



MONTHLYTE

Secretarial Updates June & July 2019

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“To **succeed** in your
mission you must have
single minded
devotion to your goal”

-Dr. APJ Abdul Kalam

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 June, 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 have also brought for you a list of articles published by APAC and compliance calendar for the month of July and August, 2019.

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



A. Re-Shaping of Law



1.0 RBI DUE DILIGENCE, ICSI ISSUED DRAFT GUIDANCE NOTE

The Reserve Bank of India vide Circular DBOD.No.BP.BC.110/08.12.001/2008-09 dated February 10, 2009, mandated a due diligence for lending under consortium arrangement / Multiple Banking Arrangement. In order to strengthen the information sharing system among banks in respect of the borrowers enjoying credit facilities from multiple banks, the banks are required to obtain regular certification by a professional, preferably a Company Secretary, regarding compliance with various applicable statutory prescriptions.

With the passage of time and to keep pace with the developments, a need was felt to review the diligence mechanism. Moreover, the Companies Act, 2013, with revamped corporate law norms, has a bearing on the format of Diligence Report for Banks. As part of efforts to enhance capability of its members in preparing diligence reports for submission to consortium/multiple lenders, the ICSI has decided to launch a revised guidance note.

In terms of ICSI draft Guidance Note, additional information backup required post notification:

1. Details of Directors on the Board / Committees

- (i) Remuneration to Board Members is in accordance with the provisions of the Act/limits set by the members.
- (ii) Variance between the decisions of board and recommendations of the Committee

2. Details of KMP

- (i) The details of senior management personnel functioning just below the level of the Board and the KMPs.
- (ii) Nature of changes and reasons should be elaborated and if such changes occurred before the expiry of contract, reasons should be elaborated



3. Shareholding

- (i) Details of convertible instruments issued by the Company during the period.
- (ii) Corporate events leading to change in Shareholding pattern

4. Statutory Auditor's Report

- (i) The confirmation regarding going concern nature of the Company and qualifications, if any reported by him.
- (ii) Events concerning the business prospects of the Company.

5. Cases filed against/ Show Cause Notices received by the Promoters / Directors of the Company

- (i) The details of the show cause notice issued to the Company, Promoter or Director and the status of such proceedings/notices.

6. Observations or comments made by the industry specific regulator relating to the major business of the Company during its recent inspection along with the response of the Board thereon, if any.

7. The details of Contingent liabilities of the Company

8. Certain early warning signals noted during the review to be reported. Examples:

- Default in payment to the banks/ sundry debtors and other statutory bodies, etc., bouncing of the high value cheques.
- Raid by Income tax /sales tax/ central excise duty officials
- Frequent change in the scope of the project to be undertaken by the borrower
- Under insured or over insured inventory.



B. Regulatory Changes

1.0 MINISTRY OF CORPORATE AFFAIRS (MCA)

1. License for Section 8 companies

[Source: [Companies \(Incorporation\) Sixth Amendment Rules, 2019 dated June 07, 2019](#)]

The application for grant of license for Companies incorporated under section 8 shall now be filed in Form INC-32 (Spice form).

2. Suspension of filing of eform INC-22A

[Source: [MCA notices/Circulars](#)]

E-filing of the form INC 22A (ACTIVE) has been suspended temporarily. The same would be restored soon for filing purposes with fee of Rs. 10,000, once the Tagging activity of non-compliant Companies / Directors is complete.

3. Completion of tagging of Non Compliant Companies

[Source: [MCA notices/Circulars](#)]

The Tagging of non-compliant Companies/Directors for not filing e-Form Active (INC-22A) is complete. E form (ACTIVE) INC 22A has been made available with a fee of Rs. 10,000 for same.

4. Applicability of form DIR-3 KYC

[Source: [MCA Circular No. 07/2019 dated June 27, 2019](#)]

Every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service, with pre-filled data based on the records in the registry, for ease of verification by the person concerned and he can also update his mobile no. or e-mail address via filing of form DIR-3 KYC.

In case of updation in any other personal details, e-form DIR-6 required to be filed before completion of KYC through web-based service.

5. Significant Beneficial Ownership (SBO) in the Companies

[Source: [Companies \(Significant Beneficial Owners\) Second Amendment Rules, 2019 dated July 29, 2019](#)]

In terms of amendments, revised format for Form BEN-2 is provided. The new e-form is made available on the MCA portal w.e.f July 01, 2019 and accordingly Form BEN-2 shall be filed within 30 days of its deployment on the MCA Portal i.e. latest by July 30, 2019.

Further, on July 29, 2019 last date for filing of form BEN-2 was extended till September 30, 2019 without payment of additional fees.

6. DIR-3 KYC requirements for Directors

[Source: [Companies \(Appointment and Qualification of Directors\) Third Amendment Rules, 2019 dated July 25, 2019](#) and [Companies \(Registration offices and fees\) Fourth Amendment Rules, 2019 dated July 25, 2019](#)]

(a) E-form DIR-3 KYC

- (i) holds DIN but filing his/her KYC details for the first time;
- (ii) If already filed KYC once, but wants to update email ID & mobile no.

