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Newsletter for April, 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 AprilMonth's edition of Newsletter!

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

We have tried to provide our Article on compliances by Deemed Public Company as per the Companies Act, 2013.

Please feel free to leave comments, thoughts or suggestions.

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

With warmest thanks,
Amita Desai & Team

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MCA UPDATES:

A. MINISTRY OF CORPORATE AFFAIRS, THE SERIOUS FRAUD INVESTIGATION OFFICE, ASSISTANT DIRECTOR (CORPORATE LAW), SENIOR ASSISTANT DIRECTOR (CORPORATE LAW) AND DEPUTY DIRECTOR (CORPORATE LAW), RECRUITMENT (AMENDMENT) RULES, 2018.

MCA vide notification G.S.R. 361(E) dated 2nd April, 2018 has amended the Ministry of Corporate Affairs, the Serious FraudInvestigation Office, Assistant Director (Corporate Law), Senior Assistant Director (Corporate Law) and Deputy Director (CorporateLaw), Recruitment Rules, 2016. It shall come into force from 2nd April, 2018.

The Amendment has been made in essential qualifications, desired experience, age limit and pay scale among others which are applicable for recruitment for the post of Assistant Director (Corporate Law), Senior Assistant Director (Corporate Law) and Deputy Director (CorporateLaw).

The link of above notification is as under:
http://egazette.nic.in/WriteReadData/2018/184703.pdf

B. FEBRUARY AMENDMENT IN NOTIFICATION NUMBER S.O. 529(E), DATED THE 5TH FEBRUARY , 2018.

MCA vide Notification dated 2nd April, 2018has amended earlier notification S.O. 529(E), dated the 5th February,2018, which shall come into force from April 02, 2018.

Notification S.O. 529(E), dated 5th February,2018 stated that the provisions of Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability shall not apply for 7 years with effect from the 1st April, 2017, to a Governmentcompany. Now words 7 years have been omitted and it read as below:

The provisions of Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability shall not apply with effect from the 1st April, 2017, to a Governmentcompany which:-

(a) is a public financial institution under sub-clause (iv) of clause (72) of section 2 of the CompaniesAct, 2013;

(b) is a Non-Banking Financial Company registered with the RBI under section45-IA of the Reserve bank of India Act, 1934; and

(c) is engaged in the business of infrastructure finance leasing with not less than 75 % of its total revenue being generated from such business with Government companies orother entities owned or controlled by Government.

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The link of above notification is as under:
http://www.mca.gov.in/Ministry/pdf/commencementNotification2103_21032018.pdf

The link of notificationS.O. 529(E), dated the 5th February, 2018 is as under:
http://www.mca.gov.in/Ministry/pdf/NotificationSO529_06022018.pdf

C. ALTERATION TO TABLE F AND TABLE H OF SCHEDULE I OF THE COMPANIES ACT.

MCA vide notification**G.S.R. 362(E)**dated 10th April, 2018 has made alteration to the Schedule I as given below. The amendment shall come into force from April 10, 2018.

Schedule I

(i) in Table F, in paragraph II, -
(a) in sub-paragraph (2), for item (ii), the following item is substituted:-

"Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by twodirectors or by a director and the company secretary, wherever the company has appointed a company secretary:

Provided that in case the company has a common seal it shall be affixed in the presence of the persons required to sign thecertificate.

Explanation.- For the purposes of this item, it is hereby clarified that in case of an One Person Company, it shall be sufficientif the certificate is signed by a director and the company secretary, wherever the company has appointed a company secretary, or any other person authorised by the Board for the purpose.";

(b) in sub-paragraph (79), after item (ii), the following explanation is inserted:-

"Explanation.- : For the purposes of this sub-paragraph it is hereby clarified that on and from the commencement of theCompanies (Amendment) Act, 2015 (21 of 2015), i.e. with effect from the 29th May, 2015, company may not be required tohave the seal by virtue of registration under the Act and if a company does not have the seal, the provisions of this subparagraph shall not be applicable."

(ii) in Table H, in paragraph II, in sub-paragraph (30), after item (ii) but before the 'Note', the following explanation is inserted:-

"Explanation.- For the purposes of this sub-paragraph it is hereby clarified that on and from the commencement of theCompanies (Amendment) Act, 2015 (21 of 2015), i.e. with effect from the 29th May, 2015, company may not be required tohave the seal by virtue of registration under the Act and if a company does not have the seal, the provisions of this subparagraphshall not be applicable.".

The link of above notification is as under:
http://egazette.nic.in/WriteReadData/2018/184704.pdf

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D. COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2018.

MCA vide **G.S.R. 363(E)** notification dated 10th April, 2018 has amended the Companies (Share Capital and Debentures) Rules, 2014, and notified the Companies (Share Capital and Debentures) Amendment Rules, 2018. They shall come into force on 10th April, 2018.

In the Companies (Share Capital and Debentures) Rules, 2014, in rule 5, for sub-rule (3) of, the following sub-rule has been substituted:-

"(3) Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary.

In case the company has a common seal it shall be affixed in the presence of persons required to sign thecertificate

(a) in case of an One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary or any other person authorised by the Board for the purpose.

(b) a Director shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography or digitallysigned, but not by means of rubber stamp, provided that the director shall be personally responsible for permitting theaffixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose."

The link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/SharecapitalRule2018_11042018.pdf

E. AMENDMENT TO SECTION 2 OF COMPANIES ACT, 2013.

MCA vide notification **S.O. 1592.(E)** dated 12th April, 2018 has amended the Section 2 (11) of the Companies act, 2013. The notification shall come into force on 12th April, 2018.

Section 2 (11) deals with the definition of Body corporate or Corporation. In the Clause (ii) of sub-section 11 of Section 2, Asian Development Bank is excluded as Body corporate or Corporation by effect of above notification. The notification will become effective from 12th April, 2018.

The link of above notification is as under:

http://egazette.nic.in/WriteReadData/2018/184792.pdf

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F. DESIGNATION OF SPECIAL COURT.

Central Government through MCA vide notification **S.O. 1710(E)**dated 23rd April, 2018 has designated special court with the concurrence of Chief Justice of theHigh Court of Allahabad for speedy trial of offences punishable with imprisonment of 2 Years or more as given below in table;

TABLE

Court	Jurisdiction as Special Court
9th Court of Additional District and Sessions Judge,Kanpur Nagar.	State of Uttar Pradesh.

The link of above notification is as under:

http://egazette.nic.in/WriteReadData/2018/184925.pdf

G. CONSTITUTION OF STEERING COMMITTEE ON CORPORTAE SOCIAL RESPONSIBILITY.

A Steering Committee on CSR has been established by the order of Ministers of Corporate affairs. Shri Manmohan Juneja Regional Director (Western Region) will chair the Committee to implement the recommendations made by members. The members of steering committee are from various institutions like ICAI, ICSI, ICMAI, RoC and others institutions like ASSOCHAM, PHDCCI etc.

The purpose of the Steering Committee on CSR is to revisit guidelines for enforcement of CSR, to review Schedule VII of CA, 2013 on the basis of references received from various stakeholders, examine role and function of NFCSR and IICA, to apply methodologies and any other matter will be considered in the interest of effective CSR policy.

The Committee shall prepare a report and submit recommendation within 60 days from its constitution to the Ministry.

There are two sub-committee formed as given below, to assist the Steering Committee:

1. Legal sub-committee for CSR
2. Technical sub-committee for CSR

The Sub-committees shall submit a report within 30 days from its constitution to the Steering Committee.

The link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/OfficeOrderNews_06042018.pdf

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H. REPORT ON INSOLVENCY LAW COMMITTEE.

The Report of the Insolvency Law Committee which was set up on 16th November, 2017 has been presented to Honorable Union Minister of Finance and Corporate Affairs on the 26 March, 2018. Recommendations has been made by experts from various institutes, industry, Chambers and experts in various disciplines which will be benefit for the updating the Insolvency and Bankruptcy Code, 2016.

The link of the notifications of the Report on insolvency committee is below:

http://www.mca.gov.in/Ministry/pdf/ILRReport2603_03042018.pdf

I. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING AOC-4 XBRL UNDER IND AS.

MCA vide General Circular no. 04/2018 dated 27th April, 2018 which is in continuation of General Circular no. 13/2017 dated 26th October, 2017, General Circular no. 01/2018 dated 28th March, 2018 and after receiving requests from various stakeholders has extended filing date for AOC-4 XBRL for the financial year 2016-17 using Ind AS under Companies Act, 2013 without additional fee till May 31, 2018, for all the eligible Companies required to prepare financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

The link of the notifications of the Report on insolvency committee is below:

http://www.mca.gov.in/Ministry/pdf/Circular042704_27042018.pdf

J. EXTENSION OF CONDONATION OF DELAY SCHEME, 2018.

Ministry of Corporate Affairs vide General circular no. 03/2018 dated 27th April, 2018 which is in continuation of MCA's General Circular no. 16/2017 dated 29th December, 2017, General Circular no. 02/2018 dated 28th March, 2018 has extended one day for filing under Condonation of Delay Scheme till 1st May, 2018, as the date of closing of Condonation of Delay Scheme i.e. 30th April, 2018 is falling on the gazette holiday of "Buddha Purnima".

The link of the notifications of the Report on insolvency committee is below:

http://www.mca.gov.in/Ministry/pdf/CondonationCircular03_27042018.pdf

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RBI UPDATES:

A. PROHIBITION ON DEALING IN VIRTUAL CURRENCIES

RBI has issued a notification on Prohibition on dealing in Virtual Currencies (VCs) dated 6th April, 2018.

- RBI has repeatedly cautioned the user/ holder/ traders of virtual curriences including Bitcoins regarding its risks associated with it through public notices dated on December 24, 2013, February 01; 2017, December 05, 2017.

- In view of associated risk, it has been decided that with immediate effect entities regulated by reserve bank shall not deal in virtual curriencies or provide services such as maintaining accounts, trading, registering, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts of exchanges dealing with them and transfer etc.

- Entities regulated by RBI, already providing such services shall exit the relationship with 3 months from the date of this circular.

The link of the above notification is as under:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11243&Mode=0

B. INVESTMENT BY FOREIGN PORTFOLIO INVESTOR (FPI) IN GOVERNMENT SECURITIES

RBI has issued circular no. 22 on Investment by FPI in Government Securities – Medium Term Framework – Review dated April 06, 2018.

Attention of AD Category-I banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulation, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time.

The Statement on Developmental and Regulatory Policies, Fourth Bi-monthly Monetary Policy Statement, 2017-18 proposed that a detailed review of current regulations on debt investment by Foreign Portfolio Investors (FPI) shall be undertaken to facilitate the process of investment and hedging by FPI. The regulatory changes would be effective from April 2018.

Revision of Investment Limits.

- The limit for FPI investment in Central Government securities (G-secs) would be increased by 0.5% each year to 5.5% of outstanding stock of securities in 2018-19 and 6% of outstanding stock of securities in 2019-20.

- The investment limit in State Development Loans (SDLs) would remain unchanged at 2% of outstanding stock of securities.

- The overall limit for investment in corporate bonds will be fixed at 9% of outstanding stock of corporate bonds. Discontinuation of all the existing sub-categories under the

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category of corporate bonds. Single limit for FPI investment in all types of corporate bonds.

- There would be no fresh allocation to the 'Long-term' sub-category under SDLs. INR 6500 Cr out of existing limit of INR 13600 Cr has been transferred to G-secs category.

- The allocation of increase in G-sec limit over the two sub-categories – 'General' and 'Long-term' – remains at the current ratio of 25:75. On the basis of an assessment of investment interest, this ratio has been re-set at 50:50 for the year 2018-19.

- Coupon reinvestment by FPIs in Central Government securities, which was hitherto outside the investment limit, will now be reckoned within the Central Government securities limits. FPIs may, however, continue to reinvest coupons without any constraint, as they do now. Only at the time of periodic re-setting of limits, coupon investments would be added to the amount of utilization. Accordingly, for the year 2018-19, the stock of coupon investment of INR4,760 Cr as on March 31, 2018, would be added to the actual utilization under the 'General' sub-category of G-secs. Since this is a new policy, as a one-time measure, the investment limit in the 'General' sub-category of G-secs has been increased by an amount equal to the stock of coupon reinvestment as on March 31, 2018. This increase in limit on account of coupon investment amount is over and above the limit indicated in paragraph 3(a).

- Subsequently this coupon reinvestment arrangement will be extended to other debt categories.

- Accordingly, the revised limits for the various categories, after rounding off, would be as under (Table 1):

Table 1 - Revised Limits for FPI Investment in Debt - 2018-19 (Rupees crore)

	G-Sec-General	**G-Sec-Long Term**	**SDL - General**	**SDL-Long Term**	**Corporate Bonds**	**Total Debt**
Current Limit	191,300	65,100	31,500	13,600	244,323	545,823
Revised Limit for the HY Apr-Sep, 2018	207,300*	78,700	34,800	7,100	266,700	594,600
Revised Limit for the HY Oct 2018-March, 2019	223,300*	92,300	38,100	7,100	289,100	649,900

* Includes sINR 4,760 crore one-time addition to limit to provide for inclusion of coupon investment amount in utilization.

