

**Newsletter for April, 2017**  
**By Amita Desai & Co.**



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**Mumbai Off :**

1005, Hubtown Solaris  
Off Western Express Highway  
East End of Andheri Flyover

Landline: + 91-22-2684-5920/21

Fax: + 91-22-6678-7499

Mobile : + 91-982-017-7691

**Hyderabad Off :**

My Home Hub, 4th Floor, C Block, Madhupur,  
Hi-Tech City, Hyderabad, AP 500 081

**Greetings and a warm welcome to our April Month's edition of Newsletter!**

We are pleased to share our Newsletter for the month of April 2017. The newsletter covers the updates / amendments of [Ministry of Corporate Affairs \(MCA\)](#), [Securities and Exchange Board of India \(SEBI\)](#), [Reserve Bank of India \(RBI\)](#) and [Department of Industrial Policy and Promotion \(DIPP\)](#).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner. We have tried to provide gist of Reduction of Share Capital as our Article of the Month.

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,  
**Amita Desai & Team**



## MCA UPDATES:

### A. COMPANIES (REGISTRATION OF CHARGES ) AMENDMENT RULES, 2017:

- MCA vide its notification dated April 7, 2017 had amended the Companies (Registration of Charges) Rules 2014 and notified the Companies (Registration of Charges) Amendment Rules, 2017. Vide said notification the following Forms were revised:
  1. Form CHG-1; Form for registration of creation or modification of charge;
  2. Form CHG-4; Form for satisfaction of charge and
  3. Form CHG-9; Form for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures
- With several changes in the Form CHG-1, CHG-4 and CHG-9, it seems that the Government wants to establish stricter norms for verifying the details of properties recorded with the registrar as '**charges**' for a company. MCA has directed that under new revised disclosure norms companies must provide for the **latitude and longitude** of their tangible assets.

From now onwards it will be obligatory on the part of companies to provide for the **Geo-location** data of immovable property or any interest therein

- The link of above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/companiesRegistrationofChargesAmendmentRules\\_08042017.pdf](http://www.mca.gov.in/Ministry/pdf/companiesRegistrationofChargesAmendmentRules_08042017.pdf)

### B. COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM REGISTER OF COMPANIES) (AMENDMENT) RULES, 2017:

- MCA vide its notification dated April 12, 2017 had amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 and notified the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017. Vide said notification a proviso has been inserted in Rule 7 of the Companies (Removal of Names) Rules, 2016 which lays down the manner of publication of notice.
- The aforesaid Notification has prescribed Form STK 5A for publishing the Public Notice by ROC in English & vernacular newspaper in respect of cases falling u/s 248(1) of the Companies Act, 2013. Also the format of Form No. STK – 5A has been inserted in the Rules vide said notification.
- The link of above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/CompRemovalofNamesRules\\_13042017.pdf](http://www.mca.gov.in/Ministry/pdf/CompRemovalofNamesRules_13042017.pdf)

### **C. MERGER OR AMAGAMATION OF AN INDIAN COMPANY WITH FOREIGN COMPANY & VICE VERSA:**

- MCA vide its notification dated April 13, 2017 had notified Section 234 of the Companies Act, 2013 which deals with the merger or amalgamation of an Indian Company with Foreign Company and vice-versa. On the same day itself MCA vide its notification had also amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017.
- Vide aforesaid notifications an Indian Company can now merge with a Foreign Company incorporated in any of the jurisdictions prescribed in Annexure B which forms a part of the notification provided prior approval of the Reserve Bank of India has been obtained and the relevant provisions of amalgamations and mergers mentioned in Section 230 to 232 of the Companies Act, 2013 are complied with.
- The Rules also prescribe that the transferee company should ensure that the valuation conducted by valuers (being members of a recognised professional body in the jurisdiction of the transferee company) is in accordance with internationally acceptable principles of accounting and valuations and a declaration to that effect is filed with the RBI.
- The link of above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/CompaniesCompromises\\_14042017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesCompromises_14042017.pdf)

