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## Overview of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

The Companies Act of 2013 in India underwent a significant change with the introduction of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 ("**Amendment Rules, 2023**"). These rules, issued by the central government, affect both public and private companies in the country.

I. Rule 9 of the Amendment Rules, 2023 is applicable for Public Companies:

The Amendment Rules, 2023 has introduced changes for the public companies that had previously issued share warrants before the commencement of the Companies Act, 2013. These companies are required to take specific actions within specified timelines, as follows:

Within three (3) months of Amendment Rules, 2023 coming into effect, public companies must inform the Registrar of Companies about the details of such share warrants using Form PAS-7.

Within six (6) months of Amendment Rules, 2023 coming into effect, such companies must request bearers of the share warrants to surrender them and get the shares dematerialized. This requirement involves placing a notice on the company's website and publishing the same in local and English newspapers. Failure to surrender the share warrants shall result in their conversion into dematerialized form and transfer to the Investor Education and Protection Fund.



II. Rule 9B of the Amendment Rules, 2023 is applicable for Private Companies:

As per this rule, private companies, except small companies, must issue securities only in dematerialized form and facilitate dematerialization of all its securities, in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

Companies except for small companies based on their audited financial statements for the financial year ending on or after 31st March, 2023 must comply with these rules within eighteen (18) months of the closure of that financial year. Private companies covered by these rules must ensure that all securities held by their promoters, directors, and key managerial personnel are dematerialized before any offer for issuing securities, buying back securities, or issuing bonus shares or rights offers, in accordance with the provisions of the Depositories Act, 1996, and related regulations. Securities holders planning to transfer or subscribe to securities must also ensure that their securities are in dematerialized form.

III. Introduction of New Forms:

Form PAS-7– relating to “Details of pending share warrants”.

Form PAS-8– relating to “Notice for bearers of pending share warrants”



## "Key Amendments to the Insolvency and Bankruptcy Board of India Regulations Enhancing Creditor Rights and Procedural Efficiency"

The Insolvency and Bankruptcy Board of India pursuant to powers given in section 240 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") vide Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 ("**Amendment Regulations, 2023**") effective from September 18, 2023.

The Amendment Regulations, 2023 have introduced new measures and amended the CIRP Regulations. A significant change benefiting creditors is the flexibility in timelines for filing claims after a corporate debtor is admitted into Corporate Insolvency Resolution Process ("**CIRP**"). Additionally, creditors filing applications under sections 7 and 9 of the Code must now provide a chronology to highlight key details necessary for adjudication. The Amendment Regulations, 2023 also enhance the role of Resolution Professionals ("**RP**"), specify duties of suspended management of corporate debtors, and empower the Committee of Creditors ("**CoC**") to ensure accountability, transparency, and effectiveness of CIRP.

Key Amendments are as follows:

- Additional details are to be provided i.e., details of debt, default and limitation in respect of applications under section 7 or section 9 of the Code.

The Amendment Regulations, 2023 have introduced regulation 2D, which requires financial creditors and operational creditors filing applications under sections 7 and 9 of the Code to disclose the following details and documents:

- i. chronology of the debt and default;
- ii. date when the debt became due;
- iii. date of default;
- iv. dates of part payments;
- v. date of last acknowledgment of debt; and
- vi. limitation applicable.



Regulation 2D of the Amendment Regulations, 2023 aims to help the adjudicating authority determine the admissibility of applications under sections 7 and 9 of the Code right from the start. By aligning with the principles of the Code, this regulation will ensure that issues regarding limitation and application admissibility are addressed promptly, leading to timely decisions on such applications.

- Assistance and cooperation by the personnel of the corporate debtor.

Regulation 3A, a new addition by the Amendment Regulations, 2023 requires the management, promoters, or individuals associated with the management of the corporate debtor to prepare a list of assets and records when transferring their custody and control. If these individuals fail to provide the list, the RP or Interim Resolution Professional can issue a notice requesting this information.

Regulation 3A (5) allows the RP or interim resolution professional to request information from the corporate debtor's personnel regarding the assets, finances, and operations of the corporate debtor, as outlined in section 18(a) of the Code and regulation 36 of the CIRP Regulations. If any asset or record has not been handed over, regulation 3A (3) of the Amended Regulations, 2023 states that the interim resolution professional or RP must prepare a list of assets and records while taking custody and control, and may designate person(s) to hold these assets and records. Each list must be signed by the parties present and at least two witnesses.