- Applicability of these directions would be with immediate effect.

- Announcement of coupon reinvestment arrangements referred to in paragraph 3(g) and other changes affecting operational aspects of FPI investments in debt will be issued as a separate notification in consultation with SEBI.

- The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

  The link of the above circular is as under:
  https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11241&Mode=0

C. LIBERALISED REMMITANCE SCHEME (LRS) FOR RESIDENT INDIVIDUAL- DAILY REPORTING OF TRANASACTION

RBI has issued cirular no. 23 on LRS for Resident Indiviual – daily reporting of transaction dated 12th April, 2018

Currently Transaction under LRS Scheme are being permitted by AD Banks based on the declaration made by the remitter. However in order to improve monitoring and compliance with LRS limits, it has been decided to put in a place a daily reporting systems by AD Bank.

Accordingly all AD category-1 Banks are required to upload daily transaction-wise information undertaken by them with respect to LRS at the end of business on the next working day. In case no data is to be furnised, AD Banks shall upload " NIL" report.

The Link of the above Cirular is as under:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11255&Mode=0

D. KNOW YOUR CUSTOMER (KYC) DIRECTION, 2016

RBI has updated Know Your Customer Direction, 2016 ("the Direction") on April 20, 2018.

Following are the amendments :

1. Regulated Entities (RE)shall take steps to implement provisions of Prevention of Money-Laundering Act, 2002 and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005.

2. REs shall not outsourced decision-making functions of determining compliance with KYC norms.

3. REs shall apply the Customer Due Diligence (CDD) procedure at the UCIC (Unique Customer Identification Code) level. Thus, if an existing KYC compliant customer of a RE desires to open another account with the same RE, there shall be no need for a fresh CDD exercise.

4. Section 17 of the Directions have been amended which states that "Accounts opened using OTP based e-KYC, in non face to face mode are subject to the following conditions".

   (i) There must be a specific consent from the customer for authentication through OTP.

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(ii) the aggregate balance of all the deposit accounts of the customer shall not exceed rupees one lakh. In case, the balance exceeds the threshold, the account shall cease to be operational, till CDD as mentioned at (v) below is complete.

(iii) the aggregate of all credits in a financial year, in all the deposit taken together, shall not exceed rupees two lakh.

(iv) As regards borrowal accounts, only term loans shall be sanctioned. The aggregate amount of term loans sanctioned shall not exceed rupees sixty thousand in a year.

(v) Accounts, both deposit and borrowal, opened using OTP based e-KYC shall not be allowed for more than one year within which Biometric based e-KYC authentication Is to be completed.

(vi) If the CDD procedure as mentioned above is not completed within a year, in respect of deposit accounts, the same shall be closed immediately. In respect of borrowal accounts no further debits shall be allowed.

(vii) REs shall ensure that only one account is opened using OTP based KYC in non face to face mode and a declaration shall be obtained from the customer to the effect that no other account has been opened nor will be opened using OTP based KYC in non face to face mode. Further, while uploading KYC information to CKYCR, REs shall clearly indicate that such accounts are opened using OTP based e-KYC and other REs shall not open accounts based on the KYC information of accounts opened with OTP based e-KYC procedure in non face to face mode.

(viii) REs shall have strict monitoring procedures including systems to generate alerts in case of any non-compliance/violation, to ensure compliance with the above mentioned conditions.

5. Section 18, 19, 20, 21 and 22 of the Directions have been deleted.

6. Section 24 (a) – the NBFC shall obtain self- attested photograph from the customer.
   Section 24 (b) – the designated officer of the NBFC shall certifies under his signature that the person opening the account has affixed his signature or thumb impression in his presence.
   Section 24 (c) - the account shall remain operational initially for a period of twelve months, within which the customer has to furnish identification information as mentioned under Section 15.

7. Section 25 of the Directions is deleted.

8. Section 28(d) being inserted as 23CST/VAT/ GST certificate (provisional/final).

9. Section 30 has been amended as follows:

   For opening an account of a company, certified copies of each of the following documents shall be obtained:

   (a) Certificate of incorporation.

   (b) Memorandum and Articles of Association.

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(c) A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf.

(d) Identification information as mentioned under Section 15 in respect of managers, officers or employees holding an attorney to transact on its behalf.

10. Section 31 has been amended as follows:

For opening an account of a partnership firm, the certified copies of each of the following documents shall be obtained:
(a) Registration certificate.
(b) Partnership deed.
(c) Identification information as mentioned under Section 15in respect of the person holding an attorney to transact on its behalf.

11. Section 32 has been amended as follows:

For opening an account of a trust, certified copies of each of the following documents shall be obtained:
(a) Registration certificate.
(b) Trust deed.
(c) Identification information as mentioned under Section 15in respect of the person holding a power of attorney to transact on its behalf.

12. Section 33 has been amended as follows:

For opening an account of an unincorporated association or a body of individuals, certified copies of each of the following documents shall be obtained:
(a) resolution of the managing body of such association or body of individuals;
(b) power of attorney granted to transact on its behalf;
(c) Identification information as mentioned under Section 15 in respect of the person holding an attorney to transact on its behalf and
(d) such information as may be required by the RE to collectively establish the legal existence of such an association or body of individuals.
Explanation: Unregistered trusts/partnership firms shall be included under the term 'unincorporated association'.
Explanation: Term 'body of individuals' includes societies.

13. In Section 33A clause (b) is inserted as follows:

"Aadhaar/ PAN/ Officially valid documents for proof of identity and address in respect of the person holding an attorney to transact on its behalf."

14. Section 38 Periodic Updation has been amended as follow:
Periodic updation shall be carried out at least once in every two years for high risk customers, once in every eight years for medium risk customers and once in every ten years for low risk customers as per the following procedure:

(a) REs shall carry out

i. PAN verification from the verification facility available with the issuing authority and

ii. Authentication, of Aadhaar Number already available with the RE with the explicit consent of the customer in applicable cases.

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iii. In case identification information available with Aadhaar does not contain current address an Officially Valid Document (OVD) containing current address may be obtained.

iv. Certified copy of OVD containing identity and address shall be obtained at the time of periodic updation from individuals not eligible to obtain Aadhaar, except from individuals who are categorised as 'low risk'. In case of low risk customers when there is no change in status with respect to their identities and addresses, a self-certification to that effect shall be obtained.

v. In case of Legal entities, RE shall review the documents sought at the time of opening of account and obtain fresh certified copies.

(b) REs may not insist on the physical presence of the customer for the purpose of furnishing OVD or furnishing consent for Aadhaar authentication unless there are sufficient reasons that physical presence of the account holder/holders is required to establish their bona-fides. Normally, OVD/Consent forwarded by the customer through mail/post, etc., shall be acceptable.

(c) REs shall ensure to provide acknowledgment with date of having performed KYC updation.

(d) The time limits prescribed above would apply from the date of opening of the account/ last verification of KYC.

15. Section 39 is deleted.

16. Section 40 is amended as follows:

Accounts of non-face-to-face customers: REs shall ensure that the first payment is to be effected through the customer's KYC-complied account with another RE, for enhanced due diligence of non-face to face customers.

17. Section 43 is amended as follows:

Simplified norms for Self Help Groups (SHGs) Simplified
(a) CDD of all the members of SHG as per the CDD procedure mentioned in Section 15 of the MD shall not be required while opening the savings bank account of the SHG
(b) CDD as per the CDD procedure mentioned in Section 15 of the MD of all the office bearers shall suffice.
(c) No separate CDD as per the CDD procedure mentioned in Section 15 of the MD of the members or office bearers shall be necessary at the time of credit linking of SHGs.

The link of the above Notification is as under:

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/18MDKYCD8E68EB13629A4A82BE8E06E606C57E57.PDF

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E. INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN DEBT-REVIEW

RBI has issued circular no. 24 regarding Investment by Foreign Portfolio Investors (FPI) in Debt – Review dated 27th April, 2018.

1. Attention of Authorised Dealer Category – 1 (AD Category – 1) is invited to Schedule 5 to the Foreign Exchange Mamagement (Transfer or Issue of Secruity by a Person Resident Outside India) Regulation, 2000 notifed vide Notification No. FEMA.20/2000-RB dated May 3, 2000 as amended from time to time and the relevant directions issued thereunder.

2. FPI in debt was announced in the revised framework in terms of AP (DIR series) Circular no. 22 dated 6th April, 2018. Other changes affecting operational aspects of FPI investments in debt would be issued as a separate notification, in consultation with SEBI was stated in the Circular.

3. The following are the changes to operational aspects of FPI investment:

(a) Revision of minimum residual maturity requirement

i. FPIs were required to invest in Government bonds with a minimum residual maturity of three years in terms of A.P. (DIR Series) Circular No. 13 dated July 23, 2014. The minimum residual maturity requirement for Central Government securities (G-secs) and State Development Loans (SDLs) categories stands withdrawn, subject to the condition that investment in securities with residual maturity below 1 year by an FPI under either category

shall not exceed, at any point of time, 20% of the total investment of that FPI in that category.

ii. FPIs were required to invest in corporate bonds with a minimum residual maturity of three years in terms of A.P. (DIR Series) Circular No. 71 dated February 03, 2015. However, now FPI can invest in corpoarte bonds with a minimum residual maturity above 1 year.

(b) Revision of security-wise limit

There is a revision in cap on aggregate investment in any Central Government security from 20% of the oustanding stock of that security to 30% of tha outstanding stock of that security.

(c) Online monitoring of G-Sec utilisation limits

Currently, FPIs are permitted to invest in G-secs till the limit utilization reaches 90%, after which the auction mechanism is triggered for allocation of the remaining limit. it has been decided to discontinue the auction mechanism with effect from June 1, 2018 with Clearing Corporation of India Ltd. (CCIL) commencing online monitoring of utilisation of G-sec limits,. Utilisation of FPI limits shall be monitored online thereafter.

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(d) <u>Concentration limit</u>

The three categories of debt, viz., G-secs, SDLs and corporate debt securities, shall be subject to the following concentration limits in case of Investment by any FPI (including investments by related FPIs):

(i) Long-term FPIs: 15% of prevailing investment limit for that category.
(ii) Other FPIs: 10% of prevailing investment limit for that category.
(iii) In case an FPI has investments (INV_0) in excess of the concentration limit on the effective date (date on which these concentration limits come into existence), it will be allowed the following relaxations, subject to availability of overall category limits, as a one-time measure:

a. In case an FPI has investments (INV_0) in excess of the concentration limit on the effective date, it will be allowed to undertake additional investments such that its portfolio size at any point in time (INVt) does not exceed INV_0 plus 2.5% of investment limit for the category on the effective date. Once INV_t falls below the prevailing concentration limit for the category, the FPI shall be free to make investments up to the applicable concentration limit.

b. In case an FPI has investments (INV_0) within the concentration limit, but in excess of 7.5% (12.5% in case of FPIs in the 'Long-term' sub-category) of theinvestment limit for the category on the effective date, that FPI shall be allowed to undertake additional investments such that its portfolio size at any point in time (INV_t) does not exceed INV_0 plus 2.5% of the investment limit for the category on the effective date. Once INV_t falls below the prevailing concentration limit for the category, the FPI shall be free to make investments up to the applicable concentration limit.

c. All other FPIs will be allowed to invest up to the applicable concentration limit.

(e) <u>Single/Group investor-wise limit in corporate bonds</u>

FPI investment in corporate bonds shall be subject to the following requirements:

(i) Investment by any FPI, including investments by related FPIs, shall not exceed 50% of any issue of a corporate bond. If it has exceeded in more than 50% of any single issue, it shall not make further investments in that issue until this stipulation is met.

(ii) FPI shall not have an exposure of more than 20% of its corporate bond portfolio to a single corporate (including exposure to entities related to the corporate). In case if it has exposure in excess of 20%, it shall not make further investments in that corporate until this stipulation is met. **A newly registered FPI shall comply to this stipulation not later than 6 months from the commencement of its investments**.

4. FPI shall not invest in partly paid instruments.

5. Applicability of these directions would be with immediate effect.

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6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

The link of the above Circular is as under:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11266&Mode=0

F. EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY – RATIONALISATION AND LIBERALISATION

RBI has issued a circular no. 25 on External Commercial Borrowings (ECB) policy – Rationalisation and Liberalisation dated 27th April, 2018.

I. Attention of AD Category-I banks is invited to Master Direction No. 5 dated January 01, 2016 on External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers, as amended form time to time.

II. Corporates and other entities have been approaching RBI for relaxation in the existing ECB framework to avail ECB to meet their capital needs. It has been decided, on the basis of requests received and experience gained in administering the ECB regime and in consultation with the Government of India, to further liberalize and rationalize the ECB guidelines as under:

(i) Rationalisation of all-in-cost for ECB under all tracks and Rupee denominated bonds (RDBs) :

It has been decided to stipulate a uniform all-in-cost ceiling of 450 basis points over the benchmark rate. The benchmark rate for Track I and Track II will be 6 month USD LIBOR (or applicable benchmark for respective currency), for Track III (Rupee ECBs) and RDBs it will be prevailing yield of Government of India securities of corresponding maturity.

