



***Private Circulation Only**

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

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

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

We have tried to provide an analysis on Secretarial Standard on Report of Board of Directors (SS-4).

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

With warmest thanks,
Amita Desai & Team



Desai & Co

A. General Circular No.07/2018 dated 06th September 2018

- Ministry of Corporate Affairs (MCA) vide its Notification dated June 13, 2018, enforced the provisions of amended Section 90 of the Companies Act, 2013 and also issued the Companies (Significant Beneficial Owners) Rules, 2018 in relation to **Significant Beneficial Ownership (SBO)**, pursuant to which the Company is required to file Form BEN - 2 with the Registrar of Company (RoC) **within a period of 30 days** from the date of receipt of Form BEN – 1 from the SBO.
- Now, MCA vide its general circular dated 6th September, 2018, granted a relaxation by **extending the last date of filing Form BEN -2** by the Company with the RoC without additional fees considering the unavailability of electronic form BEN -2.
- The Link of the above circular is as under:
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.7_06082018.pdf.

B. General Circular No.08/2018 dated 10th September 2018

- MCA vide its General Circular No. 08/2018 dated September 10, 2018, has informed that considering certain difficulties as expressed by the stakeholders in filing a declaration in Form BEN-1, it will be **revising Form BEN-1** and shall notify the new Form BEN -1 shortly.
- Further, MCA advised to **file Form BEN 1 as per the revised form only** and adhere to the time lines which will be specified soon by MCA.
- The Link of the above circular is as under:
http://www.mca.gov.in/Ministry/pdf/GCCircularBen_10092018.pdf

C. Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018.

- Ministry of Corporate Affairs (MCA) has issued a Notification dated September 10, 2018, in which the Central Government has made amendments in the Companies (Prospectus and Allotment of Securities) Rules, 2014
- In the Companies (Prospectus and Allotment of Securities) Rules, 2014, after rule 9, Rule 9A is inserted. The brief details of which are as follows:

(1) Every unlisted public company shall –

- (a) issue the securities only in **demat form**; and
- (b) for its existing security holders it will give facility of demat as per the Depositories Act, 1996 and regulations made there under. It shall secure International Security Identification Number (ISIN) for each type of security and inform all its existing security holders about the ISIN.

(2) Every unlisted public company cannot make any offer:

- (a) for issue of any securities or
- (b) buyback of securities or
- (c) issue of bonus shares or
- (d) rights offer

unless entire holding of securities of its promoters, Directors, Key Managerial Personnel is in demat form.

(3) No security holder of an unlisted public company can transfer his/ her shares after 2nd October, 2018, unless securities are in demat form and also no security holder can subscribe to any securities by way of rights, bonus or private placement unless all his existing securities are held in demat form before subscription.

(4) Every unlisted public company shall ensure:

- (a) timely payment of fees to depository and registrar to the issue;
- (b) to maintain security deposit, of not less than 2 years fees with the depository and registrar to the issue; and
- (c) to comply with the regulations, directions or guidelines or circulars, issued by SEBI or Depository, if any, from time to time.

(5) In case the public unlisted company has defaulted in complying with the rules mentioned in point (4), it shall not make offer of any securities or buyback its securities or issue any bonus or right shares till the payments are made to depositories or registrar to an issue and share transfer agents.

(6) The unlisted public company shall submit an audit report as provided under Regulation 55A of the Securities and Exchange Board of India (Depository and Participants) Regulations, 1996, to the Registrar on a half-yearly basis.

(7) In case of any grievances by the security holders, the same shall be filed before the Investor Education and Protection Fund Authority, which shall intimate any action against a depository or participate or registrar to an issue and share transfer agent after making a consultation with SEBI.

➤ The link for the said Notification is as follows:

http://www.mca.gov.in/Ministry/pdf/CompaniesProspectus3amdRule_10092018.pdf

D. Section 66 to 70 (both inclusive) of the Companies Amendment Act 2017 (CAA 2017) made effective from 12th Sept 2018 (Related to remuneration of Managerial Personnel)

- Ministry of Corporate Affairs (MCA) vide Notification dated 12th September 2018, has notified Sections 66 to 70 (Both Inclusive) of the Companies (Amendment) Act, 2017 (CAA, 2017) pursuant to which there has been changes in Section 196, 197, 198, 200, 201 of the Companies Act, 2013 (CA, 2013).

