

# The Madras Chamber of Commerce & Industry

## Expert Committee on Company Law / Corporate Matters

Chairman: Dr. B. Ravi

Co-Chair: Mrs. B. Chandra

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**ISSUE NO. 3**

### **ARTICLE: RULES FRAMED UNDER THE COMPANIES ACT 2013 – CONTRAVENTION THEREOF**

The Central Government has made rules for carrying out the provisions of the Act. A tabulation containing all the Rules made by the Central Government is given below. There is a general section – Section 469 of the Act which empowers Central Government to frame Rules and in some provisions there are mentions about penal consequences for non compliances. In all other cases the action will be taken based on the Sections which originate the Rules. A compilation is made in this regard for easy reference.

#### **DISCLAIMER:**

*The above compilation is only for the purpose of information and easy understanding and does not constitute or purport to be an advice or opinion in any manner. The objective is only to share information based on recent developments and regulatory changes. The author is not responsible for any error or mistake or omission in this compilation or for any action taken or not taken based on the contents of this compilation. It is advisable to refer the legislation and the Notifications issued by the Government before taking any decision or action.*

#### **Power of Central Government to Make Rules.**

**Notified Date of Section: 12/09/2013**

**469.** (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. (2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.

(3) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(4) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Title of the rules	Contravention and consequences	Remarks
<b>Companies (Specification of definitions details) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Restriction on number of layers) Rules, 2017.</b>	<p><b>(2) Restriction on number of layers for certain classes of holding companies.-</b></p> <p>(5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.</p>	Sec. 469 provides that the rule can provide for a fine of upto Rs.5000/- whereas this Rules provides fine which may extend upto Rs.10,000/-. Similarly per day further fine is also provided as Rs.1000 per day whereas the main section provides for Rs.500 only
<b>Companies (Incorporation) Rules, 2014</b>	<p><b>Rule 7A.</b> If a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such Company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues.</p>	Except by Rule 7A there is no other provision in the Rules dealing with situation in case of non compliance of the provisions of the rules.
<b>Companies (Prospectus and Allotment of Securities) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Issue of Global Depository Receipts) Rules, 2014</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.

<b>Companies (Share Capital and Debentures) Rules, 2014</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Acceptance of Deposits) Rules, 2014.</b>	<b>Rule 21 Punishment for Contravention.</b>  If any company referred to in sub-section (2) of section 73 or any eligible company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues.	Applicable to company covered under Sec.73(2) and also to every eligible company.
<b>Companies (Registration of Charges) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Management and Administration) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Significant Beneficial Owners) Rules, 2018</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Declaration and Payment of Dividend) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016</b>		No Comments

<p><b>Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.</b></p>	<p>(11) (a) The company shall be liable under all circumstances whatsoever to indemnify the Authority in case of any dispute or lawsuit that may be initiated due to any incongruity or inconsistency or disparity in the verification report or otherwise and the Authority shall not be liable to indemnify the security holder or Company for any liability arising out of any discrepancy in verification report submitted etc., leading to any litigation or complaint arising thereof.</p> <p>(b) Any fraudulent claim by the claimant shall be deemed to be fraud within the meaning of section 447 of the Act and the claimant shall be liable accordingly.</p> <p>(c) If any person deceitfully personates an owner of any security or of any share warrant or coupon issued in pursuance of this Act and thereby files any claim to obtain or attempts to obtain any such security or interest or any such warrant or coupon due to the lawful owner, he shall be punishable under sections 57, 447 and 448 of the Act.</p>	
<p><b>Companies (Accounts) Rules, 2014</b></p>		<p>There is no provision in the rule dealing with the consequences for non compliance of the rules.</p>
<p><b>National Financial Reporting Authority Rules, 2018</b></p>	<p><b>13. Punishment in case of non-compliance</b></p> <p>If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of these rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.</p>	<p>Section 450 of the Act deals with Penalty and not fine.</p>
<p><b>National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019.</b></p>		<p>Internal matter of NFRA</p>

<b>The National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018.</b>		Internal matter of NFRA
<b>Companies (Corporate Social Responsibility Policy) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Indian Accounting Standards) Rules, 2015</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Audit and Auditors) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (cost records and audit) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Appointment and Qualification of Directors) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Meetings of Board and its Powers) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.

