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Security clearance to be given at various stages of becoming director!!

A. Introduction:

Last month, the Ministry of Corporate Affairs (MCA) had plugged in various modes of making investment in Indian companies by a citizen of / entity belonging to / beneficial owner of any entity being from a country sharing land border with India, by way of amending the provisions of new issuances of securities / transfer of securities of existing Indian companies and new incorporations. These persons could invest in Indian companies only after taking Government approval under FEMA.

B. Security clearance for proposed directors:

MCA has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 **with effect from 1st June 2022**, according to which in case **any person** who is a **national of a country sharing land borders with India** is proposed to be appointed as a director in any existing or yet to be incorporated company, he needs **to obtain security clearance from the Ministry of Home Affairs, Government of India before applying for DIN and also before giving consent** for getting appointed in any Indian company. This approval sought from the Ministry of Home Affairs **needs to be attached below mentioned documents**:-

- DIR-2 - Consent given before appointment as director
- DIR-3 – e-form filed with MCA applying for DIN
- DIR-12 – e-form filed with MCA to intimate the appointment of director in any existing company
- SPICe+ (INC-32) – web form filed at the time of incorporation of any new company

In case the person proposed to be appointed as Director is an Indian national OR a national of any country other than those sharing land borders with India, then in each of the above-mentioned documents, he needs to give a declaration that he is not required to obtain the above-mentioned security clearance.

C. Whether security clearance needed at the time of re-appointment also?

If an individual who is a national of any country sharing land borders with India is proposed to be re-appointed in any company, then he needs to give consent for re-appointment, in format as per Form DIR-2. In such case, as per the revised format of DIR-2, he will need to comment about the security clearance and attach the clearance obtained from Ministry of Home Affairs.

Hence this requirement **will also be applicable** to all such individuals who are nationals of any country sharing land borders with India, and who have already obtained DIN and are **already serving on the Board of Directors of Indian companies** before the date of this amendment, whenever they offer themselves for **appointment as director in any other company or even for re-appointment in their existing company**. Hence, it is **recommended** that all such directors who are already serving on the Board of Directors of Indian companies before the date of this amendment should also **apply for security clearance** from the Ministry of Home Affairs, Government of India, **in order to avoid delays** whenever they are proposed to be appointed in any other company / re-appointed in an existing company.

By

Vrushali Bhavle Athavale - vrushalibhave@mmjc.in

Deepti Jambigi Joshi - deeptijambigi@mmjc.in

Independent director missed to clear the test - MCA gives another chance!!

A. Introduction:

In October 2019, the Ministry of Corporate Affairs (MCA) had introduced the Databank of Independent Directors maintained by Indian Institute of Corporate Affairs (IICA). Under that, every individual who has been appointed as an Independent Director in a Company or who is proposed to get appointed as Independent Director must register themselves for inclusion in the Independent Directors' database. Further, every Individual whose name is included in the databank is required to pass an online proficiency self-assessment test ("test") within 2 years from the date of inclusion of his name in the databank (unless exempted), failing which his name shall stand removed from the databank.

B. Consequence of non-clearance of exam:

If any Independent Director could not appear for the said test in that prescribed time period of 2 years due to any reason or could not score 60% which is the minimum passing criteria mentioned to pass such test, then such person's name was removed from the Databank. There was no chance that he could start afresh and appear for the test or there was no other option of applying for an extension for appearing for the test.

C. New chance given by way of amendment in Rules:

The MCA amended Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014 to rectify this position. As per amended rules, any individual whose name has been removed from the databank, may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the following conditions:

- (a) Name will be shown in a separate restored category for a period of one year from the date of restoration within which he shall be required to pass test and thereafter his name will be included in the databank
- (b) If such person fails the test within the said period of one year, his name shall be removed from the databank and he shall be required to apply afresh for inclusion of his name in the databank.

D. Can such person continue as independent director during interim period?

As per Rule 6(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014, one of the compliance to be done by a person proposed to be appointed as an independent director is to register his name in the said databank and take steps from time to time to ensure that his name remains in the databank till he continues to hold the office of an independent director in any company.

If due to non-clearance of the said test, if an independent director's name is removed from the databank, then till the time he clears the test, whether he can be said to have met the eligibility conditions required to be met by an independent director under Section 149(6)(f) and whether he can continue to hold the office of independent director?