Sr No.	Section no.	Title
1	196	Appointment of Managing Director, Whole Time Director or Manager
2	197	Overall maximum Managerial Remuneration, and Managerial Remuneration in case of absence or inadequacy of profits
3	198	Calculation of Profits
4	200	Central Government or Company to fix limit with regard to remuneration
5	201	Forms of, and procedure in relation to certain application

- The notification has resulted in some amendments in the provisions of above sections, Schedule V and in the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018. *Central Government word is omitted as now there is no need to apply to Central Government for the purpose of remuneration to Managerial personnel.*
- An article on the above mentioned notification has been uploaded on our website under the Articles section. The link to which is as under:

<http://amitadesai.com/uploads/News%20alert%20on%20Sections%20Notified%20under%20CAA%202017%20on%2012.09.2018.pdf>

- The links of the above said notification are as follows:

(i) Commencement notification:

http://www.mca.gov.in/Ministry/pdf/commencementnoti_13092018.pdf

(ii) Amendment in Schedule V of the Companies Act, 2013

http://www.mca.gov.in/Ministry/pdf/ScheduleVCompAct_13092018.pdf

(iii) Companies (Appointment and Remuneration of Managerial personnel) Amendment Rules, 2018

http://www.mca.gov.in/Ministry/pdf/companiesAmendRules_13092018.pdf

E. Limited Liability Partnership (Second Amendment) Rules, 2018

- Ministry of Corporate Affairs (MCA) vide its notification dated 18th September, 2018 has further amended the Limited Liability Partnership Rules, 2009 (LLP Rules, 2009) which are called as Limited Liability Partnership (Second Amendment) Rules, 2018.
- Such Rules (i.e. Limited Liability Partnership (Second Amendment) Rules, 2018) shall come into force with effect from 2nd October, 2018.

- **In Rule-3**, after sub-rule (2), sub rule (3) was inserted as (3) form RUN-LLP (Reserve Unique Name- Limited Liability Partnership), Form FiLLip (Form For incorporation of LLP), Form-5, Form-17 and Form-18 shall be processed by Central Registration Centre (CRC) for and on behalf of the jurisdictional Registrar.
- **In Rule 8**, in the proviso, for the word and figure “Form-2”, the word and letters “Form FiLLip” shall be substituted. Form-2 was for the individual who has given his consent to act as Partner or designated Partner.
- **In Rule 11**, the following shall be substituted:
 - (1) For the purposes of section 11, the incorporation document shall be filed in Form FiLLiP (instead of Form-2) with the Registrar having jurisdiction over the state in which the registered office of the limited liability partnership is to be situated along with fee as provided in Annexure 'A'
 - Provided that if an individual required to be appointed as designated partner does not have a DPIN or DIN, application for allotment of DPIN shall be made in Form FiLLiP:
 - Provided further that the application for allotment of DPIN shall not be made by more than two individuals in Form FiLLip:
 - Provided also that an application for reservation of name may be made through Form FiLLiP:
 - Provided also that where an applicant had applied for reservation of name under rule 18 in Form RUN-LLP and which has been approved, he may fill the reserved name as the proposed name of limited liability partnership.
 - (2) (a) Where the Registrar, on examining Form FiLLiR finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.
 - (b) After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies:
 - Provided that the total period for re-submission of documents shall not exceed thirty days.
 - (3) The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16."
- **In Rule 13**, (a) the word and figure "Form2" the word and letters "Form FiLLiP" shall be substituted."
- **In Rule 18**, in Sub rule(2),
 - i. Clause (viii) the proposed name is vague like D.I.M.O. Limited liability partnership or I.V.N.R. Limited liability partnership or S.S.R.P Limited liability partnership: Shall be omitted.
 - ii. Clause (xiv) it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal: Shall be omitted.
 - iii. for sub-rule (5) Every such application shall be in Form 1 and be accompanied by fee as mentioned in Annexure ‘A’ and the Registrar shall inform to the applicant for reservation or non reservation of the changed name or the name with which the proposed LLP is to be registered ordinarily within seven days of the receipt of application, the following shall be substituted, namely:-

" (5) Every such application shall be made through the web service, RUN-LLP, available at www.mca.gov.in and be accompanied by fee as mentioned in Annexure 'A', which may either be approved or rejected, as the case may be, by the Registrar after allowing a re-submission of such application within fifteen days for rectification of defects."

Change in process of Incorporation of LLPs

Changes in the Forms

Form Description	Form No. prior to amendment	Form No. after to amendment	Remarks
Reserve Unique Name-Limited Liability Partnership (RUN-LLP)	Form 1	RUN-LLP	the name can be applied simultaneously with application for registering LLP (Similar to sPice form applicable for Companies)
for registering LLPs	Form 2	form FiLLip	
DPIN application		form FiLLip	Only upto two individuals can make application for DPIN in the Form FiLLip.

