



*Private Circulation Only

Newsletter for July, 2018
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 July Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of July 2018. 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 & 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 an article on Report of the Insolvency Law Committee.

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

With warmest thanks,
Amita Desai & Team



A. COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2018:

- MCA vide its notification dated 5th July, 2018 has amended the Companies (Acceptance of Deposits) Rules, 2014, and notified the Companies (Acceptance of Deposits) Amendment Rules, 2018. This rule shall come into force from **15th August, 2018**.
- The following proviso has been inserted after proviso in Rule 4 (1) of the Companies (Acceptance of Deposits) Rule, 2014:

“Provided further that a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after the commencement of the Act and in case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be.”;

Hence, every Company accepting Deposit from members shall **attach in Form DPT-1 a certificate of Statutory Auditor** confirming that the company has not defaulted in repayment of deposit or in payment of interest on such deposit accepted either before or after commencement of the act. In case company has defaulted in repayment of deposit accepted either before or after commencement of the act in payment of interest, then a certificate of Statutory Auditor shall be attached with Form DPT-1 confirming that the company has made good the default and a **period of 5 years has been lapsed** from making the default good.

- Rule 5 of the Companies (Acceptance of Deposits) Rule, 2014 has been omitted which specifically provides for Manner and Extent of Deposit Insurance.
- The Following proviso has been substituted in the Rule 13 as follow:

“Provided that the amount remaining deposited shall not at any time fall below **20 per cent** of the amount of deposits maturing during the financial year.”

Hence, a company accepting deposit shall on or before 30th April of each year deposit a sum as specified in clause (c) of Section 73 (2) which shall not at any time fall below 20% of the amount of deposit maturing during the financial year.

- Rule 14 (1) (k) of the Companies (Acceptance of Deposits) Rule, 2014 has been omitted. Hence, details of deposit insurance including extent of deposit insurance is not required to be mentioned in register of deposit.
- Form DPT-1 and DPT-3 has been substituted.

Link of the above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceDepositsAmendmentRules_06072018.pdf

B. COMPANIES (AUTHORISED TO REGISTER) SECOND AMENDMENT RULES, 2018:

- MCA vide notification dated 5th July, 2018 has amended the Companies (Authorised to register) Rules, 2014 and notified the Companies (Authorised to Register) Second Amendment Rules, 2018. This rule shall come into force with effect from **15th August, 2018**.

- In the Companies (Authorised to Register) Rules, 2014 (hereinafter referred to as the said rules), in rule 2 (1), after clause (g), the following clause has been inserted, namely:-

(h) **“Society”** means a society registered under the Societies Registration Act, 1860 (21 of 1860) and includes a society registered under or deemed to be registered under any other law for the time being in force;

(i) **“trust”** means an irrevocable public charitable or religious trust registered under any law for the time being in force and represented by its trustees, in whom the trust property is vested, as members;

(j) **“Registrar of Firms”** means the Registrar appointed under section 57 of the Indian Partnership Act, 1932(9 of 1932);

(k) **“Registrar of Trusts”** includes a charity Commissioner, an Inspector- General of Registration or such other authority having the duty of registering trust in a State.’

- In the said rules, for rule 3, the following rule has been substituted, namely:-

3(1) For the purpose of section 366 (2) of the Act, the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable mutatis mutandis for such registration:

Provided that there shall be **2 or more members** for the purpose of registration of a company under this sub-rule:

Provided further that a company with less than **7 members** shall register a private company.

(2) A company shall attach and provide the required documents and information to the Registrar along with Form No. URC. 1.

The rules specifies list of documents and information required to be attached with the Form in case of following:

(a) Application by a **Limited Liability Partnership (LLP) or firm** for registration as a company **limited by shares**.

(b) Application by a **LLP or firm** for registration as a company limited by **guarantee or as an unlimited company-**

(c) Application by a **society** for registration as a company limited by **guarantee under Section 8**

(d) Application by a trust for registration as a company limited by guarantee under section 8

(3) if an Application is made by a society or firm for registration as company limited by guarantee and it is proved to ROC that such proposed company has its object in accordance with Section 8 (1) (a) of the Act and comply with restrictions and prohibitions as, mentioned in clause (b) and (c) of the said sub-section, a license in Form INC-16 shall be issued by Registrar of Companies (“ROC”) to allow such society or trust to be registered as a limited company without addition to its name of the word “Limited” or as the case may be, the words “Private Limited”, a certificate of Incorporation shall be issued in terms of rule 4 (4) on an application submitted under Chapter II of the Act for incorporation of a company:

Society which has not filed the annual or other returns, statutorily required to be filed with the Registrar of Societies, shall not be eligible to apply for registration under section 366 of the Act.

(4) An undertaking shall be given by all members/partners/trustees stating that in the event of registration as company under Part I of Chapter XXI of the Act, necessary documents shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution.

Provided that no such undertaking shall be required to be submitted in case of LLP registered under LLP Act, 2008 for registration under Part I of Chapter XXI of the Companies Act, 2013.

(5) The list of members and directors and any other particulars relating to the company shall be duly verified by the declaration of any 2 or more proposed directors which are required to be delivered to the ROC.

- **a) In Rule 4 (1)**, for the words ‘Limited Liability Partnership or the firm as the case may be is situate’ the words ‘Limited Liability Partnership, firm, society or trust, as the case may be, is situated’ is substituted.
- **b) In Rule 4 (2)**, after the words, brackets and letters “Registrar (LLP)”, the words “Registrar of Firms, Registrar of Societies or Registrar of Trust, as the case may be” is inserted.
- **In Rule 5 (i)**, the clause has been substituted stating as below:
After obtaining a certificate of registration under Section 367 of Companies Act, 2013 by a firm, society or trust, it shall intimate the same within 15 days of such registration to the concerned Registrar of Firms/Registrar of Societies / Registrar of Trusts with documents for dissolution as a firm, society or trust as the case may be, under which it was originally registered.
- **In Rule 5 after clause (v)**, three new clauses have been added namely:

(vi) A society or a trust registered under section 12A of Income Tax Act, 1961 which is claiming exemption on its income and where a society or a trust intends to register as a company under Section 366 of Companies Act, 2013, such society or trust shall intimate Income- tax authorities and proof of its service shall be attached in **Form No. URC 1**

(vii) Upon registration of a society or trust as a company under the Act, no application for conversion into a company of any other kind, except conversion from a private company to a public company or vice-versa, shall be made till the expiry of a period of 10 years from the date of incorporation under the Act.

(viii) no application for registration as a company under the Act shall be made by a trust during the pendency of any proceedings under section 92 of the Code of Civil Procedure (5 of 1908)

With the said rules Form No. URC – 1 for application by company for registration under section 366 & URC – 2 advertisement giving notice about registration under part 1 of chapter XXI for are substituted.

