

JANUARY 2024

CORPORATE LAW BULLETIN



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A. MINISTRY OF CORPORATE AFFAIRS

DEMATERIALIZATION OF SHARE WARRANTS OF UNLISTED PUBLIC COMPANIES AND SECURITIES OF PRIVATE LIMITED COMPANIES

As per notification issued by Ministry of Corporate Affairs (MCA) dated 27th October 2023, MCA had introduced rule 9A [Reporting of pending share warrants by Public Companies] and rule 9B [Mandatory Dematerialisation of Securities by the Private Companies]

A. For Public Companies (Unlisted) in reference for share warrants:

- Within 3 months, public companies must inform the Registrar about the details of such share warrants in Form PAS-7 which were issued before the commencement of the Companies Act, 2013.
- Within 6 months, these companies must request bearers of the share warrants to surrender them and get the shares dematerialized.
- Further, requires notice on the company's website and publish the same in local and English newspapers.
- If the bearer fails to surrender the share warrants, the company shall convert such share warrants into dematerialized form and further transfer to the Investor Education and Protection Fund.

B. Conversion of physical securities into dematerialized form by the Private Companies except Small Companies & Government Companies.

- Every Private companies, except Small Companies & Government Companies shall:
 - a. issue the securities only in dematerialized form
 - b. facilitate dematerialisation of all its securities
- Every Private companies, that are not small companies as per the last audited financial statements i.e. 31st March 2023, must comply with these rules within eighteen (18) months of that financial year's closure (i.e. till September 30, 2024).

**Small Company is the company whose paid-up share capital does not exceed INR 4 Crores and Turnover does not exceed INR 40 Crores. However, nothing in the above clause shall apply to:*

- A Holding Company or Subsidiary Company;
- A Company registered under Section 8;
- A Company or Body Corporate registered under any Special Act;
- The entire holding of securities of their promoters, directors, and Key Managerial Personnel has been dematerialized before issuing any offer for the issuance of securities, buyback of securities, or the issuance of bonus shares or rights offers.
- Holders of securities who intends to transfer or subscribe to securities must ensure that their securities are in dematerialized form.

INTRODUCTION OF NEW RULES AND FORMS UNDER LLP RULES 2009

As per the MCA notification dated 27th October 2023, MCA had inserted new Rule 22A (Register of Partners) and Rule 22B (Declaration in respect of beneficial interest in any contribution) in the Limited Liability Partnership Rules and accordingly, introduced new Forms, Form 4A (Maintenance of Register of partners), Form 4B (Declaration by the Registered Partner who does not hold the beneficial interest in the Contribution), Form 4C (Declaration by the Partner who holds or acquires a beneficial interest in the Contribution but whose name is not entered in the Register of Partners) and Form 4D (Return to the Registrar in respect of declaration).

Brief description of the new rules and added forms.

A. Maintenance of Register of Partners in Form 4A

- Every Limited Liability Partnership ('LLP'), from the date of its incorporation/registration, shall maintain a register of partners in Form 4A.
- In the case of LLPs registered before 27th October 2023, they will have to maintain the register within 30 days from the commencement of new rules i.e. up to 25th November 2023.
- The register should contain the Name of the partners, Address, Permanent Account Number/Corporate Identification Number; Unique Identification Number; Father or mother or spouse's name; Occupation; Status; Nationality; Name and address of nominee, Date of becoming a partner; Date of cessation; Amount and nature of contribution with monetary value etc.
- Further, in case of a change of name and details of partner, change in contribution amount or cessation of a partnership interest, entries should be made within 7 days of such change.

B. Declaration in respect of a beneficial interest in any contribution

- **Form 4B (Declaration by the Registered Partner who does not hold the beneficial interest in the Contribution):**
Where a person's name is entered in the register, but he/she does not hold any beneficial interest in contribution or there is any change, then he/she has to file a Declaration in Form 4B, **within 30 days** from the date on which his name is entered in the register of partners.
- **Form 4C (Declaration by the Partner who holds or acquires a beneficial interest in the Contribution but whose name is not entered in the Register of Partners):**
Where a person's name is not entered in the register, but he/she hold beneficial interest in contribution or there is any change, then he/she has to file a Declaration in Form 4C, **within 30 days** after acquiring such beneficial interest in the contribution of the LLP.
- **Form 4D (Return to the Registrar in respect of declaration):**
The LLP should record the declaration received in Form 4B and 4C and file the return of beneficial interest with Registrar in Form 4D within 30 days from the date of receipt of such declaration to the Registrar.