The matter of continuation of such person as an independent director remains a debatable question and we may find answers from the judiciary in the years to come in future!!

By

Rutuja Umadikar - rutujaumadikar@mmjc.in

Deepti Jambigi Joshi - deeptijambigi@mmjc.in



CSR-2 to continue as a separate web form for FY 2021-22 also!!

A. Introduction:

There have been many changes in Corporate Social Responsibility (CSR) related provisions and the Ministry of Corporate Affairs (MCA) has been continuously working on tightening of CSR related disclosures. One such disclosure is the reporting of CSR activities done by a company in previous year in a web-form CSR-2, which is to be filed post the filing of financial statements with MCA. In this article, we shall look into the relaxation in time frame for filing of web form CSR-2 for FY 2020-21 and the manner of filing it for FY 2021-22.

B. Filing of Form CSR-2 for FY 2020-21:

- Rule 12 of the Companies (Accounts) Rules, 2014 prescribes the manner of filing financial statements with Registrar of Companies (RoC) as e-Form AOC-4 / AOC-4 CFS / AOC-4 XBRL / AOC-4 NBFC (Ind AS) / AOC-4 CFS NBFC (Ind AS) .
- Rule 12(1B) was inserted to prescribe the filing of an additional e-Form CSR-2 as an addendum to the above-mentioned applicable e-Form AOC-4 in the case of companies to whom CSR provisions under Section 135 of Companies Act, 2013 are applicable.
- It was also prescribed that **only for the F.Y. 2020-21, CSR-2 shall be separately filed as a web form.**
- The date **for filing** Form **CSR-2** for **F.Y. 2020-21** was originally till 31st March 2022 which was is extended to 31st May 2022 and now extended till **30th June 2022** vide MCA notification dated 31st May 2022.

C. Filing of Form CSR-2 for FY 2021-22:

Since Form CSR-2 was introduced for the first time for FY 2020-21 and it was to be filed as a separate web form post filing of AOC-4, there were many ambiguities with regard to the contents of this form.

E.g.: whether the financial figures were to be mentioned for the previous year FY 2019-20 which determined the applicability of CSR for FY 2020-21?

whether the SRN of AOC-4 to be mentioned in this form should be corresponding to FY 2019-20 (if figures of FY 2019-20 are mentioned) OR SRN of AOC-4 corresponding to FY 2020-21 was to be mentioned (as this web form was intended to be addendum to this AOC-4)?

Now, vide MCA notification dated 31st May 2022, Rule 12(1B) of the Companies (Accounts) Rules, 2014 has been amended to the effect that the Form CSR-2 for FY 2021-22 also needs to be as a separate form post filing of Form AOC-4 for FY 2021-22. Hence the above ambiguities will continue for FY 2021-22 also.

It is nowhere mentioned that within how many days after filing of AOC-4 for FY 2021-22 does the web form CSR-2 for FY 2021-22 be filed with MCA? Few companies would have already filed their AOC-4 for FY 2021-22. Hence, it is recommended that as soon as AOC-4 is filed, the relevant web form CSR-2 for FY 2021-22 be also filed without waiting for the last date to be announced by MCA.

Further, the help-kit of CSR-2 states that "*Filing of this form is allowed only for the financial years starting on or after 1st April 2020*" Hence for companies having calendar year as financial year, the web form CSR-2 will have to be filed for the first time for the financial year ended on 31 December 2021.

By

Vrushali Bhav Athavale - vrushalibhave@mmjc.in

Deepti Jambigi Joshi - deeptijambigi@mmjc.in



Can CIRP be initiated on the basis unpaid LTC and leave encashment dues?

In the matter of Kishore K Lonkar- Appellant/ex-employeev/s Hindustan Antibiotics Ltd Respondent/Corporate Debtor at National Company Law Appellate Tribunal (NCLAT) Mumbai in the order dated 10th May,2022.