### **D. TRANSFER OF SHARES TO INVESTOR PROTECTION AND EDUCATION FUND (IEPF) AUTHORITY**

- In furtherance to the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 notified on February 28, 2017; MCA has notified circular no. 03/2017 on April 27, 2017.
- As per the aforesaid Circular, IEPF Authority will open a separate demat account with NSDL and all the Companies where the seven year period prescribed under Section 24 (5) of the Companies Act, 2013 is completed will have to transfer such shares to the demat account of IEPF Authority latest by May 31, 2017.
- Further, the Circular also lays down the charges to be levied by NSDL to the Companies towards uploading and maintenance of records pertaining to the shares transferred to the special demat account of IEPF Authority.
- The link of the aforesaid Circular is as under:  
[http://www.mca.gov.in/Ministry/pdf/Circular\\_27042017.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_27042017.pdf)

## **SEBI UPDATES:**

### **A. INCLUSION OF “DERIVATIVES ON EQUITY SHARES”- IFSC**

- SEBI vide its Circular dated April 13, 2017 has notified Securities and Exchange Board of India (International Financial Services Centers) Guidelines, 2015 on March 27, 2015, which came into force on April 01, 2015.
- Risk Management Review Committee of SEBI, has given recommendations to specify “Derivatives on equity shares of a Company incorporated in India”(hereinafter referred to as ‘Derivative on equity shares’ ) as permissible security under sub- clause (vi) of Clause 7 of SEBI (IFSC) Guidelines, 2015.
- Foreign Portfolio Investors (FPIs) registered with SEBI and certain other entities which incorporated and operating under IFSC, shall be eligible to trade in ‘derivatives on equity shares’
- The applicable position limits for eligible participants shall be as stipulated vide SEBI circulars SMDRP/DC/CIR/-10/01 dated November 02, 2001, DNPDC/Cir-30-2006 dated January 20, 2006 and SEBI/HO/MRD/DP//CIR/P/2016/143 dated December 27, 2016.
- The Market Wide Position Limit for ‘derivatives on equity shares’ shall be equal to ten percent of the number of shares held by non-promoters in the relevant underlying security.
- The MWPL for ‘derivatives on equity shares’ in recognized stock exchanges in IFSC shall be reckoned separately from that in recognized stock exchanges in domestic market and the MWPL (in value terms), in no circumstances, shall exceed the fifty percent of the MWPL (in value terms) in recognized stock exchanges in domestic market.
- The link of the above notification is as under:

[http://www.sebi.gov.in/legal/circulars/apr-2017/inclusion-of-derivatives-on-equity-shares-ifsc\\_34638.html](http://www.sebi.gov.in/legal/circulars/apr-2017/inclusion-of-derivatives-on-equity-shares-ifsc_34638.html)

### **B. REVIEW OF THE FRAMEWORK OF POSITION LIMITS FOR INTEREST RATE FUTURES CONTRACTS**

- To ease trading requirements in the Interest Rates Futures Contracts, SEBI vide its Circular dated April 18, 2017 says that market position shall not be allowed to increase their existing positions in the Interest Rate futures contracts of the respective maturity bucket till they comply with applicable position limit.
- Such notification are directed to Stock exchanges and Clearing corporations:
  - (a) Take necessary steps for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
  - (b) To disseminate the provision of this circular on their website,
  - (c) To communicate with SEBI and the status of implementation in the Monthly report.

- The link of the above notification is as under:

[http://www.sebi.gov.in/legal/circulars/apr-2017/review-of-the-framework-of-position-limits-for-interest-rate-futures-contracts\\_34681.html](http://www.sebi.gov.in/legal/circulars/apr-2017/review-of-the-framework-of-position-limits-for-interest-rate-futures-contracts_34681.html)

**C. ACCEPTING OF CENTRAL GOVERNMENT SECURITIES BY CLEARING CORPORATIONS TOWARDS CORE SETTLEMENT GUARANTEE FUND (SGF) CONTRIBUTION BY CLEARING MEMBERS**

- SEBI vide its Circular dated April 26, 2017 has Specified the guidelines for Core Settlement Guarantee fund, Default Waterfall and Stress Test for Clearing Corporation.
- On the recommendation received from Risk Management Review Committee and feedback from market participant it is decided that the clearing members shall be permitted to bring their contribution towards Core Settlement Guarantee Fund, in the form of Central Government Securities.
- 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 their members and also disseminate the same on its website; and
  - c) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Report.
- This circular is being issued to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.
- The link of the above notification is as under:

[http://www.sebi.gov.in/legal/circulars/apr-2017/acceptance-of-central-government-securities-by-clearing-corporations-towards-core-settlement-guarantee-fund-sgf-contribution-by-clearing-members\\_34760.html](http://www.sebi.gov.in/legal/circulars/apr-2017/acceptance-of-central-government-securities-by-clearing-corporations-towards-core-settlement-guarantee-fund-sgf-contribution-by-clearing-members_34760.html)

