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



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



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

We are pleased to share our Newsletter for the month of May 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:**

### **1. AMENDMENTS UNDER RULE 2 AND RULE 5 OF COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014**

- MCA vide Notification No. **G.S.R. 454(E)** dated May 11, 2017 had amended the Companies (Acceptance of Deposits) Rules, 2014 and notified Companies (Acceptance of Deposits) Amendment Rules, 2017.
- With the enforcement of the aforesaid notification, the definition of deposit has been modified and any amount received by a Company from Infrastructure Investment Trusts registered with Securities and Exchange Board of India shall be outside the purview of deposits.
- Further, the aforesaid Notification has amended Rule 5 of the Companies (Acceptance of Deposits) Rules, 2014 which prescribes the manner and the extent of deposit insurance. Now the Companies may accept deposits without deposit insurance contract till 31st **March, 2018** or till the availability of deposit insurance product, whichever is earlier. Earlier a time period till **31<sup>st</sup> March, 2017** was allowed to the Companies for accepting deposits without deposit insurance.
- The link of above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDeposits\\_12052017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDeposits_12052017.pdf)

### **2. ENFORCEMENT OF THE PROVISIONS OF CLAUSE (a) TO CLAUSE (d) OF SECTION 2 OF THE INSOLVENCY CODE RELATING TO VOLUNTARY LIQUIDATION OR BANKRUPTCY**

- MCA vide Notification No. S.O. 1570(E) dated May 15, 2017, has notified the provisions of clauses (a) to (d) of section 2 of the Insolvency and Bankruptcy Code, 2016 relating to voluntary liquidation or bankruptcy of the Insolvency and the same shall come into force w.e.f. 01.04.2017.
- The link of above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/NotificationIBBI\\_19052017.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationIBBI_19052017.pdf)

### **3. LIMITED LIABILITY PARTNERSHIP (AMENDMENT) RULES, 2017**

- MCA vide Notification No. G.R.R. 470(E) dated May 16, 2017 has issued the Limited Liability Partnership (Amendment) Rules, 2017 amending the provisions with respect to striking off the name of the LLP.
- As per the aforesaid notification an LLP cannot apply for striking off its name in Form 24 unless it has completed the filing of Form 8 i.e. Statement of Account and Solvency, Form 11 i.e. Annual Return of LLP and Income Tax Returns of previous years.

- Form 24 for striking off the name of the LLP shall include a statement of account disclosing nil assets and nil liabilities certified by a Chartered Accountant, an affidavit signed by designated partners, copy of acknowledgement of the latest Income Tax return and copy of the initial limited liability partnership agreement, if entered into and not filed, along with changes thereof in cases where the Limited Liability Partnership has not commenced business or commercial operations since its incorporation.

- The link of above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/Circular04\\_2017\\_17052017.pdf](http://www.mca.gov.in/Ministry/pdf/Circular04_2017_17052017.pdf)

#### **4. MCA CIRCULAR NO. 05/2017 W.R.T. TRANSFER OF SHARES TO IEPF AUTHORITY**

- MCA vide its Circular dated May 16, 2017 had withdrawn the previous Circular No. 03/2017 issued on April 27, 2017 wherein all the Companies where the seven year period prescribed under Section 24(5) of the Companies Act, 2013 is completed were required to transfer the shares to the demat account of IEPF Authority latest by May 31, 2017.

- The link of the above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/Circular\\_16052017.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_16052017.pdf)

#### **5. INSOLVENCY AND BANKRUPTCY CODE (REMOVAL OF DIFFICULTIES) ORDER, 2017**

- The Ministry of Corporate Affairs (MCA) has vide it's notification dated May 24, 2017 issued an order called as the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017.

- The order is issued for the removal of difficulties while filing an appeal or for an inquiry to National Company Law Tribunal (NCLT). Earlier, these appeals were filed under Sick Industrial Companies (Special Provisions) Repeal Act, 2003 and Companies Act, 1956 which has been repealed. Also under Companies Act, 2013, Sections 261-264, which provided for scheme of revival and rehabilitation, sanction of scheme, scheme to be binding and for the implementation of scheme, have been omitted by the Eleventh Schedule to the Insolvency and Bankruptcy Code, 2016.

