

Newsletter for August, 2017
By Amita Desai & Co.



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



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 August Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of August 2017. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Department of Industrial Policy and Promotion ("DIPP"), Insolvency & Bankruptcy Board of India (IBBI) and Securities and Exchange Board of India (SEBI).

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.

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. EXEMPTION TO REGIONAL RURAL BANKS FROM THE APPLICATION OF SECTION 5 AND 6 OF THE COMPETITION ACT, 2002

- MCA vide its notification dated August 10, 2017 had exempted the Regional Rural Banks (RRB's) from the application of provisions of Section 5 and 6 of the Competition Act, 2002. Section 5 and 6 of the Competition Act, 2002 pertain to combination of enterprises.
- Prior to the notification, amalgamation of RRB's pursuant to the order issued by the Central Government required prior approval of Competition Commission of India (CCI). However, with the aforesaid amendment, the mergers of Regional Rural Banks that are ordered by the Central Government are now exempted from seeking the prior approval of CCI. The said exemption is applicable for a period of five year.
- The link of the above notification is as under:
[www.mca.gov.in/Ministry/pdf/Notification2561\(E\)_21082017.pdf](http://www.mca.gov.in/Ministry/pdf/Notification2561(E)_21082017.pdf)

B. PROPOSED AMENDMENT IN THE COMPANIES (COST RECORDS AND AUDIT) RULES, 2014

- MCA vide its notification, had proposed amendments in the Companies (Cost Records and Audit) Rules, 2014 and prescribed the draft Companies (Cost Records and Audit) Amendment Rules, 2017 so as to align the same with the Companies (Indian Accounting Standards) Rules 2015. The draft Companies (Cost Records and Audit) Amendment Rules, 2017 were placed on the Ministry's website for suggestions/comments of various stakeholders and the last dated for giving the suggestions/comments was August 26, 2017.
- The link of the above notification is as under:
http://www.mca.gov.in/Ministry/pdf/draftRules_11082017.pdf
http://www.mca.gov.in/Ministry/pdf/notice_11082017.pdf

C. WITHDRAWAL OF SECRETARIAL STANDARD NO. 1 & NO. 2

- Institute of Company Secretaries of India vide its notification dated August 16, 2017 has withdrawn the Secretarial Standard 1 on Meeting of Board of Directors and Secretarial Standard 2 : Secretarial Standard on General Meetings, w.e.f. September 30, 2017 without affecting the enforceability of SS-1 and SS-2 during the period before such withdrawal.
- The link of the above notification is as under:
<http://egazette.nic.in/WriteReadData/2017/178157.pdf>
- The revised version of Secretarial Standard 1 on Meeting of Board of Directors and Secretarial Standard 2 on General meetings alongwith the comparative analysis of amendment in SS-1 and SS-2 are placed on the website if the Institute of Company Secretaries of India which will be effective from October 01, 2017.

- The link of the revised version of SS-1 is as under:
https://www.icsi.edu/webmodules/Final_SS-1.pdf

The link of the revised version of SS-2 is as under:
https://www.icsi.edu/webmodules/Final_SS-2.pdf

The link of the comparative analysis of amendment in SS-1 is as under:
https://www.icsi.edu/webmodules/ComparativeAnalysis_Amendments_SS1.pdf

The link of the comparative analysis of amendment in SS-2 is as under:
https://www.icsi.edu/webmodules/ComparativeAnalysis_Amendments_SS2.pdf

D. NATIONAL COMPANY LAW APPELLATE TRIBUNAL (AMENDMENT) RULES, 2017

- MCA vide its notification dated August 23, 2017, had amended the National Company Law Appellate Tribunal Rule, 2016 (NCLAT) and notified the National Company Law Appellate Tribunal Rule, 2017 by substituting the Rule 63 i.e. Appearance of Authorised Representative.
- Pursuant to the Amendment, the Central Government, the Regional Director or the Registrar Companies or Official Liquidator has also been empowered to authorize an advocate or an officer not below the rank of Junior Time Scale or company prosecutor to represent a party in a proceedings or an appeal before the National Company Law Appellate Tribunal.
- Prior to the present Amendment only the party to a proceeding/appeal before the National Company Law Appellate Tribunal had the power to authorize one or more chartered accountant(s) or company secretary/ies or cost accountant(s) or legal practitioner(s) or any other person to present his case before the Tribunal.
- The link of the above notification is as under:
<http://egazette.nic.in/WriteReadData/2017/178275.pdf>

