements on fraud / defaults to promoter or key managerial personnel or by the listed entity or arrest of key managerial personnel or promoter. The LODR Amendment widens the scope of disclosure to frauds or defaults to cover directors, senior management or subsidiaries of listed entities or arrests of director or senior management of the listed entity, whether occurred in India or abroad.

The details to be disclosed initially include inter alia: (i) nature of fraud / default / arrest; (ii) estimated impact on the listed entity; (iii) time of occurrence; (iv) person(s) involved; and (v) estimated amount involved and are to be disclosed within 24 (twenty-four) hours.

f. New ratings or change of ratings

Listed companies are now required to report on: (i) revision in rating even if it was not requested for by the listed entity or the request was later withdrawn by the listed entity. (ii) revision in rating outlook even without revision in rating score. (iii) Environmental, Social and Governance ("**ESG**") ratings by registered ESG rating providers, within 24 (twenty-four) hours.

g. Timeline for filling vacancy of compliance officer

Any vacancy in the office of the compliance officer share be filled within 3 (three) months. Further, the listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

h. Approval of the shareholders for continuation of directors' terms

The continuation of a director serving on the board of directors of a listed entity shall be subject to the approval by the shareholders in a general meeting at least once in every 5 (five) years from the date of their appointment or reappointment.

This requirement hall not be applicable to the whole-time director, managing director, manager, independent director or a director retiring as per the sub-section (6) of section 152 of the CA 2013, if the approval of the shareholders for the reappointment or continuation of the aforesaid directors

or manager is otherwise provided for by the provisions of these regulations or the CA 2013 and has been complied with.

Further, this requirement shall also not be applicable to the director appointed pursuant to the order of a court or a tribunal or to a nominee director of the government on the board of a listed entity, other than a public sector company, or to a nominee director of a financial sector regulator on the board of a listed entity.

i. **Vacancies in respect of certain Key Managerial Personnel**
Any vacancy in the office of chief executive officer, managing director, whole time director, manager or chief financial officer will be filled at the earliest within 3 (three) months.

j. **Special rights to shareholders**
Any special right granted to the shareholders of a listed entity shall be subject to the approval by the shareholders in a general meeting by way of a special resolution once in every 5 (five) years starting from the date of grant of such special right. Further, the special rights available to the shareholders of a listed entity as on the date of coming into force of this regulation shall be subject to the approval by shareholders by way of a special resolution within a period of 5 (five) years from the date of coming into force of this LODR Amendment.

k. **Sale, lease or disposal of an undertaking outside Scheme of Arrangement**
Any sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of the listed entity or, if in case it owns more than one undertaking, then of the whole or substantially the whole of any of such undertakings, shall (i) take prior approval of shareholders by way of special resolution, where the votes cast by the public shareholders in favour of the resolution should exceed the votes cast by such public shareholders against the resolution, and (ii) disclose the object of and commercial rationale for carrying out such sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of the entity, and the use of proceeds arising therefrom, in the statement annexed to the notice to be sent to the shareholders.

●●●

LKS COMMENT

The clarification on the manner of calculation of thresholds has cleared the ambiguity for deciding the materiality, especially for the listed new age internet companies that are yet to post profits. Listed companies as an immediate measure must undertake a review of existing policies of materiality and disclosure of events that were framed based on extant requirements. Along with review of existing policies of materiality and disclosure of events, the listed entities may have to undertake a review of continuing events to ascertain the impact of the thresholds.

The requirement for disclosing if a sale, lease, or disposal of the undertaking is outside the scheme of arrangement, will now make it mandatory for shareholder notice and approval for disposal of any undertaking which under the extant requirements may not be the case due to the transaction not specifically falling under the disclosure requirements.

Transactions or agreements inter se the Class of Persons or with third parties which under the extant requirements could not have been disclosed will now have to be disclosed if such transactions impact

management or control of the listed entity or impose any restriction or create any liability upon the listed entity or imposes any restriction or create any liability upon the listed entity. The immediate action item for the listed entities is to source the information on the subsisting agreements impacting the management or control of the listed entity on or before 14 August 2023, to the stock exchanges and publish it on its website. Listed companies must actively seek information from the Class of Persons about the agreements entered by them which may impact the listed entities. All the agreements (including MoUs) entered by Class of Persons mentioned and impacting the management or control of the listed entity will come under the above clause.

