

LOVI MEHROTRA & ASSOCIATES

CHARTERED ACCOUNTANTS

MONTHLY UPDATE AUGUST 2019

(Circulars / Notifications released during August 2019)

[RBI](#)

[SEBI](#)

[MCA](#)

31st August, 2019

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I. RBI

S. NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY
1.	RBI/2019-20/44 A.P. (DIR Series) Circular No.06 Dated 16 th August, 2019	Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019 – Acceptance of Deposits by issue of Commercial Papers	<p>Vide this circular RBI has deleted from the Foreign Exchange Management (Deposit) Regulations, 2016 the provision pertaining to acceptance of deposits by Companies through issue of Commercial Paper (CP). This has been done with a view to bring in consistency in statutory provisions/regulations relating to Commercial Papers (CPs) and taking into consideration the fact that Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 – FEMA 20(R), already allow investments in CPs issued by the Indian Companies.</p> <p>Accordingly, companies cannot any longer accept deposits through issue of CP.</p> <p>Notification</p>

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II. SEBI

S. NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY
1.	<p>Circular No.: CIR/HO/MIRSD /DOP/CIR/P/20 19/88</p> <p>Dated 1st August, 2019</p>	<p>Rationalization of imposition of fines for false/incorrect reporting of margins or non-reporting of margins by Trading Member/Clearing Member in all segments</p>	<p>Vide this circular, SEBI has rationalized and brought uniformity in the manner of imposition of fine for 'false/incorrect' reporting of margin vis-à-vis 'non-reporting' of margin and harmonized the penalties specified in previous circulars.</p> <p>Following guidelines have been issued in this respect:</p> <ol style="list-style-type: none"> 1. The Stock Exchanges and Clearing Corporations shall devise a standard framework for imposition of fine on the Trading Member/ Clearing Member for incorrect/false reporting and non-reporting of margin collected from the clients. 2. The fine shall be charged to the member as per the principle of 'proportionality' based on the materiality of non-compliance done by the member. The amount of fine to be charged upon the member may extend to 100% of such false/incorrectly/non reported amount of margin and/or suspension of trading for appropriate number of days. <p>Circular</p>
2.	<p>Circular No.: SEBI/HO/MRD/ DOP2DSA2/CIR /P/2019/87</p> <p>Dated 1st August, 2019</p>	<p>Database for Distinctive Number (DN) of Shares - Action against non-compliant companies</p>	<p>Vide circular issued in June 2015, SEBI had directed depositories to maintain a database of all shares including those in physical and Demat formats with distinctive numbers (DN) for equity shares of all listed companies. In case of mismatch in the DN information with the data provided / updated by the Stock Exchanges in the DN database, the Issuer/RTA was supposed to take steps to match the records and update the same latest by December 31, 2015.</p> <p>It was however observed that despite follow up certain companies are yet to comply with the provisions of the circular.</p> <p>Vide this circular, SEBI has directed depositories to</p> <ul style="list-style-type: none"> • freeze securities of promoters and directors of listed companies that failed to ensure updating the database with the distinctive number of equity shares. • not to affect any transfer, by way of sale, pledge, etc. of any of the securities, held by the promoters and directors of such non-compliant companies

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			<ul style="list-style-type: none"> freeze all related corporate benefits on the Beneficiary Owner a/c frozen freeze on accounts shall be retained till the time the company complies with requirements of reconciliation of shares in terms of the circular of June 2015 <p>Depositories are however advised to keep in abeyance the action mentioned above in specific cases where moratorium on enforcement proceedings has been provided for under any Act, Court/ Tribunal Orders, etc.</p> <p>The names of companies that are not in compliance with the aforementioned circular shall be prominently disseminated on the website of the exchanges/depositories.</p> <p>Circular</p>
3.	<p>Circular No.: SEBI/HO/OIAE/IGRD/CIR/P/2019/86</p> <p>Dated 2nd August, 2019</p>	<p>Streamlining issuance of SCORES (SEBI Complaints Redress System) Authentication for SEBI registered intermediaries</p>	<p>SEBI with intent to streamline the issuance of SCORES Authentication for SEBI registered intermediaries had directed all listed companies and SEBI registered intermediaries to obtain SCORES user id and password vide circular dated December 18, 2014.</p> <p>In partial modification of the aforesaid circular, the generation of SCORES, user id and password has been automated for all new SEBI registered intermediaries. This has been done to streamline the process of providing SCORES credentials in the interest of investors.</p> <p>The SCORES user id and password details shall be sent to all new SEBI registered intermediaries, through an auto-generated e-mail, upon completion of the process of online grant of registration by SEBI. The primary e-mail address in SCORES is the e-mail ID where all notifications related to SCORES complaints are sent to the intermediary.</p> <p>All existing and new SEBI registered intermediaries will now be able to update their primary e-mail address and registered address on their own.</p> <p>Circular</p>
4.	<p>Circular No.: SEBI/HO/CFD/DIL2/CIR/P/2019/94</p>	<p>Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements)</p>	<p>This circular supersedes SEBI circular of June 15, 2017 on the subject.</p> <p>SEBI shall impose fine on listed entities for non-compliance with the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as under:</p>

S. NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY			
	Dated 19 th August, 2019	Regulations, 2018 ("ICDR Regulations")	S. No.	Violation	Regulation / Schedule	Fine
			1.	Delay in completion of a bonus issue: a) In case shareholders' approval is not required - Within 15 days from the date of approval of the issue by its board of directors b) In case shareholders' approval is required - Within 2 months from the date of the meeting of its board of directors	295(1)	₹ 20,000 per day of non-compliance till the date of compliance
			2.	Non-completion of conversion of convertible securities and allotment of shares within 18 months from the date of allotment of convertible securities.	162	Same as above
			3.	Delay in making application for listing in case of further issue of equity shares beyond 20 days from the date of allotment (unless otherwise specified)	Schedule XIX – Listing of Securities on Stock Exchanges	Same as above
			4.	Delay in making application for trading approval to the stock exchange/s beyond 7 working days from the date of grant of listing approval	-	Same as above
<p>The amount of fine realized as per the above structure shall continue to be credited to the "Investor Protection Fund" of the concerned stock exchange.</p> <p>Circular</p>						

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III. MCA

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1.	Notification Dated 31 st July, 2019	Companies (Amendment) Act, 2019	<p>MCA has notified the Companies (Amendment) Act, 2019 ('the Act'). Provisions of the Act shall be deemed to have come into force on the 2nd day of November, 2018, except</p> <ul style="list-style-type: none"> sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 <p>which shall come into force on such date as the Central Government may notify.</p> <p>Key features of the Amendment have been discussed in brief in 'Annexure A' to the Newsletter.</p> <p>Notification</p>																																		
2.	Notification No. S.O. ___-(E). Dated 14 th August, 2019	Commencement Notification Dated 14 August 2019 Companies (Amendment) Act	<p>MCA has notified the date of commencement for certain provisions and amendments of the Companies (Amendment) Act, 2019 which shall come into force from 15th August, 2019. These provisions are those which were not made effective from 2nd day of November, 2018 (refer point above).</p> <p>The details are provided hereunder:</p> <table border="1"> <thead> <tr> <th rowspan="2">S. No.</th> <th colspan="2">Section of</th> <th rowspan="2">Title</th> </tr> <tr> <th>Companies (Amendment) Act, 2019</th> <th>Companies Act, 2013</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Section 6</td> <td>Section 26</td> <td>Matters to be stated in prospectus</td> </tr> <tr> <td>2.</td> <td>Section 7</td> <td>Section 29</td> <td>Public Offer of Securities to be in Dematerialized Form</td> </tr> <tr> <td>3.</td> <td>Section 8</td> <td>Section 35</td> <td>Civil Liabilities for Mis-statements in Prospectus</td> </tr> <tr> <td>4.</td> <td>Clause (i), (iii) and (iv) of section 14</td> <td>Section 90</td> <td>Register of significant beneficial owners in a company</td> </tr> <tr> <td>5.</td> <td>Section 20</td> <td>Section 132</td> <td>Constitution of National Financial Reporting Authority</td> </tr> <tr> <td>6.</td> <td>Section 31</td> <td>Section 212</td> <td>Investigation into Affairs of Company by Serious Fraud Investigation Office</td> </tr> <tr> <td>7.</td> <td>Section 33</td> <td>Section 241</td> <td>Application to Tribunal for Relief</td> </tr> </tbody> </table>	S. No.	Section of		Title	Companies (Amendment) Act, 2019	Companies Act, 2013	1.	Section 6	Section 26	Matters to be stated in prospectus	2.	Section 7	Section 29	Public Offer of Securities to be in Dematerialized Form	3.	Section 8	Section 35	Civil Liabilities for Mis-statements in Prospectus	4.	Clause (i), (iii) and (iv) of section 14	Section 90	Register of significant beneficial owners in a company	5.	Section 20	Section 132	Constitution of National Financial Reporting Authority	6.	Section 31	Section 212	Investigation into Affairs of Company by Serious Fraud Investigation Office	7.	Section 33	Section 241	Application to Tribunal for Relief
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3.	<p>Notification No. G.S.R. __ (E). Dated 16th August, 2019</p>	<p>Companies (Share Capital and Debenture) Amendment Rules, 2019</p>	<p>Vide this notification, MCA has relaxed norms for shares with differential voting rights to boost innovative technology companies and start-ups.</p> <p>Accordingly, for shares with differential voting rights of the company, the existing cap of 26 per cent of the total post issue paid up equity share capital has been enhanced to 74 per cent.</p> <p>Further, Employee Stock Options (ESOPs) can now be issued by start-ups to promoters or directors holding more than 10 per cent of equity shares upto 10 years from the date of their incorporation instead of five years as prescribed earlier.</p> <p>MCA has also amended the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, for all companies.</p> <p>The adequacy/percentage for creation of DRR for different categories of companies has been modified vide the amended rules.</p> <p>Notification</p>																				
4.	<p>General Circular No. 09/2019 Dated 21st August, 2019</p>	<p>Clarification under section 232(6) of the Companies Act, 2013</p>	<p>MCA has clarified the interpretation of the provisions of section 232(6) of the Companies Act, 2013 w.r.t 'appointed date' and 'acquisition date' for the purpose of Ind-AS 103 (Business combinations) to be identified under the Merger Scheme's.</p> <p>It has been clarified that the provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as the grant of license by a competent authority or fulfillment of any preconditions agreed upon by the parties, which are relevant to the scheme.</p>																				

