

Luther.

Legal and Regulatory Updates in India

March 2019

I. New Compliance Requirements

Active Company Status Reporting

On 25 February 2019 the Companies (Incorporation) Amendment Rules, 2019 came into force.

Every company incorporated on or before December 31st, 2017 has been mandated to file the e-Form ACTIVE (Active Company Tagging Identities and Verification) before April 25th, 2019.

Photographs of the exterior and interior of the registered office and a key managerial personnel or a director who has affixed his digital signature have to be attached to the form.

Any company that fails to comply with the rule will be barred from altering the authorized and/or the paid up share capital, appointing new directors or changing the registered office. Late filing is further subject to a fine of INR 10,000.

Disclosure of Delayed Payment to MSME-suppliers in India

On January 22, 2019 the MCA notified the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019.

Micro, Small and Medium Enterprises (MSMEs) are companies registered under the MSME Act and benefit from various tax rebates, easy access to credit, and cheaper bank loans.

Companies who receive supplies from MSMEs and have delayed a payment for more than 45 days, will now have to file half-yearly returns under 'MSME Form I', disclosing the outstanding amount and the reasons for the delay.

The deadlines for filing the returns are 30th April for the period – October to March and 31st October – for April to September.

II. Recent changes to the Companies Act

The Companies Amendment Act, 2017 ("Amendment Act") and the Companies Amendment (Ordinance), 2019 ("Ordinance") have introduced several amendments to the company law some of which came into effect in late 2018 and beginning of 2019.

Certificate of Commencement of Business

The concept of a mandatory issuance of certificate of commencement of business ("Certificate") in the erstwhile Companies Act, 1956 has been reintroduced in the current company law. Companies incorporated on or after November 2, 2018 are now mandated to obtain a Certificate within 180 days from the date of incorporation.

The Registrar of Companies (ROC) is empowered to strike off the name of a company who has failed to obtain a Certificate within the prescribed time period.

Meetings of Shareholders

The Amendment Act brought also some relief to wholly owned subsidiaries ("WOS") of foreign companies. A private unlisted company can now hold its annual general meeting ("AGM") anywhere in India and is not restricted to the registered office of the company any more.

Further WOS of foreign companies can now hold their extraordinary general meetings outside of India.

Corporate Social Responsibility

The Companies Act, 2013 mandated constituting of a Corporate Social Responsibility (CSR) Committee for a company having net worth of more than approx. EUR 6.4 million, a turnover of more than EUR 12.5 million or a net profit of more than approx. EUR 630k during any of the previous three financial years. The Amendment Act has reduced the relevant period to the immediately preceding financial year, thus reducing the ambit of companies falling under the CSR obligation net.

Registration of Charges

Often a company borrows funds by creating a “charge” on the property or assets of a company for securing the loan.

The ROC is required to keep a register showing full particulars of charges created by a company and which is open for inspection to any person. Until now the charge had to be registered within 30 days from the date of its creation.

The Ordinance has extended the deadline for registration to 6 months from the date of the Ordinance for all old charges and to 60 days from the date of creation for all new charges.

Financial Year

In India, companies generally follow the financial year beginning from 1st April to 31st March. A company wishing to have a different financial year can now file an application with the Regional Director, Ministry of Corporate Affairs to adopt a different financial year.

Earlier the application was filed to the National Company Law Tribunal which oftentimes consumed a long period for obtaining the approval.

Penalty for repeated defaults

For repeated defaults the penalties have been drastically increased. This is a stringent action taken to prevent habitual defaulters and improve corporate compliance on a timely basis.

Incorporation of a Company – Declaration

Earlier, each subscriber to the initial share capital of a company at the time of incorporation was required to file an affidavit declaring that he/she was not guilty of fraud or any offence under the company law.

The Amendment Act exchanged the requirement of providing an affidavit to a simple self-declaration.

III. Foreign Investment

BIS Certification mandatory for IT and Electronic Imports

On January 8, 2019 the Director General of Foreign Trade, India (DGFT) issued a notification mandating that every company importing and selling electronic and IT related products in India is required to obtain a certification from the Bureau of Indian Standards (BIS).

Previously the BIS certification was mandatory for only 15 products.

Eased Procedure for Registration of foreign NGOs and NPOs

The Reserve Bank of India vide circular dated February 27, 2019 has announced that foreign Non-Government Organizations (NGO), Non-Profit Organizations (NPO) and Department/Agency/ Body of a foreign Government who intend to open a branch, liaison or a project office or any other place of business in India can do so by obtaining a “certificate of registration” under the Foreign Contribution (Regulation) Act, 2010 (FCRA).

No further permit will be required from the RBI, as it has been the case under the Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any Other Place of Business) Regulations, 2016 prior to the notification.

IV. Proposed Amendments in the Cosmetic Industry

The cosmetic industry in India is booming and has become a viable business opportunity owing to various factors such as increase in income, greater purchasing power and the increase in demand for beauty products.

The Central Government in November 2018, has released Draft Cosmetic Rules, 2018 ("Draft Rules") for cosmetic products with stringent regulatory norms. Under the present law, cosmetic products are not obliged to comply with regulatory norms such as packaging, labelling and testing. The Draft Rules address these loopholes and seek to mandate the following:

- Animals cannot be used for testing of cosmetic products;
- Cosmetic products tested on animals after October 2014 are prohibited from being imported into India;
- Only those cosmetic products can be imported into India whose "use before" or "use by" is for longer than six months from the date of import;
- Only cosmetics containing mercury compounds up to a permissible limit can be manufactured or imported in India; and
- Bulk cosmetics imported for repackaging and used 100% for reexport to other countries, cosmetics imported for use exclusively by hotel guests or for sale in duty free shops at international airports will be excluded from import registration.

Import, manufacturing, distribution and sale of cosmetics in India is currently regulated under Drugs and Cosmetics Act, 1940 ("the Act") and Drugs and Cosmetics Rules, 1945 ("the Rules"). The Act defines "cosmetic" as any article intended to be rubbed, poured, sprinkled or sprayed on or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic.

Import of Cosmetic Products

Import Registration Certificate

All cosmetic products that are imported for sale in India must be registered with the Central Drugs Standard Control Organization (CDSCO).

The importer, the overseas manufacturer or its Indian subsidiary, or an authorized agent can obtain the registration certificate, which will be valid for three years. The Draft Rules are proposing a five year validity of a registration certificate on imports.

Import and Sale

Current Rules require compliance with BIS standards of some imported products under Schedule S. At present there are only 28 such items. Under the Draft Rules, all cosmetic products will require BIS compliance certificates.

Manufacturing of Cosmetic Products

License

To manufacture cosmetics in India, a license must be obtained from the competent Licensing Authority appointed by each State Government. The license is granted for a period of five years.

Manufacturing requirements

All manufacturing premises have to comply with the specific requirements depending on the cosmetic product as provided by the law. The Rules under Schedule M lay down the minimum norms with respect to the type of manufacturing equipment utilized. It also stipulates requirements on the size of the manufacturing premises.

Misbranded or spurious cosmetics or of substandard quality, cosmetics containing hexachlorophene or mercury compounds, eye preparations containing coal tar colour and cosmetics containing arsenic, lead and heavy metals above the prescribed level are prohibited from being manufactured in India.

Conclusion:

Luther can assist you with business establishments, obtaining registrations and licenses as well as with corporate secretarial matters to ensure statutory compliance in the changing legal and regulatory environment.

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