The link of the above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesAuthorisedRegister_06072018.pdf

C. ESTABLISHMENT OF NCLT CUTTACK BENCH:

- MCA vide its notification S.O.3430(E) dated 12th July, 2018 has made amendments to the previous notification S.O. 1935 (E), dated the 1st day of June, 2016 by omitting State of Odisha and State of Chhattisgarh and following have been inserted;

1 2	National Company Law Tribunal, Cuttack Bench	Cuttack	(1) State of Odisha (2) State of Chhattisgarh”.
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This notification shall come into force on 15th July, 2018.

- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187307.pdf>

D. AMENDMENTS IN THE PAY STRUCTURE OF NCLT STAFF:

- MCA vide its notification G.S.R. 632 (E) dated 12th July, 2018 has made amendments to the earlier notification G.S.R. 729 (E) dated 21st September, 2015 revising the pay of a serving or retired Chief Justice of a High Court on his joining as President, NCLT which shall be fixed at the level of pay which he was drawing at the time of demitting his previous office.
- The pay of a serving or retired government officer or Chairman, Vice-chairman, President, Vice-president, Presiding officer, Member of a Tribunal, Appellate Tribunal or an authority, or a judge of a High Court, who is or has been drawing higher pay, on their joining as Member, NCLT shall be fixed at the level of pay which they were drawing at the time of demitting their previous employment, subject to a limit of Rs 80,000.
- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187306.pdf>

E. MINISTRY OF CORPORATE AFFAIRS, SERIOUS FRAUD INVESTIGATION OFFICE, ADDITIONAL DIRECTOR (FORENSIC AUDIT) OR JOINT DIRECTOR (FORENSIC AUDIT) AND ADDITIONAL DIRECTOR (INVESTIGATION) OR JOINT DIRECTOR (INVESTIGATION) GROUP 'A' POST RECRUITMENT (AMENDMENT) RULES, 2018.

MCA vide notification G.S.R. 633(E) dated 10th July, 2018 has amended the Ministry of Corporate Affairs, the Serious Fraud Investigation Office, Additional Director (Forensic Audit) or Joint Director (Forensic Audit) and Additional Director (Investigation) or Joint Director (Investigation) Group 'A' Post Recruitment Rules, 2016, it shall come into force from **10th July, 2018.**

The Amendment has been made with respect to pay scale for the post of Additional Director (Forensic Audit) or Joint Director (Forensic Audit), Additional Director (Investigation) or Joint Director (Investigation).

- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187331.pdf>

F. ENFORCEMENT DATE FOR SECTION 20 OF COMPANIES (AMENDMENT) ACT, 2017:

- MCA vide notification S.O. 3299(E) dated 5th July, 2018 appoints date 5th July, 2018 for the enforcement of Section 20 of the Companies (Amendment) Act, 2017.

In section 82 (1) of the Companies Act, 2013:-

- (i) the words "and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section" has been omitted;

- (ii) the following proviso has been inserted:

"Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."

- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187144.pdf>

G. AMENDMENTS TO COMPANIES (REGISTRATION OF CHARGES) RULES, 2014:

- MCA vide notification G.S.R. 614(E) dated 5th July, 2018 have made amendments to Companies (Registration of Charges) Rules, 2014. They shall come into force from **5th July, 2018.**
- In sub-rule 1 of rule 3 the words "and filed" has been substituted with "shall be filed" for clear construction of words.

- In rule 8 (1) A company or charge holder shall within a period of three hundred days from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No. CHG-4 along with the fee.
- In rule 12, (1), for the words “within thirty days” the words “within a period of three hundred days” shall be substituted.

Hence, now as per amendment, under sub-rule 1 of rule 8, charge holder can also intimate about the satisfaction of the Charge. Also the 30 days limit has been enhanced to 300 days.

➤ The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187307.pdf>

H. AMENDMENTS TO COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014:

- 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 is effective from 10th July 2018.
- According to the aforesaid Notification, every individual who has been allotted Director Identification Number (“DIN):
 1. On or before March 31, 2018 shall file e form DIR-3 KYC on or before August 31, 2018.
 2. As on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

➤ The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187349.pdf>

I. AMENDMENTS TO COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014:

- MCA vide its notification dated July 05, 2018 has amended Companies (Registration Offices and Fees) Rules, 2014 which is effective from 10th July 2018.
- It says that the fee payable till the 30th April of every financial year in respect of e-form DIR-3 KYC as at the 31st March of immediate previous year shall be Nil. Beyond that fee of Rs. 5,000 shall be payable.
- For the current financial (2018-2019), no fee shall be chargeable till the 31st August, 2018 and fee of Rs.5000 shall be payable on or after the 1st September, 2018.

➤ The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187190.pdf>

J. ESTABLISHMENT OF NCLT KOCHI BENCH:

- MCA vide its notification S.O. 3683(E) dated 27th July, 2018 the Central Government has constituted the National Company Law Tribunal, Kochi Bench at Kochi for the State of Kerala and Union territory of Lakshadweep and has made amendments to the previous notification S.O. 1935 (E), dated the 1st June, 2016 by following insertion;

“13	National Company Law Tribunal, Kochi Bench	Kochi	(1) State of Kerala (2) Union territory of Lakshadweep.”.
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The notification shall come into force on 1st August, 2018.

- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187307.pdf>

K. ENFORCEMENT OF SECTION 5 AND 6 OF COMPANIES (AMENDMENT) ACT, 2017:

- MCA vide notification S.O. 3684(E) dated 27th July, 2018 appoints date 27th July, 2018 for the enforcement of Section 5 and 6 of the Companies (Amendment) Act, 2017.
- In section 7 (1) (c) of the Companies Act, 2013, for the words "an affidavit", the words "a declaration" has been substituted.
- In section 12 of the principal Act,-
 - (i) in sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words "within thirty days of its incorporation" shall be substituted;
 - (ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.

Hence, a Company shall within 30 days of its incorporation have a registered office and intimation of change of registered office should be filed within 30 days, instead of 15 days earlier.

- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187785.pdf>

L. AMENDMENTS TO COMPANIES (INCORPORATION) RULES, 2014:

- Ministry of Corporate Affairs (MCA) vide its notification dated July 27, 2018 has amended Companies (Incorporation) Rules, 2014 and these rules shall come into force as on July 27, 2018.

The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year.

As per the amended definition of resident in India has been changed by replacing “calendar year” to “financial year”.

- As per newly inserted Explanation II, any period of stay between January 01, 2018 till notification of these rules shall be counted for the purpose of counting period for F.Y. 2018-19.
- In Form No. INC-9, for the word 'Affidavit', the word 'Declaration' has been substituted.
- In Form No. INC-32, (SPICe), in the List of Attachments, in item number 3, for the words "Affidavit and declaration by first subscriber(s) and director(s)" the words "Declaration by first subscriber(s) and director(s)" has been substituted.

Now as per sub rule 15(b), declaration shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No. INC-9 earlier affidavit was to be given by subscriber and first directors.

