



*Private Circulation Only

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

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

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 “**Consequences of delay in filing of Balance Sheet and Annual Return**”.

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

With warmest thanks,
Amita Desai & Team



1) MCA NOTIFICATIONS:

A. Constitution of National Financial Reporting Authority (NFRA)- Section 132 of Companies Act, 2013

- Ministry of Corporate Affairs (MCA) has issued a notification dated October 1, 2018, in which the Central Government has appointed October 1, 2018 as the date for the constitution of the NFRA pursuant to Section 132 (1) of Companies Act, 2013.
- The link for the said notification is as follows:
http://www.mca.gov.in/Ministry/pdf/ConstitutionNotificationNFRA_04102018.pdf

B. Commencement Notification-Section 132 of Companies Act, 2013

- MCA has issued a notification dated October 1, 2018, in which Central Government has appointed October 1, 2018 as the date on which Section 132 (1) and (12) shall come into force pursuant to Section 1(3) of the said Act.
- The link for the said notifications are as follows:
http://www.mca.gov.in/Ministry/pdf/CommencementNotification_04102018.pdf

C. Amendments in Schedule III of Companies Act, 2013

- MCA has issued a notification dated October 11, 2018 by which the Central Government has made the following further amendments in Schedule III of the Companies Act, 2013.
- This notification shall come into effect from the date of its publication in the Official Gazette.

Division Nos.	Before Amendment	Amendments	After Amendment
Division I (i) Under the heading “General instructions for preparation of Balance Sheet and statement of Profit and Loss of a company”, under sub-heading “General instructions”,	Once a unit of measurement is used, it shall be used uniformly in the Financial Statements.	For the word “shall”, the word “should” shall be substituted.	Once a unit of measurement is used, it should be used uniformly in the Financial Statements.

in paragraph 4, in clause (ii)			
(ii) In Part I-Balance Sheet under the heading “II Assets” under sub-heading “Non-Current Assets	(1)(a) Fixed assets	For the words “Fixed assets”, the words “Property, Plant and Equipment” shall be substituted.	(1)(a) Property, Plant and Equipment.
(iii) In Part I-Balance Sheet, in the Notes, under the heading “General Instructions for preparation of Balance Sheet”, in paragraph 6, under the heading “B. Reserves and Surplus”, in item (i), in sub- item (c) under the heading “B. Reserves and Surplus”, in item (i), in sub- item (c)	B. (i) (c) Securities Premium Reserve	The word “Reserve” shall be omitted.	B.(i)(c) Securities Premium
(iv) In Part I-Balance Sheet, in the Notes, under the heading “General Instructions for preparation of Balance Sheet”, in paragraph 6, in Clause W	W. “If in the opinion of the Board, any of the assets other than the fixed assets and Non-Current Investments....shall be stated”.	For the words “fixed assets”, the words “Property, Plant and Equipment” shall be substituted.	W. “If in the opinion of the Board, any of the assets other than the Property, Plant and Equipment and Non-Current Investments....shall be stated”.

<p>Division II</p> <p>In Part I- Balance Sheet- under the heading “Equity and Liabilities”</p>	<p>(1)(a)(ii) Trade Payables and (2)(a)(ii) Trade Payables</p>	<p>For the words “Trade payables” at both the places where they occur, the following shall be substituted.</p>	<p>“Trade Payables: - (A) total outstanding dues of micro enterprises and small enterprises; and (B) total outstanding dues of creditors other than micro enterprises and small enterprises.”</p>
<p>In Part I- Balance Sheet- under the heading “Statement of Changes in Equity”, under sub-heading “B. Other Equity”</p>	<p>Reserves and Surplus- Securities Premium Reserve</p>	<p>For the words “Securities Premium Reserve”, the words “Securities Premium” shall be substituted.</p>	<p>Reserves and Surplus- Securities Premium</p>
<p>In Part I- Balance Sheet, in the “Notes”, under the heading “General Instructions for Preparation of Balance Sheet”, in paragraph 6, under the heading “A. Non-Current Assets”, under sub-heading “VII. Trade Receivables”, for item (i) and Under the heading “B. Current Assets” under sub-heading “III. Trade Receivables”,</p>	<p>(i) Trade Receivables shall be sub-classified as:</p> <p>(a) Secured, considered good,</p> <p>(b) Unsecured, considered good; and</p> <p>(c) Doubtful</p>		<p>(i) Trade Receivables shall be sub-classified as:</p> <p>(a) Trade Receivables considered good - Secured;</p> <p>(b) Trade Receivables considered good - Unsecured;</p> <p>(c) Trade Receivables which have significant increase in Credit Risk; and</p> <p>(d) Trade Receivables - credit impaired.”</p>

<p>for item (i)</p> <p>In Part I- Balance Sheet, in the “Notes”, under the heading “General Instructions for Preparation of Balance Sheet”, in paragraph 6, under the heading “A. Non-Current Assets”, under sub-heading “VIII. Loans”, for item (ii) and</p> <p>Under the heading “B. Current Assets” under sub-heading “V. Loans”, for item (ii)</p>	<p>(ii) Loans Receivables shall be sub-classified as:</p> <p>(a) Secured, considered good;</p> <p>(b) Unsecured, considered good; and</p> <p>(c) Doubtful.</p>		<p>“(ii) Loans Receivables shall be sub-classified as:</p> <p>(a) Loans Receivables considered good - Secured;</p> <p>(b) Loans Receivables considered good - Unsecured;</p> <p>(c) Loans Receivables which have significant increase in Credit Risk; and</p> <p>(d) Loans Receivables - credit impaired,”</p>
<p>In Part I- Balance Sheet, in the “Notes”, under the heading “General Instructions for Preparation of Balance Sheet”, in paragraph 6, after the heading “F. Current Liabilities”</p>	<p>F. Current Liabilities</p> <p>G. “The presentation of liabilities... Indian Accounting Standards.”</p>	<p>“FA. Trade Payables” shall be inserted.</p>	<p>F. Current Liabilities</p> <p>FA. Trade Payables(*)</p> <p>G. “The presentation of liabilities... Indian Accounting Standards.”</p>

and the entries relating thereto			
Division III	Only Division I and Division II were included under Schedule III of the Companies Act, 2013	Division III shall be inserted after Division II and the entries relating thereto.	Division I Division II, and Division III (**) under Schedule III of the Companies Act, 2013.

*Details to be written under this heading are mentioned in brief in the link given below.

**Division III deals with Financial Statements for a Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015.

The format of the balance sheet, necessary instructions for its preparations and the notes relating thereto are mentioned in detail in the link given below.

