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## Corporate Laws

### 1.0 Insolvency rules Notified for Financial Service Providers

The Ministry of Corporate Affairs (MCA) has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 vide Notification dated November 15, 2019.

These rules shall apply to such Financial Service Providers (FSP) or categories of Financial Service Providers, as may be notified by the Central Government under section 227 of The Companies Act, 2013 from time to time.

The Rules provide that the provisions of the Code relating to the Corporate Insolvency Resolution Process (CIRP), Liquidation Process and Voluntary Liquidation Process for a corporate debtor shall, mutatis mutandis, apply to a process for an FSP, subject to modifications, as provided in the Rules.

#### Few of the Modifications are as below:

- The CIRP of an FSP shall be initiated only on an application by the appropriate regulator.

- On admission of the application, the Adjudicating Authority shall appoint the individual, who has been proposed by the appropriate regulator in the application for initiation of CIRP, as the Administrator.
- The appropriate regulator may constitute an Advisory Committee of three or more experts to advise the Administrator in the operations of the FSP during the CIRP.
- An interim moratorium shall commence on and from the date of filing of the application for initiation of CIRP by the appropriate regulator till its admission or rejection by the Adjudicating Authority.
- The provisions of interim-moratorium or moratorium shall not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties.
- The Administrator shall take control and custody of third-party assets or properties in custody or possession of the FSP and deal with them in the

manner, to be notified by the Central Government under section 227.

- The license or registration which authorises the FSP to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the CIRP.
- The FSP shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings.
- The Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for liquidation or dissolution of the FSP.

## 2.0 Reserve Bank of India specified as Regulator for Insolvency of NBFC

The Ministry of Corporate Affairs have issued Notification dated November 18, 2019 vide which The Reserve Bank of India(RBI) have been designated as Appropriate Regulator to seek corporate insolvency resolution process of non-banking financial companies(which include housing finance companies) having assets worth of at least Rs 500 crore as per last Audited Balance Sheet under the insolvency law.

## 3.0 Non-Resident Rupee Accounts scope widened

The Reserve Bank of India has enhanced the scope of 'Special Non-resident Rupee' (SNRR) by allowing persons residing outside India to open such accounts for purposes like:

- External Commercial Borrowing in INR

- Trade credit in INR.
- Trade (Export/ Import) Invoicing in INR and
- Business related transactions outside International Financial Service Centre (IFSC) by IFSC units at GIFT city like administrative expenses in INR outside IFSC, INR amount from sale of scrap, government incentives in INR, etc. The account will be maintained with bank in India (outside IFSC).

Apart from Non-Resident Ordinary (NRO) Account, permit credit of amount due or payable to non-resident nominee from account of a deceased account holder to Non-Resident External (NRE) Account or direct remittance outside India through normal banking channels.

## 4.0 Re-export of unsold rough diamonds from Special Notified Zone of Customs without Export Declaration Form (EDF) formality

The Reserve Bank of India have issued Circular dated November 22, 2019 vide which it relaxed Para 4 of A.P. (DIR Series) Circular No.1 dated July 02, 2015.

Now, instead of only for the lot/ lots cleared at the Precious Cargo Customs Clearance Centre, Mumbai, for all the lot/ lots cleared at the Centre/s which are duly notified under Customs Act, 1962 / specified by the Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, Government of India for the above purpose, Bill of Entry shall be filed by the buyer.

AD bank may permit such import payments after being satisfied with the bona-fides of the transaction. Further, AD bank shall also maintain a record of such transactions.

### 5.0 Chit Funds Amendment Bill Passed by Parliament

The Bill has been passed by the Lok Sabha on November 20, 2019 and by the Rajya Sabha on November 28, 2019.