- The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/187755.pdf>

M. AMENDMENT TO COMPANIES (ACCOUNTS) RULES, 2014:

- Ministry of Corporate Affairs (MCA) vide its notification dated July 31, 2018 has amended Companies (Account) Rules, 2014 and shall come into force on the date of their publication in the Official Gazette.
 - In sub-rule (5), after clause (viii) the following clauses has been inserted, namely:-
 - (ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained.
 - (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,";
 - Rule 8 will not be applicable to One Person Company and Small Company.
 - New rule 8A has been inserted which discusses that Boards report of One person Company and Small Company shall be prepared based on standalone financial statements of the Company in abridged form and following matters should be inserted :
 - (a) The web address, if any, where annual return referred to in sub-section (3) of Section 92 has been placed;
 - (b) Number of meetings of the Board;
 - (c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;
 - (d) Details in respect of frauds reported by auditors under sub-section (12) of Section 143 other than those which are reportable to the Central Government;
 - (e) Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
 - (f) The state of the company's affairs;
 - (g) The financial summary or highlights;
 - (h) Material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

- (i) The details of directors who were appointed or have resigned during the year;
- (j) The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.
- (2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in section 188 (1) in the **Form AOC-2**.

RBI UPDATES:

A. CREDIT FACILITIES TO MINORITY COMMUNITIES

- RBI issued a Master Circular dated July 02, 2018, on **Credit Facilities to Minority Communities** to all the Scheduled Commercial Banks & Small Finance Banks (Excluding RRBs and Foreign banks with less than 20 branches).
- RBI has updated the master circular by incorporating the instructions issued upto 30th June, 2018 which includes all instructions/ guidelines/ directives issued till date.
- All commercial banks are advised to ensure smooth flow of bank credit to minority communities. Proper care should be taken for minority communities that they are secured in a fair and adequate measure.
- List of 121 Minority district has been forwarded by government which have at least 25% of minority population.
- All scheduled commercial banks are requested to specially monitor the credit flow to minorities in these 121 districts, thereby, ensuring that the **minority communities receive a fair and equitable portion of the credit** within the overall target of the priority sector.
- The Link for the above Master Circular is as under:
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11323&Mode=0>

B. TIME PERIOD FOR SUBMISSION OF AGENCY COMMISSION CLAIMS

- RBI in its Circular No. DGBA.GBD.N0.3262/31.02.007/2016-17 dated June 15, 2017 advised all the agency banks to submit their agency commission claims to RBI within 90 days from the end of that quarter in which the transactions were conducted.
- RBI in its Circular No. RBI/2018-19/16 DGBA.GBD.No.87/31.02.007/2018-19 dated July 12, 2018 advised all the agency banks to submit their agency commission claims to RBI within 60 days from the end of that quarter in which the transactions were conducted.
- As even after granting the time limit of 90 days, agency banks were delaying their claims leading to delay in timely assessment of payment by RBI. In order to avoid unnecessary delay, RBI has decided to **reduce time period from 90 days to 60 calendar days from the end of the quarter in which the transactions are conducted**.
- If the RBI fails to receive the claims from agency within a period of 60 calendar days from the end of the quarter in which the transactions are conducted, RBI has power to reject the claims. This will be applicable for the agency commission claims for the quarter ended June 30, 2018.

- The Link for the above circular is as under:
https://rbi.org.in/SCRIPTS/BS_CircularIndexDisplay.aspx?Id=11334

C. INCORPORATION OF NAME OF THE PURCHASER ON THE FACE OF THE DEMAND DRAFT

- RBI vide circular dated July 12, 2018 issued instructions all Scheduled Commercial Banks including Regional Rural Banks/Urban Co-operative Banks/State Co-operative Banks/District Central Co-operative Banks/Local Area Banks/Small Finance Banks/Payment Banks addressed the concerns arising out of the anonymous provided by payments through demand drafts.
- According to Section 66 of the Master Direction on KYC dated February 25, 2016, as amended on April 20, 2018, which relates to Issue and Payment of Demand Drafts, etc, the following paragraph has been added by mentioning the name of the purchaser shall be incorporated on the face of the demand draft, pay order, banker's cheques, etc, by the issuing bank. However these instructions shall take effect for such instruments issued on or after September 15, 2018.
- The Link for the above circular is as under:
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11332&Mode=0>
https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10292

SEBI UPDATES:

A. OVERSEAS INVESTMENT BY ALTERNATIVE INVESTMENT FUNDS (AIFs) / VENTURE CAPITAL FUNDS (VCFs):

SEBI vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2018/103/2018 dated July 03, 2018 has issued circular regarding overseas investment by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs).

- SEBI enhanced the overseas investment limit of AIFs/VCFs to USD 750 million from the current USD 500 million in consultation with Reserve Bank of India (RBI).
- In order to monitor the utilization of overseas investment limits, SEBI asked to AIFs/VCFs to mandatorily disclose the following:
- the utilisation of the overseas limits within 5 working days of such usage on the regulator's intermediary portal (<https://siportal.sebi.gov.in>);
 - in case an AIFs / VCFs has not utilized the overseas limit granted to them within a period of 6 months from the date of SEBI approval (“validity period”), the same will have to be reported within 2 working days after expiry of the said validity period;
 - in case an AIFs / VCFs has not utilized a part of the overseas limit within the validity period, the same will have to be reported within 2 working days after expiry of the validity period;

- in case an AIFs/ VCFs wishes to surrender the overseas limit at any point of time within the validity period, the same will have to be reported within 2 working days from the date of decision to surrender the limit.

The link of this circular is as under:

<https://www.sebi.gov.in/legal/circulars/jul-2018/overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs-39424.html>

B. REVIEW OF ADJUSTMENT OF CORPORATE ACTIONS FOR STOCK OPTIONS, 1999:

SEBI vide Circular No. CIR/MRD/DoP-1/P/00108/2018 dated July 05, 2018 has issued circular regarding review of Adjustment of corporate actions for Stock Options.

- According to SEBI, now adjustment in strike price will be carried out in case,
 - where dividend is declared by a company at and above 5 % of the market value of the underlying stocks; or
 - in all other cases of dividend, wherein listed company has sought exemption from the timeline prescribed under the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- Stock Exchanges are advised to:
 - Take necessary steps and put in place necessary systems for implementation of the above.
 - Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
 - Bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on the website

The link of above circular is as under:

<https://www.sebi.gov.in/legal/circulars/jul-2018/review-of-adjustment-of-corporate-actions-for-stock-options-39455.html>

C. CORE SETTLEMENT GUARANTEE FUND (SGF) AND STANDARDISED STRESS TESTING FOR CREDIT RISK FOR COMMODITY DERIVATIVES:

SEBI vide Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2018/111 dated July 11, 2018 has issued norms for Core SGF and standardized stress testing for credit risk for commodity derivatives.

- SEBI vide circular CIR/MRD/DRMNP/25/2014 dated August 27, 2014 had issued norms related to Core Settlement Guarantee Fund (CGF), default waterfall, stress testing, back testing etc. for recognized Clearing Corporations and Stock Exchanges.

