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

We are pleased to share our Newsletter for the month of November 2018. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Reserve Bank of India (RBI), Insolvency & Bankruptcy Board of India (IBBI) and Securities and Exchange Board of India (SEBI).

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.

Our article of the month is **"The Companies (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 (Registered Valuers and Valuation) Fourth Amendment Rules, 2018

- Ministry of Corporate Affairs (MCA) has issued a notification dated November 13, 2018 by which the Central Government has made the rules to further amend the Companies (Registered Valuers and Valuation) Rules, 2017.

- These rules are called the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018

- The key changes made by the said amendments are as follows:

Rule No.	**Companies (Registered Valuers and Valuation) Rules, 2017**	**Amendment**	**Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018**
Rule 1	Short title and commencement	Insertion of "and application" in the Marginal Heading	Short title, commencement and application
Rule 1	sub-rule (1) and (2)	Insertion of sub-rule (3) after sub-rule (1) and (2).	"(3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules. Explanation: It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules."

Rule 3- Eligibility for Registered Valuers			
Rule 3(2) (a)	(2) No partnership entity or company shall be eligible to be a registered valuer if- (a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, **it is not** a subsidiary, joint venture or associate of another company or body corporate.	Omission of the word "not".	(2) No partnership entity or company shall be eligible to be a registered valuer if- (a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, **it is** a subsidiary, joint venture or associate of another company or body corporate.
Rule 3 (2) (c)	(2) No partnership entity or company shall be eligible to be a registered valuer if- (c) all the promoters or directors, as the case may be, are not ineligible under clauses (c), (d), **(e), (g),** (h), (i), (j) and (k) of sub-rule (1).	Insertion of "(f)" after (e).	(2) No partnership entity or company shall be eligible to be a registered valuer if- (c) all the promoters or directors, as the case may be, are not ineligible under clauses (c), (d), **(e), (f), (g),** (h), (i), (j) and (k) of sub-rule (1).
Rule 4- Qualifications and Experience			
Rule 4 (c)	4. An individual shall have the following qualifications and experience to be eligible for registration under rule (3), namely- (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with atleast three years' experience after such membership **and having qualification mentioned at clause (a) or (b)**	Omission of "and having qualification mentioned at clause (a) or (b)"	4. An individual shall have the following qualifications and experience to be eligible for registration under rule (3), namely- (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with atleast three years' experience after such membership.

Rule 4 (Explanation II)	Qualifying education and experience **and examination or training** for various asset classes, is given in an indicative manner in Annexure IV of these rules.	Omission of "and examination or training"	Qualifying education and experience for various asset classes, is given in Annexure IV of the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018.
Rule 4	Explanation I and II	Insertion of Explanation III.	"Explanation III- For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognized by the Ministry of Human Resources and Development as equivalent to professional and technical degree."
Rule 10- Functions of a Valuer			
Rule 10	A valuer shall conduct valuation required under the Act as per these rules **and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority**.	Omission of the words "and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority."	A valuer shall conduct valuation required under the Act as per these rules.
Rule 11- Transitional Arrangement			
Rule 11	There was an **Explanation** in relation to Rule 11	Omission of Explanation	No Explanation.

Rule 12- Eligibility for Registered Valuers Organizations			
e 12	12. (1) An organization that meets requirements under rule 12 (2) maybe recognized as a registered valuers organization for valuation of a specific asset or asset classes if – (ii) **a professional institute** established by an Act of Parliament enacted for the purpose of regulation of a profession: Provided….. (a)……or (b)…….	Substitution of the words "a professional institute" with "it is a professional institute".	12. (1) An organization that meets requirements under rule 12 (2) maybe recognized as a registered valuers organization for valuation of a specific asset or asset classes if – (ii) **it is a professional institute** established by an Act of Parliament enacted for the purpose of regulation of a profession: Provided….. (a)……or (b)…….
Annexure IV	Indicative matrix on requisite qualifications/experience in specified discipline.	Substitution of Annexure IV (See the link mentioned below)	Eligibility Qualification and Experience for Registration as Valuer.

- The link for the said notification is as follows:

http://www.mca.gov.in/Ministry/pdf/CompaniesRegisteredValuers4AmdtRules_13112018.pdf

B. National Financial Reporting Authority Rules (NFRA) 2018

- MCA vide its notification dated October 1, 2018 has constituted National Financial Reporting Authority ("NFRA" or "Authority").
- Pursuant to this notification, MCA notified the National Financial Reporting Authority Rules 2018 ("NFRA Rules, 2018") on November 13, 2018.

(a) Applicability of the rules:

Rule 3(1) of the NFRA Rules, 2018, lays down the applicability. Accordingly, following class of companies and body corporate will be governed by the Authority:

1. Companies whose securities are listed on any stock exchange in India or outside India;
2. Unlisted public companies fulfilling *any* of the below mentioned criteria as on 31st March of the immediately preceding financial year:
   (i) having paid-up capital of not less than Rs. 500 Cr.; or
   (ii) having annual turnover of not less than Rs. 1000 Cr.; or
   (iii) having in aggregate, outstanding loans, debentures and deposits of not less than Rs. 500 Cr.

3. Insurance companies, banking companies, companies engaged in the generation of supply of electricity, companies governed by any special Act or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of Section 1(4) of the Act.
4. Any body corporate or company or person or any class of them, referred by the Central Government to the Authority in public interest.
5. A body corporate incorporated or registered outside India:
   (i) which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred under points (1) to (4) above; and
   (ii) the income or net worth of such subsidiary or associate exceeds *twenty per cent* of the consolidated income or consolidated net worth of such company or body corporate referred under points (1) to (4) above.

Additionally, the Authority is also empowered to monitor and enforce the compliance with the auditing and accounting standards, to oversee the quality of auditing services provided by the auditors or professionals associated in providing such services and to undertake investigation.

