



*Private Circulation Only

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

We are pleased to share our Newsletter for the month of February 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) and Insolvency & Bankruptcy Board of India (IBBI).

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 brief analysis on e-form CODS deployed by MCA on February 26, 2018 as our Article of the Month.

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



A. EXEMPTION TO GOVERNMENT COMPANIES UNDER SECTION 129(6) OF COMPANIES ACT, 2013 FROM RECOGNIZING DEFERRED TAX ASSETS/ DEFERRED TAX LIABILITY UNDER AS-22/IND AS-12

MCA vide notification dated February 05, 2018 has granted exemption and has directed 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 April 01, 2017, to a Government Company** which is:

- a. a **public financial institution** as defined under Section 2(72) (iv) of the Companies Act, 2013;
- b. a **Non-Banking Financial Company** registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934; and
- c. 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 or other entities owned or controlled by Government .

The link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/NotificationSO529_06022018.pdf

B. DESIGNATION OF SPECIAL COURT

MCA vide notification dated February 05, 2018 for the purposes of providing speedy trial of offences punishable with imprisonment of 2 years or more has designated following Courts as Special Courts:

Sr. No.	COURTS	JURISDICTION AS SPECIAL COURTS
1.	Additional District and Sessions Court-VII, Ernakulam	State of Kerala
2.	District and Sessions Court, Kavaratti	Union territory of Lakshadweep
3.	District and Sessions Judge, Cuttack	State of Odisha
4.	Additional District and Sessions Judge, No.1, Kamrup (M), Guwahati	State of Odisha

The Link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/NotificationSO528Specialcourts_06022018.pdf

C. COMPANIES (REGISTERED VALUERS AND VALUATION) AMENDMENT RULES, 2018

MCA vide notification dated February 09, 2018 has amended Rule 11 by notifying Companies (Registered Valuers and Valuation) Rules, 2018 which relates to transitional arrangement.

With the aforesaid notification **any person may continue to render valuation services without certification of registration upto September 30, 2018** (earlier it was allowed till March 31, 2018).

In case a Company has appointed any valuer before notification of Companies (Registered Valuers and Valuation) Rules, 2017 i.e October 18, 2017 and the valuation or any part of it has not been completed before September 30, 2018 (earlier it was March 31, 2018), the valuer shall complete such valuation or such part within 3 months thereafter.

The Link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesRules2018_12022018.pdf

D. COMMENCEMENT OF CERTAIN SECTION OF COMPANIES (AMENDMENT) ACT, 2017

MCA vide notification dated February 09, 2018 has notified certain section of Companies (Amendment) Act, 2017 which are enforced from February 09, 2018.

Following is the list of sections notified

SR.NO	SECTIONS
1.	Section 2 [Except clause (i) and clause (xiii)] and 3
2.	Section 7
3.	Section 9
4.	Section 11 and 12
5.	Section 14
6.	Section 17
7.	Section 27 and 29 (both inclusive)
8.	Section 32
9.	Section 34 and 35
10.	Section 38
11.	Section 41 to 45 (both inclusive)
12.	Section 47 and 48
13.	Section 50 and 51
14.	Section 53
15.	Section 59 and 60
16.	Section 63 to 65 (both inclusive)
17.	Section 72 to 74 (both inclusive)
18.	Section 77 to 79 (both inclusive)
19.	Section 82
20.	Section 84 and 85
21.	Section 90 to 93 (both inclusive)

For detailed comparative analysis of the Sections notified with the aforesaid notification please refer to the below pasted link:

http://www.amitadesai.com/uploads/Comparative_Analysis_of_Section_notified_of_CA_2017.pdf

The Link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/Commencementnotification_12022018.pdf

E. DRAFT RULES FOR COMPANIES (BENEFICIAL INTEREST AND SIGNIFICANT BENEFICIAL INTEREST) RULES, 2018.

MCA has placed **draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 dated February 15, 2018** on its website which will be available for suggestions/ comments till March 07, 2018.

As per the Companies (Amendment) Act 2017 Section 89 and 90 (not yet notified) related to **Beneficial Interest** are amended hence with the intention to align the Rule with the Section draft Rules are prepared.

The Link of above draft rules is as under:

http://www.mca.gov.in/Ministry/pdf/DraftRulesBeneficialOwnership_15022018.pdf

F. DRAFT RULES FOR COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2018

MCA has placed **draft Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018 dated February 15, 2018** on its website which will be available for suggestions/ comments till March 07, 2018.

As per the Companies (Amendment) Act 2017 Section 42 (not yet notified) is substituted which related to Private Placement hence with the intention to align the Rule with the Section draft Rules are prepared.

The Link of above draft rules is as under:

http://mca.gov.in/Ministry/pdf/DraftCompaniesProspectusSecuritiesRules2018_15022018.pdf

G. COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES,2018

MCA vide notification dated February 16, 2018 has issued Companies (Management and Administration) Amendment Rules 2018.

With the above notification **Form MGT-6** required to file by the Company for creation/ change of Beneficial Interest under Section 89 of Companies Act, 2013 and Form MGT-15 required to be filed by listed public Company for report on Annual General Meeting are substituted.

➤ **In Form MGT-6** following modification are made:

1. **Date of declaration given by Register Owner** (in form MGT-4) is added;
2. **Date of receipt of declaration by the Company from Register Owner** (in form MGT-4) is added; and
3. Name of declarants separately required to be filled in the form for beneficial owner is removed.

➤ **In Form MGT-15** following modification are made:

Option of attaching optional attachment is made available.

