



***Private Circulation Only**

Newsletter for January, 2019
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 January Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of January 2019. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and Insolvency and Bankruptcy Code, 2016 (IBC).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circulars issued by regulatory authorities during the month in concise and in simplified manner.

Our article of the month is “**Decoding Form DIR-3 KYC.**”

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

With warmest thanks,
Amita Desai & Team



DESAI & CO.

MCA UPDATES

A. NCLT AMENDMENT RULES, 2019

- Ministry of Corporate Affairs (MCA) vide its Notification dated January 15, 2019, has amended the National Company Law Tribunal Rules, 2016 which shall be called as National Company Law Tribunal (Amendment) Rules, 2019 the following are some of the changes which has been made in the Rules.
 - a) As per amendment in clause (b) in Sub- rule (3) of Rule 71 of National Company Law Tribunal Rules, 2016 now a company shall serve a notice along with copy of application and acknowledgement due, by registered post to **“Regional Director” instead of “Central Government”** for obtaining approval from tribunal for consolidation and division of all or any of the share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders.
 - b) As per amendment in Sub- rule (4) of Rule 71 of National Company Law Tribunal Rules, 2016 now any person whose interest is likely to be affected by the proposed application under Rule 71(Application under Section 61 (1)(b) of Companies act, 2013) of National Company Law Tribunal Rules, 2016 has been received by applicant than such applicant shall serve a copy thereof to **Regional Director”** instead of **“Central Government”**.
- The link of the above Rules is as under:
http://www.mca.gov.in/Ministry/pdf/NCLTAmendmentRules_18012019.pdf

B. COMPANIES (ACCEPTANCE OF DEPOSITS)AMENDMENT RULES, 2019

- MCA vide its `Notification dated January 22, 2019, has amended Companies (Acceptance of Deposits) Rules, 2014, which shall be called as the Companies (Acceptance of Deposits) Amendment Rules, 2019 the following are some of the changes which has been made:
 - a) In Sub- clause (xviii) of clause (c) in sub-rule (1) of rule 2 of Companies (Acceptance of Deposits) Rules, 2014 after the word **“Infrastructure Investment Trusts”** the word **“Real Estate Investment Trusts”** has been inserted
 - b) Explanation in Rule 16 of Companies (Acceptance of Deposits) Rules, 2014 has been added which specifies that **DPT-3 shall be used for filing return of deposit or for particulars of transaction not considered as deposit or both by every company other than Government Company.**
 - c) New Sub-rule (3) after Sub-rule (2) of Rule 16A of companies (Acceptance of Deposits) Rules, 2014 has been inserted which mentions that every company other than Government Company shall file a one Time return of outstanding receipt of money or loan received by a company but not considered as deposit in terms of Rule 2(1)(c) (i.e "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company) from 1st April, 2014 to publication of this notification in form DPT-3 within 90 days from the date of publication of this notification.

d) e- Form DPT-3 has been substituted.

- The link of the above Rules is as under:
http://www.mca.gov.in/Ministry/pdf/AcceptanceDepositsAmendmentRule_22012019.pdf

C. COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2019

- Ministry of Corporate Affairs (MCA) vide Notification dated January 22, 2019, has amended Companies (Prospectus and Allotment of Securities) Rules, 2014 which shall be called as Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019.
- In rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014 a new sub- rule (11) has been inserted which mentions that the **rule** of Issue of Securities in dematerialized form by unlisted companies shall **not apply to** the following companies;
 - a) Nidhi Company (Recognised under **Section 406** of the Companies Act, 2013).
 - b) Government Company (As defined under **Section 2(45)** of The Companies Act, 2013).
 - c) Wholly owned Subsidiary.
- The link for the said Notification is as under:
<http://egazette.nic.in/WriteReadData/2019/195752.pdf>

D. COMPANIES (FURNISHING OF INFORMATION ABOUT PAYMENT TO MICRO AND SMALL ENTERPRISE SUPPLIERS) ORDER, 2019

- MCA vide its Notification dated January 22, 2019 has further amended the notification published on November 02, 2018 by Ministry of Micro, Small, and Medium Enterprise.
- **Applicability:**
 To all the companies, who
 - (a) receive supplies of any goods and services from Micro, Small and Medium Enterprise (“MSME”) and
 - (b) whose **payment exceeds 45 days** from the date of acceptance or from the date of deemed acceptance of the goods or services (“the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services) as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (**referred to as “Specified Companies”**).
- Every Specified Companies shall file “**MSME Form I**” with the Ministry of Corporate Affairs, within **30 (thirty) days** from the date of the said Notification and every half yearly as well stating **(1) the amount of payment due and (2) the reason of the delay.**
- MSME Form I should *also* be filed on a half-yearly basis i.e:
 - on /before 30th April for the period October to March and
 - on /before 31st October for the period April to September.