EVERY COMPANY SHALL DESIGNATE A PERSON FOR FURNISHING AND PROVIDING INFORMATION TO THE REGISTRAR WITH RESPECT TO BENEFICIAL INTEREST IN SHARES OF THE COMPANY.

As per the notification issued by Ministry of Corporate Affairs (MCA) dated 27th October 2023, every company shall designate a person who shall be responsible for furnishing and providing information to the Registrar with respect to beneficial interest in shares of the company.

Every company shall designate a person who shall be responsible for furnishing and providing information to the registrar and other authorised officer with respect to beneficial interest in shares of the Company. The responsible person shall be any one of:

- a company secretary, if there is a requirement of appointment of such company secretary; or
 - a key managerial personnel, other than the company secretary; or
 - every director, if there is no company secretary or key managerial personnel.
- ▶ **Deemed designated person:** If there is no specific person is designated, the following persons shall be consider a deemed designated person:
- company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
 - every Managing Director or Manager, in case a company secretary has not been appointed; or
 - every director, if there is no company secretary or a Managing Director or Manager
- ▶ **Reporting:** Details of designated person shall be disclosed in the annual return of the Company
- ▶ **Change in designated person:** if there is any change in designated person the same will be informed to the Registrar in e-form GNL-2.

LIMITED LIABILITY PARTNERSHIP (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2023

The Ministry of Corporate Affairs (MCA) vide its notification dated November 07, 2023 has notified "the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023" which has come into force on the date of its publication in the Official Gazette. The provisions of these rules shall apply to all the LLPs. The aforesaid rules, conferred under section 79 of the Limited Liability Partnership Act, 2008, directs to regulate and identify significant beneficial owners in Limited Liability Partnerships and such individual to make a declaration in Form No. LLP BEN-1.

Brief Analysis:

- The provisions of these rules shall specifically apply to all the LLPs.(Rule 2)
- Aforesaid rules mentioned various definitions viz, control; majority stake; significant beneficial owner; significant influence; ultimate holding company etc.(Rule 3)
- Duty of the reporting limited liability partnership to take necessary actions in identifying the significant beneficial owner and causing such individual to file Form No. LLP BEN1.(Rule 4)
- Upon receipt of declaration as mentioned above sub point, the reporting limited liability partnership shall file a return in Form No. LLP BEN-2 with the Registrar. (Rule 6)

- The limited liability partnership shall maintain a register of significant beneficial owners in Form No. LLP BEN-3 and keep it open for inspection during the business hours for such reasonable time as mentioned in the rules. (Rule 7)
- Rules specified Form No. LLP BEN-4 for notice seeking information about significant beneficial owners. (Rule 8)
- Provisions related to the filing of application to the Tribunal under certain circumstances. (Rule 9)
- Provisions related to non-applicability of aforesaid rules to the certain entities. (Rule 10)

For more details: <https://www.mca.gov.in/bin/dms/getdocument?mids=pJZaasqhxL5W9F46Ukp5lw%253D%253D&type=open>

B. COMPETITION LAWS

CCI APPROVES ACQUISITION OF CONTROL/STAKE IN RELIANCE CAPITAL LIMITED BY INDUSIND INTERNATIONAL HOLDINGS LIMITED, IIHL BFSI (INDIA) LIMITED, AND AASIA ENTERPRISES LLP

The Competition Commission of India (CCI) has approved acquisition of the control/stake in Reliance Capital Limited by IndusInd International Holdings Limited, IIHL BFSI (India) Limited, and Aasia Enterprises LLP. The proposed combination relates to the acquisition of control by acquiring shares in Reliance Capital Limited (RCL/Target) by IndusInd International Holdings Limited (IIHL), IIHL BFSI (India) Limited (IIHL BFSI), and Aasia Enterprises LLP (Aasia).

For more details: <https://pib.gov.in/PressReleasePage.aspx?PRID=1991029>

C. BANKING

MASTER DIRECTION ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES

A draft Master Direction on the subject was published in October 2022 seeking public comments. Based on feedback received, the final Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023 are issued by the Reserve Bank of India.