- As Insolvency and Bankruptcy Code, 2016 has been introduced; the said application with NCLT has to be made within 180 days from the commencement of the Insolvency Code.

- By virtue of this order, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.

- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2017/176208.pdf>

**6. COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017 (DRAFT RULES)**

- The MCA has floated the draft Companies (Registered Valuers and Valuation) Rules, 2017 (“Draft Rules”) and has also issued a notice dated May 26, 2017 wherein suggestions/comments alongwith justifications in brief are invited on the Draft Rules. The suggestions/comments may be sent latest by 27/06/2017 through email at comments\_rv@mca.gov.in.
- The Draft Rules is having 5 chapters, 20 rules and 3 schedules. The Draft Rules prescribe-
  - a. eligibility, qualifications and registration of valuers;
  - b. recognition of valuation professional organizations;
  - c. valuation standards;
  - d. disciplinary proceedings.
- The aforesaid Draft Rules shall come into force with effect from July 15, 2017.
- The links of above notifications are as under:  
[http://www.mca.gov.in/Ministry/pdf/Companies\\_Registered\\_Valuers\\_Rules\\_2017.pdf](http://www.mca.gov.in/Ministry/pdf/Companies_Registered_Valuers_Rules_2017.pdf)  
[www.mca.gov.in/Ministry/pdf/NoticeforValuers.pdf](http://www.mca.gov.in/Ministry/pdf/NoticeforValuers.pdf)

**7. CLARIFICATION REGARDING DUE DATE FOR TRANSFER OF SHARES TO IEPF AUTHORITY**

- MCA vide its General Circular No. 06/2017 dated May 29, 2017 has provided clarification regarding due date for transfer of shares to IEPF Authority.
- IEPF Authority is considering to open special Demat account and till opening of demat accounts, the due date for transfer of shares stands extended and the revised due date for transfer/ transmittal of shares shall be notified soon by the Ministry.
- The link of above notification is as under:  
[http://mca.gov.in/Ministry/pdf/GeneralCircular6\\_29052017.pdf](http://mca.gov.in/Ministry/pdf/GeneralCircular6_29052017.pdf)

## **SEBI UPDATES:**

### **1. DIGITAL MODE OF PAYMENT**

- SEBI vide its Circular dated May 16, 2017 has notified Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 to enable digital mode of payment through RTGS or NEFT or IMPS etc. for payment of fees, penalties, remittance or other payment.
- SEBI has also prescribed the format in which all registered entities and other entities are required to intimate SEBI once the payment is made. The format contain the date of transfer, Department of SEBI, Name of Intermediary/ Other Entities, Type of Entities, SEBI Registration Number (if any), PAN, Amount (in Rs.), Purpose of Payment (including the period for which payment was made e.g. quarterly, annually), Bank name and Account number from which payment is remitted, UTR No. etc..
- The above information relating to payment should be emailed to the respective department(s) as well as to Treasury & Accounts division at tad@sebi.gov.in.
- The link of the above notification is as under:  
[http://www.sebi.gov.in/legal/circulars/may-2017/digital-mode-of-payment\\_34885.html](http://www.sebi.gov.in/legal/circulars/may-2017/digital-mode-of-payment_34885.html)

### **2. LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES (NCRPS) / NON-CONVERTIBLE DEBENTURES (NCDS) THROUGH A SCHEME OF ARRANGEMENT**

- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, have place obligations with respect to Scheme of Arrangement of Listed Entities and Stock Exchange(s) in Regulation 11, 37 and 94.
- This circular shall be applicable for all the draft schemes filed with the Stock Exchanges after the date of this circular.
- Sub-rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957 has empowered Securities and Exchange Board of India (SEBI) to relax provision of Rule 19 at its discretion and accordingly SEBI vide its Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 laid down the detailed requirement to be complied with by listed entities while undertaking schemes of arrangement for listing of Equity or Warrants pursuant to the Scheme.
- In cases where NCRPS/NCDS are issued, in lieu of specified securities, pursuant to scheme of arrangement; and where such NCRPS/NCDS are proposed to be listed on recognized Stock Exchanges, the listed entity shall additionally comply following requirements.