(ii) Revisiting ECB Liability to Equity Ratio provisions:

It has been decided under the automatic route to increase the ECB liabilty to Equity Ratio for ECB raised from direct foreign equity holder to 7:1. If total of all ECB raised by entity is upto USD 5 million or equivalent, this ratio will not be applicable.

(iii)Expansion of Eligible Borrowers' list for the purpose of ECB:

It has been decided to permit:

a) Housing Finance Companies, regulated by the National Housing Bank and Port Trusts constituted under the Major Port Trust Act, 1963 or Indian Ports Act, 1908 as eligible borrowers to avail ECBs under all tracks. Such entities shall keep their ECB exposure hedged 100 % at all times for ECBs raised under Track I and shall also have a board approved risk management policy.

b) Companies engaged in the business of Maintenance, Repair and overhaul and freight forwarding to raise ECBs denominated in INR only.

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(iv) Rationalization of end-use provisions for ECBs:

Currently for Track I positive end- use list is prescribed for eligible borrowers and for Track II & III negative end- use list is prescribed. **Now it has been decided to have only the negative list for all tracks.**
The Negative list for all tracks would include the following:

1. Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks/integrated townships.

2. Investment in capital markets.

3. Equity Investment.

For Track I & III : The following end-uses will also apply except such ECB is raised from Direct and Indirect equity holders or from a Group company subject to minimum average maturity is of 5 years.

4. Working Capital purpose

5. General Corporate Purpose

6. Repayment of Rupee loans.

For all Tracks :the following end-use will also apply:

7. On-lending to entities for the above activities from 1 to 6.

III. The other provisions of ECB policy shall remain unchanged.

IV. The aforesaid Master Direction No. 5 dated 1st January, 2016 is being updated to reflect the changes.

V. The directions have been issued under section 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

The link of the above Circular is as under:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11267&Mode=0

G. AMENDMENTS IN FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) REGULATION, 2017

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 (Amended up to April 06, 2018)

1. In Reg 16 (B) (5) Sectoral Cap in point Foreign Investment in investing companies not registered as Non Banking Financial Company (NBFC) and in Core Investment Company (CIC) and engaged in the activity of investing in the capital of other Indian entities will require prior Government approval.

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Note: the compliance of these regulations is in addition to regulatory framework prescribed for such companies as NBFC under the Reserve Bank of India Act, 1934 and the regulation framed thereunder.
Investing Companies registered as NBFC with RBI, Foreign investment is allowed under 100% automatic route.

2. The person resident outside India and has made foreign Investment in the Investee company, specifies a particular auditor/audit firm having international network for the audit of the Indian investee company, then joint audit shall be carried out in such investee company wherein one of the auditor should not be part of the same network.

SL. No.	Sector/Activity	Sectoral Cap	Entry Route
9	**Civil Aviation**		
9.3	Air Transport Services		
	(a) (i) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline (ii) Regional Air Transport Service	100%	Automatic up to 49% Government beyond 49% (Automatic up to 100% for NRIs/ OCIs)
9.5	Other Conditions		
	d. In addition to the above conditions, foreign investment in M/s Air India Limited shall be subject to the following conditions: (i) Foreign investment in M/s Air India Ltd., including that of foreign airline(s), shall not exceed 49% either directly or indirectly. (ii) Substantial ownership and effective control of M/s Air India Ltd. shall continue to be vested in Indian Nationals. Note: (1) The sectoral caps/ entry routes, mentioned at paragraph 9.3(a) and 9.3(b) above, are applicable in the situation where there is no investment by foreign airlines. (2) The dispensation for NRIs and OCIs regarding foreign investment up to 100% shall also be applicable in respect of the investment regime specified at 9.5(c) above. (3) Omitted (4) The investee company additionally shall have to follow guidelines issued by the concerned ministry of the Central Government.		
10.2	Other Conditions		
	Note: (7) Real estate broking services shall be excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route		
15.3	Single Brand Product Retail Trading Foreign investment in Single Brand Product Retail Trading (SBRT) is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods	100%	Automatic

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	from India and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.		
15.3.1	Other Conditions		
	d) A person resident outside India being owner of the brand or otherwise either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner. g) & h) has been Omitted. (i)Single brand retail trading entity shall be permitted to set off its incremental sourcing of goods from India for global operations during initial 5 years, beginning 1st April of the year of the opening of first store, against the mandatory sourcing requirement of 30% of purchases from India. For this purpose, incremental sourcing shall mean the increase in terms of value of such global sourcing from India for that single brand (in INR terms) in a particular financial year from India over the preceding financial year, by the non-resident entities undertaking single brand retail trading, either directly or through their group companies. After completion of this 5 years period, the SBRT entity shall be required to meet the 30% sourcing norms directly towards its India's operation, on an annual basis. Note : Point no. (2) and (3) has been omitted. (5) Sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, condition mentioned at 15.3.1(e) above will be applicable. A Committee under the Chairmanship of Secretary, DIPP, with representatives from NITI Aayog, concerned Administrative Ministry and independent technical expert(s) on the subject will examine the claim of applicants on the issue of the products being in the nature of 'state-of-art' and 'cutting-edge' technology where local sourcing is not possible and give recommendations for such relaxation. 14		
16.3	Other Conditions		
	Note: (2) (ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or disability; (c) in-vitro diagnostic device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system, whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of examination of specimens derived from the human bodies or animals. (3) Has been Omitted.		
F.6.1	Other Conditions		
	(a) Has been Omitted.		

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3. Under **Schedule 1 in Point no. 1.**Purchase/sale of capital instruments of an Indian company by a person resident outside India, **sub point no. 4** has been Amended as follow:

(4) An Indian company may issue, subject to compliance with the conditions prescribed by the Central Government and/ or the Reserve Bank from time to time, capital instruments to a person resident outside India, if the Indian investee company is engaged in an automatic route sector, against:
(a) Swap of capital instruments; or
(b) Import of capital goods/ machinery/ equipment (excluding second-hand machinery); or
(c) Pre-operative/ pre-incorporation expenses (including payments of rent etc.).

Provided Government approval shall be obtained if the Indian investee company is engaged in a sector under Government route. The applications for approval shall be made in the manner prescribed by the Central Government from time to time.

Sub point no.6 has been *Omitted*.

4. The Link of the above notification is given below:
https://rbidocs.rbi.org.in/rdocs/notification/PDFs/20NRBD55D1D00889F43438D76B97340DAE8FF.PDF

SEBIUPDATES

A. FILINGS BY LISTED COMPANIES IN MACHINE READABLE/SEARCHABLE FORMAT

BSE vide circular no LIST/COMP/01/2018-19 dated April 3, 2018 which is in continuation of the circular issued on January 16, 2018 and is regarding submission of PDF documents or filings in machine readable format or searchable format. The above circular will be effective from April 5, 2018.

- At the filing stage itself, Listing Centre has put in place beta mode validations to verify whether the PDF document is in Machine-Readable/ Searchable format and if not, it would not be accepted.

- In order to assist companies to file PDF in machine readable/ searchable format, the exchange has posted a Help Manual which states how can the companies convert non-machine readable/ searchable PDF files to readable/ searchable files as required by SEBI.

- This Circular will have no effect on submissions that are required to be made in XBRL format.

The link of above circular is as under:
https://www.bseindia.com/corporates/Displaydata.aspx?Id=35043bbf-99e2-4fee-b037-eec498d3ad10&Page=cir

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B. MONITORING OF FOREIGN INVESTMENT LIMITS IN LISTED INDIAN COMPANIES

SEBI vide Circular No. IMD/FPIC/CIR/P/2018/61 dated April 05, 2018 has put in place a new system for depositories to monitor the foreign investment limits in listed Indian companies. The new system for monitoring foreign investment limits in listed Indian companies shall be made operational on May 01, 2018. The existing mechanism for monitoring the foreign investment limits shall be done away with once the new system is operationalized. RBI shall issue the necessary guidelines in this regard.

- Foreign Investment in India is regulated in terms of clause (b) of sub-section 3 of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017 issued vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017. FEMA prescribes the various foreign investment limits in listed Indian companies. These include the aggregate FPI limit, the aggregate NRI limit and the sectoral cap. The RBI Master Direction (FED Master Direction No. 11/2017-18) dated January 04, 2018 provides a compilation of the instructions issued on Foreign Investment in India and its related aspects under FEMA.

- As per FEMA, the onus of compliance with the various foreign investment limits rests on the Indian company. In order to facilitate the listed Indian companies to ensure compliance with the various foreign investment limits, SEBI in consultation with RBI has decided to put in place a new system for monitoring the foreign investment limits. The architecture of the new system has been explained in 'Annexure A' below.

- The depositories (NSDL and CDSL) shall put in place the necessary infrastructure and IT systems for operationalizing the monitoring mechanism described at Annexure A. The Stock Exchanges (BSE, NSE and MSEI) shall also put in place the necessary infrastructure and IT systems for disseminating information on the available investment headroom in respect of listed Indian companies.

- The depositories will issue the necessary circulars and guidelines for collecting data on foreign investment from listed companies. The system for collecting this data from the companies will go live on the date of the issuance of this circular. The companies will provide the necessary data (details of which are mentioned in Annexure A) to the depositories latest by April 30, 2018.

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Annexure A

Architecture of the System for Monitoring Foreign Investment Limits in listed Indian companies

Housing of the System

- The system for monitoring the foreign investment limits in listed Indian companies shall be implemented and housed at the depositories (NSDL and CDSL).

Designated Depository

- A Designated Depository is a depository which has been appointed by an Indian company to facilitate the monitoring of the foreign investment limits of that company. As defined at Regulation 2 (xxiii) of FEMA, the term 'Indian company' means a company incorporated in India and registered under the Companies Act, 2013.
- The Designated Depository shall act as a lead depository and the other depository shall act as a feed depository.

Company Master

- The company shall appoint any one depository as its Designated Depository for the purpose of monitoring the foreign investment limit.
- The stock exchanges (BSE, NSE and MSEI) shall provide the data on the paid-up equity capital of an Indian company to its Designated Depository. This data shall include the paid-up equity capital of the company on a fully diluted basis.
- The depositories shall provide an interface wherein the company shall provide the following information to its Designated Depository like Company Identification Number (CIN), Name, Date of incorporation, PAN number, Applicable Sector and Sectoral Cap, Permissible Aggregate Limit for investment by FPIs /NRIs, Details of shares held by FPI, NRIs and other foreign investors, on repatriable basis, in demat as well as in physical form and ISIN- wise details of the downstream investment in other Indian companies etc.
- The information provided by the companies shall be stored in a Company Master database. The Designated Depository, if required, may seek additional information from the company for the purpose of monitoring the foreign investment limits. The companies shall ensure that in case of any corporate action, the necessary modification is reflected immediately in the Company Master database.
- In the event of any change in any of the details pertaining to the company, such as increase/decrease of the aggregate FPI/NRI limits or the sectoral cap or a change of the sector of the company, etc. the company shall inform such changes along with the supporting documentation to its Designated Depository. Such documentation may include Board resolution, General meeting resolution and Company Secretary certificate for compliance with FEMA, 1999

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Reporting of trades

- At present, as per SEBI guidelines, the custodians are reporting confirmed trades of their FPI clients to the depositories on a T+1 basis. This reporting shall continue and the data shall be the basis of calculating FPI investments/holding in Indian companies.
- With respect to NRI (repatriable) trades, Authorized Dealer (AD) Banks shall report the transactions of their NRI clients to the depositories. The AD Banks shall be guided by the circulars issued by RBI in this regard.

Activation of a Red Flag Alert

- The monitoring of the foreign investment limits shall be based on the paid-up equity capital of the company on a fully diluted basis to ensure that all foreign investments are in compliance with the foreign investment limits.
- A red flag shall be activated whenever the foreign investment within 3% or less than 3% of the aggregate NRI/FPI limits or the sectoral cap. This shall be done as follows:
  - The system shall calculate the percentage of NRI/ FPI holdings in the company and the investment headroom available as at the end of the day with respect to the aggregate NRI/ FPI investment limit and the total foreign investment in the company by adding the aggregate NRI investment on the stock exchange, the aggregate FPI investment in the company and other foreign investment as provided by the company in the company master.
  - If the available headroom/ total foreign investment is 3% or less than 3% of the aggregate NRI/ FPI investment limit/ sectoral cap, a red flag shall be activated for that company.
  - Thereafter, the depositories and exchanges shall display the available investment headroom, in terms of available shares, for all companies for which the red flag has been activated, on their respective websites.
  - The data on the available investment headroom shall be updated on a daily end-of-day basis as long as the red flag is activated.
- The depositories shall inform the exchanges about the activation of the red flag for the identified. The exchanges shall issue the necessary circulars/public notifications on their respective websites. Once a red flag has been activated for a given scrip, the foreign investors shall take a conscious decision to trade in the shares of the scrip, with a clear understanding that in the event of a breach of the aggregate NRI/FPI limits or the sectoral cap, the foreign investors shall be liable to disinvest the excess holding within five trading days from the date of settlement of the trades.