- There has been changes in following Forms:
Form 5: Notice of Change of Name of LLP
Form 17: Application for conversion of Firm to LLP
Form 18: Application for conversion of Pvt Ltd. Co. or Unlisted Public Ltd. Co. to LLP
- Central Registration Centre (CRC)
Reserving name of LLP through form RUN-LLP, applications for registering LLP in form FiLLip and application for conversion of firm/unlisted company to LLP will be examined by CRC.
- The certificate of Incorporation of LLP or Conversion of LLP will be issued by CRC in form 16 and 19 respectively.
- Chances of Resubmission:
One resubmission allowed for RUN-LLP and two chances for resubmission for FiLLip.

F. Commencement Notification – Section 135 of the Companies Act, 2013

- MCA vide Notification dated September 19, 2018, has notified Sections 37 of the Companies (Amendment) Act, 2017 (CAA, 2017) along with the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018, pursuant to which there has been changes in Section 135 of the Companies Act, 2013(CA, 2013).

i) Provisions of Section 135 of the Companies Act, 2013

The key highlights of the amendment are as follows:

- a) Every company having:
- Net worth of Rs. 500 crore or more or;
 - Turnover of Rs. 1,000 crore or more or;
 - Net Profit of Rs. 5 crore or more during the *immediately preceding financial year* needs to constitute a CSR Committee of the Board.

In view of the above-said amendment, a Company would not be required to undertake the compliances relating to CSR if a Company, during the immediately preceding financial year, does not meet the above mentioned criteria.

- b) A new proviso is added in Section 135(1) pursuant to which a relaxation has been provided to a Company, other than a listed public company as it is not required to appoint an 'independent director' on CSR committee, Such companies can have *any two or more Directors as the Member of the Committee*.

- c) The term activities to be undertaken by the Company referred to in Section 135 (3) *has been widened* to mean activities, areas or subjects as specified in Schedule VII of the CA, 2013.

- d) Explanation under Section 135(5) has been substituted and now for the purposes of this section **“net profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.**

ii) The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018

The Central Government has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 and these rules will be called as the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018.

The key highlights of the amendment are as follows:

Rule no.	Rule before amendment	Amendment	Rule after amendment
Definition Rule 2(1) Clause (c)(i)	Projects or programs relating to activities specified in Schedule VII to the Act.	after the words "relating to activities", the words " <i>areas or subjects</i> " are inserted.	Projects or programs relating to activities areas or subjects specified in Schedule VII to the Act.

Rule no.	Rule before amendment	Amendment	Rule after amendment
Rule 2(1) Clause (c)(ii)	Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.	for the words “cover subjects enumerated” the words “include activities, areas or cover subjects enumerated” has been substituted.	Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will include activities, areas or subjects specified in Schedule VII of the Act.
Rule 2(1) Clause (e)	CSR Policy relates to the activities to be undertaken by the Company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;	for the words “company as” the words “company in areas or subjects” has been substituted.	CSR Policy relates to the activities to be undertaken by the company in areas or subjects specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company.
CSR Committees Rule 5(1) Clause (i)	An unlisted public company or a private company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to subsection (4) of section 149 of the Act, shall have its CSR Committee without such director.	for the words "an unlisted public company or a private company", the words "a company " has been substituted.	A company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to subsection (4) of section 149 of the Act, shall have its CSR Committee without such director.
CSR Policy Rule 6(1) Clause (a)	A list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same	for the words "falling within the purview of" the words "areas or subjects specified in" has been substituted.	A list of CSR projects or programs which a company plans to undertake areas or subjects specified in of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same

<p>Rule 6(1) Second proviso to Clause (b)</p>	<p>Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.</p>	<p>for the words, "activities included in Schedule VII" the words "<i>areas or subjects specified in Schedule VII</i>" has been substituted.</p>	<p>Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the areas or subjects specified in Schedule VII of the Act.</p>
<p>CSR Expenditure Rule 7</p>	<p>CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.</p>	<p>for the words, "purview of", the words "<i>areas or subjects, specified in</i>" has been substituted.</p>	<p>CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the areas or subjects, specified in Schedule VII of the Act.</p>

- The Link of the above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesCSRPolicyAmendRules2018_19092018.pdf

G. The Companies (Indian Accounting Standards) Second Amendment Rules, 2018

- MCA vide its Notification dated September 20, 2018, has amended the Companies (Indian Accounting Standards) Rules, 2015.
- Due to the Government grants, IND AS 20, IND AS 12, IND AS 16 and IND AS 38 of the Indian Accounting Standard has been amended.
- The link to the above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesIASsecondAmendment_21092018.pdf

H. The Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018

- MCA vide its Notification dated September 25, 2018 amended the Companies (Registered Valuers and Valuation), Rules 2017. These rules are called the Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018.