<b>Companies (Inspection, Investigation and Inquiry) Rules, 2014.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017</b>		Procedure to be followed by SFIO
<b>Companies (Compromises, Arrangements and Amalgamations) Rule, 2016</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Mediation and Conciliation) Rules, 2016.</b>		Deals exclusively on procedural matters.
<b>Companies (Registered Valuers and Valuation) Rules, 2017.</b>	<b>20.Punishment for contravention</b> Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.	Section 469 is reproduced at the beginning of this table.
<b>Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Authorised to Register) Rules, 2014</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Companies (Registration of Foreign Companies) Rules, 2014</b>	If any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.	



<b>Companies (Registration Offices and Fees) Rules, 2014</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.
<b>Nidhi Rules, 2014.</b>	<p><b>5 Requirements for Minimum Number of Members, Net Owned Fund etc</b></p> <p>(1) Every <i>Nidhi</i> shall, within a period of one year from the date of its incorporation, ensure that it has-</p> <p>(a) not less than two hundred members;</p> <p>(b) Net Owned Funds of ten lakh rupees or more;</p> <p>(c) unencumbered term deposits of not less than ten per cent. of the outstanding deposits as specified in rule 14; and</p> <p>(d) ratio of Net Owned Funds to deposits of not more than 1:20</p> <p>4) If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1) and gets itself declared under sub-section (1) of section 406], besides being liable for penal consequences as provided in the Act..</p> <p><b>24 Penalty for Non-compliance</b></p> <p>If a company falling under rule 2 contravenes any of the provisions of the rules prescribed herein, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.</p>	
<b>National Company Law Tribunal Rules, 2016.</b>		No comments

<b>National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Rules, 2015.</b>		No comments
<b>National Company Law Appellate Tribunal (Salaries and Allowances and other terms and conditions of service of the Chairperson and other Members) Rules, 2015.</b>		No comments
<b>National Company Law Appellate Tribunal Rules, 2016.</b>		No comments
<b>National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.</b>		No comments
<b>Companies (Transfer of Pending Proceedings) Rules, 2016.</b>		No comments
<b>Companies (Adjudication of Penalties) Rules, 2014.</b>		No comments
<b>Companies (Miscellaneous) Rules, 2014.</b>		No comments
<b>Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019.</b>		No comments
<b>Companies (Winding Up) Rules, 2020.</b>	Did not analyse this rule since it is very exhaustive and more to do with Court/Tribunal	
<b>National Company Law Tribunal (Recruitment, Salary and other Terms and Conditions of Service of Officers and other Employees) Rules, 2020.</b>		NCLT internal matter
<b>Companies (Auditor's Report) Order, 2020.</b>		There is no provision in the rule dealing with the consequences for non compliance of the rules.



**NOTIFICATION/CIRCULARS/RULES ISSUED BY MINISTRY OF CORPORATE AFFAIRS IN FEBRUARY 2021**

**1. COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) RULES, 2016:**

**Rule 25: Merger or Amalgamation of certain companies:**

**The following sub rule added after sub rule 1.**

(1A) A scheme of merger or amalgamation under section 233 of the Act may be entered into between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

Explanation.- For the purposes of this sub-rule, “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.”

**MCA Notification No G.S.R. 93(E) 01.02.2021**

**2. Companies (Specification of Definitions Details) Amendment Rules, 2021.**

**(2) They shall come into force on the 1st day April, 2021.**

Rule 2, in sub-rule (1), after clause (s), the following clause shall be inserted, namely:-

(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.

**(Section 2(85) reads as under prior to amendment)**

(85) "small company" means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year] does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

**(Section 2(85) will read as under after the amendment with effect from 01.04.2021)**

(85) "small company" means a company, other than a public company,—

(i) paid-up share capital of which does not exceed two cores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year] does not exceed twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