Breach of foreign investment limits

- Once the aggregate NRI/FPI investment limits or the sectoral cap for a given company have been breached, the depositories shall inform the exchanges about the breach. The exchanges shall issue the necessary circulars/public notifications on their respective websites and shall halt all further purchases by FPIs/ NRIs and all foreign investors if the aggregate FPI/NRI/sectoral cap limit is breached

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- In the event of a breach of the sectoral cap/aggregate FPI limit/aggregate NRI limit, the foreign investors shall divest their excess holding within 5 trading days from the date of settlement of the trades, by selling shares only to domestic investors.

Method of disinvestment

- The proportionate disinvestment methodology shall be followed for disinvestment of the excess shares so as to bring the foreign investment in a company within permissible limits. In this method, depending on the limit being breached, the disinvestment of the breached quantity shall be uniformly spread across all foreign Investors/FPIs/NRIs which are net buyers of the shares of the scrip on the day of the breach. The foreign investors are required to disinvest the excess quantity by selling them only to domestic investors, within 5 trading days of the date of settlement of the trades that caused the breach.

- This method has been illustrated with the help of an example provided below.

Total shares that can be purchased by foreign investors till sectoral cap is not breached	600
Total quantity purchased by foreign investors on T day	1000
Breach quantity	400

Time	Foreign Investor	Purchase Quantity	Cumulative Purchase by foreign Investor	Quantity to be disinvested by the foreign investor
1000 hrs	ABC	100	100	40
1015 hrs	XYZ	250	350	100
1145 hrs	TYU	50	400	20
1230 hrs	POI	180	580	72
1300 hrs	QSX	120	700	48
1400 hrs	REW	150	850	60
1410 hrs	LOP	150	1000	60

- As can be observed from the above table, the foreign investors/FPIs/NRIs which are required to disinvest shall be identified and shall be informed of the excess quantity that they are required to disinvest.
- In the case of FPIs which have been identified for disinvestment of excess holding, the depositories shall issue the necessary instructions to the custodians of these FPIs for disinvestment of the excess holding within 5 trading days of the date of settlement of the trades.

- In the case of NRIs which have been identified for disinvestment of excess holding, the depositories shall issue the necessary instructions to the Authorized Dealer (AD) Banks for disinvestment of the excess holding within 5 trading days of the date of settlement of the trades.
- The depositories shall utilize the FPI trade data provided by the custodians, post custodial confirmation, on T+1 day, where T is the trade date. The breach of investment limits (if any) shall be detected at the end of T+1 day and therefore, the announcement pertaining to the breach shall be made at the end of T+1 day. The foreign investors who have purchased the shares of the scrip during the trading hours on T+1 day shall also be given a time period of 5 trading days from the date of settlement of such trades, to disinvest the holding accruing from the aforesaid purchase trades. In other words, the purchase trades of such foreign investors which have taken place of T+1 day, shall be settled on T+3 day and thereafter a time period from T+4 day to T+8 day shall be available to them to disinvest their entire holding arising from purchases on T+1 day.
- If T+1 is a settlement holiday, then the custodial confirmation of the trade executed on T day shall be done on T+2 day and the subsequent settlement of the trade on T+3 day. In such a scenario, the breach would be detected at the end of T+2 day.

- A table summarizing the breach-disinvestment scenario is given below

Parameter	Purchase on T Day	Purchase on T+1
Date of breach	T day	T day
Date of trade	T day	T+1 day
Date of detection of breach	T+1 day (End of day) T+2 day (End of Day, if T+1 is a settlement holiday	T+1 day (End of day) T+2 day (End of Day), if T+1 is a settlement holiday
Date of settlement of transaction	T+2 day T+3 day, if either T+1 day or T+2 day is a settlement holiday	T+3 day T+4 day, if either T+2 day or T+3 day is a settlement holiday
Disinvestment time frame	5 trading days from the date of settlement of the transactions which were executed on the day of the breach i.e. 5 trading days from T+2 day If T+1 day or T+2 day is a settlement holiday, then 5 trading days from T+3 day	5 trading days from the date of settlement of the transactions which were executed on T+1 day i.e. 5 trading days from T+3 day If T+2 day or T+3 day is a settlement holiday, then 5 trading days from T+4 day

- In the event the foreign shareholding in a company comes within permissible limit during the time period for disinvestment, on account of sale by other FPI or other group of FPIs, the original FPIs, which have been advised to disinvest, would still have to do so within the disinvestment time period, irrespective of the fresh availability of an investment headroom during the disinvestment time period.
- There shall be no annulment of the trades which have been executed on the trading platform of the stock exchanges and which are in breach of the sectoral caps/aggregate FPI limits/aggregate NRI limits.
- If a breach of the investment limits has taken place on account of the FPIs and the identified FPIs have failed to disinvest within 5 trading days, then necessary action shall be taken by SEBI against the FPIs.
- The Designated Depository shall levy reasonable fee/charges on the company towards development, ongoing maintenance and monitoring costs at an agreed upon frequency.

C. CLUBBING OF INVESTMENT LIMITS OF FOREIGN GOVERNMENT OR FOREIGN GOVERNMENT RELATED ENTITIES

SEBI vide circular no. SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated April 10, 2018 has given clarification with reference to Clubbing of investment limits of Foreign Government/ foreign Government related entities.

- As SEBI has been monitoring investment by foreign Governments and their related entities which are foreign central banks, sovereign wealth funds and foreign Governmental agencies registered as foreign portfolio investors (hereinafter referred as ''FPIs'') in India. The clarifications about clubbing of investment limit to be applied to foreign Government/ its related entities are as follows:

- What is the investment limit for foreign Government/ foreign Government related entities registered as Foreign Portfolio Investors (FPI)?
  The investment limit for purchase of equity shares of each company by a single FPI or an investor group shall be below 10% of the total paid up capital of the company.

- What is an investor group?
  An investor group is a set of beneficial owners who are constituents of two or more FPIs and such investor have a common beneficial ownership (hereinafter referred as "BO") of more than 50% in those FPIs. All such FPIs will be treated as forming part of an investor group and the investment limit of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.

- How to ascertain whether an FPI is forming part of any investor group?
  The designated depository participant engaged by an applicant seeking registration as FPI shall ascertain at the time of granting registration and whenever applicable, whether the applicant forms part of any investor group. It is the prime responsibility and obligation of the FPI to disclose the information with regard to investor group via designated depository participant engaged by an applicant while seeking registration as FPI.

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- How is the beneficial ownership of foreign Government entities/ its related entities determined for the purpose of clubbing of investment limit?
  The BO of foreign Government entities/its related entities shall be determined in accordance with Rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred as "PMLA Rules''). The said PMLA Rules provide for identification of BO on the basis of two methodologies namely:
  - controlling ownership interest (also termed as ownership or entitlement)
  - control in respect of entities having company or trust structure.

  In respect of partnership firms and unincorporated associations, ownership or entitlement is basis for identification of BO.

- Whether two or more foreign Government related entities from the same jurisdiction will individually be permitted to acquire equity shares in an Indian company up to the prescribed limit of 10%?
  The combined holding of all foreign Government/ its related entities from the same jurisdiction shall be below ten percent of the total paid up capital of the company. However, in cases where Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it. [Ref. Regulation 21(9) of FPI Regulations].

- How will the investment by a Foreign Government Agency be treated?
  The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government/ its related entities for the purpose of calculation of 10% limit for FPI investments in a single company, if they form part of an investor group.

- It is pertinent to note the meaning of Foreign Government Agency which is an arm/ department/ body corporate of Government or is set up by a statute or is majority (i.e. 50% or more) owned by the Government of a foreign country and has been included under "Category I Foreign portfolio investors".

- Whether any investment by World bank group entity IBRD, IDA, MIGA and IFC should be clubbed with the investment from a foreign Government having ownership in such World bank group entity?
  Government of India, has exempted World Bank Group viz. IBRD, IDA, MIGA and IFC from clubbing of the investment limits for the purpose of application of 10% limit for FPI investments in a single company.

- Where Provinces/States of some countries with federal structure have set up their separate investment funds with distinct beneficial ownership constituted with objectives suitable for their respective provinces, such funds not only have separate source of financing but also have no management, administrative or statutory commonality. Kindly inform whether investments by these foreign Government entities shall be clubbed?
  The investment by foreign Government/ its related entities from provinces/ states of countries with federal structure shall not be clubbed if the said foreign entities have different BO identified in accordance with PMLA Rules.

- How will the foreign Government/ its related entities know the available limit for investment, to avoid breach of the limit?
  The custodian of securities reports the holdings of FPIs/ investor groups to depositories who monitor the investment limits. As such, NSDL is in ready possession of aggregate holdings of FPIs/ investor groups in any particular scrip.

[Ref. Regulation 26(2)(d) of FPI Regulations]. To this effect, SEBI, vide communication dated November 02, 2017 has already advised DDPs/ custodians of securities to approach NSDL to get information regarding aggregate percentage holdings of the group entities on whose behalf they are acting in any particular company before making investment decisions. SEBI has no objection to the said arrangement for sharing of data.

- What if the investment by foreign Government/ its related entities cause breach of the permissible limit?
  If FPIs invest in breach of the prescribed limit they shall divest their holdings within 5 trading days from the date of settlement of the trades causing the breach. Alternatively, the investment by such FPIs shall be considered as investment under Foreign Direct Investment (FDI) at the FPI's option. However, the FPIs need to immediately inform of such option to SEBI & RBI, since they cannot hold equity investments in a particular company under FPI and FDI route, simultaneously.

The link of above circular is as under:
https://www.sebi.gov.in/legal/circulars/apr-2018/clarification-on-clubbing-of-investment-limits-of-foreign-government-foreign-government-related-entities_38616.html

D. PERFORMANCE DISCLOSURE POST CONSOLIDATION/ MERGER OF SCHEMES

SEBI vide its circular no SEBI/HO/IMD/DF3/CIR/P/2018/69 dated April 12, 2018 has strengthened the norms pertaining to disclosure of performance track record of merged mutual fund (MF) schemes. It has made it mandatory to disclose Performance post consolidation or merger of schemes with effect from May 01, 2018.

- This is with reference to Schedule VI under Regulation 30 of SEBI (Mutual Funds) Regulations, 1996 and SEBI circular dated March 15, 2017 which govern the depiction of past performance of schemes.

- There were no specific guidelines governing the depiction of performance of surviving schemes. In order to standardize performance disclosure, Mutual Fund Advisory Committee (MFAC) was set up which recommended the standard disclosure of performance of schemes post merger.

  i. When the Transferor's and Transferee's scheme has similar features and they get merged and the merged scheme i.e. the surviving scheme also has the same features, weighted average performance of both the schemes needs to be disclosed.

  ii. When the Transferor's scheme gets merged with Transferee's scheme or vice – versa than, the scheme whose features are retained, the performance of the same shall be disclosed.

  iii. When Transferor's Scheme gets merged with Transferee's Scheme and a new scheme emerges after consolidation or merger of schemes, past performance need not be provided.

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- In addition to the above Disclosures, past performances such scheme(s) whose features are not which are not retained post-merger may be made available on request with adequate disclaimer.

The link of above circular is as under:
https://www.sebi.gov.in/legal/circulars/apr-2018/performance-disclosure-post-consolidation-merger-of-schemes_38674.html

E. GUIDELINES FOR ISSUANCE OF DEBT SECURITIES BY REAL ESTATE INVESTMENT TRUSTS(REITs) AND INFRASTRUCTURE INVESTMENT TRUSTS(InvITs)

SEBI vide circular no SEBI/HO/DDHS/DDHS/CIR/P/2018/71 dated April 13, 2018 has issued guidelines for issuance of debt securities by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs).

- Notifications dated December 15, 2017 has amended the SEBI (Real Estate Investment Trusts) Regulations, 2014 ("REIT Regulations") and SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") and clarified that REITs and InvITs can issue debt securities

- For issuance of Debt securities, REITs and InvIT shall follow provisions of SEBI (Issue and Listing of Debt securities) Regulations, 2008 which states:

  i. That regulation 4(5) in which issuer shall not issue debt securities for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management and regulation 16(1) is regarding the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard shall not be applicable for issuance of debt securities by REITs/InvITs.

  ii. The compliances of Companies Act, 2013 or any filing to be made to ROC in terms of ILDS Regulations, shall not apply to REITs and InvITs for issuance of debt securities unless specifically provided in circular.

  iii. All other provisions of ILDS Regulations shall apply to REITs and InvITs. In case of conflict with REIT Regulations and /or InvIT Regulations or circulars issued thereunder, provisions of REIT Regulations and /or InvIT Regulations or circulars issued thereunder shall prevail over ILDS Regulations.

- Registered debenture trustee, will be required to be appointed for issuance of debt securities. A trustee to REIT/InvIT shall not be eligible to be appointed as debenture trustee to such issue of debt securities.

- Secured debt securities issued by REITs/ InviTs shall be secured by creation of charge on the assets of REIT/InvITs or holdco or SPV, having a value which is sufficient for the repayment of the amount of such debt securities and interest thereon.

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- In addition to financial disclosures, SEBI requires that such trusts which have listed their debt securities need to disclose the asset cover available, net worth, debt-equity ratio, debt service coverage ratio and interest service coverage ratio.

- Modified opinions in audit reports, having a bearing on the interest payment or redemption or principal repayment capacity of such trusts, need to be "appropriately and adequately addressed" by the board of the manager while publishing the accounts.