The Link of above draft rules is as under:

http://mca21.gov.in/Ministry/pdf/CompaniesManagementAdministrationAmendmentRules2018_19022018.pdf

H. COMPANIES (AUDIT AND AUDITORS) AMENDMENT RULES, 2018

MCA vide notification dated February 16, 2018 has issued Companies (Audit and Auditors) Amendment rules, 2018.

With the above notification Form ADT-1 for appointment of Auditor and ADT-2 for removal of Auditor are substituted.

➤ **In Form ADT-1** following modification are made

1. Point number 3(b) is added to provide details of **Nature of appointment**;
2. Additional option for attaching copy of the letter of appointment from Comptroller and Auditor General of India (C&AG) is included (if applicable);
3. Additional option for attaching copy of the order of the Tribunal (if applicable).

➤ **In Form ADT-2** following modification are made

1. In point number 7 (c) for Category of Auditor i.e **Individual or Auditor's firm** is added;
2. In point number 7 (d) Membership number of the auditor or Registration number of the firm is added.

The Link of above notification is as under:

http://mca21.gov.in/Ministry/pdf/CompaniesAuditAuditorsAmendmentRules2018_19022018.pdf

I. COMPANIES (AUTHORISED TO REGISTER) AMENDMENT RULES, 2018

MCA vide notification dated February 16, 2018 has issued Companies (Authorised to Register) Amendment Rules, 2018.

With the above notification Form URC required to be filed for conversion from firm to Company and from LLP to Company is modified.

➤ Following additional information are required to be given

1. In point no 10 of Form URC, applicant entity needs to confirm whether any suit or legal proceedings taken by, or pending against the entity, or any public officer or member. If such legal proceedings are subsisting than brief details of the same are required to be given.
2. In Point no 11 if Form URC, applicant entity needs to confirm whether entity has any secured debt outstanding as on the date of application and it needs to mention total outstanding amount in the form.

The Link of above notification is as under:

http://mca21.gov.in/Ministry/pdf/CompaniesAuthorisedRegisterAdmendmentRules2018_19022018.pdf

J. COMPANIES (REMOVAL OF DIFFICULTIES) ORDER, 2018

MCA vide notification dated February 21, 2018 has issued Companies (Removal of Difficulties) Order 2018 amending provision of removal of Independent Director before expiry of second term.

According, to Section 152(2) of Companies Act, 2013 (“the Act”) every director shall be appointed by the Company in General Meeting (including an Independent Director). And Section 149(10) of the Act states that an Independent Director shall hold office for a term up to 5 consecutive years and shall be eligible for re-appointment on passing **Special Resolution** by the Company.

Further, Section 169 (1) provides that a Company may, by Ordinary Resolution, remove a Director, not being a Director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

Hence **at present an Independent Director is re-appointed for second term in accordance with the Section 149 (10), only by way of a Special Resolution and Independent Director can be removed by an Ordinary Resolution** and not by a Special Resolution .

In order to remove above said difficulty, and to ensure better corporate governance in Companies, and for balancing of powers of the Board of the Company, amendment is now made to section 169 (1) of the Act and following proviso is inserted.

“Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.”

Thus **now Independent Director re-appointed for the second term pursuant to section 149 (10) of the Act can be removed by the Company only by passing a Special Resolution.**

The Link of above removal of difficulty order is as under:

http://mca21.gov.in/Ministry/pdf/CompaniesRODorder2018_22022018.pdf

K. EXEMPTION OF GOVERNMENT COMPANIES ENGAGED IN DEFENCE FROM SEGEMENT REPORTING

MCA vide notification G.S.R. 463(E) dated June 05, 2015 (exemption notification) had granted exemption to Government Companies engaged in defence production from compliance of **Accounting Standard 17 (Segment Reporting)** as required under section 129 of the Companies Act, 2013 to the extent applicable.

With the aforesaid notification Ministry has amended the exemption notification dated June 15, 2015 and has substituted serial number 8 of the said notification in following manner:

“8.	Chapter IX, section 129	Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting ”.
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Considering the implementation of Ind AS Ministry has substituted words “**Accounting Standard 17**” and “**relevant Accounting Standard**”.

The Link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/notificationSegment2302_26022018.pdf

L. COMPANIES (ACCOUNT) AMENDMENT RULES, 2018

MCA vide notification dated February 27, 2018 has issued Companies (Account) Amendment Rules 2018 introducing Form AOC-3A for Statement containing salient features of the financial statement for Companies which are required to comply with the Companies (Indian Accounting Standards) Rule, 2015.

According to first proviso of section 136 (1) read with Rule 10 Companies (Account) Amendment Rules 2018, in the case of a listed Company, copy of financial statements, including consolidated financial statements, if any, auditor’s report and other relevant documents to be sent to members would be complied if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting and a statement containing the salient features of such documents in form AOC-3 or AOC-3A is sent to every member of the Company.

Form AOC-3A is abridged financial statement for Ind AS. It has following parts:

- I. **Abridged Balance Sheet** (where in previous 3 years figures are required to be given in accordance with Ind As) including abridged statement of changes in Equity
- II. **Abridged statement of Profit and Loss**
- III. **Abridged Statement of Cash flow**

Also Director and consolidated financial statements (if any) Auditor Report are part of form AOC-3A.

The form AOC-3A should be certified in the same manner in which the Balance Sheet is certified.