E. INVESTIGATION INTO AFFAIRS OF COMPANY BY SERIOUS FRAUD INVESTIGATION OFFICER

- MCA vide its notification dated August 24, 2017, had notified the sub section 8, 9 and 10 of Section 212 of the Companies Act, 2013 which deals with the power of Serious Frauds Investigation Officer to arrest any person that has been guilty of any punishable under the said section and shall be taken before the judicial Magistrate or a Metropolitan Magistrate within the twenty four hours. On the same day itself MCA vide its notification has also notified the Companies (Arrest in connection with Investigation by Serious Fraud Investigation Officer) Rules, 2017.
- The link of the above notifications are as under:
http://www.mca.gov.in/Ministry/pdf/Commencementnotification_25082017.pdf
http://www.mca.gov.in/Ministry/pdf/companiesArrestsconnectionSFIORRule_25082017.pdf

F. EXEMPTION TO NATIONALISED BANKS FOR AMALGAMATION

- MCA vide its notification dated August 30, 2017 had exempted all the Nationalized Banks from the application of Section 5 and 6 of the Competition Act 2002 for a period of ten years in cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized Banks.
- The link of the above notification is as under:
<http://egazette.nic.in/WriteReadData/2017/178385.pdf>

G. SPECIAL COURT FOR THE STATE OF BIHAR

MCA vide its notification dated August 31, 2017 has designated Special Court for the state of Bihar with a view to provide speedy trial of offenses punishable with imprisonment of 2 years or more.

- The link of the above notification is as under:
http://mca.gov.in/Ministry/pdf/NotificationSpecialCourtBihar_01092017.pdf

DIPP

CONSOLIDATED FOREIGN DIRECT INVESTMENT POLICY

Department of Industrial Policy and Promotion (“DIPP”) has issued Consolidated Foreign Direct Investment (FDI) Policy which is **effective from August 28, 2017**. It is the intent and objective of the Government of India to attract and promote FDI in order to supplement domestic capital, technology and skills, for accelerated economic growth.

The present consolidation **subsumes and supersedes Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on August 27, 2017** and reflects the FDI Policy as on August 28, 2017.

The updated version of FDI Policy has consolidated the law relating to FDI in India as on date at one place. This policy document has been issued with an objective that **foreign investors can understand Government’s policies in the matter of FDI in a simple manner**, so that FDI in India can get a boost for overall betterment of Economy. The policy document also includes a separate paragraph on start-ups under the head “Eligible investee entities” (Point no 3.2.6). Gist of provision pertaining to Start-up Companies is as under:

STARTUP COMPANIES

For the purpose of this policy Startup Company means a private Company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated February 17, 2016 issued by the DIPP.

Start-ups can issue equity or equity linked instruments or debt instruments to FVCI against receipt of foreign remittance, as per the FEMA Regulation. In addition, start-ups can issue convertible notes to person resident outside India subject to the following conditions:

(i) A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered / incorporated in Pakistan or Bangladesh), **may purchase convertible notes issued by an Indian startup company for an amount of 25 lakh rupees or more in a single tranche.**

(ii) A startup company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non-resident only with approval of the Government. Further the issue of shares against such convertible notes shall have to be in accordance with the Schedule 1 of the Notification No.FEMA.20/2000-RB dated 3rd May 2000.

(iii) A startup company issuing convertible notes to a person resident outside India **shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE / FCNR (B) / Escrow account** maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

Provided that an **escrow account for the above purpose shall be closed immediately after the requirements are completed or within a period of six months, whichever is earlier.** However, in no case continuance of such escrow account shall be permitted beyond a period of six months.

(iv) **NRI's may acquire convertible notes** on non-repatriation basis in accordance with Schedule 4 of the Notification No.FEMA.20/2000-RB dated 3rd May 2000.

(v) A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the pricing guidelines as prescribed by RBI. Prior approval from the Government shall be obtained for such transfers in case the startup company is engaged in a sector which requires Government approval.

(vi) The startup company issuing convertible notes shall be required to furnish reports as prescribed by Reserve Bank of India.

