



***Private Circulation Only**

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

We are pleased to share our Newsletter for the month of March 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 our Analysis on Amendments in Section 89 and 90 of Companies Act, 2013 (Beneficial Interest and draft rules made thereunder) as our Articles of the Month and have provided link of the MCA Amendments during FY 2017-18.

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. COMPANIES (FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE) AMENDMENT RULES, 2018.

MCA vide notification dated March 08, 2018 has amended the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 and notified the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2018. It shall come into force from March 08, 2018.

With the aforesaid notification the existing Rule 3 is renumbered as Rule 3 (1) and sub rule are 3 (2) and 3 (3) inserted to provide clarity that if Company was covered under any of the criteria specified in Rule 3 (1) or was required to file its Financial Statement or other documents in XBRL under erstwhile rules namely, Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, it shall **continue to file its financial statements and other documents in XBRL though they may not fall under the class of companies specified therein in succeeding years.**

The link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesXBRL0803rule_15032018.pdf

B. COMMENCEMENT OF SECTION 132 (3) AND 132 (11) AND NOTIFICATION OF NATIONAL FINANCIAL REPORTING AUTHORITY (MANNER OF APPOINTMENT AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON AND MEMBERS) RULES, 2018

MCA vide Notification dated March 21, 2018 has **notified Section 132(3) and 132(11) of Companies Act, 2013.**

Section 132(3) relates to Manner of appointment and other Terms and Conditions of Service of Chairperson and Members and Section 132(11) relates to appointment of Secretary and such other employees by Central Government for efficient performance of National Financial Reporting Authority (NFRA).

MCA has also notified the National Financial Reporting Authority (Manner of appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018.

The aforesaid Rules include details about Composition of Authority like Chairperson and Members, their Manner of Appointment, Medical Fitness, Resignation, Removal from Office, Procedure for Inquiry of Misbehavior or Incapacity of the Chairperson or a Member, Term of Office, Vacancy, Salary and Allowances, Pension, Gratuity and Provident Fund, Leave, Leave and Foreign Travel Authority, House Rent Allowance, Transport Allowance, Declaration of Financial and other Interests, Other conditions of services, Oath of office and Secrecy, Sitting Fee and Allowances of Part-time Members, Power of Relax and Interpretation.

The link of above notification for commencement of Section is as under:

http://www.mca.gov.in/Ministry/pdf/commencementNotification2103_21032018.pdf

The link of above notification for Rules is as under:

http://www.mca.gov.in/Ministry/pdf/ReportingAuthorityRule2103_21032018.pdf

C. COMPANIES (INCORPORATION) SECOND AMENDMENT RULES, 2018:

MCA vide notification dated March 23, 2018 has amended the Companies (Incorporation) Rules, 2014 and notified Companies (Incorporation) Second Amendment Rules, 2018.

Now application for reservation of name made through the web service available at mca.gov.in by using RUN (Reserve Unique Name) may be approved or rejected by the registrar **after allowing re-submission of such application within 15 days** for such rectification of the defects, if any.

The link of above notification is as under:

www.mca.gov.in/Ministry/pdf/CompanyRule2303_23032018.pdf

D. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF AOC-4 XBRL E-FORMS USING IND AS

MCA vide its Circular No. 1/2018 dated March 28, 2018 had extended the last date of **filing the e-Form AOC-4 XBRL using IND AS under the Companies Act, 2013 till 30th April, 2018 without additional fees.**

MCA has issued this Circular with reference to Ministry's General Circular No. 13/2017 dated 26/10/2017 and upon consideration of request received from various stakeholders and has decided to extend the last date for filing of AOC-4 XBRL E-Forms using IND AS under the Companies Act, 2013 for all eligible companies required to prepare or voluntarily prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015 for the Financial Year 2016-17.

The link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo02of2018_29032018.pdf

E. EXTENTION OF CONDONATION OF DELAY SCHEME, 2018:

MCA vide its Circular No. 2/2018 dated March 28, 2018 had **extended Condonation of Delay Scheme(CODS), 2018 upto April 30, 2018.**

This circular has been issued in continuation to MCA General Circular No. 16/2017 dated 29th December, 2017 and on consideration of request received from various stakeholders MCA has decided to extend the CODS, 2018 scheme from 31st March, 2018 to April 30, 2018.

The link of above circular is as under:

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo02of2018_29032018.pdf

F. COMPANIES (INDIAN ACCOUNTING STANDARDS) AMENDMENT RULES, 2018:

MCA vide notification dated March 28, 2018 has amended the Companies (Indian Accounting Standards) Rules, 2015 and notified Companies (Indian Accounting Standards) Amendment Rules, 2018.

In Companies (Indian Accounting Standards) Rules, 2015 in the “Annexure” under the heading “B” for Indian Accounting Standard (IND AS) various amendments are made.

The link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/INDAsEngRule2018_29032018.pdf

RBI UPDATES:

1. SEPARATE LIMIT OF INTEREST RATE FUTURES (IRFS) FOR FOREIGN PORTFOLIO INVESTORS (FPIS)

RBI vide Notification dated March 1, 2018 has eased position limit in Interest Rate Futures (IRFs) for Foreign Portfolio Investors (FPIs). **RBI has allowed a limit of 5,000 crore for FPIs to go long in IRFs.**

Currently, the FPI limit for Government Securities (G-secs) is fungible between investments in G-secs and investment in IRF. FPI long positions in IRF are not allowed on G-sec limit utilisation reaching 90%.

In order to facilitate further market development and to ensure that access of FPIs to IRFs remains uninterrupted, the regulator has taken above decision.

The link of above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11225&Mode=0>

2. DISCONTINUANCE OF LETTERS OF UNDERTAKING (LOU) AND LETTER OF COMFORT (LOC) FOR TRADE CREDITS

RBI vide Circular dated March 13, 2018 has amended provision of paragraphs A.P. (DIR Series) Circular No. 24 dated November 1, 2004 and paragraph No. 5.5 of Master Direction No.5 on External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers.

AD Category-I (Authorised money changer by RBI) **banks cannot further issue Letter of Undertaking (LoU) or Letter of Comfort (LoC)** for trade credit for import into India, from the date of the circular i.e. 13th March 2018.

RBI has scrapped quasi Bank Guarantee instruments such as the LoU and LoC in order to plug the loophole exposed by Rs. 14,000 crores fraud by Nirav Modi with Punjab National Bank.

However, Letter of Credit & Bank guarantee for trade credits for import into India can be issued subject to compliances with the provisions contained in Department of Banking Regulation Master Circular No. DBR. No. Dir. BC.11/13.03.00/2015-16 dated July 1, 2015 on “Guarantees and Co-acceptances.

The link of above circular is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11227&Mode=0>

3. FOREIGN EXCHANGE MANAGEMENT (CROSS BORDER MERGER) REGULATIONS 2018

RBI vide Notification dated March 20, 2018 has issued Regulations for Cross Border Mergers.

