Newsletter for June, 2019 By Team of Amita Desai & Co.

We love to serve and add value to business of our clients

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Greetings and a warm welcome to our June, 2019 Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of June, 2019. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circulars issued by regulatory authorities during the month in concise and in simplified manner.

Our article of the month relates to "National Financial Reporting Authority"

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

With warmest thanks,
Amita Desai & Team

MCA UPDATES

A. AMENDMENT OF SCHEDULE VII OF THE COMPANIES ACT, 2013:

- Ministry of Corporate Affairs (MCA) vides Notification No. G.S.R. 390 (E) dated 30th May, 2019 amended Schedule VII of the Companies Act, 2013 which deals with the activities which may be included by Companies in their Corporate Social Responsibility Policies.

- In the said Schedule VII, after item (xi) and entries relating thereto, the following item and entries shall be inserted, namely: -
  "(xii) disaster management, including relief, rehabilitation and reconstruction activities."

- Further, this notification shall come into force on the date of its publication in the Official Gazette.

- The link for the aforesaid Notification is as follows:
  http://www.mca.gov.in/Ministry/pdf/Notification_06062019.pdf

B. COMPANIES (INCORPORATION) SIXTH AMENDMENT RULES, 2019:

- MCA vide Notification No. G.S.R. 411 (E) dated 7th June, 2019 amended the Companies (Incorporation) Rules, 2014 ("Principal Rules"). These amended rules are called the Companies (Incorporation) Sixth Amendment Rules, 2019 and shall came into force with effect from 15th August, 2019.

- Amendments in Rule 19 of the Principal Rules vide this Notification are as follows:

1. **Rule 19(1): Substitution of the words, letters and figures "Form No. INC 12" with words, letters and figures "Form INC 32 (SPICe)"**

   A person or an association of persons ("proposed company"), desirous of incorporating a Company with limited liability under Section 8 (1) without addition to its name the word "Limited" or "Private Limited", shall make an application to the Registrar for a license under Section 8(1) in *Form INC 32 (SPICe)* along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

2. **Rule 19 (3) (a) and Rule 19 (3) (b): Substitution of the words "the draft memorandum" with the words "the memorandum"**

   The application to the Registrar under Rule 19 (1) for incorporating a Company with Limited Liability under Section 8 (1) without addition to its name the word "Limited" or "Private Limited" shall be accompanied with following amongst other documents mentioned under Rule 19 (3):
   (a) *the memorandum* and articles of association of the propose company;
   (b) the declaration in Form No. INC-14 by an Advocate, a CA, Cost Accountant or CS in practice, that *the memorandum* and articles of association have been drawn up in conformity with the provisions of Section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the

company under section 8 and matters incidental and supplemental thereto have been complied with.

- Amendments in Annexure to the Principal Rules vide this Notification are as follows:

1. In Form No. INC-11(Certificate of Incorporation):

- ✓ *Insertion* of the words and figures *in the heading* "and sub-section (1) of section 8" after the words and figures "sub-section (2) of section 7"

2. In Form No. INC-12:

- ✓ *Substitution of Form No. INC-12* which was before this notification an application for the grant of License under Section 8 and post this notification is substituted to be an application for grant of License to an existing company under Section 8.
- ✓ In the heading the words and figures "Section 8(1)" and "Rule 19" are deleted.
- ✓ In the attachments to the Form following are added:
  (6) Entrenched articles of association
  (10) List of Directors
  (11) List of key managerial personnel

3. In Form No.INC-32 (SPICe form):

- ✓ In the heading, for the words and figures "Pursuant to sections 4, 7, 12, 152 and 153", the words, figures and brackets "pursuant to sections 4, 8(1), 7, 12, 152 and 153" shall be substituted;
- ✓ In serial number 1, item "(g) Section 8 license number" shall be omitted.
- ✓ In attachments, after item no.19, the following item shall be inserted.
  "20. Declaration in Form No.INC-14;
  21. Declaration in Form No.INC-15;
  22. Optional attachment(s) (if any)."