- In case of non- compliance, the Company and every officer in default shall be punishable under Section 405 (4) of the Companies Act, 2013 with a fine and/ or imprisonment , which reads as follow :

If any company fails to comply with an order made under sub-section (1) or subsection (3), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

- The link of the above Notification is as under:
http://www.mca.gov.in/Ministry/pdf/MSMESpecifiedCompanies_22012019.pdf

E. SECTION 465 -REPEAL OF CERTAIN ENACTMENT AND SAVING, OF COMPANIES ACT, 2013 NOTIFIED

- MCA vide its Notification dated January 30, 2019 has Notified Section 465(Repeal of certain enactment and saving) of The Companies Act, 2013.
- The Link of the above notification is as under:
http://www.mca.gov.in/Ministry/pdf/NotificationSection465_31012019.pdf

SEBI UPDATES

A. SECURITIES EXCHANGE BOARD OF INDIA (CUSTODIAN OF SECURITIES) AMENDEMENT REGULATIONS, 2018

- SEBI vide its Notification No. SEBI/LAD-NRO/GN/2019/01 dated January 01, 2019 has published Securities and Exchange Board of India (Custodian of Securities) (Amendment) Regulations, 2018 to further amend the Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996.
- Some of major amendments to the SEBI (Custodian of Securities) Regulation, 1996 are as follow:
 1. The Title “Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996”, has been substituted with the title “Securities and Exchange Board of India (Custodian) Regulations, 1996”.
 2. The word “Custodian of securities” wherever occurs in Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996 has been substituted with word “Custodian”.
 3. In Regulation 2 which specifies Definition and includes the following:
 - After clause (h), the following new clause shall be inserted, namely:
“(ha) ‘goods’ means the goods notified by the Central Government under clause (bc) of section 2 of the Securities contracts (Regulation) Act, 1956 and forming the underlying of any commodity derivative contract;”
 - After clause (j), the following new clause shall be inserted, namely,
“(k) "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956

4. Apart from above, amendments are also made to the following regulations:
 Regulation 6- Consideration of application for grant of certificate
 Regulation 8- Procedure & grant of certificate
 Regulation 15- Prohibition of assignment
 Regulation 17 - provisions for Agreement with the client.
 Regulation 18- Internal controls

- The link of this Notification is as under:

https://www.sebi.gov.in/legal/regulations/jan-2019/securities-and-exchange-board-of-india-custodian-of-securities-amendment-regulations-2018_41531.html

B. DISCLOSURES BY STOCK EXCHANGES FOR COMMODITY DERIVATIVES:

- SEBI vide its Circular No. SEBI/HO/CDMRD/DNPMP/CIR/P/2019/08 dated January 04, 2019 directed recognized stock exchanges to make additional disclosures on their websites with respect to trading in commodity derivatives.
- Stock exchanges will have to make the disclosures on a weekly basis for every Wednesday by next Wednesday (and for next trading day in case of holiday on any Wednesday) by October 01, 2019. However, from April 1, 2020 onwards disclosures would be made on a daily basis by 6 pm on T+1 day, where T refers to the trading day.
- The exchanges need to make disclosures about open interest and turnover for various categories of participants at commodity as well as market level in a prescribed format.
- Exchanges need to categorise participants in the six categories -
- i. Farmers/FPOs;
 - ii. Value Chain Participants (VCPs);
 - iii. Proprietary Traders;
 - iv. Domestic Financial Institutional Investors;
 - v. Foreign Participants;
 - vi. Those who cannot be classified in the five categories to be placed in 'others' category.
- The disclosures regarding commodity-wise top participant among others, exchanges needs to make it on daily basis, "latest within a month,"
- Exchanges are required to maintain complete historical data of the additional disclosures on their websites in spreadsheet format.
- The link of this Circular is as under:
- https://www.sebi.gov.in/legal/circulars/jan-2019/disclosures-by-stock-exchanges-for-commodity-derivatives_41545.html

C. CYBER SECURITY AND CYBER RESILIENCE FRAMEWORK FOR MUTUAL FUNDS / ASSET MANAGEMENT COMPANIES (AMCS)

- SEBI vide its Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/12 dated January 10, 2019 put in place a robust and stricter cyber security framework for Mutual Funds (MFs) and Asset Management Companies (AMCs) to guard against breaches of data leak.

