



**Private Circulation Only*

Newsletter for November, 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 November Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of November 2017. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Reserve Bank of India (RBI) and Insolvency & Bankruptcy Board of India (IBBI).

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 our analysis on Duties of Director 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



A. DESIGNATION OF SPECIAL COURT

- MCA vide Notification S.O.3529 (E) dated 3rd November, 2017, has notified that the Central Government has designated Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more.
- The following courts in column 1 has been designated as Special Court by the Central Government in concurrence with Chief Justice of High Court as Special Court for the purpose of speedy trial of offences punishable with imprisonment of 2 (two) years or more:

Courts	Jurisdiction as Special Court
(1)	(2)
XV Additional Court, XVI Additional Court of City Civil Court, Chennai	State of Tamil Nadu except Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur

- The link of above notification is as under:
http://mca.gov.in/Ministry/pdf/NotificationSpecialcourt_04112017.pdf

B. COMPANIES (FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE), AMENDMENT, RULES, 2017

- MCA vide notification G.S.R. 1372 (E) dated 6th November, 2017 has amended Companies (Filing of Documents and Forms in Extensive Business Reporting Language) Rules, 2015 which shall be called Companies (Filing of Documents and Forms in Extensive Business Reporting Language), Amendment, Rules, 2017.
- In Companies (Filing of Documents and Forms in Extensive Business Reporting Language) Rules, 2015, Annexure – I have been revised and after Annexure – II, Annexure II A has been inserted.
- The link of above notification is as under:
http://mca.gov.in/Ministry/pdf/Scan_XBRL_09112017.pdf

C. COMPANIES (ACCOUNTS) AMENDMENT RULES 2017

- MCA vide notification G.S.R. 1371 (E) dated 7th November, 2017 has amended Companies (Accounts) Rules, 2014 through which existing e-form AOC -4 has been substituted by the revised e-form AOC-4.
- To bring in more transparency a new section has been inserted which ask for details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016 to be filled in table given in new e-form AOC-4.

- In notes to Accounts following disclosure should be made:

Details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016

	SBNs	Other denomination notes	Total
Closing cash in hand as on 08.11.2016			
(+) Permitted receipts			
(-) Permitted payments			
(-) Amount deposited in Banks			
Closing cash in hand as on 30.12.2016			

- The link of above notification is as under:
http://mca.gov.in/Ministry/pdf/CompaniesAccountsamendmentsRules_09112017.pdf

RBI UPDATES:

A. INTRODUCTION OF LEGAL ENTITY IDENTIFIER FOR LARGE CORPORATE BORROWERS:

RBI vide Notification dated November 02, 2017 has introduced the Legal Entity Identifier (LEI) for large corporate borrowers.

- The LEI is a 20-digit unique code to identify parties to financial transactions worldwide and helps to improve the quality and accuracy of financial data systems for better risk management.
- RBI has decided that the large corporate borrowers having total exposure of Rs. 50 crore and above will have to mandatorily obtain the 20-digit LEI from banks as per following manner and also it has been decided that the banks shall advise on the same.

Total Exposure to SCBs (Rs.)	To be completed by
1000 crore and above	March 31, 2018
Between 500 crore and 1000 crore	June 30, 2018
Between 100 crore and 500 crore	March 31, 2019
Between 50 crore and 100 crore	December 31, 2019

- A separate roadmap for borrowers having exposure between Rs. 5 crore and upto Rs. 50 crore would be issued in due course
- Further it has been stated that, those who do not obtain the said LEI as per the manner mentioned above, are not to be granted renewal/enhancement of credit facilities
- The link of the Circular is as follows:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11154&Mode=0>

B. REGULATIONS TO REGULATE INVESTMENT IN INDIA BY A PERSON

RESIDENT OUTSIDE INDIA:

- RBI vide notification No. FEMA 20(R)/ 2017-RB dated 7th November, 2017 issued **Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017** in supersession of Notification No. FEMA 20/2000-RB and Notification No. FEMA 24/2000-RB both dated May 3, 2000, **Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.**
- The Reserve Bank of India (RBI) has simplified the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations 2017, by consolidating two notifications in one notification, covering all the major investments procedures, policies and reporting requirements of RBI. A move that significantly made it easier for foreign investors to invest in the country.
- The new Regulation combines the two old regulations on foreign investments namely,
 - FEMA 20 /2000-RB dated 3rd May 2000 - Investment in an Indian company or a partnership, or in a limited liability partnership.
(https://www.rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174)
 - FEMA 24 /2000-RB dated 3rd May 2000, which is investment in a Firm or Proprietary concern.
(https://www.rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=178)
- Some significant amendments by RBI in consultation with the Central Government:
 - Definition of Capital Instruments has been amended and clubbed under one definition of “Capital Instruments”. It includes equity shares, debentures, preference shares and share warrants issued by an Indian company.
 - Only listed companies can issue warrants to NRs, as such warrants are required to comply with requirements of SEBI regulations.
 - Payment of late submission fees will be attracted if there is delay in complying with reporting requirements;
 - To be in line with the Companies Act, 2013, the timeframe for allotting instruments has been reduced to 60 days from 180 days.
 - Sectoral cap for private security agencies has been reduced from 74% to 49% under Government route.
 - Sectoral cap of 49% under automatic route has been specified for investments in Commodities spot exchanges. Guidelines for investments will be prescribed by the Central/State government.

The link of new Regulation is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11161&Mode=0>

C. RISK MANAGEMENT AND INTER-BANK DEALINGS – SIMPLIFIED HEDGING FACILITY:

RBI vide Circular dated November 09, 2017 issued a circular with regards to Risk Management and Inter-Bank Dealings – Simplified Hedging Facility.

- The RBI came out with simplified norms for hedging exchange rate risk under which companies can take exposure of up to USD 30 million on gross basis.
- The scheme of simplified hedging is being introduced with a view to simplify the process for hedging exchange rate risk by reducing documentation requirements, avoiding prescriptive stipulations regarding products, purpose and hedging flexibility, and to encourage a more dynamic and efficient hedging culture.
- The facility will be for resident and non-resident entities (other than individuals) to hedge exchange rate risk on transactions, contracted or anticipated, permissible under Foreign Exchange Management Act (FEMA) & will be effective from January 1, 2018.

Further, it has been added that the Resident unlisted Companies can use cost reduction structure only if they have a minimum net worth of Rs. 200 crores.

- The products covered under this scheme will be any Over the Counter (OTC) derivative or Exchange Traded Currency Derivative (ETCD).
- Moreover, the RBI added condition that, if hedging requirement of the user exceeds the limit in course of time, the designated bank may re-assess and, at its discretion, extend the limit up to 150 per cent of the stipulated cap;
- The link of the Circular is as follows:
https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11162

IBC UPDATES:

A. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSON) (THIRD AMENDMENT) REGULATION, 2017

Insolvency and Bankruptcy Board of India (“IBBI”) vide notification dated November 07, 2017 had issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017 (“The Regulation”). The Regulation has resulted in amendment of existing Regulation 38 and Regulation 39 relating to mandatory contents of resolution plan and approval of resolution plan respectively.

Regulation 38 (3)

Newly inserted Regulation 38 (3) mandates to state the **details** of the resolution applicant and other **connected persons**. This amendment has been made so that the committee could assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.

IBBI further defines “**connected persons**” as

- a) persons who are promoters or in the management or control of the resolution applicant;
- b) persons who will be promoters or in management or control of the business the corporate debtor during the implementation of the resolution plan;
- c) holding company, subsidiary company, associate company and related party of the persons referred to in items (a) and (b).

In addition following ‘**details**’ that should be included in respect to the resolution applicant and other connected persons :

- a) identity;
- b) conviction for any offence , if any, during the preceding five years;
- c) criminal proceedings pending, if any;
- d) disqualification, if any, under Companies Act, 2013, to act as a director;
- e) identification as a willful defaulter, if any, by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India;
- f) debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India,; and
- g) transactions, if any, with the corporate debtor in the preceding two years.

