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**Newsletter for June, 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 June Month's edition of Newsletter!**

We are pleased to share our Newsletter for the month of June 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 Insolvency Bankruptcy Code (Amendment) Ordinance, 2018.

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

With warmest thanks,  
**Amita Desai & Team**



## MCA UPDATES:

### **A. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) THIRD AMENDMENT RULES,2018**

- MCA vide its notification dated June 12,2018 has made amendments to the Companies (Appointment and Qualification of Directors) Rules, 2014 and notified the Companies (Appointment And Qualification Of Directors) Third Amendment Rules, 2018 by which format of Form DIR-3 and Form DIR-6 has been substituted.
- The link of the above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/Cmp3rdAmndRul31206\\_13062018.pdf](http://www.mca.gov.in/Ministry/pdf/Cmp3rdAmndRul31206_13062018.pdf)

### **B. COMPANIES (MANAGEMENT AND ADMINISTRATION) SECOND AMENDMENT RULES,2018**

MCA vide its notification dated June 13, 2018 has made amendments to the Companies (Management and Administration) Rules, 2014 and notified the Companies (Management and Administration) Second Amendment Rules, 2018.

- **In the Companies (Management and Administration) Rules, 2014:**
- Rule 13 has been omitted which talks about a return to be filed with Registrar in Form No.MGT-10 with respect to change in shareholding position of promoters and top ten shareholders of the company representing increase or decrease by 2% or more of paid up share capital of the company within 15 days of such change. As Section 93 related to return to be filed with Registrar in case promoters stake changes has also been omitted with effect from 13<sup>th</sup> June, 2018. Therefore Form No. MGT-10 has also been omitted.
- Sub Rule (6) of Rule 15 has been omitted which talks about the requirement to give an advance notice of special resolution in Form No. MGT-14 to Registrar atleast one day before the date of general meeting of the company for the change of place of keeping registers and returns.
- Explanation after clause (ix), of sub rule (3) of rule 18 has been omitted. Explanation with respect to extraordinary general meeting to be held at a place outside India also has been omitted; this amendment is made to be in line with the amendment made in the proviso of Section 100(1) which says that the EGMs of WOS of a company incorporated outside India can be held even outside India.
- In sub rule (16) of rule 22 the proviso has been substituted. Now for any items of business as provided under sub-rule 22, which requires to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

The link of the above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/Company2ndAmndRule13062018\\_14062018.pdf](http://www.mca.gov.in/Ministry/pdf/Company2ndAmndRule13062018_14062018.pdf)

### **C. COMPANIES (REGISTERED VALUERS AND VALUATION) SECOND AMENDMENT RULES, 2018**

- MCA vide notification dated June 13, 2018 has made amendments to the Companies (Registered Valuers and Valuation) Rules, 2017 and notified the Companies (Registered Valuers And Valuation) Second Amendment Rules, 2018.
- In rule 19, in sub-rule 2, after clause (g), of Companies (Registered Valuers and Valuation) Rules, 2017, the new clause has been inserted. Now the committee shall also comprise of Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India and the Institute of Cost Accountants of India as ex-officio members.
- The link of the above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/CompaniesRegisteredRule1306\\_14062018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesRegisteredRule1306_14062018.pdf)

### **D. COMMENCEMENT NOTIFICATION FOR 5 SECTION OF COMPANIES (AMENDMENT) ACT, 2017**

- MCA has notified 5 more Sections of Companies (Amendment) Act, 2017 (“CAA, 2017”) vide notification dated June 13, 2018.
- The CAA, 2017 had received the assent of the President of India on January 3, 2018 subsequently, MCA had issued notification on January 26, 2018 for enforcement of Section 1 and 4 of CAA 2017, 43 Sections were notified on February 9, 2018, and 28 Sections were notified on May 07, 2018.

The list of Sections notified on June 13, 2018 is as follow:

<b>Section of Companies (Amendment ) Act, 2017</b>	<b>Section of Companies Act, 2013</b>	<b>Particulars of Section</b>
Clause (iii) of Section 21 and Section 22	Section 89 (10) and Section 90	Section 89(10): Declaration in respect of beneficial interest in any shares Section 90: Register of significant beneficial owners in a company.
24	93	Return to be filed with Registrar in case promoters stake changes.
25	94	Place of keeping and inspection of registers, returns, etc.
26	96	Annual general meeting.
71	216	Investigation of ownership of Company.

- For detailed analysis of Sections of Companies Amendment Act 2017 notified till June 13, 2018 please refer to on to following link:  
<http://amitadesai.com/ppt.html>
- The link of the above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/CommNotificatio1306\\_14062018.pdf](http://www.mca.gov.in/Ministry/pdf/CommNotificatio1306_14062018.pdf)

## **E. COMPANIES (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2018**

- MCA vide notification dated June 13, 2018 has notified the Companies (Significant Beneficial Owners) Rules, 2018 as Section 90 of the Companies Act, 2013 has been amended by the Companies (Amendment) Act, 2017 to reduce the compliance related burden, reduce litigation matters related with beneficial ownership.

### **Key Highlight:**

- **“Significant beneficial owner (SBO)”** means an individual referred to in sub-section (1) of section 90 (holding ultimate beneficial interest of not less than 10%) read with sub-section (10) of section 89, but whose name is not entered in the register of members of a company as the holder of such shares.

### **SBO, in case of persons other than individuals or natural persons, shall be determined as under:**

- i) In case of Company being a member**, the SBO is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, **holds not less than 10%** share capital of the company or who exercises significant influence or control in the company through other means;
  - ii) In case of partnership firm being a member**, the SBO is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, **holds not less than 10%** of capital or has entitlement of not less than ten per cent. of profits of the partnership;
  - iii) In case no natural person is identified under (i) or (ii)**, the SBO is the relevant natural person who holds the position of **senior managing official**;
  - iv) In case of trust being a member (through trustee)**, the identification of beneficial owner shall include the identification of the author of the trust, the trustee, the beneficiaries who holds not less than 10% interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership;
- Global depository receipts (GDR), compulsorily convertible preference shares (CCPS) or compulsorily convertible debentures (CCD) shall be treated as “shares” for determining SBO.
  - **Declaration of significant beneficial ownership in shares under section 90:-**

<b>Form No.</b>	<b>By Whom</b>	<b>To Whom</b>	<b>Time Period</b>
BEN- 1	Every SBO	To the company in which he holds the significant beneficial ownership	Within 90 days from commencement of these rules i.e. 13/06/2018 and within 30 days in case of any change in his significant beneficial ownership.