- The link of the aforesaid Notification is as under:
  http://www.mca.gov.in/Ministry/pdf/Rules_07062019.pdf

C. KYC OF DIRECTORS IN E-FORM DIR-3 KYC:

- Based on the representations received from various stakeholders expressing certain difficulties in filing e-form DIR-3 KYC (of Directors) as per Rules under Companies Act, 2013, MCA vide General Circular No. 07/2019 dated 27th June, 2019 has proposed the following changes and soon will be notifying the amendment in relevant rules including extension of time for completion of KYC through e-form DIR-3 KYC or web based service:

1. **No Change in email or mobile no.**

   Director to just complete KYC through a web-based verification service

2. **If Change in email or mobile no.**

   Director to file e--form DIR-3 KYC

3. **If change in Address and other personal details like Nationality or other details**

   Director to file e-Form DIR-6 then do KYC through web-based service

- The link for the aforesaid General Circular is as follows:
  http://www.mca.gov.in/Ministry/pdf/GeneralCircular_27062019.pdf

SEBI UPDATES

A. SECURITIES AND EXCHANGE BOARD OF INDIA (DEPOSITORIES AND PARTICIPANTS) (AMENDMENT) REGULATIONS, 2019:

- SEBI vide Notification No. SEBI/LAD-NRO/GN/2019/20 dated 4th June, 2019 notified the Securities and Exchange Board of India (Depositories and Participants) (Amendment) Regulations, 2019. These regulations shall come into force on the date of their publication in the Official Gazette.

- Vide these amendment regulations following amendments took place:

  (i) In regulation 30(2) of SEBI (Depositories and Participants) Regulations, 2018, which deals with the composition of functional Committee:
  (a) in clause (a) the word "selection" shall be omitted;
  (b) in clause (b), the word "investor" shall be omitted.

  (ii) in SECOND SCHEDULE, in PART C, under the sub-heading "Managing Director/Executive Director:-", in clause (1), the following words and symbols shall be inserted at the end of the clause, namely,- "The depository shall forward the new names to the Board before two months from the last working day of the existing Managing Director."

  (iii) in SECOND SCHEDULE, in PART C, -
  (a) the symbols "(I)" shall be inserted before the sub-heading "Procedure for Appointment of Directors";
  (b) the symbols "(II)" shall be inserted before the sub-heading "Managing Director / Executive Director:-";
  (c) the symbols "(III)" shall be inserted before the sub-heading "Public Interest Directors:";
  (d) the symbols "(IV)" shall be inserted before the sub-heading "Share Holder Directors:-";
  (e) the symbols "(V)" shall be inserted before the sub-heading "General conditions on appointment of directors:-".

- The link for the aforesaid Notification is as under:
  https://www.sebi.gov.in/legal/regulations/jun-2019/securities-and-exchange-board-of-india-depositories-and-participants-amendment-regulations-2019-_43245.html

B. FACTORS FOR ASSURING CONFIDENTIALITY IN A SETTLEMENT APPLICATION FILED UNDER CHAPTER IX OF THE SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018:

- SEBI vide Circular SEBI/HO/EFD2/CSD/CIR/P/2019/0000000072 dated 18th June, 2019 provided for factors for assuring confidentiality in a settlement application filed under Chapter IX of the SEBI (Settlement Proceedings) Regulations, 2018.

- A person who may have committed a violation of securities laws, other than those detailed in Tables VII to IX of Schedule II of the SEBI (Settlement Proceedings) Regulations, 2018, may make full disclosure of such violation and also provide substantial assistance in examination / investigation / inspection / inquiry / audit / any other proceedings (hereinafter referred to as "examination proceedings") that is initiated / is ongoing / yet to be initiated by the Board, against any person in respect of violation of the securities laws for the purpose of seeking grant of confidentiality and reduced settlement charges.

- In order to assure confidentiality to an applicant who provides assistance in examination proceedings, the Board may assess the information/assistance/co-operation rendered during such examination proceedings by inter alia considering, the following factors:-

(1) **Assistance Provided**: Nature of co-operation, based on but not limited to the following:
   (i) Whether the co-operation was provided before he/she had any knowledge of any pending examination proceedings and related action;
   (ii) Whether the applicant was the first person to report the misconduct to the Board and such co-operation was truthful, reliable and complete;
   (iii) Whether the co-operation was voluntary or pursuant to any agreement with any other law enforcement or regulatory agency;
   (iv) Whether co-operation resulted in substantial assistance in conclusion of of such examination proceedings;
   (v) Whether any hardship was experienced by the applicant as a result of such co-operation;
   (vi) Whether the applicant provided non-privileged information;
   (vii) Whether the co-operation was in the form of original information (sufficiently specific and credible) to cause the Board to commence an examination proceeding or to inquire different conduct as part of a current examination proceeding;
   (viii) Whether the Board brought a successful judicial or civil and administrative action based on the original information.
   (ix) Whether the applicant encouraged or authorized others to assist the Board who might not have otherwise participated in the examination proceedings.