- The new norms and guideline would be **effective from April 1, 2019**.
- Quarterly reports containing information on cyber-attacks and threats experienced by mutual Funds/AMCs and measures taken to mitigate vulnerabilities, threats and attacks including information on bugs/vulnerabilities/threats that may be useful for other AMCs/MFs should be submitted to SEBI in a soft copy.
- AMCs/ MFs needs to submit the audited report on its systems which is audited by an independent Certified Information Systems Auditor (CISA) / Certified Information Security Manager (CISM) qualified or Computer Emergency Response Team - India (CERT-IN) empanelled auditor **with the SEBI within 3 months of the end of financial year**.
- The link of this Circular is as under:
<https://www.sebi.gov.in/legal/circulars/jan-2019/cyber-security-and-cyber-resilience-framework-for-mutual-funds-asset-management-companies-amcs-41589.html>

D. PORTFOLIO CONCENTRATION NORMS FOR EQUITY EXCHANGE TRADED FUNDS (ETFs) AND INDEX FUNDS

- SEBI vide its Circular No. **SEBI/HO/IMD/DF3/CIR/P/2019/011** dated January 10, 2019 has announced portfolio concentration norms for equity exchange traded funds (ETFs) and index funds.
- According to the new norms:
 - a) The index will have a **minimum of 10 stocks** as its constituents.
 - b) For a sectoral/ thematic Index, no single stock will have more than **35%** weight in the index. For other than sectoral/ thematic indices, no single stock will have more than **25%** weight in the index.
 - c) The weightage of the top three constituents of the index, cumulatively will **not be more than 65%** of the Index.
 - d) The individual constituents of the index shall have a trading frequency **greater than or equal to 80%** and an average impact cost of **1% or less** over previous six months.
- The index fund issuer should ensure compliance with the new norms for all its ETFs and index funds at the end of every calendar quarter. The new rules will come into effect within 3 months from the date of issuance of this circular. All the equity ETFs and index funds that have got final observations should submit the compliance status vis-à-vis these norms before launching their funds.
- The link of this Circular is as under:
<https://www.sebi.gov.in/legal/circulars/jan-2019/portfolio-concentration-norms-for-equity-exchange-traded-funds-etfs-and-index-funds-41588.html>

E. NORMS FOR INVESTMENT AND DISCLOSURE BY MUTUAL FUNDS IN DERIVATIVES

- SEBI vide its circular No. SEBI/HO/IMD/DF2/CIR/P/2019/17 dated January 16, 2019 provides the norms for investment and disclosure by Mutual Funds in derivatives”.
- SEBI has decided to allow mutual funds to write call options subject to certain conditions. Generally, call options refer to an agreement that gives a buyer the right to purchase an asset at a specified price within a particular time period.
- Mutual Fund schemes are permitted to undertake transactions in equity derivatives but cannot write options or purchase instruments with embedded written options.
- Mutual Fund Schemes (except Index Funds and ETFs) can write call options as per the call strategy of **NIFTY 50** and **BSE SENSEX**.
- The link of this Circular is as under:

https://www.sebi.gov.in/legal/circulars/jan-2019/norms-for-investment-and-disclosure-by-mutual-funds-in-derivatives_41670.html

F. SECURITIES EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) (AMENDMENT) REGULATIONS, 2019

- SEBI vide its Notification No. **SEBI/LAD-NRO/GN/2019/02** dated January 21, 2019 has published the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2019 to further amend the SEBI (Prohibition of Insider Trading) Regulations, 2015.
- Amendments to the SEBI (Prohibition of Insider Trading) Regulation, 2015 are as follow:
- In Regulation 2(1) which gives definitions,
 - i After clause (h), following new clause shall be inserted, namely:

"(ha) "promoter group" shall have the meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 or any modification thereof;"
 - ii existing clause (ha) shall be re-numbered as (hb);
- In Regulation 7 which specifies the provisions regarding disclosures by certain persons:
 - i In Sub-regulation (1) which specifies the provisions for Initial Disclosures:
 - (a) in clause (a) after the word "promoter", and before the word and symbol "key" the words ", member of the promoter group" shall be inserted;
 - (b) in clause (b), the word "promoter" wherever appearing shall be substituted with "promoter or member of the promoter group";
 - ii In Sub-regulation (2) which specifies the provisions for Continual Disclosures, in clause (a), after the word "promoter" and before the word and symbol", designated person", the words and symbol", member of the promoter group" shall be inserted.

