

Changes related to CSR & COVID-19 vaccination, name change provisions; AGM of top 100 companies; Insurance business, capital market intermediaries, listing of securities in IFSC; FDI in PSUs for petroleum refining

In a series of announcements, India's key regulators have introduced the following changes:

1. MCA clarifies on eligible CSR spending related to COVID-19 vaccination.
2. MCA notifies September 1, 2021, as enforcement date of Section 4 of the Companies (Amendment) Act, 2020 which introduced changes to Section 16 of Companies Act, 2013 (**CA2013**). This is with respect to *inter alia* shortening the time to comply with directions of the Regional Director for name change, removing penalty in case of default in complying with the order of Regional Director and consequences if the direction is not adhered.
3. Department for Promotion of Industry and Internal Trade (**DPIIT**) allows 100% foreign investment in a Public Sector Undertaking (**PSU**) dealing with petroleum refining in case an "in-principle" approval for strategic disinvestment of a PSU has been granted by the Government.
4. SEBI extends timeline for top 100 listed entities by market capitalization for conducting their Annual General Meetings (**AGM**) for financial year 2020-21 from 5 months to 6 months.
5. International Financial Services Centres Authority (**IFSCA**) releases consultation papers on proposing a comprehensive regulatory framework for: (a) capital market intermediaries operating in International Financial Services Centres (**IFSC**); (b) insurers and reinsurers in IFSC.
6. IFSCA provides regulatory framework for the listing of equity shares, convertible securities, and debt securities in IFSC.

Summary and analysis of key changes is provided below:

A. MCA clarifies on eligible CSR spending related to COVID-19 vaccination

MCA has clarified that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families, is an eligible CSR activity. The clarification has been issued vide General Circular No. 13/2021, dated July 30, 2021 ([available here](#)).

B. Change in company's name due to failure to comply with Regional Director's order

MCA has notified **September 1, 2021**, as effective date for enforcement of Section 4 of the Companies (Amendment) Act, 2020 which introduced the following changes with respect to change in company's name:

- (a) **Rectification period reduced to 3 months from 6 months:** Where a company is registered by a name which is identical with or resembles a registered trademark in the opinion of the Regional Director (including on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999), such company may be directed to change its name within a period of three months from the issue of such direction, after adopting an ordinary resolution for this purpose. Prior to the amendment, the time period prescribed for rectification of name of the company was six months.
- (b) **Removal of penalty in case of default:** The penalty provided under Section 16 of CA2013 for non-compliance of the order of the Regional Director directing change of name of the company has been deleted and now the Regional Director will in case of default by the company, allot a new name to the company, which name can be subsequently changed by the company in accordance with Section 13 of CA 2013.

To align with the changes with the aforesaid amendment to Section 16 of Companies Act, 2013, MCA has inserted Rule 33A in the Companies (Incorporation) Rules, 2014. These Rules provide *inter alia* that where a company has failed to rectify its name in accordance with the direction issued under Section 16(1) of CA2013 within a period of three months from the date of issue of such direction, the letters "ORDNC" (an abbreviation for "Order of Regional Director Not Complied"), the year of passing of the direction, the serial number and the existing Corporate Identity Number (**CIN**) of the company shall become the new name of the company without any further act or deed by the company. The Registrar

of Companies shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C. The aforesaid enforcement date has been notified vide MCA notification dated July 22, 2021 ([available here](#)) and the amendment to the Companies (Incorporation) Rules, 2014 has been made vide the Companies (Incorporation) Fifth Amendment Rules, 2021 dated July 22, 2021 ([available here](#)).

C. 100% foreign investment in petroleum refining PSUs in case of strategic disinvestment approved by the Government

The Government of India has revised the FDI sectoral cap to 100% under automatic route in the PSU's in the petroleum refining sector, by carrying out changes in the FDI Policy 2020, vide Press Note 3/2021, dated July 29, 2021 ([available here](#)). FDI upto 49% was permitted under the automatic route for petroleum refining carried out by PSUs, without any disinvestment or dilution of domestic equity in the existing PSUs. Now, as per the Press Note, FDI upto 100% under automatic route has been allowed in case an "in-principle" approval for strategic disinvestment of a PSU has been granted by the Government. The aforesaid change will take effect from the date of notification issued under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

D. Relaxation in holding AGM by top 100 listed entities by market capitalization

Due to the Covid-19 pandemic, SEBI has provided respite to the top 100 listed entities by market capitalization with respect to convening their AGM. Presently, under Regulation 44(5) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (**LODR Regulations**), top 100 listed entities by market capitalization are required to hold their AGM within a period of 5 months from the date of closing of the financial year. Now, as a one-time relaxation, such top 100 listed entities by market capitalization can hold their AGM for the **financial year 2020-21** within a period of **6 months** from the date of closing of the financial year. The aforesaid relaxation has been granted vide SEBI Circular dated July 23, 2021 ([available here](#)).