The key highlights of the amendment are as follows:

Rule no.	Rule before amendment	Amendment	Rule after amendment
Transitional Arrangement Rule 11	Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 30 th Sept 2018. Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 30 th Sept, 2018 the valuer shall complete such valuation or such part within three months thereafter.	or the figures, letters and word “30 th Sept, 2018” occurring at both the places, the figures, letters and word “31 st January, 2019” has been substituted.	Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 31st January, 2019. Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st January, 2019 the valuer shall complete such valuation or such part within three months thereafter.
Conditions of Recognition Rule 14 Clause (f)	The recognition granted under Rule 3 shall be subject to the conditions that the registered valuer organization shall ---be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in Annexure-III, within a period of one year from the date of commencement of these rules, if it is an organisation referred to in proviso to sub-rule (1) of rule 12	for the words “one year” the words “two years” has been substituted.	be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in Annexure-III, within a period of two year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12

RBI UPDATES:

A. AMENDMENTS TO RESERVE BANK OF INDIA (NOTE REFUND) RULES, 2009:

- RBI vide its Notification dated September 07, 2018 made **amendments to Reserve Bank of India (Note Refund) Rules, 2009.**
- As per the **rule**, people can exchange mutilated or defective **notes** at **RBI** offices and designated **bank** branches across the country for either full or half value, depending upon the condition of the currency.
- The Link of this notification is as under:
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11372&Mode=0>

B. EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY- LIBERALISATION

- RBI Vide its Circular dated September 19, 2018 and in consultation with the Government of India, liberalized the following aspects of the ECB policy and policy on Rupee Denominated Bonds ('RDB'). All other provisions of the ECB policy shall remain unchanged as per Master Direction no. 5 of January 01, 2016.
- The liberalized norms have been compared below with the erstwhile norms on the said aspects:

SR. NO.	PARTICULARS	ERSTWHILENORMS	LIBERALIZED NORMS
1	ECBs by companies in Manufacturing sector	<ul style="list-style-type: none">• ECB Amount: up to USD 50 million or its equivalent• Minimum average maturity - 3 years	<ul style="list-style-type: none">• ECB Amount: up to USD 50 million or its equivalent• Minimum average maturity – now revised to 1 year
2	Underwriting and market making by Indian banks for RDBs issued overseas	<ul style="list-style-type: none">• Indian banks, subject to applicable prudential norms, can act as arranger and underwriter for RDBs issued overseas and in case of underwriting an issue, their holding cannot be more than 5 % of the issue size after 6 months of issue.	<ul style="list-style-type: none">• Now, in addition to acting as arrangers / underwriters, Indian banks can also act as market makers and traders in RDBs issued overseas

- The Link of this Circular is as under:
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11375&Mode=0>

C. CO-ORIGINATION OF LOANS BY BANKS AND NBFCs FOR LENDING TO PRIORITY SECTOR:

- RBI vide its Notification dated September 21, 2018 announced guidelines for co-origination of priority sector loans by banks and Non-Banking Financial Companies - Non-Deposit taking - Systemically Important (NBFC-ND-SIs) **with a view to enhancing flow of funds to the sector at competitive rates. Priority sector loans are the ones given to sectors such as agriculture, micro enterprises, social infrastructure, education and renewable energy.**
- All scheduled commercial banks (excluding Regional Rural Banks and Small Finance Banks) may engage with NBFC-ND-SIs (hereinafter referred to as NBFC) to co-originate loans for the creation of priority sector assets. The arrangement should entail joint contribution of credit at the facility level, by both lenders. It should also involve sharing of risks and rewards between the bank and the NBFC for ensuring appropriate alignment of respective business objectives, as per the mutually decided agreement between the bank and the NBFC, inter-alia, covering the essential features as follow :
 - Sharing of Risk and Rewards
 - Interest Rate
 - Know Your Customer (KYC)
 - Loan Sanction
 - Common Account
 - Monitoring & Recovery
 - Security and Charge Creation
 - Provisioning/Reporting Requirement
 - Assignment/ Change in Loan Limits
 - Grievance Redressal
 - Business Continuity Plan.
- The link of this Notification is as under:
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11376&Mode=0>

