



MONTHLYTE

Secretarial Updates August 2019

INSIDE THIS ISSUE

Pg. 3

A. Re-Shaping of Law

- 1.0 CSR Recommendations of High-Level Committee (HLC)

Pg. 4-5

B. Regulatory Changes

- 1.2 Companies (Amendment) Act, 2019-Enforcement
- 1.5 IEPF Compliance- Amendment

Pg. 6

C. Compliance Calendar- September & October 2019

1. SEBI Regulations
2. IRDAI Brokers Regulations
3. Companies Act
4. LLP Act
5. FEMA Regulations

Pg. 7

D. Articles Published

About the Author





“Arise, Awake and Stop
not till, **the Goal is
reached.**”

- Swami Vivekananda



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 August, 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 September & October 2019.

We hope all these would be of interest to you.

Your feedbacks are valuable. Feedback can be sent at info@apacandassociates.com.

Regards,

APAC & Associates LLP Team



A. Re-Shaping of Law

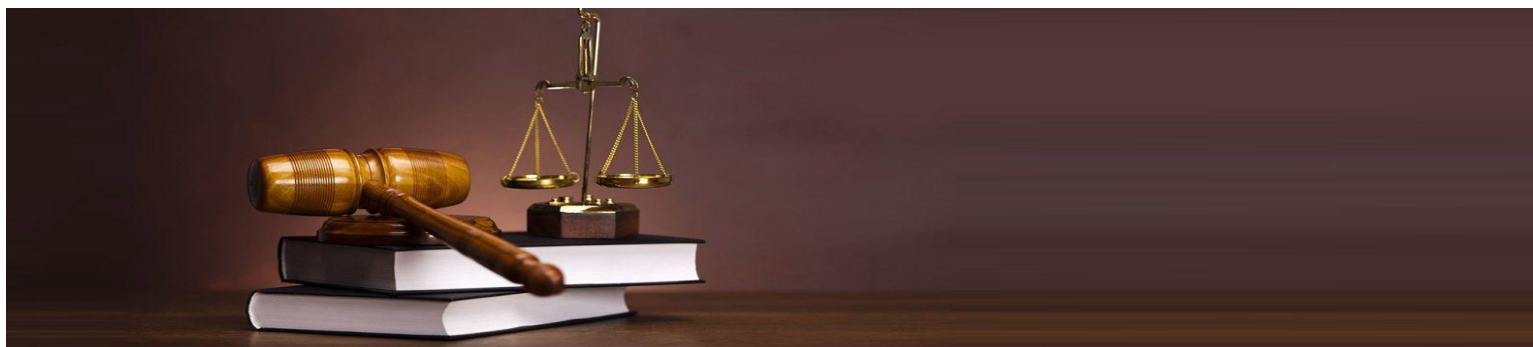


1.0 CSR- Recommendations of High Level Committee (HLC)

The HLC–2018 was set up under the Chairmanship of Corporate Affairs Secretary Injeti Srinivas, to review the CSR framework. After detailed deliberations and review of comments received from various stakeholders, the Committee identified specific issues arising out of the provisions of Section 135 of the Companies Act, 2013 and Companies (Amendment) Act, 2019 (*amendments w.r.t CSR provision not yet notified*). The Committee to facilitate the implementation of CSR in a more efficient, transparent manner and to develop a more robust and coherent CSR regulatory framework, submitted its report to the Finance Minister Nirmala Sitharaman on August 07, 2019. The key recommendations and suggestions contained in the report are as follows:

- Non-compliance with certain CSR provisions be de-criminalized and be made civil offences.
- CSR spending on activities listed under Schedule VII may be eligible for tax deductions.
- Not to treat CSR as a “means of resource gap funding for government schemes”.
- Limited Liability Partnerships (LLPs) and Banks can also come under CSR guidelines.
- Development of a CSR exchange portal to connect contributors, beneficiaries and agencies.
- Companies having CSR prescribed amount below Rs. 50 lakh may be exempted from constituting CSR Committee.
- CSR may be brought within the purview of a statutory financial audit.
- Companies with CSR amount of Rs. 5 crores or more in three immediately preceding Financial Years, undertake need and impact assessment studies for their CSR projects.
- 5% of CSR mandated Companies be identified on a random basis for third-party assessment.
- Unspent amount is spent within a period of three to five years, failing which the same be transferred to a fund specified by the Central Government.

Further, the Ministry of Corporate Affairs (MCA) plans to make Geo-tagging of CSR projects and Companies may also be asked to provide photographs as proof for CSR activities.



