

# MONTHLY<sub>TE</sub>

Secretarial Updates September 2018

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“Compliance  
does not foster  
innovation, trust  
does.”

-Stephen Covey



## PREFACE

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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 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 September 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 October 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](mailto:info@apacandassociates.com).

Regards,

APAC & Associates LLP Team



# ReShaping of Law



## RE-CATEGORISATION - OFFENCES UNDER COMPANY LAW

In order to promote ease of doing business and better compliance levels, Ministry of Corporate Affairs (MCA) had taken another step and constituted a committee to make recommendation on re-categorisation of certain “acts” punishable as compoundable offences to “acts” carrying civil liabilities, improvements to be made in the in-house adjudication mechanism, etc. so as to ensure that the serious offenders are brought to book.

To reach the above goal, it is necessary to free the courts from dealing with offences that can be handled effectively through an in-house adjudication mechanism, hence, the de-criminalisation has been proposed and recommendations have been made by the Committee to replace it with an in-house mechanism, where a penalty could be levied by an adjudicating officer in instances of default. The intent is to de-burden the courts from routine matters, however, there will be no dilution of the enforcement action relating to offences.

Section 441 of Companies Act, 2013 deals with the mechanism for compounding of offences. Compoundable offences are those offences which are punishable with only fine, or imprisonment or fine, or both. Therefore, Non-compoundable offences will be those offences which are punishable with imprisonment only, or with imprisonment and also with fine. In order to achieve the intent as mentioned above, the Committee has categorised the compoundable offences into 8 categories covering 81 compoundable offences.

The existing law would continue for serious offences, covering six categories, whereas for lapses that are essentially technical or procedural in nature, mainly falling under two categories, including



lapses accrue on account of default made in corporate governance norms or non-reporting to ROC or failure to provide sufficient information to stakeholders, may be shifted to in-house adjudication process.

Hence, the Committee has mooted re-categorisation of 16 out of the 81 compoundable offences as the defaults carrying civil liabilities under the Act and lay down the broad contours of an in-house adjudicatory mechanism where the penalty may be levied in a MCA21 system driven manner so that discretion is minimised. The main recommendations of the committee are as follows:

- Re-categorisation of 16 out of the 81 compoundable offences by shifting them from the jurisdiction of special courts to an in-house e-adjudication framework wherein defaults would be subject to levy of penalty by the authorised adjudicating officer (Registrar of Companies);
- Remaining 65 compoundable offences to continue under the jurisdiction of special courts due to their significance and to avoid potential misuse;
- Status quo in respect of all non-compoundable offences related to serious corporate offences;
- Instituting a transparent online platform for e-adjudication and e-publication of orders;
- Necessitating a concomitant order for making good the default at the time of levying a penalty, to achieve better compliance.

However, the cross-cutting liability under section 447 of Companies Act, 2013, which deals with corporate fraud, would continue to apply wherever fraud is found.

Based on the recommendations of the committee, a decision may be taken as to whether any of such offences may be considered as civil wrongs or defaults where a penalty by an adjudicating officer may be imposed in the first place and only consequent to further non-compliance of the order of such authority will it be categorised as an offence triable by a special court. Also, it has been envisaged that the Registrar of Companies can act as an authorised adjudicating officer.

Further, it is also proposed that a new section will be inserted to provide that where a penalty in relation to a default has already been imposed on a person under the provisions of Companies Act, 2013, and the person commits the same default within a period of three years from the date or order imposing such penalty, he shall be liable for second and subsequent defaults for an amount equal to twice the amount or such default.

The orders passed by the adjudicating authority should be published on the website, to create awareness and bring transparency. It will also improve the quality of orders as 'good orders' would become precedents.

The ministry is speeding up the process as some of the changes will need an amendment to the existing company law.





## MINISTRY OF CORPORATE AFFAIRS

# Gist of Regulatory Changes by Various Authorities in the month of September 2018

### ❖ [Extension of timing for filing BEN-2](#)

The time limit for filing the BEN-2 form has been revised to 30 days from the date of deployment of BEN-2 e-form on the MCA-21 portal vide circular dated September 6, 2018 and no additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form.

