

MONTHLY_{TE}

Secretarial Updates October 2018

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About Author



“Compliance
does not foster
innovation, trust
does.”

-Stephen Covey



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 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 October 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 November 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



COMPANIES (AMENDMENT) ORDINANCE, 2018

In order to promote ease of doing business and better compliance levels, Ministry of Corporate Affairs (MCA) had issued Companies Amendment Act, 2017 which was assented by President on January 3, 2018. However, the ministry has further taken another step and constituted a committee to make recommendation on various provisions of Companies Act, 2013 which were left untouched by Companies Amendment Act, 2017 including 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.

The committee provided its recommendations on same and suggested certain corporate governance reforms to the ministry. And, the President has given assent to the promulgation of the Companies Amendment (Ordinance), 2018.

The twin objectives of the ordinance are the promotion of Ease of Doing Business along with better corporate compliance. The main amendments are as under;

- Shifting of the jurisdiction of 16 types of corporate offences from the special courts to in-house adjudication, which is expected to reduce the caseload of Special Courts by over 60%, thereby enabling authorities to concentrate on serious corporate offences.
- The penalty for small companies and one person companies has been reduced to half of that applicable to normal companies.



- Instituting a transparent and technology-driven in-house adjudication mechanism on an online platform and publication of the orders on the website.
- Strengthening in-house adjudication mechanism by necessitating a concomitant order for making good the default at the time of levying the penalty, to achieve the ultimate aim of achieving better compliance.
- Tightening Disclosure of Beneficial Interest.
- Declogging the NCLT by enlarging the pecuniary jurisdiction of Regional Director.

Mostly, the penal provisions have been liberalised granting scope to companies to settle it in-house rather than thrive in the long drawn processes.

Further, provisions related to corporate compliance and corporate governance include:

- Re-introduction of the declaration of commencement of the business provision
- greater accountability with respect to filing documents related to the creation, modification and satisfaction of charges
- non-maintenance of registered office to trigger the de-registration process
- holding of directorships beyond permissible limits to trigger disqualification of such directors.





MINISTRY OF CORPORATE AFFAIRS

❖ Press Release

As part of process re-engineering of LLP incorporation forms, revised forms (RUN-LLP, FiLLiP, Addendum to FiLLiP, Form 17, Form 18 and Form 5) has been made available on portal w.e.f 2nd October 2018.

Further, the names which have been approved and against which incorporation form is not filed shall be allowed to be used to file form FiLLiP for incorporation.

Also, Form 1 and Form 2 (along with Form 17 & Form 18) which are pending processing as on 1st October 2018 shall be marked under resubmission and same shall be resubmitted by using new service RUN-LLP for name reservation or FiLLiP for incorporation.

❖ [Constitution of National Financial Reporting Authority](#)

MCA hereby appoints October 1, 2018 as the date of constitution of National Financial Reporting Authority to provide for matters relating to accounts and auditing standards under the act and also enforce section 132(1) & (12) in this regard.

❖ [IBBI \(Insolvency Resolution Process For Corporate Persons\) \(Fourth Amendment\) Regulations, 2018](#)

The major changes introduced vide amendment dated October 5, 2018 are:

- The minutes of the meeting by electronic means will be circulated to creditors along with authorized



Gist of Regulatory Changes by Various Authorities in the month of October 2018

representative(s) also.

- The authorized representative shall exercise the votes either by electronic means or through the electronic voting system as per the voting instructions received by him from the financial creditors which will enable a creditor, who could not vote on a matter before the meeting, to vote after minutes of the meeting are circulated.
- Payment to operational creditors has been prioritized over financial creditors.

❖ Press Release

URC-1 notified vide Companies (Authorised to Register) Second Amendment Rules, 2018, dated July 5, 2018 would be available for filing purposes from October 9, 2018.

Also, Web-service RUN and SPICe form are also likely to be revised due to the impact of the introduction of URC-1 form.

❖ [IBBI \(Insolvency Professional Agencies\) \(Amendment\) Regulations, 2018](#)

The amendment dated October 11, 2018 has been made w.r.t criteria of holding of the share capital of an IPA by different persons. Post-amendment, the criteria is that no person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than 5% of the paid-up equity share capital in an IPA.