- **Additional conditions to be complied before the Scheme of arrangement is submitted for sanction by the National Company Law Tribunal (NCLT)**

A listed entity, which has listed its specified securities (specified securities as defined in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009), may seek

listing of NCRPS/NCDs pursuant to a scheme of arrangement provided that it has complied with the following provisions :-

- **Eligibility for seeking listing of NCRPS/ NCDs:**

A listed entity has listed its specified securities may seek listing of NCRPS/NCDs pursuant to a scheme of arrangement if the listed entity is a part of such scheme of arrangement and such NCRPS/NCDs are issued to the specified securities holders of such listed entity. Such scenarios may broadly include the following:

- ✓ A listed entity, which has listed its specified securities, (demerged entity) demerges a unit and transfers the same to another entity (resultant entity), and the resultant entity issues NCRPS/NCDs to the holders of the specified securities of listed entity (i.e. demerged entity) as a consideration under the scheme of arrangement.
- ✓ A listed entity, which has listed its specified securities, (amalgamating entity) is merged with another entity (amalgamated entity), and the amalgamated entity issues NCRPS/NCDs to the holders of the specified securities of listed entity (i.e. amalgamating entity) as a consideration under the scheme of arrangement.

It is clarified that only the NCRPS/NCDs issued to the holders of listed specified securities, vide the scheme of arrangement, would be eligible for seeking listing.

- **Tenure/ Maturity:**

The minimum tenure of the NCRPS/NCDs shall be one year.

- **Credit Rating:**

The NCRPS/NCDs have been assigned minimum credit rating, if any, as specified for public issue of NCRPS under SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 or for public issue of NCDs in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008, as the case may be by a credit rating agency registered with the Board.

- **Valuation Report:**

NCRPS/ NCDs to be issued pursuant to the scheme of arrangement shall also include valuation.

- **Disclosures in the Scheme of Arrangement:**

The following information should be clearly disclosed in Draft Scheme of Arrangement:

- ✓ Face Value & Price
  - ✓ Dividend/Coupon: The terms of payment of dividends/Coupon including frequency etc
  - ✓ Credit Rating
  - ✓ Tenure/ Maturity
  - ✓ Redemption: The terms of redemption, amount, date, redemption premium/discount,, and early redemption scenarios, if any
  - ✓ Other embedded features (put option, call option, dates, notification times, etc)
  - ✓ Other terms of instruments
  - ✓ Any other information/details pertinent for the investors
- **Other Conditions which would be required to be followed are as under:**
    - ✓ The issue of NCRPS/NCDs shall be in compliance with all the applicable provisions of the Companies Act, 2013 along with provisions related to creation and maintenance of Capital Redemption Reserve/Debenture Redemption Reserve.
    - ✓ All such NCRPS/NCDs shall be issued in dematerialized form only
    - ✓ In case of issue of NCDs, the issuer shall appoint Debenture Trustee in compliance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and Companies Act, 2013
    - ✓ In case of issue of NCDs, the issuer shall create an appropriate charge or security, wherever applicable, in compliance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and Companies Act, 2013
    - ✓ All the provisions relating to SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 shall be complied with except the provisions related to making a public issue, or making a private placement, or filing of offer document, etc.
  - **Additional conditions to be complied after the Scheme is sanctioned by the Hon'ble High Court / NCLT and at the time of making application for relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957**

The application for relaxation under Sub-rule (7) of rule 19 of SCRR for listing of NCRPS/ NCDs shall include a detailed Compliance Report in the format as specified in this notification duly certified by the Company Secretary and the Managing Director, confirming compliance of the Scheme of Arrangement with the provisions of this Circular, SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017, as amended from time to time and with various regulatory requirements specified for schemes of arrangement.

- ✓ The Schemes shall be governed by the requirements specified in Listing Regulations and any other Regulation/ Law connected therewith and as revised from time to time.
- ✓ The Board may, while granting relaxation, if any, under sub-rule (7) of rule 19 of SCRR, stipulate any other conditions as may be deemed necessary in the



interest of investors and securities market, under the facts and circumstances of the specific case.

