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## **Newsletter for April, 2015** **By Amita Desai & Co.**



*We love to serve and add value to business of our clients*



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## **MCA UPDATES:**

### **A. Clarification Under Section 186 (Loan And Investment By Company) Of The Companies Act, 2013.**

- The Ministry vide Circular No. 06/2015 provided clarification in respect of sub-section (7) Section 186 for providing loan at a rate of interest lower than the prevailing yield of one year, three year, five year, or ten year Government Security closest to the tenor of the Loan.
- Attention of the Ministry was drawn to General Circular No 06/2013 dated 14.03.2013 vide which it was clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the yield on prevailing bank rate, there was no violation of Section 372A (3) of Companies Act, 1956, Stakeholders requested for similar clarification w.r.t. corresponding section 186(7) of the Companies Act, 2013.
- The Ministry clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan, there is no violation of sub-section (7) of section 186 of the Companies Act, 2013.
- The Link of the Circular is as follows:  
[http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_06\\_2015.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_06_2015.pdf)

## **B. Remuneration to managerial person under Schedule XIII of the Companies Act, 1956 - Clarification with regard to payment for period.**

- The Ministry of Corporate Affairs (MCA) vide Circular No. 7/2015 provided clarification with regard to payment to managerial person appointed in accordance with such provision of Schedule XIII of the Companies Act, 1956 (Earlier Act) may receive relevant remuneration for the period as approved by the Company in accordance with such provisions of Earlier Act.
- Stakeholders drew attention to the provisions of Schedule XIII (sixth proviso to Para (C) of Section II of Part II) of the Companies Act, 1956 (Earlier Act) and as clarified vide Circular number 14/11/2012-CL-VII dated 16th August, 2012, which allowed listed Companies and their subsidiaries to pay remuneration, without approval of Central Government, in excess of limits specified in para II Para (C) of such Schedule if the managerial person met the conditions specified therein, Stakeholders expressed that since similar provisions are not available in the Schedule V of the Companies Act, 2013, there is a need for a clarification that a managerial person appointed in accordance with such provision of Schedule XIII of Earlier Act may receive relevant remuneration for the period as approved by the Company in accordance with such provisions of Earlier Act.
- The Ministry clarified that a managerial person referred above may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by Company as per relevant provisions of Schedule XIII of earlier Act even if the part of his/ her tenure falls after 1st April, 2014.
- The link of the Circular is as follows:  
[http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_07\\_2015.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_07_2015.pdf)

## **C. Companies (Auditor's Report) Order, 2015.**

- MCA issued The Companies (Auditor's Report) Order, 2015 on 10<sup>th</sup> April, 2015.
- The Link of the following order is:  
[http://www.mca.gov.in/Ministry/pdf/Companies\\_Auditors\\_Report\\_Order\\_2015.pdf](http://www.mca.gov.in/Ministry/pdf/Companies_Auditors_Report_Order_2015.pdf)

**D.** MCA has also made available from May 1, 2015 an integrated **Form INC- 29** enabling combined application for:

1. Allotment of DIN,
2. Application for Name Availability and
3. Application for incorporation of the Company.

Also the Application for PAN and TAN can be done in the same form. All the relevant assistance can be obtained from the help kit of Form INC-29 as available on the website of MCA.

Revised Form INC-7 with the facility to make PAN/TAN application is also available on the MCA portal.



## NOTIFICATION BY MINISTRY OF FINANCE

### Income – Tax (Fifth Amendment) Rules, 2015

- The Central Board of Direct Taxes issued the Income – Tax (Fifth Amendment) Rules, 2015 for a Company which has not been registered under the Companies Act, 2013 (18 of 2013), to make the application for allotment of a Permanent Account Number (PAN) in **Form No. INC-7** specified under sub-section (1) of section 7 of the said Act for incorporation of the Company.
- The Link of the Notification is:  
<http://www.incometaxindia.gov.in/communications/notification/notification382015.pdf>



## **RBI UPDATES:**

### **A. Know Your Customer (KYC) Guidelines - Accounts of Proprietary Concerns:**

- The Reserve Bank of India (RBI) vide Circular No.532 dated April 1, 2015 issued guidelines for Know Your Customer (KYC) - Accounts of Proprietary Concerns.
- As per paragraph 2.5(ii) of Master Circular no. UBD.BPD.(PCB) MC.No.16/12.05.001/2014-15 dated July 1, 2014 and paragraph 2.5 (vi) of Master Circular RPCD. RRB.RCB.AML.BC. No. 02/07.51.018/ 2014-15 dated July 1, 2014 on KYC norms and RBI Circular UBD.BPD.CO/NSB1/11/12.03.000/2009-10 dated September 29, 2009 and RPCD Circular RPCD.CO.RF.AML.BC.No.83/07.40.00/2009-10 dated May 12, 2010 prescribing norms for opening of bank accounts in respect of sole proprietary firms and subsequent circulars issued in this regard.
- Representations have been received pointing out difficulties in complying with the requirement of furnishing two documents as activity proof while opening accounts of sole proprietary firms in certain cases. It is possible that in some types of activities there is genuine difficulty in procuring two such documents. The matter was, therefore, reviewed with a view to ease the process of opening bank accounts of proprietary concerns in such cases. The default rule was that any two documents, out of those listed in paragraphs of the Master Circulars mentioned above, should be provided as activity proof by a proprietary concern. However, in cases where the banks are satisfied that it is not possible to furnish two such documents, they would have the discretion to accept only one of those documents as activity proof. In such cases, the banks, however, would have to undertake contact point verification, collect such information as would be required to establish the existence of such firm, confirm, clarify and satisfy themselves that the business activity has been verified from the address of the proprietary concern.

