EDITORIAL

Greetings to all on behalf of the entire team of SB Partners.

In the last six months we saw numerous changes in the areas of Banking and Finance, Capital Markets and Corporate Laws, Foreign Exchange and Insolvency and Bankruptcy Laws of India.

The main highlight was the Insolvency and Bankruptcy Code Ordinance, 2018 which gave a big relief to home buyers by recognizing their status as '*financial creditors*'. This would give them due representation in the Committee of Creditors and make them an integral part of the decision-making process. The Ordinance also provided relief to Micro, Small and Medium Sector Enterprises ("**MSMEs**") by allowing the promotor of such MSMEs to bid for his enterprise undergoing Corporate Insolvency Resolution Process.

The other notable developments were in the area of Capital Markets. Securities and Exchange Board of India ("**SEBI**") amended the Alternative Investment Funds ("**AIFs**") Regulations and increased the maximum investment limit by AIFs in venture capital undertakings from Rs. 5 Crores to Rs. 10 Crores. The minimum corpus size required for an AIF has also been reduced from Rs. 10 crores to Rs. 5 crores.

In addition to the foregoing, this issue of '*Lex Novus*' also focuses on other key regulatory developments in Corporate Laws. The Ministry of Corporate Affairs ("**MCA**") amended rules relating to meetings of board of directors of the company and allowed the directors to participate through audio-visual means in a board meeting discussing matters like approval of annual financial statements etc., provided that there is a quorum present in such meeting through physical presence of directors.

We hope you find this edition of Lex Novus informative and insightful.

IN THE NEWS

RBI GUIDELINES

- **NEW CROSS BORDER MERGER REGULATIONS, 2018 NOTIFIED**

Reserve Bank of India ("**RBI**") has released the Foreign Exchange Management (*Cross Border Merger*) Regulations, 2018 ("**Regulations**") vide notification dated March 20, 2018, in order to regulate mergers, amalgamations and arrangements between Indian companies and foreign companies.

The highlights of the Regulations are as follows:

a Inbound Mergers
The Regulations define an Inbound Merger as the merger of a '*foreign company*' into an '*Indian company*'. The Regulations state that guarantees or outstanding borrowings of the foreign company which become the borrowings of the resultant Indian company shall conform, within a period of two years, to RBI norms in relation thereto.

b Outbound Mergers
The Regulations define Outbound Merger as the merger of an '*Indian company*' into a '*foreign company*'. All guarantees or outstanding borrowings of the Indian company which become the liabilities of the resultant foreign company shall be repaid as per the Scheme sanctioned by the NCLT in terms of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

c Reporting Requirements

The companies involved in the cross-border merger shall be required to furnish reports as may be prescribed by RBI, in consultation with the Government of India, from time to time.

- **NEW REGULATIONS FOR ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY BY NRIS AND OCIs**

RBI has issued the Foreign Exchange Management (*Acquisition and Transfer of Immovable Property in India*) Regulations, 2018 ("**Regulations**") vide notification dated March 26, 2018. Following are the key provisions of the Regulations:

(a) Acquisition and Transfer of Property in India by a Non-Resident Indian ("**NRI**") or an Overseas Citizen of India ("**OCI**")

An NRI and OCI may:

(i) acquire any immovable property in India other than agricultural land/ farm house/ plantation property;

(ii) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or OCI;

(iii) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of the applicable foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India;

(iv) transfer any immovable property in India to a person resident in India; and

(v) transfer any immovable property other than agricultural land/ farm house/ plantation property to an NRI or an OCI.

(b) Acquisition of Immovable Property for carrying on a Permitted Activity

A person resident outside India who has established in India a branch, office or other place of business (excluding a liaison office) for carrying on any activity in India, may:

(i) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity; and

(ii) transfer by way of mortgage to an authorized dealer the immovable property acquired in pursuance of the aforementioned clause, as a security for any borrowing;

(c) Prohibition on acquisition or transfer of Immovable Property in India by citizens of certain countries

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong, Macau or the Democratic People's Republic of Korea (DPRK) shall acquire or transfer immovable property in India, without the prior permission of the RBI. Lease transactions pertaining to immovable property, not exceeding 5 (Five) years are however permitted. This prohibition however, does not apply to an OCI.

(d) Other provisions

The Regulations also contain provisions *inter alia* regarding purchase/ sale of immovable property by Foreign Embassies/ Diplomats/ Consulate Generals, joint acquisition by spouse of an NRI or an OCI, acquisition of immovable property by a Long-Term Visa holder.