- The link of the above notification is as under:  
[http://www.sebi.gov.in/legal/circulars/may-2017/listing-of-non-convertible-redeemable-preference-shares-ncrps-non-convertible-debentures-ncds-through-a-scheme-of-arrangement\\_34965.html](http://www.sebi.gov.in/legal/circulars/may-2017/listing-of-non-convertible-redeemable-preference-shares-ncrps-non-convertible-debentures-ncds-through-a-scheme-of-arrangement_34965.html)

### 3. DISCLOSURE REQUIREMENTS FOR ISSUANCE AND LISTING OF GREEN DEBT SECURITIES

- SEBI vide its circular no CIR/IMD/DF/51/2017 dated May 30, 2017 has prescribed under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“SEBI ILDS Regulations”) the disclosure required to be made for issuance and listing of Green Debt Securities.

‘Green Debt Securities’ are the securities issued to raise the funds for the projects or assets falling under any of the following broad categories:

- a. Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology etc.
  - b. Clean transportation including mass/public transportation etc.
  - c. Sustainable water management including clean and/or drinking water, water recycling etc
  - d. Climate change adaptation
  - e. Energy efficiency including efficient and green buildings etc.
  - f. Sustainable waste management including recycling, waste to energy, efficient disposal of wastage etc.
  - g. Sustainable land use including sustainable forestry and agriculture, afforestation etc.
  - h. Biodiversity conservation.
- The issuer has to give disclosure in the offer document and other documents on environmental objectives of the issue of Green Debt Securities. He has to provide the disclosures of utilization of proceeds of the issue along with its annual report and financial results.
  - The link of the above notification is as under:  
[http://taxpublishers.in/DownloadPDF.aspx?30\\_SEBI\\_001.pdf](http://taxpublishers.in/DownloadPDF.aspx?30_SEBI_001.pdf).

## **RBI UPDATES:**

### **1. ENFORCEMENT OF NEW SECTIONS 35AA AND 35AB IN THE BANKING REGULATION ACT, 1949**

- RBI vide its notification dated May 04, 2017 has amended the Banking Regulation Act, 1949 by inserting Section 35 AA and Section 35 AB for Powers of Central Government to authorise Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process and to issue directions in respect of stressed assets after Section 35 A.

- **Section 35 AA:-**

Under this Section, the Central Government may by order authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.

- **Section 35 AB:-**

- (1) Without prejudice to the provisions of Section 35 A for Power of the Reserve Bank to give directions, the Reserve Bank may, from time to time , issue directions to the banking companies for resolution of stressed assets.
- (2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise banking companies on resolution of stressed assets.

- The link of above notification is as under:

<http://egazette.nic.in/WriteReadData/2017/175760.pdf>

### **2. RESERVE BANK OF INDIA OUTLINES THE ACTION PLAN TO IMPLEMENT THE BANKING REGULATION (AMENDMENT) ORDINANCE, 2017.**

- RBI vide its release dated May 22, 2017 has taken steps to promulgate the amendments of the Banking Regulation (Amendments) Ordinance, 2017. RBI has issued directions to banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). It also enables the Reserve Bank to issue directions with respect to stressed assets and specify one or more authorities or committees with such members as the Bank may appoint or approve for appointment to advise banking companies on resolution of stressed assets.

- The RBI has issued a directive bringing the following changes to the existing regulation of stressed assets:

- A corrective action plan could include flexible restructuring, SDR and S4A.
- With a view to facilitating decision making in the JLF, consent required for approval of a proposal was changed to 60 percent by value instead of 75 percent earlier, while keeping that by number at 50 percent.

- Banks who were in the minority on the proposal approved by the JLF are required to either exit by complying with the substitution rules within the stipulated time or adhere to the decision of the JLF
  - Participating banks have been mandated to implement the decision of JLF without any additional conditionality.
- RBI envisages an important role for the credit rating agencies in the scheme of things and, with a view to preventing rating-shopping or any conflict of interest, is exploring the feasibility of rating assignments being determined by the Reserve Bank itself and paid for from a fund to be created out of contribution from the banks and the Reserve Bank.

