



LATEST STATUTORY SNAPSHOT

TUESDAY 10th MAY 2022



Compliance with the provisions of Foreign Exchange Laws for Private Placement of Securities and Transfer Of Shares in physical mode

The Ministry of Corporate Affairs ("MCA"), Government of India Vide Notification dated 4th May, 2022, has amended the Form SH-4 under the Companies (Share Capital and Debentures) Rules, 2022. Accordingly, any transfer of shares involving transfer by a Non-Resident to a Resident or vice-versa will require a declaration that the transferee does not require prior approval of Government of India under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and where required a copy of such approval is to be attached to the Form SH-4

Needless to say, the aforesaid requirement would apply only to a private company because in respect of listed companies and unlisted public companies, transfer of shares can be effected only in dematerialized mode.

The amended requirement as aforesaid ensures that the transfer of shares in physical mode does not breach the provisions of the Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2020 (which amended Rule 6(a)) which stipulates that any entity or citizen of any country which shares land border with India can invest in shares of a company in India only with the prior approval of Government of India.

Similarly, MCA vide Notification dated 5th May, 2022 has amended Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 under Section 42 dealing with Private Placement of Securities. Accordingly, the fifth proviso to Rule 14(1) was inserted to provide that no offer or invitation of any securities shall be made to a body corporate incorporated in, or a national of a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained the approval of Central Government under the Foreign Exchange

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Management (Non-debt Instruments) Rules, 2019. Further, Form PAS-4 (private placement offer cum application letter) was amended to include a declaration similar to the one under Form SH-4. Any issue of securities by way of private placement requiring approval of Central Government should enclose approval so taken along with Form PAS-4.

Any false declaration by the transferee in SH-4 or by the issuer of securities in Form PAS-4 can invite the wrath of provisions of Section 448 of the Companies Act, 2013.

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