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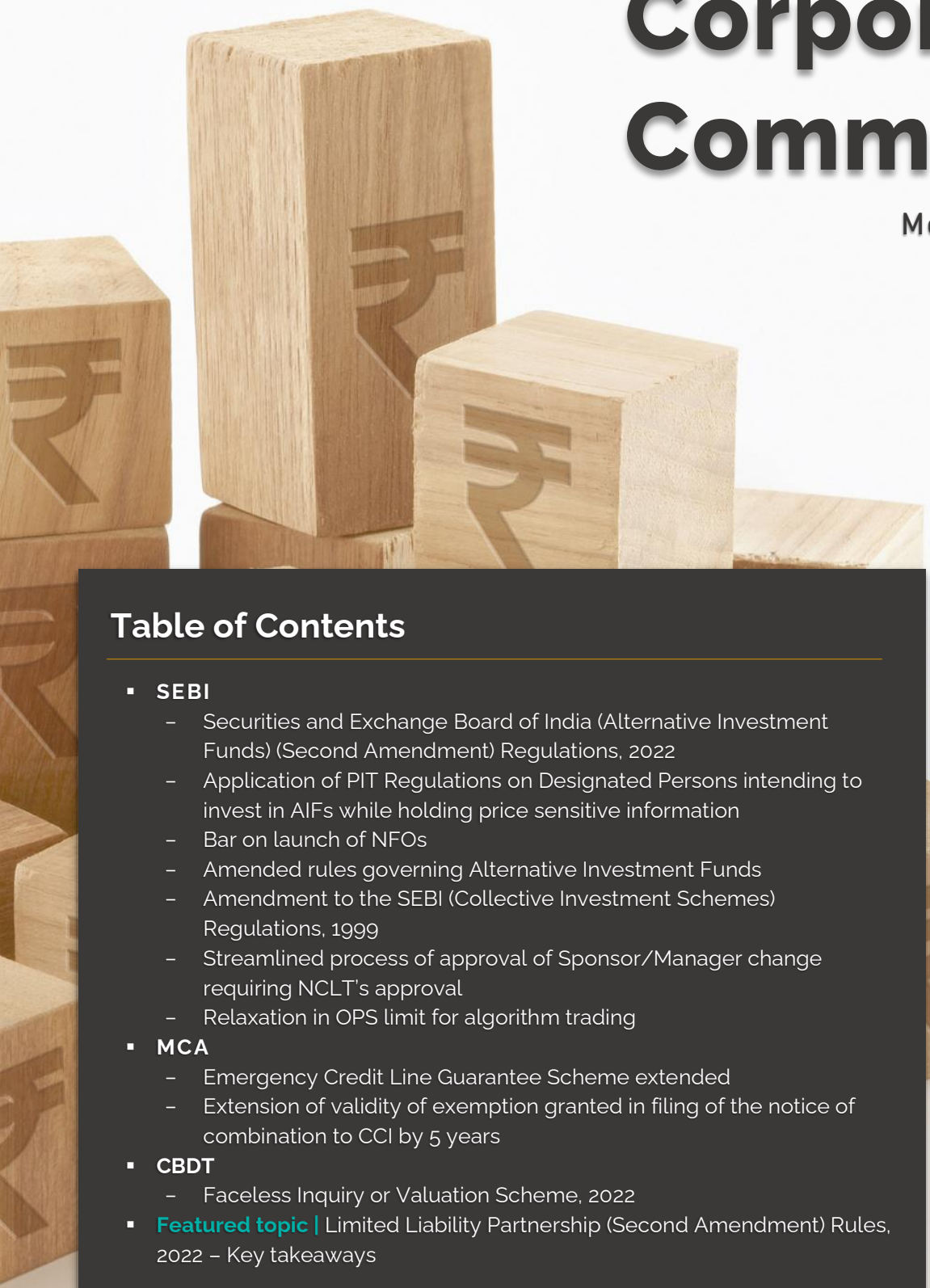

Table of Contents

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SEBI | Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2022

SEBI has issued the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2022 (**Second Amendment to the AIF Regulations**), which came into effect from March 16, 2022. This Second Amendment to the AIF Regulations involves a substitution for Regulation 15(d)(1) in relation to Category III Alternative Investment Funds (**AIFs**). This substitution is summarized below:

Regulation 15(d)(1) prior to Second Amendment to the AIF Regulations	Regulation 15(d)(1) post Second Amendment to the AIF Regulations
Category III AIFs cannot invest more than 10% of the net asset value in listed equity of an investee company.	In the case of investment by Category III AIFs in listed equity of an investee company, the fund managers will calculate the investment limit of 10% of either the investible funds or the net asset value of the scheme.
Large value funds for accredited investors of Category III AIFs cannot invest more than 20% of the net asset value in listed equity of an investee company.	In the case of investment by large value funds for accredited investors of Category III AIFs in listed equity of an investee company, the fund managers will calculate the investment limit of 20% of either the investible funds or the net asset value of the scheme.
Category III AIFs shall invest not more than 10% of the investable funds in securities other than listed equity of an investee company, directly or through investment in units of other AIFs.	Category III AIFs may invest not more than10% of their investible funds in an investee company, directly or through investment in units of other AIFs.
Large value funds for accredited investors of Category III Alternative Investment Funds shall invest not more than 20% of the investable funds in securities other than listed equity of an investee company, directly or through investment in units of other AIFs.	Large value funds for accredited investors of Category III AIFs may invest not more than 10% of their investible funds in an investee company, directly or through investment in units of other AIFs.

As noted in the table, the requirement in relation to investment in listed equity has undergone change, whereas the investment in relation to unlisted equity remains the same. For more information, please refer to Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2022.

SEBI | Application of PIT Regulations on Designated Persons intending to invest in AIFs while holding price sensitive information

Yes Bank Limited (**YBL**) has approached SEBI to issue clarifications for two questions:

Whether the employees of YBL covered as designated persons and their immediate relatives in terms of the Prohibition of Insider Trading Regulations, 2015, are allowed to invest in Alternative Investment Funds?

- YBL operates its Investment Banking and Merchant Banking & Brokerage business through Yes Securities (India) Ltd, a wholly owned subsidiary of YBL. YBL has adopted a referral model with Alternative Investment Funds (**AIFs**), i.e., YBL customers are referred to AIF asset management companies signed up with YBL and YBL gets a commission payment based on the agreed commission structure with the AIF asset management companies. Employees of YBL (including immediate relatives) can also invest through AIF services offered by YBL.
- *'A designated person (**DP**) is any employee who has access to Unpublished Price Sensitive Information (**UPSI**)'*[1]. Any person who is in possession of or has access to UPSI would be considered an '*insider*'[2], which will include a DP. Further, investments made by the fund Manager in AIF schemes on behalf of investors (which includes DPs and their immediate relatives) may include investments in companies whose UPSI is with YBL and by extension with the DP. Therefore, when this information is read with Regulation 4 of the PIT Regulations, it seems to suggest that by virtue of DPs being insiders, they will be prohibited from trading in securities of YBL and other listed companies as they are in possession of UPSI. The reasoning behind this is provided in the explanation to Regulation 4(1) which states that when a person who has traded in securities has been in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.
- YBL has clarified that investors have no direct/indirect control or influence over the investment making decisions of the Fund Manager and DPs are not allowed to communicate any form of UPSI available with them to the Fund Manager that can influence the investment decisions. SEBI, however, has taken the view that

[1] This as per Regulation 9A(2)(a) of the PIT Regulations.

[2] This is as per the definition of the term 'insider' as given in the PIT Regulations.

Regulation 3, Regulation 4(1), and the code of conduct mentioned in Regulation 9(read with Schedule B) of the Prohibition of Insider Trading (**PIT**) Regulations, may get attracted when there is trading/investment by the DP of YBL or their immediate relatives in units of AIF schemes, that invest in securities that are listed or proposed to be listed when the DP is in possession of or has access to UPSI, i.e., the designated person becomes an insider.

- Therefore, all employees of YBL who are considered DPs as well as their immediate relatives may invest in AIFs, subject to compliance with applicable provision of PIT Regulations and Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (**AIF Regulations**).

Whether the units allotted under AIF schemes are covered under the definition of 'securities' for the purpose of the PIT Regulations?