- The link for the said notification is as follows:
http://www.mca.gov.in/Ministry/pdf/NotificationScheduleIII_12102018.pdf

D. Commencement Notification-Section 132 of Companies Act, 2013

- MCA has further issued a notification dated October 24, 2018 in which Central Government has appointed October 24, 2018 as the date on which Section 132 (2), (4), (5), (10), (13), (14) and (15) shall come into force pursuant to Section 1(3) of the said Act.
- The link for the said notification is as follows:
http://www.mca.gov.in/Ministry/pdf/CommencementNotification_24102018.pdf

E. Notification under Section 454 of the Companies Act, 2013

- MCA has issued a notification dated October 26, 2018 by which the Central Government has made amendments in a Notification dated March 24, 2015, in exercise of its powers conferred by Section 454 of Companies Act, 2013 read with Companies (Adjudication of Penalties) Rules, 2014.
- A brief detail of amendments made in Notification dated March 24, 2015 is as follows:
 - (i) Against serial number 4, under the heading “Designation” for the word “Nainital” the word “Dehradun” shall be substituted.
 - (ii) For serial number 16, the following has been substituted:

“16. Registrar of Companies, Hyderabad	Whole State of Telangana”
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(iii) After serial number 24, the following has been inserted namely,

“25. Registrar of Companies, Vijayawada	Whole State of Andhra Pradesh”
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- This notification shall come into force with effect from 29th October, 2018.
- The link for the said notification is as follows:
http://www.mca.gov.in/Ministry/pdf/notificatioSection454CA26_29102018.pdf

F. Notification under section 396 of Companies Act, 2013

- MCA issued a notification dated October 26, 2018 by which the Central Government in exercise of the powers conferred upon it under section 396 (1) and (2) of the said Act, appointed Registrar of Companies cum Official Liquidator at Dehradun, having territorial jurisdiction in the whole State of Uttarakhand, for the purpose of registration of companies and discharging the functions under the said Act in the State of Uttarakhand.
- This notification shall come into force with effect from October 29, 2018.
- The link for the said notification is as follows:
http://www.mca.gov.in/Ministry/pdf/NotificationROCDehradun26_29102018.pdf
- MCA issued a notification dated October 26, 2018 by which the Central Government in exercise of the powers conferred upon it under section 396 (1) and (2) of the said Act, appointed Registrar of Companies at Vijayawada, having territorial jurisdiction in the whole State of Andhra Pradesh, for the purpose of registration of companies and discharging the functions under the said Act in the State of Andhra Pradesh.
- This notification shall come into force with effect from October 29, 2018.
- The link for the said notification is as follows:
http://www.mca.gov.in/Ministry/pdf/notificationROCVijayawada26_29102018.pdf

2) MCA CIRCULARS:

A. General Circular No. 09/2018

- Ministry of Corporate Affairs (MCA) vide its General Circular No. 09/2018 dated October 5, 2018 has informed that considering the requests received from various stakeholders, stating their concerns about their normal life/work being affected due to heavy rains and floods in the State of Kerala, it has been decided to relax the additional fees payable to companies having registered office in the State of Kerala, on e-forms AOC-4, AOC (CFS) AOC-4(XBRL) and e-form MGT-7 upto 31.12.2018, wherever additional fee is applicable.
- The link of the above circular is as follows:
http://www.mca.gov.in/Ministry/pdf/GeneralCircularKerala_05102018.pdf

B. General Circular No. 10/2018

- MCA vide its General Circular No. 10/2018 dated October 29, 2018 has informed that considering the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended 31.03.2018, on account of various factors, it has been decided to relax the additional fees payable by companies on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-form MGT-7 upto 31.12.2018, wherever additional fee is applicable.
- The link of the above circular is as follows:
http://www.mca.gov.in/Ministry/pdf/NoticeAndCircularGC_30102018.pdf

RBI UPDATES:

1) External Commercial Borrowing (ECB) Policy Liberalization

- Reserve Bank of India (RBI) vide its Circular A.P. (DIR Series) Circular No.10 dated October 3, 2018, has amended ECB policy, now an ECB can be raised under tracks I and III for working capital purpose if such ECB is raised from direct and indirect equity holders or from a group company, provided that the loan is for a minimum average maturity of 5 years. Also it has been decided in consultation with Government of India, to liberalise the provisions and to permit public Sector oil marketing companies (OMCs) to raise ECB for working capital purpose with minimum average maturity period of 3/5 years from all recognized lenders under the automatic route.
- The Individual limit of USD 750 million or equivalent and mandatory hedging requirement as per ECB framework has been waived for borrowing. However, OMCs should have a board approved forex mark to market procedure and prudent risk management policy, for such ECBs.
- The overall ceiling for ECBs has been USD 10 billion or equivalent, however other provision of ECB policy shall remain unchanged. It is pertinent to note that AD Category- 1 bank should bring the content of this circular to the notice of their constituents and customer.
- The direction contained in this circular have been issued under section 10 (4) and 11 (2) of the Foreign Exchange Management Act, 1999.
- The Link of the above circular is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11384&Mode=0>

2) Electronic Trading Platforms (Reserve Bank) Directions, 2018

- In order to put in a place a framework for authorization of Electronic trading platforms (ETPs) for financial market instrument, RBI has issued ETPs directions, 2018.
- Such draft ETPs directions were released for public comments on October 12, 2017.
- ETPs directions are issued to the entities operating in Electronic Trading Platforms (ETPs) to transact trade in eligible instruments.
- ETPs direction shall come into force from October 05, 2018.

1). What are Electronic Trading Platforms?

Electronic trading platform, as defined in the Directions as mentioned below, however, in common parlance, it means an electronic system which acts as a platform for enabling transactions in instruments. It allows the traders and/ or investors to place their trades themselves rather than doing the same through brokers. These systems are separate from systems provided by the recognized stock exchanges like NSE and BSE.