VOTING IN THE COMMITTEE OF CREDITORS

The Insolvency and Bankruptcy Code, 2016 (Code) has prescribed voting requirements for various approvals by the Committee of Creditors (CoC). For example, Section 28(1) of the Code mandates that the Resolution Professional shall not take any of the actions listed without prior approval of the CoC. Section 28 (3) further provides that action listed under section 28(1) shall be approved by the CoC if minimum 66% of the voting shares is casted. Similarly, Section 30(4) of the Code provides that the CoC may approve a resolution plan by a vote of minimum 66% of voting share of the financial creditors. Further, in terms of regulation 2 (1) (f) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), a dissenting financial creditor means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the CoC. Thus, in this regards, an issue has been raised whether a financial creditor would be considered a dissenting or abstaining financial creditor where he has not yet been admitted as a member of the CoC,

Relevant provisions in the Code with regard to this are:

- **Section 13**- Code mandates a public announcement calling for the submission of claims under Section 15. Further, section 15 mandates that the public announcement referred to in Section 13 shall contain the last date for submission of claims, as may be specified.
- **Regulation 12**- Regulations require that a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. If the creditor fails to submit the claim with proof, creditor may submit the same to the Interim Resolution Professional or the Resolution Professional on or before the 90th day of the insolvency commencement date. If financial creditor fails to submit the claim within stipulated time, shall be included in the CoC from the date of admission of such claim and such inclusion shall not affect the validity of any decision taken by the CoC prior to such inclusion.
- **Section 18** - Section 18 of the Code mandates the Interim Resolution Professional to receive and collate all claims submitted by creditors to him, pursuant to public announcement under sections 13 and 15 of the Code and constitute a CoC. It is also mandatory to list assets and liabilities of the corporate debtor as on the insolvency commencement date. Section 21 of the Code mandates that the Interim Resolution Professional shall constitute a CoC after collation of all claims received against the corporate debtor and determination of financial position of corporate debtor. It further mandates that the CoC shall comprise all financial creditors of the corporate debtor. Section 24 (6) of the Code provides that each creditor shall vote in accordance with the voting share assigned to it based on financial debts owed to such creditor.
- **Regulation 17** - Regulation 17 of the Regulations require that the Interim Resolution Professional shall file a report certifying constitution of the CoC to the Adjudicating Authority within 2 days of the verification of claims received under regulation 12.

A person who is not a member of the CoC does not have voting right in the CoC and cannot be regarded as one who has voted against a resolution plan or abstained from voting.

The link for this notification is as under:

http://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Sep/Circular-Voting%20in%20the%20Committee%20of%20Creditors_2018-09-14%2018:32:15.pdf

A. INTERIM REPORT OF WORKING GROUP ON “KYC REQUIREMENTS FOR FPIs” FOR PUBLIC COMMENTS:

- SEBI issued a Press Release No SEBI/37/2018 dated September 05, 2018 inter-alia, stated that the working group constituted under the Chairmanship of Shri H. R. Khan, Deputy Governor (Retired), Reserve Bank of India has held wide consultations with various stakeholders on the various issues raised in the representations made in relation to SEBI Circular No.CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) Requirements for Foreign Portfolio Investors (FPIs) and is in the process of giving its recommendations.
- The working group has now submitted its interim report to SEBI. A copy of the report is placed on the website www.sebi.gov.in. Comments from public are invited on the recommendations contained in the aforesaid report. The comments may be submitted to kycforfpi@sebi.gov.in on or before 12:00 Noon on September 17, 2018.
- The link of this above circular is as under:

https://www.sebi.gov.in/media/press-releases/sep-2018/sebi-publishes-interim-report-of-working-group-on-kyc-requirements-for-fpis-for-public-comments_40280.html

B. CHANGES BOUGHT IN SECURITIES AND EXCHANGE BOARD OF INDIA (BUY - BACK OF SECURITIES) REGULATIONS, 2018:

SEBI vide Notification No. SEBI/LAD-NRO/GN/2018/32 dated September 11, 2018, notified the changes proposed by it in the Discussion Paper, through the [SEBI \(Buy-Back of Securities\) Regulations, 2018](#) ('Amended Regulations'). With the objective of simplifying the language, removing redundant provisions and inconsistencies, updating the references to the Companies Act, 2013 & other new SEBI Regulations, incorporating the relevant circulars, FAQs, informal guidance in the regulations, wherever possible, SEBI had amended the Regulations on Buy Back of securities. Few changes of these Regulations are as follow

(a) In Regulation 2 ---Insertion of new definition-

'Buyback period' means the period between the date of board of directors resolution or date of declaration of results of the postal ballot for special resolution, as the case may be, to authorize buyback of shares of the company and the date on which the payment of consideration to shareholders who have accepted the buyback offer is made.”