A company or a body corporate governed under this rule shall continue to be governed by the Authority for a period of *three years* after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

(b) <u>Filing of Form NFRA-1:</u>

Every existing body corporate other than a company governed by these rules, shall within *thirty days* from the date of commencement of these rules, inform the Authority about the particulars of the auditors, in Form NFRA-1.

Every body corporate, other than an Indian company and a company governed by these rules, shall within *fifteen days* of appointment of an auditor, inform the Authority about the particulars of the auditors appointed by such body corporate, in Form NFRA-1:

Provided that a body corporate governed rule 3 (1) (e) of the NFRA Rules, 2018 shall provide details of appointment of its auditors in Form NFRA-1.

(c) <u>Filing of annual return by the Auditors:</u>

Every auditor of the class of companies or bodies corporate governed by the NFRA Rules, 2018 shall file a return with the Authority on or before 30th April of every year in such form as may be specified by the Central Government.

(d) <u>Functions and duties of the Authority:</u>

Following are the functions to be performed by the Authority to protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate governed under rule 3 of the NFRA Rules, 2018:

- ✓ particulars of auditors appointed in the companies and bodies corporate governed by the Authority is to be maintained;
- ✓ after receiving recommendations from the ICAI for accounting standards and auditing standards, recommend the same to Central Government for approval;
- ✓ monitor and enforce compliance with the accounting standards and auditing standards;

- ✓ quality of service of the professionals associated with ensuring compliance with such standards is to be administered for improvement;
- ✓ any matter of professional or other misconduct is to be insvestigated;
- ✓ awareness in relation to the compliance of accounting standards and auditing standards is to be promoted
- ✓ collaborate with national and international organizations of independent audit regulators for establishing and administration for observance of accounting standards and auditing standards;
- ✓ carry out such other functions and duties necessary or incidental to the aforesaid functions and duties.

  [NOTE: The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein delegate any of its powers or functions under the Act, other than the power to make rules, to the Authority.]

(e) Disciplinary proceedings and the manner of enforcement of orders passed in disciplinary proceedings:

if the Authority believes that sufficient cause exists to take actions permissible under Section 132 (4), on the basis of reference received from the Central Government or findings of its monitoring or on the basis of material otherwise available on record, , it shall refer the matter to the concerned division, which shall cause a show-cause notice to be issued to the auditor.

- ✓ The show- cause notice shall be in writing.
- ✓ The show-cause notice shall enclose copies of documents relied upon and extracts of relevant portions from the investigation report or other records.
- ✓ The show-cause notice shall be served on the auditor or the auditor's firm either by registered post with acknowledgement due or by an appropriate electronic means.
- ✓ The division shall dispose of the show- cause notice within a period of *ninety days* of its assignment, by passing a reasoned order in adherence to the principles of natural justice.
- ✓ The order disposing of show cause notice may provide for no action, caution, action for imposing penalty.
- ✓ The order passed shall be served on the auditor and a copy thereof to the respective Authorities prescribed in NFRA rules, 2018.
- ✓ The order passed shall become effective not until *thirty days* have elapsed from the date of its issuance.

The order passed in the disciplinary proceedings shall be enforced in the following manner:

- ✓ Where the order passed relates to imposition of a monetary penalty on any auditor, the auditor shall deposit the amount of penalty with the Authority within *thirty days* of the order:

  Provided that where the auditor prefers an appeal against the order of the Authority, it shall deposit *ten per cent* of the amount of the monetary penalty with the Appellate Tribunal.
- ✓ If, within *thirty days* of the order passed, the auditor neither pays the penalty nor appeals against the order, the Authority shall, without prejudice to any other action, inform about such non-compliance to every company or body corporate in which the auditor is functioning (including those not covered by rule 3) and every such company or body corporate shall appoint a new auditor in accordance with the provisions of the Act.

- ✓ Where the order passed debars the auditor from practice, the order shall be sent to every company or body corporate in which the auditor is functioning as auditor (including those not covered by rule 3) and every such company or body corporate shall appoint a new auditor in accordance with the provisions of the Act.

(f) Punishment in case of non-compliance:

If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of these rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

(g) Role of chairperson and full-time members:

To examine and decide matters relating to investigation, monitoring, enforcement and disciplinary proceedings.

(h) Advisory committees, study groups and task forces:

These are constituted by the Authority for the effective performance of its functions under the Act.

(i) Financial Reporting advocacy and education:

The Authority shall take suitable measures for the promotion of significance of auditing standards, accounting standards and such other matters through training, workshops, seminars etc.

(j) Confidentiality and security of information:

The Authority and all persons and organizations associated with it shall maintain complete confidentiality and security of all information provided to them for work purposes.

(g) Avoidance of conflict of interest:

The Authority shall not enter into any contract, arrangement or relationship that may or is likely to interfere with its ability to perform its functions in an effective manner.
The Authority or any person associated with it:

- ✓ shall not receive any funds, assets, donations, favours, gifts or sponsorship from any source other than Central Government and
- ✓ shall not enter into any liabilities, obligations or commitments without permission of the Central Government.

(h) International associations and international assistance:

The Authority may become a member of regional or international associations of independent audit regulators and standard-setters on such terms as it deems fit.
The Authority may provide assistance to or receive assistance from foreign independent audit regulators in the investigation of an auditor in accordance with the Indian laws on such terms as it deems fit.

- The link for the said notification is as follows:
  http://www.mca.gov.in/Ministry/pdf/NFRARules2018_13112018.pdf

RBI UPDATES:

A. REAL TIME GROSS SETTLEMENT (RTGS) SYSTEM - IMPLEMENTATION OF POSITIVE CONFIRMATION:

- RBI vide its Notification No. **RBI/2018-19/76 DPSS (CO) RTGS No.1049/04.04.016/2018-19** dated November 15, 2018 issued notification for implementation of Real Time Gross Settlement (RTGS) System.

- Up till now, National Electronic Funds Transfer (NEFT) system has been providing positive confirmation to the remitter of the funds regarding completion of the funds transfer, thus giving an assurance to the remitter that the funds have been successfully credited to the beneficiary account. Now onwards same facility will be extended by the banks to the remitter of funds under the RTGS system as well.