Regulation 39 (2)

IBBI substitutes the existing Regulation 39 (2) and states that where a resolution professional finds, observes, determines **certain transaction** on which order is being passed by the Adjudicating Authority then he shall submit details of such transaction along with all the resolution plans to the committee of creditors in compliance with the Code and regulation made thereunder.

The transactions include:

- a) **preferential transactions** under section 43;
- b) **undervalued transactions** under section 45;
- c) **extortionate credit transactions** under section 50; and
- d) **fraudulent transactions** under section 66,

The link for the above notification is as follows:

<http://www.ibbi.gov.in/cirpreparation19.pdf>

B. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (FAST TRACK INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSON) (THIRD AMENDMENT) REGULATION, 2017

Insolvency and Bankruptcy Board of India (“IBBI”) vide notification dated November 07, 2017 had issued the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017 (“The Regulation”). The Regulation has resulted in amendment of existing Regulation 37 and Regulation 38 relating to mandatory contents of resolution plan and approval of resolution plan respectively.

Regulation 37 (3)

Newly inserted Regulation 37 (3) mandates to state the **details** of the resolution applicant and other **connected persons**. This amendment has been made so that the committee could assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.

IBBI further defines "**connected persons**" as

- a) persons who are promoters or in the management or control of the resolution applicant;
- b) persons who will be promoters or in management or control of the business the corporate debtor during the implementation of the resolution plan;
- c) holding company, subsidiary company, associate company and related party of the persons referred to in items (a) and (b).

In addition following '**details**' that should be included in respect to the resolution applicant and other connected persons:

- a) identity;
- b) conviction for any offence , if any, during the preceding five years;
- c) criminal proceedings pending, if any;
- d) disqualification, if any, under Companies Act, 2013, to act as a director;
- e) identification as a willful defaulter, if any, by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India;
- f) debarment, if any, from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India,; and
- g) transactions, if any, with the corporate debtor in the preceding two years.

Regulation 38 (2)

IBBI substitutes the existing Regulation 39 (2) and states that where a resolution professional finds, observes, determines **certain transaction** on which order is being passed by the Adjudicating Authority then he shall submit details of such transaction along with all the resolution plans to the committee of creditors in compliance with the Code and regulation made thereunder.

The transactions include:

- e) **preferential transactions** under section 43;
- f) **undervalued transactions** under section 45;
- g) **extortionate credit transactions** under section 50; and
- h) **fraudulent transactions** under section 66,

The link for the above notification is as follows:

<http://www.ibbi.gov.in/fasttrack20.pdf>

C. THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2017

The Ministry of Law and Justice has promulgated the Ordinance, after getting assent from the President of India, to amend Sections 2, 5, 25, 30, 35 and 240 of the Insolvency and Bankruptcy Code, 2016 and to inserts new Sections 29A/ 235A therein. The Insolvency and

Bankruptcy Code(Amendment) Ordinance, 2017 aims at putting in place safeguards to prevent willful defaulters from misusing or vitiating the provisions of the Code.

The highlights of the Ordinance are as follows:

Section 29 A – Ineligibility for Submission of Resolution Plan	
Existing Provision	Proposed Amendments
New Insertion	<p>A person <u>shall not be eligible to submit a resolution plan</u>, if such person, or any other person acting jointly with such person, or any person who is a promoter or in the management or control of such person,—</p> <p>(a) is an undischarged insolvent;</p> <p>(b) has been identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;</p> <p>(c) whose account is classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and period of one year or more has lapsed from the date of such classification and who has failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of the resolution plan;</p> <p>(d) has been convicted for any offence punishable with imprisonment for two years or more; or</p> <p>(e) has been disqualified to act as a director under the Companies Act, 2013;</p> <p>(f) has been prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;</p> <p>(g) has indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under this Code;</p> <p>(h) has executed an enforceable guarantee in favour of a creditor, hi respect of a corporate debtor under insolvency resolution process or liquidation under this</p>