(b) Web service DIR-3-KYC WEB - where only verification of the details already filed in earlier KYC and no update is required.

The last date for filing the above for FY 18-19 is September 30, 2019. After the due date, MCA will levy a penalty of Rs. 5,000.



7. Ordinance to Amendment Act, 2019

[Source: [Companies \(Amendment\) Act, 2019 dated July 31, 2019](#)]

Various reforms undertaken through the Companies (Amendment) Act, 2019 includes those already covered in the Companies (Amendment) Ordinance, 2018.

Also, some more stringent provisions were introduced through this Act. E.g.: Stricter Compliance related to Corporate Social Responsibility.

For any further information kindly refer to our [W18 WEEKLYTE- A Weekly Bulletin](#).

2.0 SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

8. Reconstitution of Functional Committee of Depositories

[Source: [Securities and Exchange Board of India \(Depositories and Participants\) \(Amendment\) Regulations, 2019 dated June 04, 2019](#)]

Functional Committee of the Depository shall comprise of:

- a) Member Committee instead of Member selection committee;
- b) Grievance Redressal Committee instead of Investors Grievance Redressal Committee.

9. Modification in Format for Compliance Report on Corporate Governance

[Source: [SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/78 dated July 16, 2019](#)]

Listed Entities vide Regulation 27(2) are required to file Corporate Governance Report with the Stock Exchange in the format specified by SEBI.

In the above mentioned circular, the format for this report was revised and the filing for and after the quarter ended September, 2019 shall be done in the new format.

10. Procedure & format for Limited review/Audit report

[Source: [SEBI Circular No. CIR/CFD/CMD1/ 80 /2019 dated July 19, 2019](#)]

The format for Limited review/ Audit report as specified earlier has been revised and the new format was made available.

11. Standardizing Reporting of violation related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulation, 2015

[Source: [SEBI Circular No. SEBI/HO/ISD/ISD/CIR/P/ 2019/82 dated July 19, 2019](#)]

SEBI has standardize the process relating to dealing with violation of the Code of Conduct, all listed companies, intermediaries and fiduciaries shall:

- a. Report such violations by the designated persons and immediate relatives of designated persons in standardized format to SEBI
- b. Maintain a database of the violation that would entail initiation of appropriate action against them.

3.0 RESERVE BANK OF INDIA (RBI)

12. Annual return on FLA reporting by Indian Companies

[Source: [RBI Circular No. RBI/2018-19/226 dated June 28, 2019](#)]

In terms of amendments, the present email-base reporting for submission of FLA return replaced with the web-based system online reporting portal

Main features of revised FLA Information Reporting System (FLAIR):

1. Web portal interface
2. Form will seek investor-wise direct investment and other financial details on fiscal year basis
3. System generated acknowledgement receipt.

Further, the last date for submission of FLA return for F.Y. 2018-19 extended to July 31, 2019.

13. Issue of Commercial Paper

[Source: [FEMA \(Deposit\) \(Amendment\) Regulations, 2019 dated July 16, 2019](#)]

An Indian Company can no longer accept deposits by issue of Commercial Paper to a NRI or PIO or foreign portfolio investor registered with SEBI.



Compliance Calendar- July, August & September 2019

S.No.	Particulars of compliance	Forms>Returns	Due Date
Under SEBI(LODR) REGULATIONS, 2015			
1	Corporate Governance Report under Regulation 27(2)	Format specified by the Board	15 th July, 2019
2	Statement of Investor Complaints under Regulation 13(3)	Format specified by the Board	21 st July, 2019
3	Shareholding Pattern under Regulation 31	Format specified by the Board	21 st July, 2019
4	Statement of deviation(s) & variation(s) under Regulation 32(1)		21 st July, 2019
5	Reconciliation of Share Capital Audit Report (SEBI-DP Reg.55A)	Format specified by the Board	30 th July, 2019
6	Financial Results under Regulation 33	Format specified by the Board	14 th August, 2019
Under IRDAI (INSURANCE BROKERS) REGULATIONS, 2018			
1	Quarterly Return	Online BAP Format	15 th July, 2019
Under Companies Act, 2013			
1	DIR-3 KYC of the individuals holding DIN	DIR 3KYC	September 30, 2019
2	Filing of form BEN-2	BEN - 2	September 30, 2019



ABOUT APAC & Associates LLP

CONTACT US

APAC & Associates LLP

310, Aggarwal Cyber Plaza - I,
Netaji Subhash Place, Pitampura,
Delhi-110034

011-49058720-21

info@apacandassociates.com

www.apacandassociates.com

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

For any queries with respect to this newsletter, you may contact:



Chetan Gupta
[FCS, B.Com]
Managing Partner
9818188855
chetan.gupta@apacandassociates.com



Kailash Chandra Pandey
[FCS, LL.B, B.Com (H)]
Partner
9582239923
kailash.cpandey@apacandassociates.com



Ayushi Jain
[ACS, M.Com, LL.B, B.Com (H)]
Partner
9312499298
ayushi.jain@apacandassociates.com

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