BACKGROUND:

Earlier MCA vide its notification dated April 13, 2017 had notified Section 234 of the Companies Act, 2013 and had inserted Rule 25A by notifying Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 which deals with the merger or amalgamation of an Indian Company with Foreign Company and vice-versa.

According to aforesaid Rule an Indian Company can merge with a Foreign Company incorporated in any of the jurisdictions prescribed in **Annexure B which forms a part of the rule, provided prior approval of the Reserve Bank of India has been obtained** and the relevant provisions of amalgamations and mergers mentioned in Section 230 to 232 of the Companies Act, 2013 are complied with.

Jurisdictions referred in Annexure B of Rule 25A is as under:

- i. whose securities market regulator is a signatory to International Organization of Securities Commission’s Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with SEBI, or
- ii. whose central bank is a member of Bank for International Settlements (BIS), and
- iii. a jurisdiction, which is not identified in the public statement of Financial Action Task Force (FATF) as:
 - a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies

The Rules also prescribed that the transferee Company should ensure that the **valuation conducted by valuers** (being members of a recognised professional body in the jurisdiction of the transferee Company) **is in accordance with internationally acceptable principles of accounting and valuations and a declaration to that effect is filed with the RBI.**

IMPORTANT DEFINITIONS:

- **‘Cross Border Merger’** means any merger, amalgamation or arrangement between an Indian Company and foreign Company in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013.
- **‘Foreign Company’** means any Company or body corporate incorporated outside India whether having a place of business in India or not.

Explanation: for the purpose of outbound mergers, the foreign Company should be incorporated in a jurisdiction specified in Annexure B to Companies (Compromises, Arrangements and Amalgamation)

- **‘Inbound merger’** means a cross border merger where the resultant Company is an Indian Company.
- **‘Outbound merger’** means a cross border merger where the resultant Company is a foreign Company.
- **‘Resultant Company’** means an Indian Company or a foreign Company which takes over the assets and liabilities of the Companies involved in the Cross Border Merger.

INBOUND MERGER:

In an inbound merger,

(1) the resultant Company may issue or transfer any security and/or a foreign security, as the case may be, to a person resident outside India **in accordance with the pricing guidelines, entry routes, sectoral caps, attendant conditions and reporting requirements for foreign investment** as laid down in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017.

Provided that:

- (i) where the foreign Company is a joint venture (JV)/ wholly owned subsidiary (WOS) of the Indian Company, it shall comply with the conditions prescribed for transfer of shares of such JV/ WOS by the Indian party as laid down in Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2004;
- (ii) where the inbound merger of the JV/WOS results into acquisition of the Step down subsidiary of JV/ WOS of the Indian party by the resultant Company, then such acquisition should be in compliance with Regulation 6 and 7 of Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2004.

(2) An office outside India of the foreign Company , **pursuant to the sanction of the Scheme of cross border merger shall be deemed to be the branch/office outside India of the resultant Company** in accordance with the Foreign Exchange Management (Foreign Currency Account by a person resident in India) Regulations, 2015. Accordingly, the resultant Company may undertake any transaction as permitted to a branch/office under the aforesaid Regulations.

(3) The guarantees or outstanding borrowings of the foreign Company from overseas sources which become the borrowing of the resultant Company or any borrowing from overseas sources entering into the books of resultant Company shall conform, within a period of 2 years, to the External Commercial Borrowing (ECB) norms or Trade Credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Borrowing or Lending in Rupees) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000, as applicable.

Provided that no remittance for repayment of such liability is made from India within such period of 2 years;

Also the conditions with respect to end use shall not apply.

(4) The resultant Company may acquire and hold any asset outside India which an Indian Company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder.

(5) Where the asset or security outside India is not permitted to be acquired or held by the resultant Company under the Act, rules or regulations, the resultant Company shall sell such asset or security within a period of 2 years from the date of sanction of the Scheme by NCLT and the sale proceeds shall be repatriated to India immediately through banking channels. Where any liability outside India is not permitted to be held by the resultant Company, the same may be extinguished from the sale proceeds of such overseas assets within the period of 2 years.

(6) **The resultant Company may open a bank account in foreign currency in the overseas jurisdiction for the purpose of putting through transactions incidental to the cross border merger for a maximum period of 2 years** from the date of sanction of the Scheme by NCLT.

OUTBOUND MERGER:

In an outbound merger,

(1) a person resident in India may acquire or hold securities of the resultant Company in accordance with the Foreign Exchange Management (Transfer or issue of any Foreign Security) Regulations, 2004.

(2) a resident individual may acquire securities outside India provided that the fair market value of such securities is within the limits prescribed under the Liberalized Remittance Scheme (LRS).

(3) An office in India of the Indian Company, pursuant to sanction of the Scheme of cross border merger, may be deemed to be a branch office in India of the resultant Company in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016. Accordingly, **the resultant Company may undertake any transaction as permitted to a branch office under the aforesaid Regulations.**

(4) The guarantees or outstanding borrowings of the Indian Company which become the liabilities of the resultant Company shall be repaid as per the Scheme sanctioned by the National Company Law Tribunal (NCLT) in terms of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

Provided that the resultant Company shall not acquire any liability payable towards a lender in India in Rupees which is not in conformity with the Act or rules or regulations framed thereunder.

Provided further that a no objection certificate to this effect should be obtained from the lenders in India of the Indian Company.

(5) The resultant Company may acquire and hold any asset in India which a foreign Company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder.

(6) Where the asset or security in India cannot be acquired or held by the resultant Company under the Act, rules or regulations, the resultant Company shall sell such asset or security within a period of 2 years from the date of sanction of the Scheme by NCLT and the sale proceeds shall be repatriated outside India immediately through banking channels. Repayment of Indian liabilities from sale proceeds of such assets or securities within the period of 2 years shall be permissible.

(7) The resultant Company may open a Special Non-Resident Rupee Account (SNRR Account) in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016 for the purpose of putting through transactions under these Regulations. The account shall run for a maximum period of 2 years from the date of sanction of the Scheme by NCLT.

VALUATION:

The valuation of the Indian Company and the foreign Company **shall be done in accordance with Rule 25A** of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

According to aforesaid rule the **transferee Company shall ensure that the valuation is conducted by valuers who are members of recognized professional body** in the jurisdiction of transferee Company and further that such **valuation is in accordance with internationally accepted principles on accounting and valuation**. A declaration to this effect shall be attached with the application made to RBI for obtaining its approval.

MISCELLANEOUS:

- (1) Compensation by the resultant Company, to a holder of a security of the Indian Company or the foreign Company, as the case may be, may be paid, in accordance with the Scheme sanctioned by the NCLT.
- (2) The Companies involved in the cross border merger shall ensure that regulatory actions, if any, prior to merger, with respect to non-compliance, contravention, violation, as the case may be, of the Act or the Rules or the Regulations framed thereunder shall be completed.

REPORTING:

- (1) The resultant Company and/or the Companies involved in the cross border merger shall be required to furnish reports as may be prescribed by the Reserve Bank, in consultation with the Government of India, from time to time.