B. Regulatory Changes

1.0 MINISTRY OF CORPORATE AFFAIRS (MCA)

1.1 Insolvency And Bankruptcy Code- Amendment

[Source: [The Insolvency and Bankruptcy Code \(Amendment\) Act, 2019 dated August 06, 2019](#)]

The key highlights after amendment are as follows:

- i. The resolution plan now includes the restructuring of the corporate debtor,
- ii. 2.The obligation of the adjudication authority to respond within 14 days in writing.
- iii. Corporate Insolvency Resolution Process (CIRP) is now required to be completed within 330 days from the insolvency commencement date.
- iv. Authorized Representatives of financial creditors can now cast their vote on behalf of all financial creditors.
- v. Resolution plan will be binding on all the stakeholders, including Central Govt., State Govt. or any local authority.
- vi. Committee of Creditors may now take the decision to liquidate the corporate debtor.

1.2 Companies (Amendment) Act, 2019- Enforcement

[Source: [Companies \(Amendment\) Act, 2019 dated August 14, 2019](#)]

All sections of the Companies (Amendment) Act 2019 enforced [except Section 21 of the said Act which relates to Section 135 of the Companies Act, 2013 (Corporate Social Responsibility)] including:

- i. Section 7 (Dematerialization of shares),
- ii. Section 11 (Duty to register charge),

- iii. Section 26 (Disqualification of Directors) etc.

1.3 Issue of Shares with DVRs and ESOPs- Amendment

[Source: [Companies \(Share Capital and Debentures\) Rules, 2014 dated August 16, 2019](#)]

- i. The existing cap of 26% of the total post-issue paid-up share capital to a revised cap of 74% of total voting power in respect of shares with Differential Voting Rights (DVR).
- ii. Removal of the requirement of distributable profits for 3 years as eligibility to issue shares with DVR.
- iii. The time period within which Employee Stock Options (ESOPs) can be issued by Startups to promoters or Directors (holding > 10% equity shares) has been enhanced from 5 years to 10 years from the date of their incorporation.

1.4 Incorporation of Section 8 Companies- Simplified

[Source: [MCA news and updates](#)]

- i. The license number for a section 8 company shall be allotted at the time of incorporation itself through SPICe Form.
- ii. All pending INC-12 SRNs for new Companies would be marked as 'Rejected' on 15th August 2019. And, fresh SPICe Form would be filed by such applicants.
- iii. There would be a delay in the processing of SPICe Forms for incorporation already filed/to be filed by applicants who have already obtained License Numbers due to the workflow changes.



1.5 IEPF Compliance- Amendments

[Source: [IEPF Authority \(Accounting, Audit, Transfer and Refund\) Second Amendment Rules, 2019 dated August 20, 2019](#)]

IEPF Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019 has been notified and below mentioned changes in IEPF forms are as follows:-

- i. Forms IEPF-1, IEPF-2, & IEPF-4 have been revised.
- ii. New form IEPF-1A is available.
- iii. Form IEPF-6 shall be withdrawn w.e.f August 20, 2019.

Our detailed analysis on the amendment can be accessed by following Blog: [[IEPF Second Amendment Rules, 2019](#)]

1.6 Merger- Appointed Date- Clarification

[Source: [MCA Circular dated August 21, 2019](#)]

Companies may choose the “Appointed date” of the merger/amalgamation based on the occurrence of an event, which is relevant to the merger between Companies, which also allow them to do their function independently till such event is actually materialized. The Company shall file an intimation (if the Appointed date goes beyond the date of filing of the order to the RoC), within 30 days of such scheme come into force to the RoC. The term “Appointed Date” shall be deemed to be the “acquisition date” for the purpose of conforming to Ind AS 103 that standard dealing with business combinations.

1.7 AOC-4 Non-XBRL- updated form awaited

[Source: [MCA news and updates](#)]

The changes to form AoC-4 Non-XBRL necessitated by insertion of Division III in Schedule III of CA, 2013 are under development and the revised form would be made available for filing purposes.

1.8 Register PAN & Associate DSC by Nodal officer on MCA Website

[Source: [MCA news and updates](#)]

Nodal Officers/Deputy Nodal Officers who are appointed in a Company through the filing of IEPF-2 form are requested to get their PAN registered and associate their DSC on MCA website.

1.9 Approval of Regional Director matters- Amendment in form RD-1

[Source: [Companies Incorporation Rules, 2014 dated August 28, 2019](#)]

In terms of amendment rules, MCA has revised the form RD-1 in which a company can now seek approval from Regional Director w.r.t. change in financial year and conversion of the public company to the private company and removed the following two reasons of filing the said form i.e. ADT-2 for removal of Auditor and INC-12 for the issue of license under section 8 of the Companies Act, 2013. Further, MCA has also introduced form RD GNL-1 for filing addendum for rectification of defects or incompleteness in form RD-1.



2.0 SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

2.1 Disclosure of reasons for encumbrance by Promoter of Listed Companies

[Source: [SEBI Circular dated August 07, 2019](#)]

Disclosure under Reg. 31(1) of SEBI Takeover Regulation, 2011 has been revised wherein the promoters of every listed company are now specifically required to disclose the detailed reasons for encumbrance if combined encumbrance by them along with PACs is equal or exceed:

- i. 50% of their shareholding in the company; or
- ii. 20% of the total share capital of the company.