- It was also clarified here that the list of registering authorities indicated in paragraph 2.5(ii) of our Master Circular no. UBD.BPD.(PCB) MC. No.16/12.05.001/2014-15 dated July 1, 2014 and paragraph 2. 5 (vi) of Master Circular RPCD.RRB.RCB.AML.BC. No.02/07.51. 018/2014-15 dated July 1, 2014 on KYC norms is only illustrative and therefore includes license / certificate of practice issued in the name of the proprietary concern by any professional body incorporated under a statute, as one of the documents to prove the activity of the proprietary concern.
- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/PCB24KYCNT0415.pdf>

## **B. Setting up of IFSC Banking Units (IBUs):**

- The Reserve Bank of India (RBI) vide Circular No.533 dated April 1, 2015 issued guidelines for Setting up of IFSC Banking Units (IBUs).
- As per Reserve Bank of India Notification No. FEMA.339/2015-RB dated March 02, 2015 (copy enclosed) under FEMA 1999 on Foreign Exchange Management (International Financial Services Centre) Regulations, 2015 relating to financial institutions set up as International Financial Services Centres (IFSC). These regulations have been published in the Official Gazette of Government of India on March 23, 2015 vide Notification No. G.S.R. 218 (E) dated March 2, 2015.
- Pursuant to the above Notification, Reserve Bank has formulated a scheme for the setting up of IFSC Banking Units (IBUs) by banks in IFSCs. The broad contours of the scheme for Indian banks and foreign banks already having presence in India were detailed in Annexures to the notification, respectively. The guidelines contained in this circular will be applicable to IBUs set up in Gujarat International Finance Tec-City (GIFT) in Gandhinagar, Gujarat as well as in other IFSCs which may be set up in India.
- Eligible banks intending to set up IBU may approach this department with an application under Section 23 of the Banking Regulation Act, 1949.
- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/FNIBU010415CIRN.pdf>

## **C. Provisioning pertaining to Fraud Accounts:**

- The Reserve Bank of India (RBI) vide Circular No.535 dated April 1, 2015 issued guidelines for Provisioning pertaining to Fraud Accounts.

- As per guidelines compiled in paragraph 4.2.9 of Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 1, 2014, in terms of which, in accounts where there are potential threats for recovery on account of erosion in the value of security or non-availability of security and existence of other factors such as frauds committed by borrowers, the asset classification, and consequent provisioning, depends upon the realizable value of security.
- On a review, it was decided to prescribe a uniform provisioning norm in respect of all cases of fraud, as under:
  - (a) The entire amount due to the bank (irrespective of the quantum of security held against such assets), or for which the bank is liable (including in case of deposit accounts), is to be provided for over a period not exceeding four quarters commencing with the quarter in which the fraud has been detected;
  - (b) However, where there has been delay, beyond the prescribed period, in reporting the fraud to the Reserve Bank, the entire provisioning is required to be made at once. In addition, Reserve Bank of India may also initiate appropriate supervisory action where there has been a delay by the bank in reporting a fraud, or provisioning there against.
- RBI reiterated that banks must scrupulously adhere to the guidelines contained in circular DBS.CO.CFMC.BC.No.1/23.04.001/2014-15 dated July 1, 2014 on 'Frauds – Classification and Reporting'.
- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/83CDBODPF010415.pdf>

#### **D. Revision of interest rates for Small Savings Schemes:**

- The Reserve Bank of India (RBI) vide Circular No. 536 dated April 1, 2015 Revised interest rates for Small Savings Schemes.
- As per circular RBI/2011-12/359 dated January 20, 2012 regarding interest rates on small savings schemes, wherein it was indicated that as per Government's decision on revision of interest on small savings schemes, the interest rates on various small savings schemes for every financial year will be notified by the Government before April 01st of that year.
- The Government of India have vide their Office Memorandum (OM) No. 6/01/2011-NS.II dated March 31, 2015, advised the rate of interest on various small savings schemes for the financial year 2015-16. Accordingly, the rates of interest on PPF 1968, SCSS 2004, Kisan Vikas Patra & Sukanya Samriddhi Account Scheme for the financial year 2015-16, effective from April 01, 2015, on the basis of the interest compounding/payment built-in in the schemes, will be as under:



<b>Scheme</b>	<b>Rate of Interest w.e.f. 01.04.2014</b>	<b>Rate of Interest w.e.f. 01.04.2015</b>
5 year SCSS, 2004	9.2% p.a	9.3% p.a
PPF, 1968	8.7% p.a	8.7% p.a
Kisan Vikas Patra	8.7% p.a	8.7% p.a
Sukanya Samriddhi Account Scheme	9.1% p.a	9.2% p.a

- The link for the same is as follows:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/536CABRIRSS010415.PDF>

### **E. Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Projects Under Implementation – Change in Ownership:**

- The Reserve Bank of India (RBI) issued Circular No.538 dated April 06, 2015 for Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Projects under Implementation – Change in Ownership.
- RBI received representations from banks that, in the case of projects which have been stalled primarily due to inadequacies of the current promoters, a change in ownership/management may be required to revive the project. However, the new promoters/developers may require additional time to revive/complete the stalled projects.
- Accordingly, in paragraph 26 (extract enclosed) of the Sixth Bi-Monthly Monetary Policy Statement, 2014-15 announced on February 03, 2015, it was proposed to allow extension of the date of commencement of commercial operations (DCCO) without change in asset classification in cases of change in ownership of the projects.
- It was decided that in cases where, in the assessment of the banks, the implementation of the project has been stalled primarily due to inadequacies of the existing promoters and a subsequent change in the ownership of the borrowing entity has been effected, banks may permit extension of DCCO up to a further period of two years, in addition to the extension of DCCO permitted under existing regulations. Detailed guidelines in this regard are annexed.
- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/DBOD84NT060415GN.pdf>