- **EXTERNAL COMMERCIAL BORROWING NORMS RELAXED**

RBI has relaxed the existing framework for External Commercial Borrowings ("**ECB**") vide circular dated April 27, 2018. The changes brought in the framework are as follows:

(a) Rationalization of all-in-cost for ECB under all tracks and Rupee Denominated Bonds:

A uniform all in cost ceiling of 450 (Four Hundred and Fifty) basis points over the benchmark rate, which in most cases is the 6 (Six)-month USD London Interbank Offered Rate (LIBOR), has been stipulated. The benchmark rate for rupee denominated bonds will be the prevailing yield of government bonds of corresponding maturity.

(b) Revisiting ECB Liability to Equity Ratio provisions

The ECB Liability to Equity Ratio for ECB raised from direct foreign equity holder under the automatic route has been increased to 7:1 (Seven : One). However, this ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or its equivalent.

(c) Expansion of Eligible Borrowers' list:

The list of Eligible Borrowers has been expanded to include the following:

(i) Housing Finance Companies, regulated by the National Housing Bank, are eligible to avail ECBs under all tracks;

(ii) Port Trusts constituted under the Major Port Trusts Act, 1963, or Indian Ports Act, 1908, may avail ECBs under all tracks; and

(iii) Companies engaged in the business of maintenance, repair and overhaul and freight forwarding may raise ECBs denominated in INR only.

(d) End-use provisions Rationalized:

Earlier, a positive end-use list was prescribed for Foreign Currency denominated ECB with Minimum Average Maturity of 3 (Three) to 5 (Five) years ("**Track I**"), while a negative end-use list was prescribed for Foreign Currency denominated ECB with Minimum Average Maturity of 10 (Ten) years ("**Track II**") and Indian Rupee denominated ECB with Minimum Average Maturity of 3 (Three) to 5 (Five) years ("**Track III**"). Currently, only a negative list for all tracks i.e. for Track I, Track II and Track III has been prescribed, which *inter alia* includes items like investment in capital markets, equity investment, working capital purposes and general corporate purposes.

• INVESTMENT NORMS RELAXED FOR FPIs

The RBI has relaxed operational aspects of FPI investments in debt vide circular dated June 15, 2018. The key changes include the following:

(a) RBI has reduced the minimum residual maturity period ("**MRM Period**") for the investment of FPIs in debt. Earlier, the required MRM Period was 3 (Three) years but RBI has relaxed this requirement and has allowed the investments by FPIs in debt with MRM Period below 1 (One) year, provided it does not exceed 20% (Twenty Percent) of the total investment of an FPI in that category, on a continuous basis.

The RBI has also clarified that all the existing securities with residual maturity of less than 1 (One) year will be brought in compliance of the 20% (Twenty Percent) limit, regardless of the maturity of the security at the time of purchase. The BI has provided a six months window to FPIs to comply with this condition.

(b) RBI has increased the aggregate cap on FPI investments in any Central Government security from 20% (Twenty Percent) to 30% (Thirty Percent) of the outstanding stock of that security.

(c) Further, RBI has restricted investments by FPIs (including related FPIs) in corporate bonds to a maximum of 50% (Fifty Percent) of any issue of a corporate bond. Also, a restriction has been introduced to limit FPI exposure to 20% (Twenty Percent) of its corporate bond portfolio to a single corporate entity (including related entities). If the already subsisting investment exceeds the above limits, no further investments are permitted until these stipulations are met. Furthermore, a newly registered FPI is required to adhere to this stipulation starting no later than 6 (Six) months from the commencement of its investments.

(d) RBI has come up with the concentration limits for investments by FPIs (including related FPIs) in debt. For long term FPIs, the prescribed limit is 15% (Fifteen Percent) of the prevailing investment limit for that category whereas for other FPIs, it is 10% (Ten Percent). The RBI has also prescribed one-time measure for investments currently exceeding the newly prescribed concentration limit.

(e) Lastly, RBI has indicated that FPIs can invest in Treasury bills. However, investment is not permitted in partly paid instruments.

INSOLVENCY AND BANKRUPTCY LAWS

- ### INSOLVENCY AND BANKRUPTCY CODE ORDINANCE, 2018

The President of India has promulgated the Insolvency and Bankruptcy Code Ordinance, 2018 ("**Ordinance**") which amends the Insolvency and Bankruptcy Code, 2016 ("**Code**"). The key changes are as follows:

(a) The Ordinance provides significant relief to '*home buyers*' by recognizing their status as '*financial creditors*'. This would give them due representation in the Committee of Creditors and make them an integral part of the decision-making process. It will also enable home buyers to initiate corporate insolvency resolution process against errant developers.