- Initially, the positive confirmation feature in RTGS would be available for member banks wherein both remitter and beneficiary banks access RTGS through thick client interface / Structured Financial Messaging System (SFMS) member interface. Member banks are expected to communicate the same to their customers. The positive confirmation feature would be subsequently enabled for member banks accessing RTGS through other channels as well.

- For the above purpose, a new message format (camt.059) has been introduced to communicate an acknowledgement to the remitting bank containing the date and time of credit to beneficiary account. The beneficiary's bank would communicate the confirmation of funds transfer through the SMFS and the remitting bank in turn initiates an SMS and / or generates an e-mail to the remitter.

- RBI further instructs all banks to put in place systems to ensure straight-through-processing (STP) based confirmation processing. The beneficiary bank shall ensure that such confirmation message is sent as soon as the amount is credited to the beneficiary account in Core Banking Solutions (CBS) while the confirmation message from the remitting bank shall be necessarily sent on a real time basis and in any case not beyond one hour after receipt of credit message from the beneficiary bank.

- The system of sending positive confirmation to the customers shall be operationalised by banks at the earliest but not later than two months from the date of this circular.

- The Link of this notification is as under:
  https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11414&Mode=0

B. VALUE FREE TRANSFER (VFT) OF GOVERNMENT SECURITIES – GUIDELINES

- RBI Vide its Notification No. RBI/2018-19/78 IDMD.CDD.No.1241/11.02.001/2018-19 dated November 16, 2018 has issued guidelines for Value Free Transfer (VFT) of Government Securities.

- VFT of the government securities means transfer of securities from one Subsidiary General Ledger (SGL)/Constituent Subsidiary General Ledger (CSGL) to another SGL/CSGL account, without consideration.

- The following transactions will be eligible for VFT of government securities:
  - Transfers on account of gifts and inheritance, between one CSGL account to another;
  - Inter-depository transfers;
  - Transfer from CSGL accounts of clearing corporations to the CSGL account of the depositories or to other CSGL holders for onward transfer to clients for distribution of securities allotted during primary auction settlement;
  - Transfer of securities on account of mergers and amalgamations;
  - Transfer of securities on account of change of custodians by Foreign Portfolio Investors, subject to approval by SEBI.

- The eligible entities will be allowed to initiate VFT through RBI's Core Banking System viz., e-Kuber for the transactions mentioned above. The details of the VFT effected as above to be reported by entities effecting the VFT on a weekly basis to The Regional Director, Public Debt Office, Mumbai Regional Office, RBI, Fort, Mumbai 400 001.

- Permission for VFT for any other purpose to be granted on a case to case basis. Applications for the same to be submitted to Public Debt Office, Mumbai Regional Office, RBI, Fort, Mumbai - 400 001.

- The Link of this Circular is as under:

  https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11417&Mode=0

IBBI UPDATES:

A. PRESS RELEASE DATED NOVEMBER 26,2018.

- IBBI vide its Press Release dated November 26, 2018 has issued a draft specimen for suggestions and comments from various stakeholders on:
  a. Information Memorandum
  b. Evaluation Matrix
  c. Request for Resolution Plans, and
  d. Resolution Plan.

  These documents help the stakeholders to make informed decision and hence the outcome of a Corporate Insolvency Resolution process depends on the quality of these documents. The Code read with the Regulations indicate the content and purpose of the aforesaid documents.

  Market has developed best practices about detailed content of these documents from the perspective of adequacy and relevance for stakeholders. It, however, requires considerable skill and expertise and due diligence to prepare these documents which are complete, correct, relevant and user friendly, while confirming to the requirements of the Code and Regulations and meeting the need and expectations of the stakeholders

  In order to refine these documents, this Press Release has been issued for guidance of the stakeholders from various inputs received by IBBI from the stakeholders.

- The Link for this Press Release is as under:
  https://ibbi.gov.in/webadmin/pdf/press/2018/Nov/PR-Specimen-compressed.pdf

B. INSOLVENCY PROFESSIONALS TO ACT AS INTERIM RESOLUTION PROFESSIONALS AND LIQUIDATORS (RECOMMENDATION) (SECOND) GUIDELINES, 2018

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 under section 16(4) of the Code to recommend the name of an IP to AA against whom no disciplinary proceedings are pending.

Also, Section 34(4) of the Code requires the AA to replace the resolution professional in following cases:

(a) the resolution plan submitted by the resolution professional was rejected for failure to meet the requirements as mentioned under submission of resolution plan in Section 30(2) of the Code;

(b) the Board recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing; or

(c) the resolution professional fails to submit written consent as per Section 34(1) of the Code.

Accordingly, on November 30, 2018, the Board has issued the guidelines which shall become effective from *January 01, 2019* in respect of appointment as IRP and Liquidators. The said guidelines are:

Eligibility of IP to be in the panel:-

(a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him;

(b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;

(c) he expresses his interest to be included in the Panel for the relevant period; and

(d) he undertakes to discharge the responsibility as IRP or Liquidator, as he may be appointed by the AA.

It must be explicitly understood that:
(a) the AA may require the Board to recommend an IP from or outside the Panel and in such cases, the Board shall accordingly recommend an IP;

(b) an IP in the Panel can be appointed as IRP or as Liquidator, at the sole discretion of the AA;

(c) the submission of expression of interest is an unconditional consent by the IP to act as an IRP or Liquidator, for any corporate debtor; and

(d) an IP who declines to act as IRP or Liquidator, as the case may be, on being appointed by the AA, shall not be included in the Panel for the next five years, without prejudice to any other action that may be taken by the Board.

For on-going assignments it is clarified that the eligible IPs will be included in the Panel in order of the volume of ongoing processes they have in hand. The IP who has the lowest volume of ongoing processes will get a score of 100 and will be at the top of the Panel. The IP who has the highest volume of ongoing processes will get a score of 0.