2). Definitions:

- (i) 'Algorithmic trading' or 'Algo trading' shall mean any trade originated by software programme using automated execution logic.
 - (ii) 'Approved' shall mean approved by the Reserve Bank, either in the authorisation document at the time of authorisation or at any later point of time when conditions of authorisation are altered.
 - (iii) Electronic Trading Platform (ETP) shall mean any electronic system, other than a recognised stock exchange, on which transactions in eligible instruments as defined in paragraph 2(iv) below are contracted.
 - (iv) 'Eligible Instruments' shall mean securities, money market instruments, foreign exchange instruments, derivatives, or other instruments of like nature, as may be specified by the Reserve Bank from time to time under section 45 W of Chapter III-D of the Reserve Bank of India Act, 1934.
 - (v) In these Directions, unless the subject or the context otherwise requires, 'Entity' shall mean and include an agency formed as a 'company' and incorporated under the provisions of the Companies Act, 2013 or under any of the previous enactments in India."
 - (vi) 'ETP Operator' shall mean an entity authorised by the Reserve Bank to operate an ETP under these Directions.
 - (vii) 'Foreign exchange' shall have the meaning assigned in section 2(n) of the Foreign Exchange Management Act, 1999.
 - (viii) 'Recognised stock exchange' shall have the meaning assigned in section 2(f) of the Securities Contracts (Regulations) Act, 1956.
- 3) No entity shall operate as an ETPs without obtaining prior approval from RBI. Any ETPs existing prior to commencement of these direction shall make an application for authorization within a period of 6 months from the date of issue of these direction ETPs authorized by RBI shall host transaction only in instrument approved by RBI.
- 4) Electronic trading platforms operated by banks for their customers (acting as users) on a bilateral basis are exempt from the provisions of these Directions provided that such platforms do not extend direct or indirect access to market makers in any market for eligible instruments.

5) Eligibility Criteria for authorization of ETPs :

General Criteria:

1. Entity shall be a company incorporated in India.
2. Any existing operating ETPs without being incorporated in India, shall conform with the requirement of incorporation in India within a period of 1 year from the date of issue of authorization of ETP by RBI.

3. Shareholding by non- resident in the entity seeking authorization as an ETP shall conform to all applicable laws and regulation including FEMA Act, 1999.
4. Entity seeking authorization as an ETP operator or its Key Managerial Personnel shall have experience of atleast 3 years in operating trading infrastructure in financial markets.

Financial Criteria:

1. Seeking authorization as an ETP operator need to maintain a net worth of Rs. 5 crore and shall continue to maintain the minimum net-worth at all times.
2. Banks seeking authorization to operate ETP shall earmark a minimum capital of Rs.5 crore.

Technological Criteria:

1. Obtain and maintain robust technology infrastructure with a high degree of reliability, availability, scalability and security in respect of its systems, data and network, appropriate to support its operations and manage the associated risks
2. Ensure capability to disseminate trade information on a real-time basis or near real-time basis.

6) Grant of Authorisation to operate ETP and cancellation of Authorisation:

- A. Entities satisfying the eligibility criteria prescribed under direction may submit an application at Chief General Manager, Financial Markets Regulation Department, Reserve Bank of India, 1st Floor, Main Building, Shaheed Bhagat Singh Marg, Mumbai – 400001.
- B. RBI may call for additional information or seek clarification from applicant, RBI may also seek information from government department/agencies or any other authority
- C. Authorization granted to an entity to operate an ETP is not transferrable and RBI may impose additional conditions if the ETP operator is found to violate the provision or any rules or regulation or conditions of authorization.
- D. RBI may cancel an authorization issued to an entity if it is satisfied that
 - ❖ The ETP Operator has violated a statutory provision.
 - ❖ The ETP Operator has violated any of the terms or conditions stipulated by the Reserve Bank
 - ❖ The continuance of authorisation is prejudicial to public interest or financial system of the country.

7) Operating Framework:

An ETP operator shall adhere to the following requirements such as:

- ✓ Have objective, fair and transparent membership criteria
- ✓ Undertake due diligence at the time of on-boarding of all members and maintain all relevant information about the member
- ✓ Identify its members uniquely using Legal Entity Identifier (LEI) and/or Permanent Account Number (PAN);
- ✓ Make available pre-trade information.
- ✓ Make available post-trade information.

Risk Management:

An ETP operator shall put in place a comprehensive risk management framework covering all aspects of its operations such as:

Trading integrity: An ETP operator shall:

- a. Ensure access control for its members and prevent unauthorised access to the platform;
- b. Segregate the ETP from other financial services or infrastructure to prevent unfair access to the ETP;
- c. Ensure that all trades on the system, without exception, are dealt within a fair, non-discretionary and orderly manner, and as per established procedure;
- d. Prevent transactions that are not in compliance with the conditions of authorisation or with the prevailing legal or regulatory requirements.

Algorithmic systems: An ETP operator that provides/facilitates participation by algorithmic trading systems (algo systems) shall:

- a. Put in place a framework for testing and on-boarding of algo systems;
- b. Ensure that such facilities are offered in a transparent and non-discriminatory manner;
- c. Ensure that their systems and controls are adequate and effective for monitoring and managing risks arising from algo systems;

An ETP operator shall put in place appropriate controls to reduce the likelihood of erroneous transactions such as off-market quotes or trades, fat finger errors, unintended or uncontrolled trading activity by members, etc.

Handling exigencies: An ETP operator shall put in place rules and regulations in transparent manner to deal with exigencies like suspension/cessation of trading or cancellation of orders/trades, malfunctions in its systems or erroneous use by members, or any other unforeseen situation. Such exigencies should be dealt with in accordance with clearly laid down rules and regulations.

Dispute resolution: An ETP operator shall put in place an arrangement to address any dispute that may arise or likely to arise between its members.

8) Surveillance:

An ETP operator shall implement systems and controls to ensure fair and orderly trading to maintain market integrity and monitor trading activity on a real time and post facto basis.

9) Transparency:

(1) An ETP operator shall:

- (i) Identify and disclose conflict of interest, if any, arising from participation of related parties or group agencies to the Reserve Bank; and
- (ii) Implement a fair, non-discriminatory and transparent fee structure for its members.

10) Outsourcing of operations:

(1) An ETP operator outsourcing its operations/technology/activities, partially or fully, shall ensure that: (i) It has an effective governance and risk management mechanism for managing all risks inherent in such outsourcing relationships;

(ii) Such outsourcing arrangements do not impede or interfere with or hinder such ETP operator from compliance with these Directions or any other regulations / directions / instructions/ guidelines issued by the Reserve Bank from time to time.

(iii) The requirements relating to preservation, access, use of data and reporting as given in paragraph 12 and paragraph 13 below are adhered to, even if the agreement/arrangement between the ETP operator and its outsourced entity is rescinded or expired.

11) Technology and Information security (IS)

(i) Business Continuity and Disaster recovery: The ETP operator shall have in place a suitable Business Continuity Plan (BCP) including contingency and disaster recovery arrangements that are appropriate to the nature, scale, and complexity of its business to ensure continuity and availability of its operation.