	<p>Code;</p> <p>(i) where any connected person in respect of such person meets any of the criteria specified in clauses (a) to (h).</p> <p><i>Explanation.</i>— For the purposes of this clause, the expression “connected person” means—</p> <p>(i) any person who is promoter or in the management or control of the resolution applicant; or</p> <p>(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or</p> <p>(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)</p> <p>(j) has been subject to any disability, corresponding to clauses (a) to (i), under any law in a jurisdiction outside India.</p>
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Section 2 (e) - Applicability	
Existing Provision	Proposed Amendments
<p>The provision of the Code shall apply to :</p> <p>(e) partnership firm and individuals</p>	<p>The provision of the Code shall apply to :</p> <p>(e) <u>personal guarantors to corporate debtors;</u></p> <p>(f) <u>partnership firms and proprietor firms ; and</u></p> <p>(g) <u>individual, other than persons</u></p>

Section 5 (25) – Definition of Resolution Applicant	
Existing Provision	Proposed Amendments
<p>Resolution applicant means any person who submits a resolution plan to the resolution professional</p>	<p>Resolution applicant means a person, who <u>individually or jointly with any other person, submits a resolution plan to the resolution professional</u> pursuant to the invitation made under clause (A) of sub-section (2) of section 25</p>

Section 5 (26) – Definition of Resolution Plan

Existing Provision	Proposed Amendments
Resolution plan means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the Code	Resolution plan means a plan proposed by <u>resolution applicant</u> for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the Code

Section 25 (2) (h) – Action taken by Resolution Professional

Existing Provision	Proposed Amendments
The resolution professional shall invite prospective lenders, investors, and any other persons to put forward resolution plans	<p>The resolution professional shall invite prospective <u>resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors</u>, having regard to the complexity and scale of operations of the business of the corporate debtor and such <u>other conditions</u> as may be specified by the Board, to submit a resolution plan or plans</p> <p>IBBI may by notification issue regulation relating to other conditions. Section 240 (2) (sa)</p>

Section 30 (4) – Approval of Resolution Plan by Committee of Creditors

Existing Provision	Proposed Amendments
The committee of creditors may approve a resolution plan by a vote of not less than 75 % of voting share of the financial creditors.	<p>The committee of creditors may approve a resolution plan by a vote of not less than 75 %, of voting share of the financial creditors, <u>after considering its feasibility and viability, and such other requirements as may be specified by IBBI:</u></p> <p>Provided that the committee of creditors shall <u>not approve</u> a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, <u>where the resolution applicant is ineligible</u> under section 29A and may, <u>where no other resolution plan is available</u> with it, require the resolution professional to invite a fresh resolution plan.</p> <p>IBBI may by notification issue regulation relating to other requirements Section 240 (2) (wa)</p>

Section 35 (1) (f) –Duties & Power of Liquidator	
Existing Provision	Proposed Amendments
On direction of Adjudicating Authority the liquidator to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;	On direction of Adjudicating Authority the liquidator to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified; <u>Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.</u>

Section 235 A – General Penalty	
Existing Provision	Proposed Amendments
Newly Inserted	If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than <u>one lakh rupees but which may extend to two crore rupees..</u>

The link for the above notification is as follows:

<http://www.ibbi.gov.in/180404.pdf>

DUTIES OF DIRECTORS UNDER THE COMPANIES ACT 2013

Keeping in view the fiduciary capacity of the directors, the Companies Act, 2013 defines the duties of the directors under **Section 166** which reads as follow:

(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the **articles** of the Company.

(2) A director of a company shall act in **good faith** in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with **due and reasonable care**, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect **interest that conflicts**, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt **to achieve any undue gain or advantage** either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company **shall not assign his office** and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than **one lakh rupees but which may extend to five lakh rupees**.

Further following are duties of each Director of the Company

- Resignation of the Director is now required to be filed by the Directors themselves also with reason and hence each Director to have his Digital Signature Certificate (DSC).
- Directors who are interested in any kind of contract or arrangement or proposed contract or arrangement shall not participate in the meeting (Board and also General Meeting)

As per notification dated June 5, 2015, in case of private companies section 184(2) shall apply with the exception that the interested director may participate in such Meeting after disclosure of his interest.