For more details: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54571

FINANCIAL FRAUD: CENTRE GETS INTO PRO MODE TO CHECK DIGITAL CONS

The Government has started discussions on building new filters and safeguards for digital financial transactions amid rising concern over burgeoning cases of fraud. The Ministry of Finance, Reserve Bank of India (RBI), Ministry of Electronics and Information Technology (MeitY) and National Payments Corporation (NPCI) of India are examining mandatory filters above a certain monetary threshold, including One-Time Passwords (OTP) for digital payments, a top government official told ET.

For more details:

<https://economictimes.indiatimes.com/industry/banking/finance/banking/financial-fraud-centre-gets-into-pro-mode-to-check-digital-cons/articleshow/105763844.cms>

RBI TO SET UP REGULATORY FRAMEWORK TO MAKE TAKING LOANS SAFER

The RBI plans to set up a regulatory framework for digital lending apps or loan web aggregators to make taking of loans more consumer centric and transparent. The RBI governor, as part of the announcement on December 8, 2023 after the Monetary Policy review, said that concerns regarding the functioning of loan web aggregators and loan products that harm customers have come to its notice. Therefore, it proposes to set up a regulatory framework to enhance customer centricity and safety for customers.

For more details: <https://economictimes.indiatimes.com/wealth/borrow/rbi-to-set-up-regulatory-framework-to-make-taking-loans-safer/articleshow/105829912.cms>

NO ADDITIONAL AUTHENTICATION FOR UPI AUTO PAYMENTS UP TO RS. 1 LAKH FOR THESE THREE TYPES OF TRANSACTIONS

The Reserve Bank of India (RBI) has announced the proposal to hike the limits for UPI auto payments for specified transactions. As per the announcement, Additional Factor Authentication (AFA) is required when auto-payment is made via UPI. Currently, this AFA kicks in when auto-payment is made for an amount exceeding Rs. 15,000. As per the proposal this limit is being hiked to Rs. 1 lakh for mutual fund subscriptions, insurance premium subscriptions and credit card repayments only.

For more details: <https://economictimes.indiatimes.com/wealth/save/rbi-hikes-limit-for-upi-auto-payments-for-these-transactions/articleshow/105829494.cms>

D. SECURITIES LAW AND CAPITAL MARKET

CONSULTATION PAPER ON REVIEW OF PROVISIONS OF NCS REGULATIONS AND LODR REGULATIONS FOR EASE OF DOING BUSINESS AND INTRODUCTION OF FAST-TRACK PUBLIC ISSUANCE OF DEBT SECURITIES.

With a view of promoting ease of doing business, SEBI has issued consultation paper on following proposed changes:

- SEBI (Listing Obligations and Disclosure Requirements) 2015 ('LODR Regulations') and the SEBI (Issue and Listing of Non-Convertible Securities), 2021 ('NCS Regulations'); and
- introduction of concept of Fast Track public issuance and listing of debt securities and proposed norms of the same.

For more details: https://www.sebi.gov.in/reports-and-statistics/reports/dec-2023/consultation-paper-on-review-of-provisions-of-ncs-regulations-and-lodr-regulations-for-ease-of-doing-business-and-introduction-of-fast-track-public-issuance-of-debt-securities_79762.htm

E. INSOLVENCY AND BANKRUPTCY

PRE-PACK SCHEME UNDER IBC LIKELY FOR LARGE COMPANIES TOO

The government is preparing an enabling provision for a compact and largely informal bankruptcy settlement process for faster resolution for large firms under the over-arching Insolvency and Bankruptcy Code (IBC), on the lines of the one available for micro, small, and medium enterprises (MSMEs), said people with knowledge of the matter. As part of amendments to the IBC, the corporate affairs ministry will likely include the provision to extend the pre-packaged insolvency framework to large firms or introduce a similar "creditor-led resolution" mechanism for them, but only when it believes the time is right.

For more details: https://economictimes.indiatimes.com/news/economy/policy/pre-pack-scheme-under-ibc-likely-for-large-companies-too/articleshow/105886644.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

F. MISCELLANEOUS

INADEQUATELY STAMPED OR NON-STAMPED AGREEMENTS ARE NOT VOID OR UNENFORCEABLE

Hon'ble Supreme Court has recently passed a ruling inter alia holding as under:

- Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable.
- Non-stamping or inadequate stamping is a curable defect.
- An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists

For more details:

https://scourtapp.nic.in/supremecourt/2022/40099/40099_2022_1_1501_49105_Judgement_13-Dec-2023.pdf

Compliance Calendar – Upcoming Compliances

Form	Particulars	Due Date
CSR-2	Comprehensive report on corporate social responsibility (CSR) activities	31.03.2024

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