**MCA Notification No G.S.R. 92(E) 01.02.2021**

***3. Companies (Incorporation) Second Amendment Rules, 2021.***

***a) Rule 3 One Personal Company***

Prior to amendment	After the amendment
<p><b>3 One Person Company</b></p> <p>(1) Only a natural person who is an Indian citizen and resident in India-</p> <p>(a) shall be eligible to incorporate a One Person Company;</p> <p>(b) shall be a nominee for the sole member of a One Person Company.</p> <p><sup>2</sup>Explanation L - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding financial year.</p> <p>Explanation II.- For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted.</p>	<p><b>3 One Person Company</b></p> <p>(1) Only a natural person who is an Indian citizen <b>whether resident in India or otherwise</b>"</p> <p>(a) shall be eligible to incorporate a One Person Company;</p> <p>(b) shall be a nominee for the sole member of a One Person Company.</p> <p>Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than <b>one hundred and twenty days</b> during the immediately preceding financial year.</p> <p>Explanation II - For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted.</p>

***b. Rule 3 – sub rule 7:***

Prior to amendment	After the amendment
<p>(7) No such company can convert voluntarily into any kind of company unless two years is expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.</p>	<p><b>OMITTED</b></p>

***c. Rule 6 - One Person Company to Convert Itself into a Public Company or a Private Company in Certain Cases***

Prior to amendment	After the amendment
<p>(1) Where the paid up share capital of an One Person Company exceeds fifty lakh rupees and its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.</p> <p>(2) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.</p> <p>(3) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.</p> <p>(4) The One Person Company shall within period of sixty days from the date of applicability of sub-rule (1), give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in sub-rule (1).</p> <p>Explanation.-For the purposes of this rule,- "relevant period" means the period of immediately preceding three consecutive financial years;</p> <p>(5) If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.</p> <p>(6) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.</p>	<p>(1) The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.</p> <p>(2) A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.</p> <p>(3) The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:- (a) Altered MOA and AOA; (b) copy of resolution; (c) the list of proposed members and its directors along with consent; (d) list of creditors; and (e) the latest audited balance sheet and profit and loss account.</p> <p>(4) On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.</p>

***d. Rule 7: Conversion of private company into One Person Company***

Prior to amendment	After the amendment
<p>(1) A private company other than a company registered under section 8 of the Act 1["having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period"] two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.</p>	<p>(1) A private company other than a company registered under section 8 of the Act may convert itself into one person company by passing a special resolution in the general meeting.</p>

***Rule 7(4)***

Prior to amendment	After the amendment
<p>4) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-</p> <p>(i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;</p> <p>(ii) the list of members and list of creditors;</p> <p>(iii) the latest Audited Balance Sheet and the Profit and Loss Account; and</p> <p>(iv) the copy of No Objection letter of secured creditors.</p>	<p>4) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-</p> <p>(i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion,;</p> <p>(ii) the list of members and list of creditors;</p> <p>(iii) the latest Audited Balance Sheet and the Profit and Loss Account; and</p> <p>(iv) the copy of No Objection letter of secured creditors.</p>

***E – Form INC 5 – One Person Company- Intimation of exceeding threshold - SHALL BE OMITTED***

***E – Form INC – 6: One Person Company and Private Company – Application for conversion. (New form in the place of the existing INC e – form 6)***

**MCA Notification No G.S.R. 91(E) 01.02.2021**

**PRODUCER COMPANIES RULES 2021**

**MCA vide notification dated 11.02.2021 has made the Rules titled as Producer Companies Rules 2021.**

2. The rules apply to a Producer company as referred to in Section 378A(i).

**Section 378A(i) reads as follows:**

*"Producer Company" means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956;*

**Section 378B reads as follows:**

*(1) The objects of the Producer Company shall relate to all or any of the following matters, namely:—*

*“(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit:*

*Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;*

*(b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;*

*(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;*

*(d) providing education on the mutual assistance principles to its Members and others;*

*(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;*

*(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;*

*(g) insurance of producers or their primary produce;*

*(h) promoting techniques of mutuality and mutual assistance;*

*(i) welfare measures or facilities for the benefit of Members as may be decided by the Board;*

*(j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;*

*(k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.”.*

(2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

3. The term Co-operative society is defined to mean a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State.

4. Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.



### **5. Change of place of Registered office from one State to another:**

The Rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.