BEN- 1	Every individual who acquires significant beneficial ownership after commencement of these rule i.e. 13/06/2018	To the Company	Within 30 days of acquiring such significant beneficial ownership or in case of any change in such ownership.
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➤ **Return of SBO in shares:-**

Form No.	By whom	To Whom	Time Period
BEN- 2	The company shall file form, if any declaration is received by the company under rule 3	With the Registrar in respect of such declaration	Within period of 30 days from the date of receipt of declaration by the company.

➤ **Registrar of SBO:-**

Every company shall maintain a register of SBO in BEN- 3. The register maintained by the company shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

➤ **Notice seeking information about SBO.-**

Company shall give notice seeking information in accordance with Section 90(5) in BEN- 4

➤ **Application to the Tribunal:-**

The Company may apply to the Tribunal in accordance section 90(7), for order directing that the shares in question be subject to restrictions, including –

- a) restrictions on the transfer of interest attached to the shares in question;
- b) suspension of the right to receive dividend in relation to the shares in question;
- c) suspension of voting rights in relation to the shares in question;
- d) any other restriction on all or any of the rights attached with the shares in question.

➤ **Non- Applicability:-**

These rules are not applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

- The link of the above notification as under:

[http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantBeneficial1306\\_14062018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantBeneficial1306_14062018.pdf)

#### **F. COMPANIES (ACCOUNTING STANDARDS) AMENDMENT RULES, 2018**

MCA vide its notification dated June 18, 2018 has amended the Companies (Accounting Standards) Rules, 2006 and notified Companies (Accounting Standards) Amendment Rules, 2018 and it shall come into force from April 1, 2018.

In Companies (Accounting Standards) Rules, 2006 in the “Annexure” under the heading ‘B’ for the Accounting Standard (AS) 11 - the Effects of Changes in Foreign Exchange Rates, paragraph 32 Disposal of a Non-integral Foreign Operation has been substituted.

The link of the above notification is as under:

[http://www.mca.gov.in/Ministry/pdf/CompanyAmendmentRule1806\\_19062018.pdf](http://www.mca.gov.in/Ministry/pdf/CompanyAmendmentRule1806_19062018.pdf)

#### **G. ESTABLISHMENT OF NCLT JAIPUR BENCH**

MCA vide its notification dated June 28, 2018 established National Company Law Tribunal, Jaipur Bench at Jaipur. It shall come into force from July 01, 2018.

The link of the above notification is as under:

<http://egazette.nic.in/WriteReadData/2018/186917.pdf>

#### **RBI UPDATES:**

#### **A. FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) REGULATIONS, 2018**

Reserve Bank of India vide its notification dated June 01, 2018 has notified proviso (ii) to sub-regulation (1) of regulation 10 and proviso (ii) to sub-regulation (2) of **Regulation 10 [Transfer of capital instruments of an Indian company by or to a person resident outside India]** of the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2017 which was made effective from June 02, 2018.

Link of the above circular is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11298&Mode=0>

#### **B. EXTERNAL COMMERCIAL BORROWINGS (ECBs)-MONTHLY REPORTING THROUGH ECB-2 RETURN**

Reserve Bank of India vide A.P (DIR Series) Circular No. 29 dated June 07, 2018 has modified Part E of ECB -2 return for External Commercial Borrowing (ECB) which is to be filed monthly.

It has been decided to capture the details of the hedges for ECBs through a simplified format of ECB 2 Return. Part E of the Return, accordingly, is modified so as to include only standard information on hedged/unhedged ECB exposure (Annex). Details of hedging in Part E.1 of the Return and foreign exchange earnings and expenditure in Part E.2 of the Return should be furnished in additive format.

Revised monthly reporting format of ECB 2 Return would be applicable from month-end June 2018.

Amended E Block in ECB 2 Form is as under:

### E.1 Hedging Details

Outstanding Principal ECB amount (in million)*	Currency	Financial hedge(s)		Natural hedge		Annualized percentage cost of financial hedge(s) for ECB
		Notional value (in million)	% of outstanding ECB amount	Notional value (in million)	% of outstanding ECB amount	

\*as on the last date of the reporting month

### E.2 Foreign exchange earnings and expenditure, if any, for the last three financial years (only corresponding to same currency of ECB)

Financial Year	Currency	Foreign Currency earnings (in million)	Foreign Currency expenditure (in million)	Annual EBID** (in INR million)

\*\*Earnings before Interest and Depreciation (EBID), as defined table above = Profit After Tax + Depreciation + Interest on debt + Lease Rentals, if any.

Link of the above circular is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11296&Mode=0>

## C. FOREIGN INVESTMENT IN INDIA - REPORTING IN SINGLE MASTER FORM (SMF)

Reserve Bank of India vide A.P ( DIR Series ) Circular No. 30 dated June 07, 2018 informed all Bankers that now the Foreign Investment in India will be Reported in **one Single Master Form (SMF)**, with the objective of integrating the extant reporting structures of various types of foreign investment in India.

Accordingly, Companies/LLPs/start-ups with already existing Foreign Investment shall report their existing total foreign investment in form Entity Master on the RBI website between **28th June, 2018 to 12th July, 2018**.

The entities which fail to comply with this requirement, will not be able to receive foreign investment (including indirect foreign investment) and hence will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.



The entities may be in readiness with the requirements to be provided in the Entity Master provided in Annexure 1 of the Circular. The format of SMF is given in Annexure 2. The final form will be available under the tab of Master Director-Reporting under FEMA, 1999.

After the new reporting regime commences i.e., expected by post July 12, 2018, the filings in respect of foreign investment will be integrated into one single form known as Single Master Form (SMF) and all forms for reporting foreign investment like FC-TRS, FC-GPR, forms for reporting ESOPs, downstream investments, Form LLP-I, Form LLP- II, Form DRR (for issue/transfer of depository receipts), Form InVi- Reporting of investment by a person resident outside India in an Investment vehicle. The move is aimed at simplifying and consolidating the reporting.