Facts of the Case:

- The Kishore K Lonkar - Appellant worked as an employee of the Hindustan Antibiotics Ltd Corporate Debtor (CD) and attained superannuation on 31October,2016 and an amount of Rs.16.80 lakhs which included Gratuity, LeaveEncashment (EL) andLeave Travel Concession (LTC) which were due and payable to the appellant by the CD but the same was not paid.
- Appellant served a demand notice u/s 8 of the Insolvency and Bankruptcy Code,2016 (IBC)but CD failed to clear the Operational Debt.
- Thereafter, the appellant filed petition u/s 9of IBC to initiate Corporate Insolvency Resolution Process (CIRP) against the CD which was dismissed by National Company Law Tribunal, Mumbai (NCLT) on the following grounds:
 - That the above referred amount were due on account of superannuation that amounts to service benefits and not services and do not qualify under the definition Operational Debt.
 - Service benefits accrues out of rendering service but the intention and object of code is not recovery and is only resolution
 - The words goods and services used in the definition of Operational Debt cannot be stretched to service benefits arising out of service. The words goods and services to be interpreted to mean those that are necessary to keep the Company as a going concern. The same is also evident from exempting goods and services from the purview of moratorium declared under section 13 of the IBC.
- The appellant being an ex-employee of the CD filed the appeal u/s 61 of the before NCLAT against the order dated 6September,2021passed by NCLT Mumbai wherein the petition filed by the appellant u/s 9 of IBC against the CD was dismissed.

Arguments of the Appellant:

- It was argued that the Gratuity, EL and LTC are all components of the salary and constitute "salary" and therefore, falls under the ambit of the definition of Operational Debt u/s 5(21) of the IBC.
- Even if the payment of gratuity is to be adjudicated by the Regional Commissioner, the dues of LTC,EL encashment are still due and payable to the Appellant.
- Apart from 'Gratuity' there were dues pertaining to LTC and LE which construes debtand default therefore the ratio of the Hon'ble Supreme Court in 'M/s. Innovative Industries Ltd.' Vs. 'ICICI &Anr', with respect to debt and 'default is applicable to the facts of this case.

Arguments of the Respondent:

- It was argued that Gratuity disputes has to be decided by the Regional Labour Commissioner u/s 14 of the Payment of Gratuity Act,1972.

- It was further contended that the gratuity has already been paid to the appellant but the question of whether interest is to be paid or not, is yet to be decided by the Regional Labour Commissioner and that this Tribunal does not have jurisdiction to entertain such disputes.

Held:

- NCLAT upheld the decision of NCLT wherein it was noted u/s 5(21) of IBC - any claim is included in respect of the provision of Goods and Services including employment.
- NCLAT further observed that the amount claimed by the Appellant was not towards any services rendered by him during his employment with the CD but all these payments were accrued after the cessation of employment. Though service benefits like LTC accrue on account of service rendered during the period of employment the scope and objective of the Code is simply not just for recovery of dues but resolution of Companies meant for, maximisation of the value of assets, to promote entrepreneurship availability of Credit and balance all interest of the stakeholders. Employee and workmen do constitute major part of stakeholders.

NCLAT also highlighted that seeking to initiate CIRP on the ground that LTC and EL Encashment' has not been paid, which fall within the ambit of service benefits/welfare benefits cannot be said to be the intent and objective of the Code.

By

Esha Tandon eshatandon@mmjc.in

Aarti Ahuja Jewani artiahuja@mmjc.in



Series on closure options for Companies

Introduction-

Having regards to as many as 9 bare minimum laws applicable to incorporate a Company in India, it is no wonder how many closure options would be available under realm of corporate laws. Like we analyse, deliberate, process various options to incorporate an entity such as Limited Liability Partnership Firm, a Private/Public/Non-Profit/Producer/One Person Company, it would be equally facilitating to have known various closure options and what each option has to offer in terms of time, money, liability and otherwise.

In India, there are various options available to close down the business affairs of the Company. Voluntary Liquidation ("VL") under S. 59 of Insolvency and Bankruptcy Code, 2016("Code") being one of the most finetuned closure option, we will compare each such closure option with VL in series of articles.

Too begin with, let us compare the most common and compared option for mid-size and small size Companies i.e. strike-off under section 248 of Companies Act, 2013 ("CA 2013").