(ii) An ETP operator shall put in place adequate information and data security infrastructure. It should adhere to Information Technology (IT) and Information Security (IS) norms/guidelines, if any, prescribed by the Reserve Bank or any other regulator or public authority from time to time, as applicable to it.

(iii) An ETP operator shall carry out IT/IS audit, at least once in a year, by auditors with Certified Information System Auditor (CISA) certificates or auditors empanelled by Indian Computer Emergency Response Team (CERT-In) or such other professional bodies.

(iv) Notwithstanding anything contained in Para 11 (iii) herein above, the Reserve Bank may, at its discretion order an IT/IS audit of the ETP by an independent auditor(s), selected by the Reserve Bank.

12) Preservation, access and use of data

(i) All data relating to activities on the ETP (henceforth, ETP data) shall be maintained in easily retrievable media for at least 10 years. Without prejudice to the minimum requirement for storage of data, the data sought for any investigation by the Reserve Bank or any other authority as required under Indian laws or regulations shall be maintained for three years from the date of completion of the investigation.

(ii) An ETP operator shall maintain confidentiality and security of all ETP data. Access to such data should be strictly under the control of the ETP operator.

13). Reporting requirement:

To ensure that the motive of developing and regulating this whole framework does not get frustrated, RBI, vide these Directions has also laid down certain reporting requirements that shall be binding on the ETPs.

✓ An ETP shall provide any data and/or information as required by the Reserve Bank in the format and within the timeframe prescribed.

✓ An ETP operator shall report transaction information to any trade repository or reporting platform, in the format and in the manner, as specified by the Reserve Bank.

✓ An ETP shall provide data/information to any other agencies/authorities as may be required under the Indian laws.

✓ An ETP shall keep the Reserve Bank informed of events resulting in disruption of activities or market abuse without undue delay.

14). Termination of operation

(i) An ETP operator, who is holding a letter of authorisation to commence or carry on ETP operations, may terminate its operation with prior approval of the Reserve Bank with regard to timing and date of termination of operations, and shall comply with the terms and conditions stipulated by the Reserve Bank.

(ii) In the event of early termination of its operations, the ETP operator shall surrender to the Reserve Bank the letter of Authorisation in original granted to it to commence or carry on the ETP operations.

15). Exemption from provisions of these directions

The Reserve Bank, on being satisfied that it is necessary to do so, may exempt any ETP Operator or class of ETP Operators either generally or for such period as may be specified, from any or all of the provisions of these Directions, subject to such terms or conditions or limitations or restrictions as it may think fit and proper to impose, in the interest of public or financial system of the country.

➤ The Link of the above Direction is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11385&Mode=0>

3) Directions for Central Counterparties (CCPs)

Reserve Bank of India vide its Notification No. RBI/2018-19/60 dated 15th October, 2018 has come out with new Directions for Central Counterparties (CCPs) this is in reference to the announcement made in the Second Bi-monthly Monetary Policy Review dated June 06, 2018 regarding issuance of directions relating to capital requirements and governance framework of CCPs as also providing a framework for recognition of foreign CCPs. Accordingly, the directions governing the functioning of CCPs are given below for compliance. The CCPs shall continue to ensure compliance with the Principles for Financial Market Infrastructures (PFMI). These directions are issued under Section 18 read with Section 10(2) of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007) by RBI and shall come into force with effect from the date of these directions.

Annexure forming part of this Notification has specified the Directions which is outline below:

Directions for Central Counterparties (CCPs)

Section A - Directions on Governance of domestic CCPs authorised to operate in India by the RBI

Organization sets and achieve its objectives and monitor its performance against the objectives, by following the process provided by Governance. The broad principles underlying governance of domestic CCPs are prescribed hereunder.

1. Composition of the Board;
2. Roles and responsibilities of the Board;
3. Conditions of appointment of Directors;
4. Appointment of Chairperson;
5. Appointment of Director / Independent Director / Nominee Director;
6. Appointment of Managing Director;
7. Appointment of senior management;
8. Fit and proper criteria for Directors;
9. Committees of the Board:-

- Nomination and Remuneration Committee
- Risk Management Committee
- Audit Committee
- Technical Committee
- Regulatory Compliance Committee

10. Compliance Officer.

11. Disclosure

12. Conflict of interest

Section B - Directions on Networth requirements and Ownership of CCPs

CCPs should have sufficient networth to cover potential general business losses and continue to provide services as a going concern.

1. **Networth of CCP**- Every applicant seeking authorisation as a CCP should have a minimum networth of **Rs. 300 crore**.
2. Ownership of CCPs (applicable for domestic CCPs);
3. Eligibility for acquiring or holding shares (applicable for domestic CCPs);
4. Fit and proper criteria for shareholders;

Section C - Directions for Recognized Foreign CCPs

The Act does not differentiate between domestic and foreign entities. Any service provided by a foreign entity should be within the overall legal framework obtaining in India. The applicant should undertake and cooperate with the RBI (Reserve Bank of India) by sharing information and in any other manner as may be required by the RBI.

The Link of the above Notification is as under;

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11390&Mode=0>

4) Basic Cyber Security Framework for Primary (Urban) Cooperative Banks (UCBs)

A. BASIC CYBER SECURITY FRAMEWORK FOR PRIMARY (URBAN) COOPERATIVE BANKS (UCBS)

- Use of Information Technology by banks has grown rapidly and is now an important part of the operational strategy. It is observed that the level of technology adoption is also different across the banks in this sector. Hence, it has been decided to issue basic cyber security guidelines applicable to all UCBs.
- All UCBs should put in place a Cyber Security policy, duly approved by their Board/Administrator giving a framework and the strategy containing a suitable approach to check cyber threats depending on the level of complexity of business and acceptable levels of risk.
- The Cyber Security Policy should be distinct from the IT policy of the UCB so that it highlights the risks from cyber threats and the measures to reduce these risks. This framework should take care of security and should be reviewed by the Board.
- A Government of India organization, CERT-In (Computer Emergency Response Team – India, a Government entity) has been taking important initiatives in strengthening Cyber Security by providing proactive/reactive services and guidelines.

