

## New Delisting Regulations notified | MCA details consequences of failure to disclose SBO | IFSCA clarifies on ancillary services and suggests changes to Bullion Exchange Regulations

In this series of alert, we have analyzed following changes introduced by the Securities and Exchange Board of India (SEBI), Ministry of Corporate Affairs (MCA) and International Financial Services Centres Authority (IFSCA):

1. **New Delisting Regulations introduced by SEBI;**
2. **Consequences of failure to disclose significant beneficial ownership under Companies Act, 2013;**
3. **MCA incorporates shops and establishment registration as part of incorporation process, replaces e-form AGILE-PRO with AGILE-PRO-S;**
4. **Certain clarifications for service providers for the development of financial products, financial services and financial institutions in International Financial Services Centres (IFSC);**
5. **Consultation paper proposed by IFSCA to bring certain changes to the Bullion Exchange Regulations.**

Key changes of the aforesaid are analyzed below:

### NEW DELISTING REGULATIONS INTRODUCED BY SEBI

SEBI has notified the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021, on June 10, 2021 (**New Delisting Regulations**). The New Delisting Regulations have repealed the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.

The New Delisting Regulations is divided into 8 chapters, providing for (1) definitions, (2) certain common principles for delisting of equity shares, (3) principles of voluntary delisting, (4) process for exit opportunity to the shareholders, (5) process for compulsory delisting, (6) special provisions for (a) small companies, (b) companies listed on innovators growth platform after making an initial public offer, (c) subsidiary company getting delisted through a scheme of arrangement wherein the listed holding company and the subsidiary company are in the same line of business, (d) delisting by operation of law, (7) miscellaneous provisions providing for power to stock exchange to monitor compliance, and process for listing of delisted equity shares, and (8) power of SEBI to give clarifications and issue directions/grant relaxations.

Certain changes/process as per the New Delisting Regulations include:

- Delisting pursuant to a buyback of equity shares by the company, including a buyback pursuant to consolidation or division of all or part of the equity share capital of the company not allowed, unless a period of six months has elapsed from the date of completion of such buyback;
- Delisting pursuant to a preferential allotment made by the company not allowed unless a period of six months has elapsed from the date of such allotment, however, this shall not be applicable to the delisting of equity shares made by a new acquirer(s) who has made an offer under regulation 5A of the Takeover Regulations or a new promoter(s) pursuant to re-classification in terms of the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosures Requirements) Regulations, 2015;
- Inapplicability of the New Delisting Regulations to delisting made pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016, if such plan provides for: (i) delisting of such shares; or (ii) an exit opportunity to the existing public shareholders at a specified price: provided that the existing public shareholders shall be provided the exit opportunity at a price which shall not be less than the price, by whatever name called, at which a promoter or any entity belonging to the promoter group or any other shareholder, directly or indirectly, is provided an exit opportunity;
- Detailed timelines for counter offer provided;
- Concept of discovered price (that is, price discovered through reverse book building process), indicative price, and related mechanism;
- Special provisions provided for delisting of companies listed on innovators growth platform after making an initial

public offer, and subsidiary company getting delisted through a scheme of arrangement wherein the listed holding company and the subsidiary company are in the same line of business,

- Detailed obligations provided for the target company, manager to the offer, acquirer, including measures to protect the rights of remaining public shareholders;
- Process for cancellation of outstanding depository receipts;
- The acquirer/promoter to pay interest at the rate of 10% per annum to all the shareholders, whose bids have been accepted in the delisting offer, if the price payable is not paid to all the shareholders within the time specified thereunder: however, in case the delay was not attributable to any act or omission of the acquirer/promoter or was caused due to the circumstances beyond the control of the acquirer, SEBI may grant waiver from the payment of such interest;
- The equity shares shall be tendered/offered by the public shareholders, including by way of marking a lien through the stock exchange mechanism, in the manner specified by SEBI;
- The discovered price shall be determined as the price at which shares are accepted through eligible bids, that takes the shareholding of the acquirer (along with the persons acting in concert) to 90% of the total issued shares of that class excluding the shares which are held by following:
  - A custodian(s) holding shares against which depository receipts have been issued overseas;
  - A trust set up for implementing an Employee Benefit scheme under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014;
  - Inactive shareholders such as vanishing companies, struck off companies, shares transferred to Investor Education and Protection Fund account and shares held in terms of sub-regulation (4) of regulation 39 read with Schedule VI of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015.

The New Delisting Regulations published in the official gazette is [available here](#).

#### CONSEQUENCES OF FAILURE TO DISCLOSE SIGNIFICANT BENEFICIAL OWNERSHIP (SBO)

Section 90 of the Companies Act, 2013 (**CA2013**) requires relevant persons to report if they are SBOs in the company. A company can also give notice to certain persons who may be SBO or related to SBO. Failure to provide such disclosure or satisfactory disclosure could result into the company approaching the National Company Law Tribunal (**NCLT**) to seek remedies such as transfer of interest, suspension of all rights attached to the shares and other matters. An application can be filed by the company or person aggrieved for seeking orders of relaxation or lifting of restrictions, and if no such application has been filed within a period of 1 year from the date of the NCLT order, such shares are required to be transferred, without any restrictions, to the Investor Education and Protection Fund (**Fund**) set up by the Investor Education and Protection Fund Authority (**IEPFA**) in accordance with Section 90(9) of the CA2013.