- The link of this Notification is under:
<http://www.egazette.nic.in/WriteReadData/2019/195750.pdf>

G. REVISED MONTHLY CUMULATIVE REPORT (MCR)

- Securities and Exchange Board of India (SEBI) in consultation with Association of Mutual Funds in India (AMFI) has revised the format for reporting of Monthly Cumulative Report (MCR) vide its circular dated January 22, 2019.
- The revised MCR aims to bring uniformity in calculations of assets under management (AUM) and to eliminate the duplication in offerings across the mutual fund schemes.
- This new reporting form will come into effect from April 2019. AMCs shall submit the MCR to SEBI in the revised format by the 3rd working day of each month. The data on interval schemes and overseas fund of funds are also included in MCR.
- The said is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- The link of the said Circular is as under:
<https://www.sebi.gov.in/legal/circulars/jan-2019/revised-monthly-cumulative-report-mcr-41759.html>

H. ALIGNMENT OF TRADING LOT AND DELIVERY LOT SIZE

- SEBI vide its circular no. SEBI/HO/CDMRD/DNPMP/CIR/P/2019/023 dated January 23, 2019 has directed stock exchanges to follow the policy of having uniform trading and delivery lot size for commodity derivatives contracts.
- In Commodity Derivatives Contracts, stock exchanges keeps differential trading lot size and delivery lot size which puts participants in disadvantageous position. The matter was discussed in Commodity Derivatives Advisory Committee (CDAC) and based on the recommendation of CDAC it has been decided that the exchanges shall follow the policy of having uniform trading and delivery lot size for the commodity derivatives contracts.
- SEBI has made exception that it may be provided on case to case basis, subject to the exchanges submitting detailed rationale including physical market practices, feedback from stakeholders for keeping different lot size for trading and delivery with respect to any contract, to SEBI for approval.
- The link of said Notification is as under:
<https://www.sebi.gov.in/legal/circulars/jan-2019/alignment-of-trading-lot-and-delivery-lot-size-41804.html>

RBI UPDATES

A. MICRO, SMALL AND MEDIUM ENTERPRISE (MSME) SECTOR RESTRUCTURING OF ADVANCES:

- Reserve Bank of India (RBI) issued a Notification dated January 01, 2019 permitting an one-time restructuring of existing loan to MSME with a view to facilitate meaningful restructuring of MSME accounts that have become stressed.
- RBI has decided to permit a one-time restructuring of existing loans to MSMEs that are in default but 'standard' as on January 1, 2019 without an asset classification downgrade.
- To be eligible for the scheme, the aggregate exposure, including non-fund based facilities of banks and NBFCs to the borrower should not exceed Rs. 250 million as on January 1, 2019 and the restructuring has to be implemented by March 31, 2020. The other condition is that the borrowing entity is GST registered on the date of implementation of restructuring. However, this condition will not apply to MSMEs that are exempt from GST- registration.
- RBI has mandated that a provision of 5 per cent in addition to the provisions already held which should be made in respect of accounts restructured under this scheme.
- According to the said Notification, banks and NBFCs adopting this scheme will put in place a board approved policy on restructuring of MSME advances under these instructions within a month from the date of this notification. The policy will include framework for viability assessment of the stressed accounts and regular monitoring of the restructured accounts.
- The link of this Circular is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11445&Mode=0>

B. EXCLUSION OF SBM BANK (MAURITIUS) LIMITED FROM SECOND SCHEDULE OF RBI ACT, 1934

RBI vide its Notification No. DBR.IBD.No.4611/23.13.043/2018-19 dated December 03, 2018 had issued a notification for exclusion of “SBM Bank (Mauritius) Limited” from the Second Schedule of the Reserve Bank of India Act, 1934 and the same is published in the Gazette of India dated 29th December, 2018 - 4th January, 2019.

- The link of this Notification is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11451&Mode=0>

C. EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY

- RBI vide its Circular dated January 16, 2019 came out with a new policy for overseas borrowings, allowing all eligible entities to raise foreign funding under the automatic route and removing sectoral curbs to improve the ease of doing business and allowing all eligible borrowers to raise up to \$750 million per financial year under the automatic route, replacing the existing sector-wise limits. The Central Bank has also expanded the list of eligible borrowers and recognized lenders.