(b) With a view to encourage resolution as opposed to liquidation, the voting threshold has been brought down to 66% (Sixty-Six Percent) from 75% (Seventy-Five Percent) for all major decisions such as approval of resolution plan, extension of CIRP period, etc. Further, in order to facilitate the corporate debtor to continue as a going concern during the CIRP, the voting threshold for routine decisions has been reduced to 51% (Fifty-One Percent).

(c) The Ordinance also provides that a promotor of Micro, Small and Medium Sector Enterprises ("**MSME**") is not disqualified to bid for his enterprise undergoing Corporate Insolvency Resolution Process ("**CIRP**") provided he is not a wilful defaulter and does not attract other disqualifications related to default. Further, Central Government has been empowered to allow further exemptions or modifications with respect to the MSME Sector, if required, in public interest.

(d) The Ordinance has introduced a strict procedure for withdrawing a case after its admission under the Code. Henceforth, such withdrawal would be permissible only with the approval of the Committee of Creditors with 90% (Ninety Percent) of the voting share. Furthermore, such withdrawal will only be permissible before publication of notice inviting Expressions of Interest.

(e) The Ordinance also provides for a mechanism to allow participation of security holders, deposit holders and all other classes of financial creditors that exceed a certain number, in meetings of the Committee of Creditors, through authorized representation.

(f) The existing Section regarding eligibility for becoming a resolution applicant has also been amended to exempt financial entities from being disqualified on account of holding non-performing assets ("**NPA**"). A resolution applicant holding an NPA by virtue of acquiring it in the past under the Code has been provided with a 3 (Three)-year cooling-off period, from the date of such acquisition. In other words, such NPA shall not disqualify the resolution applicant during the currency of the 3 (Three)-year grace period. Considering the wide range of disqualifications contained in this section, the Ordinance provides that the resolution applicant shall submit an affidavit certifying its eligibility to bid. The Ordinance also provides for a minimum 1 (One)-year grace period for the successful resolution applicant to fulfil various statutory obligations required under different laws.

(g) The other changes brought about by the Ordinance include non-applicability of moratorium period to enforcement of guarantee, introducing the requirement of special resolution for corporate debtors to themselves trigger insolvency resolution under the Code, liberalizing terms and conditions of interim finance to facilitate financing of corporate debtor during CIRP period, and giving the IBBI a specific development role along with powers to levy fees in respect of services rendered.

- ### INSOLVENCY RESOLUTION PROCESS AND LIQUIDATION PROCESS FOR CORPORATE PERSONS AMENDED

(a) IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018, dated February 06,

2018 and IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018 dated February 07, 2018 (collectively referred to as the "**Amendment Regulations**")

The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 ("**Principal Regulations**") have been amended as follows:

(i) The definition of "*evaluation matrix*" has been added to the Principal Regulations. Evaluation Matrix means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval. Further, as per the Amendment Regulations, a Resolution Professional is required to issue an invitation including an evaluation matrix to the prospective applicants to submit resolutions plans;

(ii) The definition of "*liquidation value*" has been amended to mean the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

(iii) The provision regarding determination of liquidation value by a registered valuer has now been substituted by determination of "*fair value and liquidation value*" which shall be computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor.

(iv) The ambit of matters covered under the Resolution Plan has been made more inclusive. The Resolution Plan, after the amendment, shall also contain the proposal for changes in portfolio of goods or services produced or rendered by the corporate debtor as well as the proposal for changes in technology used by the corporate debtor.

(v) The Resolution Professional is now required to submit the resolution plan approved by the committee to the Adjudicating Authority, at least 15 (Fifteen) days before the expiry of the maximum period permitted for the completion of the corporate insolvency resolution process or fast track corporate insolvency resolution process, as the case may be.

(b) IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018:

The second amendment to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 brought the following changes:

(i) A person who is not an employee or partner or proprietor of a firm of auditors or secretarial auditors shall be considered independent of the corporate debtor and shall therefore be considered eligible for appointment as a resolution professional;

(ii) After the amendment, it is the duty of the interim resolution professional or the resolution professional, as the case may be, to disclose item wise insolvency resolution process costs in such manner as may be required by the Insolvency and Bankruptcy Board of India ("**IBBI**").