Comparison-

VL under S. 59 of Code Vs Strike off under CA 2013

	VL under S 59 of Code	Strike Off under S 248 of CA 2013
Indemnity by Board	<u>Majority of Directors</u> are required to provide Declaration of Solvency effectively for dissolution of Company.	<u>All the Directors</u> are required to provide Indemnity Bond giving lifetime Indemnity to all lawful future claimants.
Extinguishment of Liabilities	Company is not mandatorily required to extinguish its liabilities for initiating the process as long as solvency position is maintained.	Company is required to extinguish all its liabilities including contingent liabilities, if any, before initiating strike-off process.
No Objection Certificate (NOC)	It is advisable to obtain NOC from Tax Authorities having considered the final closure of Liquidation bank account etc. during the process.	NOC is not required to be obtained by the Company. However, all the liabilities are to be settled before making application in the context of lifetime Indemnity Bond by Directors.

Prior approval of Creditors	Prior approval of 2/3rd of creditors is mandatory	Approval of Creditors is not required as Company is required to extinguish all its liabilities prior to commencement of process.
Procedural Requirement	Company is required to adopt process such as opening of separate liquidation bank account, Newspaper Publication, Notices to authorities etc.	There is no such requirement under Strike off.
Timeline	VLP can be completed within a period of 12 months subject to factors such as obtaining NOC from tax department, settlement of claims and other contractual liabilities, if any etc.	Strike off can be completed within a period of 6-8 months
Restoration	Revival may not be possible once order of dissolution is issued by adjudicating authority.	Any person aggrieved by the order of ROC Companies has power to file appeal to tribunal within a period of 3 years. Consequently, Company can be restored if so ordered by Tribunal.

By

Madhura Godbole madhuragodbole@mmjc.in

SEBI issues SOP for dispute resolution through stock exchange arbitration process

I. Introduction:

We had in our earlier insight dt: April 25, 2022 had covered a newsletter on SEBI circular dt: April 8, 2022 titled "SEBI sets the ball rolling with respect to dispute resolution by listed entities through stock exchange arbitration mechanism". In that circular, SEBI had advised the stock exchanges to put in place Standard Operating Procedures ('SOPs') for operationalizing the resolution of disputes listed in that circular. In furtherance to and in partial modification to that Circular, SEBI has now vide its circular dt: May 30, 2022 ('SEBI SOP Circular'), brought the SOP in this regard for resolving of investor grievances.

II. Applicability of the SOP for arbitration mechanism:

These Standard Operating Procedures ('SOP') are effective from June 1, 2022.

Provisions of this circular are applicable to Listed Companies / RTAs offering services on behalf of listed companies. SEBI has further stated that in case of claims or disputes arising between the shareholder(s)/ investor(s) of listed companies and the RTAs, the RTAs shall be subjected to the stock exchange arbitration mechanism.

In all such instances, the listed company shall necessarily be added as a party. Further SEBI has stated that Arbitration Mechanism shall be initiated post exhausting all actions for resolution of complaints including those received through SCORES Portal. The Arbitration reference shall be filed with the Stock Exchange where the initial complaint has been addressed.

III. Prescribed SOP:

SEBI vide this SEBI SOP Circular has standardised the process of referring the investor grievance to arbitration. This SOP provides timeline for filing and redressal of grievance at each level.

SEBI has stated that disputes pertaining to or emanating from investor service requests such as transfer/transmission of shares, demat/remat, issue of duplicate shares, transposition of holders, investor entitlements like corporate benefits, dividend, bonus shares, rights entitlements, credit of securities in public issue, interest /coupon payments on securities and delay in processing/wrongful rejection of aforesaid investor service requests **may be considered for arbitration.**

Following are the features of this circular from the context of listed entities:

1. Maintenance of panel of arbitrators, code of conduct for arbitrators, process of appointment of arbitrators and the process of appointment of appellate panel of arbitrators shall be done by the stock exchanges as per current norms of arbitration for other regulations.
2. The arbitration proceedings shall be concluded by way of issue of an arbitral award within four months from the date of appointment of arbitrator(s). This time can be extended by Stock exchanges by upto two months after giving reasons.
3. Fees and number of arbitrators:

Value of claim	No. of arbitrators	Fees per arbitrator
Claim upto Rs 25 lakh	One – to be appointed by stock exchange	Rs. 18,000/- plus stamp duty, service charge etc. as applicable per case ¹
Claim above Rs 25 lakh ²	Three –to be appointed by stock exchange	Rs. 18,000/- plus stamp duty, service charge etc. as applicable per case
Appellate arbitration – Where Appellant is company		Rs 54,000 plus stamp duty, service charge etc. This fee is to be paid by Appellant only and it is non-refundable.
Appellate Arbitration – Where appellant is shareholder and Claim is upto Rs 10 lakhs		Rs 30,000 plus stamp duty, service charge etc. ³
Appellate Arbitration – Where appellant is shareholder and Claim is above Rs 10 lakhs		Rs 30,000 plus stamp duty, service charge etc.

4. The arbitration and appellate arbitration shall be conducted at the regional centre of the stock exchange nearest to the shareholder(s)/investor(s). Parties will have option to appear in physical or online.
5. No hearing shall be required to be given to the parties involved in the dispute if the value of the claim or dispute is upto Rs. 25,000/-. In such a case, the arbitrator(s) shall proceed to decide the matter on the basis of documents submitted by the parties concerned. If the value of claim or dispute is more than Rs. 25,000/-, the arbitrator(s) shall offer to hear the parties to the dispute unless parties concerned waive their right for such hearing in writing.
6. Any party aggrieved by an arbitral award may file an appeal before the appellate panel of arbitrators of the stock exchange against such award within one month from the date of receipt of arbitral award by the aggrieved party
7. The appeal against an arbitral award shall be disposed of by way of issue of an appellate arbitral award within three months from the date of appointment of appellate panel
8. In case the parties wish to settle/withdraw the dispute, the arbitrator(s)/ appellate panel may pass an award on consent terms
9. In case the parties wish to settle/withdraw the dispute, the arbitrator(s)/ appellate panel may pass an award on consent terms

¹Fees plus stamp duty, service charge etc. as applicable shall be collected from RTAs/Listed companies and shareholder(s)/investor(s) separately by the Exchange, for defraying the cost of arbitration. Fees and stamp duty paid by the party in whose favour the award is passed would be refunded and against whom order is passed will be utilised towards payment of arbitration fees.

²In case the value of claim is less than Rs 10 lakhs then cost of arbitration with respect to shareholder shall be borne by exchange.

³These expenses shall be borne by stock exchanges and investor protection fund of stock exchanges equally.

10. The stock exchanges shall put in place a framework for imposition of penalty on Listed Companies in cases where Listed Companies/RTAs do not honor the arbitral award.
11. The stock exchanges will disclose on its website, details of disposal of arbitration proceedings and details of arbitrator-wise disposal of arbitration proceedings as per the formats prescribed by SEBI for already available arbitration mechanism.
12. Where the award is against the Listed Company/RTA, the Listed Company/RTA shall update the status of compliance with the arbitration award promptly to the exchange.
13. Listed entities have to place a copy of this circular on its website and also bring this circular to the notice of their constituents / investors / shareholders.

IV. Already existing SOP for taking action against listed entities for non-redressal of investor grievances:

It needs to be highlighted here that already there is a SEBI circular dt: August 13, 2020 wherein a detailed SOP is prescribed for actions to be taken against listed entities for failure to redress investor grievances. So it will be interesting to see that at what stage the investor grievance will be referred to arbitration? Further after referring the matter to arbitration, it needs to be seen whether designated stock exchanges (mentioned in circular dt August 13, 2020) will continue to levy fines y on the companies which have not redressed investor grievance?

The provisions of SEBI SOP Circular for stock exchange arbitration mechanism have become effective from June 1, 2022. So which cases are dealt under this mechanism, at which stage are they referred and what shall be the impact on the already existing mechanism for taking action against listed entities for non-redressal of investor grievances can be seen in the near future !!