Rule 27 of the Companies (Incorporation) Rules 2014 reads as follows:

#### **27 Notice and Verification of Change of Situation of the Registered Office:-**

*The notice of change of the situation of the registered office and verification thereof shall be filed in Form No. INC.22 along with the fee and shall be attached to the said form, the similar documents and manner of verification as are specified for verification of Registered office on incorporation in terms of sub-section (2) of section 12.*

Rule 30 of the Companies (Incorporation) Rules 2014 reads as follows:

#### **30. Shifting of Registered office from one State or Union Territory to another state**

*(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely:-*

*(a) a copy of Memorandum of Association, with proposed alterations;*

*(b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;*

*(c) a copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.*

*(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-*

*(a) the names and address of every creditor and debenture holder of the company;*

*(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:*

*Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that*

*(i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and*

*(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.*

*(3) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.*

*(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.*

*(5) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23 -*

*(a) advertise in the Form No.INC.26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper 2[with wide circulation] in the State in which the registered office of the company is situated:*

*Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.*

*(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and*

*(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.*

*(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).*

*(7) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.*

*(8) Where an objection has been received,*

*(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.*

*(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.*

*(9) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper:*

*Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.*

*(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed".*

Rule 31 of the Companies (Incorporation) Rules 2014 reads as follows:

### **31 Certified Copy of Central Government's Order**

*The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No.INC.28 along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.*



**6. Rule 5 of the producer companies rules 2021** provides the manner in which investment of general reserves can be made. The rule provides that a Produce company shall make investments from and out of its general reserves in one or in combination of the following viz:

- (a) in approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or
- (b) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
- (c) with any other scheduled bank; or
- (d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (02 of 1882); or
- (e) in the shares or securities of any other inter-State co-operative society or any co-operative society; or
- (f) in the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Act.

**NOTE: 378X : SECRETARY OF PRODUCER COMPANY:**

(1) Every Producer Company having an average annual turnover exceeding five crore rupees or such other amount as may be prescribed in each of three consecutive financial years shall have a whole-time secretary. Chief Executive and his functions. Secretary of Producer Company.

(2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.

(3) If a Producer Company fails to comply with the provisions of sub-section (1), the Company and every officer of the Company who is in default, shall be liable to a penalty of one hundred rupees for every day during which the default continues subject to a maximum of rupees one lakh:

Provided that in any proceedings against a person in respect of a default under this sub-section, no penalty shall be imposed if it is shown that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the Company was such that it was beyond its capacity to engage a whole-time secretary. or such other amount as may be prescribed – the rules has not prescribed this amount.

**MCA NOTIFICATION DATED 11.02.2021.**

1. Section 52 of the Companies Amendment Act 2020, which deals with Producer Companies under Chapter XXI covering Sections 378A to 378ZU have come into force from 11.02.2021 as per MCA notification S.O. 644(E) dated 11.02.2021.

2. The Central Government has also made a rule titled as Producer Companies rules 2021 and they shall also come into force from 11.02.2021. MCA notification G.S.R. 112(E) dated 11.02.2021.

3. Section 66 of the Companies Amendment Act 2020 which deals with Amendment to Section 465 which talks about Repealing certain enactments and Savings have also come into force from 11.02.2021 vide MCA notification S.O. 644(E)dated 11.02.2021.

4. For the purpose of Section 62(1)(a) of the Act, the time period within which the offer shall be made for acceptance shall be not less than 7 days from the date of offer has been notified by amending the Companies (Share Capital and Debentures) Rules 2014 vide MCA Notification G.S.R. 113(E) dated 11.02.2021. (They shall come into force with effect from the 1st April, 2021)

5. "2A. Companies not to be considered as listed companies.- For the purposes of the proviso to clause (52) of section 2 of the Act, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act."

### **MCA NOTIFICATION NO G.S.R. 123(E) DATED 19.02.2021**

#### **SEBI vide Circular No : SEBI/HO/IMD/DF2/CIR/P/2021/17 February 2, 2021**

Setting up of Limited Purpose Clearing Corporation (LPCC) by Asset Management Companies (AMCs) of Mutual Funds

With the objective of development of the corporate bond market from the perspective of mutual funds, the Mutual Fund Advisory Committee (MFAC) of SEBI had constituted a Working Group consisting of representatives of various Mutual Funds, Clearing Corporation of India Limited (CCIL) and AMFI for detailed deliberation.