'specified securities' includes employees' stock option or other securities as may be notified by the Central Government from time to time;

'unpublished price sensitive information' has the same meaning as defined in clause (n) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;

(b) In Regulation 4- Conditions and requirements for buy back of shares and specified securities following new additions are made

(i) The maximum limit of any buy-back shall be 25% or less of the aggregate of paid-up capital and free reserves of the company:

Explanation: In respect of the buy-back of equity shares in any financial year, the reference to 25% in this regulation shall mean its total paid-up equity capital in that financial year;

(ii) The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back shall not be more than twice the paid-up capital and free reserves.

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.

(iii) All shares or other specified securities for buy-back shall be fully paid-up.

(iv) A company shall not allow buy-back of its shares unless the consequent reduction of its share capital is affected.

(v) A company may undertake a buy back of its own shares or other specified securities out of

(a) its free reserves;

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities:

Provided that no such buy-back shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(vi) No company shall directly or indirectly purchase its own shares or other specified securities:

(a) Through any subsidiary company including its own subsidiary companies;

(b) Through any investment company or group of investment companies; or

(c) if a default is made by the company in the repayment of deposits accepted either before or after the commencement of the Companies Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

(c) In Regulation 5 – General compliance And filing requirements for buy back , following clauses are added

(i) The company shall not authorise any buy-back (whether by way of tender offer or from open market or odd lot) unless:

a) *The buy-back is authorized by the company's **articles**;*

b) ***a special resolution** has been passed at a general meeting of the company authorizing the buy-back;*

Provided that nothing contained in this clause shall apply to a case where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting.

(ii) *Every buy-back shall be completed within a period of **one year from the date of passing** of the special resolution at general meeting, or the resolution passed by the board of directors of the company, as the case may be.*

(iii) *The company shall, after the completion of the buy-back, file with the Registrar of Companies and the Board, a return containing such particulars relating to the buy-back within **30 days** of such completion, in the format as may be specified.*

(iv) *Where the buy-back is from open market either through the stock exchange or through book building, the resolution of board of directors shall specify the maximum price at which the buy-back shall be made:*

Provided that where there is a requirement for the Special Resolution as specified in clause (b) of sub-regulation 1 of regulation 5 of these Regulations, the special resolution shall also specify the maximum price at which the buy-back shall be made.

(d) In Regulation 7- Disclosure , filing requirements and timeline for public announcement

*The company which has been authorised by a special resolution or a resolution passed by the board of directors, as the case may be, shall make a public announcement within two working days **from the date of declaration of results of the postal ballot** for special resolution/board of directors resolution in at least one English National Daily, one Hindi National Daily and one Regional language daily, all with wide circulation at the place where the Registered Office of the company is situated and the said public announcement shall contain all the material information as specified in Schedule II*

(e) In Regulation 9. Offer procedure-

Under Regulation 9 (ii) Explanation under desptach of letter of offer following is added;

(a) *Letter of Offer may also be dispatched through electronic mode in accordance with the provisions of the Companies Act.*

(b) *On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.*

(c) *The aforesaid shall be disclosed in the letter of offer.*

Under Regulation 9 (iv) is added --- An unregistered shareholder may also tender his shares for buy-back by submitting the duly executed transfer deed for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any.

Under Regulation 9 (ix) explanation is added

The shares proposed to be bought back shall be divided into two categories; (a) reserved category for small shareholders and (b) the general category for other shareholders, and the entitlement of a shareholder in each category shall be calculated accordingly.

Explanation: Holdings of multiple demat accounts would be clubbed together for identification of small shareholder if sequence of Permanent Account Number for all holders is matching. Similarly, in case of physical shareholders, if the sequence of names of joint holders is matching, holding under such folios should be clubbed together for identification of small shareholder.

Under Regulation 9 (xi) explanation is added

Explanation: The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.

(f) In Regulation 11- Extinguishment of certificate and other closure compliances

Under Regulation 11(i) following explanation is added

The company shall extinguish and physically destroy the securities certificates so bought back in the presence of a registrar to issue or the Merchant Banker and the Statutory Auditor **within fifteen days** of the date of acceptance of the shares or other specified securities.

Provided that the company shall ensure that all the securities bought-back are extinguished **within seven days** of expiry of buy-back period.

Explanation: The aforesaid period of fifteen days shall in no case extend beyond seven days of expiry of buy-back period

Under Regulation 11(v) is added wrt maintaining of Register of Buy Back of Securities

Where a company buys back its shares or other specified securities under these regulations, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed in sub-section (9) of section 68 of the Companies Act.