The Link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRule_01032018.pdf

RBI UPDATES:

A. OMBUDSMAN SCHEME FOR NON BANKING FINANCIAL COMPANIES

The Reserve Bank of India has issued Ombudsman Scheme for Non-Banking Financial Companies, 2018 to appoint Nodal Officer/Principal Nodal Officer to address the grievances of the customer in Financial Sector more or less covered by NBFC via Notification No. RBI/2017-18/133 DNBR. PD, CC. No. 091/03.10.001/2017-18 dated 23rd February 2018 from immediate effect.

Coverage of Scheme

- NBFC as defined in Section 45-I(f) of Reserve Bank of India Act, 1934 and registered with RBI under Section 45-IA of Reserve Bank of India Act, 1934 which:-
 - a) Are authorized to accept deposits; or
 - b) Have customer interface with assets size of Rs. one billion or above as on date of the audited balance sheet of the previous financial year or of any such assets size as the RBI may prescribe will come within the ambit.
- Required to comply the provisions of the Ombudsman Scheme for Non-Banking Financial Companies, 2018.
- It is initially introduced to four metro cities viz. **Chennai, Kolkata, Mumbai and New Delhi.**
- Non-Banking Financial Companies –Infrastructure Finance Company (NBFC-IFC), Core Investment Company (CIC), Infrastructure Debt Fund-Non Banking Financial Company (IDF-NBFC) and NBFC under liquidation are excluded from the ambit of Scheme.

What are the Complaints?

- **Complaint** means any representation or allegation made in writing or through electronic means, containing a grievance alleging deficiency in service.
- **Deficiency in service** is explained further in scheme however sample of deficiency in services are as below:-
 - a) Non-payment or inordinate delay in the payment of interest on deposits or repayment of deposits itself;
 - b) Non-adherence to RBI directives, if any applicable to rate of interest on deposits;
 - c) Failure to convey in writing, the amount of loan sanctioned along with terms and condition including annualized rate of interest and method of application thereof;
 - d) Failure or refusal to provide sanction letter/ terms and conditions of sanction in vernacular language or language as understood by the borrower;
 - e) Levying of charges without adequate prior notice to the borrower/customer;
 - f) Failure or inordinate delay in releasing the securities documents to borrower on repayment of all dues;
 - g) Non-observation of direction issued by Reserve Bank to the non-banking financial companies, etc.

Procedure for Filing Complaint

- Any person who has grievances against NBFC on the grounds of Deficiency of Service, himself or through his authorized representative other than Advocates, make a complaint to Ombudsman within whose jurisdiction the Branch/Registered office of NBFC complained against, is located.
- The complaint when in writing shall be duly signed by complainant or his authorized representative should state following issues clearly:-
 - a) Name and address of Complainant;
 - b) Name and address of branch or registered office of non-banking financial company against which the complaint is made;
 - c) Facts giving rise to the complaint;
 - d) Nature and extent of loss caused to the complainant and
 - e) The relief sought for.

- Further complaint made through electronic means shall also be accepted by the Ombudsman. Moreover, the ombudsman shall also entertain complaints covered by this scheme received from Central Government or RBI or other financial regulator and forwarded to him for disposal.

Power not to entertain a Complaint

- Ombudsman shall not entertain a complaint unless:-
 - a) Complainant made written representation to respective NBFC and NBFC rejected or no reply within a period of 1 month or reply is not satisfactorily;
 - b) Complaint is made within 1 year after the complainant received reply of NBFC to his representation or no reply received within 1 year and 1 month after date of representation to the NBFC;
 - c) Complaint is not in respect of same cause of action which was settled or dealt with on merits by Ombudsman in any previous proceedings;
 - d) The complaint does not pertain to the same cause of action for which any proceedings before any court, tribunal or arbitrator or any other forum is pending or a complaint for which decree or award or order has already been passed by the court, tribunal, arbitrator or any forum;
 - e) Complaint is not frivolous or vexatious in nature;
 - f) Complaint is made before expiry of period of limitations which is prescribed under the Indian Limitation Act, 1963 and
 - g) The aggrieved person on filing complaint should produce copies of documents, grounds of complaint.

When will complaint be rejected?

- Ombudsman may reject a complaint at any stage if it appears to him that:-
 - a) Grounds of complaint is not on deficiency of services; or
 - b) Compensation sought is beyond the pecuniary limit specified in scheme; or
 - c) Complaint made is without any sufficient clause; or
 - d) Complaint made is not pursued by the complainant with reasonable diligence required to be taken; or
 - e) In the opinion of the Ombudsman, there is no loss or damage or inconvenience caused to the complainant.
- Any person aggrieved by an Award Clause or rejecting the complaint on above reason can have access to go for appeal in the appellate authority within 30 days of the date of receipt of communication of Award or rejection of complaint.

Implementation/Enforcement of Award

- There shall be an obligation of concerned NBFC to implement the settlement arrived with the complaint or award passed by Ombudsman when it becomes final and send a report in this regard to RBI within a period of 15 days of the award became final. Non-address of order is initiated under provisions of Reserve Bank of India Act, 1934 as it deems fit.
- NBFC to display salient features of the scheme for knowledge of public in English, Hindi and Vernacular Language in all offices and branches, in such manner that a person visiting office or branch has adequate information of the scheme.

The link of the Notifications is given below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI561C3A69557C44E191D43BA652E9690E.PDF>

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT1331BBCD905C0FC43678B6471648E5DF2E4.PDF>

B. GUIDELINES FOR PERSON RESIDENT IN INDIA AND FOREIGN PORTFOLIO INVESTOR (FPI) IN THE EXCHANGE TRADED CURRENCY DERIVATIVES (ETCD) MARKET

RBI vide Circular No. 18 dated February 26, 2018 has issued Circular with Revised guidelines relating to participation of a person resident in India and Foreign Portfolio Investor (FPI) in the Exchange Traded Currency Derivatives (ETCD) Market.