DEEMED APPROVAL:

- (1) **Any transaction on account of a cross border merger undertaken in accordance with these Regulations shall be deemed to have prior approval of the Reserve Bank as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.**
- (2) A certificate from the Managing Director/Whole Time Director and Company Secretary, if available, of the Company (ies) concerned ensuring compliance to these Regulations shall be furnished along with the application made to the NCLT under the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

OUR VIEWS:

MCA had already notified Section 234 of Companies Act, 2013 and Rule 25A Companies (Compromises, Arrangement or Amalgamation) Rules, 2016 on April 13, 2017 and RBI has now framed the regulations under FEMA for Cross Board Merger. With the notification of regulations by RBI, Multinational Companies may plan their merger and acquisition strategies more effectively.

The link of above MCA notification for amendment of Rules dated April 13, 2017 is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesCompromises_14042017.pdf

The link of RBI notification is as under:

<http://egazette.nic.in/WriteReadData/2018/184059.pdf>

A. SEPARATE LIMIT OF INTEREST RATE FUTURES (IRF) FOR FOREIGN PORTFOLIO INVESTORS (FPI)

RBI vide Notification dated March 1, 2018 has proposed for a separate limit of Rs 5000 Crores for taking long position in Interest Rate Futures (IRFs) for FPI's registered with SEBI accordingly SEBI vide circular dated March 08, 2018 have partially amended SEBI circular CIR/MRD/DRMNP/35/2013 dated December 05, 2013 and Para 13 (c) of Annexure 1 to SEBI Circular CIR/MRD/DRMNP/11/2015 dated June 12, 2015. The circular dated 8th March, 2018 has come into effect immediately.

- The limit will be calculated as follows:
 - For each IRF instrument, position of FPI's with only net long position will be aggregated.
 - At any time, FPI cannot acquire a net long position in excess of 1,800 Crores
- The necessary mechanism will be placed by Stock Exchanges which shall monitor and enforce the limits of FPI in IRF.
- Stock Exchange shall aggregate net long position in IRF of all FPIs taken together at end of the day and shall jointly publish/ disseminate the same on their website on daily basis.
- The mechanism shall be placed by Stock Exchanges which provide an alert and publish on Stock Exchanges website once 90% of the limit is utilized and the available limit.
- In case of any breach of the threshold limit, the FPI's whose investment caused the breach are required to square off their excess positions within 5 trading days or by expiry of contract, whichever is earlier.

The link of above circular is as under:

<https://www.sebi.gov.in/legal/circulars/mar-2018/separate-limit-of-interest-rate-futures-irfs-for-foreign-portfolio-investors-fpis-38127.html>

B. CLARIFICATION IN RESPECT OF INVESTMENT BY CERTAIN CATEGORY II FPIs

SEBI vide circular dated March 13, 2018 has given clarification with reference to its circular No. CIR/IMD/FPIC/ 26 /2018 dated February 15, 2018 on “Easing of access norms for investment by FPIs. The following clarifications are made in respect of investment by certain category II FPIs:

- The collective investment vehicle of private banks/ merchant banks investing on behalf of clients shall ensure the following:
 - The client/ investor should have fulfilled KYC norms. The beneficial owners (BO) of client/ investor of bank should be identified in accordance with Rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005.
 - The client/ investor or their BO should not be Indian resident/ NRI/ Overseas Citizen of India.
 - The client/ investor is not resident in a country identified in the public statement of Financial Action Task Force as:-
 - i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;
 - The client/ investor should not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (Foreign Portfolio Investors) Regulations, 2014 or Bearer share structure.
 - The collective investment vehicle of the Bank (other than for ODIs) should be broad based (more than 20 investors and no investor having more than 49% stake) and there should be common portfolio for all clients/ investors.
 - The conditions already specified at point (g) of SEBI circular dated February 15, 2018 shall continue to be applicable.
- Investment in India by appropriately regulated broad based insurance/ reinsurance companies must be maintained as an undivided common portfolio. Segregated portfolio or investor/ policy-holder level investment structure shall not be permitted.

All other investment restrictions and due diligence requirements as applicable to FPIs shall continue to be applicable on entities referred above.

The link of above circular is as under:

https://www.sebi.gov.in/legal/circulars/mar-2018/clarifications-in-respect-of-investment-by-certain-category-ii-fpis_38198.html

C. CLARIFICATION TO CIRCULAR PERTAINING TO INVESTOR PROTECTION FUND (IPF) AND INVESTOR SERVICE FUND (ISF)

SEBI vide circular dated March 14, 2018 has made clarifications w.r.t the circular issued by it on June 13, 2017 on guidelines covering broad areas of Investor Protection Fund and Investor Service Fund.

- The unutilized IPF interest income accruing during a specific financial year can be carried forward to the next financial year to enable effective utilization of such money by the National Commodity Derivative Exchanges (NCDE) during such extended period.
- NCDEs are permitted to utilize IPF interest income for undertaking research activities related to commodities market, provided every such research activity / project can be undertaken only after obtaining prior written approval of the trustees of the IPF Trust, who would record the reasons, relevance and stated objectives of the research project while according approval to such activity/ project.
- Not more than 10% of the interest amount of IPF can be spent on Research activities related to commodities market.
- Earlier IPF of the exchange can be utilized for the clients of SEBI registered members. Now, exchanges can also use the IPF of the exchange for meeting their liabilities towards the clients of members not registered with SEBI, if the same is allowed under the byelaws of the exchange.
- Certain expenditures are prescribed by SEBI which are to be met utilizing the ISF and not IPF. But ISF is of recent origin, its corpus may be inadequate. Therefore NCDEs have requested to permit utilizing interest on IPF in lieu of ISF for expenditures meant only for ISF. NCDEs have been granted 3 years period starting April 1st, 2018 to utilize interest on IPF for activities of ISF.

The link of above circular is as under:

<https://www.sebi.gov.in/legal/circulars/mar-2018/clarification-to-circular-pertaining-to-investor-protection-fund-ipf-and-investor-service-fund-isf-38208.html>

D. CLARIFICATION TO CIRCULAR PERTAINING TO INVESTOR GRIEVANCE REDRESSAL SYSTEM AND ARBITRATION MECHANISM

SEBI vide circular dated March 14, 2018 has made clarifications w.r.t circular issued by it on July 11, 2017 on guidelines covering broad areas of Investor Grievance Redressal System and Arbitration Mechanism.

The following clarifications are being issued:

- NCDEs are required to provide at least 1 day training to every arbitrator each year.
- In order to discourage delayed filings by members, the additional fees payable by members who file their claim beyond the prescribed time period shall be non-refundable even if award of arbitration goes in favor of the member.

The link of above circular is as under:

https://www.sebi.gov.in/legal/circulars/mar-2018/clarification-to-circular-pertaining-to-investor-grievance-redressal-system-and-arbitration-mechanism_38209.html

E. MANDATORY FILING OF INVESTOR GRIEVANCE DETAILS IN LISTING CENTRE WEBSITE

In order to make the disclosures more accurate and efficient, BSE has issued circular dated 27th March, 2018 under which only equity listed entities are required to submit the Investor Complaint Details under Regulation 13 (3) in the Listing Centre website using the web form provided for that purpose. The same is effective from April 01, 2018.