(g) In Regulation 16 – Buy Back through Stock Exchange –Regulation (iii) is added

Under Regulation 16 (iv) (b) ----amendment is Public announcement to be made in 2 days instead of 7 days .

The public announcement shall be made within **two working days** from the date of passing the board of directors resolution or date of declaration of results of the postal ballot for special resolution, as relevant and shall contain disclosures as specified in Schedule IV;

(h) In Regulation 20 – Escrow Account for open market buy back through stock exchange

Under Regulation 20 (ii) Explanation is added

The escrow account referred to in sub-regulation (i) may be in the form of,—

- a) cash deposited with any scheduled commercial bank; or*
- b) bank guarantee issued in favour of the merchant banker by any scheduled commercial bank.*

Explanation: The cash component of the escrow account may be maintained in terms of Explanation to clause (c) of sub-regulation (xi) of regulation 9.

(i) In Regulation 22- Buy Back through Book Building

Under Regulation 22 (iii) following Explanation is added

Explanation: The cash component of the escrow account may be maintained in terms of the Explanation to clause (c) of sub-regulation (xi) of regulation 9.

(j) Regulation 21, 22 , 23 and 24 of SEBI (Buy Back of Securities) Regulations, 1998 with respect to Action against Intermediaries, Power of the Board to Order Investigation, Duty to produce records etc. and Submission of Report to the Board are all deleted.

(k) Regulation 26- Powers of the Board to issue directions – Amended as follow –

Board has no power which was there in Original Regulation of 1998 wrt following

- (i) directing the person concerned not to further deal in securities in any particular manner;*
- (ii) taking action against the intermediaries registered with the Board in accordance with the Regulations applicable to it;*
- (iii) prohibiting the persons concerned, directors, partners, members, employees and associates of such persons, from accessing the securities market;*
- (iv) disgorgement of any ill-gotten gains or profits or avoidance of loss;*
- (v) In case any person is guilty of insider trading or market manipulation the person concerned shall be dealt with in accordance with the provisions of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992 and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995.*

The Board has now power to give a copy of such direction issued by it to be forwarded to Registrar of Companies.

(l) Regulation 28 and 29 wrt Power to relax strict enforcement to the Regulations and Repeal and Saving are new Regulations added.

➤ The link of this above circular is as under:

https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-buy-back-of-securities-regulations-2018_40327.html

C. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

SEBI vide Notification No. SEBI/LAD-NRO/GN/2018/31 dated September 11, 2018 published the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 which shall come into force on the 16th day from the date of its publication in the Official Gazette. That is effective from 27th September 2018.

The link of this above circular is as under:

<https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-40328.html>

Amita Desai & Co

ARTICLE OF THE MONTH

Institute of Company Secretaries of India (ICSI)
Secretarial Standards (SS) -4 on Report of Board of Directors
(Recommendatory and not mandatory)

The Report of Board of Directors is the most important document through which the Board communicates about the Company and its affair of the previous financial year and also upto the date of Board's Report to various stakeholders like Shareholders, Investors, Banks, Financial Institutions, Vendors, Customers, Collaborators or public at large.

Section 134 of the Companies Act, 2013 mandates Board of Directors of every company to attach its report to the Financial Statement to be placed at Annual General Meeting before the members. Section 134(3) and Rule 8 of Companies (Accounts) Rules, 2014 mandates details of items to be a part of the Board Report. Listed Company is also required to disclose certain additional details in the Board Report as stated under SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015.

Standard is defined as a level of quality or something used as a norm or model. Secretarial Standards on Report of Board of Directors is a step towards standardization of practice to present Boards Report, which will be helpful and meaningful to various stakeholders, investors, analyst and regulators.

Secretarial Standards on Report of Board of Directors is divided into two parts after detailing of Scope and Definition.

Part I	It consists of <u>various disclosures</u> under the Companies Act, SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015, SEBI (Share Based Employee Benefit) Regulation, 2014 and pertaining to the Sexual Harassment of women at the workplace (Prevention, Prohibition and Redressal) Act, 2013.
Part II	It consists of <u>other requirements</u> like approval, signing, Right of members to have copies of it placing of it on the website and filing of it with MCA and Stock Exchange.

The Exposure Draft of Secretarial Standard-4 circulated in the year 2016 by ICSI was more detailed. However, in the final Secretarial Standard-4, following are not finding its place.