(iii) The amendment has added a compulsion on the resolution professional to identify the prospective resolution applicants on or before the 105th (One Hundred and Fifth) day from the insolvency commencement date.

(c) IBBI (Liquidation Process) (Amendment) Regulations, 2018:

The regulations relating to liquidation process have been amended to bring the following changes:

(i) The definition of "liquidation cost" has been added which includes the fees paid to the liquidator, remuneration paid by the liquidator, cost incurred by the liquidator for verification and determination of claims, and interest on interim finance for a period of 12 (Twelve) months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower.

(ii) A person who is not an employee or partner or proprietor of a firm of auditors or secretarial auditors shall be

considered independent of the corporate debtor and shall therefore be considered eligible for appointment as a liquidator.

(iii) Amongst other powers conferred on the liquidator, pursuant to the amendment, the liquidator can sell the corporate debtor as a going concern.

CAPITAL MARKETS

• AMENDMENTS TO SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

SEBI has amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**Regulations**") twice via SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018, dated February 12, 2018 ("**First Amendment**") and SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018, dated May 31, 2018 ("**Second Amendment**").

By the First Amendment, listed issuers are no longer required to comply with the minimum public shareholding norms. Prior to the amendment, a listed issuer was obligated to comply with minimum public shareholding norms to make a qualified institutional placement.

Pursuant to the Second Amendment, any preferential issue of equity shares made in terms of the rehabilitation scheme approved by the relevant adjudicating authorities under applicable insolvency laws, is exempt to comply with the Regulations. However, the lock-in provisions stated in the Regulations, would continue to apply to such preferential issue(s).

• SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 AMENDED

SEBI amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Principal Regulations**") by SEBI (Listing Obligations and Disclosure Requirements) Amendment Regulations dated May 09, 2018, SEBI (Listing Obligations and Disclosure Requirements) Third Amendment Regulations dated May 31, 2018 and SEBI (Listing Obligations and Disclosure Requirements) Fourth Amendment Regulations dated June 08, 2018 (collectively referred as "**Amendment Regulations**"). The key changes are as follows.

(a) The definition of '*related party*' has been amended to include any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% (Twenty Percent) or more of shareholding in the listed entity in its ambit.

(b) It has been made compulsory for the board of directors of the top 500 (Five Hundred) listed entities to have at least one independent woman director by April 1, 2019 and the board of directors of the top 1000 (One Thousand) listed entities to have at least one independent woman director by April 1, 2020.

(c) Following provisions regarding maximum number of directorships which can be held by a person are added in the regulations via this amendment.

(i) A person shall not be a director in more than 8 (Eight) listed entities with effect from April 1, 2019 and in not more than 7 (Seven) listed entities with effect from April 1, 2020 with a proviso that a person shall not serve as an independent director in more than 7 (Seven) listed entities.

(ii) Notwithstanding the above, any person who is serving as a whole-time director / managing director in any listed entity shall serve as an independent director in not more than 3 (Three) listed entities.

It is to be noted that for the purpose of this provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

(d) A provision for "*Secretarial Audit*" has been added, under which 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.

(e) The provisions regarding the composition and working of board of directors as mentioned in the Principal Regulations will not be applicable to a listed entity which is undergoing corporate insolvency resolution process under the Code. Similarly, the provisions regarding audit committee, nomination and remuneration committee, stakeholders and relationship committee and risk management committee will also not be applicable to such entities.

(f) Moreover, for the transactions which may amount to related party transactions but which are approved in the resolution plan by the adjudicating authority under the Code, no approval of the shareholders is required to be taken through resolution for such transactions.

(g) A listed entity which is undergoing corporate insolvency resolution process under the Code is also exempted from complying with the provisions regarding selling or disposing of shares or assets, replacement of promotor, reclassification of promotors as public shareholders and increase in the level of public shareholding mentioned in the Regulations provided that such changes are pursuant to the resolution plan approved by the adjudicating authority under the Code.

(h) A proviso has been added to the regulation dealing with transfer, transmission or transposition of securities. The proviso says that except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in dematerialized form with a depository.

- **REITs AND InvITs PERMITTED TO ISSUE DEBT SECURITIES**

SEBI (Real Estate Investment Trusts) Regulations, 2014 ("**REIT Regulations**") and SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations**") were amended vide notifications dated December 15, 2017. The said amendments, inter-alia, clarified that REITs and InvITs can issue debt securities.