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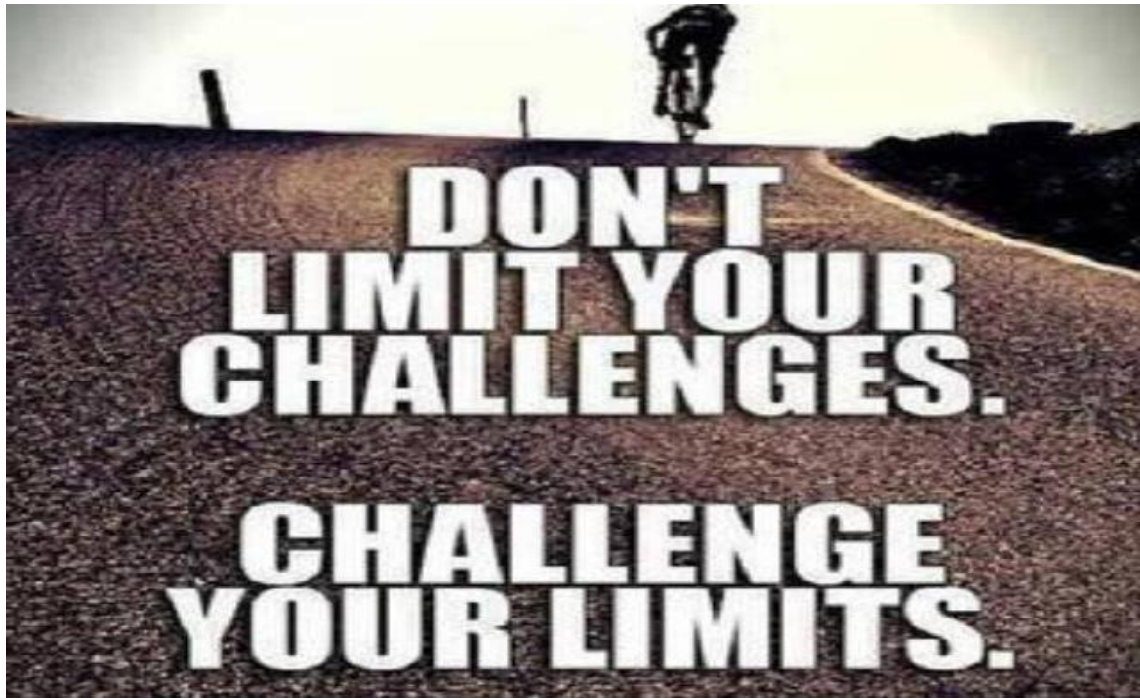
## **DIPP UPDATES:**

### **1. DIPP NOTIFICATION FOR GRANT OF LICENSE FOR MANUFACTURE OF DEFENCE ITEMS:**

- Department of Industrial Policy and Promotion (“DIPP”) had vide its notification dated 19<sup>th</sup> May, 2017 directs that the powers and functions exercisable and performed by it under sub-section (1) of section (5), clauses (b) and (c) of section 7 and Chapter III of the Arms Act, 1959, shall also be exercised and performed by the Secretary to the Government of India in the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, in respect of the category of arms and ammunition and defense items subject to the following conditions.
- that the Secretary, Department of Industrial Policy and Promotion shall, in the exercise and performance of powers and functions under the said sections, be subject to the supervision and control of the Central Government in the Ministry of Home Affairs;
- that the Secretary, Department of Industrial Policy and Promotion shall observe the policies and instructions laid down by the Central Government in the Ministry of Home Affairs and shall not enunciate any new policy or issue instructions in relation thereto without the prior consent of the Central Government in the Ministry of Home Affairs; and
- that the Central Government may revoke such delegation of powers and functions or may itself exercise or perform the powers or functions under the said sections, if in its opinion such a course of action is necessary in the public interest.
- The link of above circular is as under:  
<http://egazette.nic.in/WriteReadData/2017/176095.pdf>

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INSPIRATIONAL QUOTES



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