(2) Gravity of subject matter:
   (i) Nature and type of defaults under the securities laws;
   (ii) The age and repetitive nature of defaults;
   (iii) Adverse effect upon the investors due to the defaults involved.

(3) Factors which may adversely affect the applicant' s claim for confidentiality:
   (i) Past history of securities law violations by the applicant;
   (ii) Extent of involvement of the applicant in the violation of securities law;
   (iii) Degree to which the applicant tolerated the illegal activity;
   (iv) Whether the applicant is/was an auditor/accountant/compliance officer etc who ought to have exercised a higher standard of diligence but failed to do so;

(v) Plausibility of reasons for the applicant to delay reporting of the violations of the securities law.
(vi) Efforts taken by the applicant to remediate/mitigate/indemnify the harm caused by the violations.

- Applicants desirous of filing a settlement application under Chapter IX of the SEBI (Settlement Proceedings) regulations, 2018 may take note of the aforesaid at the time of filing the application with the Board.

- Further, this circular shall come into force with immediate effect.

- The link of the aforesaid circular is as mentioned below: https://www.sebi.gov.in/legal/circulars/jun-2019/factors-for-assuring-confidentiality-in-a-settlement-application-filed-under-chapter-ix-of-the-sebi-settlement-proceedings-regulations-2018-_43325.html

C. DECISIONS TAKEN IN THE SEBI BOARD MEETING:

- SEBI vide Press Release No. 16/2019 dated 27th June, 2019 mentioned about the decisions taken by it in its Meeting held in Mumbai on 27th June, 2019.Following are the various decisions taken by the Board in its Meeting:

1. Framework for issuance of Differential Voting Rights (DVR) Shares:

- In this meeting the Board approved a framework for issuance of DVR shares along with the amendments to the relevant SEBI Regulations to give effect to the framework.

- The key proposals approved are as follows:

Eligibility: An initial public offering (IPO) of only ordinary shares would be permitted to a company having superior voting rights shares (SR shares). The shares can be listed on the Main Board subject to requirements of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and the following conditions:

(i) The issuer company is a tech company (as per the definition in Innovators Growth Platform) i.e. intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition.
(ii) The SR shareholder should be a part of the promoter group whose collective net worth does not exceed Rs 500 Crores. While determining the collective net worth, the investment of SR shareholders in the shares of the issuer company shall not be considered.
(iii) The SR shares have been issued only to the promoters/ founders who hold an executive position in the company.
(iv) The issue of these SR shares has been authorized by a special resolution passed at a general meeting of the shareholders.
(v) SR shares have been held for a period of at least 6 months prior to the filing of Red Herring Prospectus (RHP).
(vi) SR shares have voting rights in the ratio of minimum 2:1 to maximum 10:1 compared to ordinary shares.

Listing and Lock-in: SR shares shall also be listed on Stock Exchanges after the issuer company makes a public issue. However, SR shares shall be under lock-in after the IPO until their conversion to ordinary shares. Transfer of SR shares among promoters shall not be permitted. No pledge/ lien shall be allowed on SR shares.

Rights of SR shares: SR shares shall be treated at par with the ordinary equity shares in every respect, including dividends, except in the case of voting on resolutions. The total voting rights of SR shareholders (including ordinary shares), post listing, shall not exceed 74%.

Enhanced corporate governance: Companies having SR shareholders shall be subject to enhanced corporate governance as follows:

(i) Atleast ½ of the Board and 2/3rd of the Committees (excluding Audit Committee) as prescribed under SEBI (LODR) Regulations, 2015 shall comprise of Independent Directors.
(ii) Audit Committee shall comprise of only Independent Directors.

