

MONTHLY_{TE}

Secretarial Updates August 2018

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“Success is
where
preparation and
opportunity
meet.”

-Bobby Unser



PREFACE

At the outset, through this newsletter, we want to take a moment and thank you all for appreciating and encouraging APAC & Associates LLP (APAC).

In this edition of our newsletter, we have covered the notifications/circulars issued by from Ministry of Corporate Affairs (MCA), Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), and other authorities including Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT) and Stock Exchanges in the month of August 2018.

Hope we not only help you keep updated but also save your time by bringing a brief summary of all the updates through our section on the summary of regulatory changes.

We have also brought for you a list of articles published by APAC and compliance calendar for the month of September 2018.

We hope all these would be of interest to you.

Your feedbacks are valuable: appreciation will encourage us; criticism will help us improve! Feedbacks can be sent at info@apacandassociates.com.

Regards,

APAC & Associates LLP Team



ReShaping of Law



NEW NECESSITY- DEMATERIALISATION

In past years, a number of legislative amendments and regulatory measures have been taken by the government for shell companies, benami transactions and various other means of tax evasion.

Now the government (Ministry of Corporate Affairs) is planning to mandate dematerialisation for unlisted companies in order to make transactions more transparent. Recognising that immediate dematerialisation of shares for all companies is not possible, the initial focus will be on public unlisted companies.

While the Companies Act, 2013 already has a provision (Section 29) that mandates the issuance of securities in demat form for companies making public offers, the Depositories Act, 1996 states that an investor can hold shares either in physical or in demat form.

This legal ambiguity has allowed many investors in unlisted public companies to retain their shares in physical form, evading tax and financial scrutiny. Further, any move by the government mandating the conversion of shares will be an ambitious task, impacting over 55 million shareholders.

Existing rules are clear only in the case of listed companies in India where the dematerialization of shares is mandatory.



Parallely, SEBI (The Securities and Exchange Board of India) vide notification dated June 8, 2018, has announced compulsory dematerialisation of physical shares before transfer otherwise investors would not be able to transfer shares after December 5, 2018. This is to eliminate fraud by share-transfer agents.

Also, it is not always possible to track the ownership of shares in physical form, the repeatedly called for the conversion of physical share certificates into electronic/demat form to lift the veil on opaque ownership of companies or benami ownership in shell companies is made

The demat system converts physical shares into an electronic format, thereby making it easier for tax authorities to track shareholders as well as the real beneficiaries of shares.

An investor seeking to dematerialize shares needs to open a demat account with the Depository Participant (DP). A DP is the market intermediary through which investors can avail depository services, such as banks, brokers, custodians, and financial institutions.

The ministry is also in process of discussing fees with the other regulators involved in this say NSDL, CDSL. It has been estimated that the announcement will be made over the next few weeks.

To conclude, these will help the government to identify the chain of benami transactions and regularise the functioning of unlisted public companies.





MINISTRY OF CORPORATE AFFAIRS

❖ [Changes in the provision of Private Placement as per Companies Act, 2013](#)

Highlights of revised provisions of Section 42 read with Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014, i.e. Private placement of securities, issued by MCA on August 7, 2018, are:

- The requirement related to the value of offer or invitation per person of Rs. 20,000/- of the face value of the securities has been done away with.
- Restriction on use of Share Application Money until the allotment is made and the return of allotment, in e-form PAS – 3, is filed with the Registrar of Companies.
- Common private placement offer cum application form, i.e. PAS-4 has been revised.
- E-form PAS-3 is required to be filed within 15 days of allotment instead of 30 days.
- Separate penal provisions for non-filing of e-form PAS – 3 has been introduced and the company, its promoters and directors shall be liable with a penalty Rs. 1,000/- per day but not exceeding Rs. 25 Lakh.

❖ [Directions on Notice for Meetings of the Committee of Creditors \(CoC\) under section 24\(3\)\(a\) of the IBC 2016](#)

The interim resolution professional or the resolution professional has been directed, vide circular of IBBI dated August 10, 2018, that he shall, in every notice of



Gist of Regulatory Changes by Various Authorities in month of August 2018

meeting of the CoC and any other communication addressed to the financial creditors, require that they must be represented in the CoC or in any meeting of the CoC by such persons who are competent and are authorised to take decisions on the spot and without deferring decisions for want of any internal approval from the financial creditors.

❖ [Insolvency and Bankruptcy Code \(Second Amendment\) Act, 2018](#)

The IBBI has notified the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 on August 17, 2018, which replaces the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, which among other things provided relief to home buyers and promoters of MSMEs. The new law allows promoters of MSMEs to bid for their companies during the insolvency process. Through the new law, the Government has revised various provisions.

❖ [Companies \(Appointment and Qualification of Directors\) Fifth Amendment Rules, 2018](#)

The last date of filing of Form DIR – 3 KYC has been extended upto September 15, 2018, from August 31, 2018, for the current financial year (2018-2019). E-Form DIR-3 KYC has also been revised vide amendment rules dated August 21, 2018.