The Working Group amongst other suggestions recommended that AMCs of Mutual Funds should set up a Limited Purpose Clearing Corporation (LPCC) for clearing and settling repo transactions in corporate debt securities by contributing an amount of INR 150 Crore.

This was recommended as it was felt that mutual funds would be natural beneficiaries of such a clearing corporation. The recommendation of setting up LPCC was also deliberated with various issuers of corporate bonds and in Corporate Bonds and Securitization Advisory Committee (CoBoSAC).

Upon deliberations, SEBI Board in its meeting held on September 29, 2020, approved a proposal to facilitate setting up of a LPCC for clearing and settling repo transactions in corporate debt securities and accordingly Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (SECC Regulations), have been amended vide gazette notification no. SEBI/LAD-NRO/GN/2020/32 dated October 08, 2020.

Accordingly, it has been decided that AMCs shall contribute INR 150 Cr. towards share capital of LPCC in proportion to the Asset Under Management (AUM) of open ended debt oriented mutual fund schemes (excluding overnight, gilt fund and gilt fund with 10 year constant duration but including conservative hybrid schemes) managed by them.

The contribution shall be based on Average AUM of debt oriented schemes as detailed above for the Financial Year (FY) 2019-20. In this regard, AMFI shall calculate contribution per AMC based on the Average AUM of aforementioned schemes for the FY 2019-20 and inform all AMCs. Accordingly, it will be obligatory on the part of AMC(s) to contribute towards the share capital of LPCC.

The setting up of LPCC and making the aforesaid contribution shall be in compliance with the networth requirements, other conditions and timelines, if any, as per SECC Regulations and circulars issued thereunder from time to time.

AMCs shall ensure that the networth as prescribed under Regulation 21(f) of SEBI (Mutual Funds) Regulations, 1996 shall be maintained over and above the contribution made towards setting up of the LPCC.

**SEBI vide Circular No : SEBI/HO/ITD/ITD/CIR/P/2021/16 February 02, 2021** has issued Revised Framework for Innovation Sandbox

**SEBI vide Circular No SEBI/HO/ISD/ISD/CIR/P/2021/19 February 09, 2021** has issued revised disclosure formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

SEBI, vide Circular nos. CIR/ISD/01/2015 dated May 11, 2015 and CIR/ISD/02/2015 dated September 16, 2015, had specified the formats for disclosures under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”).

In light of amendments to the PIT Regulations effecting the inclusion of member of the promoter group, and designated person in place of employee, in Regulation 7 of PIT Regulations; and on the basis of feedback received from market participants and stock exchanges, the relevant disclosure formats (Forms B to D) have been suitably revised.

The updated/revised formats are annexed to this circular. The other conditions stipulated in the aforesaid circulars shall remain unchanged. (Please read the circular for the format)

**SEBI vide Circular No SEBI/HO/CDMRD/DRMP/CIR/P/2021/20 February 23, 2021** has prescribed Pre-Expiry Margin on commodities under Alternate Risk Management Framework. The circular shall be effective from the first trading day of the month of April 01, 2021.

**SEBI vide Circular No SEBI/HO/DDHS/DDHS/CIR/P/2021/21 February 26, 2021** has provided Extension of facility for conducting meeting(s) of unit holders of REITs and InvITs through Video Conferencing (VC) or through other audio-visual means (OAVM).

Annual meetings of unit holders in terms of Regulation 22(3) of SEBI (Real Estate Investment Trusts) Regulations, 2014 and Regulation 22(3)(a) of SEBI (Infrastructure Investment Trusts) Regulations, 2014, (which becomes due in the calendar year 2021) to be conducted till December 31, 2021.

For meetings other than annual meeting of unit holders till June 30, 2021.

REITs/ InvITs shall comply with the procedure prescribed in Annexure-I of SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated June 22, 2020.

#### **DISCLAIMER**

*The above compilation is only for the purpose of information and easy understanding and does not constitute or purport to be an advice or opinion in any manner. The objective is only to share information based on recent developments and regulatory changes. Neither the Madras Chamber or the Expert Committee on Company Law/Corporate Matters is responsible for any error or mistake or omission in this compilation or for any action taken or not taken based on the contents of this newsletter. It is advisable to refer the legislation and the Notifications issued by the Government before taking any decision or action.*

