

WEEKLY UPDATES ON COMPANY LAW, SEBI, RBI AND IBC

Week 58 - February 04 to February 10, 2019

1

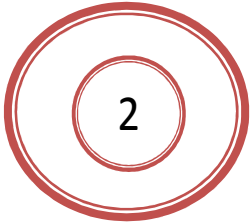
**Companies Act 2013 during the week**

**Rules - 1; Circulars - 0; Notifications – 0; Orders- 0; Important Notices - 0**

S. No	Date of Issue	Rules/Circular/ Notification/Order	Contents thereof	Gist thereof
1	08.02.2019	Rules	Companies (Significant Beneficial Ownership) Amendment Rules, 2019	<p>The amended rules include the following additions:</p> <p>The terms ‘majority stake’, ‘partnership entity’, ‘reporting company’ and ‘significant influence’ have been defined.</p> <p>Definitions of Registered Owner and Significant Beneficial Owner have been substituted.</p> <p><b>2A. Duty of the reporting company.-</b> (1) Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual</p>

				<p>to make a declaration in Form No. BEN-1.</p> <p><b>3. Declaration of significant beneficial ownership under section 90:</b></p> <p><b>(1)</b> On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, every individual who is a significant beneficial owner in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company within 90 days from such commencement.</p> <p><b>(2)</b> .....</p> <p>Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.</p> <p><b>7. Application to the Tribunal:</b></p> <p>The reporting company shall apply to the Tribunal, –</p> <p>(i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein;</p>
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				<p><b>8. Non-Applicability:</b></p> <p>These rules shall not be made applicable to the extent the share of the reporting company is held by,-</p> <p>(a) the authority constituted under sub-section (5) of section 125 of the Act i.e. Investor Education and Protection Fund;</p> <p>(b) its holding reporting company:</p> <p><i>Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.</i></p> <p>(c) the Central Government, State Government or any local Authority;</p> <p>(d) (i) a reporting company, or (ii) a body corporate, or (iii) an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;</p> <p>(e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,</p> <p>(f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.</p>
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### SEBI during the week

**Act -0; Rules -0; Regulations-0; General Orders – 0; Guidelines- 0;**

**Master Circulars-0; Circulars – 2; Press Release –0; Others -0**

S.No	Date of Issue	Act/rules/circulars....	Subject & Link	Gist thereof
1	05.02.2019	Circular	Performance review of Public Interest Directors (PIDs)	<p>Public interest directors shall be nominated at the recognized stock exchange or the recognized clearing corporation / depository for a term of three years, extendable by another term of three years, subject to performance review in the manner as may be specified by the Board:</p> <p>Provided that post the expiry of term(s) , a public interest director may be nominated for a further term of three years in other recognized clearing corporation or recognized stock exchange, or a depository, only after a cooling-off period of 1 year:</p> <p>Provided further that a person may be nominated as a public interest director for a maximum of three terms across recognized stock exchanges / recognized clearing corporations / depositories, subject to a maximum age limit of 75 years.</p> <p>Other contents of the circular include:</p>

				<ol style="list-style-type: none"> <li>1. Policy for Performance review of PIDs</li> <li>2. Guiding criteria of Performance Review</li> <li>3. Evaluation mechanism</li> <li>4. Disclosure</li> <li>5. Recommendation to SEBI</li> </ol>
2	08.02.2019	Circular	Format for annual secretarial audit report and annual secretarial compliance report for listed entities and their material subsidiaries	<p>SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been amended to include the following Regulation 24A:</p> <p><b><i>“24A: Secretarial Audit</i></b>  <i>Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed with effect from the year ended March 31, 2019.”</i></p> <p>Accordingly, the following shall be complied with, by a listed entity and its material unlisted subsidiaries, as applicable:</p> <p>A. Annual secretarial audit report</p> <ol style="list-style-type: none"> <li>1. Currently, Section 204 of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires Secretarial Audit by PCS for listed companies and certain unlisted companies above a certain threshold in Form No. MR-3</li> <li>2. In order to avoid duplication, the listed entity and its unlisted material subsidiaries shall continue to use the same Form No. MR-3 as</li> </ol>

				<p>required under Companies Act, 2013 and the rules made thereunder for the purpose of compliance with Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as well.</p> <p>B. Annual Secretarial Compliance Report:</p> <p>(i) While the annual secretarial audit shall cover a broad check on compliance with all laws applicable to the entity, listed entities shall additionally, 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 this circular.</p> <p>(ii) The format for the annual secretarial compliance report is placed at Annex-A to this circular.</p> <p>(iii) The annual secretarial compliance report in the aforesaid format shall be submitted by the listed entity to the stock exchanges within 60days of the end of the financial year.</p>
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S. No	NEWS ON SECURITIES EXCHANGE BOARD OF INDIA (SEBI)
1	<p>Informal Guidance in the matter of IIFL Asset Management Limited on SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 regarding the commencement of lock-in period of one year for investments made by Category I and II Alternate Investment Funds (AIF), if it is from the date of allotment.</p> <p>In this regard, SEBI clarified that in reference to the said regulations, the lock-in period of one year shall be from the date of purchase by the AIF.</p>
2	<p>Informal Guidance in the matter of DSP Merrill Lynch Limited on SEBI {KYC (Know Your Client) Registration Agency} Scheme, 2011 regarding the KYC documents submitted by a client whose status in the KRA system is shown as “verified/registered”, are found to be obsolete, deficient or missing, then can the entity continue to rely on the KRA Status without separately seeking the deficient/obsolete documents.</p> <p>In this regard, SEBI clarified that the responsibility is cast upon the intermediary to verify and identify the client and the entity and that the entity cannot rely on KYC of client whose documents are downloaded even if the KYC status of such client is a client is shown as verified/registered.</p>