- The revised guidelines of the new framework are set in the Annex and the features includes the following:
 - Merging of tracks: Merging of Tracks I and II as “Foreign Currency denominated ECB” and merging of Track III and Rupee Denominated Bonds framework as “Rupee Denominated ECB”
 - Eligible Borrowers: This has been expanded to include all entities eligible to receive FDI. Additionally, Port Trusts, Units in SEZ, SIDBI, EXIM Bank, registered entities engaged in micro-finance activities, viz., registered not for profit companies, registered societies/trusts/cooperatives and non-government organizations can also borrow under this framework.
 - Recognized Lender: The lender should be resident of FATF or IOSCO compliant country. Multilateral and Regional Financial Institutions, Individuals and Foreign branches / subsidiaries of Indian banks can also be lender.
 - Minimum Average Maturity Period (MAMP): MAMP will be 3 years for all ECBs. However, for ECB raised from foreign equity holder and utilized for specific purposes, as detailed in the Annex, the MAMP would be 5 years. Similarly, for ECB up to USD 50 million per financial year raised by manufacturing sector, which has been given a special dispensation, the MAMP would be 1 year.
 - Late Submission Fee for delay in Reporting: Any borrower, who is otherwise in compliance of ECB guidelines, except for delay in reporting drawdown of ECB proceeds before obtaining LRN or Form ECB 2 returns, can regularize the delay by payment of LSF as per the laid down procedure.
- ECB is permitted under Automatic route if ECB is upto USD 750 million per financial year. The designated AD Category I bank while considering the ECB proposal is expected to ensure compliance with applicable ECB guidelines by their constituents. Any contravention of the applicable provisions will invite penal action or adjudication under the Foreign Exchange Management Act, 1999.
- The Annex of new ECB Framework includes:
 - Important terms like - Authorized dealer
Approval and Automatic Route
Benchmark rate
FATF compliant country
FCCBs and FCEBs
IOSCO compliant country
 - External Commercial Borrowings framework
 - Issuance of Guarantee, etc. by Indian Banks and Financial Institutions
 - Parking of ECB proceeds
 - Procedure of raising ECB
 - Reporting Requirements
 - Powers delegated to AD Category I banks to deal with ECB cases
 - Special dispensation under ECB framework
 - Borrowing by entities under investigation
 - ECB by entities under restructuring
 - Dissemination of information
 - Compliance with the guidelines

- Accordingly, lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.
- The link of this Circular is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11456&Mode=0>

IBBI UPDATES

A. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017

- In exercise of the powers conferred by sections 59,196 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (“Code”) the Insolvency and Bankruptcy Board of India (“Board”) amended the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, which came into force with effect from 1st April, 2017.
- This Regulation provides a complete framework for Voluntary Liquidation of any corporate person. The Regulation, inter-alia, specifies the manner and content of public announcement , receipt and verification of claims of stakeholders, reports and registers to be maintained, preserved and submitted by the liquidator, realization of assets and distribution of proceeds to stakeholders, distribution of residual assets, and dissolution of corporate person.
- The amendments in the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 is as under:

Regulation/Form in which amendment is made	Before Amendment	Amendment	After Amendment
Regulation 6: Eligibility for Appointment as Liquidator			
In Explanation for Regulation 6(1)	<i>Explanation:</i> A person shall be considered independent of the Corporate person, if he- (c) has not been an employee or proprietor or a partner- (i) of a firm of auditors or company secretaries or cost auditors of the corporate person;	Substitution of the words from “company secretaries” to “secretarial auditors”	<i>Explanation:</i> A person shall be considered independent of the Corporate person, if he- (c) has not been an employee or proprietor or a partner- (i) of a firm of auditors or secretarial auditors or cost auditors of the corporate person;
Form A: Public Announcement			
In Schedule I Form A	The stakeholders of [<i>name of the corporate person</i>] are hereby called upon to submit a	Substitution of the words from “after” to “from”	The stakeholders of [<i>name of the corporate person</i>] are hereby called upon to submit a

	proof of their claims, on or before [insert the date falling thirty days after the liquidation commencement date], to the liquidator at the address mentioned against item 7.		proof of their claims, on or before [insert the date falling thirty days from the liquidation commencement date], to the liquidator at the address mentioned against item 7.
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- The link for Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (amended upto 15.01.2019) is as under:

https://ibbi.gov.in/webadmin/pdf/legalframework/2019/Jan/Voluntarily%20Liquidation%20upto%2015.01.2019_2019-01-21%2010:51:18.pdf

B. THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2019

- In exercise of powers conferred by Section 196 (1) (t) read with Section 240 of the Code the Board further amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- The Board notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019 vide notification dated January 24, 2019, which shall come into effect from the date of their publication in the Official Gazette.
- The amendments in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are as under:

Sr. No.	Nature of Amendment (Insertion/Substitution)	Amendment
1.	In Regulation 36B, insertion of sub-regulation 4A after sub-regulation 4	“(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule. <i>Explanation I.</i> – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor. <i>Explanation II.</i> – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan,

		amount payable to creditors under the resolution plan, etc.”
2.	In Regulation 38, insertion of sub-regulation (1B) after sub-regulation (1A)	“(1B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.”
3.	In Regulation 39 (4), substitution of “Form H of the Schedule”	“Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.”
4.	In Regulation 39, insertion of sub-regulation (9) after sub-regulation (8)	“(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.”
5.	Substitution for paragraph 7 in Form H in the Schedule	Detailed format of Form H is a part of the Schedule and is referred to in the link as given below.
6.	Insertion in paragraph 9 in Form H in the Schedule	Insertion of Regulation 38 (1B) and Regulation 39(4). (Detailed format of Form H is a part of the Schedule and is referred to in the link as given below.)

- The link for the said Notification is as under:

https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jan/CIRP%20Amendment%20Regulations%202019_2019-01-29%2014:56:42.pdf

- The link for the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (amended upto 24.01.2019) is as under:

https://ibbi.gov.in/webadmin/pdf/legalframework/2019/Jan/CIRP%20Regulations%20upto%2024.1.2019_2019-01-29%2018:49:02.pdf

ARTICLE OF THE MONTH

DECODING FORM DIR-3 KYC

**Don't Lose
Your
Directorship!**

**Ensure your KYC is completed by
April 30, 2019 to avoid
Disqualification**



A. INTRODUCTION

Ministry of Corporate Affairs (MCA) vide *Notification dated 5th July, 2018* has amended Companies (Appointment and Qualification of Directors) Rules, 2014 by inserting Rule 12A and made Directors KYC mandatory which was effective from 10th July 2018.

Directors KYC will be made by filing e- Form DIR-3 KYC, which is one step forward towards MCA's effort to systematically weed out fake Companies and its Directors.

B. DUE DATE OF FILING :

- **At the time of Commencement of Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014:** The Persons who have been allotted DIN TILL 31st March, 2018 were required to file this e-form with MCA by 31st August, 2018.(extended till 5th October 2018)
- **Yearly KYC Compliance:** Every individual who has been allotted DIN as on 31st March of a financial year shall file DIR – 3 KYC with MCA on or before 30th April of immediate next financial year. After expiry of the due dates, system will mark all non-compliant DINs against which DIR-3 KYC form has not been filed as 'Deactivated due to non-filing of DIR-3 KYC'.

Considering the practical aspects, we suggest annually to file e-form DIR-3 KYC for all the Directors as the compliance is better than risking the status of DIN as "Deactivated due to non-filing of DIR-3 KYC" and pay the filing fees of Rs.5000/-.

C. CERTIFICATION BY PROFESSIONAL

E-Form DIR 3 KYC is required to be signed digitally by the applicant director and the same is required to be certified and verified by practicing Chartered Accountant or Company Secretary or Cost and Management Accountant. Professional is required to declare that he has been duly engaged for the purpose of certification/verification of the form and he is certifying the followings:

- (a) That he has satisfied himself about the identity of the applicant and his address based on the perusal of the original of the attached document and in case, where the applicant is residing outside India the particulars have to be verified from the documents duly attested by the attesting authority as prescribed.
- (b) That he has verified and attested the documents of the applicant based on the Originals documents produced before me.
- (c) That he has gone through the provisions of the Companies Act, 2013 and rules made thereunder for the subject matter of this form and matters incidental thereto and he has verified the particulars mentioned in the form (including attachment(s)) from the original records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed.
- (d) **That Mobile Number and Email ID of the applicant belong to the applicant who is signing the form.**
- (e) That all the required attachments have been completely and legibly attached to this form;
- (f) **That he has kept a copy of this form and attachments thereto, in his records for further reference.**
- (g) That he is understood that he shall be liable for action under section 448 of the Companies Act, 2013 for wrong certifications, if any found at any stage.