However, certain entities, namely, a stock exchange, depository, banking company, insurance company, public financial institution and the multilateral financial institution may acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to 15%. Further, the Central Government, a State Government and the statutory regulator may acquire or hold, directly or indirectly, up to 100%.

❖ [IBBI \(Model Bye-Laws and Governing Board of Insolvency Professional Agencies\) \(Amendment\) Regulations, 2018](#)

The amendment regulation dated October 11, 2018 provide for the composition of the Governing Board of an IPA.

The Governing Board of an IPA shall consist of managing director, independent directors and shareholder directors. The managing director shall not be considered either as an independent director or shareholder director. An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

Further, an IPA shall, subject to the guidelines issued by the IBBI from time to time. The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the IBBI.

❖ [IBBI \(Information Utilities\) \(Second Amendment\) Regulations, 2018](#)

The amendment regulation dated October 11, 2018 provide for the composition of the Governing Board of an IU.

The Governing Board of an IU shall consist of managing director, independent directors and shareholder directors. The managing director shall not be considered either as an independent director or shareholder director. An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

Further, an IU shall, subject to the guidelines issued by the IBBI from time to time. The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the IBBI.

❖ [IBBI \(Insolvency Professionals\) \(Second Amendment\) Regulations, 2018](#)

The amendment regulation dated October 11, 2018 provide that insolvency professional require to pay a fee of Rs. 10,000/- to the Board every year on or before 30 of



the year it falls due along with a fee calculated at the rate of 0.25% of professional fee earned for the service on or before April 30 every year.

Further, a person eligible for recognition as an insolvency professional entity may make an application along with a fee of Rs. 50,000/-.

Certain forms have also been prescribed for making an application or providing disclosure to the Board.

❖ [Amendment in Schedule III of Companies Act, 2013](#)

The Ministry of Corporate Affairs (MCA) vide notification dated October 11, 2018 has amended Schedule III of Companies Act, 2013 which shall become effective once notified.

❖ [Valuation under the Insolvency and Bankruptcy Code, 2016](#)

Every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a 'registered valuer', that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017 vide notification dated October 17, 2018. It is hereby directed that with effect from 1st February 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

❖ [IBBI \(Mechanism for Issuing Regulations\) Regulations, 2018](#)

IBBI has issued new regulation vide notification dated October 22, 2018 for providing a mechanism of making regulations, amendment, review and other aspects of regulations.

❖ [IBBI \(Liquidation Process\) \(Second Amendment\) Regulations, 2018](#)

Regulation 32 governing sale of an asset under liquidation process in IBBI (Liquidation Process) Regulations, 2016 has been amended vide notification dated October 22, 2018.

❖ [Commencement notification of MCA](#)

The Ministry of Corporate Affairs (MCA) has notified sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of Companies Act, 2013 related to National Financial Reporting Authority effectively from October 24, 2018.

❖ [Relaxation of additional fees and extension of the last date of Annual filing forms](#)

The additional fees payable by companies on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 required to be filed for the financial year ended March 31, 2018 has been relaxed to December 31, 2018, wherever additional fee is applicable.



SECURITIES AND EXCHANGE BOARD OF INDIA

❖ [New Regulation](#)

SEBI issued the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 on October 3, 2018.

❖ [Additional transparency to listed companies](#)

BSE has moved to provide the status of an application for schemes of arrangement on its online filing portal i.e. "BSE Listing Centre", as an additional service creating further transparency to listed companies.

The status displayed on the portal will also reflect as to when the Exchange has provided its comments/observations to SEBI on the schemes.

BSE would gradually provide the status of all types of listing applications on this portal as a value-added service to its companies.

❖ [Monthly report of FPI registration on SEBI's website](#)

For the purpose of transparency in the processing of applications for FPI registration under regulation 7(2) of the SEBI (Foreign Portfolio



Investors) Regulations, 2014, SEBI has decided that the average time taken by the designated depository participants (DDPs) in processing such applications be disseminated on SEBI's website on a monthly basis, by 5 working day of every month in the prescribed format.