ABOLITION OF FIPB

The updated FDI policy takes into account the changes made after the abolition of FIPB. The new policy specifies the respective administrative departments that will decide on FDI proposals.

DIPP is the administrative ministry for FDI policy and proposals that require government approval.

Government of India has liberalised FDI policy in over a dozen sectors over the last one year, including defence, civil aviation, construction and development. Bringing in foreign investments is one of the topmost priorities of the Government of India at present and it is expected to improve the country's balance of payments situation and strengthen the rupee value against other global currencies.

➤ The link for the Consolidated FDI Policy is as under:

http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf

IBC UPDATES:

A. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2017

Under the Insolvency and Bankruptcy Code, 2016 (“The Code”) the interest of operational creditors, financial creditors, workmen and employees were protected in case of default committed by the Corporate Debtor. Apart from the aforesaid claimant’s interest of any other creditor were not considered.

However the Insolvency and Bankruptcy Board of India (“The Board”) vide notification dated August 16, 2017 has amended Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 by inserting Regulation 9A.

- Regulation 9A provides submission of proof of claims by other Creditors (other than financial creditors, Operational creditors, workmen and employees) to the Interim Resolution Professional or Resolution Professional in person, by post or by electronic means in **Form F** (Proof of Claim by Other Creditors).
- The Creditor to support his existence of claim shall establish the following:
 - i. Records available with Information Utility (if any),
 - OR**
 - ii. documentary evidence demanding satisfaction of the claim
 - iii. bank statements of the creditor showing non-satisfaction of claim
 - iv. an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any
- The public announcement shall be given in Form A by the Interim Resolution Professional.
- The Creditor shall submit proof of claims to the Interim Resolution Professional by any of the following means:
 - i. By hand delivery
 - ii. By post
 - iii. By electronic means

The link of above notification is as under:

http://ibbi.gov.in/webadmin/pdf/legalframework/2017/Jul/AMEND_CIRP.pdf

B. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (FAST TRACK INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2017

As mentioned earlier, to keep the regulations of Corporate Insolvency Resolution Process in line with Fast Track Insolvency Resolution Process Insolvency and Bankruptcy Board of India (“IBBI”) vide notification dated August 16, 2017 has amended Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 by inserting Regulation 9A

- Regulation 9A provides submission of proof of claims by other Creditors (other than financial creditors, Operational creditors, workmen and employees) to the Interim Resolution Professional or Resolution Professional in person, by post or by electronic means in **Form F** (Proof of Claim by Other Creditors).
- The Creditor to support his existence of claim shall establish the following:
 - i. Records available with Information Utility (if any),
 - OR**
 - ii. documentary evidence demanding satisfaction of the claim
 - iii. bank statements of the creditor showing non-satisfaction of claim
 - iv. an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any
- The public announcement shall be given in Form A by the Interim Resolution Professional.
- The Creditor shall submit proof of claims to the Interim Resolution Professional by any of the following means:
 - i. By hand delivery
 - ii. By post
 - iii. By electronic means

The link of above notification is as under:

http://ibbi.gov.in/webadmin/pdf/legalframework/2017/Jul/AMEND_Fast_track.pdf

C. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (EMPLOYEES’ SERVICE) REGULATIONS, 2017

The Insolvency and Bankruptcy Board of India (“The Board”) performs its mandatory function as mentioned in Chapter II of the Code. However the Board has the authority to appoint such other officers or employees to whom it may discharge its functions.

IBBI vide notification dated the 24th August, 2017 has issued Insolvency and Bankruptcy Board of India (Employees’ Service) Regulations, 2017. The regulation primarily deals with appointment, salaries, allowances and other terms and conditions of service of, officers and employees so appointed by the Board.

The link of above notification is as under:

[http://ibbi.gov.in/webadmin/pdf/legalframework/2017/Aug/24%20August,%202017%20Insolvency%20and%20Bankruptcy%20Board%20of%20India%20\(adsydst_2017-08-31%2015:55:58.pdf](http://ibbi.gov.in/webadmin/pdf/legalframework/2017/Aug/24%20August,%202017%20Insolvency%20and%20Bankruptcy%20Board%20of%20India%20(adsydst_2017-08-31%2015:55:58.pdf)

SEBI UPDATES:

A. DISCLOSURES BY LISTED ENTITIES OF DEFAULTS ON PAYMENT OF INTEREST/ REPAYMENT OF PRINCIPAL AMOUNT ON LOANS FROM BANKS / FINANCIAL INSTITUTIONS, DEBT SECURITIES, ETC.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 currently require disclosure on material events. Also specific disclosures such as delay or default in payment of interest or principal on various debt securities should be given.