RBI has relaxed the guidelines for domestic participants in the ETCD market by increasing its position limits and rationalising documentation requirements for both importers and exporters.

The central bank increased the position limits, long (bought) as well as short (sold) — in the Exchange Traded Currency Derivatives (ETCD) market for domestic participants by **\$5 million**.

The new position limit will be up to **\$15 million** per exchange in the **US Dollar (USD)– Indian Rupee (INR)** currency pair.

Further, domestic participants will be allowed to take long as well as short positions in the **Euro-INR, GBP (British Pound Sterling)-INR and Japanese Yen-INR** pairs, all put together, up to **\$5 million** equivalent per exchange.

Now it has been decided to make changes to permit persons resident in India and FPIs to take positions (long or short), without having to establish existence of underlying exposure, upto a **single limit** of **\$100 million** equivalent across all currency pairs involving INR, put together, and combined across all exchanges.

The link of this circular is given below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/134APDIR26021839B2053698A94BFD A0CA65D3936FFAF3.PDF>

A. COMPENSATION TO RETAIL INDIVIDUAL INVESTORS (RII) IN AN IPO:

SEBI vide its circular no. SEBI/HO/CFD/DIL2/CIR/P/2018/22 dated February 15, 2018 has provided for compensation to Retail Individual Investors (RII) in an IPO. This circular has come into force with immediate effect;

There were instances where the applicants in an Initial Public Offering (IPO) have failed to get allotment of specified securities and have suffered an opportunity loss due to the certain factors such as failure on part of Self Certified Syndicate Banks (SCSBs) to make bids in concerned Exchange system, or SCSB fails to process the ASBA application, or any other failure on part of SCSB due to which application reject.

In scenarios mentioned above there was a need to have a uniform policy for calculation of minimum compensation payable to investors and the following factors have been taken into account for the same:

- a) opportunity loss suffered by the investor due to non-allotment of shares;
- b) number of times the issue was oversubscribed in the relevant category;
- c) probability of allotment; and
- d) listing gains if any on the day of listing.

The proposed formula for calculation of minimum fair compensation is as follows:

Compensation =	(Listing price* - Issue Price)	X	No. of shares that would have been allotted if bid was successful	X	Probability of allotment of shares determined on the basis of allotment
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*Listing price shall be taken as the highest of the opening prices on the day of listing across the recognized stock Exchanges.

- The applicant will get compensated for all the shares which they would have been allotted in case the issue which is subscribed between 90-100% i.e non oversubscribed issue.
- No compensation will be payable to applicant whose issue price is below listing price.
- SCSBs may seek basis of allotment file from the RTAs, so that SCSBs shall have access to the allotment ratio for the purpose of arriving at the compensation.

- Any applicant whose application has not been considered for allotment due to failure on part of SCSBs then such applicant have an option to make application for redressal to the SCSBs within 3 (three) months of the listing date. SCSBs have to resolve the same within 15 days and failing which SCSB is liable to pay interest @15% p.a. for the delay beyond 15 days. Also SEBI may initiate action as deemed fit against SCSBs, if SCSBs fails to redress such grievances within the stipulated time.

The link of this circular is as under:

https://www.sebi.gov.in/legal/circulars/feb-2018/compensation-to-retail-individual-investors-riis-in-an-ipo_37864.html

B. EASING OF ACCESS NORMS FOR INVESTMENT BY FPIS:

SEBI vide its Circular No. CIR/IMD/FPIC/26/2018 dated February 15, 2018 issued circular for Easing of Access Norms for investment by Foreign Portfolio Investor (FPIs) and through this circular SEBI has made changes in the provisions with the consultation of stakeholders:

(a) No prior approval of SEBI is required if there is any change in the local custodian/Designated Depository Participant (DPP)

A Global Custodian generally manages a large number of FPI accounts in India. Sometimes they shift these FPIs accounts from one local custodian to another. At that time, taking specific request letter from each FPI regarding change of local custodian may create operational and logistical challenges therefore the following changes has been made:-

Clause 5.4 of Operational Guidelines for DDPs ref. SEBI circular dated January 08, 2014 – Change in DDP/Custodian	
Existing provisions	Revised Provisions
In case the FPI wishes to change the DDP/Custodian, the request for change shall be intimated to SEBI through the concerned DDP/Custodian. On receipt of no objection from the existing transferor DDP/Custodian and acceptance from the proposed transferee DDP/Custodian, then approval from SEBI shall be sought by concerned FPI.	In case, the FPI or its Global Custodian wishes to change the local custodian/DDP, the request for change shall be forwarded to new local custodian/DDP. In case, the Global Custodian of FPI wishes to change the local custodian/DDP, then the request for change can be sent by the Global Custodian on behalf of its underlying FPI clients provided such Global Custodian has been explicitly authorized to take such steps by the client. Upon receipt of no objection from the transferor local custodian/DDP, the transferee local custodian/DDP shall approve the change and intimate SEBI about the change. In case, the request for change in local custodian/DDP is received from Global Custodian, the transferee local custodian/DDP shall inform Compliance Officer of the concerned FPI(s) regarding the change in their local custodian/DDP.