Subsequently, SEBI issued a circular permitting Real Estate Investment Trusts ("**REITs**") and Infrastructure Investment Trusts ("**InvITs**") to issue debt securities subject to the following conditions and compliance of SEBI (Issue and Listing of Debt Securities Regulations), 2008 ("**ILDS Regulations**"):

(a) Unlike other debt securities, such debt securities can be issued for providing loan or acquisition of shares of any person who is part of the same group or who is under the same management as that of the REITs/ InvITs.

(b) Unlike other issuers, it is not necessary for REITs/ InvITs to create '*debenture redemption reserve*' to secure the redemption of the debt securities.

(c) The compliances required to be made under the Companies Act, 2013 or any filing to be made to Registrar of Companies in terms of the ILDS Regulations, shall not apply to REITs/InvITs for issuance of debt securities unless specifically provided in the circular.

(c) All other provisions of ILDS Regulations shall apply to REITs/ InvITs. In case of any conflict between ILDS Regulations and REIT Regulations and/or InvIT Regulations or circulars issued thereunder, the latter shall prevail.

Further, REITs/ InvITs shall be required to appoint 1 (One) or more debenture trustee(s) registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993 prior to issue of any debt security.

Any secured debt securities issued by REITs/ InvITs have to be secured by the creation of a charge on the assets of the REIT/ InvIT or holding company or SPV, having a value which is sufficient to repay the principal amount together with interest thereon.

- **SEBI (PUBLIC OFFER AND LISTING OF SECURITISED DEBT INSTRUMENTS) (AMENDMENT) REGULATIONS, 2018**

SEBI has released the SEBI (Public Offer and Listing of Securitised Debt Instruments) (Amendment) Regulations, 2018 ("**Amendment Regulations**"), vide notification dated June 26, 2018, by virtue of which SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 ("**Principal Regulations**") have been amended.

Some of the key amendments introduced by the Amendment Regulations are as follows:

(a) The title of the regulations has been substituted and the regulation will now be called 'SEBI (*Issue and Listing of Securitised Debt Instruments and Security Receipts*) Regulations, 2008'.

(b) The definitions of '*asset reconstruction company*', '*issuer*', '*offer for sale*', '*private placement offer*', '*qualified buyer*', '*security receipt*', '*valuer*' have been introduced.

(c) The definitions of '*investor*', '*issue*', '*offer document*', '*scheme*' and '*sponsor*' have been substituted.

(d) Chapter VII A has been introduced in the Principal Regulations which enumerates the provisions of '*Issuance and Listing of Security Receipts Eligibility*'.

(e) An Issuer proposing to issue and list security receipts or list its already issued security receipts is required to comply with the provisions of Chapter VII A.

(f) Security receipts proposed to be listed are required to comply with the provisions of RBI and also comply with the provisions pertaining to issue of security receipts. The Security Receipts should be issued on a private placement basis.

(g) Chapter VII A also prescribes the provisions for sale of security receipts by the existing holders, conditions for listing of security receipts, offer document, valuation, rating and net asset value disclosure and trading of security receipts.

(h) Schedule VA has been introduced in the Principal Regulations which prescribes the provisions for 'Disclosures to be made in the Offer Document' which states that the offer document should contain all material information which shall be true and adequate so as to enable the investors to make informed decisions on the investment in the issue. The disclosures will be part of the objects of the issue in the offer document and should include the details prescribed in the Schedule VA.

- **AIF REGULATIONS AMENDED**

SEBI has amended the SEBI (Alternative Investment Funds) Regulations, 2012 ("**Regulations**") by releasing the SEBI (Alternative Investment Funds) (Amendment) Regulations, 2018 ("**Amendment**") on May 31, 2018.

Under the Amendment, SEBI has increased the maximum investment limit by Alternative Investment Funds ("**AIFs**") in venture capital undertakings to Rs. 10 (Ten) crores from Rs. 5 (Five) crores. However, the minimum investment by an AIF will continue to be Rs. 25 (Twenty-Five) lakhs only.

Further, SEBI has also reduced the minimum corpus size required for an AIF to Rs. 5 (Five) crores. Besides, SEBI has raised the maximum period of accepting funds from an AIF to 5 (Five) years, from 3 (Three) years. This move will provide angel funds more time to identify opportunities and invest in venture capital firms.

The requirement of filing of scheme memorandum with SEBI by AIFs is replaced with the requirement of filing term sheet containing material information, as specified by SEBI within 10 (Ten) days of launching the scheme.

The amendment also clarified that the provisions of the Companies Act will apply to an AIF, if it is formed as a company.