### ❖ [Revision in Form BEN-1 and due date of filing the declaration will be extended and notified accordingly](#)

Form No. BEN-1, introduced vide notification dated September 9, 2018, would be revised shortly. Further, the due date of filing BEN-1 declaration which was September 10, 2018 would also be revised.

### ❖ [Companies \(Prospectus and Allotment of Securities\) Third Amendment Rules, 2018](#)

Issue of securities in dematerialized form has been made mandatory for every unlisted public company vide notification dated September 10, 2018 and it shall also facilitate dematerialization of all its existing securities.

Pre-requisite for the offer for the issue of any securities or buyback of securities or issue of bonus shares or rights offer by the unlisted public company is to ensure that entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized.

All subscriptions and transfer of shares in unlisted public companies post-October 2, 2018 shall



be done only in dematerialized mode. Further, the companies are required to:

- facilitate demat of all its existing securities by making necessary application to a depository and shall secure ISIN for each type of security and shall in-form all its existing security holders about such facility.
- makes timely payment of fees to the depository and RTA;
- maintains security deposit at all times, of not less than two years, fees with the depository and RTA
- complies with the regulations or directions or guidelines or circulars, if any, issued by the SEBI or Depository in this regard
- Submit Reconciliation of Share Capital Audit Report (as per regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996) on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.
- Investor Education and Protection Fund Authority will handle the grievances, if any, of security holders of unlisted public companies herein.

❖ [Another Commencement Notification of Companies \(Amendment\) Act, 2017](#)

Another notification dated September 12, 2018 has been issued by MCA:

- A person aged 70 years or more can be appointed as MD, WTD or manager without passing a special resolution.
- No Approval of CG under section 197 in case of payment of Managerial remuneration exceeding limits, only SR would be enough subject to compliance of Schedule V.
- Reporting required by auditor of the company on the compliance of provision of section 197.
- Other amendments made in provisions related to the calculation of profit under section 198.

❖ [Amendment in Schedule V of Companies Act, 2013 & Companies \(Appointment and Remuneration of Managerial Personnel\) Rules, 2014](#)

Certain provisions of Schedule V has been amended vide notification dated September 12, 2018:

- No person shall be appointed as MD/ WTD/ manager, if made offence under the Insolvency and Bankruptcy Code, 2016, the Goods and Services Tax Act, 2017, the Fugitive Economic Offenders Act, 2018
- The excess remuneration, than the limits prescribed in Section II, item A, can be paid by passing a special resolution.
- Prior approval of bank, PFI or any other secured creditor is required for payment of excess remuneration, in case of any default is made in their payments
- In section III, a company can pay any remuneration to its managerial personnel subject to the conditions prescribed in clause (b).
- Form MR-2 (Form of application to the Central Government for approval of the appointment of MD/WTD/manager)has been revised.

❖ [Clarification regarding inclusion of a non-member financial creditor in list of dissenting or abstaining financial creditor](#)

The Insolvency Code read with regulations provide for the manner of collection and verification of claims vide notification dated September 14, 2018. It provides:

- A financial creditor is included in the CoC as a member, as and when its claim is admitted.
- Inclusion of a financial creditor in the CoC as a member subsequent to the constitution of the CoC does not affect the validity of any decision taken by the CoC prior to such inclusion.



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

❖ [Companies \(Appointment and Qualification of Directors\) Sixth Amendment Rules, 2018 / Companies \(Registration Offices and Fees\) Fifth Amendment Rules, 2018](#)

Vide notification dated September 20, 2018, every DIN holder who has failed to file Form DIR-3 KYC for the current financial year has been granted relaxation for filing form till October 5, 2018, with a fee of Rs. 500/- and fee of Rs. 5,000/- shall be payable on or after October 6, 2018, for reactivation of DIN.