The difference between the highest volume and the lowest volume will be equated to 100 and other IPs will get scores between 0 and 100 depending on volume of their ongoing assignments.

1. An on-going assignment will be valued as under:

Ongoing assignments	Volume
IRP of a Corporate Insolvency Resolution Process	05
RP of a Corporate Insolvency Resolution Process	10
IRP of a Fast Track Process	03
RP of a Fast Track Process	06
Liquidation / Voluntary Liquidation	05
Individual Insolvency	01
Bankruptcy Trustee	01

It is clarified that where two or more IPs get the same score, they will be placed in the Panel in order of the date of their registration with the Board. The IP registered earlier will be placed above the IP registered later.

- The link of this above guidelines is as under:

https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Nov/Guidelines-%20IPs%20to%20act%20as%20Interim%20Resolution%20Professionals%20and%20Liquidators%20(Recommendation)%20Guidelines%202018%20FINAL_2018-11-30%2014:53:13.pdf

SEBI UPDATES:

A. STANDARDIZED NORMS FOR TRANSFER OF SECURITIES IN PHYSICAL MODE

Vide Regulation 40 and Schedule VII of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") SEBI has prescribed requirements for transfer of securities in physical mode. However, it has been noticed by SEBI that the documentation requirement by Registrar and Transfer Agents (RTA) varies from RTA to RTA. SEBI has also received representations, highlighting difficulties faced by transferees in providing these documents. In this regard, SEBI had meetings with Registrars Association of India (RAIN) and Depositories in this regard and pursuant to such meetings, RAIN has submitted a standardized procedure for transfer of securities in physical mode. The proposal of RAIN has been examined and accordingly, the documentation / procedure for transfer of physical securities is modified by SEBI as follows:

- **<u>Non-availability of PAN of the transferor for transfer deeds executed prior to December 01, 2015:</u>**

  After noticing that many transfer deeds executed prior to the notification of LODR, (i.e., December 01, 2015) have not been registered due to non-availability of PAN of the transferor, SEBI has clarified that transfer deeds executed prior to notification of LODR may be registered with or without the PAN of the transferor as per the requirement of quoting PAN under the applicable Income Tax Rules.

- **<u>Mismatch of name in PAN card vis-à-vis name on share certificate/ transfer deed</u>**:

  SEBI clarified that in cases where there is mismatch in of name in PAN and that on share certificate/Transfer deed, submission of **any** of the following additional documents explaining difference in names would suffice:

  1. Copy of Passport
  2. Copy of legally recognized Marriage Certificate
  3. Copy of gazette notification regarding change in name
  4. Copy of Aadhar Card

- **<u>Major mismatch/Non-availability of transferor's signature:</u>**

  Where there is major mismatch/Non-availability in transferor's signature as per the procedure laid down in LODR, the transferor is required to update his / her signature by submitting bank attested signature along with an affidavit and cancelled cheque to the RTA/company. Many instances have been brought to the notice of SEBI where the transferor did not take efforts to update his signature since he had already received the consideration for the transfer. Further, in many cases, the transferors cannot be traced now. For such cases, following procedure/ documentation is to be followed for registration of transfer of securities:

1. RTA/ company shall follow the procedure as laid down in Para (B)(2) of Schedule VII of LODR for major difference or non-availability of signature of the transferor(s).

2. Issuers / RTAs shall make efforts to contact the transferor :

i) by checking the Dividend history and obtaining the current contact details from the bank where dividend was en-cashed

ii) from the address, email ids and phone numbers, if any, available with the Depositories/KRA

3. In case of non- delivery of the objection memo to the transferor or non-cooperation by / inability of the transferor to provide the required details to the transferee, company / RTA shall register the transfer after following the procedure as under

   i) Following additional documents shall be collected from the transferee:
   a) An indemnity bond from the transferee as provided in Annexure A of this Circular;
   b) Copy of address proof - Passport / Aadhar Card / Driving License of the transferee.
   c) An undertaking that the transferee will not transfer/ demat the physical securities until the lock-in period specified under clause (iv) below is completed

   (ii) RTA may also verify the documents submitted by the transferee with the KYC details, if any, available with the Depositories/ KRAs.

(iii) Companies / RTAs shall publish an advertisement in at least one English language national daily newspaper having nationwide circulation and in one regional language daily newspaper published in the place of registered office of the listed entity is situated, giving notice of the proposed transfer and seeking objection, if any, to the same within a period of 30 days from the date of advertisement. A copy of the advertisement shall also be published on the company's website.

(iv) Transfer shall be effective only after the expiry of 30 days from the newspaper advertisement. The securities so transferred shall bear a stamp affixed by the company / RTA stating that these securities shall be under lock-in for a period of 6 months from the date of registration of transfer and should not be transferred / dematerialized during the said period.

(v) Names of the transferor, transferee and no. of securities transferred under this procedure shall be disclosed on the company's website for a period of 6 months from the date of transfer. This information shall also be displayed on stock exchange website as a corporate announcement;

- In case of non-availability of any document required for transfer and the transferor is not cooperating or not traceable, companies/ RTA shall register the transfer by following the procedure as specified in Para of *mismatch/non-availability of transferor's signature* above.

- Clause (B)(2)(d) of Schedule VII of LODR , inter-alia, require that the transfer shall be registered if, the address of the transferor submitted in the bank attestation matches with the address recorded in the records of the company / RTA. However, it has been brought to the notice that the address as available with the company, as per old records, may not match with the current address attested by the bank and this has resulted in rejection of transfer requests causing undue hardship to investors. Accordingly, in case the bank attested address of the transferor differs from the records available with the company / RTA, companies/ RTAs shall register the transfer by updating the new address as attested by the bank. Further, an intimation may also be sent by the RTA with regard to updation of address on the old and new address of the transferor

➢ The link of this above circular is as under:
https://www.sebi.gov.in/legal/circulars/nov-2018/standardised-norms-for-transfer-of-securities-in-physical-mode_40966.html

B. DISCLOSURE OF REASONS FOR DELAY IN SUBMISSION OF FINANCIAL RESULTS BY LISTED ENTITIES:

As per Regulation 33 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), the quarterly and annual financial results are to be submitted by listed entities to stock exchanges within forty-five/sixty days from the end of the quarter/financial year.