- YBL has also sought a clarification from SEBI as to whether an AIF is covered under the definition of the term 'Securities' for the application of PIT Regulations. SEBI has clarified that as per Section 2(h) of the Securities Contract Regulation Act, 1956 (**SCRA**), 'Securities' include units, or any other instrument issued by any pooled investment vehicle. Additionally, as per Section 2(da) of SCRA and Regulation 2 (1)(b) of the AIF Regulations, AIFs are considered pooled investment vehicles. Therefore, units of AIFs are securities in terms of the provisions of the SCRA. In relation to the PIT Regulations, Regulation 2(1)(i) contains the same definition of the term 'Securities' as SCRA, with one notable exception, i.e., units issued by mutual funds.
- Hence, units of AIFs are covered under the definition of the term 'Securities' for the purposes of the PIT Regulations.

For more information, please refer to YBL's letter to SEBI requesting clarification and SEBI's informal guidance letter to YBL.

SEBI | Bar on launch of NFOs

SEBI via Circular dated March 31, 2022 has stopped the Mutual Fund (**MF**) industry from issuing New fund Offers (**NFO**s), in order to give more time to the intermediaries to adjust its new guidelines, such as two-factor authentication for redemption and verification of source accounts for investment in MFs. Due to representations made by Association of Mutual Funds in India (**AMFI**), SEBI extended the deadline for compliance to July 01, 2022 while simultaneously suspending the launch of new NFOs (which is typically the initial step in the launch of a new MF schemes) to ensure that new MF schemes can be launched only after complying with the new Circulars and guidelines, including the Circular barring pooling of funds. In order to ensure that money is not misused, SEBI also asked MF houses to ensure that no MF distributor, online platform, stockbroker, or investment advisor pools accounts or transfers it to the fund house for purchasing units of schemes for those investors. The Circular on pooled accounts is meant to address the risk of a broker taking money meant for MF into its own account and then defaulting. Money going directly to the fund house or stock exchange allows for this risk to be ring faced.

Revised norms

- No stockbroker, clearing corporation or any other intermediary shall process MF transactions by way of pooling of accounts.
- Stockbrokers and clearing corporations should not handle both pay-in and pay-out of funds.
- MF purchases and sales must be directly credited and debited from the respective investor's demat and folio accounts without routing it through pool accounts.
- For MF units held in demat account, the practice of issuing physical or online Delivery Instruction Slip (**DIS**) to the Depository Participant (**DP**) will continue. The DIS is an instruction slip necessary for the DP to debit the units of an MF or stock for delivery to the clearing corporation and then credit the investor's bank account with the sale proceeds.
- Intermediaries must implement the two-factor authentication for redemption of mutual funds and verification of source accounts when mutual fund investments are made. Two-factor authentication implies that an additional One Time Password (OTP) will be sent to the customer for mutual fund redemption. This will cut down the risk of fraud in the industry.
- Brokers and other intermediates will have to ensure that the beneficiary of the Systematic Investment Plan (**SIP**) mandate should only be the approved bank account of the SEBI recognized clearing corporations.
- To comply with this rule, Asset Management Companies (**AMC**s) may engage services of SEBI-recognized clearing corporations, who will then have to validate investors' source bank accounts and share the necessary details back with the AMCs.

All these changes are significant, but rather complicated in terms of implementation, as there are millions of investors across platforms and apps. Therefore, SEBI had extended the deadline but barred NFOs in the meantime.

SEBI | Amended rules governing Alternative Investment Funds

SEBI has amended the rules pertaining to investment aspects of certain category of Alternative Investment Funds (**AIFs**), including defining relevant professional qualifications. AIFs refer to a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing these funds in India. Category III AIFs registering hedge funds, Venture Capital Funds, Private Equity Funds, Small Medium Enterprise (**SME**) Funds and Private Investment in Public Equity (**PIPE**) Funds fall under this category. The new rules came into effect on March 16, 2022.

Key features

- Category III AIFs can invest not more than 10% of the investable funds in an investee company, directly or through investment in units of other AIFs. This category may calculate the investment limit at 10% of either the investable funds or the net asset value of the scheme.

- The large value funds for accredited investors of Category III AIFs can invest up to 20% of the investable funds in an investee company, directly or through investment in units of other AIFs. This category may calculate the investment limit at 20% of either the investable funds or the net asset value of the scheme.

