

## MCA NOTIFIES LEVY OF ADDITIONAL FEES NORMS | SEBI RECOGNIZES ACCREDITATION AGENCY

The Ministry of Corporate Affairs (**MCA**) has notified certain important changes in relation to payment of additional fees for delay in submitting, filing, registering or recording, of certain documents, fact or information under the provisions of the Companies Act, 2013 (**CA2013**). The changes are set to take effect from July 1, 2022.

In another important change, in order to enable the “accredited investors” seek certification under SEBI (Alternative Investment Funds) Regulations, 2012 (**AIF Regulations**), SEBI has granted recognition to CDSL Ventures Limited (CVL), a wholly owned subsidiary of Central Depository Services (India) Limited (CDSL), as an Accreditation Agency under AIF Regulations. On August 3, 2021, SEBI had introduced class of accredited investors (**AIs**) in the AIF Regulations, to give flexibility to high value investors and fund managers, in their investments. To provide certain flexibility to AIs, a new class of AIF or scheme of AIF was also introduced which is referred to as “large value fund for accredited investors” (**AI Fund**).

The changes are analyzed in detail below:

### A. LEVY OF ADDITIONAL FEES BY MCA

Notably, the Companies (Amendment) Act, 2017 (**CA2017 Amendment**) and Companies (Amendment) Act, 2020 (**CA2020 Amendment**) brought certain changes to the provisos of Section 403 of CA2013 relating to fee for delay in filing any document, fact or information other than under Section 92 or Section 137 of CA2013. The changes that were introduced to Section 403 of CA2013 by CA2017 Amendment and CA2020 Amendment are as follows:

- **Levy of additional fees:** Additional fees is payable for filing where any document, fact or information, in cases other than under Section 92 or Section 137 of CA2013, is filed after the expiry of the period provided for such submission, filing or registration in the relevant section.
- **Levy of higher additional fees:** Higher additional fees is payable for filing where there has been a default on two or more occasions in submitting, filing, registering or recording of any document, fact or information.

In accordance with the aforesaid enforcement notification, MCA has also issued the following revised table of additional fees and higher additional fee as will become applicable with effect from **July 1, 2022**, for delay in filing forms other than for increase in nominal share capital or forms under Section 93 or Section 137 of CA2013 or forms for filing charges:

Sl no.	Period of delays	Additional fee as multiple of normal fees	Higher additional fees as a multiple of normal fees
1.	Upto 15 days (Section 139 and 157)	One time	-
2.	More than 15 days and upto 30 days (Section 139 and 157) and upto 30 days in remaining forms	2 times of normal filing fees	3 times of normal filing fees
3.	More than 30 days and upto 60 days	4 times of normal filing fees	6 times of normal filing fees
4.	More than 60 days and upto 90 days	6 times of normal filing fees	9 times of normal filing fees
5.	More than 90 days and upto 180 days	10 times of normal filing fees	15 times of normal filing fees
6.	Beyond 180 days	12 times of normal filing fees	18 times of normal filing fees

In addition to the above, following have been clarified:

1. **Fees for e-form INC-22/PAS-3:** Higher additional fees shall be payable, if there is a delay in filing e-form INC-22, or e-form PAS-3, as the case may be, on two or more occasions, within a period of three hundred and sixty five days from the date of filing of the last such belated e-form for which additional fee or higher additional fee, as the case may be, was payable. E-form INC-22, or e-form PAS-3, as the case may be, filed prior to the commencement of

the Companies (Registration Offices and Fees) Amendment Rules, 2022 shall not be reckoned for the purposes of determining higher additional fee.

2. **No additional fee where higher fee:** Wherever higher additional fee is payable, additional fee shall not be charged.

The aforesaid enforcement notification under CA2017 Amendment and CA2020 Amendment are available [here](#) and [here](#) and the amendment to the Companies (Registration of Offices and Fees) Rules, 2014 has been made vide the Companies (Registration of Offices and Fees) Amendment Rules, 2022 dated January 11, 2022 ([available here](#)) and shall come into force from **July 1, 2022**.

## B. SEBI RECOGNITION TO ACCREDITATION AGENCY

On August 3, 2021, SEBI had introduced class of accredited investors (AIs) in the AIF Regulations, to give flexibility to high value investors and fund managers, in their investments. To provide certain flexibility to AIs, a new class of AIF or scheme of AIF was also introduced which is referred to as “large value fund for accredited investors” (AI Fund). An AI Fund means an AIF or scheme of an AIF in which each investor (other than the Manager, Sponsor, employees or directors of the AIF or employees or directors of the Manager) is an AI and invests not less than INR 70,00,00,000 (Indian rupees seventy crores).

Parallel, amendments to SEBI (Portfolio Managers) Regulations, 2020 and SEBI (Investment Advisers) Regulations, 2013 were also notified on August 03, 2021 to introduce framework for “Accredited Investors” in the Indian Securities Market.

Now, CDSL Ventures Limited has been granted recognition as an Accreditation Agency. The procedure for accreditation of an investor and verification of accreditation status of an investor by investment providers (viz Alternative Investment Funds, Portfolio Managers and, Investment Advisers) and other modalities along with relevant circulars will be displayed on the website of CDSL and CVL. Aforementioned has been provided vide SEBI press release dated January 12, 2022 ([available here](#)).

## Certain benefits / exemptions to an AI Fund / AIs

1. **Diversification norms eased to 50% for Cat-I /Cat-II, and to 20% for Cat-III AIFs**
  - (a) **Category-I and Category-II AIFs:** In terms of the AIF Regulations, Category I and II of AIFs cannot invest more than twenty-five percent (25%) of the investable funds in an Investee Company directly or through investment in the units of other AIFs. The said limit has been eased in case of AI Funds, to fifty percent (50%). Hence, if an AI Fund is a category-I or category-II AIF, then it may invest up to 50% of the investable funds in an investee company directly or through investment in the units of other AIFs.
  - (b) **Category-III AIFs:** If an AI Fund is a category-III AIF, then it may invest up to 20% net asset value in listed equity of an Investee Company and may invest up to 20% of the investable funds in securities other than listed equity of an Investee Company, directly or through investment in units of other AIFs.
2. **Tenure of a close-ended fund may be extended beyond two (2) years:** In terms of the AIF Regulations, extension of the tenure of the close ended AIF may be permitted up to two years subject to approval of two-thirds of the unit holders by value of their investment in the AIF. AI Funds may extend its tenure beyond two years, subject to terms of the contribution agreement, other fund documents and such conditions as may be specified by SEBI from time to time.
3. **Minimum investment:** In terms of the AIF Regulations, an AIF shall not accept from an investor, an investment of value less than INR 1,00,00,000. The said requirement has been relaxed for an AI. Further, in case of social venture funds, minimum grant (INR 25,00,000) shall not apply to an AI

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors: **Manendra Singh, Associate Partner – Email – [ManendraSingh@elp-in.com](mailto:ManendraSingh@elp-in.com)**; **Tanvi Goyal, Principal Associate – Email – [TanviGoyal@elp-in.com](mailto:TanviGoyal@elp-in.com)**; **Ambareen Khatri, Advocate – Email – [AmbareenKhatri@elp-in.com](mailto:AmbareenKhatri@elp-in.com)**

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