➤ UCBs should actively promote among their customers, vendors, service providers and other concerned parties an understanding of its cyber security objectives. UCBs, as owners of customer sensitive data, should take appropriate steps in preserving the Confidentiality, Integrity and Availability. UCBs should report immediately all unusual cyber security incidents. A copy of this circular shall be placed before the Board in its ensuing meeting and a policy on Cyber Security should be framed by the Board

➤ This circular includes two Annex:-

Annex I: Basic Cyber Security framework for Primary (Urban) Cooperative Banks (UCBs)

Annex II: Description of some of the cyber security threats

• **Annex I: Basic Cyber Security Controls for Primary (Urban) Cooperative Banks (UCBs)**

Following points with respect to Cyber Security framework are provided in this Annex:

- 1) Inventory Management of business IT Assets
- 2) Preventing access of unauthorised software
- 3) Environmental Controls
- 4) Network Management and Security
- 5) Secure Configuration
- 6) Anti-virus and Patch Management
- 7) User Access Control/Management
- 8) Secure Mail and messaging systems
- 9) Removable Media
- 10) User/Employee/Management Awareness
- 11) Customer Education and Awareness
- 12) Backup and Restoration
- 13) Vendor/Outsourcing Risk Management

• **Annex II: Description of some of the cyber security threats**

Following points on cyber security threats have been discussed in Annex II:

- 1) Denial of Service Attack
- 2) Distributed denial of services
- 3) Ransom ware
- 4) Malware
- 5) Phishing
- 6) Spear phishing
- 7) Whaling
- 8) Vishing
- 9) Drive-by downloads
- 10) Browser Gateway frauds
- 11) Ghost administrator exploit

➤ The Link of the above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11397&Mode=0>

A. IBBI (MECHANISM FOR ISSUING REGULATIONS) REGULATION, 2018.

- Ministry vide Notification dated October 22, 2018 issued notification regarding introduction of new regulation i.e. Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. This regulation shall come into force on the date of their publication in the Official Gazette.
- This Regulation covers four Chapters which are as stated below:

CHAPTER I- PRELIMINARY

1. Short Title and Commencement

- a) These regulations may be called the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018.
- b) Save as otherwise provided, these regulations shall come into force on the date of their publication in the Official Gazette.
- c) These regulations shall not apply to regulations made by the Board in respect of organizational matters.

2. Definitions

- a) In these regulations, unless the context otherwise requires,-
 - i. “Advisory Committee” means an advisory committee constituted by the Board under section 197 of the Code;
 - ii. “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016); and
 - iii. “Governing Board” means the Board of Members constituted under sub-section (1) of section 189 of the Code.
- b) Words and expressions used and not defined in these regulations but defined in the Code shall have the meanings respectively assigned to them in the Code.

CHAPTER II- MAKING OF REGULATIONS

3. Making Regulations

The Board may make regulations to carry out the provisions of the Code in compliance with regulations 4 and 5.

4. Public Consultation

- a. For the purpose of making regulations, the Board shall upload the following, with the approval of the Governing Board, on its website seeking comments from the public-
 - i. draft of proposed regulations;
 - ii. the specific provision of the Code under which the Board proposes regulations;
 - iii. a statement of the problem that the proposed regulation seeks to address;
 - iv. an economic analysis of the proposed regulations under regulation 5;
 - v. a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
 - vi. the manner of implementation of the proposed regulations; and
 - vii. the manner, process and timelines for receiving comments from the public.
- b. The Board shall allow at least twenty one days for public to submit their comments.

- c. The Board shall consider the public comments received and upload the same on its website along with a general statement of its response on the comments, not later than the date of notification of regulations.
- d. If the Governing Board decides to approve regulations in a form substantially different from the proposed regulations, it shall repeat the process under this regulation.
- e. The regulations shall be notified promptly after it is approved by the Governing Board and the date of their enforcement shall ordinarily be after thirty days from the date of notification unless a different date is specified therein.
- f. Without prejudice to provisions in this regulation, the Board may consult stakeholders and advisory committees, as it may consider appropriate for making regulations.

5. Economic Analysis

- a. The Board shall cause an economic analysis of the proposed regulations to be made.
- b. The economic analysis shall cover the following:-
 - i. expected costs to be incurred by, and the benefits that will accrue to, the society, economy, stakeholders and the Board, both directly and indirectly on account of the proposed regulation; and
 - ii. how the proposed regulations further strengthen the objectives of the Code.

CHAPTER III- AMENDMENT AND REVIEW OF REGULATIONS

6. Amendment of Regulations

An amendment to any regulations shall be made in compliance with the provisions of regulations 4 and 5.

7. Review of Regulations

The Board shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation, keeping in view-

- (a) its objectives;
- (b) its outcome;
- (c) experience of its implementation;
- (d) experience of its enforcement and the related litigation;
- (e) global best practices, if any;
- (f) its relevance in the changed environment; and
- (g) any other factor considered relevant by the Board.

CHAPTER IV- MISCELLANEOUS

8. Urgent regulations

Where the Board is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing regulations, as the case may be, with the approval of Governing Board, without following the provisions of regulations 4 and 5.

9. Guidance on law

The Board may provide for a scheme for general or specific clarification or guidance on the provisions of regulations made by it either on a request by a person or on its own, subject to the condition that such clarification or guidance shall not be construed as determination of any question of fact or law.

- The link for this notification is as under:
[https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/IBBI\(Mechanism%20for%20Issuing%20Regulations\)%20Regulations,%202018_2018-10-26%2011:59:43.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/IBBI(Mechanism%20for%20Issuing%20Regulations)%20Regulations,%202018_2018-10-26%2011:59:43.pdf)

B. IBBI (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

- IBBI vide its Press Release dated on 11th October, 2018 has amended IBBI (Insolvency Professional) Regulations, 2016. This Regulation shall come into force on 29th November, 2016. Following are some of the highlights of the above regulation:
- In clause (c) of sub- regulation 2 of Regulation 7 for the words “pay a fee of ten thousand rupees to the Board, every five years after the year in which the certificate is granted” the words “pay to the Board, a fee of ten thousand rupees, every five years after the year in which the certificate is granted and such fee shall be paid on or before the 30th April of the year it falls due” shall be substituted.
- In sub-regulation 2 of Regulation 12 for the words “A person eligible under sub-regulation (1) may make an application for recognition as an insolvency professional entity to the Board in Form C of the Second Schedule to these Regulations” the words “A person eligible under sub-regulation (1) may make an application for recognition as an insolvency professional entity to the Board in Form C of the Second Schedule along with an application fee of fifty thousand rupees” shall be substituted.
- In sub- regulation 2 of Regulation 13 for the clause (b) and (c), the following clause shall be substituted:
 - (b) inform the Board, within seven days, when an individual ceases to be its director or partner, as the case may be, in Form F of the Second Schedule along with a fee of two thousand rupees;
 - (c) inform the Board, within seven days, when an individual joins as its director or partner, as the case may be, in Form F of the Second Schedule along with a fee of two thousand rupees;
 - (ca) pay to the Board, a fee calculated at the rate of 0.25% of the turnover from the services rendered by it in the preceding financial year, on or before the 30th of April every year, along with a statement in Form G of the Second Schedule.
- Regulation 15 has been inserted by notification dated 11th October, 2018.
Regulation 15 Interest:
Without prejudice to any other action which the Board may take as deemed fit under the Code or any regulations made thereunder, any delay in payment of fee by an insolvency professional or an insolvency professional entity, a simple interest at the rate of 12% per annum on the amount of fee unpaid shall be paid to the Board after the last date of payment of fee under these regulations.
- Amendment also includes insertion of new Form **FORM E** which is filed for submitting **Annual statement of professional fee of insolvency professional.**
- The link for this notification is as under:
https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/upto11.10.2018%20IP%20REGULATIONS_2018-10-21%2015:30:12.pdf