Major points clarified in this regard are as follows

- The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' for all purposes.
- where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for a scheme of merger/ amalgamation in NCLT.
- if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, justification for the same would have to be specifically brought out in the scheme and it should not be against the public interest.
- in the case of the event base 'Appointed Date', the said event would have to be indicated in the scheme itself upon the occurrence of which the scheme would become effective.
- in case of such event-based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

[Circular](#)

Annexure A

Key features of the Companies (Amendment) Act, 2019 have been discussed in brief as under:

1. Allowing subsidiaries of foreign companies to follow different financial year for accounting;
2. Measures to control 'shell companies';
3. Sixteen sections of the Act are amended so as to modify the punishment as provided in the said sections from fine to monetary penalties to lessen the burden upon the Special Courts.
4. Amendments are made in Section 135 to carry forward the unspent corporate social responsibility amount, to a special account to be spent within three financial years and transfer thereafter to Funds specified in Schedule VII, such as PM's National Relief Fund.
5. The Act provides for the punishment for debarment from appointment as an auditor or internal auditor of a company, or performing a company's valuation, for a period between six months to 10 years in case of proven misconduct.
6. The pecuniary limit of Regional Director ("RD") to compound offences under section 441 is proposed to be increased. The threshold is increased to a fine up to Rs. 25 lakhs.
7. A new clause has been inserted under the Section 164 to state that violation of Section 165(1) shall be a ground for disqualification of a director if he/ she breaches the limits of maximum directorship allowed thereunder.
8. The amendment to Section 241 empowers the Central Government to move a matter before the NCLT against managerial personnel on several grounds.
9. Shifting of powers for conversion from public to private companies from National Company Law Tribunal (NCLT) to the Central government, as well as more clarity with respect to certain powers of the National Financial Reporting Authority (NFRA).
10. The Act provides more power to the Registrar of Companies (ROC) to take strict action against those companies which are not working as per the law. Registrar can remove the name of the company from the Register of companies if it is not carrying on operations.
11. Insertion of sub-section 1A to Section 29, which inter-alia mandates certain unlisted companies that the securities shall, in addition to being issued, also be held and transferred only in dematerialized form after complying with the provisions of the Depositories Act, 1996 and regulations made thereunder. With this proposed move, all shareholders of all private companies shall have to get their holdings dematerialized.
12. In case of corporate frauds revealed by an investigation by SFIO, the Central Government may make an application to NCLT for passing appropriate orders for disgorgement of profits or assets of an officer or person or entity which has obtained an undue benefit.
13. Charges can only be registered within a period of 120 days from the date of creation and modification and ad-valorem fees shall be charged over and above the additional fees in case of delayed filings beyond 60 days.
14. Rectification by Central Government in Register of charges in case of omission and or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83.

15. If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each subsequent day during which such failure continues, subject to a maximum of five lakh rupees.
16. If any company fails to furnish the Director Identification Number under sub-section (1) of Section 157, such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each subsequent day during which such failure continues.
17. Provisions of Sec 203 amended to provide that if any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each subsequent day during which such default continues but not exceeding five lakh rupees.”
18. Penalty provided under section 447 of the principal Act, is increased from “twenty lakh rupees”, to “fifty lakh rupees”.
19. Insertion of new section 454A to provide Penalty for repeated defaults by a company or an officer of a company or any other person having already been subjected to a penalty for default under any provisions of this Act.
20. The Companies (Amendment) Second Ordinance, 2019 promulgated in February 2019 is repealed on notification of the Act.

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Disclaimer:

This is not a complete listing of all circulars/notifications issued during the month.

Instead it is only a listing of some of the circulars/notifications that we considered important.