

Info Capsule

Thursday
November 11, 2021

President : CS Nagendra D. Rao

Vice President : CS Devendra V. Deshpande

❖ **Ministry of Mines**

The Mineral Conservation and Development (Amendment) Rules, 2021 Notified (November 10, 2021)

Ministry of Mines has notified the Mineral Conservation and Development (Amendment) Rules, 2021 on 3rd November, 2021 to amend the Mineral Conservation and Development Rules, 2017 [MCDR].

The MCDR have been framed under section 18 of the Mines and Minerals (Development and Regulation) Act, 1957 [MMDR Act] to provide rules regarding conservation of minerals, systematic and scientific mining, development of the mineral in the country and for the protection of environment. Rules Provide for Submission of Digital Images of Mining Area by Lessees and Letter of Intent Holders.

For details:

<https://pib.gov.in/PressReleaseDetail.aspx?PRID=1770484>



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)



❖ **Ministry of Corporate Affairs**

• **Public Notice: Disqualification of DINS (November 10, 2021)**

Ministry of Corporate Affairs had flagged the DINs of Directors found to be disqualified under sub-section 2(a) of section 164 of the Companies Act, 2013 w.e.f. November 01, 2016 for a period of five years. This is for the information of all the concerned that DINs eligible to be de-flagged on expiry of the period of disqualification are in the process of verification. Necessary action shall be taken shortly.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=XFJgFhH%252BTbjDWd81KdDXbg%253D%253D&type=open>

• **The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021 (November 09, 2021)**

The MCA vide Notification dated November 09, 2021 has amended Schedule II of the IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 that prescribes documents to be submitted to the Authority to register transmission of securities.

With this Amendment, threshold limit for value of securities has been increased from Rs. 2 lakhs to Rs. 5 lakhs and documents such as Succession certificate/probate of will/will/letter of administration or Decree, as may be applicable in terms of Indian Succession Act, 1925 or any other Decree or Order of any Court or Tribunal is required to be submitted to authority to register transmission of securities.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/230981.pdf>

❖ **Securities Laws & Capital Markets**

• **SEBI Chairman's Speech at FICCI's event on "Driving Climate Action through Disclosures: BRSR as Bedrock for ESG Action in India" (November 10, 2021)**

Speaking at FICCI's event, Shri Ajay Tyagi, Chairman, SEBI, said-

- A number of important commitments have been made in COP26 towards curbing greenhouse gas emissions and transitioning to clean energy sources. The pledges made and decisions taken in COP26 including on climate finance are steps in the right direction to address climate change related challenges.
- In India, broader legislative intent in the sustainability space has been ahead of the curve. The Companies Act 2013 require a director of a company to act in the best interests of the company, its employees, the community and for the protection of the environment.
- SEBI introduced new requirements for sustainability reporting. The new report is called the Business Responsibility and Sustainability Report (BRSR) and replaces the existing Business Responsibility Reporting (BRR). Reporting as per the BRSR norms for the current financial year is voluntary and it is mandatory from next year onwards.
- The BRSR seeks disclosures from listed entities on their performance against nine principles. These nine principles echo the SDGs and cover both environment and social aspects such as climate action, responsible consumption and production, gender equality, working conditions etc.
- Apart from the need for adequate corporate disclosures, ESG aspect of the asset management industry is another area of focus of SEBI. While, on one hand, there is an increasing demand for ESG investments, on the other hand, there are also concerns about greenwashing.
- The regulators may be agnostic to where investors invest, they have an important role to play to ensure ESG disclosures by funds and issuers, and guard against green washing.
- The expectations from company boards on sustainability issues will continue to increase going forward. BRSR has raised the game in sustainability disclosures.

For details: https://www.sebi.gov.in/media/speeches/nov-2021/chairman-s-speech-dated-november-10-2021-at-ficci-s-event-on-driving-climate-action-through-disclosures-brsr-as-bedrock-for-esg-action-in-india-_53834.html

• **SEBI (Alternative Investment Funds) (Fifth Amendment) Regulations, 2021 (November 09, 2021)**

SEBI vide its notification dated November 09, 2021, amends the provisions of SEBI (Alternative Investment Funds) Regulations, 2012, which shall come into force on the on the thirtieth day from the date of their publication in the Official Gazette. Vide this notification, a new clause has been inserted in Regulation 2 in relation to Co-investment made by investors of Alternative Investment Funds. The term defines that "Co-investment" means investment made by a Manager or Sponsor or investor of Category I and II Alternative Investment Fund(s) in investee companies where such Category I or Category II Alternative Investment Fund(s) make investment. Provided that Co-investment by investors of Alternative Investment Fund shall be through a Co-investment Portfolio Manager as specified under the SEBI (Portfolio Managers) Regulations, 2020.

For details: https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-alternative-investment-funds-fifth-amendment-regulations-2021_53830.html

❖ **Banking and Insurance**

Collection efficiency in securitised pools of NBFCs rises as Covid abates : ICRA (November 10, 2021)

Rating agency ICRA Ratings noted in a recent report that collection efficiency in its rated securitised retail pools originated by Non-Banking Finance Companies (NBFCs) and Housing Finance Companies (HFCs) has improved in the second quarter of the current fiscal. The improvement came on the back of continued decline in fresh Covid-19 infections during June to October 2021 period, a high share of the vaccinated population and uninterrupted operational activities of these entities, ICRA said in its report.