In case of non-compliance of various provisions of the Listing Regulations including non-submission / delayed submission of financial results, SEBI has prescribed a standard operating procedure (*providing for levy of penalties, freezing of promoter shareholding, suspension of trading ,etc*.) through various circulars, the latest being the circular dated May 3, 2018 which acts as deterrents for listed entities who delay in disclosing their financial results.

Earlier, whenever there were delays in submission of financial results by certain listed entities to the stock exchanges, the fact of delay was intimated without disclosing the reason for delay by the listed entity. This left the investors unaware which may have had an impact on their investment decision. Hence, a need was felt for listed entities to disclose reasons for delay in submission of their financial results.

Accordingly, if any listed entity does not submit its financial results in accordance with the timelines specified in Regulation 33 of Listing Regulations, then:

(i) the listed entity shall disclose detailed reasons for such delay to the stock exchanges *within one working day of the due date of submission for the results* as required under Regulation 33.

(ii) however, if the decision to delay the results was taken by the listed entity prior to the due date, the listed entity shall disclose detailed reasons for such delay to the stock exchanges *within one working day of such decision.*

- The link of this above Circular is as under: https://www.sebi.gov.in/legal/circulars/nov-2018/disclosure-of-reasons-for-delay-in-submission-of-financial-results-by-listed-entities_41040.html

C. MANDATORY FUND RAISING BY WAY OF DEBT SECURITIES FROM 01.04.2019

To deepen the corporate bonds market, Sebi came out with a framework that will require a large corporate to raise 25 per cent borrowings through this route from next fiscal.

In case a large corporate is unable to comply with the requirement; Sebi said such entities will have to provide an explanation for such shortfall to the stock exchanges in a prescribed manner.

The guidelines come after a proposal was made in Budget 2018-19 that Sebi would consider mandating, beginning with large corporates, meeting about one-fourth of the companies' financing needs from the bond market.

This is part of an effort to reduce reliance on banks for financing corporates and simultaneously developing a liquid and vibrant corporate bond market

Applicability:

- For the entities following April-March as their financial year, the framework will come into effect from April 1, 2019, and for the firms which follow calendar year as their financial year, the guidelines will become effective January 1, 2020.

- A listed entity shall be considered as a Large Corporate (LC) and such LC shall raise not less than 25 per cent of its incremental borrowing during the financial year by way of issuance of debt securities.

- **Large corporates**: All listed entities (except for Scheduled Commercial Banks) having an outstanding long-term borrowing of at least Rs 100 crore; a credit rating of 'AA and above and target to finance themselves with long-term borrowings above 1 year.

Framework:

For an entity identified as a LC, the following shall be applicable:

- For FY 2020 and 2021, the requirement of meeting the incremental borrowing norms shall be applicable on an annual basis. Accordingly, a listed entity identified as a LC on last day of FY 2019 and FY 2020, shall comply with the requirement as laid down, by last day of FY 2020 and FY 2021, respectively.

- Provided that in case where a LC is unable to comply with the above requirement, it shall provide an explanation for such shortfall to the Stock Exchanges, in the manner as prescribed.

- From FY 2022, the requirement of mandatory incremental borrowing by a LC in a FY will need to be met over a contiguous block of two years. Accordingly, a listed entity identified as a LC, as on last day of FY "T-1", shall have to fulfil the requirement of incremental borrowing for FY "T", over FY "T" and "T+1".

- However, if at the end of two years i.e. last day of FY "T+1", there is a shortfall in the requisite borrowing (i.e. the actual borrowing through debt securities is less than 25% of the incremental borrowings for FY "T"), a monetary penalty/fine of 0.2% of the shortfall in the borrowed amount shall be levied and the same shall be paid to the Stock Exchange(s).

Disclosure requirements for large entities:

A listed entity, identified as a LC under the instant framework, shall make the following disclosures to the stock exchanges, where its security (ies) are listed:

- Within 30 days from the beginning of the FY, disclose the fact that they are identified as a LC, in the format as provided at Annexure A.

- Within 45 days of the end of the FY, the details of the incremental borrowings done during the FY, in the formats as provided at Annexure B1 and B2.

- The disclosures made shall be certified both by the Company Secretary and the Chief Financial Officer, of the LC.

- Further, the disclosures made shall also form part of audited annual financial results of the entity.

- The details of the framework as mentioned and disclosure requirements as mentioned are illustrated in Annexure C.

Responsibilities of Stock Exchanges:

- The Stock Exchange(s) shall collate the information about the LC, disclosed on their platform, and shall submit the same to the Board within 14 days of the last date of submission of annual financial results.

- In the event of a short fall in the requisite borrowing, the Stock Exchanges shall collect the fine as mentioned. The fine so collected shall be remitted by the stock exchanges to SEBI IPEF fund within 10 days from the end of the month in which the fine was collected.

- This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with regulation 101(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

- This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and under the drop down "Corp Debt Market".

D. OPERATING GUIDELINES FOR ALTERNATIVE INVESTMENT FUNDS INTERNATIONAL FINANCIAL SERVICES CENTRES

- SEBI vide its Notification No. SEBI/HO/IMD/DF1/CIR/P/143/2018 dated November 26, 2018 issued guidelines for Alternative Investment Funds (AIF) in International Financial Services Centres pertaining to registration, compliance requirements and restrictions.

- For registration as AIF, the Board said any fund established or incorporated under IFSC, the form of a trust or a company or a limited liability partnership or a body corporate, can seek registration under the regulations.

- The Board will grant certificate under any specific category of AIF, if it will be satisfied that the applicant fulfills the requirements as specified in AIF Regulations.

- Earlier, AIFs were permitted to invest in India through the FPI route, governing permissible investments by those funds operating in IFSCs. Now, they may invest in India through the Foreign Venture Capital Investor or Foreign Direct Investment (FDI) route also.