Coat-tail Provisions: Post-IPO, the SR Equity Shares shall be treated as ordinary equity shares in terms of voting rights (i.e. one SR share shall have only one vote) in the following circumstances:

(i) Appointment or removal of independent directors and/or auditor;
(ii) In case where promoter is willingly transferring control to another entity
(iii) Related Party Transactions in terms of SEBI(LODR) Regulations involving SR shareholder
(iv) Voluntary winding up of the company;
(v) Changes in the company's Article of Association or Memorandum - except any changes affecting the SR instrument
(vi) Initiation of a voluntary resolution plan under IBC;
(vii) Utilization of funds for purposes other than business
(viii) Substantial value transaction based on materiality threshold as prescribed under LODR;
(ix) Passing of special resolution in respect of delisting or buy-back of shares; and
(x) Any other provisions notified by SEBI in this regard from time to time.

Sunset Clauses: SR shares shall be converted into ordinary shares in following circumstances/ events:

(i) **Time Based:** The SR shares shall be converted to Ordinary Shares on the 5th anniversary of listing. The validity can be extended once by 5 years through a resolution. SR shareholder would not be permitted to vote on such resolutions.
(ii) **Event Based:** SR shares shall compulsorily get converted into ordinary shares on occurrence of certain events such as demise, resignation of SR shareholders, merger or acquisition where the control would be no longer with SR shareholder, etc.

Fractional Rights Shares: Henceforth, issue of fractional rights shares by existing listed companies shall not be allowed. The need for allowing issue of fractional rights shares by listed companies may however be reviewed after gaining enough experience with the use of SR shares.

The Board, while approving the amendments, considered the recommendations of the Primary Market Advisory Committee (PMAC) and the public comments on the Consultation Paper.

2. **Amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - payment relating to royalty and brand usage:**

(i) SEBI (Listing Obligations and Disclosure Requirements) Regulations had prescribed that payments made to related parties towards brand usage or royalty are to be considered material if the transaction(s) *exceed 2% of the annual consolidated turnover* of the listed entity during a financial year. This required approval of the shareholders, with no related party having a vote to approve such resolutions. This provision was to come into effect from April 1, 2019. In view of the representations received on the subject and with a view to analyse them, the Board had decided to defer the implementation of this provision for three months i.e. till June 30, 2019.

(ii) The Board has now, after considering the representations, decided that payments made to related parties towards brand usage or royalty may be considered material if the transaction(s) *exceed 5% of the annual consolidated turnover* of the listed entity during a

financial year and would require approval of the shareholders, with no related party having a vote to approve such resolutions.

3. **Disclosure of Encumbrances:**

The Board had approved the following proposals:

(i) The definition of the term "encumbrance" under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 shall include the following -

(a) any restriction on the free and marketable title to shares, by whatever name called, whether executed directly or indirectly;

(b) pledge, lien, negative lien, non-disposal undertaking;

(c) any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly.

(ii) Whenever the combined encumbrance by the promoters and persons acting in concert (PACs) crosses 20% of the total share capital in the company or 50% of their shareholding in the company, detailed reasons for such encumbrance shall be separately disclosed by the Promoters. The stock exchanges will maintain the details of such encumbrance along with purpose of encumbrance, on their websites.

(iii) The promoters shall declare on a yearly basis to the Audit Committee of the Company and to the stock exchanges, that they along with PACs have not made any encumbrance directly or indirectly, other than already disclosed, during the financial year.

The Board had taken the above measures in the context of recent concerns w.r.t. promoter/ companies raising funds from Mutual Funds/ NBFCs through structured obligations, pledge of shares, non-disposal undertakings, corporate/ promoter guarantees and various other complex structures.

4. **Review of Risk Management Framework of Liquid Funds, Investment Norms and Valuation of Money Market and Debt Securities by Mutual Fund:**

SEBI had constituted working groups representing AMCs, industry and academia to review the risk management framework with respect to liquid schemes and to review the existing practices on valuation of money market and debt securities. Further, an internal working group within SEBI was constituted to inter-alia review norms for Mutual Funds for investment in various debt and money market securities.

The analyses along with recommendations of the working groups were placed in a meeting of Mutual Fund Advisory Committee (MFAC). In this regard, MFAC made several recommendations.

The Board after deliberations, inter-alia, approved the following proposals:

Risk Management Framework of Liquid Funds and prudential norms governing investments in debt and money market instruments

(i) Liquid Schemes shall be mandated to hold at least 20% in liquid assets such as Cash, Government Securities, T-bills and Repo on Government Securities.