❖ [Companies \(Indian Accounting Standards\) Second Amendment Rules, 2018](#)

Vide notification dated September 20, 2018, IND AS 20 has been amended in relation to government grants by Companies (Indian Accounting Standards) Second Amendment Rules, 2018 notified on September 20, 2018.

❖ [Amendment in Corporate Social Responsibility provisions / Companies \(Corporate Social Responsibility Policy\) Amendment Rules, 2018](#)

Vide notification dated September 19, 2018, the threshold limit for applicability of Section 135 is required to be reviewed post-amendment in immediately preceding financial year.

Amendment in section & corresponding rules allows composition of the CSR committee with 2 or more directors in case the company is not required to appoint ID under section 149(4).

❖ [Limited Liability Partnership \(Second Amendment\) Rules, 2018](#)

MCA has changed the process of incorporating LLP vide notification dated September 18, 2018.

Following are the features of the revised process:

- Form RUN-LLP (Replacing Form 1) introduced for reservation of the name of LLP
- Form FiLLiP (Replacing Form 2) introduced for incorporation of LLP.
- The Name of LLP can be reserved in advance by using form RUN-LLP or simultaneously with the application in Form FiLLiP (Similar to SPICe form applicable for Companies)
- DPIN can be applied through Form FiLLiP for maximum 2 persons.
- The COI of LLP or Conversion of LLP will be issued by CRC in form 16 and 19 respectively.
- Following forms have also been revised:
  - Form 5: Notice of Change of Name of LLP
  - Form 17: Application for conversion of Firm to LLP
  - Form 18: Application for conversion of Pvt Ltd. Co. or Unlisted Public Ltd. Co. to LLP
- Chances of Resubmission: One resubmission allowed for RUN-LLP and two chances for resubmission for FiLLiP.

❖ [Secretarial Standard -4](#)

ICSI issues new Secretarial Standard -4 (SS-4) on 'Report of the Board of Directors' effective from October 1, 2018. The new SS- 4 is recommendatory in nature. It covers two parts.

❖ [Companies \(Registered valuers and Valuation\) Third Amendment Rules, 2018](#)

Amended Rules notified on September 25, 2018 has allowed person rendering valuation services under the Act to continue their service without a certificate of registration upto January 31, 2019.



**RESERVE BANK OF INDIA**

❖ [User Manual for Single Master Form \(SMF\)](#)

All new filings for FC-GPR, FC-TRS, LLP-I, LLP-II and CN will be in SMF



only w.e.f September 1, 2018. FC-GPR and FC-TRS shall not be filed on ebiz. The other four forms viz., ESOP, DI, InVi and DRR would be made available subsequently. Further, where the entities have not been able to register for the #EntityMaster, they may do so from September 1, 2018. However, they may provide the reasons for not registering within the time period along with the authority letter.

❖ [Foreign Exchange Management \(Transfer or Issue of Security by a Person Resident outside India\) \(Second Amendment\) Regulations, 2018](#)

Reporting requirements vide Form ARF (Advance Remittance Form) has been done away with.

Further, an Investment vehicle which has issued its units to a person resident outside India is required to file Form InVi within 30 days from the date of issue of the unit.

Also, an investment vehicle making downstream investment in another Indian entity is required to file Form DI within 30 days of investment.

❖ [External Commercial Borrowings \(ECB\) Policy – Liberalisation](#)

It has been decided by RBI vide notification dated September 19, 2018 to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with a minimum average maturity period of 1 year.

It has now been decided to permit Indian banks to participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable prudential norms.

2018 regarding the actions to be taken by listed companies to implement the amendment related to mandatory dematerialization for transfer of securities:

- Initial letter to shareholders may be sent with Annual Report and/or notice of Annual General Meeting;
- Subsequent 2 reminders may be sent by other modes including ordinary post/courier.

❖ [SEBI \(Listing Obligations and Disclosure Requirements\) \(Fifth Amendment\) Regulations, 2018](#)

A new chapter has been inserted in SEBI LODR Regulations 2015 on September 6, 2018 detailing obligations (tenure, disclosures made to stock exchange, valuations, etc.) of listed entity which has listed its security receipt as defined under the Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008.

