



NEWSLETTER

Legal, Compliance and ESG

06 May 2021

Dear Readers,

We bring to your reading and attention following topics:

A. LEGAL AND REGULATORY UPDATES:-----	1
I. Relaxation of time for filing forms related to creation or modification of charges under the Companies Act 2013 -----	1
II. Relaxation on levy of additional fees in filing of certain forms under the Companies Act 2013 and LLP Act 2008 -----	2
III. The Companies (Accounts) Second Amendment Rules, 2021 -----	2
IV. The Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 -----	2
V. The Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021 -----	2
VI. NCLT - Urgent Matters Through Video Conferencing -----	3
B. ARTICLE: Difference between Will and Power of Attorney-----	3
C. ARTICLE: Why do so many MNC banks give up pursuit of retail El Dorado in India -----	4
D. YOUR LEGAL QUERIES ANSWERED-----	5
E. ESG: Governance - Putting the 'G' in ESG -----	6

A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa and Saurav Agarwal

I. Relaxation of time for filing forms related to creation or modification of charges under the Companies Act 2013¹

On account of resurgence of Covid 19, MCA vide its circular dated 3 May 2021 decided to allow relaxation of time and condone delay in filing forms CHG-1 and CHG-9 where the date of creation/modification of charge:

- a. Is before 1.04.2021, but the timeline for filing such form had not expired as on 1.04.2021; or
- b. Falls on any date between 1.04.2021 to 31.05.2021.

¹http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo7_03052021.pdf

II. Relaxation on levy of additional fees in filing of certain forms under the Companies Act 2013 and LLP Act 2008²

On account of resurgence of Covid 19, MCA vide its circular dated 3 May 2021 decided to grant additional time upto 31st July 2021 for companies/LLPs to file such forms (other than CHG-1, CHG-4, and CHG-9) without any additional fees.

III. The Companies (Accounts) Second Amendment Rules, 2021³

MCA vide its notification dated April 01, 2021 notified the Companies (Accounts) Second Amendment Rules, 2021 amending rule 3 of the Companies (Accounts) Rules, 2014.

Rule 3 provides for manner of books of account to be kept in electronic mode. As per the amendment for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

IV. The Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021⁴

MCA vide its notification dated April 09, 2021 notified the Insolvency and Bankruptcy (pre-packaged insolvency resolution process) Rules, 2021. A corporate applicant, can now make an application for initiating pre-packaged insolvency resolution process under sub-section (1) of section 54C of the Code in Form 1, accompanied with affidavit, documents or records as referred in Annexures therein, in electronic form, along with a fee of rupees fifteen thousand. In case, electronic facility is not available for filing such application, the application and the accompanying documents may be filed in physical form, and wherever the

accompanying documents are bulky, the same may be submitted in scanned portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority. The corporate applicant shall serve a copy of the application to the Board by registered post or speed post or by hand or by electronic means, before filing it with the Adjudicating Authority and shall also, inform the Adjudicating Authority about the filing of any winding up petition against the corporate debtor after becoming aware of such filing.

V. The Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021⁵

IBBI vide its notification dated April 13, 2021 notified the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021 amending the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.

Key highlights of the amendment are:

Regulation 27 – A user, who has submitted information in Form C of the Schedule to an information utility, shall submit the information updated as on the last day of every month, in the first week of following month. Provided that information of default shall be updated within seven days of occurrence of default.

Regulation 36A - Publication of statistical information - (1) An information utility shall publish statistics relating to debt related information in its possession, quarterly. (2) The statistics in sub-regulation (1) shall provide distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default.

In the principal regulations, in the Schedule, for Form C, the Form stands substituted.

²http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo6_03052021.pdf

³http://www.mca.gov.in/Ministry/pdf/AccountsSecondAmendmentRules_13042021.pdf

⁴http://www.mca.gov.in/Ministry/pdf/InsolvencyandBankruptcyRules_12042021.pdf

⁵<https://www.ibbi.gov.in/uploads/legalframework/874c1870a61be056ec690a5ecb928ef0.pdf>

VI.NCLT - Urgent Matters Through Video Conferencing

NCLT vide its order dated April 19, 2021 in view of surge in COVID 19 cases throughout the country has decided to take up only urgent matters through video conferencing w.e.f. 20.04.2021 at all NCLT Benches till further orders. The Benches shall sit as per rule 9 of the NCLT Rules, 2016.