(ii) The cap on sectoral limit of 25% shall be reduced to 20%. The additional exposure of 15% to HFCs shall be restructured to 10% in HFCs and 5% exposure in securitized debt based on retail housing loan and affordable housing loan portfolios.

(iii) The valuation of debt and money market instruments based on amortization shall be dispensed with completely and shall be based on mark to market.

(iv) Liquid and overnight schemes shall not be permitted to invest in Short Term Deposits, debt and money market instruments having structured obligations or credit enhancements.

(v) A graded exit load shall be levied on investors of liquid schemes who exit the scheme upto a period of 7 days.

(vi) Mutual Fund schemes shall be mandated to invest only in listed NCDs and the same would be implemented in a phased manner. All fresh investments in Commercial Papers (CPs) shall be made only in listed CPs pursuant to issuance of guidelines by SEBI in this regard.

(vii) All fresh investments in equity shares by Mutual Fund schemes shall only be made in listed or to be listed equity shares.

(viii) Prudential limits on total investment by a Mutual Fund scheme in debt and money market instruments having credit enhancements and on investment by Mutual Fund scheme in such debt securities of a particular group, as percentage of debt portfolio of the respective scheme have been prescribed at 10% and 5% respectively.

(ix) There should be adequate security cover of at least 4 times for investment by Mutual Fund schemes in debt securities having credit enhancements backed by equities directly or indirectly.

Valuation of Money Market and Debt Securities by Mutual Funds

(i) In order to make existing provisions on valuation of money market and debt securities more reflective, various proposals for amending the extant provisions were approved.

(ii) Further, in order to bring uniformity and consistency in valuation, various proposals on the waterfall approach for valuation of non-traded money market and debt securities by Mutual Funds were approved, along with acknowledging that valuation agencies may need a certain degree of flexibility in order to ensure fair pricing of securities. Nevertheless, in terms of the Principles of Fair Valuation, AMCs are responsible for ensuring fairness of valuation and they may deviate

from the valuation guidelines, subject to appropriate documentation and disclosure.

(iii) In order to increase the robustness of valuation and address possible misuse, various proposals related to valuation of Inter-scheme Transfers (ISTs), disallowing the use of own trades for valuation etc., were approved.

An old rule will continue to apply to some existing situations while a new rule will apply to all future cases. Also, adequate time period shall be provided for implementation of the above proposals**.**

5. Amendments to SEBI (PIT) Regulations:

- The Board considered representations received from the market on certain aspects relating to Code of Conduct prescribed in the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations).
- Upon consideration, the Board approved amendments clarifying that trading window closure for listed companies shall be applicable from end of every quarter till 48 hours after declaration of financial results.
- The amendments clarify that such closure shall not be applicable in respect of transactions such as :
  - ✓ off-market inter-se transfer between insiders,
  - ✓ transaction through block deal window mechanism between insiders,
  - ✓ transaction due to statutory or regulatory obligations,
  - ✓ exercising of stock options,
  - ✓ pledging of shares for bona fide transaction such as raising of funds and transactions for acquiring shares under further public issue, right issue and preferential issue, exercising conversion of warrants / debentures, tendering shares under buy-back,
  - ✓ open offer and delisting etc.

- The Board also approved amendments clarifying material financial relationships.

6. SEBI Annual Report: 2018-19

- SEBI Annual Report for the FY 2018-19 was considered and approved by the Board. The Annual Report would be submitted to the Central Government in compliance with Section 18(2) of SEBI Act, 1992.

- The link of the aforesaid Press Release is as mentioned below: https://www.sebi.gov.in/media/press-releases/jun-2019/sebi-board-meeting_43417.html

RBI UPDATES

A. PRUDENTIAL FRAMEWORK FOR RESOLUTION OF STRESSED ASSETS

- Attention Scheduled Commercial bank, All India Term Financial Institution, Small Finance Bank, Systemically Important Deposit & Non-Deposit taking Non-Banking Financial Companies.