Following are the Related Party Transactions

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company

- Directors to send updated disclosure of interest whenever there is any change in the disclosure already made, at the first meeting held after such change.
- Stringent punishment with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 1 Lac, or with both.
- When any contracts or arrangement is proposed to be entered into by a company, check whether you are interested in the same or not. Note that general notice shall not be sufficient and the interest must be notified prior to or in each board meeting where such contract or arrangement is discussed.
- The director must excuse himself from such meeting if he is “interested”.
- Every Director shall inform to the company concerned about his disqualification under section 164 (2), if any, in Form DIR-8 before he is appointed or re-appointed.
- Every Director shall disclose his interest or concern in any company or companies or body corporate (including his shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP-1.
- It shall be the duty of Director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

Duty in Respect of Financial Statement etc:

- A director need to ensure that the financial statements of the company reflect a true and the fair view of the state of affairs of the company and comply with accounting standards, if he is charged by the board of director to do so.
- A ‘Directors Responsibility Statement’ is also to be provided by the board of directors which confirms, inter alia, that proper mechanism was adopted in preparation of the annual accounts.

Duty to ensure Accuracy in Prospectus/ Private Placement Offer Letter of the Company:

- In addition to criminal liability, civil liability can arise in case of prospectus issued for all types of securities (not only shares and debentures) for untrue statements, inclusion or omission of any matter which is misleading.

Duties of Independent Director

- Every Independent Director shall at the first Meeting of the Board in which he participates and thereafter at the first meeting of Board in every financial year which he participates as a director, shall give a declaration that he meets the criteria of independence.

Duties as per Schedule IV of the Act

The Independent Directors shall:

- undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- strive to attend the general meetings of the company;
- where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- keep themselves well informed about the company and the external environment in which it operates;
- not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

Duty to ensure Certain Compliances by the Company:

- A Director must ensure that the company files its financials and annual returns with the Registrar of Companies.
- Failure of a company to do so for a continuous period of 3 years leads to disqualification of a director for a period of 5 years from all companies.
- Further, the director must ensure that the company deposits and redeems debentures in accordance with its terms, including interest and dividend. Any failure of the company to do so for a period of 1 year or more will lead to disqualification of the director for a period of 5 years from all companies.

Duty to Attend Board Meeting:

- Absence of a director from all meetings of the board for a period of 12 months, with or without seeking leave of the board, can lead to automatic vacation of office.

Duty to Notify Assent or Dissent and Have the Same Recorded in Minutes:

- Any director who is aware of any contravention and who has not objected to the same becomes liable in respect of such acts. Knowledge or awareness may be attributable through the board process.
- Please bear in mind while reviewing board minutes or board meeting agenda or approving **the same at a subsequent meeting.**

Penalty Imposed on any Loans Advanced to Director:

- Prior to the company extending any loan to a director or any party in which a director is 'interested', ensure that the company is permitted to do so and all applicable formalities have been complied with. Any contravention imposes a penalty on the director itself in addition to the company.

There are following restrictions on Directors

- Non Cash transaction with the company
- Forward Dealing
- Insider Trading

Role, Responsibilities and Rights of Directors

as per Revised Secretarial Standard -1
effective from October 01, 2017

1. CONVENING A MEETING:

- a. **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 authorised 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.
- b. **Any Director may participate through Electronic Mode** in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business.

Directors shall not participate through Electronic Mode in the discussion on certain restricted items. Such restricted items of business include-

- i. Approval of the annual financial statement
 - ii. Approval of Director's report
 - iii. Prospectus
 - iv. Matters relating to amalgamation, merger, demerger, acquisition and takeover.
- c. Majority of Directors may adjourn the Meeting for any reason, at any stage of the Meeting.