Supreme Court restores Order extending Limitation; Period from 14.03.2021 excluded from computing limitation period until further Orders.

B. ARTICLE: Difference between Will and Power of Attorney

~ J.P. Trivedi

What is Power of Attorney?

A power of attorney is a legal document giving one person (the agent or attorney-in-fact) the power to act for another person (the principal). The agent can have broad legal authority or limited authority to make legal decisions about the principal's property, finances, or medical care. The power of attorney is frequently used in the event of a principal's illness or disability, or when the principal can't be present to sign necessary legal documents for financial transactions. A power of attorney can end for a number of reasons, such as when the principal dies, the principal revokes it.

What is Will?

A Will is a legal document that sets forth your wishes regarding the distribution of your property and the care of any minor children. If you die without a will, those wishes may not be carried out. Further, your heirs may end up spending additional time, money, and emotional energy to settle your affairs after you're gone.

Difference between Will and Power of Attorney:

Both the will and power of attorney are legal documents that gives power to certain person.

Main difference is the time span in which the will and power of attorney takes effect. Will executed by the testator takes effect only after the death of the testator. All the powers conferred by the executor cannot be exercised upon the estate during the lifetime of the testator. But the power of attorney can exercise the powers only during the lifetime of the principal. Principal is the person whose renders his powers of administrating the estate to some person who is called donee.

The power of an executor is not limited and he has an authority to manage all the matters relating to the estate. But the powers of the agent with respect to the power of attorney are limited only to those matters that are required to be carried out with respect to the agreement.

Conclusion:

Both Will and power of attorney are legal instruments which confers power to some other person. The time period in which the documents take effect varies.

C. ARTICLE: Why do so many MNC banks give up pursuit of retail El Dorado in India⁶

~ Comments by our Founder, Mr. Gunit Chaddha, in the Times of India dated 17th April 2021

For decades, multinational banks have sought to tap the continent-sized Indian market. Unlike other multinational entities, banks are not able to sweep the market as authorities in India and elsewhere grant branch licences very judiciously.

Yet, over half a dozen multinational banks have pumped in billions of dollars to grow their retail business across India, only to sell them and exit in the last two decades.

It all started with ANZ Grindlays, then the largest foreign bank in India. ANZ Grindlays, which was to banking what Hindustan Lever was to FMCG, sold its business to StanChart and exited the country in 2000.

A few years later in 2007, ABN Amro, which had acquired Bank of America's retail business in 1998, sold out to RBS following a global deal. In the last decade, Deutsche Bank, ING, RBS and HSBC sold significant portions of their retail businesses in the country. While ANZ Grindlays did take a major hit because of the securities scam, most of the others had a profitable business.

So, what is it that makes foreign banks exit after investing? According to veteran banker-turned-entrepreneur Gunit Chaddha, who started in Citibank, it is to do with the nature of the business. Chadha has had a ringside view of multinational banks in global markets as former CEO of Deutsche Bank Asia.

"In my view, unlike investment banking or capital markets which are truly global businesses, retail banking is a home market or, at best, a multi-country business. The exception being credit cards and wealth management, both of which can be global businesses. In most countries, the top 5 retail players are the local banks with multinationals playing for the number 5 to number 10 position in retail banking market share," said Chadha, founder of APAC Financial.

Echoing this view is Amrish Rau, CEO of Pine Labs and a veteran of the credit card business. According to Rau, the concept of a massive global consumer bank is dead. *"With the rise of the fintechs, banks are realising that they have to make large investments in newer technology to retain their customers. At the same time, they are under higher scrutiny and facing increased regulations while the capital available is the same. This is compelling banks to spend more in defending their business in domestic markets"*.

According to Chaddha, while mid-sized countries may not be attractive for MNC banks, India is still an outlier in terms of opportunity. *"I still feel that given the huge market size and growth demographics, India along with a couple of other such mega markets, will be continue be a solid opportunity in retail banking for global banks as well,"* he said.

Some foreign banks complain about the intransigence of regulators. But Chadha says that regulation has not been a factor in any of the exits so far. *"India does not stand different from most other emerging markets in terms of regulations, even while degrees may vary. Most of the foreign banks operating in India have had very profitable businesses over a long period, which shows that regulations are well-balanced and supportive to global banks, as much as to local banks,"* he said.