D. DEACTIVATION AND RE-ACTIVATION

In case of non-filing of e-Form DIR-3 KYC by any individual as per dates mentioned above, his/her DIN will be **De-activated** by the Central Government or Regional Director (Northern Region) or any officer authorized by the Central Government for this purpose.

The de-activated DIN shall be re-activated only after e-form DIR-3 KYC is filed with additional fees.

E. MANDATORY INFORMATION/ DETAILS FOR FILING FORM DIR-3 KYC

1. Director Identification Number (DIN)
2. Full Name of the Director
3. Fathers Name of the Director Other
4. Whether a citizen of India or not
5. Nationality
6. Whether resident in India or not

7. PAN
8. Date of Birth
9. Gender
10. Aadhar Card Number
11. Passport Number (Mandatory in case of Foreign National)
12. **Personal Mobile and Personal Email Id of the Director**
13. Permanent Residential address & Present Residential address

F.MANDATORY ATTACHMENTS TO E-FORM DIR -3 KYC

Proof of Identity and Proof of Address of individual

G. ATTESTATION

1. Before certification, professional need to ensure whether the applicant is Resident Indian or become Non Resident (as per definition of FEMA).
2. In case where the applicant is residing outside India, professional need to ensure that the particulars are verified from the documents duly attested by the attesting authority and keep original attested copy with him for future reference.
3. Requirement for Attestation is no where mentioned in the form or rules. But as per the past practice we can opine following **Attestation Requirements**:

A	Proof of Identity -Passport / PAN Card	Authority of Attestation
.	For Indian National (Resident)	Any professional CA/ CS or CMA (Practising)
	For Indian National (Non-Resident)- who is residing in country which is part of Common Wealth countries	Attested by Indian Embassy
	For Indian National (Non-Resident) - who is residing in a country which is part of Hague Convention	Attested by Indian Embassy
	For Indian National (Non-Resident) - who is residing in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961	Attested by Indian Embassy
	For Foreign National Residing in his own country which is under Hague Convention	1. Notarized by the Public Notary of that foreign country; and 2. Apostilled by the competent authority of that foreign country.
	For Foreign National Residing outside his Country and that country where he resides is under Hague Convention	Option A-- Notarized by the Public Notary of that foreign country and Apostilled by the competent authority of that foreign country or Option B--Attested by Embassy of his Country of Origin at place where he resides.
	For Foreign National Residing in his own Country which is under Common Wealth Country	Notarized by the Public Notary

	For Foreign National Residing outside his Country and that country where he resides is under Common Wealth Country	Option A-- Notarized by the Public Notary of that foreign country or Option B--Attested by Embassy of his Country of Origin at place where he resides.
B	Proof of Address for Indian Citizen (RI or NRI)	Authority of Attestation
	For Indian National (Resident) (Permanent and Present)	Any professional CA/ CS or CMA (Practising)
	For Indian National (Non-Resident)- Permanent address in India	Any professional CA/ CS or CMA (Practising)
	For Indian National (Non-Resident)- Present address at overseas -which is in a country under Common Wealth countries	Notarized by the Public Notary
	For Indian National (Non-Resident)- Present address at overseas - which is under Hague Convention	1. Notarized by the Public Notary of that foreign country; and 2. Apostilled by the competent authority of that foreign country.
	For Indian National (Non-Resident)- Present address at overseas - who is residing in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961	1. Notarized before the Notary (Public) of such country and 2. The certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer
C	Proof of Address (Foreign National)	Authority of Attestation
	For Foreign National Residing in his own Country which is under Hague Convention	1. Notarized by the Public Notary of that foreign country; and 2. Apostilled by the competent authority of that foreign country.
	For Foreign National Residing outside his Country and that country where he resides is under Hague Convention	Option A-- Notarized by the Public Notary of that foreign country and Apostilled by the competent authority of that foreign country or Option B--Attested by Embassy of his Country of Origin at place where he resides .
	For Foreign National Residing in his own Country which is under Common Wealth Country	Notarized by the Public Notary
	For Foreign National Residing outside his Country and that country where he resides is under Common Wealth Country	Option A-- Notarized by the Public Notary of that foreign country or Option B--Attested by Embassy of his Country of Origin at place where he resides .
	For Foreign National who is from the Country which is outside the Commonwealth and also not a party to the Hague Apostille Convention, 1961	1. Notarized before the Notary (Public) of such country and 2. The certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer
D	Any applicant, whether Indian or Foreign National if visited in India,	Then all above documents can be Notarized before the Notary Public in India along with his or her valid Business Visa to India.

