

MONTHLY_{TE}

Secretarial Updates February 2019

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“Today, power is
gained by sharing
knowledge, not
hoarding, it.”

-Dharmesh Shah



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 February 2019.

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 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



MINISTRY OF CORPORATE AFFAIRS WEIGHS PROPOSAL TO UPDATE COMPANIES ACT

Nowdays, The Ministry of Corporate Affairs is actively considering the changes, which include fast tracking mergers and acquisitions, increasing remuneration of independent directors, doubling the penalty for repeating offences and prohibiting conversion of Section 8 companies or companies formed with charitable objects into commercial companies. Several offences that are essentially procedural and technical lapses have been proposed to be shifted to in-house adjudication mechanism. If the same default is committed again within three years of imposition of the penalty, twice the amount of penalty has been proposed.

The maximum remuneration of an independent director from a company is proposed to be raised to up to 25% of his total income includes sitting fee and commission. Even this remuneration was allowed through a change in the provisions under Section 149 of the Act to enhance availability of independent directors.

Under the earlier rules, there was a blanket ban on pecuniary relationship, other than sitting fee and commission, between a company and its independent directors to ensure complete independence.

“Presently, a Section 8 company can be converted into a commercial company.”
Section 8 of the Act allows formulation of companies for promoting commerce, art, science,



sports, education, research, social welfare, religion, charity, protection of environment or .. or any such other object, provided the profits, if any, or other income is applied for promoting only the objectives of the company and no dividend is paid to its members.

In view of the fact that Section 8 companies enjoy several exemptions and benefits not only under the Companies Act but also under other laws.

The government is looking at to disallow conversion of Section 8 Companies into Commercial Companies.





MINISTRY OF CORPORATE AFFAIRS

Gist of Regulatory Changes by Various Authorities in the month of February 2019

❖ [Companies \(Significant Beneficial Owners\) Amendment Rules, 2019](#)

MCA has issued the Companies (Significant Beneficial Owners) Amendment Rules, 2019 wherein it has specified the definitions of control, majority stake, partnership entity and reporting company. Further, individuals holding 10% of the shares or voting rights or entitled to receive 10% of total distributable dividend or exercising significant influence directly or through specified entities, are required to make a declaration in Form BEN-1 regarding such interest whether his name reflects in the register of members or not, within 90 days from commencement of these rules i.e. by 9th May, 2019. Based on such declaration, the reporting company shall file return in Form BEN-2 within 30 days of receipt of declaration.

❖ [Companies \(Prospectus and Allotment of securities\) Second Amendment Rules, 2019](#)

MCA has amended Companies (Prospectus and Allotment of Securities) Rules, 2014 whereby in Form PAS-3 against serial number 6, in item(b), the words “not allotted securities with an application size of less than twenty thousand per person” against the second check box shall be omitted.

❖ [Companies \(Adjudication of Penalties\) Amendment Rules, 2019](#)

MCA has issued Companies (Adjudication of Penalties) Amendment Rules, 2019 substituting Rule 3 prescribing the procedure for imposing penalties on the Company, officer in default or any other person, by the adjudicating officers



appointed by Central Government not below the rank of Registrar of Companies through a written notice to show cause why the penalty should not be imposed.

❖ [Extension for last date of filing Initial return in MSME form 1](#)

"MCA vide General Circular No.01/2019 extended the last date of filing the form MSME 1 within 30 days from the date of deployment of e-Form MSME-1 on MCA portal.

❖ [Introduction of form INC-22A/e-form ACTIVE \(Active Company Tagging Identities and Verification\)](#)

Every Company incorporated on or before 31st December, 2017, is required to file e-form ACTIVE i.e. form INC-22A, on or before 25th April, 2019, in the following manner:

1. Company's e-mail ID for OTP verification;
2. Mandatory photo of registered office showing external building and inside office along with atleast one director/KMP, who has affixed the DSC in this form; and
3. Completion of pendency in Annual filing

Further that, non-filing of e-form ACTIVE will lead to disbaring from filing the various forms, i.e. SH-7, PAS-3, DIR-12, INC-22 and INC-28.

Also further that, late fee for filing the form on or after 26th April, 2019, is Rs. 10,000.



SECURITIES AND EXCHANGE BOARD OF INDIA

❖ [Format of Annual Secretarial Compliance Report](#)

"SEBI has issued a circular dated February 08, 2019 wherein, every listed entity and its material unlisted subsidiaries incorporated in India shall annex with its annual report, a secretarial audit report, issued by a PCS, in Form MR-3 with effect from the year ended March 31, 2019. Further, listed entities shall, on an annual basis, require a

check by the PCS on compliance of all applicable SEBI Regulations and circulars/ guidelines issued thereunder, consequent to which, the PCS shall submit a report to the listed entity in the manner specified in aforesaid circular. "

❖ [Filing of Annual Report in Xbrl mode](#)

BSE has issued a circular dated February 08, 2019 wherein facility of filing of Annual Report in XBRL mode under Regulation 34 of SEBI LODR, 2015 has been introduced in addition to the currently used pdf mode filing. All the listed entities can submit the Annual Report with the Exchange, prepared using the XBRL taxonomy of Ministry of Corporate Affairs, itself. Further, the listed entities may file their Annual Report for FY 2017-18 also in XBRL on the BSE Listing Centre to test the system and get the feel of ease of filing.

❖ [Relaxation from requirement to furnish a copy of PAN for transfer of equity shares of listed entities executed by non-residents](#)

SEBI has granted relaxation to non-residents such as NRI, OCIs, PIOs and foreign nationals from furnishing a copy of PAN card in case of transfer of equity shares of listed companies held by them to their immediate relatives. However, they will be required to provide copy of an alternate valid document to ascertain identity as well as the non-resident status. The relaxation will only be available for transfers executed after January 1st, 2016 in case of non-commercial transactions i.e transfer by way of gift among immediate relatives.