Copy of the circular: <https://www.sebi.gov.in/legal/circulars/may-2022/standard-operating-procedures-sop-for-dispute-resolution-under-the-stock-exchange-arbitration-mechanism-for-disputes-between-a-listed-company-and-or-registrars-to-an-issue-and-share-transfer-agents-59345.html>

By

Vallabh Joshi vallabhjoshi@mmjc.in
Deepti Jambigi Joshi deeptijambigi@mmjc.in



SEBI begins to put an end to issue of duplicate share certificate dilemma

I. Introduction:

Issue of duplicate share certificate(s) has been a critical issue for all listed companies for quite some time. Regulation 39 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI LODR'] talks about timelines and disclosure with regard to issue of duplicate share certificates. Till now **SEBI Circular no. 1 (2000-2001) dt: May 9, 2001 provided for documentation and procedure required in case of issue of duplicate share certificate(s)**. Now vide its **SEBI Circular dt: May 25, 2022 changed the documentation required** for issue of Letter of Confirmation on receipt of request of issue of duplicate securities certificate(s). The provisions of this SEBI Circular dt: May 25, 2022 is in supersession of SEBI RTI Circular No. 1 (2000-2001) dated May 9, 2001 and are effective with effect from May 25, 2022.

II. Documentation required before this Circular:

Till now as per SEBI Circular dt: May 9, 2001 for issue of duplicate share certificate following documents were required:

- a. Indemnity for issue of duplicate Share Certificate/s in the name of the person, in whose name the duplicates are being issued that he has not sold / disposed off the involved shares or acted in any manner by which any interest of third party would have been created, as per the applicable Annexure as detailed here under –

Annexure 8 – Indemnity by registered holder

Annexure 8A – General purpose indemnity

Annexure 9 – Indemnity by unregistered transferee/holder in due course

Annexure 10 – Affidavit by transferee

Annexure 11 – Indemnity by transferee for issue of duplicates without producing transfer deeds.

- b. Final Court order for issue of duplicate shares required in case of a third party stop transfer ('third party' does not include genuine bonafide transferee).

Further Company/ STA had to inform all the Stock Exchanges where the shares are traded regarding the loss of shares in lieu of which duplicate shares were being issued, if not already informed. Also listed entity had to issue an advertisement in a widely circulated newspaper if the value of the shares was greater than Rs 10,000.

III. Revised Documentation:

Now SEBI vide its circular dt: May 25, 2022 has revised the documentation for issue of Letter of Confirmation if request is received for issue of duplicate share certificate. As per the revised norms procedure is as follows:

Sl. No	Documents required	Value of Securities less than or equals to Rs 5 lakhs ¹	Value of Securities exceeds Rs 5 lakhs ²
1	Copy of FIR/e -FIR/police complaint/ court injunction order/copy of plaint (where suit filed has been accepted by the Court and Suit no. has been given) necessarily having details of securities, folio no., distinctive number range and certificate number. What if the Security holder does not have the details of security?*	Not required	Required
	What if the security holder is a foreign shareholder?***		
2	Issuance of advertisement regarding loss of securities in a widely circulated newspaper.	Not required	Required
3	Submission of Affidavit and Indemnity bond. No requirement of submission of surety.	Required	Required

*SEBI Circular has stated that in case of non-availability of Certificate Nos./Distinctive Nos./ Folio nos., the RTA (upon written request by the security holder) shall provide the same, to the security holder only where the signature and the address of the security holder matches with the RTA / listed company's records. In case the signature and/or the address do not match, the security holder shall first comply with the KYC procedure and then only the details of the securities shall be provided to the security holder by the RTA/listed company.

**SEBI Circular has stated that in case of overseas securities holder, in lieu of copy of FIR/e-FIR/police complaint/ court injunction order/copy of plaint, they are permitted to provide self-declaration of the security certificates lost/misplaced/stolen which shall be duly notarized/ apostilled /attested by the Indian Consulate / Embassy in their country of residence, along with self-attested copies of valid passport and overseas address proof.

¹ As per SEBI Circular dt: May 25, 2022 Point 2.4 value of securities shall be calculated as on the date of submission of application alongwith complete documentation as prescribed by SEBI