C. IBBI (INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS, 2016

- IBBI vide its Press Release dated 11th October, 2018 has amended Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016. These Regulations shall come into force on the date of their publication in the Official Gazette.
- In sub- regulation 1 of Regulation 3 under clause (e) for the words “person(s)” the words “any person” shall be substituted and under clause (h) for the words “persons holding more than 10% of its share capital” the words “shareholders” shall be substituted.
- In PART III of Annexure to Form A in point no. 8-Details of shareholders holding more than 5% is required as against 10% earlier.
- In PART III of Annexure to Form A in point no. 13- Information is required to be given of the persons holding more than 5% of share capital of the Company as against 10% earlier.
- The link for this notification is as under:
[https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/PDF%20IBBI%20\(IPA\)%20Regulations,%202016%20upto%2011.10.2018_2018-10-21%2015:27:14.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/PDF%20IBBI%20(IPA)%20Regulations,%202016%20upto%2011.10.2018_2018-10-21%2015:27:14.pdf)

D. IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS, 2016

- IBBI vide its Press Release dated 11th October, 2018 has amended IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. These Regulations shall come into force on the date of their publication in the Official Gazette.
- A new definition has been added:
 - Board” means the Insolvency and Bankruptcy Board of India established under section 188 of the Code.
 - Definition of “Code” has been re-numbered from (a) to (aa).
- Regulation 5 has been re-substituted vide notification dated 11th October, 2018:
Regulation 5- Composition of the Governing Board:
 - (1).The Governing Board shall consist of-
 - a. managing director;
 - b. independent directors; and
 - c. shareholder directors:Provided that the Governing Board shall have minimum seven directors
 - (2).The managing director shall not be considered either an independent director or a shareholder director.
 - (3).Any employee of an insolvency professional agency may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.
- The link for this notification is as under:
[https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/PDF%20IBBI%20\(Model%20Bye-Laws%20and%20Governing%20Board%20of%20Insolvency%20Professional%20Agencies\)%20Regulations,%202016%20upto%2011.10.2018_2018-10-21%2015:25:15.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/PDF%20IBBI%20(Model%20Bye-Laws%20and%20Governing%20Board%20of%20Insolvency%20Professional%20Agencies)%20Regulations,%202016%20upto%2011.10.2018_2018-10-21%2015:25:15.pdf)

E. IBBI (INFORMATION UTILITIES) REGULATIONS, 2017

- IBBI vide its Press Release dated 11th October, 2018 has amended IBBI (Information Utilities) Regulations, 2017. These Regulations shall come into force on the date of their publication in the Official Gazette.
- A new definition has been added:
 - Board” means the Insolvency and Bankruptcy Board of India established under section 188 of the Code.
- Regulation 9 has been re-substituted

Regulation 9- Composition of the Governing Board:

(1). The Governing Board shall consist of –

- (a) managing director;
- (b) independent directors; and
- (c) shareholder directors:

Provided that more than half of the directors shall be citizens of India and shall be residents in India

(2). The managing director shall not be considered either an independent director or a shareholder director.

(3). Any employee of an information utility may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

(4). The number of independent directors shall not be less than the number of shareholder directors:

Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.

(5). An independent director shall be an individual-

- (a) who is a person of ability and integrity;
- (b) who has expertise in the field of finance, law, management or insolvency;
- (c) who is not a relative of the directors of the Governing Board;
- (d) who has or had no pecuniary relationship with the information utility, or any of its directors, or any of its shareholders holding more than ten percent of its share capital, during the immediately preceding two financial years or during the current financial year;
- (e) who is not a shareholder of the information utility; and
- (f) who is not a member of the Board of Directors of any of the shareholders holding more than ten percent of the share capital of the information utility.

(6). An independent director shall be nominated by the Board from amongst the list of names proposed by the information utility.

(7). An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

(8). The second term referred to in sub-regulation (7) may be subject to a satisfactory performance review of the first term by the Governing Board.

(9). A cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another information utility.

(10). The directors shall elect an independent director as the Chairperson of the Governing Board.

(11). A director, who has any interest, direct or indirect, pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Governing Board or any of its Committees, shall as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Governing Board or the Committee, as the case may be, and the director shall not take part in any deliberation or decision of the Governing Board or the Committee with respect to that matter.

➤ Regulation 9A and 9B has been inserted by notification dated 11th October, 2018.

9A. Managing director:

- (1). An information utility shall, subject to the guidelines issued by the Board from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection and appointment of the managing director, subject to the condition that-
 - (a) an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper;
 - (b) an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be relaxed by the Governing Board up to sixty years, after recording reasons therefore; and
 - (c) an individual shall not serve as managing director after he has attained the age of sixty-five years.
- (2). The appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.
- (3). An individual may serve as managing director for a maximum of two terms.
- (4). The process of appointment for the second term as managing director shall be conducted afresh.
- (5). The appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.
- (6). The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.
- (7). The managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of 11 association or bye-laws of the information utility or on the ground of misconduct or incapacity to continue in office.
- (8). The Board may *suo moto* remove or terminate the services of the managing director, if it deems fit, in the interest of stakeholders of the insolvency resolution process or in the public interest, after giving a reasonable opportunity of being heard.

9B Compliance:

Every information utility registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2018, shall comply with regulations 9 and 9A, within one year from the date of such commencement.