Once the companies have filled in the requisite data in the Listing Centre using the web form PDF submission is not required.

The Debt Listed Companies shall submit the same through Compliance Module - Reg. 13(3) - Quarterly statement of Investor Complaints.

The link of above circular is as under:

<https://www.bseindia.com/corporates/Displaydata.aspx?Id=103a0502-cc39-4a41-8d9c-6ec13984e5af&Page=cir>

F. MANDATORY FILING OF DISCLOSURES UNDER SEBI (PROHIBITION OF INSIDER TRADING REGULATION), 2015 IN XBRL MODE

BSE has issued circular dated 27th March, 2018 for filing disclosures under SEBI (Prohibition of Insider Trading) Regulations, 2015 in XBRL mode.

Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015 requires Listed Entities to file the disclosures in the formats prescribed by SEBI. In order to make the disclosures more accurate and efficient, the facility of XBRL based reporting is launched by BSE.

Excel Utility for filing the disclosures under SEBI (Prohibition of Insider Trading) Regulations, 2015 has been made available for download in the Listing Centre portal under XBRL Tab.

Thus, from 1st April, 2018 all disclosures under SEBI (PIT) Regulations, 2015 shall be submitted in XBRL Mode only.

The link of above circular is as under:

<https://www.bseindia.com/corporates/Displaydata.aspx?id=40c140e2-9209-49d0-a2e9-60752e07764b&Page=cir>

G. INVESTOR GRIEVANCE REDRESS MECHANISM – NEW POLICY MEASURES

In continuation to circular no. CIR/OIAE/1/2014 dated 18th December, 2014, SEBI has issued circular dated March 26, 2018 for redressal of investor grievances through SEBI Complaints Redress System (SCORES) platform.

At present following types of complaints are not dealt through SCORES:

- i. Complaints against the companies which are unlisted/delisted, in dissemination board of Stock Exchanges,
- ii. Complaints those are sub-judice i.e. relating to cases which are under consideration by court of law, quasi-judicial proceedings etc.
- iii. Complaints falling under the purview of other regulatory bodies viz. RBI, IRDAI, PFRDA, CCI, etc., or under the purview of other ministries viz., MCA, etc.
- iv. Complaints against a sick company or a company where a moratorium order (A moratorium is a period of time when there is a suspension of a specific activity is passed) in winding up / insolvency proceedings.
- v. Complaints against the companies where the name of company is struck off from ROC or a vanishing company as per list published by MCA.
- vi. Suspended companies, companies under liquidation / BIFR / etc.

To enhance investor satisfaction on complaint redressal, SEBI has already put in place a 'Complaint Review facility' wherein if the investor is not satisfied with the reply of his complaint, he may opt for review on SCORES within 15 days from the date of closure of his complaint.

From August 01, 2018, following procedure shall be followed for filing and redressal of investor grievances using SCORES:

- a. Investors who wish to lodge a complaint on SCORES are requested to register themselves on www.scores.gov.in by clicking on “Register here”. While filing the registration form, details like Name of the investor, PAN, Contact details, Email id, Aadhaar card number (optional), CKYC ID (optional) etc. (Annexure A) may be provided for effective communication and speedy redressal of the grievances. Upon successful registration, a unique user id and a password shall be communicated to the investor through an acknowledgement email / SMS.
- b. An investor shall use login credentials for lodging complaint on SCORES (“Login for registered user” section).
- c. The complainant may use SCORES to submit the grievance directly to companies / intermediaries and the complaint shall be forwarded to the entity for resolution. The entity is required to redress the grievance within 30 days, failing which the complaint shall be registered in SCORES.

Presently, the limitation period for filing an arbitration reference with stock exchanges is 3 years. To enhance ease, speed & accuracy in redressal of investor grievance the investor can lodge a complaint on SCORES within 3 years from the date of cause of complaint, where:

1. Investor has approached the listed company or registered intermediary for redressal of the complaint **and,**
2. The concerned listed company or registered intermediary rejected the complaint **or,**
3. The complainant does not receive any communication from the listed company or intermediary concerned **or,**
4. The complainant is not satisfied with the reply given to him or redressal action taken by the listed company or an intermediary.

The link of above circular is as under:

<https://www.bseindia.com/corporates/Displaydata.aspx?Id=1c08d10f-12e2-438a-ae1f-b3bb06bc80ce&Page=cir>

H. PRESS RELEASE FOR BOARD MEETING HELD ON MARCH 28, 2018 (KOTAK COMMITTEE ON CORPORATE GOVERNANCE):

- SEBI has issued press release vide PR No. 09/2018 with respect to decisions on recommendations of Kotak Committee on Corporate Governance.
- The SEBI had constituted the Kotak Committee under the chairmanship of Shri Uday Kotak in June, 2017 to make recommendations to SEBI for improving standards of corporate governance of listed entities in India. The committee submitted its report on October 05, 2017 and such report was placed on the website of SEBI for public comments.
- For discussions on such report, SEBI Board Met on March 28, 2018 in Mumbai and took the following decisions:

1. DECISION ON THE RECOMMENDATIONS OF KOTAK COMMITTEE ON CORPORATE GOVERNANCE:

The Kotak Committee had given recommendation on Corporate Governance dated October 05, 2017 on which public comments have been received. The Board considered such recommendations of the Committee as well as the public comments on the Corporate Governance thereon.

- Following are the recommendations of the Committee which the Board decided to accept **without any modification**:
 1. Reduction in the maximum number of listed entity directorships:
 - From 10 to 8 -- by April 01, 2019; and
 - From 10 to 7 -- by April 01, 2020.
 2. Expanding the eligibility criteria for Independent Directors.
 3. Enhanced role of the Audit Committee, Nomination and Remuneration Committee and Risk Management Committee.
 4. Disclosure of utilization of funds from QIP/Preferential Issue.
 5. Disclosure of auditor credentials, audit fees, reasons for resignation of auditors, etc.
 6. Disclosure of expertise/skills of directors.
 7. Enhanced disclosure of related party transactions (RPTs) and related parties to be permitted to vote against RPTs.
 8. Mandatory disclosure of consolidated quarterly results with effect from FY 2019-20.
 9. Enhanced obligations on the listed entities with respect to subsidiaries.
 10. Secretarial Audit to be mandatory for listed entities and their material unlisted subsidiaries under SEBI LODR Regulations.