The link of aforementioned Circular is as under:

<https://www.sebi.gov.in/legal/circulars/aug-2014/core-settlement-guarantee-fund-default-waterfall-and-stress-test-27856.html>

Para 7 of the said circular stipulated norms for Minimum Required Corpus of Core SGF (MRC) for each segment of each stock exchange. In addition to that SEBI has fixed minimum threshold value at Rs. 10 crore.

- It has been decided to prescribe modified standardized stress testing scenarios and methodology for carrying out daily stress testing for credit risk for commodity derivatives due to different features and concerns of commodity derivatives markets.

SEBI has asked clearing corporations to use the modified method for carrying out daily stress testing for credit risk in commodity derivatives within three months from the date of issuance of this circular.

The link of this circular is as under:

https://www.sebi.gov.in/legal/circulars/jul-2018/core-sgf-and-standardized-stress-testing-for-credit-risk-for-commodity-derivatives_39527.html

D. DISCONTINUATION OF ACCEPTANCE OF CASH BY STOCK BROKERS:

SEBI vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2018/113 dated July 12, 2018 has issued circular with respect to discontinuation of acceptance of cash by Stock Brokers.

- SEBI has issued Circular regarding Mode of Payment and Delivery vide Circular No. SEBI/MRD/SE/Cir- 33/2003/27/08 dated August 27, 2003. The link of said circular is as under:

https://www.sebi.gov.in/legal/circulars/aug-2003/circular-mode-of-payment-and-delivery_15954.html

- SEBI has directed all the Stock Brokers not to accept cash from their clients either directly or by way of cash deposit to the bank account of stock broker. Accordingly, **paragraph 3** of the aforementioned circular dated August 27, 2003 is **modified** and reads as under:

“All payments shall be received / made by the stock brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through electronic fund transfer, or any other mode permitted by the Reserve Bank of India. The stock brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions. Stock Brokers shall not accept cash from their clients either directly or by way of cash deposit to the bank account of stock broker.”

The link of this Circular is as under:

https://www.sebi.gov.in/legal/circulars/jul-2018/discontinuation-of-acceptance-of-cash-by-stock-brokers_39534.html

E. INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) THROUGH PRIMARY MARKET ISSUANCES:

SEBI vide Circular No. IMD/FPIC/CIR/P/2018/114 dated July 13, 2018 has issued circular regarding investment by Foreign Portfolio Investors (FPI) through primary market issuances.

- As per Regulation 21(7) of SEBI (Foreign Portfolio Investors) Regulations, 2014 (‘FPI Regulations’), purchase of equity shares of each company by a single FPI or an investor group shall be below 10 % of the total issued capital of the company.

- Further, as per Regulation 23(3) of FPI Regulations, if the same set of ultimate beneficial owner(s) invests through multiple entities, such entities shall be treated as part of same investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.
- To identify the investor group, the Designated Depository Participant (DDP) shall obtain the details provided by the FPI under clause 2.2 of the FPI Application form (Form A) specified in first schedule of the FPI Regulations. On the basis of information provided by DDPs, monitoring of investment limits at the level of investor group shall be performed by depositories.
- RTA have been asked at the time of finalization of basis of allotment during primary market issuances the following:
 - To use PAN issued by Income Tax Department of India for checking compliance for a single foreign portfolio investor; and
 - To obtain validation from Depositories for the FPI who have invested in the particular primary market issuance to ensure there is no breach of investment limit.
- SEBI has asked depositories to put in place the necessary systems for sharing of information with RTAs within the timelines.

The link of this Circular is as under:

https://www.sebi.gov.in/legal/circulars/jul-2018/investment-by-foreign-portfolio-investors-fpi-through-primary-market-issuances_39539.html

F. STRENGTHENING THE GUIDELINES AND RAISING INDUSTRY STANDARDS FOR RTAs, ISSUER COMPANIES AND BANKER TO AN ISSUE – CLARIFICATION:

SEBI vide Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2018/115 dated July 16, 2018 has issued circular regarding clarification on strengthening the guidelines and raising industry standards for RTAs, issuer companies and banker to an issue.

- SEBI, vide circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, inter-alia, mandated RTAs to send a letter under Registered / Speed post seeking PAN and bank details within 90 days of the said circular and two reminders thereof after the gap of 30 days (Para II (12)(ii) of Annexure to the said circular).

The link of aforementioned circular as under:

https://www.sebi.gov.in/legal/circulars/apr-2018/strengthening-the-guidelines-and-raising-industry-standards-for-rta-issuer-companies-and-banker-to-an-issue_38749.html

- Now, SEBI has given the clarification in respect of above mentioned Para II (12)(ii) that:
 - the timeline for sending the initial letter by Registered / Speed Post to physical shareholders has been **extended to September 30, 2018** to enable companies to send the initial letter along with Annual Reports/notice of AGM; and

- two reminders may be sent by other modes **including ordinary post / courier** as well.

The link of this Circular is as under:

https://www.sebi.gov.in/legal/circulars/jul-2018/strengthening-the-guidelines-and-raising-industry-standards-for-rtas-issuer-companies-and-banker-to-an-issue-clarification_39553.html

G. SECURITIES CONTRACTS (REGULATION) (AMENDMENT) RULES, 2018 FOR LISTED COMPANIES AFTER RESOLUTION PLAN UNDER IB CODE 2016:

Ministry of Finance (Department of Economic Affairs) vide Notification No. G.S.R 675(E) dated July 24, 2018 issued notification regarding amendment to Securities Contracts (Regulation) Rules, 1957.

- In exercise of powers conferred by Section 30 of the Securities Contracts (Regulation) Act, 1956, the Central Government has made the rules to further amend the Securities Contracts (Regulation) Rules, 1957.
- After sub-rule (4) of rule 19A of Securities Contracts (Regulation) Rules, 1957, new sub-rule has been inserted which specifies that when a public shareholding of a listed company falls below 25% as a result of resolution plan approved under section 31 of Insolvency and bankruptcy code (IBC), then such company is obligated to bring its public shareholding to 25 % within a period a 3 years from the date of such fall, in a manner specified by Securities Exchange Board of India(SEBI).
- Also, if the public shareholding falls below 10%, then the same is required to be increased to atleast 10% within a period of 18 months from the date of such fall specified by SEBI.
- The Link of the above is as under:
<http://egazette.nic.in/WriteReadData/2018/187645.pdf>

H. REVISITING THE PUBLIC ISSUE PROCESS:

SEBI vide Press Release No. 28/2018 dated July 25, 2018 has issued Consultation Paper on Revisiting the public issue process.

- SEBI has come out with its Consultation Paper on revisiting the public issue process, on its website for public comments.
- The Consultation Paper covers following:
 - Background
 - Need for review
 - Review process
 - Proposal for:
 - Bidding and validation process
 - Block process
 - Post issue closure – allocation, debit, credit of shares and listing
 - Benefits from proposed framework
 - Applications submitted directly with Self-Certified Syndicate Bank (SCSB)

- Applications of Qualified Institutional Buyers (QIB) and Non-Institutional Investors (NII) submitted with intermediary
 - Proposed schedule of major activities
- The comments on above, may be sent by email or through post, latest by **15/08/2018**.