- REITs/ InviTs shall submit the half-yearly financial results to the stock exchanges along with a statement indicating material deviations, if any, in the use of proceeds of issue of debt securities from the objects stated in the offer document on a half-yearly basis.

The link of above circular is as under:

https://www.sebi.gov.in/legal/circulars/apr-2018/guidelines-for-issuance-of-debt-securities-by-real-estate-investment-trusts-reits-and-infrastructure-investment-trusts-invits-_38693.html

F. KNOW YOUR CLIENT REQUIREMENT FOR FOREIGN PORTFOLIO INVESTORS (FPIs)

In order to make the disclosures more accurate and efficient, SEBI vide circular no CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 made a few changes in KYC requirements for FPIs which are under risk based documentation of foreign investors classified as category I, II and III investing under Portfolio Investment Scheme, which are as follows:

- Identification and verification of Beneficial Owners (BO):

Entities	**Identification and verification of BO**	**Materiality threshold for identification of BO**
Companies	controlling ownership interest (also termed as ownership or entitlement) and control basis	25%
Trust		15%
Partnership firm and unincorporated association of individuals	ownership or entitlement basis	15%

- In respect of FPIs coming from “high risk jurisdictions” as referred in SEBI’s Master circular No. CIR/ISD/AML/2010 dated December 31, 2010, lower materiality threshold of 10% for identification of BO should be applied and also to ensure KYC documentation, as applicable for category III FPIs. All the intermediaries are again directed to ensure compliance with the requirements contained in master circular dated December 31, 2010.

- Materiality threshold should be first applied at the FPI level and then look through principle should be applied to identify the BO of the material shareholder of the FPI. Only BO with holdings equal & above the materiality

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thresholds in the FPI need to be identified through the aforesaid look through principle.

- Where no material shareholder/owner entity is identified in the FPI based on the above principles, BO shall be the senior managing official of the FPI.

- In case of companies/ Trusts represented by service providers like lawyers/ accountants, FPIs should provide information of the real owners/ effective controllers of those companies / Trusts.

- If the BO exercises controls through means such as voting rights, agreements, arrangement etc that should also be specified.

- BO should not be

  - ☞ be a nominee of another person.

  - ☞ a person mentioned in United Nations Security Council's Sanctions List notified from time to time;

  - ☞ from jurisdiction identified in the public statement of Financial Action Task Force (FATF) as:

    a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or

    b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies.

➢ Format for reporting of BOs

Sr. no	Name & Address of BO (Natural person)	Date of Birth	Tax Residency Jurisdiction	Nationality	Whether acting alone or through one or more natural persons as group, with their name & address	BO Group's percentage Shareholding /Capital/ Profit ownership in the FPIs	Tax Residency Number/Social Security Number/Passport No of BO (Please provide any)
1							
2							

- The list should be certified by FPI, FPI should also certify that there are no other BOs other than those referred in list.

- The existing FPIs should provide the list of BOs within 6 months from the date of this circular.

➢ **Indians as BO of FPIs**

It is clarified that Non Resident Indians (NRIs) / Overseas Citizen of India (OCI) and Resident Indians cannot be BO of FPIs. However, if the FPI is Category II Investment Manager of other FPIs & is non- investing entity, it may be promoted by NRIs/ OCIs.

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Existing FPI structures not in conformity with the above requirements henceforth should not create fresh position at the end of expiry of derivative contract of April 2018. Further, these FPIs are given time of six months from the date of this Circular to change their structure or close their existing position in Indian securities market.

- **Bearer share structure**

  - FPIs or investors identified on the basis of threshold for identification of BO in accordance with the PMLA Rules in FPIs have not issued any bearer shares; or
  - If the legal constitution of FPIs or their investors identified on basis of threshold for identification of BO in accordance with PMLA Rules and/or applicable home jurisdiction regulations permit issue of bearer shares, then FPIs should certify that they have not issued and do not maintain any outstanding bearer shares. Also, FPIs should certify that they will not issue bearer shares.

- **KYC review**

  - Currently, FPIs are subject to KYC review as and when there is any change in material information/disclosure.
  - Going forward, a comprehensive KYC review of FPIs should be done on a periodical basis. The KYC review (including change in BOs /their holdings) should be done as follows:
    1. High Risk Clients including those coming from high risk jurisdiction - On a yearly basis;
    2. Others - Once in every three years preferably at the time of continuance of FPI registration.

- **KYC documentation for Category III FPI**

  Additional clarifications on KYC documentation for Category III FPIs have been provided:

Sr. no	Query	Present status	Reply
1	There is uncertainty around the specific financials required for Category III FPIs. Kindly clarify the specific documents that are acceptable for the financial data and whether there is need for these to be audited.	SEBI has prescribed "Financial Data" as mandatory for Category III FPIs only. During discussions with Designated Depository Participants (DDPs) it is gathered that there is no clarity on nature of financial data needed.	Audited Annual financial statement or a certificate from auditor certifying net worth may be obtained from Category III FPIs. In case of new funds/ companies/ family offices, the audited financial statement of promoter person may be obtained.

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2	Whether prospectus and information memorandum are acceptable in lieu of an official constitutional document.	SEBI Circular prescribes the requirement of "Constitutional document" for all category of FPIs	Yes

- **Exempted documents to be provided during investigations/ enquiry**

  - Where FPIs have been exempted from furnishing certain KYC related supporting documents, an undertaking is required to be provided by the FPIs to the DDP/ Custodians, that upon demand by Regulators/Law Enforcement agencies, the relevant documents would be provided.
  - Category III FPIs are exempted from the submission of proof of address of BOs, senior management & authorised signatories. A declaration on the letterhead is required to be provided by Category III FPIs as they are high risk investors.
  - Existing FPIs are required to be submit the above documents within 6 months from the date of this Circular.

- **Clubbing of investments limits for FPIs**

  Clubbing of investment limit for FPIs should be on the basis of BO identified above. All existing FPIs are required to comply with this Circular within a period of 6 months. In respect of any future breach of clubbing limit there shall be two options:

  - The said investments shall be treated as Foreign Direct Investment from the date of breach, or,
  - FPI in breach shall have to divest its holding within five trading days from the date of settlement of the– trades to bring its shareholding below 10% of the paid up capital of the company

  The link of above circular is as under:
  https://www.sebi.gov.in/legal/circulars/apr-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-_38618.html

G. INVESTMENTS BY FPIs IN GOVERNMENT AND CORPORATE DEBT SECURITIES

In order to increase the foreign funds into Indian capital markets, SEBI vide circular no SEBI/IMD/FPIC/CIR/P/2018/70 dated April 12, 2018 has decided to increase the investment limit for foreign portfolio investors (FPIs) in central government securities and corporate bonds in two tranches which will come into effect immediately.

- RBI in its Fourth Bi-monthly Policy Statement for the year 2015-16, dated September 29, 2015 had announced a Medium Term Framework (MTF) for FPI limits in Government securities in consultation with the Government of India. After that, SEBI has issued circular regarding the allocation and monitoring of FPI debt investment limits in Government securities.

- A Sub-Limit for investment by Long Term FPIs in the infrastructure sector was created within the Corporate Debt Investment Limits (CDIL) vide circular no SEBI/HO/IMD/FPIC/CIR/P/2017/112 dated September 29, 2017

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- In accordance with the A.P. (DIR Series) Circular No. 22 dated April 06, 2018 issued by RBI, it has been decided to revise the CDIL and the limit for investment by FPIs in Government Securities and State Development Loans (SDL), for the Financial Year 2018-19, as follows:

(Amount in Crores)

Particulars	Existing Limit	April 12, 2018	October 01, 2018
Government Debt – General	191,300	207,300	223,300
Government Debt – Long Term	65,100	78,700	92,300
SDL-General	31,500	34,800	38,100
SDL-Long Term	13,600	7,100	
CDIL	244,323	266,700	289,100

All other existing conditions with regard to allocation and monitoring of debt limits shall continue to apply.

- Investment of coupons by FPIs in Government securities, which was hitherto outside the investment limit, will now be reckoned within the Government Debt – General limit. FPIs may, however, continue to invest the coupons without any constraint, as they do now. Only at the time of periodic re-setting of limits, coupon investments would be added to the amount of utilization. Accordingly, the stock of coupon investment of Rs. 4,760 crore as on March 31, 2018, shall be added to the actual utilization under Government Debt - General

The link of above circular is as under:
https://www.sebi.gov.in/legal/circulars/apr-2018/investments-by-fpis-in-government-and-corporate-debt-securities_38675.html

H. AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA (STP CENTRALISED HUB AND STP SERVICE PROVIDERS) GUIDELINES, 2004

In order to protect the interests of investors in securities, to promote the development of and to regulate the securities market, SEBI (STP Centralised Hub and STP Service Providers) Guidelines, 2004 ("Guidelines") issued Circular No. DNPD/Cir-24/04 dated May 26, 2004, to regulate the services and infrastructure set-up in respect of Straight Through Processing ("STP") and it shall come into force with immediate effect.

- The Board has amended the clause 3(2) of the Guidelines by inserting the following new sub-clause, namely,-

"iii. whether the applicant is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008."

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The link of above circular is as under:
https://www.sebi.gov.in/legal/circulars/apr-2018/amendment-to-the-securities-and-exchange-board-of-india-stp-centralised-hub-and-stp-service-providers-guidelines-2004_38709.html

I. STRENGTHENING THE GUIDELINES AND RAISING INDUSTRY STANDARDS FOR RTA, ISSUER COMPANIES AND BANKER TO AN ISSUE

SEBI vide Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018 constituted a Committee on "Strengthening the Guidelines and Raising Industry Standards for RTAs,Issuer Companies and Banker to an Issue".

- The objective of the Committee was to suggest guidelines to streamline and strengthen the procedures and processes with regard to handling and maintenance of records, transfer of securities and payment of dividend/interest/redemption by the RTAs, Issuer Companies and Bankers to Issue.

- Based on recommendation of Committee, the guidelines as annexed to this Circular are being issued. These guidelines cover the following broad areas:

  i. Provisions with respect to Payment of Dividend/interest/redemption/redemption

  ii. Provisions with respect to Transfer/Transmission/ Correction of errors etc.

  iii. Compulsory internal audit of RTAs

- The records /documents described below shall be maintained for period not less than eight years after completion of the relevant transactions by Bankers to issue, Issuer Companies, and/or by RTAs on behalf of Issuer Companies, unless otherwise indicated.

- RTAs, BTIs and Issuer Companies shall strictly comply with guidelines as prescribed below. Issuer companies shall strictly monitor the activities of their RTAs and ensure compliance of provision of this circular. It is clarified that where share transfer agent activities are carried out in-house by issuer companies, the issuer companies shall ensure that their in-house share transfer activities comply with the relevant norms as applicable to them

- RTAs, Bankers to issue, and the Issuer Companies can put in place more stringent internal checks and controls if they so desire.

- Stock Exchanges are advised to bring the contents of this circular to entities listed on their respective Exchange

- **Provisions with regard to Payment of Dividend/Interest/Redemption**

  - The issuer company, among the others, will have to ensure that the master file, having detailed list of beneficiaries of dividend or redemption, need to include company name, folio number, account details among others. The file needs to be shared with the banker through a secured process.

  - If Bank A/c. details of shareholders are not available or changed, than RTA will update the same by obtaining a cancelled cheque bearing the shareholder's name or bank attested account statement/ passbook.

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- The Unpaid dividend shall be paid by electronic bank transfer. In case of failure or rejection or unavailability of IFSC/ MICR code, physical instrument shall be issued.

- Instrument lying unpaid beyond validity of the instrument to be cancelled and amount should revert back to bank a/c. of the Co. Banks should also provide unpaid instrument details along with reconciliation data. [Applicable w.e.f 30 days after Circular date]

- Revalidation requests by RTA to Bank to contain specified details and RTA to maintain record of revalidation/ re-issue requests.

- Issuer Co., RTA & Bank to ensure that Bank provides Paid-Unpaid details as follows –
  a) Fortnightly till initial validity of instrument
  b) Quarterly till transfer of unpaid dividend to IEPF
  Reconciliation data provided by Bank to contain details of all DDs/ new instruments issued/ electronic instruction in lieu of original dividend.RTA to reconcile the same and inform Issuer/ Bank of any discrepancy.Reconciliation files provided by Bank to be maintained by Co./RTA/Bank for 8 years.

- RTA must link the details of rejection of electronic remittance, instrument undelivered, instrument expired, subsequent payment and status of payment of the same to specific Folio and audit trail must be kept in the system of in RTA.

➢ **Provisions with regard to Transfer/Transmission/Correction of Errors etc**

- Folio once allotted to a shareholder should not be re-allotted including ceased folios, i.e. folios having nil balance.

- History of all transactions in a Folio (e.g. Securities held, certificates issued, dividend/ interest/ redemption) to be linked to each folio.

- RTA to maintain Certificate Printing Register/ Records containing – Date of printing / issue, Folio No., Name in which printed, Certificate No., Distinctive Nos., Old Certificate No (in case of reprinting), Reason of printing etc.