E. Consultation papers on the regulatory framework for insurers, reinsurers, and capital market intermediaries in the IFSC

(a) Insurance framework

IFSCA has proposed to enact a comprehensive regulatory framework for the insurers and reinsurers in IFSCs, focusing on ease of doing business and by adopting international best practices being followed by regulators globally. A draft of the IFSCA (Registration of Insurance Business) Regulations, 2021 (**Insurance Regulations**) has been issued for public comments ([available here](#)). The draft regulations inter alia provide for:

- (i) **Who can set-up IFSC Insurance Office (IIO) in IFSC:** Besides Indian/Foreign insurers or re-insurers who can set up their branch office as IIOs in an IFSC, draft regulations enable following entities also to seek registration in an IFSC: (i) a Public Company, (ii) a Wholly Owned Subsidiary of an insurer or a re-insurer, (iii) insurance co-operative society; or (iv) a body corporate incorporated under the law of any country outside India.
- (ii) **Permissible Activities:** (i) An IIO can be permitted to transact Life Insurance Business or General Insurance Business or Health Insurance Business or Reinsurance Business within the IFSC, from other SEZs and also from outside India; (ii) An IIO registered to transact direct insurance business may transact such business from mainland India subject to extant provisions the Insurance Act, 1938; (iii) An IIO may accept re-insurance business from the cedents based in an IFSC in relation to risk emanating from other SEZs, from outside India and also from mainland India in accordance with extant regulatory provisions;
- (iii) **Registration:** Conditions of registration including requirement of Net Owned Funds, Assigned Capital, Paid-up Equity Capital and Solvency.

(b) Capital market intermediaries

With a view to ease doing of business in IFSC, IFSCA has issued a consultation paper proposing a comprehensive regulatory framework for the intermediaries in the capital markets in IFSC. Presently, the intermediaries are governed by the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 and various circulars issued by SEBI and IFSCA and the proposal is intended to streamline the present framework. The proposed International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 (**Intermediaries Regulations**) will cover the following categories of capital market intermediaries:

Broker Dealers	Clearing Members	Depository Participants	Investment Bankers	Portfolio Managers	Investment Advisers
Custodians	Credit Rating Agencies	Debenture Trustees	Account Aggregators	Any other intermediaries as may be specified by the IFSCA from time to time	

The proposed Intermediaries Regulations lists down regulatory requirements relating to *inter alia* the registration requirements for intermediaries, application procedure, eligibility and net worth requirements, general obligations and responsibilities including code of conduct, maintenance of books of account, records, risk management and control systems, annual audits, etc. The detailed regulatory framework proposed under the Intermediaries Regulations are available [here](#).

F. Listing of equity shares, convertible securities and debt securities in IFSC

In continuation of the consultation paper dated March 10, 2021 ([available here](#)) for issuance and listing of various securities in IFSC in India, IFSCA has introduced International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 laying down the regulatory framework relating to the listing of equity shares, convertible securities and debt securities by companies in IFSC. The listing of following securities is covered under the aforesaid regulations:

an initial public offer of specified securities by an unlisted issuer	a follow-on public offer of specified securities by a listed issuer	listing of specified securities by a start-up company or an SME company	secondary listing of specified securities
an initial public offer of specified securities by a Special Purpose Acquisition Company (SPAC)	rights issue and/or preferential issues by a listed issuer	listing of depository receipts	listing of debt securities
listing of ESG (Environment, Social and Governance) debt securities	issuance and/or listing of any other securities as may be specified by the IFSCA from time to time		

The regulations supersede the provisions relating to issuance and listing of specified securities and debt securities under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 and IFSCA circular F. No. 87/IFSCA/DRs/2020-21 dated October 28, 2020. The details and procedure for issue are provided under International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 dated July 16, 2021 ([available here](#)).

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

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