In this regard, MCA has now provided the manner of transfer of shares to the Fund, including following key factors:

- Shares, including the benefits accruing on such shares, to be credited to DEMAT Account of the IEPFA within 30 days of such shares becoming due to be transferred to the Fund;
- Transfer of shares by the company to the Fund to be deemed to be transmission of shares and accordingly, the relevant procedure prescribed for transmission of shares is to be followed;
- Shares shall be transferred to the IEPFA without any restrictions and no application shall be filed for claiming back such shares from the IEPFA;
- Separate process is prescribed for transfer of physical and demat shares;
- Voting rights on shares transferred to the Fund to remain frozen, however, for the purpose of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the IEPFA shall not be excluded while calculating the total voting rights;
- In case of delisting or winding up of the company, IEPFA may surrender the shares in accordance with the applicable law, and proceeds realized to be credited to the Fund;
- Dividend received on such shares to be credited to the Fund.

The detailed manner of transfer of shares is provided under the Investor Education and Protection Fund Authority

(Accounting, Audit, Transfer and Refund) Amendment Rules, 2021 dated June 9, 2021 ([available here](#)).

#### **MCA INCORPORATES SHOPS AND ESTABLISHMENT REGISTRATION AS PART OF INCORPORATION PROCESS, REPLACES E-FORM AGILE-PRO WITH AGILE-PRO-S**

As part of the incorporation of companies, MCA has now allowed to seek registration for shops and establishment as well. Now the earlier form, AGILE-PRO is replaced with AGILE-PRO-S to mean “*Application for Goods and services tax Identification number, employees state Insurance corporation registration plus Employees provident fund organization registration, Profession tax Registration, Opening of bank account and Shops and Establishment Registration*”. The change has been incorporated vide the Companies (Incorporation) Fourth Amendment Rules, 2021, dated June 7, 2021.

Aforementioned change has been introduced vide the Companies (Incorporation) Fourth Amendment Rules, 2021, dated June 7, 2021 ([available here](#)).

#### **CERTAIN CLARIFICATIONS ON FRAMEWORK FOR ENABLING ANCILLARY SERVICES AT IFSC**

Considering the importance of professional and other service providers for the development of financial products, financial services and financial institutions in the IFSC, a framework for enabling ancillary services was provided by IFSCA vide its circular dated February 10, 2021 ([Framework Circular](#)). IFSCA has now provided following clarifications and changes to the said framework:

##### **A. Eligible entities who can act as service provider**

The Framework Circular provided that following entities are eligible to act as a service provider so as to provide permissible ancillary services pertaining to activities in relation to financial products, financial services and financial institutions in the IFSC: (i) any existing or newly incorporated entity set up in the IFSC, or (ii) any Indian or foreign incorporated entity by establishing a branch or a subsidiary. Now, it has been clarified that the entity may be set up in the IFSC in the form of a company or a limited liability partnership or a registered partnership firm, their branch thereof or any other form as may be approved by the IFSCA.

##### **B. Eligible foreign entities to whom services can be provided**

The Framework Circular provided that the service providers can provide permissible services to financial services entities from foreign jurisdictions for various activities in the IFSCs in India or other related activities overseas. It has been now clarified that the scope of aforementioned service recipients will be entities from foreign jurisdictions for various permissible ancillary services in the IFSCs in India or overseas.

##### **C. Scope of professional services expanded**

Professional services provided by any of the service provider in relation to the following will be part of the professional services:

- advisory and facilitation services to entities in IFSC/outside India in relation to their capital raising activities outside India;
- advisory and facilitation services to entities in IFSC/outside India in relation to their merger & acquisition or capital restructuring activities outside India.

##### **D. Scope of trusteeship services clarified**

Services such as Trusteeship for AIFs, InvIT and REIT, Security Trustee and other related financial services such as escrow agent, will be treated as part of the trusteeship services.

##### **E. Obligations on the applicant**

IFSCA has directed that the applicant shall not take client assets (including money), directly or indirectly in its custody and shall only provide permissible services within the prescribed framework. Further, the applicants shall seek IFSCA registration separately under the appropriate framework for undertaking regulated activities such as Debenture Trustee, Investment Advisor, AIF, Fund Management, etc.

##### **F. Further, a new format prescribed for setting up as an ancillary service provider.**

Aforementioned changes and clarifications have been issued vide IFSCA's circular dated June 10, 2021 ([available here](#)).

#### **CONSULTATION PAPER PROPOSED BY IFSCA TO BRING CERTAIN CHANGES TO THE BULLION EXCHANGE REGULATIONS**

On December 11, 2020, the International Financial Services Centres Authority (Bullion Exchange) Regulations, 2020 (**Bullion Exchange Regulations**), were notified. The Bullion Exchange Regulations provide the regulatory framework for

bullion exchange, bullion clearing corporation, bullion depository, vault manager and other intermediaries associated with the bullion market in IFSC in India. Thereafter, the IFSCA (Market Infrastructure Institutions) Regulations, 2021 (**MII Regulations**) were notified in April 2021, to provide the regulatory framework for market infrastructure institutions (stock exchanges, clearing corporations and depositories) in the securities markets in IFSC. Basis certain representations from various stakeholders to align some of the provisions of the Bullion Exchange Regulations with the MII Regulations so as to bring consistency in the broad framework for the market infrastructure institutions operating in the bullion market and the securities markets, in IFSC, a consultation paper has been issued by the IFSCA on June 10, 2021 ([available here](#)). Certain proposed amendments include changes to definitions, requirement to grant recognition to stakeholders, shareholding of the stakeholders and governance.

We hope you have found this information useful. For any queries/clarifications please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

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