The LODR Amendment has also increased the reporting ambit on fraud / defaults and clarifies that the event need not be limited to India. The listed entities shall proactively seek information pertaining to foreign directors so to report any incidents of fraud or default by them promptly irrespective of the country of occurrence.

In addition to the above, ratings in recent times have become a crucial factor impacting price movements. The proposal is intended to prompt dissemination of rating related information related to listed entities including the ESG ratings which have become a common phenomenon in recent days.

3. SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2023.

SEBI on 15 June 2023, notified the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2023 ("**AIF Amendment**") which amended the SEBI (Alternative Investment Funds) Regulations, 2012.

Following are the key amendments brought about by the AIF Amendment:

a. New category of AIF

SEBI has introduced specified AIF called the Corporate Debt Market Development Fund ("**CDMD Fund**") under Regulation 19 of SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulation**"), as a new category of AIF. The new category has been introduced to enable the investors to purchase corporate debt securities which would increase liquidity in the secondary market.

b. Eligibility criteria of key investment team of manager of AIF

Regulation 4(g)(i) of the AIF Regulation has been modified to provide that the key investment team of the Manager of the AIF shall have at least one key personnel with relevant certification as may be specified by SEBI.

c. Dematerialization of securities

The AIFs shall issue units in dematerialized form.

d. Approval from unitholders

Except with the approval of 75% (seventy-five per cent) of the investors by value of their investment in the scheme of AIF and subject to the conditions specified by SEBI, a scheme of an AIF shall not buy or sell investments, from or to:

i. Associates,
ii. Schemes of AIFs managed or sponsored by its manager, sponsor or associates of its manager or sponsor; or
iii. an investor who has committed to invest at least 50% (fifty per cent) of the corpus of the scheme of AIF. Such an investor should be excluded from the voting process.

e. Appointment of compliance officer

The manager of the AIF shall appoint a compliance officer who shall be responsible for monitoring compliance with the provisions of the SEBI Act, 1992, rules, regulations, notifications, circulars, guidelines, instructions or any other directives issued by SEBI. The compliance officer shall immediately and independently report to SEBI any non-compliance observed by him, as soon as possible but not later than 7 (seven) working days from the date of observing such non-compliance.

f. Corporate Debt Market Development Fund

SEBI has inserted Chapter III C to the AIF Regulations which is in relation to the introduction of CDMD Fund. The chapter provides for registration, investment conditions, disclosures and governance mechanism for CDMD Funds.

●●●

LKS COMMENT

The amendment related to appointment of compliance officer and obtaining approval from the unitholders are aimed to enhance the corporate governance.

Key Updates Under Environment Laws

1. Amendment to notification No. S.O. 1533 dated 14 September 2006 in relation to environmental clearances

The Ministry of Environment, Forest, and Climate Change ("**MoEFC**") through notification dated 21 April 2023 has amended its previous notification no. S.O. 1533 dated 14 September 2006 in relation to obtaining environmental clearance ("**EC**") before certain activities such as mining, etc. ("**EC Notification**").

Paragraph 11 of the EC notification provides that an EC granted to an applicant for a specific project or activity may be transferred during the period of its validity on the same terms and conditions to another legal person entitled to undertake such project or activity, on an application made in this regard by the transferor or transferee. Now, the MoEFC seeks to provide for splitting of an EC, in addition to its transfer, and has set out the procedure for the same.

The application for splitting an EC granted for a specific project (except mining projects) between two or more legal persons may be made by the transferor to the concerned Regulatory Authority in the specified format on the PARIVESH portal of the MoEFC along with requisite supporting documents. The application shall then be placed for review before an expert appraisal committee and thereafter be split and transferred to the other legal persons.

●●●

LKS COMMENT

This amendment has been brought in with the intention to facilitate ease of doing business. It is expected to move along projects which get held-up due to delay in governmental approval when they undergo a change in developer, as the process of obtaining duplicate EC approvals in the name of the new developer is a time-consuming one. This amendment will also help restructure distressed businesses by allowing different developers to overtake different parts or components of a project that has fallen through.

2. Plastic Waste Management (Amendment) Rules, 2023

The MoEFC through notification dated 27 April 2023 amended the Plastic Waste Management Rules, 2016, which lay down the framework for environmentally sound management and disposal of plastic waste.