CORPORATE LAWS

- **KEY AMENDMENTS TO VARIOUS RULES UNDER COMPANIES ACT, 2013**

The Ministry of Corporate Affairs ("**MCA**") has amended various rules under the Companies Act, 2013, *inter alia*, in relation to management and administration of company, meetings and powers of board of directors of company, prospectus and allotment of securities by the company, and shares and debentures issued by the company. Some of the notable amendments are as follows.

(a) The Companies (Share Capital and Debentures) Amendment Rules, 2018 dated April 10, 2018

Under the erstwhile Rule 5 of the Companies (Share Capital and Debentures) Rules, 2014, every share certificate was required to be issued under the seal, if any, of the company, in the presence of, and signed by 2 (Two) directors authorized by the board or committee of the company and the secretary or any person authorised by the board. Where the company did not have a common seal, the share certificate was required to be signed by 2 (Two) directors or by a director and the company secretary, wherever the company had appointed a company secretary.

Pursuant to the amendment, every share certificate is required to specify the shares to which it relates and the amount paid-up thereon and is required to be signed by 2 (Two) directors or by a director and the company secretary, wherever the company has appointed a company secretary. However, where the company has a common seal, it is required to be affixed in the presence of persons required to sign the certificate.

(b) The Companies (Meetings of Board and its Powers) Amendment Rules, 2018 dated May 07, 2018

(i) Under the erstwhile Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 ("**Rules**"), certain matters like approval of annual financial statements, approval of board's report etc. could not be dealt with in any meeting held through video conferencing or other audio-visual means. The amendment allows directors to participate in such meetings through video conferencing or other audio-visual means if there is a quorum present in such meeting through physical presence of directors.

(ii) Every listed public company is required to constitute an Audit Committee and a Nomination and Remuneration Committee pursuant to the amendment.

(iii) The requirement of passing a special resolution under Section 186 of the Companies Act, 2013, dealing with loans given and investment made by the Company read with Rule 13 of the Rules within 1 (One) year from the date of notification of the Section has been done away with.

(c) The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018 dated May 07, 2018

MCA, vide amendment to the Companies (Prospectus and Allotment of Securities) Rules, 2014, has removed rules 3, 4, 5, and 6. The omitted rules dealt with information to be stated in the prospectus, reports to be set out in the prospectus, other matters and reports which are to be set out in the prospectus and the period for which the above-mentioned information was required to be provided.

(d) The Companies Share Capital and Debentures (Second Amendment) Rules, 2018 dated May 07, 2018;

As per Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014 ("**Rules**"), a company other than a listed company, which is not required to comply with the SEBI Regulations on sweat equity shares, was not allowed to issue sweat equity shares to its employees at a discount or for consideration other than cash unless the issue was authorised by a special resolution. An employee for the purpose of this rule was defined to be a permanent employee of the company who has been working in India or outside India, for at least last 1 (One) year.

The amendment to the Rules has removed the phrase "**for at least last one year**" from the definition of employee and has extended the ambit of this rule to employees of the company who have been in the company for a period of less than 1 (One) year.

(e) The Companies (Management and Administration) Second Amendment Rules, 2018 dated June 13, 2018

MCA, vide amendment to the Companies (Management and Administration) Rules, 2014, has removed rules 13, 15(6) and explanation after clause (ix) of Rule 18(3). The omitted entries dealt with provisions regarding returns to be filed

in case of change in shareholding position of promoters and top 10 (Ten) shareholders, maintaining and keeping of register of members etc. and notice of extra ordinary general meeting.

The amendment has also substituted the proviso to rule 22(16) which dealt with the procedure to be followed for conducting business through postal ballot. The substituted provision states that any item of business, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means as per applicable laws.

- **MCA NOTIFIES VARIOUS SECTIONS OF COMPANIES (AMENDMENT) ACT, 2017**

MCA notified Section 21(iii), 22, 24, 25, 26 and 71 of the Companies (Amendment) Act, 2017 ("**Amendment Act**") vide notifications dated June 13, 2018 and June 21, 2018. The notified provisions deal with subjects like meaning of beneficial interest in shares, register of significant beneficial owners in a company, place of keeping and inspection of registers, returns, etc., holding of annual general meeting by an unlisted company at any place in India and appointment of inspector(s) to investigate and report on matters relating to the company, and its membership for determining the true persons who have/ had beneficial interest in shares of a company or who are/ have been beneficial owners/ significant beneficial owners of a company.

The notification has also notified the omission of Section 93 containing compliance of filing returns with the registrar of companies in case of change in the stake of promoters

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