Compliance Calendar- November 2018

S.No.	Particulars of compliance	Forms>Returns	Due Date
Under SEBI (LODR) Regulation, 2015			
1	Timeline for sending the final letter to seek PAN as well as bank details of shareholders holding securities in physical form and regarding appraising the amendment and impact of the regulation on the transfer of shares held by them in physical form.	-	Within 30 days of second reminder letter
Under Companies Act, 2013			
2	Filing of Annual Return with the Registrar of Companies	MGT-7	Within 60 days of Annual General Meeting



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ABOUT APAC & Associates LLP

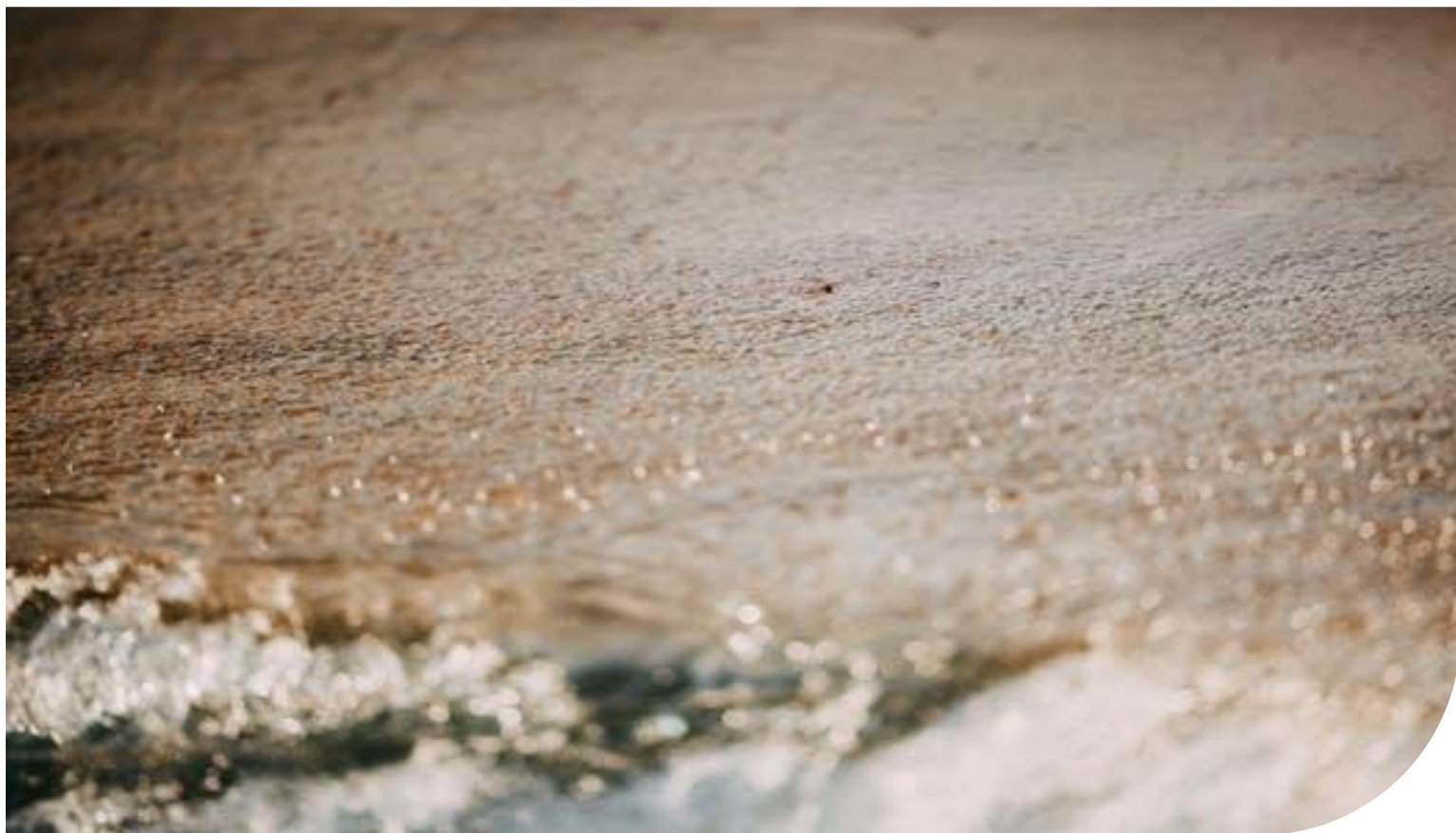
VISION

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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