## **F. Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Refinancing of Exposures to Borrowers:**

- The Reserve Bank of India (RBI) issued Circular No.539 dated April 06, 2015 for Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Refinancing of Exposures to Borrowers.
- As per circular DBOD.No.BP.BC.107/21.04.048/2013-14 dated April 22, 2014 and A.P. (DIR Series) Circular No.129 dated May 9, 2014, Indian companies are not permitted to raise external commercial borrowings (ECB) from overseas branches / subsidiaries of Indian banks for the purpose of refinance / repayment of the rupee loans raised from the domestic banking system.
- Further, in terms of the circular dated April 22, 2014, it was advised that utilization of export advances, received on the strength of guarantees issued by Indian banks, for repayment of loans availed of from Indian banks (except in cases where banks have received approvals under the Foreign Exchange Management Act 1999) is not in compliance with instructions of RBI. In this connection, in terms of instructions contained in A.P. (DIR Series) Circular No.132 dated May 21, 2014 on 'Export of Goods - Long Term Export Advances', eligible exporters were allowed to receive long term export advance to be utilized for execution of long term supply contracts for export of goods. Such exporters were also allowed to use such export advances to liquidate rupee loans which are not classified as non-performing assets as per the Reserve Bank of India asset classification norms, subject to certain conditions.
- In this connection, it is reiterated that export performance guarantees, where permitted to be issued, shall strictly be in the nature of performance guarantee and shall not contain any clauses which may in effect allow such performance guarantees to be utilized as financial guarantees/Standby Letters of Credits.
- It has been observed that the facility of long term export advances is primarily being utilized for refinancing rupee loans of borrowers instead of being used for execution of long term supply contracts for export of goods. In order to ensure that long term export advances are used for the intended purpose, it is advised that while eligible Indian companies may continue to avail of the facilities available to them under the guidelines mentioned in the above paragraphs, any repayment/refinancing of rupee loans with foreign currency borrowings/export advances, where permitted, will be subject to the following conditions:

a) If the foreign currency borrowings/export advances, where permitted under the guidelines issued under the Foreign Exchange Management Act, 1999 (42 of 1999), are obtained from lenders who are not part of the Indian banking system (Indian banking system would include all banks in India and overseas branch/subsidiary/joint venture of Indian banks) without any support from the Indian banking system in the form of Guarantees/Standby Letters of Credit/Letters of Comfort etc., the same may be utilized to refinance/repay loans availed from the Indian banking system.

b) If the foreign currency borrowings/export advances are obtained:

(i) from lenders who are part of Indian banking system (where permitted); or

(ii) with support (where permitted) from the Indian banking system in the form of Guarantees/Standby Letters of Credit/Letters of Comfort, etc.;

then, in addition to any applicable guidelines issued under the Foreign Exchange Management Act, 1999 (42 of 1999), the refinance shall be treated as 'restructuring' (and classified/provided for as per extant prudential norms on income recognition, asset classification and provisioning), if the above borrowings/export advances are extended to a borrower who is under financial difficulty and involve concessions that the bank would otherwise not consider. A non-exhaustive and indicative list of signs of financial difficulty is annexed.

➤ It is further advised that repayment/refinancing of foreign currency borrowings outstanding with a bank, by way of rupee loans or another foreign currency loan (where permitted) or based on support (where permitted) in the form of Guarantees/Standby Letters of Credit/Letters of Comfort, etc. from lenders who are part of Indian banking system would also be governed by the prudential guidelines stipulated at 4(b) above.

➤ The link for the same is as follows:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/85CDBODREB0615.pdf>

## **G. Foreign Direct Investment (FDI) in India – Review of FDI policy –Sector Specific conditions- Insurance sector:**

➤ The Reserve Bank of India (RBI) issued Circular No.94 dated April 08, 2015 for Foreign Direct Investment (FDI) in India – Review of FDI policy –Sector Specific conditions- Insurance sector.

➤ Attention of Authorised Dealer Category – I (AD Category-I) banks was invited to Annex B of Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. In terms of Schedule 1 to the Notification ibid, 26% Foreign Direct Investment (FDI) is permitted under Automatic route in Insurance sector subject to conditions.

- The extant FDI policy for Insurance sector has since been reviewed and further liberalized. **Accordingly, with immediate effect, FDI in Insurance sector shall be permitted up to 49% subject to the revised conditions specified in the Press Note 3 (2015 Series) dated March 2, 2015.** Also, a new activity viz. “Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)” has been included within the definition of ‘Insurance’.
- Besides, the salient changes over the existing regime include:
  - (a) Foreign investment in Indian insurance company shall be limited up to 49% of the paid up equity capital;
  - (b) Foreign direct investment up to 26 % shall be under automatic route and beyond 26 % and up to 49% shall be with Government approval;**
  - (c) Foreign investment in the sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities.
  - (d) An Indian insurance company shall ensure that its ownership and control remains at all times in the hands of **resident Indian entities;**
  - (e) Foreign portfolio investment in an Indian insurance company shall be governed by the provisions of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 and provisions of the Securities Exchange Board of India (Foreign Portfolio Investors) Regulations.
  - (f) Any increase of foreign investment of an Indian insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the Foreign Exchange Management Act, 1999.
  - (g) Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G.S.R 115 (E), dated 19th February, 2015.
- A copy of Press Note 3 (2015 Series) dated March 2, 2015 issued in this regard by DIPP, Ministry of Commerce & Industry, Government of India is appended.
- Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2015 notified vide Notification No. FEMA.340/2015-RB dated March 3, 2015, c.f. G.S.R. No. 183 (E) dated March 12, 2015

- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/94APDIR080415.pdf>

## **H. Non-Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) – Directions – Modifications:**

- The Reserve Bank of India (RBI) issued Circular No.544 dated April 8, 2015 for Non-Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) – Directions – Modifications.
- The captioned directions contained in the notification DNBS.PD.No.234/CGM (US)-2011 dated December 2, 2011 and subsequent modifications were issued to NBFC-MFIs in the backdrop of the Andhra Pradesh-MFI crisis. The sector has largely moved forward since then. Accordingly certain modifications as given below are being introduced.
- In terms of para 3(ii)(a) of the aforesaid Notification, loan disbursed by an NBFC-MFI to a borrower with a rural household annual income not exceeding Rs. 60,000 or urban and semi-urban household income not exceeding Rs. 1,20,000 would be eligible to be defined as qualifying asset.
- In order to widen the scope, it was decided that loan disbursed by an NBFC-MFI to a borrower with a rural household annual income not exceeding Rs. 1,00,000 or urban and semi-urban household income not exceeding Rs. 1,60,000 would be eligible to be defined as a qualifying asset.
- In terms of para 3(ii)(c) of the aforesaid Notification, NBFCs-MFI while disbursing loans were required to ensure that the total indebtedness of the borrower does not exceed Rs.50,000. In partial modification of the above, the limit of total indebtedness of the borrower has been increased to Rs.1,00,000. Education and medical expenses will be excluded while arriving at the total indebtedness of a borrower.
- In terms of para 3(ii)(b) of the aforesaid Notification, loan amount should not exceed Rs. 35,000 in the first cycle and Rs. 50,000 in subsequent cycles. In light of the revision to the limit on total indebtedness, it has been decided to revise the limit on disbursement of loans. Henceforth, the loan amount should not exceed Rs. 60,000 in the first cycle and Rs. 1,00,000 in subsequent cycles.
- In terms of para 3(ii)(f) of the aforesaid Notification, aggregate amount of loans given for income generation should constitute at least 70 per cent of the total loans of the NBFC-MFI so that the remaining 30 per cent can be for other purposes such as housing repairs, education, medical and other emergencies. The limits so prescribed are henceforth revised to 50:50 i.e. loans given for income generation should constitute at least 50 per cent of the total loans of the NBFC-MFI and the remaining 50 per cent can be for other purposes as stated above.

- Notwithstanding the above, all NBFC-MFIs are expected to be prudent and responsible in their lending activity besides educating their borrowers on the dangers of wasteful conspicuous consumption.
- Notifications of date amending the Non-Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) - Directions, 2011, Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 and Non-Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 are enclosed.
- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/544CRLMFIA070415.pdf>

## **I. NBFCs- Lending against Shares – Clarification:**

- The Reserve Bank of India (RBI) issued Circular No.551 dated April 10, 2015 for NBFCs- Lending against Shares – Clarification.
- With reference to circular DNBS (PD).CC.No.408/03.10.001/2014-15 dated August 21, 2014. RBI has received a number of queries from the industry participants seeking clarification on the applicability of the circular. In this connection, the following is clarified:
  - i. The above mentioned circular is not applicable to unlisted shares.
  - ii. LTV ratio of 50% is required to be maintained at all times. Any shortfall in the maintenance of the 50% LTV occurring on account of movement in the share prices shall be made good within 7 working days.
  - iii. The condition of acceptance of only Group 1 securities (specified in SMD/ Policy/ Cir - 9/ 2003 dated March 11, 2003 as amended from time to time, issued by SEBI) as collateral for loans of value more than Rs. 5 lakh, is applicable only where the lending is done for investment in the capital market.
  - iv. The reporting to the Stock Exchanges shall be quarterly.
- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/551CNBFCLC1004215.pdf>

## **J. Guidelines on Corporate Governance – Review:**

- The Reserve Bank of India (RBI) issued Circular No.552 dated April 10, 2015 for Guidelines on Corporate Governance – Review.

- Please refer to the Revised Regulatory Framework for NBFCs issued vide DNBR (PD) CC.No.002/ 03.10.001/ 2014-15 dated November 10, 2014 (the Framework). Corporate Governance and Disclosure norms for NBFCs, contained in para 9 of the Framework, have been reviewed based on the feedback received from industry participants and the difficulties expressed by them in its effective implementation. Accordingly, the following changes / clarifications in the matter may be noted.
- Para 9 of the Framework shall not apply to a Systemically Important Core Investment Company as defined in the Core Investment Companies (Reserve Bank) Directions, 2011. However, Systemically Important Core Investment Companies are encouraged to follow these as a prudent measure.
- (i) In terms of para 9.5(iv) of the Framework, **NBFCs shall furnish to the Reserve Bank a quarterly statement on change of directors certified by the auditors and a certificate from the Managing Director that fit and proper criteria in selection of directors have been followed.** It is clarified that the quarterly statements, can be certified by the Managing Director, except that the statement pertaining to the quarter ended March 31 need to be necessarily certified by the auditors.
- In terms of the Fit and Proper criteria for directors of NBFCs given in Annex 1 of the Framework, **independent / non-executive directors of an NBFC should be between 35 to 70 years of age.** The age limit prescribed as above has been done away with and provisions in Companies Act, 2013 in this regard shall apply.
- In terms of para 3(iv) of Annex 3 of the Framework, NBFCs shall communicate outcome of Board deliberations to directors and concerned personnel and prepare and circulate minutes of the meeting of Board to directors in a timely manner and to the extent possible within two business days of the date of conclusion of the Board meeting. It is clarified that circulation of minutes within two business days is not mandatory and provisions in Companies Act, 2013 in this regard shall apply.
- All Directions on Corporate Governance are being consolidated in the enclosed Notification No. DNBR. 019/CGM (CDS)-2015 dated April 10, 2015 on Non-Banking Financial Companies – Corporate Governance (Reserve Bank) Directions, 2015.
- The link for the same is as follows:  
[http://rbidocs.rbi.org.in/rdocs/notification/PDFs/GDNT552F130415\\_FLEAB211491959473DBBEDFEF3EADF7EF7.PDF](http://rbidocs.rbi.org.in/rdocs/notification/PDFs/GDNT552F130415_FLEAB211491959473DBBEDFEF3EADF7EF7.PDF)