The changes are set out in detail below:

a. Plastic Waste Management (Amendment) Rules, 2022 ("**PWM Rules 2022**"), provided for the Central Pollution Control Board ("**CPCB**") conferring provisional registration upon plastic of biodegradable kind if it conforms with certain tentative standards set by the Bureau of Indian Standards. Such provisional

certificates were to be valid till 30 March 2023. By virtue of the Plastic Waste Management (Amendment) Rules, 2023 ("**PWM Rules 2023**"), the validity has been extended till 30 March 2024.

b. Previously, the PWM Rules 2022 provided that each plastic bag must carry the name and registration number of the producer or brand-owner and bear its thickness. An exception has been created under the PWM Rules 2023 in this regard for rigid plastic packaging.

c. the PWM Rules 2022, require a manufacturer or recycler of plastic carry bags to obtain registration from the CPCB. The PWM Rules 2023, clarify that such registration shall be valid for a period of one year, unless revoked, suspended, or cancelled, and shall subsequently be granted for three years. Such registration can only be changed on request of producers, importers and brand owners.

d. the PWM Rules 2023, have added certain details to be provided by a producer, importer or brand owner while applying for extended producer responsibility registration. These details include PAN Number, GST Number, CIN Number in case of company and Aadhar Number and PAN Number in case of authorized person or representative of the company.

e. the PWM Rules 2023, also require annual returns on collected plastic packaging to be filed by producers, importers, or brand owners. This may be done at the latest by 31 October 2023 for financial year 2022-23. Similarly, plastic waste processors, including compost facilities, are required to file annual returns. This may be done at the latest by 31 July 2023 for financial year 2022-23.

●●●

LKS COMMENT

This amendment is a step towards further fleshing out the concept of extended producer responsibility which was introduced through the Plastic Waste Management Rules in 2016. Provisions requiring registration on part of manufacturers or recyclers of plastic carry bags and annual filing of returns would further boost accountability on part of such businesses and create an effective plastic waste management regime.

3. Hazardous and Other Wastes (Management and Transboundary Movement) Amendment Rules, 2023

The MoEFC through draft notification dated 2 May 2023 has proposed an amendment to the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, to introduce the concept of Extended Producer Responsibility ("**EPR**") for Used Oil. The MoEFC has invited objections/suggestions from the public in this regard within 60 (sixty) days of the publication of this draft notification and the amendment shall thereafter come into effect from 1 April 2024.

The EPR regime in the draft amendment is based on the concept of circular economy, that is, re-refining of used oil to form base oil. This process not only helps with energy conservation but also leads to a reduction in carbon footprint. As per the EPR regime, producers, collection agents, importers and recyclers of used oil are compulsorily required to register on the CPCB portal in order to carry out business.

Financial year 2024-25 onwards, they have also been obligated to strive and meet EPR targets, which shall progressively increase every year. For example, in financial year 2045-25, a producer of used oil or lubrication

oil is required to recycle 10% (ten per cent) of the used oil or lubrication oil sold or imported by him in financial year 2023-24, which shall increase to 20% (twenty per cent) in the year 2025-26. Similarly, the EPR Target for importers of used oil has been set at 100% (one hundred per cent) of the oil imported by them the previous year.

The CPCB shall bestow EPR certificate credits upon the used oil producers or importers as incentive for them meeting their EPR targets. Such certificates shall be valid for a period of 2 (two) years from the date of their issuance. The CPCB has also proposed to introduce imposition and collection of fines in case of non-fulfilment of EPR targets.

In addition to meeting the EPR targets, the producers and importers of used oil are also required to file annual returns on the CPCB portal on or before 30 June of every financial year.

●●●

LKS COMMENT

These draft rules target the management of used oil which carries the threat of contaminating the environment. They will also help formalize the used oil collection and recycling regime to prevent mishandling of used oil. However, these rules are still in the draft stage and their implementation and monitoring remain to be seen.

4. Green Credit Programme Implementation Rules, 2023

The MoEFC through notification dated 26 June 2023 has invited objections/suggestions in respect of the Green Credit Programme Implementation Rules, 2023 ("**Green Credit Rules**").