- Following are the recommendations of the Committee which the Board decided to accept **with modifications**:
1. **No. of directorship** in listed entities by market capitalization:
 - Minimum 6 directors,
 - in the top 1000 listed entities – by April 01, 2019 and
 - in the top 2000 listed entities -- by April 01, 2020
 2. **No. of woman independent director** in listed entities by market capitalization:
 - At least one woman independent director,
 - in the top 500 listed entities -- by April 01, 2019 and
 - in the top 1000 listed entities -- by April 01, 2020
 3. **Separation of CEO/MD and Chairperson** in listed entities by market capitalization:
 - To be initially made applicable to the top 500 listed entities w.e.f. April 01, 2020
 - **Quorum for Board Meetings** in listed entities by market capitalization:
 - 1/3rd of the size of the Board or 3 members, whichever is higher,
 - in the top 1000 listed entities -- by April 01, 2019 and
 - in the top 2000 listed entities -- by April 01, 2020.
 4. **Holding of AGM:**
 - Top 100 entities -- within 5 months after the end of FY 2018-19 i.e. by August 31, 2019.
 5. **Webcast of AGMs :**
 - compulsory for top 100 entities by market capitalization w.e.f. FY 2018-19
 6. Shareholder approval (majority of minority) for Royalty/brand payments to related party exceeding 2% of consolidated turnover (instead of the proposed 5%)
- The Board decided to refer certain recommendations such as strengthening the role of ICAI, internal financial controls, adoption of Ind-AS, treasury stock, governance aspects of PSEs, etc given by various agencies with respects to matters which relates to them.

2. MEASURES FOR STRENGTHENING ALGORITHMIC TRADING FRAMEWORK.

The Board after due discussions on measures for strengthening algorithmic trading framework approved the following proposals:

- In order to reduce the cost for trading members wishing to operate from the collocation facility, the Stock Exchanges to introduce Shared Co-location Services.
- The board approved a proposal for providing tick-by-tick data feed free of charge to all trading members.
- It is also proposed that algo orders placed within 0.75% on either side of the Last Traded Price (LTP) may be exempted from the framework for imposing penalty for high Order to Trade Ratio (OTR). Further, the OTR framework may be extended to orders placed in the equity cash segment and orders placed under Liquidity enhancement Scheme (LES).
- Further, the stock exchanges may be asked to allot a unique identifier for each algo, to establish an audit trail and to ensure better surveillance of Algo trading.
- SEBI may also ask the exchanges to publish additional details regarding the latency observed within the exchange trading infrastructure and also publish a reference latency.
- The board has decided to review trading requirement for algo software for strengthening algorithmic trading framework by mandating stock exchanges to provide a simulated market environment for testing of software used for such high-frequency trades.

3. RATIONALIZING AND STRENGTHENING THE FRAMEWORK OF EQUITY DERIVATIVES MARKET:

SEBI has decided to rationalise and strengthen the framework for equity derivatives market which *inter-alia* includes—

- For the cash and derivatives market to facilitate greater alignment, physical settlement for all stock derivatives would be carried out in a phased and calibrated manner.
- For introduction of stocks into derivative segment in line with the increase in market capitalization, the SEBI has approved a proposal to update and strengthen the existing entry criteria.

- Accordingly, existing criteria like market wide position limit would be increased from INR 300 Cr to 500 Cr and median quarter-sigma order size would be increased from INR 10 lakh to INR 25 lakh. Additional criteria include, average daily deliverable value in cash market of INR 10 Cr. The enhance criteria are to be met in a continuous period of 6 months.
- Stocks which are currently in derivatives but fail to meet any of the enhanced criteria would be physically settled. However, if they fail to meet any of the enhanced criteria within a period of 1 year from the specified date or fail to meet any of the current existing criteria for a continuous period of 3 months such stocks would exit the derivative segment.
- Stocks which are currently in derivatives and meet the enhanced criteria shall be cash settled. However, such stocks shall move from cash settlement to physical settlement, if they fail to meet any one of the enhanced criteria for a continuous period of 3 months. After moving to physical settlement if such stock does not meet any of the current existing criteria for a continuous period of 3 months it would exit out of derivatives.

Only those stocks would remain in derivatives which meet the enhanced criteria after a period of one year from the specified date.

- A framework to reflect global initiatives on product suitability has been approved. Based on individual investors disclosed income as per their Income Tax Return (ITR) such investor may freely take exposure in the market (cash & derivatives) upto a computed exposure. For exposure beyond the computed exposure, the intermediary would be required to undertake rigorous due diligence and take appropriate documentation from the investor.

4. PROPOSAL FOR AMENDMENT OF THE REGULATORY PROVISION PERMITTING CHARGING OF ADDITIONAL EXPENSES OF UP TO 0.20% OF THE DAILY NET ASSETS OF MF SCHEMES:

- The additional expense from mutual funds to is reduced to 5 bps from 20 basis points earlier. In 2012, SEBI had allowed mutual funds to charge up to 0.20% of assets under management of the scheme in lieu of exit loads, or the sum collected from investors when they sell holdings.

5. GO GREEN INITIATIVE IN MUTUAL FUNDS:

- Now, Fund houses will no longer be required to publish daily net asset values, or NAVs in newspapers. Further, SEBI has said that fund houses will not be required to send physical copies of scheme annual reports and statement of scheme portfolios on half-yearly basis to all the investors whose email addresses are not available.

- Instead, these details will now be published on the websites of Association of Mutual Funds in India, or AMFI, and fund houses. Fund houses will be required to publish an advertisement informing about hosting of the annual report and statement of scheme portfolios on the websites and provide the relevant information to investors upon request.

6. AMENDMENTS TO THE SEBI (ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012 REGARDING ANGEL FUNDS:

- The recommendation of the working group relating to the above Regulation aims at simplifying the certain provisions of the Regulations for the ease of doing business for angel funds.
- Working group comprises of,
 - various angel networks;
 - consultants; and
 - start-ups
- Following are the amendments which the SEBI Board has approved with respect to 'Angel Funds':
 - **Maximum investment** by an angel fund in any venture capital undertaking -- increased from Rs. 5 Cr to Rs. 10 Cr;
 - **Minimum corpus** of an angel fund – reduced from Rs. 10 Cr to Rs. 5 Cr;
 - **Maximum period for accepting funds** from angel investors – increased to 5 years from 3 years;
 - Filing of **term sheet** containing material information within 10 days of launching of scheme **in lieu of requirement of filing of scheme memorandum** to SEBI by angel funds;
 - If angel fund is formed as a company, then provision of Companies Act, 2013 shall apply.

7. REVISED FRAMEWORK FOR NON-COMPLIANCE OF THE LISTING AGREEMENT:

- Based on the recommendation of the Committee, the Board decided to revise the penalty for non-compliance of listing regulation for the listed companies.
- Following are the distinct features of the revised framework which is expected to promote better compliance culture:
 - Listing regulations covers a wide gamut of listing regulations such as,
 - the requirement pertaining to composition of Board of Directors and various committees,
 - submission of corporate governance report, financial results and voting rights etc.

- Violations of these above mentioned regulations will result into imposition of fines by the Stock Exchanges.
- Shareholding of the promoter and promoter group shall be freeze in such non-compliant entity and in other securities as well.
- If non-compliance persists, it will lead to suspension.

8. DISTRIBUTION OF CASH BENEFITS BY LISTED ENTITIES THROUGH DEPOSITORIES:

- The present mode of distribution of dividend by the listed entities is directly to the securities holders by the entity or through Registrar to an Issue and /or Share Transfer Agents.
- In addition to the present mode, the Board decided to include the option of distribution of cash benefits such as payment of dividend through depositories which will widen the choice for investors with its benefits such as shorter turnaround time for receiving benefits, ability to get consolidated statements of all such benefits and to receive such alerts (SMS/E-mails), etc.