²ibid

IV. Other actionable to be ensured:

1. **Special Contingency Policy:** SEBI Circular has also stated that listed company shall take special contingency insurance policy from the insurance company towards the risk arising out of the requirements relating to issuance of duplicate securities in order to safeguard and protect the interest of the listed company.
2. SEBI has reiterated that duplicate securities shall be issued in dematerialized mode only.
3. Further SEBI has also reiterated that (a) fake / forged / stolen certificates or certificates where duplicate certificate is issued, must be seized and defaced by the RTA / listed company and disposed of in the manner, authorized by the Board of Directors of the Company and (b) Defaced certificate shall be kept in custody of the Company/ RTA and disposed of in the manner as authorized by the Board of the Company.
4. For ease of reference SEBI has provided "Operational Guidelines for processing investor's service request for the purpose of issuance of duplicate securities" as a part of this circular. Further SEBI has also provided formats of Affidavit for issuance of duplicate securities, Indemnity for issuance of duplicate securities and Format of Letter of Confirmation as a part of this circular.
5. The provisions of this SEBI Circular are subject to SEBI LODR (Amendment) 2022 dt: January 24, 2022 read with SEBI Circular dt: January 25, 2022 and SEBI Circular dt: November 3, 2021 read with SEBI Circular dt: December 14, 2021. Vide this LODR amendment, SEBI had stated that duplicate share certificate cannot be issued in physical form. SEBI Circular dt: January 25, 2022 prescribed a new procedure, wherein on receipt of request for issue of duplicate share certificate, "Letter of Confirmation is required to be issued". Also SEBI has vide its circular dt: November 3, 2021 read with SEBI Circular dt: December 14, 2021 has stated that any investor service request including inter-alia issue of duplicate share certificates cannot be processed unless the folio is complied with KYC norms viz. signature, address, nomination, PAN, linking of PAN and Aadhar etc.

Copy of the circular can be accessed at below mentioned link:

https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-issuance-of-duplicate-securities-certificates_59173.html

By

Vallabh Joshi vallabhjoshi@mmjc.in

Deepti Jambigi Joshi deeptijambigi@mmjc.in



SEBI makes Transmission hassle free

I. **Introduction:**

Schedule VII of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015 ['SEBI LODR'] provides procedural requirements for transfer of securities. **SEBI** has vide its **amendment dated April 25, 2022** has **amended Regulation 40(7), 61(4) & Schedule VII of SEBI LODR** thereby making it applicable for transfer and transmission of securities. SEBI has also, vide its circular dt: May 18, 2022 ['SEBI May 2022 Circular'] provided for formats and procedures that are required to be followed for transmission of securities.

II. **Background of amendment:**

SEBI, in its Board note dt: February 15, 2022 (where this amendment was approved by SEBI), has cited that during the Covid-19 pandemic, it was observed that varied procedures and documents were required for transmission, due to which there were delays in processing transmission requests of investors. Delays in processing of such requests led to financial loss to investors due to the volatile nature of the securities market. In view of this it was thought to ease the complex procedure of transmission. Further SEBI in its Board Note dt: February 15, 2022 has also stated that Ministry of Corporate Affairs ('MCA') had requested SEBI to consider 'Legal Heirship Certificate' as one of the acceptable documents for the process of transmission of securities vide their letter to SEBI dated September 22, 2021. MCA had also stated that Introduction of Legal Heirship certificate or its equivalent certificate would provide an additional avenue to the investor, which is less time consuming and easier than obtaining the other documents in intestate succession, for example, Succession Certificate or Court Decree.

III. **Amendment:**

As mentioned above, as Schedule VII is made applicable for transmission of securities, Point C of Schedule VII is amended to the following effect:-

1. Universal Applicability for transmission of documents: Now SEBI has, vide this amendment, stated list of documentation required for transmission of securities. SEBI May 2022 Circular is in supersession of earlier SEBI Circulars dt: October 28, 2013, dt: September 15, 2016, January 4, 2019 and October 18, 2021. Now w.e.f May 18, 2022 provisions as specified in SEBI Circular dt: May 18, 2022 shall be applicable for transmission of Securities. Also, SEBI has scrapped the reference of Depositories bye-laws for transmission of securities which were already in demat mode to streamline & collate list of all documents required for processing of transmission requests at one place. Earlier Schedule VII provided additional documents required for transmission under various scenarios viz. if securities are held in demat form, if securities are held in physical form and without nominee etc. Now SEBI has revised this classification and stated only two scenarios viz. (i) securities held singly with nomination and (ii) securities held singly without nomination. Further SEBI vide its SEBI May 2022 Circular has provided list of common documents that are required for transmission irrespective of whether nomination is submitted or not. SEBI has also given a ready reckoner as Annexure A in SEBI May 2022 Circulars specifying list of documents to be submitted under

different scenarios for transmission of securities when nomination is not there viz. what all additional documents are required to be submitted if Legal heirship certificate is there. Further SEBI, vide its amendment dated January 24, 2022 read with SEBI circular dated January 25, 2022, had prohibited processing of transmission request in physical form. Hence irrespective of whether the securities were in physical form or demat form, the transmitted securities can be issued in demat mode only.