The Green Credit Rules are primarily aimed at setting up a market-based incentive mechanism in the form of green credits to individuals, farmer producer organisations, cooperatives, forestry enterprises, sustainable agriculture enterprises, urban and rural local bodies, etc. This will go a long way in achieving the goals of climate change mitigation, energy efficiency, and overall environmental conservation.

The key provisions of the Green Credit Rules are set out in detail below:

a. Phased manner of implementation

The Green Credit Rules envisage a phased implementation for the programme whereby only a few activities shall be undertaken to pilot the initiative and others shall be added in the future with the approval of the Central Government. These activities include tree plantation based green credit, water-based green credit, waste management based green credit, etc.

b. Methodology of generating Green Credits

The Green Credit Rules have also introduced a threshold and benchmarks-based methodology for generating and issuing green credits. This methodology takes into account factors such as equivalence of resource requirement, parity of scale, scope, size and other relevant parameters, to ensure fungibility of green credit units across sectors and activities.

c. Steering Committee

The Green Credit Rules have also instituted a Steering Committee for the effective implementation of this programme. The Steering Committee shall be chaired by an administrator who will be responsible for developing guidelines, processes, and procedures for implementation of this programme. Technical and sectoral committees may also be established for better management of the programme.

d. Establishment of a Green Credit Registry and Trading Platform

The Green Credit Registry shall act as an online database of the common data elements relevant to the issuance, holding, transfer and acquisition of green credits. The Trading Platform shall facilitate the trading of green credits in accordance with approved guidelines. The administrator of the programme shall also appoint accredited verifiers and empaneled auditors to verify the grant of green credit and audit the entire system.

LKS COMMENT

The Green Credit Rules have been introduced to further our Prime Minister's 'Lifestyle for Environment' initiative. These tradable green credits are expected to incentivize voluntary action for environmental conservation, on the part of both individuals and businesses. However, the government must set up a robust monitoring mechanism to tackle the legitimate apprehension of greenwashing.

LOCATIONS

NEW DELHI

5 Link Road, Jangpura Extension,
New Delhi 110 014
PHONE: 011-4129 9800

B-6/10, Safdarjung Enclave,
New Delhi 110 029
PHONE: 011-4129 9900
E-MAIL: Lsdel@lakshmisri.com

MUMBAI

2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai 400 025
PHONE: 022-2439 2500
E-MAIL: Lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street,
Chennai 600 006
PHONE: 044-2833 4700
E-MAIL: Lsmds@lakshmisri.com

BENGALURU

World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru 560 055
PHONE: 080-4933 1800
E-MAIL: Lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road,
Opp. Methodist Church, Nampally,
Hyderabad 500 001
PHONE: 040-2323 4924
E-MAIL: Lshyd@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad 380 009
PHONE: 079-4001 4500
E-MAIL: Lsahd@lakshmisri.com

PUNE

607-609, Nucleus,
1 Church Road, Camp
Pune 411 001
PHONE: 020-6680 1900
E-MAIL: Lspune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building,
41, Chowringhee Road,
Kolkata 700 071
PHONE: 033-4005 5570
E-MAIL: Lskolkata@lakshmisri.com

CHANDIGARH

SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh 160 026.
PHONE: 0172-492 1700
E-MAIL: Lschd@lakshmisri.com

GURUGRAM

OS2 & OS3, 5th Floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurugram 122 001
PHONE: 0124-477 1300
E-MAIL: Lsgurgaon@lakshmisri.com

PRAYAGRAJ

3/1A/3, (Opp. Auto Sales)
Colvin Road, Lohia Marg,
Prayagraj 211 001
PHONE: 0532-242 1037/242 0359
E-MAIL: Lsallahabad@lakshmisri.com

KOCHI

1st Floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam, Kochi 682016
PHONE: 0484-486 9018/486 7852
E-MAIL: Lskochi@lakshmisri.com

JAIPUR

2nd Floor (front side),
Unique Destination, Tonk Road,
Near Laxmi Mandir Cinema Crossing,
Jaipur, Rajasthan 302015
PHONE: 0141-4561200
E-MAIL: Lsjaipur@lakshmisri.com

NAGPUR

1st Floor, HRM Design Space,
90-A, Next to Ram Mandir,
Ramnagar, Nagpur 440033
PHONE: 0712-2959038/2959048
E-MAIL: Lsnagpur@lakshmisri.com

Lakshmikumaran & Sridharan attorneys

www.lakshmisri.com