9. AMENDMENT TO REGULATION 40 OF SEBI (LODR) REGULATIONS, 2015 FOR MANDATING TRANSFER OF SECURITIES ONLY IN DEMAT FORM:

- The Board decided to revise the provision relating to transfer of shares of listed companies which states that transfer of shares shall be effected only if shares are held in demat form with a depository.
- This measure aims to curb fraud and manipulation risk in physical transfer of securities by unscrupulous entities.
- This measure will also improve ease, convenience and safety of transactions for investor.
- Date of this amendment will be **notified later**.

10. PUBLIC CONSULTATION PROCESS FOR LAYING DOWN A FRAMEWORK OF COMPLIANCE WITH SEBI REGULATIONS BY LISTED ENTITIES SUBJECT TO CORPORATE INSOLVENCY RESOLUTION PROCESS (“CIRP”) UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (“IBC”):

- On the basis of discussion paper, the Board approved the proposal of undertaking a public consultation process as part of reviewing the requirements of compliance with various SEBI Regulations by listed entities which are subject to CIRP under the IBC.

- Issues which were stated in discussion paper are as follows:
 - Aspects relating to disclosures;
 - Trading in stock exchanges;
 - Material related party transactions;
 - Re-classification of promoters;
 - Compliance with minimum public shareholding requirement & Delisting pursuant to resolution plan/liquidation.

11. PUBLIC CONSULTATION PROCESS FOR REVIEW OF SEBI (BUY-BACK OF SECURITIES) REGULATIONS, 1998 AND SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011:

- On the basis of discussion paper, the Board approved the reviewing of SEBI (Buy-back of Securities) Regulations, 1998 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- The objectives of the measures are as follows:
 - Simplifying the language;
 - Removing redundant provisions & inconsistencies;
 - Updating the references the Companies Act, 2013/ other new SEBI Regulations; and
 - Incorporating Informal guidance in the regulations, wherever possible.
- Further, it is proposed to reframe the following regulations based on discussion paper:
 - entire new set of Buy-back Regulations, 2018 in lieu of SEBI (Buy-back of Securities) Regulations, 1998;
 - SEBI takeover regulations-- granting of additional time for upward revision of open offer price is proposed important amendment in Takeover regulations.
 -

12. BUDGET ESTIMATES FOR THE FINANCIAL YEAR (FY) 2018-19:

- The SEBI budget was considered and approved by the Board for the FY 2018-19.

The link of the above press release is as under:

https://www.sebi.gov.in/media/press-releases/mar-2018/sebi-board-meeting_38473.html

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

- IBBI under section 240 of Code is empowered to make regulations which are in line with Code and rules made thereunder. The Insolvency and Bankruptcy Board of India (**IBBI**) **vide its press release dated on 7th March, 2018** invites comments from public, including the stakeholders, on the draft IBBI (Mechanism for Issuing Regulations), Regulations, 2018. IBBI proposes to make regulations to govern the process of making regulations and consulting the public.
- The following regulations are under draft stage and any comments may be e-mailed at feedback@ibbi.gov.in by 31st march, 2018.

B. MEMORANDUM OF UNDERSTANDING (MoU)

- **The Insolvency and Bankruptcy Board of India (IBBI) signed a (MoU) with the Reserve Bank of India (RBI) on 12th March, 2018.**
- For effective implementation of the Code and its allied rules and regulations, RBI and IBBI have agreed under MoU to assist and co-operate with each other subject to limitations imposed by the applicable laws.
- The MoU provides for:
 - a) Sharing of information between the two parties;
 - b) Sharing of resources available with each other to the extent feasible and legally permissible;
 - c) Periodic meetings to discuss matters of mutual interest, or any other matter that the parties believe would be of interest to each other in fulfilling their respective statutory obligations;
 - d) Cross-training of staff in order to enhance each party's understanding of the other's mission for effective utilization of collective resources;
 - e) Capacity building of IPs and financial creditors (FCs);
 - f) Joint efforts towards enhancing the level of awareness among FCs about the importance and necessity of swift insolvency resolution process of various types of borrowers in distress under the provisions of the Code, etc.

C. LIMITED INSOLVENCY EXAMINATION.

- The Insolvency Professional (IP) plays an important role in resolution, liquidation and bankruptcy processes of the companies, LLP's, Partnership firms and individuals.
- IBBI have been vested with the powers u/s 196(1)(d) and (e) of the Code to specify by regulations standards for the functioning of IPs and lay down by regulations the minimum curriculum for the examination of the IPs for their enrolment as members of the Insolvency Professional Agencies (IPA's).

- For exercising the powers given to IBBI under section 207(2) for specifying the categories of professionals or persons possessing such qualifications and experience has notified the Insolvency and Bankruptcy Board of India (IP) Regulations, 2016 providing eligibility to register as an IP on passing Limited Insolvency Examination.
- **IBBI vide its press release dated on 21st March, 2018** invites comments and feedback from public on the draft syllabus of the fourth phase of Limited Insolvency Examination by 15th April, 2018 at Email Id: exam@ibbi.gov.in.

D. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) (AMENDMENT) REGULATIONS, 2018

- IBBI vide notification **IBBI/2017-18/GN/REG027 dated on 27th March, 2018** hereby makes the following regulations IBBI (Insolvency Professionals) (Amendment) Regulations, 2018 to amend IBBI (Insolvency Professionals) Regulations, 2016 (principal regulations) which shall come into force from 1st April, 2018.
- In principal regulations, regulation 3, sub-regulation (3) has been substituted which states that --The syllabus, format, qualifying marks and frequency of the 'Limited Insolvency Examination' shall be published on the website of the Board **at least 3 months before the examination.**
- In principal regulations, regulation 5 has been substituted which states that **an individual shall be eligible for registration as an IP** subject to other requirements--
 - has completed a pre-registration educational course from an Insolvency Professional Agency (IPA), as may be required by the Board;
 - has passed the Limited Insolvency Examination within the last 12 months.
 - has-
 - (i) successfully completed the National Insolvency Programme, as may be approved by the Board;
 - (ii) successfully completed the Graduate Insolvency Programme, as may approved by the Board;
 - (iii) 15 years of experience in management, after receiving a Bachelor's degree from a university established or recognised by law;
 - (iv) 10 years of experience as –
 - (a) CA registered as a member of the ICAI,
 - (b) CS registered as a member of the ICSI,
 - (c) CWA registered as a member of the ICWA, or
 - (d) advocate enrolled with the Bar Council.

- In principal regulations, “**clause ba and bb**” has been inserted under sub-regulation (2), after clause (b), of regulation 7 which states as follows:

(ba) IP shall undergo continuing professional education as may be required by the IBBI;

(bb) IP shall not outsource any of his duties and responsibilities under the Code, except those specifically permitted by the Board.