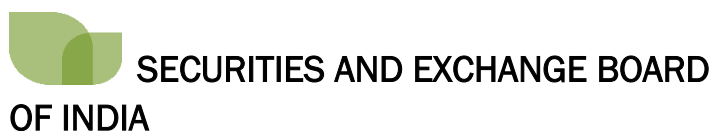
❖ [New Regulations notified by SEBI](#)

[SEBI \(Buy-Back of Securities\) Regulations, 2018](#) issued on September 11, 2018 applicable to buy - back of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act.

[SEBI \(ICDR\) Regulations, 2018](#) notified on September 11, 2018 which shall be effective from the 60th day from the date of its publication in the official gazette.

❖ [SEBI \(Substantial Acquisition of Shares and Takeovers\) \(Second Amendment\) Regulations, 2018](#)

Amendment made in SEBI Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018 on September 11, 2018.



❖ [Clarification related to mandatory dematerialization for transfer of securities](#)

Clarification issued on September 4, 2018, in continuation to the Exchange circular dated July 5,





❖ [Revised norms on KYC requirements for FPIs](#)

Beneficial ownership criteria in Prevention of Money-laundering (Maintenance of Records) Rules, 2005 has been made applicable for purpose of KYC norms on September 21, 2018 and a separate set of norms provided for determining conditions where Non-Resident Indians and Overseas Citizens of India and Resident Indians are constituents and also the basis for clubbing of investment limit. Timelines for compliance with the requirements of this circular is six months.

❖ [Eligibility conditions for FPIs](#)

FPIs can be controlled by investment managers (IMs) which are controlled and/or owned by NRI/ OCI/ RI on the satisfaction of certain conditions notified on September 21, 2018.

Existing FPIs and new applicants shall be given a time period of 2 years from the date of coming into force of the amended regulations or from the date of registration, whichever is later in order to satisfy these eligibility conditions.

❖ [Filings in Machine Readable / Searchable Format](#)

BSE had directed listed entities to submit PDF documents/filings in Machine Readable/ Searchable format vide circulars issued in January & April 2018. However, it has been observed that certain entities are not providing disclosures in such manner, as advised.

Therefore, vide circular dated September 27, 2018, BSE has strongly advised ensuring that compliance filings submitted to it are only in the machine-readable format / searchable PDF, as intimated to us by SEBI.


**INSURANCE REGULATORY AND  
DEVELOPMENT AUTHORITY OF INDIA**
❖ [Disclosure of offences under of Regulation 14 \(1\) of IRDAI \(Insurance Brokers\) Regulations, 2018](#)

All Principal Officers, are advised to furnish details of offences in cases prescribed in circular and Form K of regulations to avoid any regulatory action.

Further, Form G (Declaration and Undertaking for Principal Officer/ Directors/ Partners/ Promoters/ KMP to submit annually through email at brokers@irda.gov.in within 45 days of close of the financial year.

❖ [Documents for onsite inspection conducted by IRDAI](#)

In continuation of delays in submission of data required for onsite inspection beyond the specified time, every inspected entity has been advised to provide all necessary, accurate and complete data requested prior to inspection or during the inspection, within the timelines specified by the authority. Non-submission or incomplete submission shall attract penal provisions of the IRDA Act.