SEBI | Amendment to the SEBI (Collective Investment Schemes) Regulations, 1999

SEBI approved amendment to the SEBI (Collective Investment Schemes) Regulations, 1999, to strengthen the regulatory framework for Collective Investment Schemes (**CIS**), in line with Mutual Fund regulations to remove regulatory arbitrage. The objective is to ensure that uniform processes are followed by the Issue Registrars and Share Transfer Agents of listed companies, which would further ease the transmission process for investors.

Key features

- Enhancement of net-worth criteria and requirement of having track record in relevant field are mandatory for registration as a Collective Investment Management Company (**CIMC**).
- CIMC and its group/associates/shareholders will be restricted to 10% shareholding or representation on the board of another CIMC to avoid conflict of interest.
- Mandatory investment of CIMC and its designated employees in the Collective Investment Scheme (**CIS**) to align their interest with that of the CIS.
- There must be a requirement of minimum number of investors, maximum holding of a single investor, and minimum subscription amount at the CIS level.
- Rationalization of fee and expenses will be charged to the scheme.
- Reduction of timelines for offer period of scheme, allotment of units, and refund of money will be made available to the investors.
- Threshold limit for simplified documents has been revised as mentioned below:
  - From INR 2 lakh to INR 5 lakh for securities held in physical mode per listed issuer
  - INR 5 lakh to INR 15 lakh for securities held in dematerialised mode for each beneficiary account

SEBI (Custodian) Regulations, 1996, had been amended to enable SEBI registered custodians to provide custodial services in respect of silver or silver related instruments held by Silver Exchange Traded Funds (**ETFs**) of MFs.

SEBI | Streamlined process of approval of Sponsor/Manager change requiring NCLT's approval

SEBI on March 23, 2022 vide Circular No. SEBI/HO/IMD-1/DF9/CIR/2022/032 has undertaken to streamline the process of approval to the proposed change in control of the Sponsor and/or Manager of the Alternate Investment Fund (**AIF**) involving a scheme of arrangement.

As per the circular, with effect from April 01, 2022, all applications seeking a sanction from the National Company Law Tribunal (**NCLT**) for approval of the proposed change in the control of Sponsor/Manager of the AIF under Regulation 20(13) of SEBI (Alternative Investment Funds) Regulations, 2012, shall primarily file their application before SEBI in order to receive an in-principle approval and then file before the NCLT for its sanction. Such an in-principle approval shall be valid for a period of 3 months within which the applicant shall ensure to apply to NCLT. Thereafter, within 15 days, the applicant shall submit the following documents with SEBI for a final approval:

- Application for the final approval.
- Copy of the NCLT Order approving the scheme.
- Copy of the approved scheme.
- Statement explaining modifications, if any, in the approved scheme vis-à-vis the draft scheme and the reasons for the same.
- Details of compliance with the conditions/ observations mentioned in the in-principle approval provided by SEBI.

A change in the Sponsor/Manager of the AIF is a material change as it significantly affects the decision of the investors to continue to be invested in the AIF or not and it thereby invokes a change in the Placement Memorandum. As a result, the AIF is liable to inform SEBI of the final changes and receive an approval from NCLT. Being a material alteration, an exit option is also to be provided to all the investors as per the process mentioned in the earlier circulars- CIR/IMD/DF/16/2014 and CIR/IMD/DF/14/2014 released on July 18 and 19 of 2014, respectively.

SEBI | Relaxation in OPS limit for algorithm trading

SEBI on March 17, 2022 vide its Circular SEBI/HO/CDMRD/CDMRD_DRM/P/CIR/2022/30 revised the Orders Per Second (**OPS**) limit for algorithmic trading in commodity derivatives segment of the Stock Exchanges. The Chapter 2 of SEBI handbook on 'Trading Software and Technology' defines Algorithm trading as '*any order that is generated using automated execution logic shall be known as algorithmic trading.*'

As a result of this circular, now up to 120 OPS may be placed from a particular CTCL ID/ATS User-ID (User-ID). The User-ID is a system generated number which is allotted to an individual who is recognized as an 'Approved User' of the Trading Member. SEBI had initially placed a limit of 20 OPS through the circular dated September 27, 2016 and had relaxed it to 100 OPS from a particular User-ID vide the circular dated April 03, 2018.