## **RBI UPDATES:**

### **E. Disclosure in the “Notes to Accounts” to the Financial Statements- Divergence in the asset classification and provisioning**

- RBI vide its notification dated April 18, 2017 has amended the fourth Bi-monthly Monetary Policy Statement announced on September 29, 2015, the Reserve Bank of India (“RBI”) assesses compliance by banks with extant prudential norms on income recognition, asset classification and Provisioning (IRACP) as part of its supervisory process.
- As per notification, Bank Shall make suitable disclosures in Notes to Accounts, wherever either (a) the additional provisioning requirements assessed by RBI fifteen (15) per cent of the published net profits after tax for the reference period or (b) the additional Gross NPAs identified by RBI exceed fifteen (15) per cent of the published incremental Gross NPAs for the reference period or both.
- Further, the Bank shall be made a disclosure in its Notes to Accounts in the ensuing Annual Financial Statements published immediately following communication of such divergence by RBI to the bank.
- The link of the above notification is as under:

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10932&Mode=0>

### **F. Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances**

- RBI vide its notification dated April 18, 2017 has amended the provisioning rates prescribed in the abovementioned norms, the banks are encouraged to make provisions at higher rates in respect of advances to stressed sectors of the economy.
  - i) Banks shall put in place a Board–approved policy for making provisions for standard assets at rates higher than the regulatory minimum, based on evaluation of risk and stress in various sectors.
  - ii) The policy shall require a review, at least on a quarterly basis, The review may include quantitative and qualitative aspects like debt-equity ratio, interest coverage ratio, profit margins, ratings upgrade to downgrade ratio, sectoral non-performing assets/stressed assets, industry performance and outlook, legal/ regulatory issues faced by the sector, etc. The reviews may also include sector specific parameters.
  - iii) More immediately, as the telecom sector is reporting stressed financial conditions, and presently interest coverage ratio for the sector is less than one, Board of Directors of the banks may review the telecom sector latest by June 30, 2017, and consider making provisions for standard assets in this sector at higher rates so that necessary resilience is built in the balance sheets should the stress reflect on the quality of exposure to the sector at a future date. Besides, banks should also subject the exposure to the sector to closer monitoring.
- The link of the above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10931&Mode=0>



## ARTICLE ON STRIKE OFF



### Removal of Names of Companies by the Registrar of Companies (Roc) from the Register of companies maintained by RoC

Section 248 to 252 of the Companies Act, 2013 (“**the Act**”) read with the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 deals with removal of names of the Companies from the Register of Companies. The same has been notified with effect from 26<sup>th</sup> December 2016.

Similar provisions were under Section 560 of the Companies Act, 1956 and the procedure for strike off the name of the Company was more or less the same. Now powers are widely used by RoC to weed out companies which are non-compliant and not doing any business.

#### **A. STRIKE OFF BY ROC**

##### **1. Trigger events for striking off:**

The Registrar of Companies may remove the name of the Company from the register of companies in terms of section 248 (1) of the Act , if he has reasonable cause to believe that :

- (a) A company has failed to commence its business within 1 (one) year of its incorporation OR
- (b) A company is not carrying on any business or operation for a period of 2 (two) immediately preceding financial years and has not made any application for obtaining the status of Dormant Company.

##### **2. Following categories of companies name shall not be removed by roc:**

- i. Listed Companies;
- ii. Delisted Companies due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- iii. Vanishing Companies\*;
- iv. Companies where inspection or investigations are pending in the Court;
- v. Companies whose actions are pending under Section 206 or Section 207 or Section 208 of the Act before the Court;
- vi. Companies against which prosecution for an offence is pending;
- vii. Companies which have accepted public deposits which are either outstanding or the Company is in default in repayment of the same;
- viii. Companies whose application for compounding is pending before the competent authority for compounding of offences committed by the Company or any of its officers in default;
- ix. Companies whose charges are pending for satisfaction and
- x. Companies registered under Section 25 of the Companies Act, 1956 or Section 8 of the Act



**\*Vanishing Company:** A Company registered under the Act or previous Company law or any other law for the time being in force and listed with the stock exchange which has failed to file its returns with the RoC and stock exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the RoC or stock exchange and none of its Directors are traceable.