## Compliance Calendar- October 2018

S.No.	Particulars of compliance	Forms/Returns	Due Date
<b>Under SEBI (LODR) Regulation, 2015</b>			
1	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
2	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
3	Top 500 listed entities based on market capitalization as on March 31, 2018, shall ensure obtaining D and O insurance	-	Effective from October 1, 2018
4	Publish credit ratings for all its instruments on the website and immediately update any revision in such credit ratings	-	Effective from October 1, 2018
5	An advance notice for consideration of bonus issue to be submitted to stock exchange	-	Effective from October 1, 2018
6	Corporate Governance Report under Regulation 27(2)		October 15, 2018
7	Shareholding Pattern under Regulation 31		October 21, 2018
8	Statement of Investor Complaints under Regulation 13(3)		October 21, 2018
9	Reconciliation of Share Capital Audit Report (SEBI- DP Reg.55A)		October 30, 2018
10	Certificate from Practicing Company Secretary under regulation Regulation 40 (9)		October 30, 2018
11	Compliance Certificate certifying maintaining physical & electronic transfer facility under Regulation 7 (3)		October 30, 2018
<b>Under Companies Act, 2013</b>			
12	Any offer or issue or buy-back of any securities by Unlisted Public Company can be made in demat mode only	-	Effective from October 2, 2018
13	Application for KYC of Directors for the year ending March 31, 2018 with an additional fee of Rs. 500/-	DIR-3 KYC	October 5, 2018



14	Intimation of appointment of auditor or auditors' firm with the Registrar of Companies	ADT-1	Within 15 days of Annual General Meeting
15	Filing of Financial Statements with the Registrar of Companies	AOC-4/ AOC-4 XBRL/ AOC-4 CFS	Within 30 days of Annual General Meeting
16	Filing of Annual Return with the Registrar of Companies	MGT-7	Within 60 days of Annual General Meeting
17	Filing Report on Annual General Meeting (Only Listed Public Company)	Form MGT-15	within 30 days of AGM

#### Under Limited Liability Partnership Act, 2008

18	Re-engineered process of incorporation of LLP shall be enabled introducing Form RUN-LLP & Form FiLLiP	-	Effective from October 2, 2018
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#### IRDA (Insurance Brokers) Regulations, 2018

19	A certificate on the compliance of this regulation	-	October 31, 2018
20	A certificate on the amount of remuneration or fees earned during the period and any transfers made to any other account	-	October 31, 2018
21	Certificate on maintenance of capital and net worth required (Reg. 19 & 22)	-	October 31, 2018
22	Certificate on maintenance of Deposit required (Reg. 23)	-	October 31, 2018
23	Certificate on maintenance of Professional Indemnity Insurance (Reg. 24)	-	October 31, 2018
24	Certificate on Remuneration received by the broking company (Reg. 26)	-	October 31, 2018
25	Certificate on Segregation of Insurance Money (Reg. 33)	-	October 31, 2018



## ARTICLES PUBLISHED

### ❖ Amendment in SEBI LODR Regulations in FY 2018

In order to move towards better corporate governance and keep pace with other statutory laws and requirements, SEBI has issued various amendments in SEBI LODR Regulations, 2015 in the financial year 2018-2019. [Read the article.](#)

### ❖ Board Report of Private Companies

A board report is an essential document produced by the board of directors of a Company detailing the requirements of Indian Corporate Laws say, Companies Act, 2013, SEBI (LODR) Regulations, 2015 and various other laws. It explains the company's financial affairs, including its subsidiaries and associates along with the performance made by the Company in the relevant financial year and future projections budgeted in respect of the company's business. [Read the article.](#)

### ❖ Companies Amendment Act, 2017

Brief details of provisions amended by the Companies (Amendment) Act, 2017 till date also providing unnotified section. [Read the article.](#)

### ❖ Unlisted Public Companies- Ready for Dematerialisation?

The issue of securities in dematerialized form has been made mandatory for every unlisted public company by Ministry of Corporate Affairs (MCA) by inserting Rule 9A vide notification of the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 dated September 10, 2018 effective from October 2, 2018. The action points to be kept in mind by the Companies after October 2, 2018 are described. [Read the article.](#)

### ❖ Due dates & purpose of IEPF E-Forms w.r.t. dividend & shares

With the introduction of the notifications /amendments /circulars by Ministry of Corporate Affairs (MCA) with respect to Section 124 & 125 of the Companies Act, 2013 read with Investor Education and Protection Fund (IEPF) Authority (Accounting, Audit, Transfer And Refund) Rules, 2016, as amended relevant to the current structure of compliances for the said provisions. [Read the article.](#)