## **K. Interest Rates on Deposits:**

- The Reserve Bank of India (RBI) issued Circular No.554 dated April 16, 2015 for Interest Rates on Deposits.
- With reference to circular DBOD. No. Dir.BC.36/13.03.00/98 dated April 29, 1998, DBOD. No. Dir.BC.07/13.03.00/2001-02 dated August 11, 2001 and DBOD. No. Dir. BC.74/13.03.00/2012-13 dated January 24, 2013 in terms of which banks are allowed to offer differential rates of interest on term deposits on the basis of tenor for deposits less than ` 1 crore and on the basis of quantum and tenor on term deposits of ` 1 crore and above.
- In this connection, attention is invited to paragraph 29 of sixth Bimonthly Monetary Policy Statement- 2014-15 announced on February 3, 2015 whereby it was decided to introduce the feature of early withdrawal facility in a term deposit as a distinguishing feature for offering differential rates of interest. Accordingly, banks will have the discretion to offer differential interest rates based on whether the term deposits are with or without-premature-withdrawal-facility, subject to the following guidelines:
  - i. All term deposits of individuals (held singly or jointly) of ` 15 lakh and below should, necessarily, have premature withdrawal facility.
  - ii. For all term deposits other than (i) above, banks can offer deposits without the option of premature withdrawal as well. However, banks that offer such term deposits should ensure that at the customer interface point the customers are, in fact, given the option to choose between term deposits either with or without premature withdrawal facility.
  - iii. Banks should disclose in advance the schedule of interest rates payable on deposits i.e. all deposits mobilized by banks should be strictly in conformity with the published schedule.
  - iv. The banks should have a Board approved policy with regard to interest rates on deposits including deposits with differential rates of interest and ensure that the interest rates offered are reasonable, consistent, transparent and available for supervisory review/scrutiny as and when required.
- The link for the same is as follows:  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/FDPWF16420155D8E6455D97D4C11BD22F2B28277E956.PDF>





## **SEBI UPDATES:**

### **A. Fine structure for non-compliance with the requirement of Clause 49(II)(A)(1) of Listing Agreement:**

- SEBI vide circular No. 01 dated April 08, 2015 issued Fine structure for non-compliance with the requirement of Clause 49(II)(A)(1) of Listing Agreement.
- SEBI, vide Circular No. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014, amended the provisions of Clause 49 of Listing Agreement relating to Corporate Governance, mandating, inter-alia, that the Board of Directors of listed entities shall have an optimum combination of executive and non-executive directors with at least one woman director. Further, vide Circular No. CIR/CFD/POLICY CELL/7/2014 dated September 15, 2014, the timeline to comply with the aforesaid requirement was extended to March 31, 2015.
- SEBI vide Circular No. CIR/MRD/DSA/31/2013 dated September 30, 2013 has prescribed the uniform fine structure for non-compliance with certain provisions of Listing Agreement including Clause 49. The Stock Exchanges have amended their bye laws to the effect that issuer shall be liable to pay fine(s) as prescribed by Stock Exchanges and/or SEBI for non-compliance with the provisions of Listing Agreement etc. In continuation to the aforesaid circular, the Stock Exchanges are advised to impose the following fine on listed entities for non-compliance with the requirement of Clause 49(II)(A)(1) of Listing Agreement:

<b>Compliance Status</b>	<b>Fine Structure</b>
Listed entities complying between April 1, 2015 and June 30, 2015	Rs. 50,000/-
Listed entities complying between July 1, 2015 and September 30, 2015	Rs. 50,000 + Rs. 1000/- per day w.e.f. July 1, 2015 till the date of compliance
Listed entities complying on or after October 1, 2015	Rs. 1,42,000/- + Rs. 5000/- per day from October 1, 2015 till the date of compliance

- For any non-compliance beyond September 30, 2015, SEBI may take any other action, against the non-compliant entities, their promoters and/or directors or issue such directions in accordance with law, as considered appropriate.
- This circular is issued in exercise of the powers conferred under sections 11(1) and 11A (2) of the Securities and Exchange Board of India Act 1992, read with section 10 of the Securities Contracts (Regulation) Act, 1956 in the interest of trade and public interest and for the protection of the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect immediately.
- The link of the Circular is as below:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1428497356451.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1428497356451.pdf)

## **B. Revision of limits relating to requirement of underlying exposure for currency derivatives contracts:**

- SEBI vide circular No. 04 dated April 08, 2015 issued Revision of limits relating to requirement of underlying exposure for currency derivatives contracts.
- This is further to SEBI circular no. CIR/MRD/DP/20/2014 dated June 20, 2014, wherein, limits were specified for the USD-INR, EUR-INR, GBP-INR and JPY-INR currency derivatives contracts beyond which market participants were required to establish proof of underlying exposure.
- RBI vide *A.P. (DIR Series) Circular no. 90 dated March 31, 2015* and *A.P. (DIR Series) Circular no. 91 dated March 31, 2015* has revised the limits beyond which market participants would be required to establish underlying exposure in the currency derivatives segment. Copy of the RBI circulars are enclosed for reference.
- Accordingly, it has been decided to modify para 5 and para 9 of SEBI circular CIR/MRD/DP/20/2014 dated June 20, 2014 as under:

- **Para 5 of aforementioned circular shall read as under:**

(a) Foreign Portfolio Investors (FPIs) may take long as well as short positions per stock exchange upto the following limit without having to establish the existence of any underlying exposure:

(i) USD-INR currency pair: USD 15 million;

(ii) EUR-INR, GBP-INR and JPY-INR currency pairs (all put together): USD 5 million.