In the revised provision has added the word Global and Local Custodian. The FPI or its Global Custodian wishes to change the local custodian/DDP, then request for change shall be forwarded to new local custodian/DDP and on receipt of no objection from the transferor local custodian/DPP the transferee local custodian shall approve the change and intimate the change to SEBI, before it was if the FPI wishes to change the DDP/Custodian, the request for change shall be intimated to SEBI through the concerned DDP/Custodian.

(b) Rationalization of procedure for submission of PCC/MCV Declarations and Undertakings (D&U) and Investor grouping requirement at the time of continuance of registration of FPIs:

At the time of registration / conversion of PCC/MCV D&U and information regarding FPI investor group is provided and the same are recorded in NSDL portal. If there is no change in the information already submitted then there is no requirement to resubmit the same. Accordingly FAQ 51 has been changed:

In the revised provision FPIs are not required to re-submit D&U (as specified in the SEBI Circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010) and information regarding FPI investor groups, in case there is no change in the information as compared to that furnished to the DDP earlier.

(c) Placing reliance on due diligence carried out by erstwhile DDP at the time of change of Custodian/ DDP of FPIs:

When FPI change the local custodian /DDP then new local custodian/DDP is required to carry out the due diligence to ascertain the eligibility of the FPI. The due diligence carry out by new DDP often leads to increased documentation and sometime delay the transition. Accordingly, the following changes has been made:-

With respect to the process of change of local custodian/DDP by an FPI, it is informed that the new DDP (i.e. transferee) may rely on the due diligence carried out by the old DDP. However, the new DDP is required to carry out adequate due diligence at the time when the FPI applies for continuance of its registration on an ongoing basis.

(d)Exemption to FPIs having Multiple Investment Managers (MIM) structure from seeking prior approval from SEBI in case of Free of Cost (FOC) transfer of assets:

As per Regulation 21(4)(d) of SEBI (FPI) Regulations, 2014, “the transaction of business in securities by a foreign portfolio investor shall be only through stock brokers registered by the Board.”

The request for free of cost transfer of assets between FPIs having same PAN and also registered with SEBI showing Multiple Investment Managers (MIM) structure may be processed by DDPs at their end.

The request for free of cost transfer of asset may be processed by DDPs at their end before this circular it was forwarded to the SEBI.

(f) Permitting FPIs operating under the Multiple Investment Managers (MIM) structure to appoint multiple custodians: FAQs 6 and 103 have been changed as below:

FAQ . Can an entity obtain more than one FPI registration (similar to the one allowed for MIM structures in the FII regime)?

Yes. In the FII regime, wherever an entity engages Multiple Investment Managers(MIM) it can obtain multiple registrations with SEBI. Further investments made under such multiple registrations were clubbed for the purpose of monitoring of investment limits.

The same position shall continue in the FPI regime also now such applicants can appoint different local custodians/DDPs earlier the applicant has required to appoint the same local custodian.

(g) Permitting appropriately regulated Private Bank/ Merchant Bank to invest on their behalf and also on behalf of their clients:

Private bank/Merchant bank may invest on behalf of their clients if the bank do not have any secrecy arrangement with the investors and secrecy laws do not apply to the jurisdictions in which the bank is regulated. Further details of beneficial owners of investors are available and would be provided when required by regulator.

FAQ . How would the Private Banks and Merchant Banks be classified? Should they be considered as appropriately regulated if they are regulated or supervised by the banking regulator of the concerned foreign jurisdiction and thus qualify to be Category II FPI?

Private Banks and Merchant Banks may be classified as Category II if they are regulated by an Appropriately Regulator. Further they will be permitted to undertake investments on behalf of its investors if the submit declaration that:

- i. Details of beneficial owners are available and will be provided to the regulators when required.
- ii. bank do not have any secrecy arrangement with the investors and all the required legal/regulatory arrangement have been followed in order to ensure that there is no any delay in the disclosure of beneficial owner details as and when required by Indian regulators.
- iii. Entities specified in point (i) and (ii) above shall also be allowed to undertake proprietary investment by taking separate registration with SEBI.

FAQ . Can a Private Bank/Merchant Bank invest on behalf of its clients?

Yes. Private bank/Merchant bank invest can on behalf of its clients, in the existing provisions Private Bank /Merchant Bank we not allowed to invest on behalf of their clients.

(h) Other Clarifications on Conditional registration:

Conditional registration facility is now also extended to the “Existing funds” which is proposing to convert as India dedicated funds. They will be given time of 90 days to achieve Broad based status, earlier conditional registration facility was available only to “Newly established” India dedicated fund.

The link of this circular is as under:

https://www.sebi.gov.in/legal/circulars/feb-2018/easing-of-access-norms-for-investment-by-fpis_37866.html

C. MANNER OF ACHIEVING MINIMUM PUBLIC SHAREHOLDING

SEBI vide its Circular No. SEBI/HO/CFD/CMD/CIR/P/43/2018 dated February 22, 2018 has provided for Manner of achieving minimum public shareholding with reference to Circular No. CIR/CFD/CMD/14/2015 which allowed for various methods that may be used by a listed entity to achieve compliance with the minimum public shareholding requirement. This Circular shall supersede the Circular No. CIR/CFD/CMD/14/2015 dated November 30, 2015.

- The following additional methods are allowed to the listed entities to comply with the minimum public shareholding requirements:

(a) **Open market sale:** Promoters/Promoter group can sale shares held by them in the open market up to 2% of the total paid-up equity share capital of the listed entity, subject to Five times average monthly trading volume of the shares of the listed entity.