Link of the above circular is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11297&Mode=0>

#### **D. INTEREST RATE OPTIONS IN INDIA**

Reserve Bank of India vide its notification dated June 14, 2018, has drawn our attention to FMRD circular FMRD.DIRD.12/14.01.011/2016-17 dated December 29, 2016.

Interest rate Swaptions are now permitted and introduced to enable better timing flexibility for the market participants seeking to hedge their interest rate risk.

A copy of the Interest Rate Options (Reserve Bank) Directions, 2018 is placed on the RBI Website. This will supersede the Interest Rate Options (Reserve Bank) Directions, 2016 dated December 28, 2016. These directions shall come into force with effect from June 15, 2018.

Link of the above Direction is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11303&Mode=0>

#### **E. INVESTMENT BY FOREIGN PORTFOLIO INVESTOR(FPI) IN DEBT-REVIEW**

Reserve Bank of India vide A.P (DIR Series) Circular No. 31 dated June 15, 2018 has eased the norms for Foreign Portfolio Investors (FPIs) to invest in debt, particularly into individual large businesses.

Key Highlights of this Direction:

##### **Minimum residual maturity requirement**

- FPIs will now be permitted to invest in Government securities (G-secs) without any minimum residual maturity requirement, only on condition that short-term investments by an FPI shall not exceed 20 percent of the total investment.
- FPIs will be permitted to invest in corporate bonds with minimum residual maturity of above one year, only if short-term investments by FPI in corporate bonds shall not exceed 20 percent of the total investment of that FPI in corporate bonds.
- The requirement that short-term investments shall not exceed 20 percent of total investment by an FPI in any category applies on an 'end-of-day' basis.
- Short-term investments by an FPI may exceed 20 percent of total investments, only if investments consist entirely of investments made on or before April 27, 2018.

##### **Increased FPIs cap on investment**

The RBI increased the FPIs cap on investment in government securities to 30 percent of the outstanding stock of that security, from the 20 percent earlier.

##### **Online monitoring of investments in G-sec and SDL Categories**

- FPIs are permitted to invest in G-secs till the limit utilization reaches 90 percent and for the allocation of remaining 10 percent, an auction mechanism was triggered.

- Now, with the commencement of online monitoring of utilization of G-sec limits by Clearing Corporation of India Ltd (CCIL), the auction mechanism has been discontinued with effect from June 1, 2018.
- The utilization of FPI investment limits in G-secs and State Development Loans (SDLs) is being monitored online by the Clearing Corporation of India Ltd. (CCIL).
- CCIL will also monitor the various other limits and caps for FPI investment in G-secs and SDLs.

#### **Concentration limits for Investment by any FPI**

- Long-term FPIs: The concentration limit is 15 percent of prevailing investment limit.
- Other FPIs: The concentration limit is 10 percent of prevailing investment limit.
- All other FPIs will be allowed to invest up to the applicable concentration limit.

#### **Investor-wise limits in corporate bonds**

- Investment by any FPI, including investments by related FPIs, shall not exceed 50 percent of any issue of a corporate bond.
- In case an FPI, including related FPIs, has invested in more than 50 percent of any single issue, it shall not make further investments in that issue.
- No FPI will have an exposure of more than 20 percent of its corporate bond portfolio to a single corporate.
- 'New' investments, investments made after April 27, 2018 in corporates, by FPIs would be exempted from this requirement till March 31, 2019.

#### **No investment in partly paid debt instruments**

The RBI also stated that from now onwards, no FPI will invest in partly paid debt instruments.

Link of the above circular is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11303&Mode=0>

#### **F. LIBERALISED REMITTANCE SCHEME – HARMONISATION OF DATA AND DEFINITIONS**

Reserve Bank of India vide A.P. (DIR Series) Circular No. 32 dated June 19, 2018 mandates furnishing of Permanent Account Number (PAN) for current Account Transactions upto USD 25,000 for all remittances under Liberalised Remittance Scheme (LRS).

Also, the definition of 'relatives' in context of remittances allowed under LRS for maintenance of close relatives has been updated as per Companies Act, 2013 instead of Companies Act, 1956.

Link of the above circular is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11309&Mode=0>

## SEBI UPDATES:

### A. AMENDMENT TO SECURITIES AND EXCHANGE BOARD OF INDIA (CREDIT RATING AGENCIES) REGULATIONS, 1999

SEBI vide its Circular No. SEBI/ HO/ MIRSD/ DOP2/CIR/P/2018/95 dated June 06, 2018 has issued circular to further amend the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999. The Board hereby makes following regulations namely:

- In terms of Sub Regulation (3) of Regulation 16 of the same, the CRA may withdraw a rating, subject to the CRA having,
  - rated the instrument continuously for 5 years or 50 per cent of the tenure of the instrument, whichever is higher.
  - received an undertaking from the Issuer that a rating is available on that instrument.
- At the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release with the reason(s) for withdrawal of rating.

The link of the above circular is as under:

[https://www.sebi.gov.in/legal/circulars/jun-2018/amendment-to-securities-and-exchange-board-of-india-credit-rating-agencies-regulations-1999\\_39212.html](https://www.sebi.gov.in/legal/circulars/jun-2018/amendment-to-securities-and-exchange-board-of-india-credit-rating-agencies-regulations-1999_39212.html)

### B. AMENDMENTS TO PREVENTION OF MONEY-LAUNDERING (MAINTENANCE OF RECORDS) RULES, 2005

SEBI vide its Circular No. SEBI/HO/MIRSD/DOSR1/CIR/P/2018/93 dated June 06, 2018 has issued circular and invited attention of participants on amendment of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005:

- Government of India (GOI) had notified Prevention of Money-laundering (Maintenance of Records) **Second** Amendment Rules, 2017 (PML Second Amendment Rules) on June 01, 2017 making the Aadhaar number issued by the Unique Identification Authority of India (UIDAI) and Permanent Account Number (PAN) or Form No. 60 as defined in Income-tax Rules, 1962 mandatory for both new and existing accounts with the financial market intermediaries including securities market intermediaries.