The Bill provides for amendments to the Chit Funds Act, 1982 to provide for the use of the terms “Fraternity Funds” and “Rotating Savings and Credit Institution” (ROSCA) as alternate names for chit funds, so that legitimate/registered chit funds are distinguished from illegal “Prize Chits”, which are entirely different and are banned under a separate legislation, namely the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

The Bill further provides for amendments to replace the term “chit amount” by “gross chit amount” and the term “prize amount” with “net chit amount”, to remove confusion with respect to illegal prize chits.

The amendment Bill further raises the monetary limit of chit funds with less than four partners to Rs 3 lakh from Rs 1 lakh, and the limit for chit funds with four or more partners to Rs 18 lakh from Rs 6 lakh. It also raises the maximum limit of the commission taken by the foreman to 7% from 5%.

### 6.0 15th Finance Commission Term extended

The Union Cabinet have extended the term of 15<sup>th</sup> Finance Commission, which is to decide on division of tax and other resources between the centre and the states, by one year to October 30, 2020. The term of the commission which was originally set to end on October 30, 2019, but was extended by one month to November 30, 2019, have now been further extended.

## Corporate Laws

### 1.0 Amendment in Rule 15 for Related Party Transactions

The Ministry of Corporate Affairs has amended Rule 15, sub-rule (3), clause (a) of Companies (Meetings of Board and its Powers) Rules, 2014 and strengthen the norms relating to limits of Related Party Transaction as per Section 188 vide Notification dated November 18, 2019. The Amendment have removed additional criteria form the rules and now only criteria for Sub Clause i, iii and iv is the limit of ten percent or more of the turnover of the company and for Sub Clause ii the limit is of ten percent or more of the Net-worth of the company and beyond the Limits Ordinary Resolution from Members is required by the company.

### 2.0 Relaxing of Additional Fees for Form PAS 6

The Ministry of Corporate Affairs has vide General Circular dated November 28, 2019, extended the time limit for filing of Form PAS-6 without additional fees for the half-year ended on September 20, 2019 for sixty days from the

date of deployment of the form on the website of the Ministry.

### 3.0 Relaxing of Additional Fees for AOC 4 and MGT 7 for UT of J & K and Ladakh

The Ministry of Corporate Affairs has vide General Circular dated November 28, 2019, extended the due date for filing e-form AOC 4, AOC 4 (CFS), AOC 4 (XBRL), MGT 7 up to January 31, 2020 without levy of additional fees for Companies having jurisdiction in the UT of J & K and UT of Ladakh.

### 4.0 Extension for filing of Form NFRA -2

The Ministry of Corporate Affairs has vide General Circular dated November 27, 2019, extended the last date for filing Form NFRA -2 for 60 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

### 5.0 Caution Notice from ROC

The Registrar of Companies has issue notice reminding the Companies to file pending Financial Statements and Annual Returns for the Financial Year 2015-16, 2016-17 and 2017-18. The DIN of the defaulting directors will be disqualified as per Section 164 of the Companies Act, 2013 if the Pending Returns are not filed and compliance of the provisions of the Act are not complied with.

## TAXATION

### 1.0 Generation and quoting of DIN on any communication issued by the officers of the CBIC

The Central Board of Indirect Taxes and Customs (CBIC) has made it mandatory for its officers to quote the Document Identification Number ("DIN") in all of the documents issued by its officers to tax payers and other concerned persons. The same shall be started w.e.f. November 8, 2019.

This would create digital directory for maintaining a proper audit trail of such communication. DIN has been made mandatory in each and every case except for the exceptions as specified.

### 2.0 Extension of dues dates for GST Annual Return and GST Reconciliation Form

The due dates for furnishing GST Annual Return and GST Reconciliation Form for Financial Year 2017-18 has been extended till December 31, 2019 and for Financial Year 2018-19 till March 31, 2020.

### 3.0 Simplification of GST Annual Return and GST Audit Form

CBIC has amended the GSTR 9 (GST Annual Return) and GSTR 9C (GST Reconciliation Form). The major changes made in the forms are as follows:

#### GSTR-9

- Option to fill the supplies details net of debit notes and credit notes in case there is any difficulty in reporting the values.
- Option to report the breakup of ITC into inputs, input services or capital goods. Now the same can be reported under the head inputs only.