- RTA to follow "Maker-Checker" system in all activities and mechanism to check unauthorized transaction and record shall be maintained.

- RTA and Cos. to ensure all updation in folio records are only through front end modules and maintain system logs having complete details of any change. [Applicable w.e.f 90 days after Circular date].

- RTA to take Co.'s prior approval for correction of errors in same manner as is taken in case of transfer/ transmission.

- RTA to provide soft copy of member data with details of name, address, folio no., no. of shares, distinctive nos., certificate nos. etc. and transaction in physical folios during the period, under their certification on quarterly basis.This record is to be maintained by RTA and Listed Co. independently and permanently.

- Returns/ documents filed with Registrar of Companies relating to Co.'s securities processed and compiled by RTA to be shared with Co. and preserved by Co.

- RTA & Co. to frame written policy and maintain strict control over stationery (blank certificates, dividend warrants etc.) and periodical verification of the same. Reconciliation report on the same to be maintained by Co. & RTA.

- Bonus shares to holders of physical shares can be issued in physical form only.

- RTA & Listed Co. to take special efforts to collect copy of PAN and Bank A/c. details of physical share-holders. In this regard RTA to –

    - ☞ Preserve a verifiable record of all folios not having PAN/ Bank Account details as on date of the circular, i.e. 20th April, 2018.
    - ☞ Send letter by Regd. Post/ Speed Post within 90 days of this circular (i.e. within 19thJuly, 2018) seeking PAN/ Bank A/c. details along with copy of PAN Card and original cancelled cheque leaf/ attested bank passbook showing name of shareholder.
    - ☞ This is to be followed by two reminders with 30 days gap between each reminder, i.e. 2nd reminder by 18th August, 2018 & 3rd reminder by 17th September, 2018 to be sent.
    - ☞ 21 days' time to be given to shareholders to furnish the above details in all 3 cases.
    - ☞ Record of all communication sent, received and decision taken shall be properly maintained and linked to each such Folio.
    - ☞ Shareholder not responding to provide the above within 180 days of circular date or informed that the shares do not belong to them shall be subject to enhance due diligence by issuer company.
    - ☞ List of such accounts to be shared by RTAs with Co. within 30 days of completion of notice period of last reminder, i.e. by 6th November, 2018.

- Enhanced due diligence to be exercised for the following cases –
    - ☞ Dividend remains unpaid for 3 years or more
    - ☞ PAN/ Bank A/c. details not available in folio
    - ☞ Unclaimed suspense account under LODR
    - ☞ IEPF Suspense account under CA'13
    - ☞ Any other stringent criteria decided by Co. & RTA

      RTA to maintain list of such account folios and share with Co., at every quarter end.

- RTA to have system based alerts for processing all transactions in such account folios and exercise due diligence in case of any transaction request in such accounts.

- In order to exercise due diligence Issuer Co. and RTA SHALL call for
    - ☞ Proof of Identity / Address
    - ☞ PAN details
    - ☞ Bank details

And such other additional procedures to satisfy genuineness of the request.

- RTA to maintain register of documents and records destroyed with specified details as per Para II (15) of the Circular. Its authenticity shall be verified during internal audit of the RTA.

Compulsory internal audit of RTAs

- RTAs are required to carry out the internal audit on annual basis by independent qualified Chartered Accountants or Company Secretaries or Cost and Management Accountants who do not have any conflict of interest. Such auditors will have a minimum experience of three years in the financial sector and need to be appointed for a maximum term of five years, with a cooling-off period of two years.

- The audit shall cover all aspects of RTA operations including investor grievance redressal mechanism and compliance with the requirements stipulated in the SEBI Act, Rules and Regulations made thereunder, and guidelines/circulars issued by SEBI from time to time. The scope of the audit shall cover all issues concerning the functioning of RTAs

- The report shall state the methodology adopted, deficiencies observed, and consideration of response of the management on the deficiencies

- The report shall include a summary of operations and of the audit, covering the size of operations, number of transactions audited and the number of instances where violations / deviations were observed while making observations on the compliance of any regulatory requirement.

- The report shall comment on the adequacy of systems adopted by the RTAs for compliance with the requirements of regulations and guidelines issued by SEBI and investor grievance redressal.

- The RTA shall submit a copy of report of the internal audit to Issuer Company within three months from the end of the financial year. Copy of the same shall also be preserved by the RTA.

- The Governing Council (i.e. Board of Directors, Board of Partners, proprietor etc. as applicable) of the RTA shall consider the report of the internal auditor and take steps to rectify the deficiencies, if any. The RTA shall send the Action Taken Report to Issuer Company within next one month and a copy thereof shall be maintained by the RTA.

- The Action Taken report shall be submitted in the following format:

Serial No	Audit period & name of Issuer Company	Observations of the Auditor	Comments of the Board of the RTA	Corrective actions taken

- The audit observations along with the corrective steps taken by the RTA shall be placed before the Board of Directors of the Issuer Company.

- The Issuer Companies shall satisfy themselves regarding the adequacy of the corrective measures taken by the concerned RTA. If not satisfied with the corrective measures, Issuer Company may ask RTA to take more stringent corrective measures.

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The link of above circular is as under:
https://www.sebi.gov.in/legal/circulars/apr-2018/strengthening-the-guidelines-and-raising-industry-standards-for-rta-issuer-companies-and-banker-to-an-issue_38749.html

J. AMENDMENT TO SEBI CIRCULAR NO. IMD/FPIC/CIR/P/2018/61 DATED APRIL 5, 2018 ON MONITORING OF FOREIGN INVESTMENT LIMITS IN LISTED INDIAN COMPANIES

SEBI vide Circular No. IMD/FPIC/CIR/P/2018/74 dated April 27, 2018 has amended the Circular No. IMD/FPIC/CIR/P/2018/61 dated April 5, 2018 which introduced a new system for Monitoring of Foreign Investment limits in listed Indian companies and prescribed guidelines w.r.t the necessary infrastructure, data to be provided by listed Indian companies and other related matters.

The following clarifications were given:

- The deadline for the companies to provide the necessary data to the depositories has been extended to May 15, 2018.
- The new system for monitoring foreign investment limits in listed Indian companies shall be made operational on May 18, 2018.

The link of above circular is as under:
https://www.sebi.gov.in/legal/circulars/apr-2018/amendment-to-sebi-circular-no-imd-fpic-cir-p-2018-61-dated-april-5-2018-on-monitoring-of-foreign-investment-limits-in-listed-indian-companies_38813.html

IBBI UPDATES

A. INSOLVENCY AND BANKCRUPTY BOARD OF INDIA (INSOLVENCY PROFESSIONAL) (AMENDEMENT) REGULATIONS, 2018

IBBI vide Circular dated on 5th April, 2018 stated that the provisions amended in Regulation 12, sub-regulation 1 of IBBI (IP) Regulations, 2016 relating to Insolvency Professional Entitites (IPE's) are required to be complied the provisons of clauses (e), (f) and (g) of Reg (1) on or before 30th June, 2018 and remaining clauses on or before 30th September, 2018 of IPE's recognised on 1st April, 2018, in case of failure it may be derecognised as IPE in accordance with Regulation 14.

IPE is required to satisfy all the requirements under Regulation 12 at all the times in terms of Regulation 13, sub-regulation (2).

B. PROCESS TO BE FOLLOWED FOR REGISTRATION AS REGISTERED VALUER WITH THE AUTHORITY UNDER THE COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

The Central Government **vide Press Release dated on 4th April, 2018**stated the process for getting registration to act as registered valuer for providing valuations required under Companies Act, 2013. The eligibility to act as Registered Valuer requires necessary qualifications and expereince and registration as member of Recognised Valuer Organisation (RVO). The process for registartion for Individual is as follows:

- 1st Step:Check whether the Eligibility Creteria as presribed in Rule 3 of Companies (Registered Valuers and Valuation) Rules, 2017 and Qualification and Experience presribed in Rule 4 of Companies (Registered Valuers and Valuation) Rules, 2017.

- 2nd Step: Enrol as valuer member of RVO as recognized by Insolvency Bankcrupty Board of India (IBBI).
  Valuer Member for this shall mean a member of RVO who possesses the requisite educational qualification and experience for being registered as a valuer (as per Rule 3, sub-rule (1) (a))

- 3rdStep:Complete Educational Course recognised by IBBI as member of RVO.

- 4th Step: Pass the computer based Valuation Examination of the relevant Asset Classconducted by the IBBI.

- 5th Step: Submit Form A along with Rs. 5900 (Rs.5000 + 18 % GST) within 3 years.

- 6th Step: After due verification of Form A RVO will submit form to IBBI along with its recommendation.

- 7th Step: After the receipt of Form A along with all requirements shall process the application for registration in accordance with rules.

The process for Entities (Partnership Firms, LLP and Companies) shall remain same only the fees and form shall be different which shall be Rs.11,800 (10,000+18%) andForm B.

C. PRE-REGISTRATION EDUCATIONAL COURSE

IBBI vide **CircularNo. IPA/011/2018 dated on 23rd April, 2018**specifies the details of pre-registration educational course.Pre-educational course is required to be completed from anInsolvency Professional Agency (IPA) after his enrolment as a professional member in order to gain eligiblity to act as IP subject to other requirements.

D. COMMENCEMENT OF DISCIPLINARY PROCEEDING

IBBI vide**CircularNo.LA/010/2018 dated on 23rd April, 2018** have been issued to make clarification thata disciplinary proceeding is considered as pending against an insolvency professional from the time it has been issued a show cause notice by the IBBI till its disposal by the disciplinary committee and any fresh assignment shall not be accepted by IRP, RP, liquidator, or bankruptcy trustee under the code who has been issued Show Cause Notice.

For IBC notifications please follow the below mentioned link:
http://ibbi.gov.in/webfront/whatsnew.php

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DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION NOTIFICATION ON ELIGIBILITY GUIDELINES FOR START-UP:

The Department of Industrial Policy and Promotion (DIPP) vide its notification dated 11th April 2018 has amended its previous notification dated 23rd May 2017 on the eligibility guidelines for '*start-ups'*. This notification is in supersession of the earlier notification dated 23rd May 2017. The notification is effective from 11th April 2018.

Definitions:

A. An Entity shall be considered as an Startup:

- Upto a period of **7 years** from the date of incorporation/registration, if it is incorporated as a private limitedcompany or registered as a partnership firm (under section59 of the Partnership Act, 1932) or a limited liability partnership (under the LLP Act,2008) in India. In case of Startups in the biotechnology sector, the period shall be upto **10 years** from thedate of its incorporation/ registration.

- **Turnover** of the entity for any of the financial years since incorporation/ registration has **not exceeded Rs. 25 crore**

- Entity is working towards innovation, development or improvement of products or processes or services, or if itis a scalable business model with a high potential of employment generation or wealth creation.

An entity formed by splitting up or reconstruction of an existing business shall not be considered a'Startup'.

Explanation - An entity shall cease to be a Startup on completion of 7 years (10 years in case of Startups in Biotechnology sector) or if itsturnover for any previous year exceeds Rupees 25 crore.

B. "**Act**" means the Income-tax Act,1961;

C. "**Board**" means the Inter-Ministerial Board of Certification comprising of the following members: —

i. Additional Secretary, Department of Industrial Policy and Promotion,Convener
ii. Representative of Ministry of Corporate Affairs, Member
iii. Representative of Ministry of Electronics and Information Technology, Member
iv. Representative of Department of Biotechnology, Member
v. Representative of Department of Science & Technology, Member
vi. Representative of Central Board of Direct Taxes, Member
vii. Representative of Reserve Bank of India, Member
viii. Representative of Securities and Exchange Board of India, Member

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- **The Process of recognition of an eligible entity as Startup shall be as under:**

i. A Startup shall make an online application over Mobile App or Portal set up by the DIPP.

ii. The application shall be accompanied by-

a. Copy of Certificate of Incorporation or Registration, and
b. Write-up about the nature of business highlighting how it is working towards innovation, development orimprovement of products or processes or services, or its scalability in terms of employment generation or wealthcreation.

iii. The DIPP may, after calling for such documents or information and making such enquires as it may deem fit either recognize an entity as eligible Startup **or** reject the application by providing reasons.

Income Tax Benefits:

- **Relaxation under section 80-IAC of Income Tax Act 1961(IT ACT):**

Prior to this notification, in case of claiming tax benefits under section 80-IAC of Income Tax Act, 1961, the start-ups had to be incorporated on or after 1st April 2016, but before 1st April 2019 but as per the new notification, the period has been extended to 1 April 2021 and can claim 100% tax exemption on profits for 3 out of 7 years. With this new change, the start-ups shall enjoy income tax benefit for 3 out of 7 consecutive assessment years. Further, for obtaining a certificate for the purposes of section 80-IAC of the IT Act,make an application in Form-1 along with documents specified therein to the Inter-Ministerial Board of Certification(the Board) and the Board may, after calling forsuch documents or information and making such enquires, as it may deem fit, -

(i) grant the certificate referred to in sub-clause (c) of clause (ii) of the Explanation below section 80-IAC (4) of the Act; or
(ii) reject the application by providing reasons.