⁶ <https://timesofindia.indiatimes.com/business/india-business/why-do-so-many-mnc-banks-give-up-pursuit-of-retail-el-dorado-in-india/articleshow/82108362.cms>

D. YOUR LEGAL QUERIES ANSWERED

(Answers by K. Selvaraj, Group General Counsel and Head Compliance, Corporate Office, Mumbai)

We are introducing this new section for the benefit of our employees, wherein we answer their legal queries.

We would encourage all employees to raise your questions to LC@apacfin.com and we will try our best to get it answered. Please note that this should not be construed as an opinion for a specific case. (Specific cases need to be referred to Legal Department for opinion).

Here are some of the queries which were raised by few of our employees:

Q) When the non-judicial stamp paper used for a loan agreement is dated subsequent to the date of execution of such loan agreement, whether that agreement is valid in law?

– **Vijaya Kumar R**, Branch Manager, Dindigul Branch

A) If the date of the non-judicial stamp paper is subsequent to the date of execution of agreement, it means stamp paper was purchased subsequent to the date of actual agreement executed by the parties. In other words, it amounts to backdating the agreement which is not permissible in law. The course available to rectify this is to execute a fresh agreement with appropriate letter linking the earlier transaction.

Q) In the event of death of the borrower or the co-borrower whether his/her legal heirs can be impleaded in the court of law for recovery of debts?

– **Aditi Jain**, Corporate Office, CSS team

A) In case of death of the borrower or the co-borrower, his/her legal heirs are liable to the extent of the properties inherited by them from the deceased. If they fail to pay the dues, then the lender can file a recovery case against these legal heirs. However, the liability of the legal heirs/representatives is limited to the extent of assets inherited by them.

E. ESG: Governance - Putting the 'G' in ESG⁷

A study found that over the 12 months, governance consistently ranked second, behind only a company's products, as a driver of corporate reputation. Not too long ago, the success of a company was determined purely by its financial performance. Its profit and loss account, balance sheet statements, share price, ROI, ROE — these were the metrics that set a successful business apart from a failing one. That no longer holds entirely true.

A business still has to be profitable, it still has to have the right level of leverage, a healthy return on invested capital. These are outcomes that any company aspires to. But the influences that determine them have undergone a sea change in today's digitally-enabled modern day world.

Once the quality of a company's products or service was enough to set it apart from the competition. Today, there is a complex, multi-layered matrix of intangible influences that determine whether a company succeeds or fails. Influences like perception and reputation, stemming from a company's actions outside of its area of business, move the needle to a far greater degree today than they did in the past.

Environmental sustainability, engagement with local communities, employability, a social conscience — these are the metrics that define a good business in the 21st century.

The definition of "good business" varies for varying stakeholder groups. Urban and rural consumers will have a different interpretation of the concept, as will people of different ages or genders. Potential employees, current employees, shareholders, auditors, suppliers and service providers will all have their unique perspective on what makes a "good business". It is a fluid concept, shape shifting to fit the different perspectives of different stakeholders. But survey respondents broadly identified the following pillars as central to the concept of "good business": environmental sustainability, contribution to society, inclusivity and ethics. These are all indispensable elements of "good business". But a key aspect that survey respondents tended to largely overlook was governance.

The business world has coined an acronym 'ESG' to measure a company's societal impact. It stands for Environmental, Social and Corporate Governance.

Governance doesn't create the same excitement as environmental sustainability and a commitment to social causes. A "good business" cannot exist without strong corporate governance. It has more of an influence on the "matrix of intangibles" like perception and reputation than, for example, environmental sustainability. It is more directly linked to a company's profitability and creditworthiness, for instance. It is intrinsic to value creation.

Reputation insights company RepTrak, which has worked with several blue-chip companies, carried out a study measuring reputation drivers between August 2019 and July 2020. The study found that over the 12 months, governance consistently ranked second, behind only a company's products, as a driver of corporate reputation.

Another study by RepTrak found that a company's ESG score is a key differentiator in a consumer's purchase decision. About 60 per cent of the general public expressed a willingness to buy products from

⁷ Source: https://www.business-standard.com/article/opinion/governance-putting-the-g-in-esg-121041501443_1.html

a company with a high ESG score compared to just 20 per cent willing to buy from a company with a low score.

The latter study focused on the overall ESG score of a company, which includes its environmental and social commitments. But, as highlighted above, with governance such a key component of the three, the study further emphasised its importance to reputation and overall business.

Doing things the right way is just as important as doing the right things. A business exists to turn a profit. That has always been the case since the earliest days of capitalism. What has changed in the 21st century is that the how now matters just as much as the how much.