The Link of this consultation paper is as under:

<https://www.sebi.gov.in/reports/reports/jul-2018/consultation-paper-on-revisiting-the-public-issue-process-39670.html>

IBBI UPDATES:

A. THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI) (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (THIRD AMENDMENT) REGULATIONS, 2018

IBBI vide its notification dated on 3rd July, 2018 amends IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and notified the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018. The said regulations are applicable CIRP commencing on or after the said date.

- In the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations) in regulation 2 (1), after clause (a), new clause has been inserted:-
 - (aa) “class of creditors” means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, “creditors in a class” shall be construed accordingly.
- In principal regulations, in regulation 3, it describes about the eligibility for acting as resolution professional and for this purpose a person shall be considered independent in case is he not the employee of a legal or a consulting firm, that ***had or has transaction with corporate debtor amounting to 5% or more (previously it was 10%) of Gross Turnover of such firm in the last 3 financial years*** and inserted clause (1A) stating that written consent of proposed resolution professional shall be obtained in Form AA of the schedule.
- In principal regulations, after regulation 4, **sub-regulation 4A--Choice of Authorized Representative** has been inserted, stating that IRP on ascertaining class of creditors shall identify 3 Insolvency Professionals (IP) that are not relatives or related parties, are eligible under regulation 3 and are willing to act as authorized representative for class of creditors. IRP shall also obtain consent of each IP in Form AB for acting as Authorized Representative.
- In principal regulations, in regulation 6, in sub-regulation (2), after clause (b), clause (ba) and clause (bb) has been inserted stating that the claim forms can be obtained and IRP shall offer a choice of 3 insolvency professionals in the public announcement to act as the authorized representative of creditors in each class.
- In principal regulation, in regulation 7, in sub-regulation (1), for the words, “submit proof of claim”, the words “submit claim with proof” has been substituted.

- In principle regulation 8, in sub regulation (1), for the words, “financial creditor of the corporate debtor shall submit proof of claim”, the words “financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof” has been substituted and in sub-regulation (2) in clause (b), in sub-clause (iii), for the word “repaid”, the word “paid” has been substituted.
- In principal regulation, after regulation 8, regulation 8A has been inserted. Claims by creditors in a class has been inserted stating that a person claiming to be Creditor in class shall submit electronically in Form CA and existence of debt shall be proved on the basis of availability of records with an information utility, other relevant documents including agreement for sale, letter of allotment or such other documents
- In principal regulations, in regulation 9 in sub-regulation (1) and (2), for the words, “proof of claim”, the words “claim with proof” has been respectively substituted.
- In the principal regulations, in regulation 9A, in sub-regulation (1), for the words, “proof of its claim”, the words “its claim with proof” has been substituted.
- In principal regulations, in regulation 12, in sub-regulation (1), for the words, “proof of claim”, the words “claim with proof” has been substituted and, sub-regulation (2), is substituted stating that the creditor in case of failure to submit proof of claim within the time stipulated in public announcement can do so by submitting on or before 90th day from date of insolvency commencement date.
- The following regulation 16A and 16B has been inserted after regulation 16,

16A. Authorized representative.

(1) The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class:

Provided that the choice for an insolvency professional to act as authorised representative in Form CA received under sub-regulation (2) of regulation 12 shall not be considered.

(2) The interim resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representatives selected under sub-regulation (1) within two days of the verification of claims received under sub-regulation (1) of regulation 12.

(3) Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

(4) The interim resolution professional shall provide the list of creditors in each class to the respective authorised representative appointed by the Adjudicating Authority.

(5) The interim resolution professional or the resolution professional, as the case may be, shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.

Clarification: The authorized representative shall have no role in receipt or verification of claims of creditors of the class he represents.

(6) The interim resolution professional or the resolution professional, as the case may be, shall provide electronic means of communication between the authorised representative and the creditors in the class.

(7) The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.

(8) The authorized representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely:-

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	15,000
101-1000	20,000
More than 1000	25,000

16B. Committee with only creditors in a class.

Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorized representative(s).

- In principal regulations, regulation 17 has been substituted stating that IRP shall now file a report certifying Constitution of Committee (CoC) within 2 days of verification of claims and shall hold 1st meeting of the committee within 7 days of filing the report. In case of delay for appointment of Resolution Professional the IRP shall carry out functions from 40th day from date of insolvency commencement date till a Resolution Professional is appointed.
- In principal regulations, regulation 19 has been substituted stating that meeting of the CoC shall be called by giving not less than 5 days notice in writing to every participant. The CoC may, however, reduce the notice period from 5 days to such other period of not less than forty-eight hours where there is any authorized representative and to twenty-four hours in all other cases.
- In principal regulations, regulation 25, sub-regulation (3) and (5) has been substituted stating that the authorized representative shall circulate the agenda to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions.
- In principal regulation, regulation 26 (2) has been omitted.
- In principal regulations, regulation 27 shall be substituted stating that now the IRP shall within 7 days of his appointment but not later than 47th day from insolvency commencement date appoint two registered valuers to determine the liquidation value of the corporate debtor.
- In principal regulations, regulation 29 has been substituted stating that now for sale of assets the approval of 66% will be required.
- In principal regulations, after regulation 30, regulation **30A Withdrawal of application**, has been inserted stating that an application for withdrawal of an application admitted under section 7, 9 or 10 of the Code (for closure of corporate insolvency resolution process) may be submitted to the IRP or the Resolution Professional, as the case may be, before issue of invitation for expression of interest, along with a bank guarantee towards estimated cost incurred for certain purposes under the process. The committee of creditors (CoC) shall consider the application within seven days of its constitution or seven days of receipt of the application, whichever is later. If the application is approved by the CoC with 90% voting share, the resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