(b) FPIs shall ensure that their short positions at a stock exchange across all contracts in USD-INR pair do not exceed USD 15 million and do not exceed USD 5 million in EUR-INR, GBP-INR and JPY-INR pairs, all put together.

(c) In the event a FPI breaches the short position limit, stock exchanges shall restrict the FPI from increasing its existing short positions or creating new short positions in the currency pair till such time FPI complies with the said requirement.

(d) To take long positions in excess of USD 15 million in USD-INR pair and in excess of USD 5 million in EUR-INR, GBP-INR and JPY-INR pairs, all put together, FPIs shall be required to have an underlying exposure in Indian debt or equity securities, including units of equity/debt mutual funds.

- **Para 9 of aforementioned circular shall read as under:**

(a) Domestic clients may take long as well as short positions per stock exchange upto the following limit without having to establish the existence of any underlying exposure:

(i) USD-INR currency pair: USD 15 million;

(ii) EUR-INR, GBP-INR and JPY-INR currency pairs (all put together)

(b) Domestic clients may take positions in excess of USD 15 million in USD-INR pair and in excess of USD 5 million in EUR-INR, GBP-INR and JPY-INR pairs, all put together, subject to the conditions specified in the RBI A.P. (DIR Series) Circular no. 147 dated June 20, 2014 and RBI A.P. (DIR Series) Circular no. 90 dated March 31, 2015.

- Stock exchanges, under intimation to SEBI, may prescribe fixed limits for EUR-INR, GBP-INR and JPY-INR currency pairs within the equivalent of USD 5 million.

- The limits mentioned above at para 3.1 and para 3.2 shall be monitored by stock exchanges and/or clearing corporations and breaches, if any, shall be reported to the Market Surveillance Team of Financial Markets Regulation Department (FMRD), RBI.

➤ All other requirements, terms and conditions shall remain unchanged.

➤ Stock Exchanges and Clearing Corporations are directed to:

- (a) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
  - (b) bring the provisions of this circular to the notice of the stock brokers / clearing members and also disseminate the same on their website;
  - (c) communicate to SEBI the status of implementation of the provisions of this circular.
- This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
  - The link of the Circular is as below:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1428490382774.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1428490382774.pdf)

### **C. Securities And Exchange Board Of India (Public Offer And Listing Of Securitised Debt Instruments) (Amendment) Regulations, 2015**

- SEBI vide Notification dated April 9, 2015 issued the Securities And Exchange Board Of India (Public Offer And Listing of Securitised Debt Instruments) (Amendment) Regulations, 2015.
- The link of the Circular is as below:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1428639949107.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1428639949107.pdf)

### **D. Mechanism for acquisition of shares through Stock Exchange pursuant to Tender-Offers under Takeovers, Buy Back and Delisting:**

- SEBI vide circular No. 01 dated April 13, 2015 issued Mechanism for acquisition of shares through Stock Exchange pursuant to Tender-Offers under Takeovers, Buy Back and Delisting.
- SEBI (Buy Back of Securities) Regulations, 1998 (hereinafter referred to as "Buy Back Regulations"), SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "Takeover Regulations"), SEBI(Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as "Delisting Regulations") were amended vide notification dated March 24, 2015 to facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board.
- After due deliberations and consultations with the market participants, the procedure for tendering and settlement of shares through stock exchange is specified in Annexure-1.

➤ **Applicability**

a. This circular shall be applicable to all the offers for which Public Announcement is made on or after July 01, 2015.

b. For all impending offers, acquirer/ promoter/ company shall have the option to follow this mechanism or the existing one.

c. In case an acquirer or any person acting in concert with the acquirer who proposes to acquire shares under the offer is not eligible to acquire shares through stock exchange due to operation of any other law, such offers would follow the existing 'tender offer method'.

d. In case of competing offers under Regulation 20 of the Takeover Regulations, in order to have a level playing field, in the event one of the acquirers is ineligible to acquire shares through stock exchange mechanism, then all acquirers shall follow the existing 'tender offer method'.

- Stock Exchanges shall take necessary steps and put in place necessary infrastructure and systems for implementation of the mechanism and to ensure compliance with requirements of this circular.
- This Circular is being issued in exercise of the powers conferred under section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with regulation 13(1A) of Delisting Regulations, regulation 9(3A) of Buy Back Regulations, regulation 18(6A) of Takeover Regulations as amended.
- The link of the Circular is as below:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1428927142167.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1428927142167.pdf)

**E. (EMPLOYEES' SERVICE) (SECOND AMENDMENT) REGULATIONS, 2015:**

- SEBI vide Notification dated April 21, 2015 issued (Employees' Service) (Second Amendment) Regulations, 2015.
- The link of the Circular is as below:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1429619035622.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1429619035622.pdf)

# ARTICLE OF THE MONTH

## **SECRETARIAL STANDARD 1 (SS-1)** **ON** **MEETINGS OF THE BOARD OF DIRECTORS** **Notified w.e.f. 01<sup>st</sup> July 2015**

Institute of Company Secretaries of India is first Institute in the world to issue Secretarial Standards (SS). Secretarial Standard is mandatory, as per the provisions of Section 118(10) of the Companies Act, 2013. The same will be made effective from 1<sup>st</sup> July 2015.