### **3. Notice to be given by RoC**

ROC shall issue a notice to the Company and to all the Directors at their registered address of his intention to remove the name of the Company, requesting them to send their representations, if any along with the copies of relevant documents **within 30 days** from the date of notice.

The notice shall be issued in **form STK-1**. The Notice shall contain the reasons or grounds on which the name of the Company is to be removed.

### **B. VOLUNTARY APPLICATION BY COMPANY FOR STRIKING OFF THE NAME FROM THE REGISTER OF ROC**

1. **Who can make application** : Any company( other than Section 8 company (non profit organization) may as per section 248(2) of the Act , may voluntarily make an application for striking off the name of the Company from the Register of companies maintained by ROC, after extinguishing all its liabilities , by obtaining approval of 75% members in terms of paid up share capital or consent by way of special resolution on any of the ground that it has not started or commenced its business or it is not carrying on business or operation for a period of two immediately preceding financial years and not made any application for obtaining the status of the company as a dormant company.

A Company which is regulated under a special Act is required to obtain approval of the regulatory body constituted or established under that Act.

2. **Procedure of Application** :In order to make an application for voluntary strike off; the Company needs to follow the below mentioned procedure:
  - (i) **Call Board Meeting to consider the following** :
    - a) Approval of statement of accounts certified by a Chartered Accountant upto a day not more than thirty days before the date of application.
    - b) Taking note of Indemnity Bond to be given by the Directors of the Company and
    - c) Approval of Notice convening Extra Ordinary General Meeting of the members in order to obtain their approval for such proposal of strike off of the name of the Company.
  - (ii) **Call Shareholders Meeting to consider proposal of strike off:** A Company may after extinguishing all its liabilities shall pass a special resolution or obtain the consent of 75% of the members in terms of paid up share capital.

(iii) **Application to ROC:** The Company shall file an application for removal of its name from Register of Companies maintained by RoC in e-**Form STK-2** along with the fees of Rs.5000/- which shall be signed by a Director and with following attachments:

- (a) Indemnity Bond duly notarized by every Director in Form STK-3
- (b) No Objection Certificate from appropriate Regulatory Authority under which the Company may be registered like RBI, IRDA, SEBI and Housing Finance Companies etc.
- (c) Statement of Account containing assets and liabilities of the Company made not more than 30 days before the date of application and duly certified by Chartered Accountant.
- (d) An Affidavit in Form STK -4 by every Director of the Company
- (e) Copy of Special Resolution certified by each of the Director of the Company or consent of 75% of the members of the Company in terms of paid up share capital of the Company.
- (f) Statement regarding pending litigations, if any, involving the Company.

The Directors need to give declaration in Form STK 2 as follow :

1. There is no inspection or investigation ordered and carried out or yet to be carried out or being carried out against the company and where inspection or investigation have been carried out, no prosecution is pending in any court.
2. The company is neither having any public deposits which are outstanding nor the company is in default in its repayment or interest thereon;
3. The company does not have any outstanding loans, secured or unsecured;
4. The company does not have any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central or any State Government, statutory authority or local authority.
5. All the other liabilities of the company have been settled or discharged or extinguished;

In case of foreign nationals or non-resident Indians, the indemnity bond and declaration shall be notarized or apostilised or consularised. If the concerned Director does not have Digital Signature Certificate, then a physical copy signed by such Director shall be attached with form STK-2

(iv) **Certification:** Form STK-2 shall be certified by Company Secretary, Chartered Accountant or a Cost Accountant in whole-time practice as the case may be.

(v) **Publication of Notice:** The Notice under sub-section (1) and (2) of section 248 shall be published in **Form STK-5 or 5A( Notification dated 12<sup>th</sup> April, 2017) (in case notice for strike off received from ROC) and Form STK-6 (Voluntary strike off)** which shall be:

- a) Placed on official website of MCA.
- b) Published in official Gazette.
- c) Published in English language in a leading English Newspaper and in vernacular language in a leading vernacular language newspaper, having wide circulation in the State where the Registered Office of the Company is situated.

In case of voluntary winding up an application for striking off shall also be placed on the website of the Company till the Disposal of such application.

#### (vi) Undertakings by Directors and Discharge of Liabilities

Before passing an order for dissolution, RoC shall satisfy himself that sufficient provision has been made for the payment or discharge of all its liabilities within a reasonable time and has obtained necessary undertakings from the Managing Director, Director or other person in charge of the management of the Company.