- In principal regulations, regulation 12 has been substituted and states as follows:

A company, a registered partnership firm or a limited liability partnership shall be eligible for recognition as an insolvency professional entity, if –

- its sole objective is to provide support services to IP, who are its partners or directors, as the case may be;
 - it has a net worth of not less than 1 crore rupees;
 - majority of its shares is held by IP, who are its directors, in case it is a company;
 - majority of capital contribution is made by IP, who are its partners, in case it is a limited liability partnership firm or a registered partnership firm;
 - majority of its partners or directors, as the case may be, are insolvency professionals;
 - majority of its whole-time directors are insolvency professionals, in case it is a company; and
 - none of its partners or directors is a partner or a director of another insolvency professional entity.
- In principal regulations, in 1st schedule, the following items has been inserted after regulation 8 and regulation 25—
- (8A) An IP is required to make disclosure of being an employee or in panel of financial creditor of corporate debtor to Committee of Creditors (CoC) and Insolvency Professional Agency (IPA) of which he is a professional member and the same shall be published on its website by agency.
 - (25A) An IP is required to make disclosure about the fee payable to him, the fee payable to the Insolvency Professional Entity, and the fee payable to professionals engaged by him to IPA of which he is a professional member and the same shall be published on its website by agency.

E. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) (AMENDMENT) REGULATIONS, 2018

- The Insolvency Bankruptcy Board of India (“IBBI”) vide notification **IBBI/2017-18/GN/REG028 dated on 27th March, 2018** issued IBBI (Liquidation Process) (Amendment) Regulations, 2018 which shall come into force from 1st April,2018

In IBBI (Liquidation Process) Regulations, 2016, (hereinafter referred to as the principal regulations), in regulation 2 the following sub-clause (ea) shall be inserted:

(ea) “Liquidation cost” under sub-section (16) of section 5 means-

- (a) fee payable to the liquidator under regulation 4;
- (b) remuneration payable by the liquidator under regulation 7;
- (c) cost incurred by the liquidator under regulation 24; and
- (d) interest on interim finance for a period of 12 months or for the period from the Liquidation Commencement Date till repayment of interim finance, whichever is lower.

- Regulation 3 provides that an IP shall be eligible to be appointed as a liquidator if he, and every partner or director of the IP entity of which he is a partner or director, is independent of the corporate debtor. For this purpose the person shall be considered independent he has not been an employee or proprietor or a partner:(i) of a firm of auditors or **company secretaries** or cost auditors of the corporate debtor;

In the principal regulations, in regulation 3, in sub-regulation (1), in clause (c), in sub-clause (i), the words ‘**company secretaries**’ shall be replaced with ‘**secretarial auditors**’.

- Regulation 32, provides that liquidator may-
 - a) Sell an asset on a standalone basis; or
 - b) Sell (i) the assets in slump sale, (ii) a set of assets collectively, or (iii) the assets in parcels; or

In the principal regulations, in regulation 32, **the clause (c) “sell the corporate debtor as a going concern”** have been inserted.

F. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES (AMENDMENT) REGULATIONS, 2018

- IBBI vide notification **IBBI/2017-18/GN/REG 029 dated on 27th March, 2018** hereby makes the following regulations IBBI (Information Utilities) (Amendment) Regulations, 2018 to amend the IBBI (Information Utilities) Regulations, 2017 which shall come into force from 1st April, 2018.
- **Regulation 42** IBBI (Information Utilities) Regulations, 2017 provides for an appeal which may be preferred u/s 211, within period of 30 days of receipt of order. The words “National Company Law Tribunal Rules, 2016” shall be **replaced with “National Company Law Appellate Tribunal Rules, 2016”**.
- **“PART II”** shall be inserted in the Schedule, in the Annexure to Form A, after item 5.

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

- IBBI vide notification **IBBI/2017-18/GN/REG030 dated on 27th March, 2018** hereby makes the following regulations IBBI (Insolvency Resolution Process For Corporate Persons) (Second Amendment) Regulations, 2018 to amend IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (principal regulations) which shall come into force from 1st April, 2018.

- Regulation 3 provides that an IP shall be eligible to be appointed as a liquidator if he, and every partner or director of the IP entity of which he is a partner or director, is independent of the corporate debtor. For this purpose the person shall be considered independent if he has not been an employee or proprietor or a partner: (i) of a firm of auditors or **company secretaries** or cost auditors of the corporate debtor.

In the principal regulations, in regulation 3, sub-regulation (1), clause (c), in sub-clause (i), the words '**company secretaries**' shall be replaced with '**secretarial auditors**'.

- In the principal regulations, in regulation 33 and 34, the following Explanation shall be substituted which states now **any fee paid to Insolvency Professional Entity shall also be included in term of expenses.**
- In the principal regulations, after regulation 34, the following **regulation 34A-Disclosure of costs** has been inserted which states that IP or Resolution Professional (RP) is required to disclose item wise Insolvency Resolution Process Costs in a manner provided by Board.
- In the principal regulations, after regulation 35, the following **regulation 35A - Identification of Resolution Applicant** has been inserted which states that prospective resolutions applicants shall be identified by RP on or before 105th day from the insolvency commencement date.
- **A Financial Creditor shall submit a Proof of Claim** to the Interim Resolution Professional in Schedule Form C.
- The forms will now be requiring "**declarations**" instead of **affidavit** for submission of claims.

The link of all above notification is as under:

<http://ibbi.gov.in/webfront/whatsnew.php>

**Analysis of Section 89 and 90 of the Companies Act, 2013
amended under the Companies Amendment Act, 2017 (CAA
2017)
(NOT YET MADE EFFECTIVE)**

This article intends to analyze the amendments made in section 89 and section 90 of the Companies Act, 2013 through the Companies Amendment Act, 2017 (CAA 2017). The draft rules namely "The Companies (Beneficial Interest And Significant Beneficial Interest) Rules, 2018" are also published on 15th February 2018.

Section 89 : Declaration in respect of beneficial interest in any share

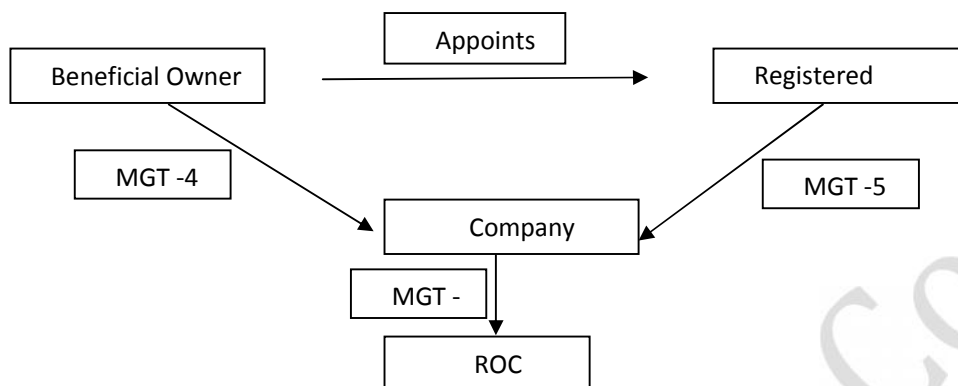
Obligation of Declaration: This section provides that declaration need to be made in specific format of **Form BEN-1 and 2** of the draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 within the specified time (30 days) by the following persons to the Company and the Company in turn give declaration to the office of the Registrar of Companies in **Form BEN 3** of the draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018:

- (a) any person whose name is registered in the Register of Members as holder of shares of the Company in but who is holding the same **as trustee** on behalf of someone who is actually the holder of beneficial interest in these shares ;
- (b) any person who is the holder of such **beneficial interest** in the shares of the Company and
- (c) **the Company** in turn shall make a note of such declaration in the Register concerned and also file a return in with the office of the Registrar of Companies within 30 days .

