

February 16 - Issue 220

## **Ministry of Corporate Affairs (“MCA”) amends norms for determining Significant Beneficial Ownership**

MCA vide notification dated February 08, 2019 has notified the Companies (Significant Beneficial Owners) Amendment Rules, 2019. The key amendments are:

### **Declaration of significant beneficial ownership under Section 90:**

- ✓ On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, every individual who is a significant beneficial owner in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company within ninety days from such commencement.
- ✓ Every individual, who subsequently becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of acquiring such significant beneficial ownership or any change therein.

### **Application to the Tribunal**

- ✓ The reporting company shall apply to the Tribunal where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or where the information given is not satisfactory

### **Non-Applicability**

- ✓ the authority constituted under sub-section (5) of section 125 of the Act;

- ✓ its holding reporting company;
- ✓ the Central Government, State Government or any local Authority;
- ✓ a reporting company, or a body corporate, or an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
- ✓ Securities and Exchange Board of India (“SEBI”) registered Investment Vehicles such as mutual funds, alternative investment funds, Real Estate Investment Trusts, Infrastructure Investment Trust regulated by the Securities and Exchange Board of India;
- ✓ Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

### **Reserve Bank of India (“RBI”) eases norms for foreign investors to invest in Debt**

RBI vide Circular dated February 15, 2019 has decided to ease norms for foreign investors to invest in Debt

In terms of paragraph 4(f) (ii) of the AP (DIR Series) Circular No. 31 dated June 15, 2018 no FPI shall have an exposure of more than 20% of its corporate bond portfolio to a single corporate (including exposure to entities related to the corporate). As announced in paragraph 10 of the Statement on Developmental and Regulatory Policies of the Sixth Bimonthly Monetary Policy Statement

for 2018-19 dated February 07, 2019, in order to encourage a wider spectrum of investors to access the Indian corporate debt market, RBI has decided to withdraw this provision with immediate effect.

### **SEBI grants relaxation to non-residents from requirement to furnish PAN for transfer of shares**

SEBI vide Circular dated February 11, 2019, in order to address the difficulties faced by such investors, has decided to grant relaxation to non-residents (such as NRIs, PIOs, OCIs and foreign nationals) from the requirement to furnish PAN and permit them to transfer equity shares held by them in listed entities to their immediate relatives subject to the following conditions:

- ✓ 3a. The relaxation shall only be available for transfers executed after January 01, 2016.
- ✓ 3b. The relaxation shall only be available to non-commercial transactions, i.e. transfer by way of gift among immediate relatives.
- ✓ 3c. The non-resident shall provide copy of an alternate valid document to ascertain identity as well as the non-resident status.

For the purpose of Para 3(b) above, the term “immediate relative” shall have the same meaning as defined in Regulation 2(1)(l) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

### **SEBI issues framework for utilization of deposit available with clearing corporations & Development Authority**

SEBI vide Circular dated February 11, 2019 has issued a framework for utilization of deposit available with clearing corporations & Development Authority. The Key highlights of the framework are:

- ✓ The Clearing Corporations shall immediately after accreditation, provide the details of Warehousing Development Regulatory Authority (“WDRA”) registered warehouses accredited by them with full details of warehouseman registration, warehouse registration, WSP, address etc. to WDRA. WDRA will in turn, share the details of security deposit received from these accredited warehouses/WSPs to the respective Clearing Corporations as per the format provided.
- ✓ Clearing Corporations shall continue to compute FSD requirement as per SEBI circular dated September 27, 2016. The deposits placed by WSPs with WDRA for Exchange/Clearing Corporation specific outstanding eNWRs shall be considered by the Clearing Corporation in the calculation of available FSD for the WSP subject to the same complying with norms regarding FSD in the said SEBI circular.
- ✓ The settlement of security deposit by WDRA originates only after the stocks stored, if any, are disposed off/ withdrawn by the holder.
- ✓ This arrangement is only for stocks stored in WDRA registered / Clearing Corporation accredited Warehouses for the purpose of delivery on exchange platform and for which e-NWR has been issued.

- ✓ The discrepancy noted / claim received by any agency (Clearing Corporation or WDRA) shall be brought to the notice of other agency irrespective of invoking the security deposit.

The circular shall become effective from 30 days from the date of the circular

### **SEBI unveils format for secretarial audit report and compliance report for listed Companies**

SEBI vide Circular dated February 02, 2019 has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to include the Regulation 24A which states that:

*“Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed with effect from the year ended March 31, 2019”*

### **Annual secretarial audit report**

- ✓ Currently, Section 204 of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires Secretarial Audit by Practicing Company Secretaries (PCS) for listed companies and certain unlisted companies above a certain threshold in From No. MR-3.
- ✓ In order to avoid duplication, the listed entity and its unlisted material subsidiaries shall continue to use the same Form No. MR-3 as required under Companies Act,

2013 and the rules made thereunder for the purpose of compliance with Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as well

### **Annual secretarial compliance report:**

- ✓ While the annual secretarial audit shall cover a broad check on compliance with all laws applicable to the entity, listed entities shall additionally, on an annual basis, require a check by the PCS on compliance of all applicable SEBI Regulations and circulars/ guidelines issued thereunder, consequent to which, the PCS shall submit a report to the listed entity in the manner as specified in the circular.
- ✓ The format for the annual secretarial compliance report as been provided in Annex-A of the circular.
- ✓ The annual secretarial compliance report in the aforesaid format shall be submitted by the listed entity to the stock exchanges within 60 days of the end of the financial year.

The listed entities and their material subsidiaries shall provide all such documents/information as may be sought by the PCS for the purpose of providing a certification under the Regulations and this circular.

This circular shall come into force with respect to the annual secretarial audit report, from the financial year ended March 31, 2019 onwards and with respect to the annual secretarial compliance report, from the financial year ended March 31, 2019 onwards.



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