- In principal regulations, in regulation 31, after clause (a), clauses (aa) and (ab) has been inserted that fee payable to authorised representative under sub-regulation (7) of regulation 16A and out of pocket expenses of authorised representative for discharge of his functions under section 25.
- In principal regulations, in regulation 35, regulation 35A has been substituted that the resolution professional shall form an opinion whether the corporate debtor has been subjected to certain transactions (preferential transactions, undervalued transactions, extortionate transactions or fraudulent transactions) on or before 75th day and make a determination of the same by 115th day of the insolvency commencement date. Where the resolution professional makes such a determination, he shall apply to the Adjudicating Authority for appropriate relief before 135th day of the insolvency commencement date.
- In principal regulations, regulation 36A has been substituted that the resolution professional shall publish an invitation for expression of interest (EoI) by the 75th day from the insolvency commencement date. The invitation shall specify the criteria, ineligibility, the last date for submission of EoI and other details and shall not require payment of non-refundable deposit. Any EoI received after the specified time shall be rejected. The resolution professional shall conduct due diligence based on material on record and issue a provisional list of prospective resolution applicants within 10 days of the last date of submission of EoI. On considering objections to the provisional list, the resolution professional shall issue the final list of prospective resolution applicants, within 10 days of the last date for receipt of objections.
- In principal regulations, after regulation 36A, regulation 36B has been inserted that the resolution professional shall issue the information memorandum, the evaluation matrix and the request for resolution plans (RFRP), within 5 days of issue of the provisional list to the prospective resolution applicants and allow at least 30 days for submission of resolution plans. The RFRP shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.
- In principal regulations, in regulation 38, sub-regulation (1)(a) has been substituted that for the words, “insolvency resolution process costs will be paid”, the words “insolvency resolution process costs, to the extent unpaid, will be paid” has been substituted and sub-regulation (3) has been substituted that the resolution plan needs to demonstrate that (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the resolution plan. The CoC shall evaluate the resolution plan strictly as per the evaluation matrix to identify the best resolution plan and may approve it with the required majority. If approved by the CoC, the resolution professional shall Endeavour to submit the resolution plan approved by the CoC to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process, along with a compliance certificate in the specified Form.
- In principal regulations, in regulation 39, sub-regulation (1) has been substituted that a prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with an affidavit stating that it is eligible under section 29A to submit resolution plans; an undertaking that it will provide for additional funds to the extent required for the purposes under sub-regulation (1) of regulation 38; and an undertaking by the prospective resolution applicant that every information and records

provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code. A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.

- In principal regulations, in regulation 39, sub-regulation (3) has been substituted that the committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit. Provided that the committee shall record the reasons for approving or rejecting a resolution plan.
- In principal regulations, in regulation 39, sub-regulation (4) has been substituted The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule
- **Model time-line for corporate insolvency resolution process.**

The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:

Section Regulation /	Section Regulation /	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c) / Regulations 6(2)(c) and 12 (1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90th day of commencement	T+90
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
Regulation 13(2)	Verification of claims received under regulation 12(2)	Within 7 days from the receipt of the claim	T+97
Section 21(6A) (b)	Application for	Within 2 days	T+23

/ Regulation 16A	appointment of AR	from verification of claims received under regulation 12(1)	
Regulation 17(1)	Report certifying constitution of CoC	Within 2 days from verification of claims received under regulation 12(1)	T+23
Section 22(1) / Regulation 19(1)	1st meeting of the CoC	Within 7 days of the constitution of the CoC, but with seven days' notice	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40th day of commencement	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 40th day of commencement	T+47
Section 12(A) / Regulation 30 A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	Within 3 days of approval by CoC	W+10

Regulation 35A	RP to form an opinion on preferential and other transactions.	Within 75 days of commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36 (1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54th day of commencement	T+54
Regulation 36A	Publish Form G	Within 75 days of commencement	T+75
	Invitation of EoI	Within 75 days of commencement	T+75
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+90
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Submission of objections to provisional list	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135

Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180

Following are the full forms of the words used above in the table

AA: Adjudicating Authority; **AR:** Authorised Representative; **CIRP:** Corporate Insolvency Resolution Process; **CoC:** Committee of Creditors; **EOI:** Expression of Interest; **IM:** Information Memorandum; **IRP:** Interim Resolution Professional; **RA:** Resolution Applicant; **RP:** Resolution Professional; **RFRP:** Request for Resolution Plan.”.

Following forms has been substituted:

- ✓ FORM A- PUBLIC ANNOUNCEMENT.
- ✓ FORM AA-WRITTEN CONSENT TO ACT AS RESOLUTION PROFESSIONAL.
- ✓ FORM AB-WRITTEN CONSENT TO ACT AS AUTHORISED REPRESENTATIVE.
- ✓ FORM C-SUBMISSION OF CLAIM BY FINANCIAL CREDITORS.
- ✓ FORM CA-SUBMISSION OF CLAIM BY FINANCIAL CREDITORS IN A CLASS.
- ✓ FORM FA-APPLICATION FOR WITHDRAWAL OF CORPORATE INSOLVENCY RESOLUTION PROCESS.
- ✓ FORM G-INVITATION FOR EXPRESSION OF INTEREST.
- ✓ FORM H-COMPLIANCE CERTIFICATE.

The Link of the above is as under:

http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jul/187054_2018-07-05%2020:49:53.pdf

B. IBBI AMENDS THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

IBBI vide its Press Release dated on 4th of July, 2018 has notified IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018

Following are some of the highlights of the above notification:

- Where the corporate debtor has classes of creditors having atleast 10 creditors in that class, then the IRP (Interim resolution professional) shall offer a choice of 3 IP (Insolvency Professionals) who shall act as authorized representative of creditors in each class. A creditor in a class shall have the option to select its IP from the choices provided by IRP. The IP who has got highest vote to act as IP shall have the authority to represent the creditors of the respective class.
- An application for withdrawal of an application admitted under section 7,9 or 10 of the code may be submitted to IRP or IP before issue of invitation for expression of interest, along with a bank guarantee towards estimated cost incurred for certain purpose under the process. The committee of creditors (CoC) shall consider the application (within 7 days of its constitution **or** from 7 days from the receipt of the application) **whichever is later**. If CoC approves the application with 90% voting share, the resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within 3 days of such approval.

- Where the rate of interest has not been agreed between the parties in case of creditors in a class, then the voting share of such creditor shall be in the proportion to the financial debt that includes an interest @ 8% P.A.
- Where the appointment of resolution professional is delayed, the IRP shall perform the function of resolution professional from the 40th day of the insolvency commencement date till a resolution professional is appointed.
- A meeting of CoC shall be called by giving prior notice of atleast 5 days to every participant. The CoC may reduce such 5 days period to a period not less than 48 hours in case where there is an authorized representative and 24 hours in all other cases. The authorized representative shall circulate the agenda to creditors and shall announce about the voting window atleast 24 hours before the window is open for voting and such voting window shall be open for atleast 12 hours.
- The resolution professional shall form an opinion about the corporate debtor which are subject to certain transactions such as (preferential transaction, undervalued transaction, extortionate transaction, fraudulent transaction) by the 75th day and make a determination of the same by 115th day of the insolvency commencement date. Where the resolution professional makes a determination, he shall apply to the Adjudicating Authority for appropriate relief before 135th day of the insolvency commencement date.
- The resolution professional shall publish an invitation for expression of interest (EoI) by the 75th day from the insolvency commencement date. Such invitation shall specify the criteria, ineligibility, last date for submission of EoI and any other detail, EoI received after the specified date shall be rejected. The resolution professional shall conduct a due diligence within 10days from the end of submission of EoI. The resolution professional shall issue the final list of prospective resolution within 10 days after the end of period specified for receipt of objections.
- The resolution professional shall issue the information memorandum, evaluation matrix and the request for resolution plans (RFRP) within 5 days of issue of provisional list to the prospective resolution applicants and allow atleast 30 days for submission of resolutions plans. The RFRP shall consist of detailed steps in the process, the manner and the purpose of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines. The resolution plan needs to demonstrate that
 - (a) It addresses the cause of default;
 - (b) It is feasible and viable;
 - (c) It has provisions for its effective implementation;
 - (d) It has provisions for approvals required and the timeline for the same;
 - (e) The resolution applicant has the capability to implement the resolution plan.
- The CoC shall evaluate the resolution plans as per evaluation matrix in order to identify the best resolution is approved with required majority. If approved than such plan need to be submitted to the Adjudicating Authority atleast 15 days before the maximum period for completion of corporate insolvency resolution process, along with a compliance certificate in the specified Form.
- The Link of the above is as under:
<http://ibbi.gov.in/webadmin/pdf/press/2018/Jul/Press%20Release-CIRP%204July.pdf>

C. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016:

IBBI vide notification dated July 4, 2018 has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. These Regulations shall apply to the corporate insolvency resolution process.