(b) **Qualified Institution Placement:** The Allotment of eligible securities to the Qualified Institution Buyers on private placement basis through Qualified Institutions Placement in terms of chapter VIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

- Conditions for open market sale:

(a) The listed entity shall at least one trading day prior to every such proposed sale announce the following details to the stock exchange(s) where its shares are listed:

i. the intention of the promoter/promoters group to sell and purpose of the sale.

ii. the details of promoter(s)/promoter group, who propose to divest their shareholding.

iii. total number of shares and percentage of shareholding proposed to be divested and

iv. the period within which the entire divestment process will be completed.

(b) The listed entity shall give an undertaking to the recognized stock exchange(s) obtained from promoter(s)/promoter group that the persons belonging to promoter and promoters shall not buy any shares in the open market on the dates on which promoter(s)/promoter group sold their shares.

(c) The listed entity and its promoters/promoter group shall comply with all the applicable legal provisions including the SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- A compilation of all the methods allowed for achieving compliance with the minimum public shareholding requirements are given in the Annexure below for reference.

ANNEXURE

In order to achieve the minimum level of public shareholding mandated under rules 19(2)(b) and rule 19A of the Securities Contracts (Regulation) Rules, 1957, a listed entity shall adopt any of the following methods :-

- i. Issuance of shares to public through prospectus;
- ii. Offer for sale of shares held by promoters to public through prospectus;
- iii. Sale of shares held by promoters through the secondary market in terms of Circular reference No. CIR/MRD/DP/18/2012 dated July 18, 2012;
- iv. Institutional Placement Programme (IPP) in terms of Chapter VIIIA of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- v. Rights Issue to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;
- vi. Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;
- vii. Sale of shares held by promoters/promoter group up to 2% of the total paid-up equity share capital of the listed entity in the open market, subject to conditions specified under this Circular;
- viii. Allotment of eligible securities under Qualified Institutions Placement in terms of Chapter VIII of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- ix. Any other method as may be approved by the Board on a case to case basis. For this purpose, the listed entity may approach the Board with appropriate details to obtain prior permission. The Board would endeavor to communicate its decision within 30 days from the date of receipt of the proposal or the date of receipt of additional information as sought from the listed entity.

The link of this circular is as under:

https://www.sebi.gov.in/legal/circulars/feb-2018/manner-of-achieving-minimum-public-shareholding_37953.html

A. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2018

IBBI vide notification no. IBBI/2017-18/GN/REG/024 dated on 6th February, 2018 amends the following Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- In IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations) in sub regulation (1) of regulation (2) the new clauses have been inserted defining “evaluation matrix”, “fair value” and “liquidation value.”
- In principal regulations, for regulation 27 a resolution professional shall **appoint 2 registered valuers within 7days of his appointment to determine the fair value and the liquidation value of the corporate debtor.**
- In principal regulations, for regulation 35 in heading fair value is added with liquidation value. **A registered valuer is required to submit estimate of liquidated value along with fair value only to Resolution Professional (RP)** after physical verification of inventory and fixed assets of corporate debtor. Consideration of fair value or liquidation value shall be on average basis of 2 estimates of value. He shall provide electronically fair value and liquidation value to every member of committee on receipt of undertaking from member and shall not use such values for undue gain or loss and comply with the requirements under sub-section (2) of the section 29. The Resolution Professional and Registered Valuers shall maintain confidentiality of the fair value and the liquidation value.
- In principal regulations, for regulation 36(1) a resolution professional shall **electronically submit the information memorandum within 2 weeks of his appointment** subject to sub regulation 4 to each member of committee and to each prospective resolution applicant latest by the date of invitation of resolution plan u/s section 25(2) (h) of the Code.
- In principal regulations, for regulation 36(2) (a) **Information memorandum shall now give necessary values of assets and liabilities with description as on the insolvency commencement date.** For this purpose ‘description’ shall include the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.
- In principal regulations, for regulation 36(4) **Only RP** can share information to member of committee or prospective resolution applicant after receipt of undertaking.
- The **new regulation 36A ‘Invitation to resolution plan’ have been inserted.**

(A) Resolution professional shall issue an invitation (including evaluation matrix) or for modification to prospective resolution applicant for submission of resolution plan. The prospective resolution applicant shall get at least 30 days from the issue of invitation

(B) Resolution professional shall issue an invitation (excluding evaluation matrix) or modification with the approval of committee to prospective resolution applicant for submission of resolution plan at least 15 days from the issue of invitation.

(C) The timelines i.e. 30 or 15 days (as the case may be) shall not apply to ongoing corporate insolvency resolution process if period of 37 days or 18 days (as the case may be) are left for submission of resolution plan.

(D) The brief particulars of invitation shall be published in Form G of the Schedule on website of corporate debtor (if any) and designated by board (if any) for that purpose.

- In principal regulations, for regulation 37 it provides for necessary measures required for insolvency resolution plan for maximizing value of assets inserting 2 new clauses:-
 - (k) Change in technology used by the corporate debtor and
 - (l) Obtaining necessary approvals from the Central and State Governments and other authorities.
- In principal regulations, for regulation 39 new sub-clauses (3A) is inserted stating that the amounts payable from resources under the resolution plan for the purposes under regulation 38(1) shall be specified in resolution plan for approval of resolution plan.
- In principal regulations, for regulation 39 (4) the resolution plan shall be submitted atleast 15 days before the maximum period permitted u/s 12 for the completion of the corporate insolvency resolution process to Adjudicating Authority with certification and the timeline specified shall not apply to an ongoing corporate insolvency resolution process which has completed 130th day from its commencement date.

B. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (FAST TRACK INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2018

IBBI vide **notification no. IBBI/2017-18/GN/REG/025 dated on 7th February,2018** amends the following Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 which are in line with amendments brought in by Insolvency and Bankruptcy board of India (Insolvency Resolution Process for Corporate Persons) (amendment) regulations, 2018.

C. RESOLUTION OF STRESSED ASSETS – REVISED FRAMEWORK

RBI has published revised framework on Resolution of Stressed Assets on February 12, 2018. Earlier RBI had issued various instructions aimed at resolution of stressed assets in the economy, including introduction of certain specific schemes at different points of time. In view of the enactment of the Insolvency and Bankruptcy Code, 2016 (Code), it has been decided by RBI to substitute the existing guidelines with a harmonised and simplified generic framework for resolution of stressed assets.

KEY HIGHLIGHTS OF REVISED FRAME WORK

(I) Early identification and reporting of stress

In case of default (Default – non-payment of debt when become due and not repaid. For cash credit, if outstanding balance in excess of the sanctioned limit or DP for more than 30 days) stress in loan accounts shall be identified at beginning stage by Lenders (all scheduled commercial banks [excluding RRBs] and All India Financial Institutions, unless specified otherwise) through classification of stressed assets as Special Mention Accounts (SMA) as per the following categories:

SMA-sub categories	Overdue of Payment between
SMA-0	1-30 days
SMA-1	31-60 days
SMA-2	61-90 days

Lenders are required to report credit information including SMA to Central Repository of Information on Large Credits (CRILC) on all borrower entities having aggregate exposure (includes all fund based and non-fund based exposure with the lenders) of 50 million and above with them. The CRILC Main report is now required to be submitted on monthly basis w.e.f April 01, 2018 and in addition, borrowers in default on weekly basis. The 1st weekly report shall be submitted for a week ending February 23, 2018.

(II) Implementation of Resolution Plan(RP)

All lenders must put in place Board-approved policies for resolution of stressed assets under this framework, including the timelines for resolution. As soon as default occurs in borrower's entity's account with any lender, all the lenders should take steps to make the default good - singly or jointly. The resolution plan (RP) may inter-alia include regularization of the account, sale of the exposures to other entities / investors, change in ownership, or restructuring (means an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty grants concessions to the borrower.). Proper documentation shall be maintained by all lenders.

(III) Implementation Conditions for RP

If following conditions are satisfied then resolution plan shall deemed to implemented in respect of borrower entities to whom the lenders continue to have credit exposure:

- a. Borrower entity is no longer in default with any of the lenders or
- b. If the resolution involves restructuring:-

All related documentation/creation of security charge/perfection of securities are completed by all lenders AND new capital structure and/or changes in the terms of conditions of the existing loans get duly reflected in the books of all the lenders and the borrower.

CRA (Credit Rating Agencies) are authorised by RBI for the purpose of ICE (independent credit evaluation). RPs involving restructuring / change in ownership in respect of 'large' accounts (i.e. accounts where the aggregate exposure of lenders is 100 crore and above) shall require ICE and in case of aggregate exposure of 500 crore & above shall require 2 ICEs. The RPs shall be considered for implementation only if they receive credit opinion of RP4 or better for residual debt from 1 or more CRAs (as the case may be). The payment fee shall be made by lenders and they shall be directly engaged to them.

(IV) Timelines for Large Accounts to be referred under IBC

In respect of accounts with aggregate exposure of the lenders at 20 billion and above, on or after March 1, 2018 ('reference date') then RP shall be implemented as per the following timelines, if in default

- i) As on the reference date, then 180 days from the reference date
- ii) After the reference date, then 180 days from the date of first such default.

Lenders shall file insolvency application, singly or jointly under IBC within 15 days from the above guidelines in case RP is not implemented and if restructuring/ change in ownership is implemented within 180 day period account it should not be in default at any point of time during specified period (the period from the date of implementation of RP up to the date by which at least 20 % of the outstanding principal debt as per the RP and interest capitalization sanctioned as part of the restructuring, if any, is repaid.) and in case any default is made in payment then it shall be considered fresh default for purpose of this framework.

(V) Prudential Norms

The provisioning in respect of exposure to borrower entities against whom insolvency applications are filed under the IBC shall be as per their asset classification in terms of the Master Circular on Prudential norms on Income of Recognition, Asset Classification and Provisioning, as amended from time to time.

(VI) Supervisory Review

If lenders fail to meet prescribed timelines or any actions with an intention to conceal the actual status or evergreen the stressed accounts shall be subject to stringent supervisory enforcement actions as deemed appropriate by the Reserve Bank.

(VII) Disclosures

Appropriate disclosures shall be maintained under Notes to Accounts in financial statements relating to resolution plans.

(VIII) Exceptions

Restructuring in respect of projects under implementation involving deferment of date of commencement of commercial operations (DCCO), shall continue to be covered under the guidelines contained at paragraph 4.2.15 of the Master Circular No. DBR.No.BP.BC.2/21.04.048/2015-16 dated July 1, 2015 on 'Prudential norms on Income Recognition, Asset Classification and provisioning pertaining to Advances'

(IX) **Withdrawal of extant instructions**

The existing mechanism of Corporate Debt Restructuring Scheme, Strategic Debt Restructuring Scheme (SDR) and Scheme for Sustainable Structuring of Stressed Assets (S4A) has been withdrawn due to latest notification issued by RBI.