- HSN wise details of Inward supplies and outward supplies are not mandatory now.

#### **GSTR-9C**

- Option to report reconciliation differences in Table 50 instead of reporting in 5B to 5G.
- Filling of table 14: Expense wise credits being made not mandatory.
- Cash flow statement is required to be submitted wherever applicable.
- The wording of the certificate from “True & Correct” has been changed to “True & Fair”.

#### **4.0 Clarification on restriction of ITC availment up to 20%**

CBIC has clarified various issues related to the availment of GST Credit up to 20% of eligible credits which are as follows:

- Taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same.
- The restriction imposed is not supplier wise and is on consolidated basis. The Credit available under rule 36(4) is linked to total eligible credit from all the suppliers.
- The balance ITC may be claimed by the taxpayer in any of the succeeding

months provided details of requisite invoices are uploaded by the suppliers.

#### **5.0 Blocking and Unblocking of Generation of E Way Bills w.e.f. December 2, 2019**

CBIC is going to apply the functionality of blocking and unblocking of E way bill w.e.f. December 2, 2019. Taxpayers who have not filed their GSTR-3B return for the months of September 2019 and October 2019, their EWB generation facility will be blocked from December 2, 2019.

On Filing of the GSTR 3B in the GST Common Portal making the pendency of return filing to less than 2 months, the GSTIN will get automatically updated as ‘Unblock’ within a day in the eWaybill system and the tax payer can continue with e-way bill generation without any cautionary message.

However, if the status is not updated in e-waybill system, then the taxpayer can do it by going to the e-Waybill portal and clicking on option: Search-> Update Block Status.

Manual applications can also be submitted for Unblocking of E Way bills by approaching the jurisdictional tax officials. The order for the rejection or acceptance of application will be uploaded on GST Portal.

#### **6.0 Clarification on GST rates on Job Work**

CBIC has clarified that the newly notified Job work rates of 12% and 18% at the entries at items (id) and (iv) under heading 9988 in notification no. 11/2017 are two different entries.

Clarification has been issued that rate of 12% is applicable in case of goods Job work being done by Job worker on goods belonging to registered persons.

For job work done on goods belonging to unregistered persons, GST rate of 18% will be applicable. For specific cases, job work rates have been notified at separate line entries other than above two entries.

### 7.0 Exemption provided to Land and Building received by a resident of an unauthorized colony in Delhi

The CBDT has inserted a new rule – 11UAC to provide for exemption under section 56(2)(x) of Income Tax Act. As per this section, where a person receives any money, immovable property or property other than immovable property without consideration or with inadequate consideration, income tax shall be charged in this case.

This newly inserted rules provide for exemption from this section in case of land or building, or both received by a resident of an unauthorized colony in the NCT of Delhi, where the Central Government by notification in the Official Gazette, regularized the transactions of such immovable property based on specified documents availability.

### 8.0 Amendment of Income tax rules to allow Interchangeability of PAN and Aadhaar

In line with the amendments made by Finance (No.2) Act, 2019, consequential amendments have been made in the income tax forms to allow

quoting of Aadhaar Number instead of PAN at appropriate places.

Now Aadhaar can be quoted instead of PAN in Tax Audit Forms 3CA-3CD, TDS Return Forms, 15G/15H Forms and many other forms under income tax laws.

### 9.0 Due dates notified for deposit of TDS and issue of TDS Certificate under section 194M

CBDT has notified the Due dates for deposit of TDS deducted under section 194M (TDS deduction in case of contractual or professional services received by individual or HUF not subjected to audit). The individual / HUF is required to deposit the tax deducted within 30 days from the end of the month in which the deduction was made.

The tax must be deposited along with a challan-cum-statement in Form 26QD.