- In regulation 2(1) clause (aa) has been inserted “class of creditors” means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, “creditors in a class” shall be construed accordingly.
- In Regulation 3(1) under explanation:
 - (c) (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to **five per cent (earlier it was 10%)** or more of the gross turnover of such firm, in the last three financial year.
- In Regulation 3 after sub regulation 1 the sub regulation 1A has been inserted “Where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional under section 22 or replace the resolution professional under section 27, it shall obtain the written consent of the proposed resolution professional in Form AA of the Schedule”.
- After Regulation 4 the following regulation **4A. Choice of authorised representative** has been inserted:
 - (1) On an examination of books of account and other relevant records of the corporate debtor, the interim resolution professional shall ascertain class(s) of creditors, if any.
 - (2) For representation of creditors in a class ascertained under sub-regulation (1) in the committee, the interim resolution professional shall identify three insolvency professionals who are-
 - (a) not his relatives or related parties;
 - (b) eligible to be insolvency professionals under regulation 3; and
 - (c) willing to act as authorised representative of creditors in the class.
 - (3) The interim resolution professional shall obtain the consent of each insolvency professional identified under sub-regulation (2) to act as the authorised representative of creditors in the class in Form AB of the Schedule.
- In Regulation 6 under sub regulation 2 the following clause has been inserted:
 - (ba) state where claim forms can be downloaded or obtained from, as the case may be;
 - (bb) offer choice of three insolvency professionals identified under regulation 4A to act as the authorised representative of creditors in each class; and
- In Regulation 6 (3) *Clarification*- The expenses on the public announcement shall not form part of insolvency resolution process costs. Has been **omitted**.
- In Regulation 7 (1) the word “submit proof of claim” has been substituted with “submit claim with proof”.

- In Regulation 8 (1) the word “financial creditor of the corporate debtor shall submit proof of claim” has been substituted with “financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof”.
- In Regulation 8 (2) in clause b(iii) the word “repaid” has been substituted with word “paid”
- After Regulation 8 the Following regulation has been Inserted:

8A. Claims by creditors in a class.

(1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule.

(2) The existence of debt due to a creditor in a class may be proved on the basis of-

- (a) the records available with an information utility, if any; or
- (b) other relevant documents, including any-
 - (i) agreement for sale;
 - (ii) letter of allotment;
 - (iii) receipt of payment made; or
 - (iv) such other document, evidencing existence of debt.

(3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.

- In Regulation 9 (1) and (2) the word “proof of claim” has been substituted with word “claim with proof”.
- In Regulation 9A (1) the words “proof of claim” has been substituted with words “its claim with proof”.
- Regulation 12 (2) has been substituted as “A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.”
- In Regulation 12(3) the words “a financial creditor” has been substituted with words “a financial creditor under regulation 8”
- After Regulation 16 the following regulation has been inserted:

16A. Authorised representative.

(1) The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class:

Provided that the choice for an insolvency professional to act as authorised representative in Form CA received under sub-regulation (2) of regulation 12 shall not be considered.

(2) The interim resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representatives selected under sub-regulation (1) within two days of the verification of claims received under sub-regulation (1) of regulation 12.

(3) Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

(4) The interim resolution professional shall provide the list of creditors in each class to the respective authorised representative appointed by the Adjudicating Authority.

(5) The interim resolution professional or the resolution professional, as the case may be, shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.

Clarification: The authorised representative shall have no role in receipt or verification of claims of creditors of the class he represents.

(6) The interim resolution professional or the resolution professional, as the case may be, shall provide electronic means of communication between the authorised representative and the creditors in the class.

(7) The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.

(8) The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	15,000
101-1000	20,000
More than 1000	25,000

(9) The authorised representative shall circulate the agenda to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

16B. Committee with only creditors in a class.

Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorised representative(s).

➤ Regulation 17 has been substituted as under:

Constitution of committee.

(1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under sub-regulation (1) of regulation 12.

(2) The interim resolution professional shall hold the first meeting of the committee within seven days of filing the report under this regulation.

(3) Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22.

- Regulation 19 has been substituted as under:

(1) Subject to this Regulation, a meeting of the committee shall be called by giving not less than five days' notice in writing to every participant, at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.

(2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative.

- Regulation 25 (3) has been substituted as under:

The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.

- Regulation 25 (3) has been substituted as under:

The resolution professional shall-

(a) circulate the minutes of the meeting by electronic means to all members of the committee within forty-eight hours of the conclusion of the meeting; and

(b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for twenty-four hours from the circulation of the minutes, for.

- Regulation 26(2) has been omitted.

- In Regulation 27 the words “seven days of his appointment” has been substituted with words “seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date”

- In Regulation 29 (2) the words “approval of the committee” has been substituted with words “approval of the committee by a vote of sixty-six per cent of voting share of the members”.

- After Regulation 30 the following regulation has been inserted:

30 A. Withdrawal of application.

(1) An application for withdrawal under section 12A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under regulation 36A.

(2) The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.

(3) The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.

(4) Where the application is approved by the committee with ninety percent voting share, the resolution professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(5) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).

➤ In Regulation 31 after point (a) the following points has been added:

(aa) fee payable to authorised representative under sub-regulation (7) of regulation 16A;

(ab) out of pocket expenses of authorised representative for discharge of his functions under section 25;

➤ After Regulation 35 the following regulation has been substituted:

35A. Preferential and other transactions.

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.

➤ Regulation 36 (1) has been substituted as under:

Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.

➤ After Regulation 36 the following regulation has been substituted:

36A. Invitation for expression of interest

(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

(2) The resolution professional shall publish Form G-

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor;

(iii) on the website, if any, designated by the Board for the purpose; and

(iv) in any other manner as may be decided by the committee.

(3) The Form G in the Schedule shall -

- (a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and
 - (b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.
- (4) The detailed invitation referred to in sub-regulation (3) shall-
- (a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;
 - (b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;
 - (c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and
 - (d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.
- (5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).
- (6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.
- (7) An expression of interest shall be unconditional and be accompanied by-
- (a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;
 - (b) relevant records in evidence of meeting the criteria under clause (a);
 - (c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;
 - (d) relevant information and records to enable an assessment of ineligibility under clause (c);
 - (e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
 - (f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and
 - (g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.
- (8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-
- (a) the provisions of clause (h) of sub-section (2) of section 25;
 - (b) the applicable provisions of section 29A, and
 - (c) other requirements, as specified in the invitation for expression of interest.
- (9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).