2. Self-Attestation to replaced notarized documents: Before this amendment, it was mandatory to submit death certificate or copy of death certificate duly attested by a notary public or by a gazetted officer. Now SEBI has also added a point and allowed to alternatively submit original death certificate or copy of death certificate attested by the nominee subject to verification with the original or copy of death certificate duly attested by a notary public or by a gazetted officer.
3. Enhancement of limit for ease of transmission: For cases where securities are held singly without nomination, if the value of securities is up to a specific threshold, then there were relaxations given under LODR with regard to submission of certain documents for transmission. SEBI has increased the value threshold for which relaxations can be claimed for processing of transmission of securities. These thresholds up to which relaxation can be claimed are increased in case of security holdings in demat accounts from Rs.5 lakh to Rs.15 lakh and in case of physical holdings from Rs.2 lakh to Rs. 5 lakh.
4. Authorizing legal heirship certificate for transmission: SEBI has stated that, a copy of Will or a Legal Heirship Certificate or its equivalent certificate issued by a competent Government Authority can be submitted as an alternative to copy of succession certificate or probate of will or Letter of Administration or Court Decree as may be applicable in terms of Indian Succession Act, 1925. However, in such cases a notarized indemnity bond from the legal heir(s) /claimant(s) to whom the securities are transmitted, in the format specified by SEBI and a No Objection from all non-claimants, stating that they have relinquished their rights to the claim for transmission of securities, shall also be additionally required to be submitted.
5. Additional documents: Further SEBI has stated that for cases where value of securities is up to rupees five lakhs per listed entity in case of securities held in physical mode, and up to rupees fifteen lakhs per beneficial owner in case of securities held in dematerialized mode, as on date of application, and where the documents mentioned in point 4 above are not available, the legal heir(s) /claimant(s) may submit the following documents:-
 - (i) no objection certificate from all legal heir(s) stating that they do not object to such transmission or copy of family settlement deed executed by all the legal heirs duly attested by a notary public or by a gazetted Officer; and
 - (ii) a notarized indemnity bond made on non-judicial stamp paper of appropriate value, indemnifying the Share Transfer Agent/ listed entity, in the format specified by SEBI

Further vide SEBI May 2022 Circular has provided operational guidelines for processing of investor's service request for the purpose of transmission of securities and also provided formats for following:

- a. Format of the form to be filed by nominee/claimants(s)/legal heir(s) while requesting transmission of securities
- b. Format of affidavit to be given by all Legal Heir(s) or Legal Heirs named in Succession Certificate/Probate of Will/Will/Letter of Administration/Legal Heirship Certificate/Court Decree
- c. Format of Bond of Indemnity to be furnished jointly by all Legal Heir(s) including the Claimant(s)
- d. Format of NOC from other Legal Heir(s) for transmission of securities in favour of the Claimant(s)/ Legal Heir(s)
- e. Format of the Letter of Confirmation to be issued by RTAs/Issuer Companies.

SEBI has vide this SEBI May 2022 Circular has made it clear that RTAs/Listed Issuers/ Depositories shall strictly adhere to the formats and documentation specified under SEBI May 2022 Circular for all transmission matters including requirement of Will.

Copy of the amendment can be accessed at below mentioned link:

https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fourth-amendment-regulations-2022_58408.html

[Copy of SEBI Circular dt: May 18, 2022 https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-transmission-of-securities-pursuant-to-amendments-to-the-securities-and-exchange-board-of-india-listing-obligations-and-dis-59123.html](https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-transmission-of-securities-pursuant-to-amendments-to-the-securities-and-exchange-board-of-india-listing-obligations-and-dis-59123.html)

By

Vallabh Joshi vallabhjoshi@mmjc.in
Deepti Jambigi Joshi deeptijambigi@mmjc.in