Additionally, the TDS certificate in Form 16D shall be issued to the contractor or professional within 15 days from the due date of depositing tax.

## SEBI

### 1.0 Disclosure norms on loan defaults for listed companies

The Securities and Exchange Board of India (SEBI) have issued Circular dated November 21, 2019 which provides that Listed Entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks / financial institutions which continues beyond 30 days.



The disclosure shall be made promptly, but not later than 24 hours from the 30<sup>th</sup> day of such default.

It provides that in case of unlisted debt securities i.e. NCDs and NCRPS, the disclosure shall be made promptly but not later than 24 hours from the occurrence of the default. This is in line with the existing disclosure requirements specified for listed debt instruments.

The Circular exempts disclosures pertaining to default of listed NCDs / listed NCRPS / listed Commercial paper. The same would continue to be made as per the present provisions of the SEBI Regulations and Circulars issued thereunder.

The Circular further specifies Formats for Disclosures which shall be made within 7 days from the end of each quarter. The Circular shall be effective from January 01, 2020.

## 2.0 Guidelines for preferential issue by listed Real Estate Investment Trust (REIT)

The Securities and Exchange Board of India have issued detailed guidelines for preferential issue of units and institutional placement of units by a listed Real Estate Investment Trust (REIT) vide Circular dated November 27, 2019.

Highlights of the conditions provided in the Guidelines:

- Listed REIT may make a preferential issue of units if it have been listed on a stock exchange for a period of at least six months prior to the date of issuance or for an institutional placement of units

under these guidelines, if it has been listed for a minimum of 12 months.

- The REIT has obtained in principle approval of the stock exchange(s) for listing of units proposed to be issued under these guidelines.
- The REIT is in compliance with all the conditions for continuous listing and disclosure obligations under the REIT Regulations and circulars issued thereunder.
- None of the respective promoters or partners or directors of the sponsor(s) or manager or trustee of the REIT is a fugitive economic offender declared under section 12 of the Fugitive Economic Offenders Act, 2018.
- The REIT shall not make any subsequent institutional placement until the expiry of six months from the date of the prior institutional placement made pursuant to one or more special resolution.
- The units shall be allotted in the dematerialized form only and shall be listed on the stock exchange(s) where the units of the REIT are listed.

## 3.0 Norms for Debt Exchange Traded Funds (ETFs)/Index Funds

The Securities and Exchange Board of India have issued Circular dated November 29, 2019 and specified Norms for Debt Exchange Traded Funds (ETFs)/Index Funds. Few of the norms prescribed for Debt ETFs/Index Funds to be adopted by all AMCs are that:

- Debt exchange traded funds (ETFs) and index funds must have a minimum of eight issuers,
- No single issuer shall have more than 15% weight in the index.
- The constituents of the index shall be aggregated at issuer level.
- The rating of the constituents of the index shall be investment grade.
- The constituents of the index shall have a defined credit rating and defined maturity as specified in the index methodology.

The Circular provides for Applicability, Replication of the Index by Debt ETFs/Index Funds and Compliance Procedures.

#### 4.0 Guidelines for preferential issue by listed Infrastructure Investment Trust (InvIT)

The Securities and Exchange Board of India have issued Guidelines for preferential issue of units and institutional placement of units by a listed Infrastructure Investment Trust (InvIT) vide Circular dated November 27, 2019.

The Conditions provided are in line with the condition provided for listed Real Estate Investment Trust (REIT), Please refer above for more highlights.

#### 5.0 Investment Policy of Clearing Corporations

The Securities and Exchange Board of India have issued Circular dated November 27, 2019 and permitted the Clearing Corporations to make investments in Overnight Funds.

The Circular provides that the combined investments made by Clearing Corporations in Liquid Funds and Overnight Funds shall not exceed a limit of ten percent of the total investible resources.

Further, the investments in Overnight Funds shall also be considered as Liquid Assets for the purpose of calculation of Net worth of a Clearing Corporation.

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