1. **Definition** does not include many definitions which were originally there in 2016 like Associates Company, Board of Directors, Body Corporate, Company, Employee Stock Option, Financial Year, Financial Statement, Holding Company, Housing Finance Company, Key Managerial Personnel, Listed Company, Member, Miscellaneous Non Banking Companies, Non Banking Financial Company, Producer Company, Promoters, Residuary Non-Banking Company, Securities, etc.
2. **Disclosures** pertaining to requirement of following Acts or laws are not found in final SS-4 like Directives of Reserve Bank of India for Non Banking Financial Companies, Miscellaneous Non Banking Companies and Residuary Companies, National Housing Bank Direction, FEMA Regulations, Producer Company.
3. Details related to Stock Appreciation Rights (SAR) is deleted from final SS- 4.

Certain key issues to be noted as mentioned under SS-4:

1. The Boards Report should be based on the Company's Standalone Financial Statement and not on Consolidated Financial Statements (CFS);
2. In case particular disclosure which is required to be made as per this SS-4 but it is not applicable to a particular company, the company need not disclose it in the Board's Report except that the Standard requires specific disclosure in this report;
3. Adherence to SS-4 is recommendary;
4. While disclosing details on Dividend, the Company also needs to mention the Dividend Distribution Tax thereon;
5. Company to disclose details about its revision in Financial Statement or the Report in respect of any of three preceding financial year either voluntarily or pursuant to order of judicial authority;
6. Details to be given as mentioned in SS-4 with respect to Issue of Equity Shares with Differential Rights and Sweat Equity Shares which is as per Rule 4(4) and Rule 8(13) of the Companies (Share Capital and Debentures) Rules, 2014, respectively ;
7. A Statement with reason to be given when Board has not accepted any recommendation of Audit Committee;

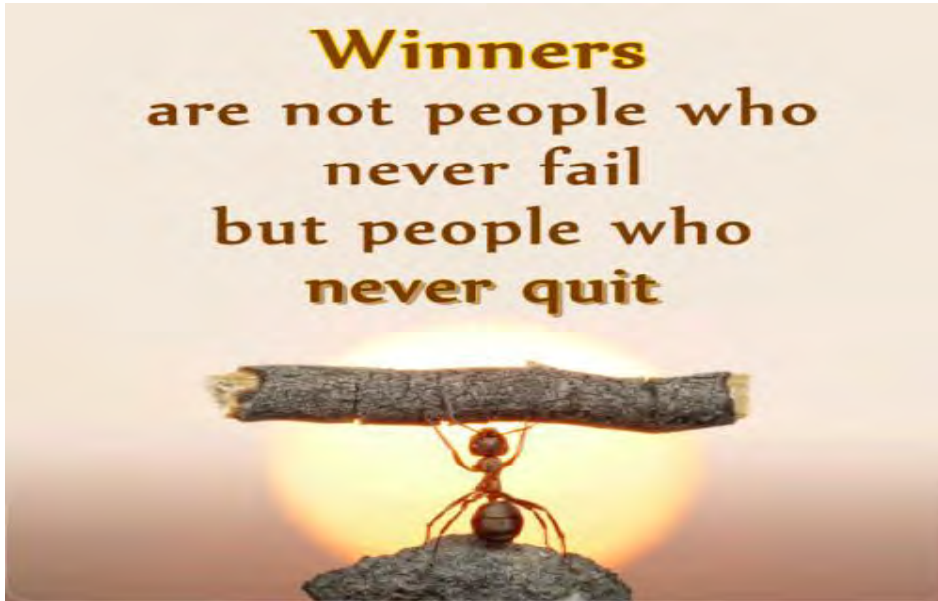
8. A Statement to be given on compliance of applicable Secretarial Standard and other Secretarial Standard adopted voluntarily by the Company;
9. Disclosure if any with respect to Corporate Insolvency Resolution Process (CIRP) initiated under Insolvency and Bankruptcy Code, 2016 to be made with respect to details like (a) Who has filed the application (b) status of such details and (c) status of CIRP process;
10. Disclosure is required to be given in case the company has failed to complete or implement any Corporate Action within specified time limit. **Corporate action** is defined for this purpose to include Buy Back of Securities, Payment of Dividend declared, Merger and Demerger, Delisting and Split and Issue of any securities.

CONCLUSION:

Standards facilitates and increases the value of any product or services and hence SS-4 on Report on Board of Directors is helpful to the Company and various stakeholders. SS-4 is an attempt of ICSI to bring more uniformity and consistency in Board's Report by integrating various practices on mandatory requirement under various Acts and Regulations about disclosures in Board's Report.

INSPIRATIONAL QUOTE

Winners
are not people who
never fail
but people who
never quit



Believe
you can
— *&* —
you're halfway
there.

T. ROOSEVELT

Disclaimer

**This legal update is not intended to be a form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. This update is intended for private circulation only.*

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