For details:

<https://www.livemint.com/industry/banking/collection-efficiency-in-securitised-pools-of-nbfc-rises-as-covid-abates-icra-11636544091357.html>

❖ **Business and Economic News**

Cabinet gives nod to restore MPLADS (November 11, 2021)

The Union Cabinet approved restoration of the Member of Parliament Local Area Development Scheme (MPLADS) for the remaining part of the current financial year till 2025-26, which will have a total financial implication of ₹17,417.00 crore. Under the scheme, each MP will get ₹2 crore in one instalment for development activities for the remainder of 2021-22 and annually ₹5 crore, in two instalments of ₹2.5 crore each.

The MPLAD scheme was temporarily put on hold in April last year, after the outbreak of Covid-19, and the funds were placed with the finance ministry to deal with the pandemic.

For details:

<https://www.hindustantimes.com/india-news/cabinet-gives-nod-to-restore-mplads-101636576928369.html>

❖ **Market Watch**

Stock Market Indices as on 11.11.2021	
S & P BSE Sensex	59919.69 (-433.13)
Nifty 50	17873.60 (-143.60)

Foreign Exchange Rates as on 10.11.2021			
<i>(https://www.geojit.com/currency-futures/rbi-reference-rate)</i>			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
73.95	85.70	100.30	0.65

❖ ***Ethics and Governance News***

• **PM welcomes USA to International Solar Alliance (November 10, 2021)**

The Prime Minister, Shri Narendra Modi welcomed United States of America to International Solar Alliance. Shri Modi also thanked the US President Mr. Joe Biden for the step.

For details: <https://pib.gov.in/PressReleseDetail.aspx?PRID=1770791>

• **SEBI keeping close tab on international developments on ESG ratings, data providers (November 10, 2021)**

Markets regulator SEBI is keenly watching international developments on Environment Sustainability and Governance (ESG) ratings as well as data providers and will take a call on the issue at relevant time, its chief Mr. Ajay Tyagi said on Wednesday. He also said that BRSR or Business Responsibility and Sustainability Report has raised the game in sustainability disclosures. The regulator will keep a close watch on how companies respond to this.

For details:

https://www.business-standard.com/article/markets/sebi-keeping-close-tab-on-int-l-developments-on-esg-ratings-data-providers-121111001232_1.html

❖ ***Terminology for today***

Greenwashing

Greenwashing is the process of manipulation to portray an organization's product or services as environmental friendly.

❖ Pronouncement

October 26, 2021	Zee Entertainment Enterprises Ltd. vs. Invesco Developing Markets Fund & Ors.	Bombay High Court
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Proposed Shareholder Resolution must be legally compliant for an EGM to be Called Fact of the Case

Invesco issued the Requisition Notice on September 11, 2021. It meets the necessary requirements: signed by shareholders with more than 10% of Zee's equity and delivered to Zee's registered office.

The requisition notice had nine resolutions out of which the primary resolution was the removal of CEO and Managing Director of ZEE Enterprises, Punit Goenka, and six other resolutions for the appointment of six independent directors. Zee's Articles of Association mandates a 12-member Director Board and if the resolution for removal of Goenka wasn't successful, the company would have 13 directors.

Questions for Determination

The major bone of contention in the arguments levelled by both parties revolved around the concept of 'validity' of a requisition notice sent to the Board and whether the Board of Directors can exercise its discretion to refuse to act upon such a requisition notice.

Zee's contention is Shareholders' rights, including the right to requisition an Extraordinary General Meeting ("EGM"), do not extend to allowing shareholders to demand acts of illegality and non-compliance with statutes.

The response from Invesco is that it is not for the Board or the company to decide whether or not a particular proposed resolution — or all the proposed resolutions — are, according to the Board or the company, illegal or valid. The word 'valid' in Section 100 of the Companies Act, 2013 merely requires compliance with the qualifying criteria in that section itself — the minimum percentage shareholding, whether the Requisition Notice is signed, and whether it has been delivered to the company's registered office. The word used in the section in relation to the Board's obligations is 'shall', and there is no call to read it permissively as 'may'.

Judgment

The High Court noted that this is not merely a question of form or substance, or one versus the other. This is a case where the form must follow the substance. If the substance is illegal, the form is illegal. The substance of the proposed resolution will dictate its form. However, it do not suggest that shareholders' rights are curtailed or abrogated, or that they cannot seek what they now do. But the manner in which they go about doing it must be legally compliant. The court granted interim relief restraining Invesco from taking any action in furtherance of the Requisition Notice dated September 11 2021, including calling and holding an EGM under Section 100(4) of the Companies Act, 2013.

For details:

<https://www.livelaw.in/news-updates/companies-act-2013-proposed-shareholder-resolution-must-be-legal-for-egm-to-be-called-bombay-high-court-zee-invesco-184931?infinite-scroll=1>

https://www.livelaw.in/pdf_upload/zee-entertainment-enterprises-ltd-v-invesco-developing-markets-fund-and-2-others-bombay-hc-403507.pdf

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu, or call at 01204082116

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