D. DESIGNATED WEBSITE FOR PUBLISHING FORMS UNDER THE REGULATIONS

IBBI has specified Forms for publishing Public Announcements and Brief Particulars of Invitations of Resolution Plans on the website, if any, designated by the Board for the purpose under the Insolvency and Bankruptcy Code, 2016 (Code) and the regulations made thereunder.

With its Circular No. IP (CIRP)/006/2018 dated February 23, 2018 IBBI has notified website namely **www.ibbi.gov.in** as designated website and details of the manner of publishing such Forms on the designated website.

The IRP, the RP or the liquidator, as the case may be, shall send the forms to the Board for publishing the same on the designated website, namely, **www.ibbi.gov.in** in the manner provided in Table under this Para.

Sr. No.	Public Announcement (PA)/Brief Particulars of Initiation of Resolution Plan	Forms under Regulation	Form to be sent on E-mail address
1.	PA BY IRP	Form A under regulation 6 (2) (b)(iii) of the IBBI (CIRP) Regulations, 2016	public.ann@ibbi.gov.in
2.	Brief Particulars of invitation of resolution plan by RP	Form G under regulation 36A (5) (b) of the IBBI (CIRP) Regulations, 2016	invite.rp@ibbi.gov.in
3	PA BY IRP	Form A under regulation 6 (2) (b) (iii) of the IBBI (Fast Track CIRP) Regulations, 2017	public.ann@ibbi.gov.in
4	Brief Particulars of invitation of resolution plan by RP	Form G of the Schedule under regulation 35A (5) (b) of the IBBI (Fast Track CIRP) Regulations, 2017	invite.rp@ibbi.gov.in

5	PA by Liquidator	Form B of Schedule II under regulation 12 (3) (c) of the IBBI(Liquidation Process) Regulations, 2016	public.ann@ibbi.gov.in
6	PA by Liquidator	Form A of Schedule I under regulation 14 (3) (c) of the IBBI(Voluntary Liquidation Process) Regulations, 2017	public.ann@ibbi.gov.in

The Insolvency Professional shall mail the Form in PDF format from his e-mail address registered with the Board.

The Circular has also mentioned that the forms submitted by the IRP, the RP or the liquidator, as the case may be, shall be complete and accurate, and should comply with the provisions of the Code and the regulations made there under.

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

Amita Desai & Co.

E-FORM CODS DEPLOYED BY MCA ON FEBRUARY 26, 2018

GENERAL CIRCULAR NO. 16/2017 FOR CONDONATION OF DELAY SCHEME 2018

MCA vide General Circular No. 16/2017 dated December 29, 2017 had announced a Scheme namely “**Condonation of Delay scheme 2018**” for Companies which has not filed its Financial Statements or Annual Returns as required under the Companies Act, 1956 or Companies Act, 2013 as the case may be, **for a continuous period of 3 years** and whose names have not been removed from register of companies.

As per the said circular after filing overdue documents i.e Annual Accounts, Annual Returns and other associate documents under the scheme, defaulting Company shall **seek condonation of delay by filing form e-CODS 2018 along with a fee of Rs. 30,000/-**.

The e-form CODS was supposed to be deployed on MCA website on February 20, 2018, however the **e-form CODS was finally made available on MCA website on February 26, 2018**.

For availing condonation the e-form CODS is required to be filed by defaulting Companies before the last date of the Scheme (last date of Scheme at present is March 31, 2018 which may get extended)

DETAIL OF DOCUMENTS FILED UNDER CODS

SR. NO.	FIELD NAME OF THE E-FORM CODS	DESCRIPTION
1.	Total number of Service Request Number (SRN) which can be entered	Maximum 20 SRNs can be entered in a form.
2.	SRN	The SRNs entered should belong to the form ID AOC-4/AoC-4CFS/AOC-4XBRL/ 23AC/23ACA/23ACXBRL/23ACA XBRL/20B/21A/MGT-7/ ADT-1/23B/66
3.	Date of filing	This field would be pre-filled after clicking the Pre-Fill button of SRN
4.	Whether any appeal(s) was filed against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of the above mentioned document(s).	If yes, than proof of withdrawal of such appeal would be mandatory attachment

5.	Whether any prosecution(s) is pending in court against the company and its officers in respect of belated documents filed under the scheme.	If yes, than details of pending prosecution for belated documents would be mandatory attachment.
6.	Whether any director(s) of the company is declared as proclaimed offender or facing criminal case(s) for economic offences.	If yes than details of Director who is declared as proclaimed offender or facing criminal cases need would be mandatory attachment

- The e-Form CODS is required to be digitally signed by a Director or Manager or Company Secretary or CEO or CFO of the Company duly authorized by the Board of Directors.
- Also the form will be auto-approved which means it would be taken on record on Straight through Process (STP).

CONSEQUENCES OF NOT AVAILING CODS

- The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the e-form CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme in terms of section 164(2)(a) r/w 167(1)(a) of the Act shall be liable to be deactivated on expiry of the scheme period.

Below mentioned is the link for downloading e-form CODS

<http://www.mca.gov.in/MinistryV2/companyformsdownload.html>

Below mentioned is the link for downloading General Circular no. 16/2017

http://www.mca.gov.in/Ministry/pdf/Generalcircular16_29122017.pdf



“Don't stop
when you're
tired. STOP
when you
are **DONE.**”

Unknown



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FOR THE RIGHT
OPPORTUNITY.
CREATE IT.

GEORGE BERNARD SHAW

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