The Secretarial Standard 1 (SS-1) is applicable to the Meetings of Board of Directors of all Companies incorporated under the Act (as on that approx 8 Lac Companies) except One Person Company (OPC) in which there is only one Director on its Board.

SS will ensure good Corporate Governance and gives confidence to the Investors and various Stakeholders. **The main highlights of the SS 1 are as follows:**

### **1. Authority of convening a Meeting**

**Any Director of a Company** may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, **any person authorized by the Board** in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.

### **2. Time, Place, Mode and Serial Number of Meeting.**

2.1. Every Meeting shall have a **serial number**.

2.2. A Meeting may be convened at any time and place, on any day, excluding a National Holiday.

**Explanation:** "National Holiday" includes Republic Day i.e. 26<sup>th</sup> January, Independence Day i.e. 15<sup>th</sup> August, Gandhi Jayanti i.e. 2<sup>nd</sup> October and such other day as may be declared as National Holiday by the Central Government.

### **3. Notice**

3.1. Notice in writing of every Meeting shall be given to **every Director by hand or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means**. Proof of sending Notice and its delivery shall be maintained by the Company.

3.2. Notice shall be issued **by the Company Secretary or where there is no Company Secretary, any Director or any other person authorized** by the Board for the purpose.

3.3. The Notice shall **specify the serial number**, day, date, time and full address of the venue of the Meeting.

3.4. In case the facility of participation through Electronic Mode is being made available, the Notice **shall inform the Directors about the availability of such facility**, and provide them necessary information to avail such facility.

The Notice shall also contain the **contact number or e-mail address (es) of the Chairman or the Company Secretary or any other person authorized by the Board**, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

3.5. The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

3.6. Notice convening a Meeting shall be given **at least 7 days before the date of the Meeting**, unless the Articles prescribe a longer period.

**Explanation:** In case the Company sends the Notice by speed post or by registered post or by courier, **an additional 2 days** shall be added for the service of Notice and Notice of adjourned shall also be given not less than seven days before the Meeting.

3.7. The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda **shall be given to the Directors at least 7 days before the date of the Meeting**, unless the Articles prescribe a longer period. Proof of sending Notice and its delivery shall be maintained by the Company.

The Notice, Agenda and Notes on Agenda shall be **sent to the Original Director** also at the address registered with the Company, even if these have been sent to the Alternate Director.

Notes on items of business **which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors**, which shall include **at least one Independent Director, if any**.

3.8. **Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts** that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

3.9. Each item of business to be taken up at the Meeting shall be serially numbered.

3.10 Any item not included in the Agenda **may be taken up for consideration with the permission of the Chairman** and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

3.11 To transact urgent business, **the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above.**

#### **4 Frequency of Meetings**

##### **4.1 Meetings of the Board**

The Board shall meet at **least once in every calendar quarter, with a maximum interval of 120 days between any two consecutive Meetings** of the Board, such that at least four Meetings are held in each Calendar year.

##### **4.2 Meeting of Independent Directors**

Where a Company is required to appoint Independent Directors under the Act, such Independent Directors shall meet **at least once in a Calendar Year.**

#### **5 Quorum**

5.1 Quorum shall be present **throughout** the Meeting.

5.2 A Director shall **not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present**, whether physically or through Electronic Mode, during discussions and voting on such item.

5.3 Directors participating through Electronic Mode in a Meeting **shall be counted for the purpose of Quorum**, unless they are to be excluded for any items of business under the provisions of the Act or any other law.

5.4 The Quorum for a Meeting of the **Board shall be 1/3rd of the total strength of the Board, or 2 Directors, whichever is higher.**

If there is no Quorum at the adjourned Meeting also, the Meeting **shall stand cancelled.**

5.5 Where the number of Directors is reduced below the minimum fixed by the Articles, **no business shall be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.**

#### **6 Attendance at Meetings**

6.1 Every Company shall maintain **separate attendance registers for the Meetings of the Board and Meetings of the Committee.**

The pages of the respective attendance registers **shall be serially numbered** and If an attendance register is maintained in loose-leaf form, **it shall be bound periodically** depending on the size and volume.

6.2 The attendance register shall contain the **following particulars: serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names of the Directors and signature of each Director present; name and signature of the Company Secretary who is in attendance and also of persons attending the Meeting by invitation.**



- 6.3 The attendance register **shall be maintained at the Registered Office** of the Company or such other place as may be approved by the Board & the attendance register is open for inspection by the Directors as he may consider necessary for the performance of his duties.
- 6.4 Entries in the attendance register shall be **authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman by appending his signature** to each page and the same shall be **preserved for a period of at least 8 financial years.**
- 6.5 The office of a Director shall become vacant in case the Director absents himself from **all the Meetings of the Board held during a period of 12 months** with or without seeking leave of absence of the Board.

## **7 Chairman**

The **Chairman of the Company shall be the Chairman of the Board.** If the Company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.

## **8 Passing of Resolution by Circulation**

The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. A Resolution **proposed to be passed by circulation shall be sent in draft, together with the necessary papers, individually to all the Directors including Interested Directors** on the same day.

The Resolution is passed when it is **approved by a majority of the Directors entitled to vote** on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting and every such Resolution shall **carry a serial number.**

## **9 Minutes**

- 9.1 The pages of the Minutes Books shall be **consecutively numbered.**
- 9.2 Minutes shall **not be pasted or attached to the Minutes Book**, or tampered with in any manner.
- 9.3 Minutes of the Board Meeting **shall be kept at the Registered Office** of the Company or at such other place as may be approved by the Board.
- 9.4 Minutes shall state, **at the beginning the serial number and type of the Meeting, name of the Company, day, date, venue and time of commencement and conclusion** of the Meeting.
- 9.5 Minutes **shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees**, if any, including Invitees for specific items.