The link of above notified PML Second Amendment Rule is as under:

[https://www.sebi.gov.in/sebi\\_data/commondocs/jun-2018/annmirsd1\\_p.pdf](https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd1_p.pdf)

- Government of India (GOI) makes the further amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 by issuing following further notifications:

SR. NO.	NO. OF AMENDMENTS OF PML (MAINTENANCE OF RECORDS) RULES, 2017	PARTICULARS	LINK OF AMENDMENT
1	PML (Maintenance of Records) <b>Fifth</b> Amendment Rules, 2017 dated October 16, 2017	Regards to explanation of the term “certified copy” and a list of deemed Officially Valid Document (OVD) for limited purpose of proof of address (in case OVD submitted does not contain updated address).	<a href="https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd2_p.pdf">https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd2_p.pdf</a>
2	PML (Maintenance of Records) <b>Sixth</b> Amendment Rules, 2017 dated October 23, 2017	Regards to acceptable documents in case the OVDs presented by a foreign national does not contain address details.	<a href="https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd3_p.pdf">https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd3_p.pdf</a>

- Department of Revenue, Ministry of Finance issued a notification on 31<sup>st</sup> March, 2018 to revise the existing timelines for submission of Aadhaar Number till a date to be notified subsequent to pronouncement of final judgment in W.P. (C) 494/2012 etc or Six Months from the date of commencement of account based relationship in case when the client does not submit the Aadhaar number or the Permanent Account Number while opening his/her account with a reporting entity.

The link of above notification is as under:

[https://www.sebi.gov.in/sebi\\_data/commondocs/jun-2018/annmirsd4\\_p.pdf](https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd4_p.pdf)

The Link of this above circular is as under:

[https://www.sebi.gov.in/legal/circulars/jun-2018/amendments-to-prevention-of-money-laundering-maintenance-of-records-rules-2005\\_39207.html](https://www.sebi.gov.in/legal/circulars/jun-2018/amendments-to-prevention-of-money-laundering-maintenance-of-records-rules-2005_39207.html)

### **C. EXPERT COMMITTEE FOR LISTING OF EQUITY SHARE CAPITAL OF COMPANIES INCORPORATED IN INDIA ON FOREIGN EXCHANGES AND VICE VERSA**

SEBI vide its PR No. 16/2018 dated June 12, 2018 has issued Press Release regarding set up of Expert Committee for listing of equity share capital of companies incorporated in India on foreign exchanges and vice versa.

- SEBI has made a proposal to allow direct listing of Equity share capital of Indian Companies on foreign exchange, and foreign Companies on Indian exchanges, and in this regard, it has been decided to constitute an expert committee to look into this aspect in detail.
- As of now, Indian Companies can list their shares through depository receipts abroad, while foreign Companies are allowed to list only via the Indian depository receipt route.

- The committee will examine in detail the economic case for permitting direct listing of Indian companies overseas and vice-versa.
- Besides, it would examine the various legal, operational and regulatory constraints in facilitating companies incorporated in India to directly list their equity share capital abroad and vice-versa
- The panel will also recommend a framework in which to facilitate direct listing.

The link of above press release is as under:

[https://www.sebi.gov.in/media/press-releases/jun-2018/expert-committee-for-listing-of-equity-share-capital-of-companies-incorporated-in-india-on-foreign-exchanges-and-vice-versa\\_39254.html](https://www.sebi.gov.in/media/press-releases/jun-2018/expert-committee-for-listing-of-equity-share-capital-of-companies-incorporated-in-india-on-foreign-exchanges-and-vice-versa_39254.html)

#### **D. CONSTITUTION OF GROUP TO REVIEW INSTITUTIONAL TRADING PLATFORM (ITP) FRAMEWORK TO FACILITATE THE LISTING OF START UPS**

SEBI vide its PR No. 17/2018 dated June 12, 2018 has issued Press Release regarding constitution of group to review Institutional Trading Platform (ITP) framework to facilitate the listing of start ups.

- SEBI has constituted a group to look into the existing ITP framework and suggest measures to facilitate listing of startups.
- The group will look into existing ITP framework. It will revisit current ITP framework and identify areas, if any, which require further changes. It will also address any other issue relevant to ITP which the group may like to assess. And the committee has been asked to submit its report in a month.

The link of above circular is as under:

[https://www.sebi.gov.in/media/press-releases/jun-2018/sebi-constitutes-group-to-review-institutional-trading-platform-ity-framework-to-facilitate-the-listing-of-start-ups\\_39255.html](https://www.sebi.gov.in/media/press-releases/jun-2018/sebi-constitutes-group-to-review-institutional-trading-platform-ity-framework-to-facilitate-the-listing-of-start-ups_39255.html)

#### **E. REVIEW OF INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN DEBT**

SEBI vide its Circular No. IMD/FPIC/CIR/P/2018/101 dated June 15, 2018 has issued circular to Review of Investment by Foreign Portfolio Investors (FPI) in Debt.

- Regulators have decided to withdraw the minimum three-year residual maturity restriction for foreign portfolio investors (FPI) on investments made by them in Corporate Debt Securities, Government Securities (G-secs) as well as State Development Loans (SDLs).
- Overall monitoring of Government Securities (G-Secs) and State Development Loans (SDLs) would be done by the Clearing Corporation of India Ltd (CCIL). Till now, depositories were monitoring the G-Secs and SDLs utilisation limits and reporting to the Securities and Exchange Board of India (SEBI).
- Further, the auction process being carried out by BSE and NSE shall be discontinued from June 15, 2018 (i.e the date of issuance of this circular).

- Thus, any circular previously issued by SEBI from time to time for monitoring of G-Sec and SDLs stands withdrawn and hence, shall not be applicable to FPIs for investments in G-Secs and SDLs from June 1, 2018.
- Besides, the investments in corporate debt securities by FPIs would be subject to minimum residual maturity of above one year, subject to certain conditions.
- It has also been clarified that the primary responsibility of complying with monitoring the corporate debt investment limits is with the FPIs on whose behalf depositories would monitor the investment limits as the depositories are maintaining investor group level data, they should monitor the same, and the custodians would be responsible for monitoring their own clients.
- Depositories would be required to identify the FPIs that are breaching the limits and inform the same to their respective custodians.
- The regulator also directed stock exchanges and depositories to put in place the necessary systems for the online monitoring of the investment limits.