- The link for this notification is as under:
https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/PDF%20upto%2011.10.2018%20IU%20Regulations_2018-10-21%2015:31:34.pdf

F. IBBI (LIQUIDATION PROCESS) REGULATIONS, 2016

- IBBI vide its Press Release dated 22nd October, 2018 has amended IBBI (Liquidation Process) Regulation, 2016. These Regulations shall come into force on the date of their publication in the Official Gazette.
- Regulation 32 has been substituted as below vide notification dated 22nd October, 2018.

Regulation 32 Sale of Assets, etc:

The liquidator may sell-

- (a) an asset on a standalone basis;
- (b) the assets in a slump sale;
- (c) a set of assets collectively;
- (d) the assets in parcels;
- (e) the corporate debtor as a going concern; or
- (f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.

- In sub- regulation 2 of Regulation 34 under clause (b) the sentence “value of the assets or business (s) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses” shall be substituted.
- Regulation 35 has been substituted vide amendment dated 22nd October, 2018.

Regulation 35 Valuation of assets intended to be sold

- (1) Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.
- (2) In cases not covered under sub-regulation (1), the liquidator shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:
Provided that the following persons shall not be appointed as registered valuers, namely:-
 - (a) a relative of the liquidator;
 - (b) a related party of the corporate debtor;
 - (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or

- (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.
- (3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.
- (4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.
- In Regulation 40 (3), the word “business” has been inserted in the explanation part stating that Asset also includes business along with all assets, a set of asset or parcel of assets.
- In SCHEDULE II, Form B has been substituted with effect from 22nd October, 2018.
- The link for this notification is as under:
[https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/PDF%20copy%20%20upto%202.10.2018%20\(Liquidation%20Process\)%20Regulations_2018-10-26%2011:55:52.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/PDF%20copy%20%20upto%202.10.2018%20(Liquidation%20Process)%20Regulations_2018-10-26%2011:55:52.pdf)

G.IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

- IBBI vide its Press Release dated 22nd October, 2018 has amended IBBI (Insolvency resolution Process for Corporate Persons) Regulation, 2016. These Regulations shall come into force on the date of their publication in the Official Gazette.
- Definition of “Dissenting Financial Creditor” has been omitted vide notification dated 22nd October, 2018.
- Regulation 21 (3) has been re substituted with effect from 5th October, 2018

The notice of the meeting shall contain the following-

- (i). a list of the matters to be discussed at the meeting;
- (ii). a list of the issues to be voted upon at the meeting; and
- (iii). copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.
- Sub-regulation 5 of Regulation 25 has been re-substituted and sub-regulation 6 has been inserted vide notification dated 5th October, 2018
- Sub-regulation (5)** The resolution professional shall-
- a. circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and
- b. seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.

Sub-regulation (6)

The authorised representative shall circulate the minutes of the meeting received under sub regulation (5) to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

- Regulation 26 (1A) “The authorised representative shall exercise the votes either by electronic means or through electronic voting system as per the voting instructions received by him from the creditors in the class pursuant to sub-regulation (6) of regulation 25.” has been inserted with effect from 5th October, 2018.
- Regulation 38(1) has been substituted with words “The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.” which is effective from 5th October, 2018.
- For approval of resolution plan in Regulation 39, clause (b) of sub-regulation 1 has been omitted with effect from 5th October 2018.
- Sub-regulation 3A of Regulation 39 has been omitted with effect from 5th October 2018.
- A new regulation has been inserted i.e. Regulation 39A.

Regulation 39A Preservation of records:

The interim resolution professional or the resolution professional, as the case may be, shall preserve a physical as well as an electronic copy of the records relating to corporate insolvency resolution process of the corporate debtor as per the record retention schedule as may be communicated by the Board in consultation with Insolvency Professional Agencies.

- The Link for this notification is as under:
https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/pdf%20copy%20%20upto%2005.10.2018%20CIRP%20Regulations%202018_2018-10-24%2014:20:10.pdf

SEBI UPDATES:

A. SECURITIES AND EXCHANGE BOARD OF INDIA (APPOINTMENT OF ADMINISTRATOR AND PROCEDURE FOR REFUNDING TO THE INVESTORS) REGULATIONS, 2018:

Securities and Exchange Board of India (SEBI) vide Notification No. SEBI/LAD-NRO/GN/2018/39 dated 3rd October, 2018, published the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 with effect 3rd October, 2018.

• Applicability

These regulations shall be applicable for all or any of the following:

- a. appointment of Administrator pursuant to failure to comply with disgorgement or refund orders passed by the Board;
- b. sale of properties attached by the Recovery Officer of the Board under the Act;

- c. collection of claim documents and verification of claims of investors for the purpose of effecting refunds;
- d. refund of monies to the investors pursuant to disgorgement or refund orders passed by the Board;
- e. recovery of disgorgement amounts directed by the Board;
- f. any act incidental or connected thereto.

- **Purpose**

SEBI” notified the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 (“Administrator Regulations”) with the aim of appointing administrators to regulate the process of refund of monies to the investors by the defaulters against whom the SEBI has passed orders for recovery of monies under the relevant provisions of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”), the Securities Contracts (Regulations) Act, 1956 and section 19-IB of the Depositories Act, 1996 (collectively referred to as “Securities Legislations”).

- **Appointment of an Administrator**

For the purposes of these regulations, the Board shall, after attachment of the properties of the defaulter by the Recovery Officer, appoint an Administrator in the manner specified. Also, the terms and conditions of appointment including remuneration shall be specified by the Board, on a case to case basis, after taking into consideration the quantum of work, the number of investors and the quantum of money involved. The functions of the administrator are also stated in these regulations.

The link of this above notification is as under:

https://www.sebi.gov.in/legal/regulations/oct-2018/securities-and-exchange-board-of-india-appointment-of-administrator-and-procedure-for-refunding-to-the-investors-regulations-2018_40621.html

B. PARTICIPATION OF ELIGIBLE FOREIGN ENTITIES (EFES) IN THE COMMODITY DERIVATIVES MARKET:

SEBI vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2018/134 dated 9th October, 2018, addressing the Managing Directors / Chief Executive Officers of all Recognized Stock Exchanges and recognized Clearing Corporations with Commodity Derivatives Segment in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of and to regulate the securities market with regard to Participation of Eligible Foreign Entities in commodity derivatives market.

Capital markets regulator Securities and Exchange Board of India (SEBI) has allowed foreign entities to participate in commodity derivatives market of stock exchanges for hedging their exposures.

Prior to this, foreign entities were not permitted to directly participate in Indian commodity derivatives market, even if they imported or exported various commodities from and to India. Such foreign entities shall be known as “Eligible Foreign Entities” (EFEs).