The Penalty upon failure to declare:

- (a) If either the registered owner (trustee) or the beneficial owner of such Shares fails to make a declaration as required without any reasonable cause, he shall be punishable with fine which may extend to Rs.50,000 and where the failure is a continuing one, with a further fine which may extend to Rs.1000/-for every day for which the failure continues.

(b) If company fails to file required return in 30 days (earlier 270 days grace period was allowed), the company and every officer in default shall be punishable with fine which shall not be less than Rs. 500/- but may extend to Rs. 1,000/- and if the failure is continuing one with a further fine which may extend to Rs. 1,000 for every day for which failure continues.



Surprisingly, in Section 89 or 90 of the CA 2013 there is no definition mentioned about what is **beneficial interest in the shares**, for which these obligations were arising.

Now under the CAA 2017 the definition is inserted by inserting Sub- Clause (10) as follow :

Section 89 sub section (10) reads :

For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

- (i) exercise or cause to be exercised **any or all of the rights** attached to such share; or*
- (ii) receive **or participate in any dividend** or other distribution in respect of such share."*

With this amendment in Section 89, beneficial interest is defined now.

Section 90-Register of Significant Beneficial Owner in a Company

Company Law Committee has noted that the complex corporate structure is used to hide the real owner behind the transactions. CLC has suggested having definition of "Beneficial Interest" and "Significant Beneficial Owner". Accordingly definition of Beneficial Interest is inserted in Section 89 and the definition of Significant Beneficial Owner is inserted in new substituted Section 90.

1. **“Significant Beneficial Owner”(SBO)** means- every individual who acting **alone or together**, or through one or more person or trust, including trust and persons resident outside India, holds beneficial interest of **not less than 25%** or such other percentage as may be prescribed by the Central Government, in the shares of the Company or **right to exercise or actual exercising** of significant influence or control (* as defined in clause (27) of Section 2 of the Companies Act 2013) over the company.
 - Section 2 (27) defines **Control** in an inclusive definition that it shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
2. **Declaration:** Such Significant Beneficial Owner need to make a declaration to the Company in **Form BEN-4** of the draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018), in 30 days from the date of the commencement of rules, specifying in details his nature of interest, reason for not registering the shares in his name, date of acquisition of shares, direct or indirect percentage of voting rights and such other particulars as prescribed in the rule. The draft rules are published but not yet notified.
3. **Register of interest:** Every Company to maintain Register of interest declared by any person or changes made therein as aforesaid. The Register shall be in **Form BEN-6** of the draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 and shall contain details like name of the beneficial owner, address, email , Date of Birth and Father, Mother or Spouses name, particular of shares in detail.
4. **Inspection of Register:** Register of Interest shall be open to inspection by any member of the company on payment of fees as may be prescribed, the draft Rules prescribe the same of not exceeding Rs.50/-.
5. **Filing of return by Company of SBO:** The Company shall file return of SBO of the company and changes therein, with the Registrar in **Form BEN-5** of the draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018.
6. **Notice by Company:** The Company shall give notice in **Form BEN-7** of the draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 to any person whom the **company knows / have reasonable cause to believe** that
 - (i) he is a significant beneficial owner of the company ;
 - (ii) he **is having knowledge** of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - (iii) he was a **significant beneficial owner in past 3 years**

And **he is not registered** with the company as SBO, as required under this section

7. **Notice of Reply by the said Person** :Such person as mentioned above in point 6 shall give the information to the company **within 30 days** of receipt of such notice from the Company.
8. **Application to Tribunal by the Company** :If the person fails to provide information / information is not satisfactory, the company shall **apply to Tribunal (NCLT) within a period 15 days of the expiry of period** specified in the Notice, for an order directing that the shares in question be subject to restriction with regard to transfer of interest, suspension of all right attached to the shares like receiving of dividend or exercising of voting right or any other.
9. **Powers of Tribunal**: Tribunal may after giving opportunity of being heard , make such order restricting the rights attached with the shares **with in a period of 60 days of receipt of Application** or such other period as may be prescribed.
10. **Application for relaxation** : The company or the person aggrieved by the order of Tribunal may make an **application to Tribunal** for relaxation or lifting of restrictions imposed by the Tribunal
11. **Penalty for Non-Declaration/ Non-Filing of Return/ Non-Maintenance of Register:**
- If a **person fails** to make declaration, fine is not less than Rs. 1 Lac upto Rs. 10 Lac and In case of continuing default, further fine of Rs. 1,000 per day.
 - If the **company fails** to maintain register / file return/ denial for inspection, company and officer in default shall be punishable with fine which shall not be less than Rs. 10 Lac upto Rs. 50 Lac and in case of continuing default, further fine of Rs. 1,000 per day.
 - If any **person willfully furnishes** any false or incorrect information or surpasses any material information of which he is aware in declaration made shall be to action under section 447 of the CA 2013 which is for the Punishment for fraud.

Proposed Exception to SBO

As per Rule No. 8 of draft Rules on the Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018, exception is provided to the Registered Owner from declaration and to the Company for filing of return & maintaining Register, if the Registered Owner is :

- a) A Body Corporate whose equity shares are listed on any stock exchange or a Wholly-Owned Subsidiary of such Body Corporate; and
- b) Foreign Listed Companies.

CONCLUSION:

Section 90 is completely substituted for bringing more transparency to members and provides that the members can also take inspection of such register. In past the companies were prevented from taking on record any notice of trust on its Register of Members.

Now for the first time '**Beneficial Interest**' is defined for section 89 and 90 , which is very wide as it covers all kind of direct or indirect rights or entitlement of any person alone or together with any other person . "**Significant Beneficial Owner**" is also defined under section 90 and the company has been provided with the right to send Notice to such SBO and also file an application to NCLT (Tribunal) to find SBO of the company, if it knows or has reasonable cause to believe about any person having SBO or having knowledge of identity of SBO or who is SBO since past three years and who is not registered as SBO with the company.

Draft Rules and Forms for this section has been published by MCA on 17th February 2018 which are yet to be notified. It will be interesting to see how the corporate filing will be evolved and this declaration sustain the law of secrecy.

Below mentioned is the link for MCA Notifications and Circulars for full FY 2017-18

http://www.amitadesai.com/uploads/MCA_Notfn_and_Cir_for_FY_2017_18.pdf

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