The link of this circular is as under

[https://www.sebi.gov.in/legal/circulars/jun-2018/review-of-investment-by-foreign-portfolio-investors-fpi-in-debt\\_39284.html](https://www.sebi.gov.in/legal/circulars/jun-2018/review-of-investment-by-foreign-portfolio-investors-fpi-in-debt_39284.html)

#### **F. ENFORCEMENT OF SEBI ORDERS REGARDING APPOINTMENT OF DIRECTORS BY LISTED COMPANIES**

SEBI vide its Circular No. LIST/COMP/14/2018-19 dated June 20, 2018 has issued a circular w.r.t Enforcement of SEBI Orders regarding appointment of Directors by listed companies.

- SEBI has issued certain directions for the Listed Companies regarding enforcement and monitoring of the appointment of restrained persons mentioned in the SEBI orders dated June 14, 2018.
- Directions includes the following:
  - Listed companies and its Nomination Committee while considering a person for appointment as director shall verify that the said person is not debarred from holding the office of director pursuant to any SEBI order.
  - Listed Companies shall, while informing the Exchange through corporate announcements for appointment of Director, specifically affirm that the Director being appointed is not debarred from holding the office of director by virtue of any SEBI order or any other such authority. Non-inclusion of such fact will be regarded as inadequate submission and the same would be subject to action as deemed fit under Regulation 30 of the LODR.
  - In case an existing director is restrained from acting as a director by virtue of any SEBI order or any other such authority, the director shall voluntarily resign with immediate effect, failing which the listed entity shall initiate the process of removal of such director in terms of relevant sections of the Companies Act, 2013, and inform the Exchange about the same.

The link of above circular as follows:

<https://www.bseindia.com/corporates/Displaydata.aspx?Id=d30893b5-8e5e-4842-a37d-da3e595ff58c&Page=cir>

### **G. SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2018**

SEBI vide its notification No.SEBI/LAD-NRO/GN/2018/13 dated May 29, 2018 has issued notification to further amend the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations,2015. The Board hereby makes following regulations namely:

- The SEBI vide the aforesaid Notification has inserted the words “**or through the depositories**” after the words “listed entity either directly” and before the words “or through their Registrar” to clause (1) of Schedule I.

Clause (1) of Schedule I of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations,2015 reads as follows:

“the listed entity either directly **or through the depositories** or through their Registrar to an Issue and/or Share Transfer Agent, shall use electronic clearing services (local, regional or national), direct credit, real time gross settlement, national electronic funds transfer etc for making payment of dividend/interest on securities issued/redemption or repayment amount.”

The link of above notification as under:

[https://www.sebi.gov.in/legal/regulations/may-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2018\\_39188.html](https://www.sebi.gov.in/legal/regulations/may-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2018_39188.html)

### **H. SEBI BOARD MEETING**

SEBI has approved certain amendments and revised few regulations relating to the securities market at its Board Meeting dated 20<sup>th</sup> June, 2018. The highlight of the same includes the following:

#### **I. Review of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011:**

- With respect to takeover regulations, SEBI has proposed changes related to revision of the open offer price i.e to grant additional time for upward revision of open offer price till one working day before the commencement of the tendering period.
- This is after public consultations on a discussion paper issued in March reviewing Substantial Acquisition of Shares and Takeovers Regulations.

#### **II. Replacing SEBI (Buy-back of Securities) Regulations, 1998 with new SEBI (Buy-back of Securities) Regulations, 2018:**

- The Board has approved reframing a new set of SEBI (Buy-back of Securities) Regulations, 2018 (“new Buyback Regulations”) in lieu of the extant Buyback Regulations, 1998.

- Under the new regulations, the buy-back period of a company's stock has been redefined as the time between the board's resolution /date of declaration of results for special resolution authorizing the buyback of shares and the date on which the payment will be made to shareholders.

### **III. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 to replace SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:**

SEBI considered the recommendation of Primary Market Advisory Committee and public comments on consultation paper and approved SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations, 2018"). Some of key amendments include:

- IPO issuers will now be allowed to announce the price bands two working days before the issue opens for subscription instead of the previous five days.
- Financial disclosures for public/Right issue will need to be made for three years, compared with the earlier five years.
- Restated and audited financial disclosures in the offer document will need to be made on consolidated basis only.
- Threshold for submission of draft letter of offer for rights issues to SEBI is increased to Rs. 10 Crores as against the earlier prescribed of Rs. 50 Lakhs.
- Institutional Investors such as Foreign Venture Capital Investors, Scheduled Commercial Banks, Public Financial Institutions and Insurance Companies registered with Insurance Regulatory and Development Authority of India will now be able to contribute to Shortfall of up to 10% in minimum promoters' contribution.
- Company should not have any audit qualifications or adverse opinion in order to qualify for fast track rights issue.
- In case of Small and Medium – sized Enterprises (SME) IPO, the minimum Anchor investor size in SME IPO reduced to Rs. 2 Crore from the existing Rs. 10 Crore.
- To identify promoter group, shareholding threshold increased to 20% as against earlier requirement of 10%.
- Definition of group companies is widened and shall include such companies (other than promoter(s) and subsidiary (ies) with which there were related party transactions in past 3 years.
- The requirement to underwrite 100% of the issue without regard to the minimum subscription requirements has now been deleted. i.e if 90 % of the fresh issue is subscribed in a main board IPO, underwriting will be restricted to that portion only.

### **IV. Amendment to Regulation pertaining to Stock Exchanges, Clearing Corporations and Depositories (Market Infrastructure Institutions – MIIs):**

SEBI considered the recommendation of the Gandhi Committee and approved the following proposals:



- Shareholdings by eligible domestic and foreign entities have been harmonized across MIIs- shareholding is increased to 15 % for Clearing Corporations and Depositories as in case of stock exchange. Multilateral and bilateral financial institutions, as notified by the Government, have also been recommended to hold upto 15% in an MII.
- Tenure and Directorship norms of Public Interest Directors (PIDs) and Managing Director (MD) of MIIs have been modified.
- Definition of Key Management Personnel (KMP) to include any person who directly reports to CEO or Director of the Governing Board of the MII, or any person who is upto 2 levels below MD/CEO, or as identified by the Nomination and Remuneration Committee.
- Various Committees of MIIs have been restructured and reduced to 7 from existing 15.
- Clearing Corporations to maintain a net worth at all times of either INR 100 crores or such other amount to cover the various risks (operational, market, credit, etc.) as against earlier requirement of INR 300 crores.