2.2 Imposing of Fine by SEBI for certain Non-compliance of SEBI (ICDR) Regulations, 2018

[Source: [SEBI Circular dated August 19, 2019](#)]

Stock exchanges shall impose fines for non-compliance of certain provisions of SEBI (ICDR) Regulations i.e, Rs. 20,000 per day till the date of compliance on the listed entities, as under:

- i. Delay in completion of a bonus issue.
- ii. Listed entities not completing the conversion of convertible securities.
- iii. The Application for listing of further issue of equity shares to the stock exchange(s).
- iv. The Application for trading approval to the stock exchange(s).



C. Compliance Calendar- September & October 2019

S.No.	Particulars of compliance	Forms>Returns	Due Date
1. (i) SEBI(LODR) REGULATIONS, 2015			
(a)	Corporate Governance Report [Reg. 27(2)]	The format specified by the Board	15.10.2019
(b)	Statement of Investor Complaints [Reg. 13(3)]	---Do---	21.10.2019
(c)	Shareholding Pattern (Reg. 31)	---Do---	21.10.2019
(d)	Submission of Annual Report (Reg. 34)	---Do---	Within 21 days of AGM
(e)	Compliance Certificate [Reg.7(3)]	---Do---	31.10.2019
(f)	Certificate from Practicing Company Secretary [Reg. 40(9)]	---Do---	31.10.2019
1. (ii) SEBI (DEPOSITORY AND PARTICIPANTS) REGULATIONS, 2018			
(a)	Reconciliation of Share Capital Audit Report under [Reg. 55A]	---Do---	30.10.2019
2. IRDAI (INSURANCE BROKERS) REGULATIONS, 2018			
(a)	Annual fees along with Auditors certificate for fees calculation [Reg. 9]	---Do---	30.09.2019
(b)	Audited balance sheet, Auditor certificates along with details of auditors [Reg. 34]	---Do---	30.09.2019
(c)	Quarterly Return [Reg. 39]	Online BAP Format	15.10.2019
(d)	Half yearly Certificate, Provisional Balance Sheet & P&L and Net worth Certificate [Reg. 39]	The format specified by Authority	30.10.2019
3. COMPANIES ACT, 2013			
(a)	Declaration of Significant Beneficial Owner (SBO) [Sec- 90]	BEN-2	30.09.2019
(b)	Directors KYC (Rule 12A of Ch. XI)	DIR-3 KYC/DIR-3-KYC-WEB	30.09.2019
(c)	Annual Report (Sec- 121)	MGT-15	Within 30 days of AGM
(d)	Filing of Financial Statements (Sec- 137)	AOC-4/AOC-4 CFS/AOC-4 XBRL	Within 30 days of AGM
(e)	Reconciliation of Share Capital Audit Report (Rule 9A of Ch. III)	PAS-6	30.10.2019
(f)	Outstanding Dues from April-September 2019 (Order 2 & 3 dated 22.01.2019 issued u/s 405)	MSME FORM I	31.10.2019
4. LLP Act, 2008			
(a)	Statement of Account and Solvency (Rule 24 of LLP Rules, 2009)	Form 8	30.10.2019
5. FEMA REGULATIONS, 1999			
(a)	Annual Return on Foreign Liabilities and Assets [Reg. 13]	Web-Based	30.09.2019



D. ARTICLES PUBLISHED

❖ INVESTOR EDUCATION AND PROTECTION FUND (IEPF) PROVISIONS- COMPANIES ACT, 2013

This video contains the process and compliance under IEPF Provisions of the Companies Act, 2013 covering the IEPF Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019. [Link for Video](#)

❖ INVESTOR EDUCATION AND PROTECTION FUND (IEPF)- A Step in the right direction

This blog contains the amendments in IEPF Rules 2016, as detailed procedure contained in the IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016 ('Principle Rules') had practical difficulties with their implementation.

To facilitate the compliances required to be done by the Company and to remove any further difficulties with respect to the claim of unclaimed dividend and underlying shares transferred to the IEPF. [Read the Article.](#)

CONTACT US

APAC & ASSOCIATES LLP

310, Aggarwal Cyber Plaza-1, Netaji
Subhash Place, Pitampura, Delhi-
110034

011-49058720-21

Info@apacandassociates.com

www.apacandassociates.com

Vacancy for Qualified CS

We are looking to hire 2 Qualified CS for our Pitam Pura, Delhi office.

We provide a safe & dynamic workplace, where the candidates can look forward to quality work & long term career advancement.

Resumes may be shared at Knowledge & Skill-based remuneration shall be offered to the selected candidates.

Interested candidates can email their CVs at info@apacandassociates.com

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

DISCLAIMER

This MonthLyte is the property of APAC & Associates LLP and is based on the understanding and interpretation of the author. This information is for educational purpose only and the same is not intended to be a professional advice.

APAC & Associates LLP does not intend to advertise its services through this MonthLyte. APAC & Associates LLP is not responsible for any error or omission in this MonthLyte or for any action taken based on its contents.