- Under the rules, each scheme of the AIF will have a corpus of at least USD 3 million.

- The Board said that the AIF shall accept from an investor, an investment of value not less than USD one hundred and fifty thousand. Further, for investors who are employees or directors of the AIF or employees or directors of the manager, the minimum value of investment shall be USD Forty Thousand.

- The link of this above circular is as under:

  https://www.sebi.gov.in/legal/circulars/nov-2018/operating-guidelines-for-alternative-investment-funds-in-international-financial-services-centres_41070.html

E. DISCLOSURES REGARDING COMMODITY RISKS BY LISTED ENTITIES :

- SEBI Vide its Circular No. SEBI/HO/CFD/CMD1/CIR/P/2018/0000000141 dated November 15, 2018 mandates **listed entities** to make **disclosures regarding commodity** price **risk** and hedging activities in the corporate governance report section of the annual report of a **listed entity**. **Companies** have to disclose **risk relating to** material **commodities.**

- Such provisions exist for disclosing currency risk and this has led to companies improving hedging in currencies as market see red when they see that unhedged currency risks are higher when currency or Indian rupee is falling. Several non-performing assets were generated mainly because the commodity in which the company was active became very volatile and several small and mid-cap companies were not hedging them. Only large manufacturing companies were hedging risks, that too, in commodities like bullion, metals and crude oil and its derivatives. They were hedging risks most of the time in overseas exchanges.

- The Link of this Circular is as under:

  https://www.sebi.gov.in/legal/circulars/nov-2018/disclosures-regarding-commodity-risks-by-listed-entities_41003.html

F. TRADING HOURS FOR COMMODITY DERIVATIVES SEGMENT

- SEBI vide its circular dated August 30, 2016, had specified commodity category-wise time limits within which exchanges are permitted to fix trading hours for trading in derivatives contracts. Thereafter, SEBI issued a Circular dated November 30, 2018 to extend the trade time within which recognized stock exchanges can set their trading hours for their commodity derivatives segment.

- As per the Circular, the revised trade timings are as follows:

Sr. no	Commodity category	Trade Start Time	Trade End Time	
1.	Non-Agricultural Commodities	09:00 AM	11:30 PM	11:55 PM
2.	Agricultural and Agri-processed Commodities	09:00 AM	09:00 PM	

- The provisions of this circular shall come into effect from **30 days** from the date of the said circular.

- The main purpose for the revision in timings is to deepen the commodity derivatives markets as well as to enhance the participation of stakeholders such as Farmers Producers Organizations (FPOs), value chain participants, foreign entities having actual exposure to Indian physical markets etc., as recommended by the Commodity Derivatives Advisory Committee.

- Further, the Exchanges and Clearing Corporations are advised to:

  a) to make necessary amendments to the relevant bye-laws, rules and regulations.

  b) bring the provisions of this circular to the notice of the stock brokers of the Exchange and also to disseminate the same on their website.

  c) communicate to SEBI, the status of the implementation of the provisions of this circular.

- The Link to the above said Circular is as follow:

https://www.sebi.gov.in/legal/circulars/nov-2018/trading-hours-for-commodity-derivatives-segment_41181.html

ARTICLE OF THE MONTH

The Companies (Amendment) Ordinance, 2018

The recommendation of the Union Cabinet for promulgation of the Companies (Amendment) Ordinance, 2018 has been assented to by the President of India – Shri Ram Nath Kovind on November 02, 2018. The Ordinance is based on the recommendations of the Committee appointed by the Government to review offences under the Companies Act, 2013.

➢ INTRODUCTION

The Centre has promulgated the Companies (Amendment) Ordinance, 2018 to promote ease of doing business with better corporate compliance. The President of India has promulgated an Ordinance to further amend the Companies Act, 2013 in exercise of the powers conferred by clause (1) of article 123 of the Constitution named as Companies (Amendment) Ordinance, 2018 ("Ordinance").

➢ KEY HIGHLIGHTS OF THE ORDINANCE

The key highlights of the Ordinance are as follows:

1. Section 2(41) – Definition of "financial year"

In case where a company or body corporate which is a holding company or a subsidiary or associate of a company incorporated outside India and is required to follow a different financial year for consolidation of accounts outside India, such a company can, by making an application to the Central Government apply for the change in the financial year. The Ordinance gives the power to the Central Government to change the financial year and allow any period as its financial year, whether or not that period is a year.

Further, the existing applications pending before the Tribunal before November 02, 2018 shall be disposed off by the Tribunal in accordance with the provisions applicable to it before such commencement.

2. Section 10(A) – Insertion of a new Section 10A– Commencement of a business, etc.

After Section 10 of the Companies Act, 2013 – effect of Memorandum and Articles, a new Section 10A is inserted pertaining to Commencement of business, etc which states that a Company having a share capital shall not commence any business or exercise any borrowing power unless -

a) ***a declaration*** is filed by a Director within a period of ***180 days*** of the date of incorporation of the Company with the Registrar in such form as is prescribed that every subscriber to the memorandum has paid the value of the shares as agreed form.

b) The Company has filed with the ROC, ***a verification*** of its registered office in e-Form INC-22, as provided in Section 12(2).

The Company shall be liable to a penalty of ***Rs.50,000/-*** and every officer who is in default shall be liable to a penalty of ***Rs.1,000/-*** for each day during which such default continues but not exceeding an amount if ***Rs. 1,00,000/-.***

Where no declaration is filed within a period of 180 days of the date of incorporation of the Company, and the ROC has reasonable cause to believe that the Company is not carrying on any business or operations, he may, without prejudice to the provisions of Section 10(A) sub section (2) initiate action for removal of the name of the company from the register of companies.

3. Section 12 – Registered Office of the Company

In Section 12 of the Companies Act, 2013, after sub-section (8), a new sub-section (9)shall be inserted which states as follows:

"If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII"

4. Section 14 – Alteration of Articles

In section 14 of the principal Act,-

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:-

"Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.";

(ii) in sub-section (2), for the word "Tribunal", the words "Central Government" shall be substituted.