## **10 Finalization of Minutes**

**Finalization of Minutes shall be done within 15 days** from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognized electronic means to all the members of the Board or the Committee for their comments and **proof of sending draft Minutes and its delivery shall be maintained** by the Company.

The Directors, whether present at the Meeting or not, shall communicate their comments, if any, **in writing** on the draft Minutes within 7 days from the date of circulation thereof, so that the Minutes are finalized and **entered in the Minutes Book within the specified time limit of 30 days.**

## **11 Entry in the Minutes Book**

11.1 Minutes shall be **entered in the Minutes Book within 30 days** from the date of conclusion of the Meeting.

11.2 The date of entry of the Minutes in the Minutes Book **shall be recorded by the Company Secretary, where there is no Company Secretary; it shall be entered by any other person duly authorized by the Board or by the Chairman.**

11.3 Minutes of the Meeting of the **Board shall be signed and dated by the Chairman of the Meeting** or by the Chairman of the next Meeting.

11.4 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes and any blank space shall be scored out by the chairman.

11.5 A copy of the signed Minutes certified by the Company Secretary or where there is no Company Secretary, by any Director authorized by the Board **shall be circulated to all Directors within 15 days after these are signed.**

## **12 Inspection and Extracts of Minutes**

The Directors, Company Secretary in Practice appointed by the Company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the Company can inspect the Minutes as he may consider necessary for the performance of his duties. **A Member of the Company is not entitled to inspect the Minutes of Meetings** of the Board.

Extracts of the Minutes shall be given **only after the Minutes have been duly entered in the Minutes Book.** However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.

### **13 Preservation of Minutes and other Records**

Minutes of all Meetings **shall be preserved permanently in physical or in electronic form** with Timestamp and the **Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order** in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

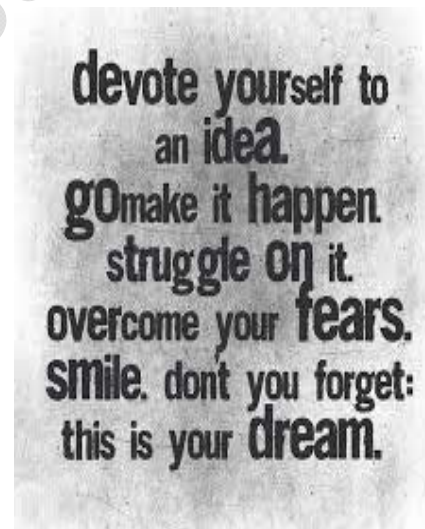
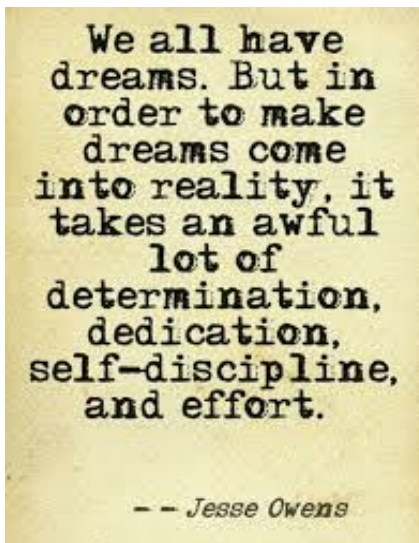
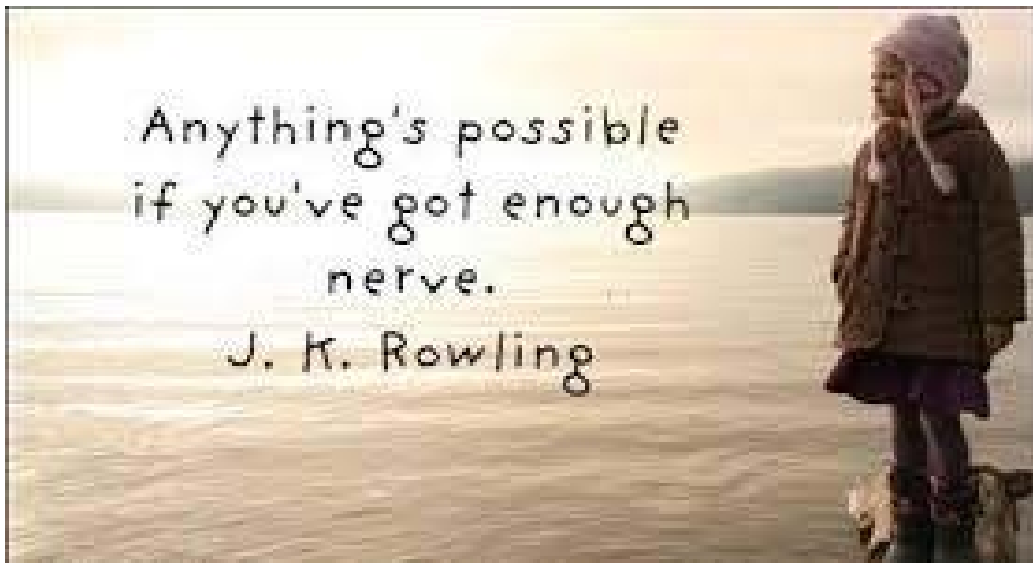
Minutes Books shall be kept in the custody of the **Company Secretary, if there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.**

### **14 Disclosure**

**The Annual Report and Annual Return of a Company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.**

Amita Desai & Co.

## INSPIRATIONAL QUOTES





### **Disclaimer**

*\*This legal update is not intended to be a form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. This update is intended for private circulation only.*

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