SEBI vide its Circular dated August 4th, 2017, has also stated the listed companies to give disclosure of loans taken from banks and financial institutions.

- The circular shall be **applicable** to all the **listed entities** which have listed any of the following securities:
 - i. Specified securities (equity and convertible securities);
 - ii. Non-Convertible debt securities, and
 - iii. Non-Convertible and redeemable preference shares.
- The disclosure shall be made to the Stock Exchange, in case the entity has defaulted in payment of interest/ installment obligations on:
 - (i) Debt securities (including commercial papers);
 - (ii) Medium Term Notes (MTNs);
 - (iii) Foreign Currency Convertible Bonds (FCCBs);
 - (iv) Loans from banks and financial institutions;
 - (v) External Commercial Borrowings (ECBs), etc.
- The defaulted entity shall make disclosures within 1 working day from the date of default, in the prescribed format.
- The defaulted listed entity shall also provide information regarding the default to the concerned Credit Rating Agencies in such manner as may be specified by the SEBI from time to time.
 - The link for the above Circular is as follows:
http://www.sebi.gov.in/legal/circulars/aug-2017/disclosures-by-listed-entities-of-defaults-on-payment-of-interest-repayment-of-principal-amount-on-loans-from-banks-financial-institutions-debt-securities-etc_35538.html

B. ONLINE REGISTRATION MECHANISM FOR CUSTODIAN OF SECURITIES

On February 1, 2017, while presenting the Budget for the financial year 2017-18, the Hon'ble Minister of Finance has announced, that the process of registration of financial market intermediaries will be made fully online by SEBI. On August 9, 2017 a Circular was introduced for Online Registration Mechanism for Custodian of Securities.

- The Custodian of Securities seeking approval as Designated Depository Participant (DDP), in terms of Regulation 11 of SEBI (Foreign Portfolio Investors) Regulations, 2014 for shall apply through - <https://siportal.sebi.gov.in>
- The applicants can submit their applications for registration as a Custodian of Securities at SEBI Intermediary Portal- <https://siportal.sebi.gov.in>
- For any queries and clarifications with regard to SEBI Intermediary Portal, the intermediaries may contact SEBI portal helpline no. **022-26449364** or may write at portalhelp@sebi.gov.in
- The link for the above Circular is as follows:
http://www.sebi.gov.in/legal/circulars/aug-2017/online-registration-mechanism-for-custodian-of-securities_35582.html

C. CURBING MISUSE OF BULK SMS IN THE SECURITIES MARKET

SEBI noticed that there were instances of bulk SMSs being sent to investors and general public inducing them to invest or purchase the securities of certain listed companies. Such investment advice and stock tips can only be given by Investment Advisors duly registered with SEBI.

In order to control or supervise such practices a Press Release was issued on August 18, 2017.

- The main challenge faced by the SEBI is the lack of reliable information of the senders of such SMSs, which created a road block for SEBI in taking corrective actions against them.
- SEBI sought the attention of Telecom Regulatory Authority of India (TRAI) in the same matter as to protect the interest of investors and general public at large.
- TRAI vide its notification no. F. No.311-3/2015-QoS dated August 10, 2017, issued directions to all Access Providers to follow certain operational guidelines for SMSs relating to investment advice or tips using the bulk SMS channel.
- The link for TRAI's notification- <http://www.trai.gov.in/release-publication/directions>
- The link for the above press release is as follows:
http://www.sebi.gov.in/media/press-releases/aug-2017/curbing-misuse-of-bulk-sms-in-the-securities-market_35642.html

INSPIRATIONAL QUOTES

**IF THE PLAN
DOESN'T WORK,
CHANGE THE
PLAN. BUT
NEVER THE
GOAL.**

POSITIVELIFETIPS.COM

*Grow through,
what
you go
through.*

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

For Amita Desai and Company

- **Mr. Abhishek Mathe**
- **Mr. Abhishek Sharma**
- **Mr. Akshay Kallil**
- **Mr. Chetan Jain**