As per Section 14(1) of the Companies Act, 2013, for conversion of Public Company into Private Limited Company approval of ***Tribunal*** is required.

By the Ordinance, the power of Tribunal shall be transferred to ***Central Government.*** Therefore, after Ordinance, Public Company can be converted into Private Company with approval of Central Government.

Further, the existing applications are however, are required to be disposed off by the Tribunal in accordance with existing applicable provisions.

5. Section 53 – Prohibition on Issue of Shares at Discount

In Section 53 of the Companies Act, 2013, sub-section (3) shall be substituted, stating as follows:

Where any Company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to ***an amount equal to the amount raised through the issue of shares at a discount*** or ***Rs. 5,00,000*** whichever is **less,** and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent per annum from the date of issue of such shares to the persons to whom such shares have been issued.

6. Section 64- Notice to be given to Registrar for alteration of Share capital

In Section 64 of the Companies Act 2013, sub-section (2) shall be substituted. Accordingly, where any company fails to file notice with the Registrar within 30 days of alteration or increase or redemption of Share capital as per sub-section (1) of Section 64, such Company and every officer who is in default shall be liable to a penalty of ***Rs. 1,000*** for each day during which such default continues, or ***Rs. 5,00,000*** whichever is less.

7. Section 77- Duty to register charges, etc.

In Section 77 of the Companies Act, 2013, in sub-section (1) for the first and second provisos following shall be substituted:

a. Charges created before commencement of Ordinance

As per Section 77(1) Company is required to register Charge within ***30 days*** of its creation with the Registrar. However, Registrar may on an application by the Company allow delay in registering the Charge till ***300 days*** of creation with additional fees. If Company fails to file within 300 days, it can file form for registration for Charge as per Section 87 by seeking condonation from Regional Director.

b. Charges created after commencement of Ordinance

Now, in case of charge created after the commencement of Ordinance, 2018, then Registrar shall allow such registration "within period of ***60 days*** of such creation".

If Company fails to file within 60 days of creation, ROC may allow such registration to be made within a further period of 60 days after payment of such ad valorem fees as may be prescribed"

8. Section 86 – Punishment for contravention

Section 86 of the Companies Act, 2013, shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

If any person willfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under Section 447.

9. Section 87 - Rectification by Central Government in Register of charges

Section 87 of the Companies Act, 2013 shall be substituted namely:

The Central Government on being satisfied that —
(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of Section 82 or Section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.

10. Section 90- Register of significant beneficial owners in a company

Section 90(9) of the Companies Act, 2013 shall be substituted as follows:

a. The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of 1 year from the date of such order

b. Provided that if no such application has been filed within a period of 1 year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of Section125, in such manner as may be prescribed.

11. Section 92 - Annual Return

In Section 92 of the Companies Act 2013, for sub-section (5), the following sub-section shall be substituted.

As per existing provisions, every officer-in-default shall be prosecuted with an imprisonment for term of 6 months and penalty if company fails to file the annual return before the specified period.

If any company fails to file Annual Return before expiry of 60 days from the date of its Annual General Meeting, such company and its officer who is in default shall be liable to a penalty of Rs. 50,000/- and in case of continuing failure, with further penalty of Rs. 100 for each day during which such failure continues, subject to a maximum of Rs. 5,00,000.

The Ordinance removes the imprisonment provision against all directors of the company in default for non-filing of copy of financials to RoC.

12. Section 102- Statement to be annexed to notice

In Section 102 of the Companies Act 2013, for sub-section (5), the following sub-section shall be substituted as follows:

Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.

13. Section 105 – Proxies

In section 105 of the Companies Act 2013, in sub-section (3), for the words "punishable with fine which may extend to five thousand rupees", the words "***liable to a penalty*** of ***Rs. 5,000***" shall be substituted.

Section 105(2) requires every company (with share capital), or where Article of Association provides for voting by proxy, to provide a statement along with notice for calling general meeting that a member is entitled to attend and vote or to appoint a proxy. Any failure to comply with this requirement results in levy of penalty of up to Rs. 5,000. The Ordinance levies the ***absolute penalty of Rs. 5,000*** for such non-compliance.

14. Section 117 - Resolutions and agreements to be filed

In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted.

If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a ***penalty of Rs. 1,00,000***and in case of continuing failure, with further penalty of ***Rs.500*** for each day after the first during which such failure continues, subject to a maximum of ***Rs. 25,00,000***and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ***Rs. 50,000*** and in case of continuing failure, with further penalty of ***Rs. 500*** for each day after the first during which such failure continues, subject to a maximum of **Rs. 5,00,000.**

15. Section 121- Report on Annual General Meeting

In section 121 of the principal Act, for sub-section (3), Amendment of the following sub-section shall be substituted, namely:

If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of ***Rs. 1,00,000*** and in case of continuing failure, with further penalty of Rs. 500 for each day after the first during which such

failure continues, subject to a maximum of ***Rs. 5,00,000*** and every officer of the company who is in default shall be liable to a penalty which shall not be less than ***Rs. 25,000*** and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ***Rs.*****1,00,000.**

16. Section – 137- Filing of Financial Statements

In Section 137 of the principal Act, in sub-section (3), for the words ***"punishable with fine"***, the words ***"liable to a penalty"*** shall be substituted;
The erstwhile provisions of Section 137 provided that if a Company fails to file financial statements with the Registrar it shall be punishable with fine and the officers of the Company shall be prosecuted.

The Ordinance has categorized such default as a 'civil default' by substituting fine with penalty.

17. **Section – 140 – Resignation of Auditor**

In section 140 of the Companies Act 2013, for sub-section (3), the following sub-section shall be substituted.

If an auditor fails to file ***e-Form ADT-3 within 30 days*** of his resignation he shall be liable for a penalty of ***Rs. 50,000*** or his/her remuneration whichever is lower, with an everyday penalty of Rs. 5000 if the failure continues, subject to a maximum of **Rs. 5,00,000.**

18. Section 157 - Intimation of DIN

In section 157 of the Companies Act 2013, for sub-section (2), the following sub-section shall be substituted.