**V. Discontinuation of category of Sub-Broker as market intermediary:**

The Board considered and approved the following proposal:

- No fresh registration to be granted
- Existing Sub-Brokers shall migrate to Authorised Persons or Trading Members, failing which their registrations will be deemed to have been surrendered

**VI. Consultation Paper for the Amendment of various SEBI Regulations in respect of entities undertaking third party assignment under securities laws:**

- The Board approved the proposal to issue consultation paper to amend various regulations in respect of professionals such as practicing Chartered Accountants (PCA), practicing Company Secretaries (PCS), Cost Accountants, Valuers, Monitoring Agencies, etc. who undertake third party fiduciary duty/assignment/engagement from Issuers or Intermediaries. Presently such professionals are not registered with SEBI.

**VII. Establishment of National Centre for Financial Education (NCFE) as Section 8 Company - subscription to its Share Capital:**

- The Board approved the establishment of National Centre for Financial Education (NCFE) as a Company under Section 8 of the Companies Act, 2013 limited by shares. The Board also approved subscription to 30% of the paid up capital of the company amounting to Rs.30 crores, by SEBI.
- NCFE is co-promoted by SEBI, Reserve Bank of India (RBI), Insurance Regulatory and Development Authority of India (IRDAI) and Pension Fund Regulatory and Development Authority (PFRDA).
- NCFE is mandated to undertake financial education activities in terms of the National Strategy for Financial Education (NSFE) as approved by the Sub-Committee of Financial Stability and Development Council (FSDC-SC).

The link of this press release is as under:

[https://www.sebi.gov.in/media/press-releases/jun-2018/sebi-board-meeting\\_39324.html](https://www.sebi.gov.in/media/press-releases/jun-2018/sebi-board-meeting_39324.html)

#### **I. FILING OF TERM SHEET BY ANGEL FUNDS:**

SEBI vide its Circular No. CIR/IMD/DF1/102/2018 dated June 29, 2018 issued a circular with regards to filing of term sheet by Angel Funds.

- SEBI has made amendments to Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“AIF regulations”) with respect to ‘Angel Funds’ vide its notification No. SEBI/LAD-NRO/GN/2018/19 dated June 01, 2018.
- Pursuant to the aforesaid amendment of AIF regulations, it is specified that:
  - Angel funds may now launch schemes subject to filing of a Term Sheet in the format as specified in Annexure II of said Circular No. CIR/IMD/DF1/102/2018;
  - Such Term Sheet shall contain material information regarding the scheme;
  - Such Term Sheet shall be filed with the Board within ten days of launching the scheme.

The link of above circular is as under:

[https://www.sebi.gov.in/legal/circulars/jun-2018/filing-of-term-sheet-by-angel-funds\\_39395.html](https://www.sebi.gov.in/legal/circulars/jun-2018/filing-of-term-sheet-by-angel-funds_39395.html)

#### **IBBI UPDATES:**

#### **A. EXPRESSION OF INTEREST TO BE IN THE PANEL UNDER INSOLVENCY PROFESSIONALS TO ACT AS INTERIM RESOLUTION PROFESSIONALS OR LIQUIDATORS (RECOMMENDATION) GUIDELINES, 2018**

In terms of the aforesaid guidelines, the Board shall prepare a Panel of Insolvency Professionals (IPs) for appointment as Interim Resolution Professional (IRP) or Liquidator and share the said Panel with Adjudicating Authority (AA). The Board then invites expression of interest (EOI) from the IPs in **Form A** for consideration of their names in the Panel.

It is recommended that Form A must be duly filed in and signed scanned copy of the Form A is required to be sent at the designated e-mail i.e. **ra.ird@ibbi.gov.in on or before June 15, 2018**. EOIs received after due date will be summarily rejected. Furnishing wrong information would attract disciplinary action. This communication may not be construed as an offer for appointment.

- Section 16(3)(a) of the Insolvency and Bankruptcy Code, 2016 (Code) requires the Adjudicating Authority (AA) to make a reference to the Insolvency and Bankruptcy Board of India (Board) for recommendation of an insolvency professional (IP) who may act as an interim resolution professional (IRP) in case an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP.

- The Board, within ten days of the receipt of the reference from the AA, is required to recommend the name of an IP to AA against whom no disciplinary proceedings are pending.
- Section 34(4) of the Code requires the AA to replace the resolution professional, if:
  - (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
  - (b) the Board recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing. In such cases, the AA may direct the Board under section 34(5) of the Code to propose the name of another IP to be appointed as a liquidator. The Board is required under section 34(6) to propose the name of another IP within ten days of the direction issued by the AA.

### **Guidelines**

- When a reference or direction is received under section 16 or 34 of the Code from the AA for recommending / proposing the name of an IP, the Board has no information about the volume, nature and complexity of the CIRP or Liquidation Process and the resources available at the disposal of an IP.
- The Board is permitted to take up to ten days to identify an IP for the purpose. The Board used to invite expression of interest from eligible IPs and had an internal committee to appraise interests to identify an IP for recommendation to the AA. It takes some time also for the recommendation of the Board to reach the AA, after which the AA can appoint the recommended IP. In some cases, it may take 2-3 weeks, which could be saved if the AA has a ready panel of IPs recommended by the Board and it can pick up any name from the Panel while issuing the Order.

### **Panel of IPs**

- The Board will prepare a Panel of IPs for appointment as IRP or Liquidator and share the said Panel with AA. The AA may pick up any name from the Panel for appointment of IRP or Liquidator for a CIRP or Liquidation, as the case may be. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months.
- An IP will be eligible to be in the Panel of IPs if –
  - (a) there is no disciplinary proceeding pending against him;
  - (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction; and
  - (c) he expresses his interest to be included in the Panel for the relevant period.

### **Expression of Interest**

- The Board shall invite expression of interest from IPs in Form A to act as an IRP or Liquidator by sending an e-mail to IPs at their email addresses registered with the Board. The expression of interest must be received by the Board in Form A by the specified date.