If the required information is not provided, the RP can file an application under section 19 (2) of the Code with adjudicating authority for directions to the personnels of corporate debtor to cooperate with the interim resolution professional. This application must demonstrate that the asset or record was mentioned in the notice of requisition under regulation 3A of the Amended Regulations, 2023 but was not included in the list of assets and records taken into custody as per sub-regulations (2) and (3).

While regulation 4(2) of the CIRP Regulations previously required cooperation from the corporate debtor's personnel, the Amended Regulations, 2023 and the addition of regulation 3A specify the details and method for providing this information. The list of documents and information must be signed by all witnesses, ensuring a comprehensive record for the RP or interim resolution professional. Ultimately, the lists outlined in regulation 3A (4) and the requisition notice in regulation 3A (5) must be attached to any application made under section 19(2) of the Code. This makes the defaults and non-compliance of regulation 3A evident to the adjudicating authority.



- Increased timelines for submission of claims

Creditors who miss the deadline specified in the public announcement can still submit their claim within 90 days from the insolvency commencement date or by the date of issue of request for resolution plans, whichever is later. Claims received after this period, but up to 7 days before the CoC meeting or initiation of liquidation, must be verified and categorized by the RP as 'acceptable' or 'non-acceptable'. If categorized as 'non-acceptable', the RP must inform the creditor within 7 days with reasons. If categorized as 'acceptable', the RP must present it at the next CoC meeting for inclusion in the list of creditors and treatment in the resolution plan, and submit it before the adjudicating authority for approval.

- Authorized Representative

The Amendment Regulations, 2023 include provisions for an authorized representative for a group of financial creditors, as well as the process for replacing such a representative. Regulation 16A (10) outlines the responsibilities of this authorized representative, emphasizing their crucial role in assisting the creditors to make prompt and well-informed decisions.

- Audit of Corporate Debtor

The Amendment Regulations, 2023 has been introduced regulations to empower any member of the CoC to call for an audit of the corporate debtor. Any creditor seeking such audit must submit a proposal outlining the scope, time frame, objective, and estimated costs for such an audit. Once approved, the costs of the audit shall be considered as CIRP costs.

The auditor apart from being a qualified professional must also be an insolvency professional. The audit report as prepared must be placed for consideration before the CoC. The RP is mandated to provide his recommendations on such report.

This regulation has been introduced with a view to boost stakeholders' confidence and ensure clarity in the CIRP. Notably, the regulation is not preconditioned with requirements for certain size of the corporate debtor for conduct of the audit. It is up to the COC to utilize this regulation, either in addition to forensic audits or simply to audit and account for the conduct of CIRP itself.



- Substitution of Schedule I to Form G (Invitation for Expression of Interest)

Form G in the CIRP Regulations has been updated to require the RP to give prospective resolution applicants direct access to the corporate debtor's financial information through a URL. The revised Form G will also specify the date for publishing the final list of prospective resolution applicants, issuing the information memorandum, providing the evaluation matrix, requesting resolution plans, and the deadline for submission of resolution plans. These changes aim to enhance the value of the resolution plan by making essential information easily accessible to prospective resolution applicants.

- Amendment of Schedule I to Form H (Compliance Certificate)

Regulation 39(4) of the CIRP Regulations mandates the RP to submit the resolution plan approved by the CoC to the adjudicating authority along with the compliance certificate in Form H and the evidence of receipt of performance security.

Form H serves as the compliance certificate which includes details of the resolution plan and CIRP. Vide the Amendment Regulations, 2023 the minutes of the COC meeting is also to be included in the compliance certificate. As a result of this introduction, the adjudicating authority whilst dealing with applications for approval of resolution plans will have easy access to a comprehensive record of the deliberations leading to the decision on the resolution plan thereby accelerating the adjudication of such applications.

- Duty to intimate the RP about the assignment or transfer of debt

In case of any assignment or transfer of debt during CIRP, the creditor will provide the RP with the details thereof (such as the terms of assignment and the identity of the assignee) within 7 (seven) days of such assignment or transfer.

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Warm Regards,

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