The fine under section 157 for not furnishing DIN to the Registrar shall be substituted with penalty of ***Rs. 25,000***.

However, the sub-section now specifically provides that if the default continues a further penalty of ***Rs. 100*** shall be levied every day.

19. **Section 159 – Punishment for contravention of sections 152, 155 and 156**

For Section 159 of the Companies Act 2013, the following Section shall be substituted:

If any individual or director of a company makes any default in complying with any of the provisions of Section 152, Section 155 and Section 156, such individual or director of the company shall be liable to a penalty which may extend to **Rs. 50,000/-** and where the default is a continuing one, with a further penalty which may extend to**Rs.500/-** for each day after the first during which such default continues.

Section 152, 155 and 156 of the Act list downs the provisions for appointment of Director, allotment of DIN and intimation of DIN. The penalty for contravention of these sections has been shifted to civil liability.

20. Section 164 –Disqualification of Director

In Section 164(1) a new sub-clause (i) shall been inserted.

If a director does not comply with the number of directorships i.e. maximum 10 public companies and maximum 20 in other companies he/she shall be disqualified under Section 164 of the Act.

21. Section 165 - Number of Directorships

In Section 165 of the Companies Act, in sub-section (6), for the portion beginning with "punishable with fine" and ending with "contravention continues", the words ***"liable to a penalty of five thousand rupees for each day after the first during which such contravention continues"*** shall be substituted.

22. Section 191- Payment to director for loss of office

In Section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted.

If a director of the Company makes any default in complying with the provisions of this Section, such Director shall be liable to a penalty of **Rs. 1,00,000/-**

The punishment for default under this Section has been shifted to civil liability.

23. Section 197 - Overall maximum managerial remuneration in case of inadequacy of profits

In section 197 of the Companies Act, 2013—

(a) sub-section (7) has been omitted;
(b) for sub-section (15), the following sub-section has been substituted, namely:

"(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of ***Rs. 1,00,000*** and where any default has been made by a company, the company shall be liable to a penalty of ***Rs. 5,00,000***."

Pursuant to the amendment introduced in the Ordinance the whole sub-section (7) shall be omitted. Therefore, now the Independent Directors can be entitled to stock options.

24. Section 203 – Appointment of Key Managerial Personnel

In section 203 of the Companies Act, for sub-section (5), the following sub-section shall be substituted.

If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

It is mandatory for specified companies to appoint Key Managerial Personnel (i.e., CEO, CFO and CS) under Section 203. Currently, any failure in appointing the KMP would result in levy of penalty of ***Rs. 1,00,000 to Rs. 5,00,000*** on the company and up to ***Rs. 50,000*** on every officer-in-default. The Ordinance now levies an absolute penalty of ***Rs. 5,00,000*** on the company and penalty of Rs. 50,000 on every officer-in-default. In case of continuous default there would be an additional penalty of ***Rs. 1,000 per day*** for each day subject to maximum of ***Rs. 5,00,000.***

25. Section 238 - Registration of offer of schemes involving transfer of shares

In section 238 of the Companies Act, 2013, in sub-section (3), for the words "punishable with fine which shall not be less than ***Rs. 25,000*** but which may extend to ***Rs. 5,00,000***", the words "liable to a penalty of ***Rs. 1,00,000***" shall be substituted.

26. Section 248 – Power of the Registrar to remove the name of the company

The Ordinance has introduced two new clauses for removal of name of the Company as follows:

(a) in clause (c), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:

"(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under subsection (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.".

27. Section 441 - Compounding of Offence

In Section 441, of the Companies Act, following shall be substituted:

a) The pecuniary jurisdiction of RD for compounding of offence under section 441(1)(b) has been from ***Rs.5,00,000*** to ***Rs. 25,00,000.*** Considering the major bulk of cases handled by NCLT at present and the significance of the report of RoC, it is rightfully justified to give greater jurisdiction to RD.

b) Ordinance has provided clarification that offences which are punishable with imprisonment only or with imprisonment and fine shall not be compoundable.

28. Section 446B- Lesser penalties for One Person Companies (OPC) or small companies

In section 446B of the Companies Act 2013, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words ***"liable to a penalty which shall not be more than one half of the penalty specified in such sections***" shall be substituted.

The penal provision for any default in the annual return of an OPC or small company has been shifted from fine to penalty.

29. Section 447- Punishment for Fraud

In Section 447 of the Companies Act, 2013, in the second proviso, for the words ***"Rs. 25,00,000",*** the words ***"Rs. 5,00,000"*** shall be substituted.

30. Section 454 - Adjudication of penalties

In Section 454 of the Companies Act 2013, —(i) for sub-section (3), the following sub-section shall be substituted, namely:

The adjudicating officer may, by an order-
(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and
(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.";

In Section 454 of the Companies Act 2013, in sub-section (8),

(a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted;
(b) in clause (ii), for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.

31. Section 454A- Penalty for repeated default

After Section 454 of the Companies Act, 2013 a new section 454A shall be inserted.
Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act."

- **CONCLUSION**

To sum up, the Companies (Amendment) Ordinance 2018, is based on the Report of Committee constituted by MCA for 'Review of Penal Provisions of Companies Act 2013', which included several recommendations relating to corporate compliance/ governance, restructuring of Corporate Offences to relieve Special Courts from adjudicating routine offences, De-clogging the NCLT, etc.

In short, the major amendments proposed in the Companies Amendment Ordinance 2018,increase the power of Registrar of Companies and Regional Director. As at many places the word Tribunal has been replaced by Central Government, Compounding threshold for going to NCLT to be revised, again introduction of Certificate of Commencement of Business, Stricter norms for Independent Directors, alteration in relation to time period for charge registration and satisfaction and new ground for strike off of Company has been given to ROC.

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INSPIRATIONAL QUOTE

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