I. <u>Framework for Resolution of Stressed Asset includes the following:</u>

i. Early identification and reporting of stress
ii. Lenders shall classify loan accounts immediately on default as Special Mention Accounts (SMA) as SMA-0, SMA-1 and SMA-2
iii. Credit facilities like Cash credit may be sub-categorised as SMA-1 and SMA-2
iv. Lenders shall report credit information including classification of an account as SMA, on all borrowers having aggregate exposure of Rs.50 million & above to Central Repository of Information on Large Credits (CRILC)
v. Main report to CRILC shall be submitted on monthly basis.
vi. Weekly report of instances of default shall be reported on every Friday.
vii. Implementation of Resolution Plan (RP)
viii. All lenders must put in place Board approved policies for resolution of stressed assets and timelines for resolution. In any case, once a borrower is reported to be in default by any of the lenders, lenders shall undertake a prima facie review of the borrower account within thirty days from such default ("Review Period").

- All lenders shall enter into an inter-creditor agreement (ICA), where RP is to be implemented to provide for ground rules for finalization and implementation of the RP in respect of borrowers with credit facilities from more than one lender.

- The Review Period shall commence not later than:

(a) The reference date, if in default as on the reference date; or
(b) The date of first default after the reference date.

- Implementation Conditions for RP

One Independent credit evaluation (ICE) is required for RPs involving restructuring / change in ownership in respect of accounts where the aggregate exposure of lenders is Rs.1 billion and above. While accounts with aggregate exposure of ` 5 billion and above shall require two such ICEs.

In cases where, lenders assigning the exposures to third party or recovery action is involved in a RP, and the exposure to the borrower is fully extinguished then it is deemed to be implemented.

Delayed Implementation of Resolution Plan

- Additional provisions shall be made as per provisions in respect of borrowers, who have not implemented variable RP.
  i. Additional provisions shall not be more than 100% of total outstanding.
  ii. Where recovery proceedings have been initiated and not fully completed, additional provisions shall be required to be made.
  iii. Additional provisions may be revised as per the provisions.

Prudential norms

i. Applicable to any restructuring/change in ownership, whether under the IBC framework or outside the IBC, are contained in **Annex-1**.

ii. Lenders shall make appropriate disclosures in their financial statements, under 'Notes on Accounts', relating to RPs implemented.

II. Exceptions

a. Restructuring in respect of projects under implementation involving deferment of date of commencement of commercial operations shall be given via Master Circular No. DBR.No.BP.BC.2/21.04.048/2015-16 dated July 1, 2015

b. Section I/(B), I(C) AND I/(D) of the framework shall not be applicable to revival and rehabilitation of MSMEs covered by the instructions contained in Circular No. FIDD.MSME & NFS.BC.No.21/ 06.02.31/ 2015-16 dated March 17, 2016

c. Section I/(E) of Framework shall not be in derogation to the provisions of the circular DBR.No.BP.BC.18/21.04.048/ 2018-19 dated January 1, 2019

III. Withdrawal of Extant Instructions

1. The extant instructions on resolution of stressed assets stand withdrawn with immediate effect.

2. The Joint Lenders' Forum (JLF) for resolution of stressed accounts also stands discontinued.

- The lenders shall not reverse the provisions in respect of any borrower unless the reversal is a consequence of an asset classification upgrade or recovery etc.

- The link of the aforesaid Notification is as under:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11580&Mode=0

B. NATIONAL ELECTRONIC FUNDS TRANSFER (NEFT) & REAL TIME GROSS SETTLEMENT (RTGS) – WAIVER OF CHARGE

- Reserve Bank has reviewed various charges for transactions processed in RTGS & NEFT with effect from July 01, 2019 via Notification RBI/2018-2019/208 DPSS (CO) RPPD No.2557/04.03.01/2018-19

- The link of the aforesaid Notification is as under:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11586&Mode=0

C. Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies

- Attention of Authorised Dealer Category-I (AD Category-I) banks is invited to the following regulations, and the relevant directions issued under these regulations.

- For further reference please refer:
http://www.amitadesai.com/uploads/News%20alert%20on%20RBI%20FLAIR%20Reporting_.pdf

ARTICLE OF THE MONTH

NATIONAL FINANCIAL REPORTING AUTHORITY

The most important clarification whether NFRA Form is required to be filed by any company or not by 31st July, 2019

July 1 is Chartered Accountants' Day marking the date on which the Chartered Accountants Act came into effect in 1949. On the same day after 70 years, NFRA is constituted with the main mission of regulating the auditing profession to improve the transparency and reliability of financial statements and information presented by listed companies and large unlisted companies in India.