❖ [Companies \(Registration offices and Fees\) Fourth Amendment Rules, 2018](#)

Amendment rules dated August 21, 2018, provide for nil fee for Form DIR-3 KYC till September 15, 2018. Further, a fee of Rs. 5,000/- shall be payable on all delayed filing on or after September 16, 2018.

❖ [Clarification on DIR-3 KYC](#)

Clarification issued in respect of individuals who are in possession of Duplicate/Multiple DINs detailing that only oldest DIN can be retained by such individuals through DIR-3 KYC. DINs

obtained later have to be surrendered. Also, once associated, DIN is not eligible for surrender.

❖ [Compliance with regulation 13\(2\) of the Insolvency and Bankruptcy Board of India \(Insolvency Professionals\) Regulations, 2016](#)

The Insolvency Board vide circular dated August 31, 2018, has directed Insolvency Professional Entities(IPEs) to inform about any cessation or joining of an insolvency professional as its partner or director in the past by September 7, 2018.

And the intimation regarding same, in future, is required to be given within seven days from the date when an insolvency professional ceases or joins. This intimation is to be given through mail in the format prescribed by the circular.

SECURITIES AND EXCHANGE BOARD OF INDIA

❖ [Clarification in case of transfer of securities in dematerialized form with a depository](#)

In continuation to the amendment made in Regulation 40 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015) related transfer of securities in dematerialized form with a depository, following clarification has been issued by Board on August 10, 2018:

- The investor has the option of holding shares in physical form even after December 5, 2018.
- The amendment is not applicable for transmission and transposition cases.
- Any investor who is desirous of transferring shares (which are held in physical form) after December 5, 2018, can do so only after the shares are dematerialized.



❖ [Electronic book mechanism for issuance of securities on private placement basis - Clarifications](#)

With a view to further rationalize and ease the process of issuance of securities on Electronic Book Provider (EBP) platform, SEBI vide circular dated August 16, 2018, has decided to provide some additional facilities like Closed bidding, Multiple yield allotment, etc. The additional facilities shall be effective from October 1, 2018.

❖ [Amendment in KYC Requirements of FPIs](#)

SEBI vide notification dated August 21, 2018, has extended timelines prescribed in a circular dated April 10, 2018, related to Know Your Client Requirements for FPIs from six months from the date of circular to December 31, 2018.



Compliance Calendar- September 2018

S.No.	Particulars of compliance	Forms/Returns	Due Date
Under SEBI (LODR) Regulation, 2015			
1	Timeline for sending the initial letter to seek PAN as well as bank details of shareholders holding securities in physical form. (Timeline extended to enable companies to send the initial letter along with annual reports or notice of AGM)	-	September 30, 2018
2	Listed entities to evaluate if any of the existing Independent Directors (IDs) are ineligible to continue as IDs pursuant to Amendment made to the definition of independent directors under the LODR.	-	Effective from October 1, 2018
3	An alternate director cannot be appointed for an independent director. If any alternate director already appointed, he shall not continue with such appointment	-	Effective from October 1, 2018
4	Top 500 listed entities based on market capitalization as on March 31, 2018, shall ensure obtaining D and O insurance	-	September 30, 2018
5	Publish credit ratings for all its instruments on the website and immediately update any revision in such credit ratings	-	Effective from October 1, 2018
Under Companies Act, 2013			
6	Application for KYC of Directors for the year ending March 31, 2018	DIR-3 KYC	September 15, 2018
7	Conducting Annual General Meeting as per Companies Act, 2013	-	September 30, 2018
8	Intimation of appointment of auditor or auditors' firm with the Registrar of Companies	ADT-1	Within 15 days of Annual General Meeting
9	Filing of Financial Statements with the Registrar of Companies	AOC-4/ AOC-4 XBRL/ AOC-4 CFS	Within 30 days of Annual General Meeting
10	Filing of Annual Return with the Registrar of Companies	MGT-7	Within 60 days of Annual General Meeting
11	Filing of Annual accounts and list of places of business in India by Liaison/ Branch/ Project office in India	FC-3	September 30, 2018



ARTICLES PUBLISHED

❖ Content of Board's Report as per Companies Act, 2013

The Companies Amendment Act, 2017 has revised various provisions of Companies Act, 2013, one of them is section 134 which details the matters required to be included in the Board Report of Company. [Read the article.](#)

❖ Private Placement under Companies Act, 2013- Amended Provisions

The Ministry of Corporate Affairs (MCA) vide notification dated August 7, 2018, has enforced revised section 42 of Companies Act, 2013 along with revised Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014. [Read the article.](#)

❖ Proposed Amendment in Re-classification of Shareholders

The Kotak Committee has suggested revision in the existing provisions for re-classification of shareholders are detailed in Regulation 31A of SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 [SEBI LODR Regulations] keeping the view that any reclassification would have to be done in a fair & transparent manner and in the interest of public shareholders. [Read the article.](#)

❖ Ready Reckoner to keep pace with Companies Amendment Act, 2017

The Companies Amendment Act, 2017 has revised various provisions of Companies Act, 2013. Most of the provisions of amendment act has been notified and explained in the article. [Read the article.](#)

❖ Form DIR-3 KYC: A new step to weed out fictitious directors

A new step has been taken by the ministry for updating database of directors registered and ensuring that only genuine individuals are responsible for running the affairs of business.