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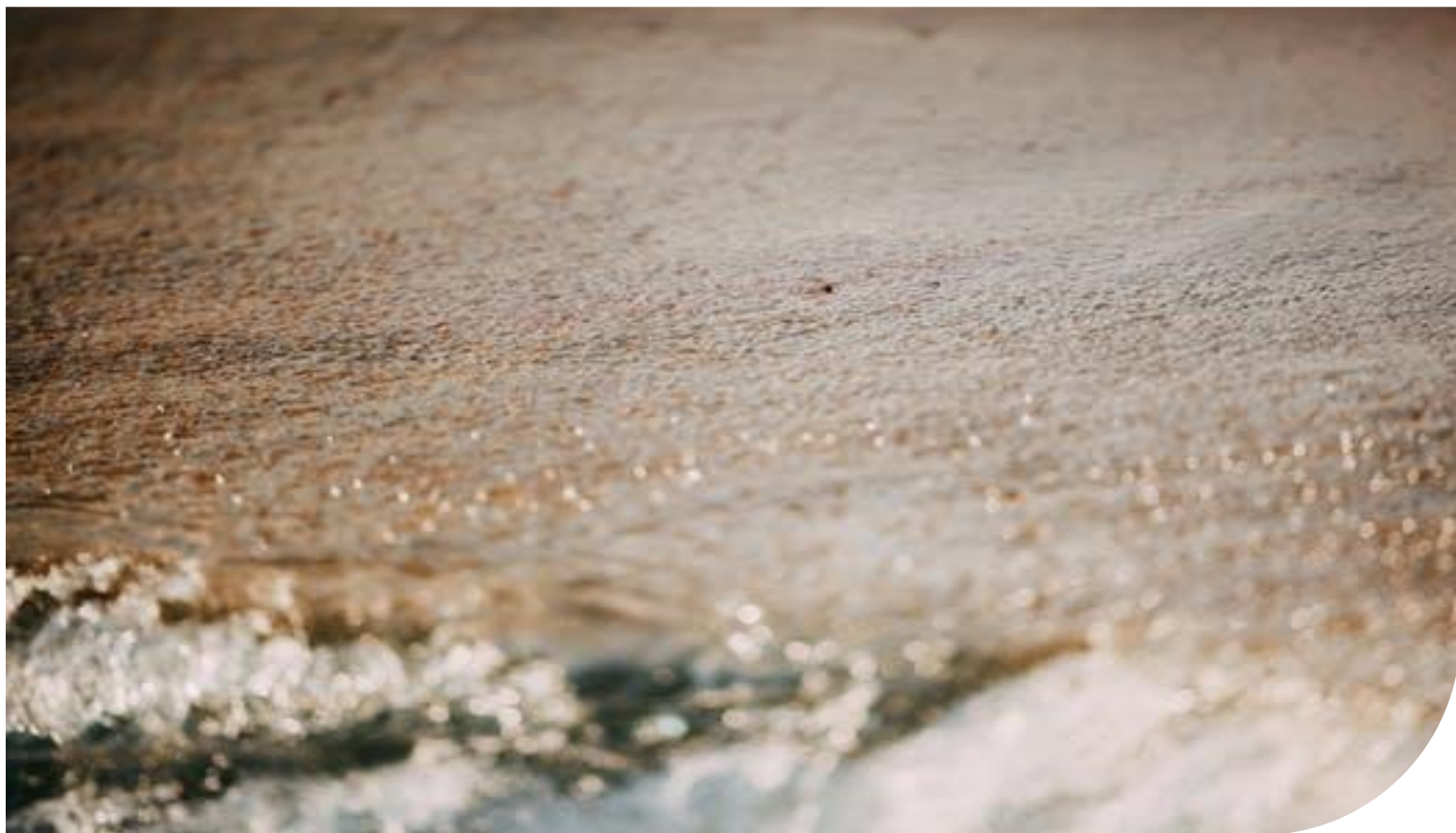
## VISION

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





## DISCLAIMER

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