I. **Powers of NFRA**

As per Notification dated 13th November 2018, National Financial Reporting Authority (NFRA) **shall have power**

(a) to monitor, enforce compliance with accounting standards and auditing standards,
(b) oversee the quality of service or
(c) shall also have the power to undertake investigation *suo moto* or on a reference made to it by Central Government, into the matters of professional or other misconduct committed by any member or firm of Chartered Accountant registered under the Chartered Accountants Act, 1949 for the **following class of companies and bodies corporate**.

This power of NFRA is notwithstanding anything contained in any other law for the time being in force. Once the investigation has been started by NFRA , no other institute (including Institute of Chartered Accountants of India) or any other body shall initiate or continue any proceedings in the matter of misconduct of Chartered Accountant .

II. Class of companies and bodies corporate

(a) Companies whose securities are listed on any stock exchange in India or outside India;

(b) Unlisted public companies having
(i) paid-up capital of not less than Rs.500 Crores or
(ii) annual turnover of not less than Rs.1000 Crores or
(iii) having, in aggregate, outstanding loans, debentures and deposits of not less than Rs.500 Crores as on the 31st March of immediately preceding financial year;

(c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

(d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and

(e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or net worth of such subsidiary or associate

company exceeds twenty per cent. of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

III. Explanation of applicability of filing Form NFRA-1

1. The Company which are in the above list is not required to file NFRA -1 as through ADT-1 the details of Auditors of the Company is available to NFRA.
2. The Company which are not in above list is also not required to file NFRA-1 as through ADT-1 the details of Auditors of the Company is available to NFRA.
3. However, if the company [**which is listed above in pt (a) to (c)]** has any body corporate **incorporated or registered outside India**, which is a subsidiary or associate company of the Company and if the **Income or Net worth** of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net worth of such company or the body corporate then the Form NFRA -1 is required to be filed by such existing body corporate.

IV. Time frame to file NFRA-1

Originally as per Rules, the Form NFRA -1 was required to be filed in 30 days from the date of commencement of the NFRA Rules, 2018. However vide Circular dated 18th October, 2018, MCA had clarified that only bodies corporate are required to file this Form NFRA-1 in 30 days from the date of deployment of the Form on the website of MCA or NFRA.

V. Auditor to file separate Annual Return with NFRA

As per Rule 5 of NFRA Rules, 2018 , every auditor of the Companies listed above in Part II is required to file a return with NFRA on or before 30th of April every year in a prescribed form as may be specified by the Central Government

VI. Education and advocacy of financial reporting by NFRA

NFRA shall take suitable measures for the promotion of awareness and significance of accounting standards, auditing standards, auditors' responsibilities, audit quality and such other matters through education, training, seminars, workshops, conferences and publicity.

Conclusion:

Prime Minister Narendra Modi addressed the CA Day gathering in Delhi last year and mentioned the gathering to support the country and not the client. He had also warned of the consequences of their assisting tax evasion, money laundering and fraud to corporate India.

After the Satyam scandal in the year 2009, the Standing Committee on Finance proposed the concept of National Financial Reporting Authority (NFRA) for the first time and the Companies Act, 2013 gave the regulatory framework for the constitution of NFRA under section 132, which was effective from 21st March 2018. NFRA consists of four members (i) Chairman (ii) three full-time members and (iii) one secretary. Mr. Rangachari Sridharan was appointed as the first chairman of the body in October 2018.

After set up of NFRA, India is now eligible for membership of International Forum of Independent Audit Regulators (IFIAR). **IFIAR** is an global member organization comprising independent audit regulators from 53 jurisdictions and its mission is to serve the public interest and enhance investor protection by improving audit quality globally. It was established in Paris in the year 2006. Lastly, for successful implementation of its mission it is imperative to have personnel of high proficiency and impeccable uprightness in NFRA and not to be appointed through acquaintances of the accounting industry.

In the society, the professionals are earning top respect due to their skills and they are expected to be neutral and there has to be a pull from the professional to raise the bar for better and transparent financial reporting. Since it has not happened there is this push which has come from the regulator.

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INSPIRATIONAL QUOTES

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