2. NOTICE:

- a. Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means. **(Notice via courier is not allowed w.e.f October 1, 2017)**
- b. The **Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year** also, which shall be valid for such Calendar Year.
- c. Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose.
- d. Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than 3 years from the date of the Meeting.
- e. Notice along with 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.
- f. 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.

- g. Notice, agenda and notes on agenda shall be sent to all the Directors at least 7 days before the date of Meeting.
- h. In case Meeting is called at a shorter notice period at least one Independent Director shall be present, if any.
- i. Director shall be entitled to receive notice of adjourned meeting who did not attend the Meeting on the originally convened date.

3. MEETING AT SHORTER NOTICE

- a. To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting.
- b. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.
- c. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

4. FREQUENCY OF MEETINGS

- a. The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings
- b. 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

- a. A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. **However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest**
- b. 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.
- c. **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. MEETING OF INDEPENDENT DIRECTOR

- a. Independent Director shall meet **at least once in a calendar year**. Such meeting shall be held to review the performance of non-independent directors
- b. In absence of Independent Director, **any decision taken in Meeting which is called at a shorter notice period, it shall be circulated to all the Directors and shall be final only on ratification by at least one Independent Director**, if any.
- c. In case the company does not require to appoint Independent Director, the decision shall be final only on ratification by a majority of Directors, unless such decision were approved at the Meeting itself by a majority of Directors of the Company.

7. ATTENDANCE REGISTER

- a. The attendance register shall be preserved for a period of **at least 8 financial years from the date of last entry made therein** and may be destroyed thereafter with the approval of the Board.
- b. **Director shall be entitled to inspect the attendance register of the Meeting, even after cessation, held during his Directorship.**
- c. The attendance register shall deemed to have been signed by Directors participating through electronic mode, if their attendance is recorded in the attendance register and authenticated by the CS or where there is no CS by the Chairman or any other Director present at the Meeting if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes.
- d. Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the CS or to the Chairman or to any other person authorised by the Board to issue notice of the Meeting.

8. CHAIRMAN

- a. Directors may elect one of themselves to be the Chairman of the Meeting if the company does not have the Chairman.
- b. Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting if Chairman is not elected or the Chairman is unable to attend the Meeting.

9. PASSING OF RESOLUTION BY CIRCULATION

- a. In case of Circular resolution, before draft circular resolution is circulated to all Directors, the **Chairman or in his absence MD or in their absence any Director shall decide whether approval of the Board for a particular business shall be obtained by means of a Resolution by Circulation.**
- b. The total number of Directors not being less than 1/3 requires the Resolution under circulation to be decided at the Meeting, the Chairman shall put the resolution for consideration at a Meeting of the Board.

- c. For determining the above 1/3, interested Director shall not be excluded.
- d. Draft circular resolution shall be circulated to all the Directors including the interested Director.
- e. The Directors shall give decision on each resolution separately.
- f. **The Directors shall respond to the draft circular resolution not later than 7 days from the date of circulation.**
- g. Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail or any other electronic means.

10. MINUTES

- a. **Draft Minutes** shall be circulated by hand delivery or speed post or by courier or registered post or e-mail or any other recognised electronic means **within 15 days** from the date of conclusion of the Meeting of the Board or the Committee.
- b. **Directors shall communicate their comments** whether such Directors were present or not **within 7 days** from the date of circulation so that minutes are finalized and entered in the Minutes book within the specified time limit of 30 days.
- c. **Copy of the signed Minutes shall be circulated to all the Directors within 15 days of signing of the Minutes** except to those directors who have waived their right to receive the same.
- d. Directors can inspect the Minutes of the Board and committee thereof.
- e. A Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship.
- f. A Director is entitled to inspect the Minutes of the Meeting held during his Directorship after he ceases to be a Director.
- g. A Director is entitled to receive the copy of the Minutes of a Meeting held before the period of his Directorship.
- h. A Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

INSPIRATIONAL QUOTE



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 :

10s, 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. Akshay Kallil
-Mr. Abhishek Sharma
-Ms. Riddhi Damani
-Mr. Dinesh Tanawde**