3

**RBI during the week**

**Notifications -1; Master Directions –0; Master Circulars – 0; Circular - 0;**

**Press Release – 0**

S.No	Date of Issue	Notifications/Master Directors/Master Circulars	Subject & Link	Gist thereof
1	07.02.2019	Notification	External Commercial Borrowings (ECB) Policy – ECB facility for Resolution Applicants under Corporate Insolvency Resolution Process	<p><b>RBI permits IBC bidders to raise funds via ECBs to repay existing lenders</b></p> <p>In terms of paragraph 2.1.(viii) of the Annex to the A.P. (DIR Series) Circular No. 17, dated January 16, 2019 on “External Commercial Borrowings (ECB) Policy – New ECB Framework”, ECB proceeds cannot be utilised for repayment of domestic Rupee loans, except when the ECB is availed from a Foreign Equity Holder as defined in the aforesaid framework.</p> <p>On a review it has been decided, in consultation with the Government of India, to relax the end-use restrictions for resolution applicants under the Corporate Insolvency Resolution Process (CIRP) and allow them to raise ECBs from the recognised lenders,</p>



				<p>except the branches/ overseas subsidiaries of Indian banks, for repayment of Rupee term loans of the target company under the approval route. Accordingly the resolution applicants, who are otherwise eligible borrowers, can forward such proposals to raise ECBs, through their AD bank, to Foreign Exchange Department, Central Office, Mumbai of the Reserve Bank for approval.</p>
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S. No	NEWS ON RESERVE BANK OF INDIA (RBI)
1	RBI governor Shaktikanta Das said there would be no changes to last year's RBI circular that tightened bad loan recognition rules, frustrating companies and others that have been seeking a relaxation on grounds that they are too stringent.
2	RBI has expressed concerns over the market regulator's proposal to merge investment route of non-resident Indians (NRIs) with foreign portfolio investor (FPI) route, said three people privy to the development. The central bank is against the plan in its current form because the regulations that govern both the modes of inflows are separate, and clubbing the two would cause a regulatory haze. RBI is concerned over what rules would apply to the non-market investments made by NRIs through the non-resident external Rupee (NRE) route if they were merged with the foreign portfolio route. Further, different investment limits apply to NRIs and FPIs. Monitoring of investment limits also becomes a challenge. While flows from off-shore investors come under SEBI's ambit, investments by NRIs are regulated by RBI.
3	RBI has decided to assign risk weights for the rated exposures of banks to all non-banking financial companies (NBFC) to facilitate credit flow to the sector that is reeling under liquidity pressure post IL&FS defaults in August. The guidelines will be out by February end.

S. No	NEWS ON INSOLVENCY AND BANKRUPTCY CODE
1	The National Company Law Appellate Tribunal (NCLAT) on Monday allowed telecom gear maker Ericsson India to file its objection by February 8 over Reliance Communications' plea to proceed with insolvency process.
2	The Delhi-based National Company Law Appellate Tribunal (NCLAT) has directed the Ahmedabad bench of National Company Law Tribunal (NCLT) to decide on the resolution plan for Essar Steel on or before February 11.
3	The national company law appellate tribunal has turned down a plea by Tata Steel to consider its bid for bankrupt Bhushan Power and Steel as the most legitimate bid for the company.
4	The National Company Law Appellate Tribunal has asked the government and IL&FS to provide a list of group companies that have the ability to meet payment obligations in the next 12 months. In what would lead to immediate repayment of Rs 7,000 crore, the new board of IL&FS proposed final resolution plan to split the group companies into three categories based on 12 months' solvency and cash flow. The government submitted the debt resolution plan for crisis-hit IL&FS to the NCLAT and also suggested the name of retired Supreme Court judge Justice D K Jain to supervise the entire process.
5	The Serious Fraud Investigation Office (SFIO) has filed a petition in the National Company Law Tribunal, Mumbai, for winding up the Indian Bullion Market Association (IBMA) and Juggernaut Projects Ltd., which are being probed in connection with the alleged Rs 5,600 crore National Spot Exchange (NSEL) scam. IBMA is a subsidiary of NSEL and step-down subsidiary of 63 moons, NSEL's parent company. JPL is one of the exchange's defaulters.

S.No.	GENERAL IMPORTANT NEWS
1	Inflows to equity funds slow for third straight month in January, 2019 at Rs. 6158 crores.
2	More than 2,000 startups that had received funding from investors — angel financiers, private equity (PE) and venture capital (VC) funds — have received notices under the 'angel tax', showed a survey conducted by the Indian Private Equity and Venture Capital Association (IVCA), a grouping of investors.
3	The board of IDBI Bank proposed change in the name of the lender to either LIC IDBI Bank or LIC Bank following its takeover by Life Insurance Corporation.



Flat No.7, Door No.10 Madhans,  
South Canal Bank Road,  
Mandavelipakkam, Chennai 600028.

[mail@akshayamcorporate.com](mailto:mail@akshayamcorporate.com)

[www.akshayamcorporate.com](http://www.akshayamcorporate.com);Land Line:044-43533080

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