- It must be explicitly understood that an IP, who is included in the Panel based on his expression of interest, must not:
  - (a) refuse to act as IRP or Liquidator, if appointed by the AA;
  - (b) withdraw his interest to act as IRP / Liquidator; and
  - (c) surrender his registration during the validity of the Panel.
- It must be explicitly understood that the AA may require the Board to recommend an IP from or outside the Panel and in such cases, the Board shall recommend an IP.

The link of above notification is as under:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2017/Dec/Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20\(Recommendation\)%20Guidelines,%202017\\_2017-12-16%2022:58:38.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2017/Dec/Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20(Recommendation)%20Guidelines,%202017_2017-12-16%2022:58:38.pdf)

## **B. PRESIDENT APPROVES PROMULGATION OF THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2018.**

IBBI receives Presidents approval for promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 dated on 6th June, 2018 which states the following-

The Ordinance provides significant relief to home buyers by recognizing their status as financial creditors. The recognition would give them due representation in the Committee of Creditors and would enable them to initiate Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 against errant developers.

### **Benefits for MSMEs**

Another major beneficiary would be Micro, Small and Medium Sector Enterprises (MSME). The immediate benefit it provides is that, it does not disqualify the promoter to bid for his enterprise undergoing Corporate Insolvency Resolution Process (CIRP) provided he is not a willful defaulter and does not attract other disqualifications not related to default. It also empowers the Central Government to allow further exemptions or modifications with respect to the MSME Sector, if required, in public interest.

### **Stricter procedure for withdrawal of case**

In order to protect the sanctity of the CIRP, the Ordinance lays down a strict procedure if an applicant wants to withdraw a case after its admission under IBC 2016. Henceforth,

such withdrawal would be permissible only with the approval of the Committee of Creditors with 90 percent of the voting share. Furthermore, such withdrawal will only be permissible before publication of notice inviting Expressions of Interest (EoI).

### **Lowering of voting threshold**

With a view to encouraging resolution as opposed to liquidation, the voting threshold has been **brought down to 66 percent from 75 percent** for all major decisions such as approval of resolution plan, extension of CIRP period, etc. Further the voting threshold for routine decisions has been reduced to 51% in order to facilitate functioning of the corporate debtor as a going concern.

The Ordinance also provides for a mechanism to allow participation of security holders, deposit holders and all other classes of financial creditors that exceed a certain number, in meetings of the Committee of Creditors, through the authorized representation.

### **Fine tuning of Section 29A**

The existing Section 29(A) of the IBC, 2016 has also been fine-tuned to exempt pure play financial entities from being disqualified on account of NPA. Similarly, a resolution application holding an NPA by virtue of acquiring it in the past under the IBC, 2016, has been provided with a three-year cooling-off period, from the date of such acquisition. In other words, such NPA shall not disqualify the resolution application during the currency of the three-year grace period.

Taking into account the wide range of disqualifications contained in Section 29(A) of the Code, the Ordinance provides that the Resolution Applicant shall submit an affidavit certifying its eligibility to bid. This places the primary onus on the resolution applicant to certify its eligibility.

### **One year grace period for resolution applicant**

The Ordinance provides for a minimum one-year grace period for the successful resolution applicant to fulfill various statutory obligations required under different laws. This would go a long way in enabling the new management to successfully implement the resolution plan.

### **Other changes**

- The Moratorium period would not be applicable for enforcement of guarantee;
- Corporate debtors would require a special resolution to themselves trigger insolvency resolution under the Code;
- Terms and conditions of interim finance have been liberalised to facilitate financing of corporate debtor during CIRP period;
- Insolvency and Bankruptcy Board of India has been provided with powers to levy fee in respect of services rendered.

The link of above notification is as under:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/President%20Approves%20Promulgation%20of%20the%20Insolvency%20and%20Bankruptcy%20Code%20\(Amendment\)%20Ordinance,%202018\\_\\_2018-06-06%2021:10:49.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/President%20Approves%20Promulgation%20of%20the%20Insolvency%20and%20Bankruptcy%20Code%20(Amendment)%20Ordinance,%202018__2018-06-06%2021:10:49.pdf)

## **C. FEE AND OTHER EXPENSES INCURRED FOR CORPORATE INSOLVENCY RESOLUTION PROCESS**

Insolvency and Bankruptcy Board of India (IBBI) on June 12, 2018 issued a circular on Fee and other Expenses incurred for Corporate Insolvency Resolution Process. In April, the Board released a discussion paper on regulation of fee payable to insolvency professionals and other process costs under Corporate Insolvency Resolution Process and invited comments on the same.

The IP is directed to ensure that:-

- a) the fee payable to him, an Insolvency Professional Entity, and to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;

- b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP;
- c) the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence;
- d) written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;
- e) supporting records of fee and other expenses incurred are maintained at least for three years from the competition of the CIRP;
- f) approval of the Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and
- g) all CIRP related fee and other expenses are paid through banking channel.

It was directed to ensure that no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC. Also, no fee or expense other than the IRPC incurred by the IP is borne by the corporate debtor; and only the IRPC, to the extent not paid during the CIRP from the internal sources of the Corporate Debtor, shall be met in the manner provided in section 30 or section 53.

The link of the above guideline is as under:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20\[June%202018\]\\_2018-06-18%2014:06:58.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20[June%202018]_2018-06-18%2014:06:58.pdf)

#### **D. THE COMPANIES(REGISTERED VALUERS & VALUATION) SECOND AMENDMENT RULES,2018**

IBBI vide Notification dated on June 13, 2018 conferred powers by section 247 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registered Valuers and Valuation) Rules, 2017 which shall be named as Companies (Registered Valuers and Valuation).

Second Amendment Rules, 2018 and shall come into force on the date of their publication in the Official Gazette.

The link of the above guideline is as under:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/CompaniesRegisteredRule1306\\_14062018\\_2018-06-19%2021:57:33.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jun/CompaniesRegisteredRule1306_14062018_2018-06-19%2021:57:33.pdf)

#### **E. DRAFT ON CROSS BORDER INSOLVENCY**

The government via Public Notice dated June 20, 2018 introduced draft chapter of cross border insolvency and invited for suggestions from various stakeholders on the same through form prescribed to be mailed by 30th June, 2018 at [crossborder@mca.gov.in](mailto:crossborder@mca.gov.in)The draft framework has been prepared on the basis on Model law with certain modifications.