❖ [Deficiencies in disclosures related to Pledge of shares](#)

In furtherance to SEBI Circular dated August 05, 2015, NSE has issued a circular to listed



companies wherein it has been advised to the promoters of target companies to provide the name of the entity in whose favour shares have been encumbered which includes the name of

both the lender and the trustee who may hold shares directly or on behalf of the lender as per the SEBI Takeover Code (SAST), 2011.



Compliance Calendar- March & April 2019

S.No.	Particulars of compliance	Forms/Returns	Due Date
Under Companies Act, 2013			
1	Return of deposits	DPT 3	20th April, 2019
2	Active Company Tagging Identities and Verification (ACTIVE)	INC 22A	25th April, 2019
3	Application for KYC of Directors	DIN 3KYC	30th April, 2019
Under SEBI(LODR) REGULATIONS, 2015			
1	Regulation 13 (3) - Statement of Investor complaints.	Format specified by the Board	21 st April, 2019
2	Regulation 27 (2) - Corporate Governance.	Format specified by the Board	15 th March, 2019
3	Regulation 31 - Shareholding Pattern	Format specified by the Board	21 st April, 2019
Under Depository Participant Reg.55A)			
1	Reconciliation of Share Capital Audit. (SEBI- DP Reg.55A)	Format specified by the Board	30 th April,2019.
Under SEBI Takeover Regulations 2011			
1	Regulation 30(1) and 30(2)	Format specified by the Board	7 th April ,2019.



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ABOUT APAC & Associates LLP

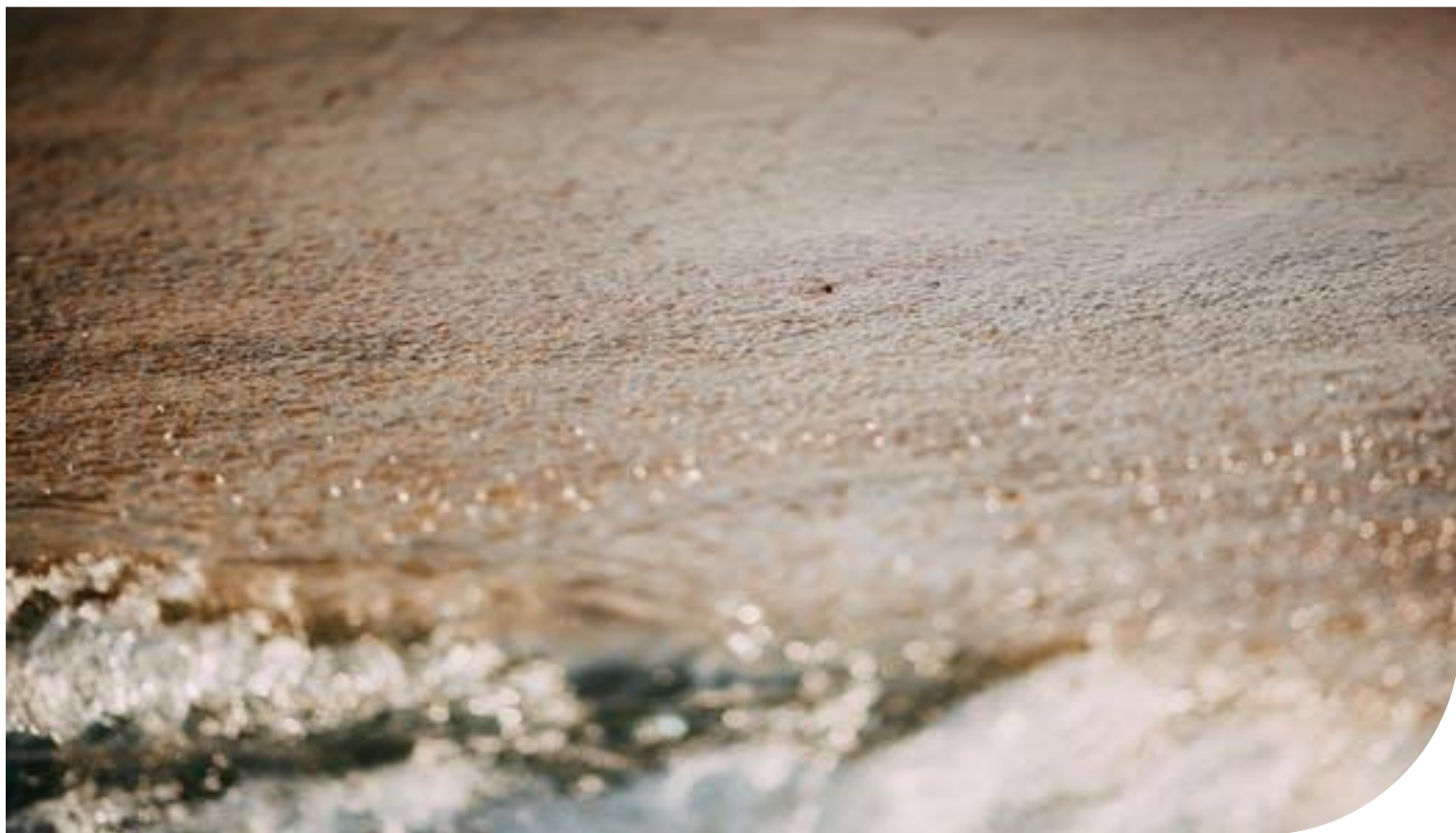
VISION

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





DISCLAIMER

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