These relaxed limits shall come into effect from April 01, 2022. Additionally, the limit of 120 OPS from a User-ID may be further relaxed by the stock exchanges to ensure that the capacity of the trading system remains at least 4 times the peak order load, provided it has been approved by SEBI.

MCA | Emergency Credit Line Guarantee Scheme extended

The government extended the validity of its flagship guaranteed loan scheme by a year through March 2023, in sync with the Budget announcements. The Finance Ministry has also extended relief under the INR 5,00,000 crore Emergency Credit Line Guarantee Scheme (**ECLGS**) to sectors like hospitality and civil aviation. The scheme was initially launched to help Micro, Small & Medium Enterprises (**MSMEs**) but was later expanded to benefit bigger firms in select sectors as well as professionals hit by the pandemic.

New guidelines

- Companies in the hospitality, civil aviation, travel, and tourism industry can now borrow up to 50% of their highest fund-based credit outstanding, as against 40% earlier.
- The borrowing by a single MSME from the hospitality, travel and tourism industry is capped at INR 200 crore.
- The borrowing limit for an aviation player has been raised to INR 400 crore from INR 200 crore earlier.
- Bank guarantees, letters of credit and other non-fund-based facilities sanctioned under the latest version of the Scheme (**ECLGS 3.0**) will be issued without any cash margin to reduce the cost of non-fund based credit.

As of March 25, 2022 loans sanctioned under ECLGS have crossed INR 3,19,000 crore, and about 95% of the guarantees issued are for loans sanctioned to MSMEs. The extension of the ECLGS validity will benefit a wider pool of businesses that haven't been able to tap the scheme yet, as economic recovery has been dealt a fresh blow by the Omicron spread in January and the current Ukraine crisis, according to banking sources.

MCA | Extension of validity of exemption granted in filing of the notice of combination to CCI by 5 years

MCA vide Notification S.O. 1192(E) on March 16, 2022 further extended the validity of exemption granted in filing of the notice of combination to Competition Commission of India (**CCI**) by another 5 years. MCA on March 27, 2017 had issued a notification whereby it granted exemption in filing of the notice to all the enterprises who are party to any merger, amalgamation or acquisitions covered under Section 5 of the Competition Act, 2002 (**Act**) for a period of 5 years provided that the value of assets being acquired, taken control of, merged, or amalgamated is not more than INR 350 crore or its turnover is not more than INR 1000 crore in India.

It is to be noted that prior to 27 March 2017, parties to a combination were required to file a notice with the CCI within 30 days of the 'trigger event' as per the provisions of Section 6(2) of the Act. The trigger event in case of a merger or amalgamation is usually the 'board resolution' and the 'execution of documents' in case of an acquisition. Further, by the notification dated June 29, 2017, MCA had granted this exemption of the 30-day time-bound filing of the notice of combination with the CCI for a period of 5 year ending June 28, 2022, but the same has now been extended till June 28, 2027 vide the current Notification.

The relaxation in the statutory timeline is a welcome step as now the parties can continue to file the notice even after the occurrence of the trigger event and not be subject to the penalty amount of up to 1% (one per cent) of the total turnover or assets of the combination, whichever is higher.

CBDT | Faceless Inquiry or Valuation Scheme, 2022

On March 30, 2022, the Central Board of Direct Taxes (CBDT) notified Faceless Inquiry or Valuation Scheme, 2022 (Scheme) under Sections 142B(1) and (2) of the Income Tax Act, 1962 (Act). The Scheme introduces artificial intelligence to facilitate a simple, transparent, efficient, and accountable way of carrying out and concluding assessment proceedings under Section 142 of the Act.