- **Tax benefit under section 56 (2) (viib) of Income Tax Act 1961:**

As per section 56(2) (viib) of Income Tax Act 1961, in case of Company receiving consideration for issuance of shares above Fair Market Value (FMV), then the excess of consideration above the FMV would be taxed in the hands of Company as other Income.

1) Pursuant to this notification, the startup could avail such tax benefit on issue of shares for a consideration above the FMV, if following conditions are fulfilled :

i. the aggregate amount of paid up share capital and share premium of the startup after the proposed issue of shares does not exceed ten crore rupees,
ii. the investor/ proposed investor, who proposed to subscribe to the issue of shares of the startup (hereinafterin this notification referred to as "investor") has,-

a. the average returned income of **Rs. 25 Lacsor more** for the preceding 3 financial years;or

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b. the net worth of **Rs. 2 crore or more** as on the last date of the preceding financial year, and

iii. the startup has obtained a report from a merchant banker specifying the FMV of shares inaccordance with Rule 11UA of the Income-tax Rules, 1962.

2) The application for approval shall be made in **Form-2** to the Board with the Specified Documents and the Board after calling for such Documents and enquiries as it may deem fit may grant approval or may reject approval after providing reasons.

- **Revocation:**

Board may revoke the certificate or approval if it is found that the certificate or approval have been obtained on the basis of false information, and will be deemed to be never issued or granted by the Board.

- The link of the above notification is below:

http://dipp.nic.in/sites/default/files/Startup_Notification11April2018_0.pdf

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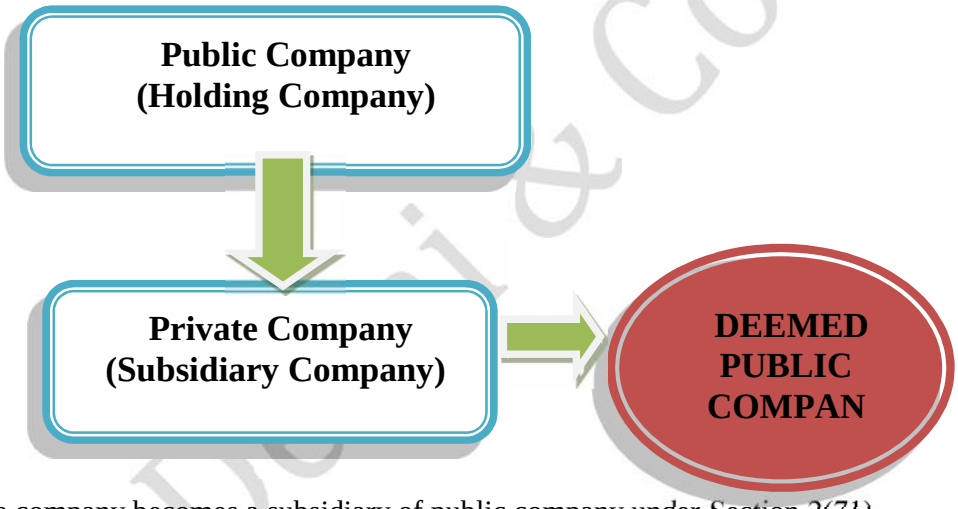
ARTICLE OF THE MONTH

COMPLIANCES BY DEEMED PUBLIC COMPANY AS PER THE COMPANIES ACT, 2013(the Act)

- **DEFINITION:**

Provisions of section 2(71) of the Act reads that a Company which is a subsidiary of any public company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles"



- **EXPLANATION**:

  - When a private company becomes a subsidiary of public company under Section 2(71) of Company Act 2013, it shall cease to be entitled to the privileges and exemptions conferred on private companies by or under the Act, and the Act shall apply to the company as if it were not a private company. The private company becomes deemed public limited company immediately upon, becoming subsidiary of a public Company.

  - Such change in status of the company is by operation of law and not based on discretion of the company.

  - The company may retain their registered corporate shell of a private company but will be subjected to the provisions of public company.There is nothing in the law mandating the company to change its incorporeal status.

- **DEEMING PROVISION UNDER COMPANIES ACT, 1956 V/S THE COMPANIES ACT, 2013:**

Section 43A of the Companies Act, 1956 had provided specifically instances when a private limited company to become public limited company.

Similarly Section 4 (7) provided that a private company, being a subsidiary of a body corporate incorporated outside India,which if incorporated in India would be a public company within the meaning of the act, shall be deemed for the purpose of this act to be subsidiary of the public company, if the entire share capital in that private limited company is not held by that body corporate, whether alone or together with one or more other body corporate incorporated outside India

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The Act has no such provisions as was there in the Companies Act, 1956.

- **RESTRICTIONS ON DEEMED PUBLIC COMPANY:**

Such deemed public company needs to comply with all provisions as if it is a public limited company. However, it may retain provisions in its Article of Association as mentioned u/s 2(68) of the Act like:

i. Restricts the right to ***transfer*** its shares;
ii. Limits the number of its ***members to 200 and***
iii. Prohibits any ***invitation to the public*** to subscribe for any securities of the company.

Further such deemed public company is not required to increase the number of members upto minimum 7 as required for public limited company and at the same time it is required to increase the number of Directors upto minimum **3**.

- **FOLLOWING ARE THE PROVISIONS APPLICABLE TO DEEMED PUBLIC COMPANY**

Section No.	**Subject of Section**	**Particulars of Sections**	**Provisions now for Deemed Public Company**
2 (40)	Financial Statement	"Financial Statement" in relation to a company, includes— (i) a B/S as at the end of the FY; (ii) a P/L, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the FY; (iii) CFS for the FY; (iv) a statement of changes in equity, if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).	As a private company if it was not required to include the Cash Flow Statement in its financial statements, shall now be applicable for deemed public company.
Section 43 and 47	Kinds of Share Capital and Voting Rights	Private Limited can exempt the provisions of section 43 and 47 by altering its Articles of Association and can have differential voting right and different kinds of share capital.	Even the deemed public company can continue to have such provisions in its Articles of Association
2 (76) (viii) read with Section 188	Related Party (RP)/ Related Party Transaction (RPT)	(viii) Any Body Corporate which is- (a) a holding, subsidiary or an associate companyof such company; (b) a subsidiary of a holding company to which it is also a subsidiary; or (c) an investigation company or the venture of the company.	Earlier provisions of Section 2(76) (viii) was exempted for definition of RP and all RPT with them were not require compliances of Section 188. However now it will be applicable to Deemed Public Company

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62(1) (a) (i) and 62 (2)	Further issue of share capital	The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than 15 days and not exceeding 30 days from the date of offer within which the offer, if not accepted shall be deemed to have been declined. And The notice of offer for right issue of share shall be dispatched through registered post or speed post or through electronic mode to all members atleast 3 days before the opening of the issue	Earlier for private company, the time limit **of** keeping the offer of right issue share openfor minimum 15 days and maximum 30 days and dispatch of such offer of shares before minimum three **(3)days, both provisions were not applicable** if **90%** of the number of members agree in writing or in electronic mode. However now the same exemptions shall not be available and hence a deemed public company need to keep offer open for minimum 15 days to maximum 30 days and also need to despatch offer to its members before 3 days from the date of opening of issue .
62(1) (b)	Further issue of share capital	Company may issue shares to its employees under a scheme of employees stock option, by passing Special Resolution.	Earlier for a private limited company, the company could pass an ordinary resolution for issue of shares under ESOP. However now the as a deemed public company it requires to pass special resolution.
67	Restrictions on purchase by company or giving of loans by it for purchase of its share	No company can purchase its shares except in terms of this Actor can provide loan, guarantee or security or any financial assistance directly or indirectly to any person for purchase of its own shares or shares of its holding company.	Earlier as a private company it may be exempted from the provisions of section 67 if following 3 conditions were met by such private limited company. 1) In whose share capital no other body corporate has invested any money; 2) If the borrowings of such company from banks or FI or any body corporate is less than twice

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			its paid up share capital or **50 crores**, whichever is lower ; and 3) there is no default in repayment of such borrowing subsisting. However now as a deemed public company, the provisions of section 67 shall be applicable to it.
73	Prohibition on Acceptance of Deposits from Public	A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the RBI, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members.	As per of Section 73(2) acceptance deposit from members by a private company is not required to comply with the conditions of clause (a)-(e) of Section 73(2). However now as a deemed public Company, the conditions of clause (a)-(e) of Section 73(2) to accept deposits from its members shall be applicable to it.
92(1) (g)	Annual Return	Every Company shall prepare Annual Return (MGT-7) containing the particulars as they stood on the close of financial year including **remuneration of directors and key managerial personnel**	In case of Small Private Companies, according to exemption notification dated June 13, 2017 were allowed to disclose the **aggregate remuneration paid to all its Directors** However now as a deemed public Company **remuneration drawn of directors and key managerial personnel needs to be disclosed individually**
92 (1)	Annual Return	In relation to One Person Company, small Company and Private Company (if such Private Company is start-up), the annual return shall be **signed by the Company Secretary, or where there is no Company Secretary by the Director of the Company.**	In case of Deemed public Company (even for start up) the Annual needs to be signed by a Director and the Company Secretary or where there is no company by a Company secretary in practice.

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101 to 107 and 109	Notice of meeting, Statement to be annexed to notice, Quorum for meeting, Chairman of meeting, Proxies, Restrictions on voting rights, Voting by show of hands and Demand of Poll	Section 101-107 and 109 shall apply to private company unless otherwise specified in respective sections or the articles of the company provide otherwise.	Provision of Section 101-107 and 109 with respect to Notice of General meeting, Statement to be annexed with such notice, quorum for general meeting etc will now apply to Deemed public company even if Article of Association of such Company provides for liberal compliances.
117(3) (g)	Resolutions and agreements to be filed	Private Company is not required to file Resolutions or agreements passed under section 179 (3) in Form MGT-14 with ROC as per the exemption notification dated June 05, 2015 mentioned as under: (a) to make calls on shareholders in respect of money unpaid on their shares; (b) to authorise buy-back of securities under section 68; (c) to issue securities, including debentures, whether in or outside India; (d) to borrow monies; (e) to invest the funds of the company; (f) to grant loans or give guarantee or provide security in respect of loans; (g) to approve financial statement and the Board's report; (h) to diversify the business of the company; (i) to approve amalgamation, merger or reconstruction; (j) to take over a company or acquire a controlling or substantial stake in another company; (k) any other matter which may be prescribed	As a deemed public company, Company will now need to comply with the provisions of Section 117 (3) (g) and will have to have file the Resolutions or agreements passed under section 179 (3) in Form MGT-14 with ROC.
138	Internal Audit	The following class of companies need to appoint an Internal Auditor, who shall either be chartered accountant or a cost accountant, or such other professional as may be decided by the Board: (a) Every **listed company**; (b)Every **unlisted public company**	As a deemed public company, the provisions of section 138 read with Rule 13 (b) of Companies (Accounts) Rule 2014 for appointment of Internal Auditor, will be applicable if it falls under the criteria for unlisted public

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		having, (i) **paid up share capital of 50 crore** rupees or more during preceding FY; **or** (ii) **turnover of 200 crore** rupees or more during the preceding FY; or (iii) **outstanding loans or borrowings** from banks or public financial institutions exceeding **100 crore** rupees or more at any point of time during the preceding FY; or (iv) **outstanding deposits of 25 crore** rupees or more during the preceding FY; and (c) Every **private company** having, (i) **turnover of 200 crore** rupees or more during the preceding FY; or (ii) **outstanding loans or borrowings** from banks or public financial institutions exceeding **100 crore** rupees or more at any point of time during the preceding FY	Company.
139 (2)	Appointment of Auditor-(Rotation of Auditor)	No listed company or a. **unlisted public companies having paid up share capital of Rs 10 crore or more**; b. **private limited companies having paid up share capital of Rs 50 crore** or more; c. companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having **public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more**. shall appoint or re-appoint— (i) an **individual** as auditor for more than **1 term of 5 consecutive years**; and (ii) an **audit firm** as auditor for more	As a deemed public company, if it exceeds the threshold limits prescribed under Rule 5(a) or (c) of Companies (Audit and Auditors) 2014, Rotation of Auditor will be applicable.

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		than 2 terms of 5 consecutive years.	
141 (3) (g)	Eligibility, Qualifications and disqualifications of Auditors	A person shall not be eligible for appointment as an auditor of a company if at the date of such appointment or reappointment he is auditor of more than 20 companies. However, in case of private Company being one person companies, dormant companies, small companies and private companies having paid-up share capital less than Rs. 100 crore shall not be counted for above ceiling limit	A Deemed Public Company now will be counted for number of appointments of Auditors under section 141 (3) (g)
143 (3) (i)	Powers and Duties of auditors and Auditing Standards-	The Auditor's Report shall state whether the Company has adequate internal financial controls system in place and the operating effectiveness of such control. Requirement of Internal Financial Controls disclosure in Auditor's Report is not apply to Private Company: i) which is a one person Company or a small Company; or ii) which has turnover less than ₹50 Cr as per latest audited financials statement and which has aggregate borrowings from banks/ financial institution/ body corporate at any point of time during the financial year less than ₹25 Cr.	As a deemed public Company, disclosure with respect to Internal Financial Controls in Auditor's Report will required as per section 143 (3) (i).
143 (11)	CARO 2016	Reporting under Companies (Auditor's Report) Order 2016 ("CARO 2016") is not applicable to certain class of Companies including Private Company- (1) Which **is not holding or subsidiary company of a public company**, and (2) A private company having a **paid up capital and reserve and surplus not more than 1 crore** as on the B/S date, and (3) A private company which does not have **total borrowing exceeding 1 crore** from any bank and Financial Institution at any point of time during the FY, and (4) A private company which does	Now as a deemed public company, the provisions of section 143 (11) relating Reporting under CARO 2016 will be applicable.