The Liability of every Director, manager or other officer and of every member of the Company shall continue even after the Company is dissolved and it may be enforced.

The assets of the Company shall be made available for the payment or discharge of all its liabilities and obligations even after the order removing the name of the Company from the register of Companies.

**(vii) Objections or suggestions:** ROC shall intimate to the authorities having jurisdiction over the Company for seeking objections **within 30 days** from the date of issue of the letter of intimation to:

- a) Income tax authorities
- b) Central exercise authority
- c) Service tax authority

If no Objection is received from the aforesaid authorities within 30 days, then it shall be presumed that they have no objections to the striking off.

**(viii) Dissolution of Company:** If ROC has not received any objection, then after the expiry of the period specified in the notice shall strike off the name of the Company and publish a notice in **form STK-7** in official Gazette, upon such publication Company shall stand dissolve and same shall also be placed on the official website of MCA.

**(ix) Application or forms pending before central government:** Any application for striking off or Form FTE filed with RoC prior to the commencement of these rules is pending or not disposed of, such application shall be disposed in accordance with the rules made under the Companies Act, 1956.

#### C. **Various Forms**

| <b>Forms</b> | <b>Particulars</b>  | <b>Responsibility</b> |
|--------------|---|-----------------------|
| <b>STK-1</b> | Notice from RoC for strike off  | RoC                   |
| <b>STK-2</b> | Application for removal of name of the Company                        | Company               |
| <b>STK-3</b> | Indemnity Bond  | Directors             |
| <b>STK-4</b> | Affidavit   | Directors             |
| <b>STK-5</b> | Publication of notice in case notice for strike off received from ROC | RoC                   |
| <b>STK-6</b> | Publication of notice in case of Voluntary strike off.                | RoC                   |
| <b>STK-7</b> | Notice of striking off and dissolution of Company                     | RoC                   |

#### **D. CONCLUSION**

Recently in the last few months of FY 2016-17, RoC across country had started issuing Show Cause Notices u/s 248 (1) for striking off the name of approx. 4 Lac companies and giving them a time limit of 30 days to give appropriate replies, or represent their case, failing which the name of these 4 Lac companies may be struck off by RoC. The possible intention behind issuing Show Cause Notices to the companies is to reduce the burden of RoC in maintaining their records for such Companies. This is a welcome move by RoC, which will be helpful to the defunct Companies also, as strike off is an easy, fast and cheapest way of closing down a Company. RoC will be free from large number of such non compliant companies and then he can rather spend more time to ensure that proper corporate governance and compliances are made by companies.

However, such issuance of Show Cause Notices has left us with various questions unanswered as to whether the Director would be disqualified u/s 164(2) of the Act? Whether the office of the Director would be considered as vacant u/s 167 (1) (a) of the Act? What will be the liabilities on members and directors as mentioned under the show cause notice issued by RoC. Whether there is any levy of penalty on the directors of the Company u/s. 166 of the Companies Act, 2013 due to non-compliance of their duties? .

One can form an opinion that RoC may send show cause notice and prosecute the Directors of such companies for violation of non filing of Balance Sheet and Annual Return of past period and such Directors may have to file application for compounding of such offence, till than they may be considered as disqualified as Director and his office shall be considered as vacant not only from these companies but all other companies where he is Director.

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INSPIRATIONAL QUOTES



SETTING GOALS IS THE  
FIRST STEP IN TURNING  
THE INVISIBLE INTO  
THE VISIBLE.

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TONY ROBBINS

“We may  
encounter many  
defeats but we  
must not be  
defeated.”

## **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.*

### **Amita Desai & Co. Company Secretaries**

#### **Mumbai Off :**

1005, Hubtown Solaris  
Off Western Express Highway  
East End of Andheri Flyover

Landline: + 91-22-2684-5920/21  
Fax: + 91-22-6678-7499  
Mobile : + 91-982-017-7691

#### **Hyderabad Off :**

My Home Hub, 4th Floor, C Block, Madhupur,  
Hi-Tech City, Hyderabad, AP 500 081

#### **Editor: For Amita Desai and Company**

- **Mr. Abhishek Sharma**
- **Mr. Akshay Kallil**
- **Mr. Chetan Jain**
- **Ms. Krinal Dattani**
- **Ms. Seema Yadav**
- **Ms. Parul Gupta**

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