As per the regulator, such entities by virtue of their actual exposure to the various commodities in Indian market are valuable stakeholders in the value chain of such commodities, and are also exposed to price uncertainty of Indian commodity markets. Therefore, these entities should be enabled to hedge their price risk in the country's commodity derivatives market.

Accordingly, in a circular, SEBI has decided to permit foreign entities having actual exposure to Indian commodity markets to participate in the commodity derivative segment of recognized stock exchanges for hedging their exposure.

The link of this above circular is as under:

https://www.sebi.gov.in/legal/circulars/oct-2018/participation-of-eligible-foreign-entities-efes-in-the-commodity-derivatives-market_40649.html

C. MONTHLY REPORT OF FPI REGISTRATION ON SEBI'S WEBSITE:

SEBI vide Circular No. SEBI/HO/FPIC/CIR/P/2018/ 135 dated 11th October, 2018 has asked designated depository participant (DPP) to inform on a monthly basis about the average time taken by them to process applications for the registration of foreign portfolio investors

Under Regulation 7(2) of the SEBI (Foreign Portfolio Investors{FPI}) Regulations, 2014 DDP will have to endeavor to dispose of the application for grant of registration as soon as possible but not later than **30 days** after receipt of such application by the DDP or, after the information called for under regulation 6 has been furnished, whichever is later.

The DDPs will have to provide the number of FPI applications received and the average time taken in processing of such applications during the immediate preceding month to SEBI by **fifth working day of every month**, in a following format:

Name of DDP	No. of FPIs registered during the month	Average time taken for registration during the month	No. of application pending for registration for more than 30 days of receipt of application.	Reasons given application(s) pending for more than 30 days

The link of this above circular is as under:

https://www.sebi.gov.in/legal/circulars/oct-2018/monthly-report-of-fpi-registration-on-sebi-s-website_40694.html

D. UNIFORMITY IN THE PROCEDURE FOR OBTAINING SAMPLES OF GOODS AT THE EXCHANGE ACCREDITED WAREHOUSES:

SEBI vide its circular no. SEBI/HO/CDMRD/DMP/CIR/P/2018/136 dated 16th October issued a framework to bring uniformity in the procedure for obtaining samples of goods at the Exchange accredited warehouses.

The move comes after the regulator found various approaches being followed by the exchanges in this connection. SEBI has asked the exchanges and clearing corporations to make certain that sufficient samples are collected from the goods deposited and are sealed in the presence of the depositor or his authorized representative.

Majority of the agri-commodities traded on the exchange platform requires assaying. The number and size of the samples are determined by the kind of commodity and the needs of tests to be done to meet the exchange specifications.

The link of this above circular is as under:

https://www.sebi.gov.in/legal/circulars/oct-2018/uniformity-in-the-procedure-for-obtaining-samples-of-goods-at-the-exchange-accredited-warehouses_40738.html

E. TOTAL EXPENSE RATIO (TER) AND PERFORMANCE DISCLOSURE FOR MUTUAL FUNDS:

SEBI vide its circular no. SEBI/HO/IMD/DF2/CIR/P/2018/137 dated October 22, 2018 issued a circular pertaining to Total Expense Ratio (TER) and Performance Disclosure for Mutual Funds. It made the changes to bring in transparency in appropriation of expenses, and reducing mis-selling and churning.

The key changes include the following:

- Transparency in TER
- Additional TER of 30 bps for penetration in B-30 cities
- Disclosure of expenses
- Disclosure of scheme performance
- Applicability

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 the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996 is to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

The link for the above circular is as follows:

https://www.sebi.gov.in/legal/circulars/oct-2018/total-expense-ratio-ter-and-performance-disclosure-for-mutual-funds_40766.html

ARTICLE OF THE MONTH

Consequences of delay in filing of Balance Sheet and Annual Return

On 7th May 2018, Ministry of Corporate Affairs (MCA) had notified, section 80 of Companies Amendment Act, 2017 (CAA 17) , which is an amendment in provisions of Section 403 of the Companies Act, 2013 (CA 2013).Section 403 of the CA 2013 is amended by substituting two proviso with three new proviso in sub section 1 and substitution of sub-section 2 .

Effective from 1st July 2018 , the late fee for filing Annual Return under Section 92 and Annual Financial Statement under Section 137 after due date is Rs. 100 per day.

Section 403 is produced below for ready reference of the reader.

403.

(1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

*Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, **under section 92 or 137** is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, **without prejudice to any other legal action or liability under this Act**, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than **one hundred rupees per day** and different amounts may be prescribed for different classes of companies.*

*Provided further that where the document, fact or information, as the case may be, in **cases other than referred to in the first proviso**, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies:*

*Provided also that **where there is default on two or more occasions** in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, **on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable***

*(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, **the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.***

With this amendment under CAA 2017, two major changes have been made

1. Window of additional 270 days is now not available for filing the documents
2. After the expiry of period mentioned in relevant sections, even if the filing is made with additional fees, does not absolve the Company and its officers from the liability for the penalty or punishment provided under the Act for such failure or default.

Penalty for violation of section 92 (delay in filing Annual Return) is as follow

If a Company fails to file its annual return within 60 days from the date of AGM or the date by which the AGM should have been held, the Company shall be punishable with fine which shall not be less than Rs.50,000/- but which may extend to Rs.5 Lac and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs.50,000/- but which may extend to Rs. 5 Lac, or with both.

Penalty for violation of section 134 (delay in filing Balance Sheet) is as follow

If a Company contravenes the provisions of this section, the Company shall be punishable with fine which shall not be less than Rs.50,000 but which may extend to Rs.25 Lac and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs.50,000 but which may extend to Rs.5 Lac, or with both

Outcome/ Result of delay in filing and suggestion

If the Company delay in filing its Balance Sheet and Annual Return beyond 30 days and 60 days respectively from the date of AGM or from the last date by when AGM should have been held, then it is allowed to file Balance Sheet and Annual Return with additional filing fees of Rs..100 per days but the Company and its Directors may be prosecuted by the Ministry for default and hence it is suggested to file an application of condonation under section 460 of the CA 2013. If the Condonation of Delay Application under section 460 is rejected by the Central Government, the Company has to no choice than to make an application under section 441 for compounding of offences.

Conclusion

In its drive for Ease of Doing Business in India, Government want an environment in corporate world which is more of self-governance, transparent, timely and any non-compliance will be viewed seriously with fines and penalties. No errant company will be spared is signal from ministry to professionals and hence each one is require to follow the law in letter and spirit.

INSPIRATIONAL QUOTE



Amita De

Disclaimer

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