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		not have total **revenue exceeding 10 crore** during the FY.	
149 (1)	Company to have Board of Directors	Second proviso to section 149 (1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, requires appointment of atleast one Woman Director in following class of Companies: (i) Every listed company; (ii) Every other **public company** having – a) **paid–up share capital of Rs. 100 crore or more**; OR b) **turnover of Rs. 300 crore** or more.	As a deemed public company, the provisions relating to appointment of Woman Director will be applicable if the deemed public company exceeds the threshold limit of paid up Share Capital or turnover.
149 (4)	Independent Director	As per Section 149 (4) read with Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 Every listed public company and the following class of companies are shall have atleast 1/3rd of the total number of directors as independent directors : (i) **Public company** having **paid-up share capital of Rs. 10 Crore** or more; or (ii) **Public company** having **turnover of Rs. 100 Crore** or more; or (iii) **Public company** having **aggregate outstanding loan, debentures and deposits exceeding** Rs. **50 Crore.**	As a deemed public company, the provisions relating to appointment of Independent Director will be applicable if the deemed public company exceeds the threshold limit.
160	Right of person other than retiring directors to stand for directorship	A person who is not a retiring director shall be eligible for appointment as a director at any general meeting, provided a **member nominates him at least 14 days,** before the meeting if a written notice signifying his candidature as a director is left at the Registered Office of the Company along with a sum of Rs **1 Lac** or such higher amount as deposit. (Refundable on successful appointment).	Private company are exempted from requirement of proposal of candidature and depositing Rs. 1 Lacs, for proposing candidature for appointment of a non-retiring director. However such exemption will not be applicable to a deemed public company.
162	Appointment if directors to be voted individually	At a general meeting of a company, a motion for the **appointment of 2 or more persons as directors of the Company by a single resolution shall**	As per exemption notification dated June 05, 2015 a Private Company may choose to appoint two

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		not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.	or more Directors by a single resolution. However, deemed public company, if it needs to appoint director at a general meeting shall move motion signally for each Director separately.
174 (3)	Quorum for Meeting of Board	Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the BOD, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.	As per exemption notification dated June 13, 2017, in case of private interested director is counted for quorum after disclosure of his interest. However now as a deemed public company, such exemption will not be available and interested director shall not be counted for quorum.
177 (1)	Audit Committee	As per section 177(1) read with Rule 6 of Companies (Meetings of Board and its power) Rules, 2014, the Board of Directors of every listed public company and following class of Companies shall constitute an Audit Committee: (i) all **public companies** having **paid up share capital of 10 crore** or more, or, (ii) all **public companies having turnover of 100 crore** or more, or (iii)all **public companies, having in aggregate, outstanding loans, debentures, and deposit exceeding 50 crore or more**.	As a deemed public company, the provisions relating to constitution of Audit Committee will be applicable if the deemed public company exceeds the threshold limit.
177 (9) Rule 7	Vigil Mechanism	As per section 177(9) read with Rule 7 of Companies (Meetings of Board and its power) Rules, 2014, every listed company or following companies, shall establish a vigil mechanism for directors and employees to report genuine concerns or grievances- a) Company which accept deposits from the public; b) Companies which have borrowed money from banks and public financial institutions in excess of Rs. **50 crore**.	As a deemed public company, the provisions of Vigil Mechanism will be applicable if the deemed public company exceeds the threshold limit.

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180	Restrictions on power of Boards	The Board of Directors of a company shall exercise following powers only with prior approval of shareholders by SpecialResolution: - To sell, lease or dispose-off Undertaking or substantial the whole of Undertaking; - To invest otherwise in trust securities; - To borrow money in excess of paid-up capital, free reserve and securities premium; - To give time to director for re-payment of debt.	Section 180 puts Restrictions on powers of Board however such restrictions are not applicable to private Company as per exemption notification dated June 05, 2015. Deemed public company will need comply with provision of section 180.
184 (2)	Disclosure of interest by director	Every Director interested (directly or indirectly) in transaction with following party, shall disclose his interest. a) Body Corporate in which Director(s) of the Company hold more than **2%** shares or is Promoter/ Manager/ CEO; b) Firm or other entity in which Director is Partner/ Member/ Owner." The director is required to submit to the company fresh **MBP-1** whenever there is change in his interest from the earlier given MBP-1.	In a private company, an interested director can participate in meeting after disclosure of his interest pursuant to section 184. Such exemption will not be applicable to a deemed public company.
185	Loan to Directors	No Company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or given any guarantee or provide any security in connection with any loan taken by- (a) any directors of company, or of a company which its holding company or any partner or relative of such director, or (b) any firm in which any such director or relative is a partner.	Private company are exempted from the provisions of section 185 if following 3 conditions were met by such private limited company. (a) in whose share capital no other body corporate has invested any money; (b) if the borrowing of such company from banks or financial institution or anybody corporate is less than twice of its paid up share capital or **50 crore** rupees, whichever is lower; and (c) such a company has no default in repayments of such borrowings subsisting at the time of making transactions. However now as a deemed public company, the provisions of Section 185 shall be applicable to it.

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196 (4) &(5)	Appointment of Managing Director, Whole-time Director or Manager	A MD, WTD or Manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the BOD at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions.	Provisions of Section 196 (4) & (5) are not applicable to private Companies. However as a deemed public company, such provisions will be applicable.
203	Appointment of whole-time Key Managerial Person	As per Section 203 read with Rule 8 and 8A of Companies (Appointment and Remuneration of Managerial Person) Rules 2014 following class of Companies are required to appoint Whole time Key Managerial Personals: Rule 8) <u>Appointment of KMP:</u> Every listed Company and every other public company having a paid-up share capital of **10 crore** rupees or more. Rule 8A) <u>Appointment of Company Secretaries (CS) in Companies not cover under rule 8:</u> A company other than a company covered under rule 8 which has a paid up share capital of **5 crore** rupees or more shall have a whole-time CS. Whole time Key Managerial Personals includes (i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer	As a deemed public company, the provisions relating to Appointment of whole-time KMP will be applicable if the deemed public company exceeds the threshold limit.
204 read with rule 9	Secretarial Audit for Bigger Companies	As per Section 204 read with Rule 9 of Companies (Appointment and Remuneration of Managerial Person) Rules 2014, the following companies shall have Secretarial Audit Report annexed with Board's report given by a Practising Company Secretary under Section 134 (3) in **Form MR-3.** (1) Every listed company or (2) Every public company comprising of- i) **paid-up share capital of 50 crore** rupees or more; or ii) a **turnover o**f **250 crore** rupees or more.	As a deemed public company, the provisions of Secretarial Audit will be applicable if the deemed public company exceeds the threshold limit.

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➢ DISADVANTAGES OF DEEMED PUBLIC COMPANY:

Immediately on becoming deemed public company, the company is required to take action for following :

1. No Interested Directors can participate or vote in the Board meeting.
2. Appointment of any managerial personnel shall besubject to approval of Shareholders.
3. Any notice for proposing candidature of any person to be appointed as Director (who is not a retiring director) to be given by him or any member with a cheque of Rs.1 Lac .
4. Auditors of the company shall be liable for retire by rotation.
5. Company cannot take loan from relatives of its Director and if it takes it will be considered as Deposits for which the company is required to comply with the provision of section 73.
6. The Offer Letter for Right Issue of shares to be sent before minimum 3 days from the date of opening of issue and need to keep the same open for minimum 15 to maximum 30 days.

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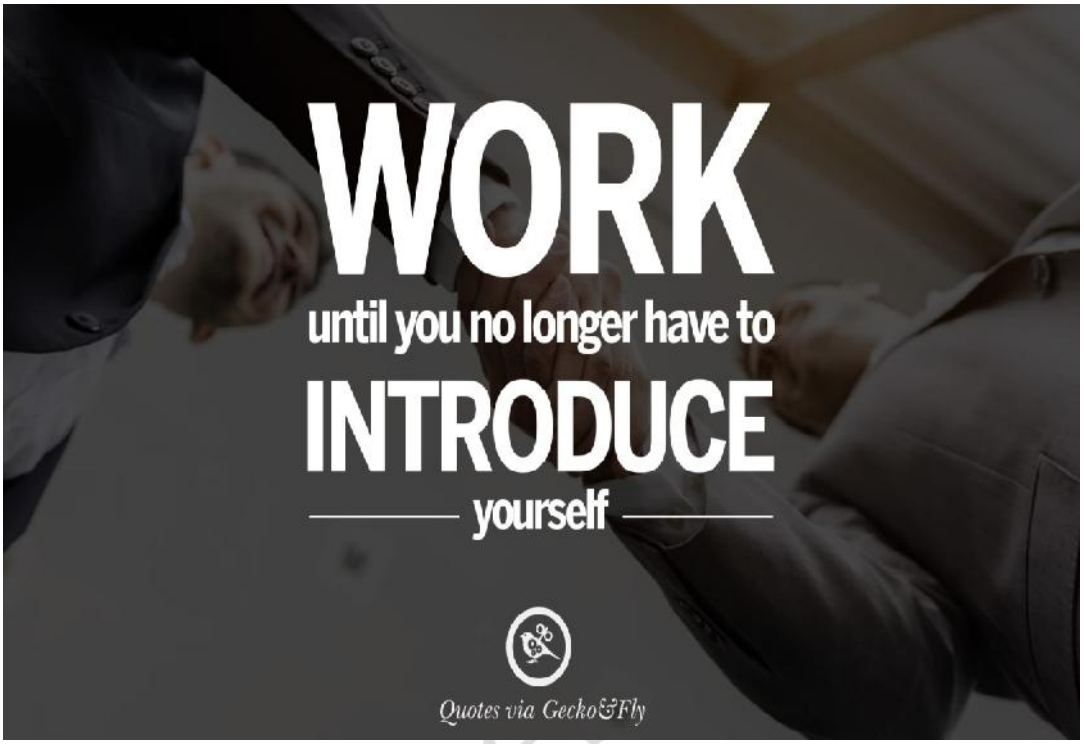
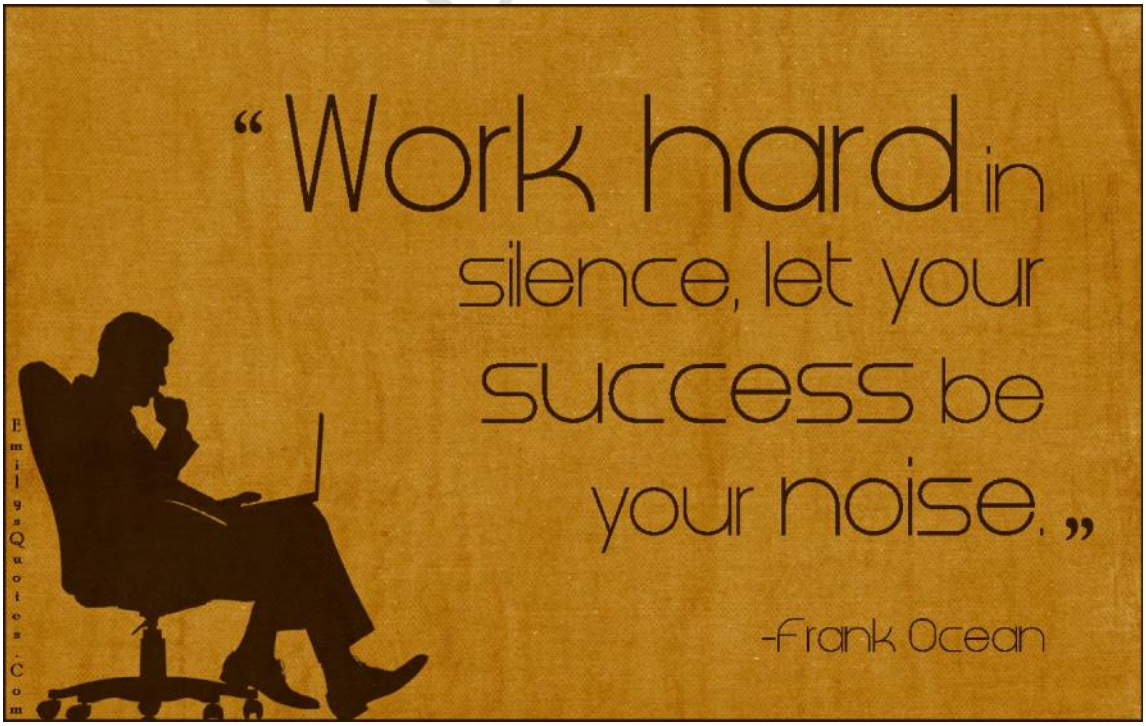
7.

INSPIRATIONAL QUOTE





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