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Advocates & Solicitors

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Ministry of Corporates Affairs vide notification dated February 21, 2023, has provided Extension of Time for filing of 45 company e-Forms, PAS-03 and SPICE+ Part A in MCA 21 Version 3.0 without additional fee

- MCA vide notification dated February 21, 2023, has provided Extension of Time for filing of 45 company e-Forms, PAS-03 and SPICE+ Part A in MCA 21 Version 3.0 without additional fee.
- It Due to change in way of filing in Version-3, including fresh process of registration of users on MCA-21 and process of stabilization of 45 forms launched with effect from 23.01.2023, and after considering various representations, in continuation of General Circulars No. 1/2023 dated 09.01.2023 and 03/2023 dated 07.02.2023, it has been decided to allow further additional time till 31.03.2023 for filing of these forms which are due for filing between 07.02.2023 and 28.02.2023, without additional fees.
- Further, Form PAS-03 which was closed for filing in Version-2 on 20.01.2023 and launched in Version-3 on 23.01.2023, and whose due dates for filing fall between 20.01.2023 and 28.02.2023, can also be filed without payment of additional fees till 31.03.2023.
- The notification is herein attached.

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Ministry of Corporates Affairs vide notification dated February 22, 2023, has provided Physical Filing of Forms GNL-2 (filing of prospectus related documents and private placement), MGT-14 (filing of Resolutions relating to prospectus related documents and private placement), PAS-3 (Allotment of Shares), SH-8 (letter of offer for buyback of own shares or other securities), SH-



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9 (Declaration of Solvency) and SH-11 Return in respect of buy-back of securities) due to migration from V2 Version to V3 Version in MCA 21 Portal from 22.02.2023 to 31.03.2023

- MCA vide notification dated February 22, 2023, has provided Extension Filing of Forms GNL-2 (filing of prospectus related documents and private placement), MGT-14 (filing of Resolutions relating to prospectus related documents and private placement), PAS-3 (Allotment of Shares), SH-8 (letter of offer for buyback of own shares or other securities), SH-9 (Declaration of Solvency) and SH-11 Return in respect of buy-back of securities) due to migration from V2 Version to V3 Version in MCA 21 Portal from 22.02.2023 to 31.03.2023.
- It has been decided that the companies intending to file (i) Form GNL-2 (filing of prospectus related documents and private placement), (ii) MGT-14 (filing of Resolutions relating to prospectus related documents, private placement), (iii) PAS-3 (Allotment of Shares), (iv.) SH-8 (letter of offer for buyback of own shares or other securities), (v.) SH-9 (Declaration of Solvency) and (vi.) SH-11 Return in respect of buy-back of securities) from 22.02.2023 to 31.03.2023 on the MCA-21 Portal may file such Form in physical mode duly signed by the persons concerned as per requirements of the relevant forms, along with a copy thereof in electronic media, with the concerned Registrar without payment of fee and take acknowledgement (as per Annexure to this Circular) thereof. Such filing will be accompanied by an undertaking from the company that, the company shall also file the relevant Form in electronic form on MCA-21 Portal alongwith fee payable as per Companies (Registration Offices and Fees) Rules, 2014.
- The notification is herein attached.

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Securities Exchange board of India vide circular dated February 16, 2023, has issued Master Circular for Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”)

- SEBI vide circular dated February 16, 2023, has issued Master Circular for Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”).
- With the issuance of this Master Circular, the directions/instructions contained in the circulars listed out in Annexure-V to this Master Circular, to the extent they relate to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “Takeover Regulations”), shall stand rescinded.
- The master circular is herein attached.

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SEBI AMENDMENTS ON GOVERNANCE NORMS NOTIFIED FOR REITS AND INVITS DATED FEBRUARY 14, 2023

SEBI has issued the 2023 Amendments to the REIT and InvIT Regulations on February 14, 2023, which outline governance norms for REITs and InvITs. Prior to these amendments, the REIT and InvIT Regulations had limited governance requirements, but the applicability of governance norms from the LODR Regulations was unclear. The LODR Regulations were amended on January 17, 2023, to state that these norms do not apply to Investment Trusts. The 2023 Amendments provide clarity on the application of LODR Regulations to Investment Trusts.

The Securities and Exchange Board of India has made amendments to the governance



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norms applicable to real estate and infrastructure investment trusts. These changes are effective from February 14, 2023, and certain amendments will apply from April 1, 2023. The changes include a definition of an independent director and aligned tests of independence for investment trusts with the LODR regulations. Independent directors will need to satisfy independence tests and the criteria will be tested at various levels. The trustees of the investment trusts, who must be independent entities, will also need to meet independence criteria.

The 2023 Amendments have extended certain provisions of the LODR Regulations to Investment Trusts, but with substituted terminology to fit the context. For example, "promoters" have been replaced with "sponsor(s), sponsor group (applicable only to a REIT), trustee, investment manager/manager, trustee and project manager (applicable only to an InvIT)". The definition of "listed entity" also differs between REITs and InvITs. Further clarification is required, particularly in regards to provisions applicable to any "listed entity".

The maximum tenure of an independent director on the board of directors of an investment manager/manager is 5 years, which can be extended for another 5 years through a special resolution. Independent directors must hold at least one meeting annually without the presence of management to review the performance of non-independent directors and the board. Liability of independent directors is limited to acts or omissions that occurred with their knowledge or consent. Directors of listed companies cannot be members of more than 10 committees or chairpersons of more than 5 committees across all listed entities where they are a director. Senior management must disclose all material financial and commercial transactions where they may have a personal interest that may conflict with the interest of the listed entity. No employee or director of the investment manager or any party to the



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Investment Trust is permitted to enter into any agreement for itself or on behalf of any other person regarding compensation or profit sharing in connection with dealings in the securities of the listed entity without prior approval of the board and public shareholders through an ordinary resolution.

Before the 2023 Amendment, investment managers were only required to have 50% independent directors on their board. However, the amendment now requires investment managers to have at least six directors, including one independent woman, and mandates that board meetings have at least one-third of the board or three directors present, with at least one independent director. Additionally, the investment manager must provide specific information to the board and comply with several new reporting requirements. A vigil mechanism must also be implemented, including a whistleblower policy, and reviewed by the audit committee.

The 2023 Amendments bring several changes to the Investment Trusts, including the appointment of auditors for a term of five years, a limited review of SPV/Holdco's financials by the statutory auditor of Investment Trusts, and a clarification on the calculation of leverage thresholds. Additionally, the definition of 'change in control' under the REIT Regulations and the InvIT Regulations has been revised to align with the Companies Act, 2013. These changes are effective from the date of notification on February 14, 2023.

SEBI has recognized that the definition of 'change in control' cannot be the same for all entities, and hence, the 2023 Amendments redefine 'change in control' under the REIT and InvIT Regulations. For listed bodies, it will be defined under SEBI regulations, and for unlisted bodies, it will be defined under the Companies Act.



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Entities other than bodies corporate will have a change in control if there is a change in legal formation, ownership or controlling interest. The amendments aim to ensure that the governance framework of Investment Trusts aligns with listed companies. However, there is a need for further clarity on some issues, and existing Investment Trusts may require structural changes to comply with the new governance regime. Overall, the amendments are beneficial for the maturing Investment Trusts market. The notification for INVITS is herein attached.

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The notification for REITS is herein attached.

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