Salient features

- Definition of Automated Allocation: As per Section 2b of the Scheme, 'Automated Allocation' has been defined as an algorithm for randomised allocation of cases, by using suitable technological tools, that includes:
  - Artificial intelligence
  - Machine learning
- Compliance in case of default under Section 17 of the Act: As per Section 3 of the Scheme, the following shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in Section 144B of the Act with reference to making faceless assessment of total income or loss of assesse:
  - Issuance of notice under Section 142(1) of the Act
  - Making inquiry before assessment under Section 142(2) of the Act
  - Directing the assessee to get his accounts audited under sub-Section (2A) of Section 142 of the Act
  - Estimating the value of any asset, property, or investment by a Valuation Officer under Section 142A of the Act

Elimination of the physical interface between an assessee and the income tax authorities has brought about a paradigm shift in the process of assessment under the Act. The Scheme is a credible move by CBDT as it not only saves significant time and effort of an assessee but also achieves its objective of bringing transparency in the taxation system. Additionally, the Scheme is a step-forward in satisfying the demands of the 21st century tax ecosystem as it relies on the use of technology such as artificial intelligence and machine learning.

FEATURED TOPIC | Limited Liability Partnership (Second Amendment) Rules, 2022 – Key takeaways

The Ministry of Corporate Affairs (**MCA**) released the Limited Liability Partnership (Second Amendment) Rules, 2022 on February 11, 2022, in consonance with the Limited Liability Partnership Act, 2008 (**Act**). However, in furtherance of the same, MCA notified the Limited Liability Partnership (Second Amendment) Rules, 2022 (**Amendment**) vide its Notification dated March 04, 2022. The Amendment was introduced in order to amend the existing Limited Liability Partnership Rules, 2009 and the same would come into force on the date of its publication in the Official Gazette.

Key takeaways from the Amendment

- **Increase in allotment of number of DPINs at the time of incorporation**
  The Amendment has been made w.r.t allotment of Designated Partner Identification Number (**DPIN**) at the time of incorporation. Now, 5 DPINs can be applied at the time of incorporation against the previous framework wherein application for a maximum of two DPINs was allowed at the time of incorporation of a Limited Liability Partnership (**LLP**).
- **Web-based process for LLP incorporation**
  Just like the SPICe Plus Forms are required for the formation of a company under The Companies Act, 2013, all the forms required for incorporation of LLPs have now become web-based, vide the Amendment. Another important change made in the process of LLP formation through this Amendment is that now every LLP shall have to mandatorily mention the 'Latitude and Longitude' in the address block and the details of the Directors can be fetched from the Digi Locker Database.
- **Allotment of PAN & TAN along with Certificate of Incorporation**
  The Amendment requires that the PAN and TAN would be allotted to LLPs along with the 'Certification of Incorporation' itself. The Amendment has been made to align the incorporation process of LLPs with that of the companies which are incorporated in accordance with The Companies Act, 2013. Previously, there was no implied provision for the automatic allotment of the PAN and TAN for LLPs at the time of incorporation itself and they were required to apply for PAN and TAN separately.
- **Relaxation in the requirement of mentioning the name of authority under which the application for changing the name is filed**
  Previously, whenever an application for changing the name of an LLP is to be made Rule 19(4) of the LLP Rules, 2009 required the person making the application to attach the authority under which he is making such an application and a copy of the incorporation certificate of the limited liability partnership or the company or the registration certificate of the entity, as the case may be. Through this Amendment, the requirement of attaching the authority under which such person is making an application under Rule 19 of the LLP Rules, 2009 is done away with and is beneficial as it reduces the compliance burden of the LLPs.
- **Signing of Statement of Account & Solvency of LLPs**
  The Amendment prescribes that the 'Statement of Account and Solvency' may be signed on behalf of the LLP by an Interim Resolution Professional or Resolution Professional, or Liquidator or LLP Administrator in the case where the Corporate Insolvency Resolution Process has been initiated against the LLP under the Insolvency & Bankruptcy Code, 2016 or the LLP Act, 2008. Prior to the Amendment, Rule 24(6) of the LLP Rules, 2009 prescribed that the 'Statement of Account and Solvency' of the LLP be signed by its designated partners. There were no provisions with regard to the signing of the Statement of Account and Solvency of the LLPs under insolvency.

Conclusion

The Amendment focuses on the real-time capturing of the information and promotes ease of doing business and primarily deals with solvency statements and certificates of truthfulness, which are part of the annual returns of LLPs. It further gives more clarity on the redressal mechanism available in case of grievances arising from the orders of the adjudicating officer. Thus, the Amendment is a welcome and significant move by the MCA as these changes will help the businesses registering as LLPs to ease the process of incorporation of an LLP.

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