The Link of the above is as under:

<http://ibbi.gov.in/webfront/whatsnew.php>

## Article on Insolvency Bankruptcy Code (Amendment) Ordinance, 2018

“If we desire respect for law, we must first make the law respectable”

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (**Ordinance**) has been promulgated by the President of India on June 6, 2018 to further amend the Insolvency and Bankruptcy Code (IBC 2016).

This amendment has brought many significant changes such as:

1. Giving recognition to home buyers as financial creditors.
2. Amending Section 29A of the Code
3. Providing special benefits to the Micro, Small and Medium Sector Enterprises.
4. Lowering the voting threshold down to 66% for extension of CIRP time limit and many more with an objective to balance the interest of all stakeholders in the Code.

The Ordinance is meant to take effect “at once” and hence shall have immediate effect. The provisions of the Ordinance will apply to ongoing proceedings with prospective effect.

- The Ordinance replaces the word “repaid” by “paid” in various provisions of the Code such as section 3(12), section 8(2)(b), explanation to section 8, section 9(5)(i)(b), section 9(5)(ii)(b), etc. as word ‘payment’ is a wider term which means “performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation”. The term ‘repay’ means “to pay back” or “refund”. The change is mere clarificatory –**While principal is “repaid”, interest is “paid”**.
- There has been an insertion of clause (5A) in Section 5 which defines “corporate guarantor” as “a corporate person who is the surety in a contract of guarantee to a corporate debtor”.
- Section 5(8) of the IBC defines the term financial debt which has been expanded to include any amount raised from an allottee under a real estate project which shall be deemed to be an amount having the commercial effect of a borrowing. This expansion means to include home buyers covering them into ambit of financial creditors that has helped to narrow down several doubts that had arisen pursuant to the initiation of the corporate insolvency resolution process (CIRP) of some of the large real estate companies. This would give due representation to Home Buyers in the Committee of Creditors and also make them part of the decision making process. They can invoke Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 against errant developers.
- There has been an insertion of clause (24A) under section 5 which defines “related party” in relation to an individual. Earlier the Code defined “related party in relation to corporate debtor.

- Section 10(3) has been substituted, hence the corporate applicant shall along with its application for initiation of CIRP shall also furnish the information relating to its Books of accounts, the Resolution Professional (RP) proposed to be appointed as IRP and Special resolution passed by shareholders of the corporate debtor or resolution passed by 3/4<sup>th</sup> of total number of partners of the corporate debtor.
- In order to overcome the practical issues Section 12A has been inserted which provides for withdrawal of the application made under Section 7, or Section 9 or Section 10. **The same can be done only with approval of 90% of voting share of Committee of Creditors (CoC).**
- The Moratorium period under section 14 of the Code **shall not apply to surety giving guarantee to a Corporate Debtor** thus not providing protection to them.
- Section 16(5) of the Code has been amended which specifies that the term of the Insolvency Resolution Professional (IRP) shall continue till the date of appointment of the RP under section 22.
- Clause (e) has been inserted in sub-section (2) of Section 17 and pursuant to the amendment IRP vested with the management of corporate debtor shall be responsible for complying with the requirements under any law for time being in force on behalf of corporate debtor.
- A proviso to sub-section (1) to section 23 of the Code has been inserted stating that the RP shall continue to manage the operations of the corporate debtor after the CIRP period till the Adjudicating Authority passes an order under Section 31 of the IBC, thus clarifying the term of RP in case plan is submitted u/s 30(6).
- Section 25A has been inserted stating Rights and Duties of Authorized Representative of Financial Creditors stating that they shall --
- Have the right to participate and vote in CoC meetings;
  - circulate the agenda and minutes of the meetings;
  - not act against the interest of the financial creditor he represents.

If authorized representative represents several financial creditors then he shall cast his vote in respect of each financial creditor to the extent of his voting share. If the financial creditor does not give prior instructions then authorized representative shall abstain from voting.

- The existing Section 29(A) of the IBC, 2016 has been exempts financial entities who is not related party to corporate debtor. Similarly, a resolution application holding an NPA by virtue of acquiring it in the past under the IBC, 2016, has been provided with a three-year cooling-off period, from the date of such acquisition. In other words, such NPA shall not disqualify the resolution application during the currency of the three-year grace period.
- Section 30 (1) has been amended now along with the resolution plan an affidavit has to be submitted stating that there solution applicant is eligible under section 29A.
- Section 31 provides for a minimum one- year grace period for the successful resolution applicant to fulfill various statutory obligations required under different laws. This allows more time for the new management to efficiently implement the resolution plan.



- All decision of committee of creditors shall be taken by vote of not less than 51% of voting share of financial creditors. However, the threshold limit for voting has been reduced from 75 % to 66% for certain transactions. Some of the transactions requiring 66 % limit are :-
  - **Section 12(2)** – Extension of the CIRP beyond 180 days,
  - **Sections 22(2) & 27(2)** – Replacement or appointment of Resolution Professional (RP),
  - **Section 30(4)** – Approval of the resolution plan,
  - **Sections 33(2)** – Passing a resolution for liquidation.
- Section 238A has been inserted stating that provision of Limitation Act, 1963 shall apply to proceedings or appeals before Adjudicating Authority, NCLAT, DRT or DRAT.
- Section 240A (1) has been inserted pursuant to which the provision of clauses (c) and (h) of section 29A is not applicable in respect of Micro, small and medium (MSMEs) [], thus taking into account the impact for excluding of promoters from submitting Resolution plans pursuant to section 29A. Section 240A has been inserted to relax clauses (c) and (h) of section 29A for resolution process of MSMEs. While clause (c) pertains to NPA criterion, clause (h) deals with guarantees in favour of creditors. The Central Government, by notification, may relax other provisions for MSMEs. The definition of MSMEs has to be derived from the Micro, Small and Medium Enterprises Development Act, 2006.
- A new Schedule 12 has been inserted after 11<sup>th</sup> Schedule for specifying the acts for the purposes of Clause (d) of section 29A.

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