A new E-Form DIR-3 KYC has been introduced under new Rule 12A, vide the Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018 dated July 5, 2018. The detailed requirements of form and challenges faced in the same have been explained in the article. [Read the article.](#)



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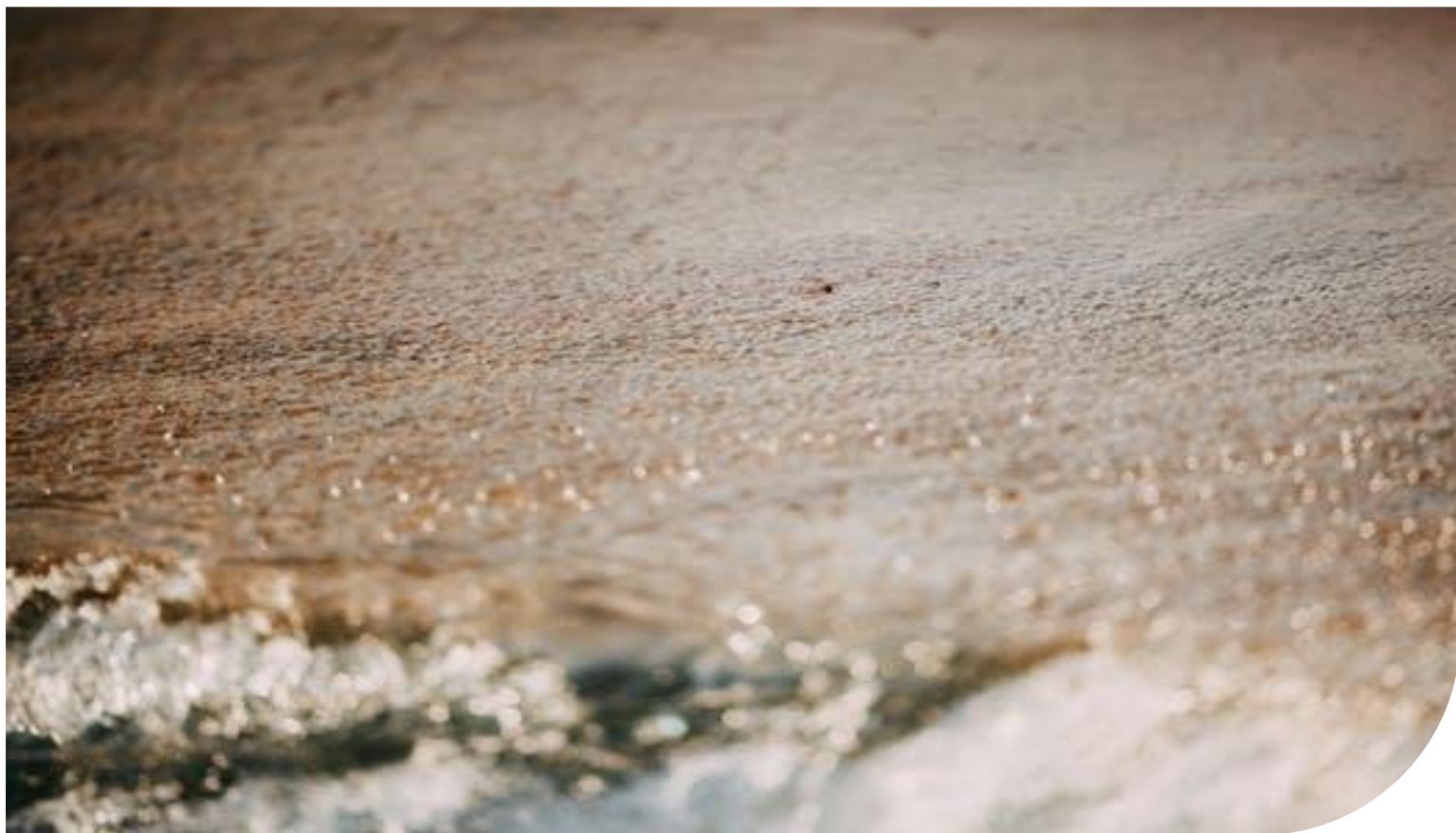
VISION

APAC is committed to be a leading one stop solution partner with an edge in corporate governance and drive corporates to be 100% tech-compliant. Our vision serves as the route map of every aspect of our business by defining what we require to achieve for a sustainable and quality growth with substantial presence

MISSION

APAC strive to create a sustainable organisation by developing a compliant environment by delivering qualitative, time bound & value added services through optimum utilisation of technology, professional skills and enduring customer satisfaction





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