➤ The link of Countries under Hague Convention is as under:

<https://www.ag.gov.au/FamiliesAndMarriage/Families/InternationalFamilyLaw/Pages/HagueConventionOnTheCivilAspectsOfInternationalChildAbduction.aspx>

➤ The link of Countries under Common Wealth is as under:

<https://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/democraticservices/pdfs/List%20of%20Eligible%20Commonwealth%20Countries.pdf>

H.PRECAUTION FOR ANY PROFESSIONAL BEFORE CERTIFICATION OF E-FORM DIR 3 KYC

A word of caution to professional before he certifye-Form DIR-3 KYC:

- To obtain Engagement Letter from the applicant confirming his engagement for the purpose
- To obtain declaration from applicant confirming (a) his Mobile Number with a copy of mobile bill , (b) Email- ID belongs to him only and (c) he is qualified or disqualified to be Director by MCA;
- To verify / attest all documents after review of Originals only and
- To keep a copy of e-Form DIR 3 KYC with all attachments attached thereto for his record.

H.FILING OF E-FORM DIR KYC WITH OWN DIGITAL SIGNATURE:

Since every individual is required to file e-Form DIR-3 KYC with his / her own Digital Signature (DSC), he/ she need to have DSC, for which following documents and details are required to obtain DSC.

Sr. No	Documents required for getting Digital Signature Certificate
1	Photograph in JPEG format
2	<u>Self certified Proof of identity</u> : (Any one of the following) (i) PAN Card (Mandatory for Indian National) (ii) Passport (Mandatory for Foreign National) (iii) Voter Identity Card (iv) Driving License (v) Passport (vi) Aadhaar Card
3	<u>Self certified Proof of residence</u> (Any one of the following): (i) Voter Identity Card (For Indian Citizen only) (ii) Driving License (iii) Passport (iv) Aadhaar Card (For Indian Citizen only) (v) Electricity Bill not older than 1 month (vi) Telephone Bill not older than 1 month (vii)Utility Bill for Gas or Water not older than 1 month
4	Email ID for video verification
5	Mobile number for verification
Not e:	<u>If Director is residing outside India:</u> Supporting documents should be apostilled/ attested by the Consulate of the Indian Embassy or Foreign Notary Public.

OUR VIEWS

Originally vide the Companies Amendment Act, 2006 dated 29th May 2006, provisions for DIN was mandated by inserting Section 266 A to 266 G and e-Form DIN -1 was prescribed . PAN was not mandatory to fill while applying for DIN.

Later MCA vide Circular No. 11 of 2011 dated 7th April, 2011 had mandated that all existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN were required to furnish their PAN by filing e-Form DIN -4 by 31st May, 2011 failing which their DIN will be disabled and they shall also be liable for heavy penalty. The last date was further extended vide various Circular No. 32 of 2011 dated 31st May, 2011, Circular No. 66 of 2011 dated 4th October 2011 , Circular No. 70 of 2011 dated 15th December, 2011 and Circular No.4 of 2012 dated 09th March , 2012.

With this backdrop of updating the data based of all Individuals who are having DIN to update with PAN details, the MCA has commenced this massive drive of KYC of all DIN holders to clean the Corporate sector from shell companies and bogus directors. MCA has put onus on professionals to ensure that the DIN holders credentials are verified.

Further MCA has also mandated that while filing e-Form DIR-3 KYC the applicant need to use PAN based DSC in case of Indian Nationals i.e., DSC should contain PAN as specified in **the form and in** respect of Foreign Nationals, applicant's name in DSC would be matched with his/her name entered while filing the e-Form DIR-3 KYC. In case the PAN /Name in DSC does not match with **PAN/Name entered in the form**, the applicant is required to get a DSC with PAN/Name as **specified in the form**. While filing the e-Form DIR 3 KYC, the **Unique Personal Mobile Number and Personal Email ID** is required to be mandatorily mentioned and would be duly verified by **One Time Password(OTP) so that the applicant is aware about his DIN**.

With digitization, MCA is striving to clean the corporate sector from non-compliant, negligent and errant individuals from the management of business.

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