(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.

(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

36B. Request for resolution plans.

(1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to -

(a) every prospective resolution applicant in the provisional list; and

(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

(2) The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.

(3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).

(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.

(5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).

(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.

(7) The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list:

Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.

➤ In Regulation 37 after point (c) the following point has been added:

(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;

➤ In Regulation 38 (1) in clause (a) the words “insolvency resolution process costs will be paid” has been substituted with words “insolvency resolution process costs, to the extent unpaid, will be paid”

- Regulation 38 (3) has been substituted as under:

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

(b) an undertaking that it will provide for additional funds to the extent required for the purposes under sub-regulation (1) of regulation 38; and

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.

- Regulation 39(3) has been substituted as under:

“The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit:

Provided that the committee shall record the reasons for approving or rejecting a resolution plan.

- Regulation 39 (4) has been substituted as under:

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule.

- The link of the above notification is as under:

http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Jul/PDF%20of%20CIRP%20Regulations%202018%20-04.07.2018%20amended%20all_2018-07-06%2016:22:34.pdf

D. EMPANELMENT OF INSOLVENCY PROFESSIONAL ENTITIES:

IBBI on July 06, 2018 has issued a circular on Empanelment of Insolvency Professional Entities.

- To bring more clarity to the roles of IPE, an IPE is recognized under section 196 (1) (aa) read with regulation 12 (1) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, as having sole objective to provide support services to the insolvency professionals, who are its partners or directors, as the case may be. Thus, an IPE cannot provide any services to any person other than providing support services to the insolvency professionals.

- Section 206 of IBC prohibits a person from rendering services as an IP unless he: (a) has enrolled as a member of an IPA and (b) registered with the IBBI. Thus no person other than a person registered as an IP with the IBBI can rendered services as an IP. An IPE is neither enrolled as a member of an IPA nor registered as an IP with the IBBI, it cannot act as IP under the Code.
- The Circular also directs IPEs to refrain from seeking empanelment with or joining any panel of any market participant.

The link of the above circular is as under:

http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Jul/CircularEmpanelment%20of%20IPE-Final_2018-07-06%2022:41:54.pdf

E. APPOINTMENT OF AUTHORISED REPRESENTATIVE FOR CLASSES OF CREDITORS UNDER SECTION 21 (6A) (B) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016:

IBBI on July 13, 2018 has issued a circular on Appointment of Authorised Representative for Classes of Creditors under section 21 (6A) (b) of The Insolvency and Bankruptcy Code, 2016.

- The said circular provides simplified mechanism of representation of financial creditors through authorised representatives, Section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 16A (1) of the IBBI (CIRP) Regulations, 2016 provide that where the corporate debtor has at least 10 financial creditors in a class, the interim resolution professional shall offer a choice of 3 insolvency professionals and a creditor in the class may indicate its choice of an insolvency professional, from amongst the 3, to act as its authorised representative. The insolvency professional, who is the choice of the highest number of creditors in the class, is appointed as the authorised representative of the creditors of the respective class. The authorised representative casts vote in the meeting of the committee of creditor (CoC) in accordance with the instruction he receives from the creditors.
- For an ongoing corporate insolvency resolution process, where creditors belonging to a class are otherwise not represented in the CoC, it is necessary to use this simplified mechanism, irrespective of the stage of the process. The resolution professional, who exercises the powers and performs the duties as vested or conferred on the interim resolution professional under section 23 (2) of the Code, shall facilitate representation through authorised representative(s).
- Accordingly it is clarified that where the approval of resolution plan under regulation 39 (3) is atleast 15 days away, the resolution professional should obtain the choice of insolvency professional by electronic means from creditors in a class to act as the authorised representative of the class and proceed in a specific manner as provided in regulation 16A.
- The link of the above circular is as under:
http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Jul/ClarificationNo.%20IBBI-CIRP-015-2018%20dated%2013072018-Approved_2018-07-13%2020:07:34.pdf

F. SECURITIES CONTRACTS (REGULATION) (AMENDMENT) RULES, 2018

Ministry of Finance (Department of Economic Affairs) vide Notification No. G.S.R 675(E) dated July 24, 2018 issued notification regarding amendment to Securities Contracts (Regulation) Rules, 1957.

- In exercise of powers conferred by Section 30 of the Securities Contracts (Regulation) Act, 1956, the Central Government has made the rules to further amend the Securities Contracts (Regulation) Rules, 1957.
- After sub-rule (4) of rule 19A of Securities Contracts (Regulation) Rules, 1957, new sub-rule has been inserted which specifies that when a public shareholding of a listed company falls below 25% as a result of resolution plan approved under section 31 of Insolvency and bankruptcy code (IBC), then such company is obligated to bring its public shareholding to 25 % within a period a 3 years from the date of such fall, in a manner specified by Securities Exchange Board of India(SEBI).
- Also, if the public shareholding falls below 10%, then the same is required to be increased to atleast 10% within a period of 18 months from the date of such fall specified by SEBI.
- The Link of the above is as under:
http://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Jul/187645_2018-07-28%2022:22:21.pdf

ARTICLE ON FORM DIR-3 KYC

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 is 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.

In India approx. 50Lac individuals have been allotted Directors Identification Number (DIN) and all of them (***including Disqualified Directors***) are required to file e-Form DIR 3 KYC by 31st August, 2018 without any fees and after 31st August 2018 the same can be filed with a fee of Rs.5000/-.

(MCA website is showing additional precaution by mentioning that after 31st August 2018 e-Form DIR 3 KYC may be filed with fees as may be prescribed and without prejudice to any other action that may be taken, which is not mentioned in the Notification dated 5th July 2018)

e-Form DIR-3 KYC will be made available on website of MCA with effect from July 14, 2018.

B. DUE DATE OF FILING :

According to the aforesaid Notification, every individual who has been allotted Director Identification Number ("DIN):

- (i) **as at 31st March, 2018** is required to submit Form DIR-3 KYC **on or before 31st August, 2018** and;
- (ii) as on 31st March of a financial year **after 31st March, 2018**, is required to submit e-Form DIR-3 KYC **on or before 30th April** of immediate next financial year.

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 of Rs.5000/- .

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
	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 certify e-Form DIR-3 KYC:

- To obtain Engagement Letter from the applicant confirming his engagement for the purpose
- To obtain Declaration / Affidavit from the applicant confirming (a) his personal Mobile Number with a copy of mobile bill , (b) his personal Email address which belongs to him only (c) confirmation that he is qualified or disqualified to be Director by MCA (d) he has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court in India (e) he has no other allotted DIN other than DIN allotted in which changes are intimated under section 154 of the Companies Act, 2013 or a Designated Partner Identification Number under section 7 of the Limited Liability Partnership Act, 2008
- 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.

I. 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) Aadhar 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) Aadhar 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 (in case Foreign Director - Indian 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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**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.*

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