



CS Alok Kumar Kuchhal
Corporate Consultant
M.Com, LL.B., FCS,
Insolvency Professional

Contributing Team:

CS Chanchal Yadav
Associate Partner

CS Vekas Kumar Garg

CS Robin Sen Giri

Adv Vaishali Soni

CS Saurabh Gupta

CS Mahak Agarwal

Priyanshu Yadav

Shruti Mohanty

Sujeet Pandey

Concerns:

M/s Indiacorp Law, Advocates & Solicitors, Noida
M/s A.K. Kuchhal & Co., Company Secretaries, Noida
M/s NPV & Associates, Chartered Accountants, Mumbai

MCA UPDATES

Please note that **Filing of affidavits (from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief) as per Section 7(1)(c) of the Companies Act, 2013 read with rule 15 of the Companies (Incorporation) Third Amendment Rules **has been dispensed with vide the Companies (Amendment) Act,2017- from 27th July 2018. Only declaration by first subscriber(s) and director(s) in INC-9 is mandatory and affidavit is NOT required to be filed.** Stakeholders may kindly note the above provisions while filing SPICe forms for incorporation of Companies.*

** Revised version of the e-Form INC-35 -AGILE (Application for Goods and services tax Identification number, employees state Insurance corporation registration plus Employees provident fund organization registration)which is filed as linked form with SPICE for incorporation of a Company is available on MCA21 Company Forms Download page. The revised form contains fields relevant to EPFO notified vide the Companies (Incorporation) third Amendment Rules, 2019 dated 29th March 2019.*

** As per rule 12A of the Companies (Appointment and Qualification of Directors) Rules 2014, "every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year. Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October,2018." However, the DIR-3 KYC e-form presently available on the portal does not cater for the following:*

- (i) Filing on annual basis, and*
- (ii) Filing in respect of DINs allotted post 31 March 2018. It presently caters only to those individuals who were allotted DINs as on 31st March 2018 and whose DINs have been marked as 'Deactivated due to non-filing of DIR-3 KYC'*

DIN holders are required to file the DIR-3 KYC form every year, so that they are aware of and confirm the data & information as available in the MCA21 system.

With the objective of making the form more user friendly, the form is presently being modified to enable pre-filing of data & information so that annual filings can be done by DIN holders in a simple and user friendly manner.

The revised form, which will be shortly deployed, can be filed without any fee within a period of 30 days from the date of deployment. Accordingly, DIN holders who had filed DIR-3 KYC form

earlier and complied with the said provisions may kindly await the deployment of the modified form for fulfilling their compliance requirements.

Filing of One Time Return in DPT-3 Form dated 12.04.2019

Circular No. 05/2019

Dated: 12.04.2019

As per Rule 16A(3) of the Companies (Acceptance of deposit) Rules, 2014 "every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to the date of publication of the notification in the Official Gazette, as specified in Form DPT-3 within ninety days from the date of said publication of this notification along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014". It may also be noted that data on deposits should be filed upto 31st March, 2019 (as opposed to 22nd January, 2019 which was originally indicated in the said Rule). Rule change is being issued separately.

2. Pending the deployment of DPT-3 Form on MCA 21 portal and in order to avoid inconvenience to stakeholders on account of various factors, it is stated that the additional fee, as provided under the Companies (Registration Offices and Fees) Rules, 2014, shall be levied after 30 days from the date of deployment of the DPT- 3 form on MCA 21 portal.

3. This issues with the approval of competent authority.

Related Link: http://www.mca.gov.in/Ministry/pdf/CircularDPT-3Form_12042019.pdf

CRA-2 Additional Fee

Circular No. 04/2019

Dated: 04.04.2019

The Ministry has received several representations about extension of last date for filing e-form CRA-2 without additional fees where the company has been mandated to get its cost records audited for the first time under Companies Act, 2013 on account of Companies (Cost Records and Audit) Amendment Rules, 2018 as notified vide G.S.R. I 157(E) dated 03.12.2018.

2. The matter has been examined and it has been decided to extend the last date for filing of e-form CRA-2 in the abovementioned cases without payment of additional fees upto 31.05.2019.

3. This issues with the approval of the competent authority.

Related Link: http://www.mca.gov.in/Ministry/pdf/GeneralCircular042019_05042019.pdf

Technology Committee for Mutual Funds/Asset Management Companies (AMCs)

Notification NO. SEBI/HO/IMD/DF2/CIR/P/2019/058

Dated: 11th April, 2019

1. With rapid technological advancement in securities market, technology is playing a very important role in asset management business and have a major impact on the various processes and controls designed and implemented by AMCs. The role of technology related aspects has become even more critical in managing risks related to asset management business.
2. In order to deal with various technology related issues, AMCs are advised to constitute a Technology Committee comprising experts proficient in technology. Such committee shall have atleast one independent external expert with adequate experience in the area of technology in Mutual Fund industry / BFSI.
3. The aforementioned committee shall, inter alia, review the cyber security and cyber resilience framework for Mutual Funds / AMCs in terms of Para 7 of Annexure-1 of SEBI circular SEBI/HO/IMD/DF2/CIR/P/2019/12 dated January 10, 2019 and review the system audit related aspects of AMCs in terms of Para 4 of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2019/57 dated April 11, 2019 on system audit framework for Mutual Funds / AMCs.
4. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Related Link: https://www.sebi.gov.in/legal/circulars/apr-2019/technology-committee-for-mutual-funds-asset-management-companies-amcs-_42692.html

System Audit Framework for Mutual Funds/Asset Management Companies (AMCs)

Notification NO. SEBI/HO/IMD/DF2/CIR/P/2019/57

Dated: 11th April, 2019

1. Requirement of system audit for mutual funds was introduced vide SEBI Circular SEBI/IMD/CIR No.9/176988/2009 dated September 16, 2009.
2. Considering the importance of systems audit in technology driven asset management activity and to enhance and standardize the systems audit, revised guidelines in this regard are placed at Annexure 1. These guidelines are indicative and not exhaustive in nature. On the date of issuance of this circular, SEBI Circular SEBI/IMD/CIR No.9/176988/2009 dated September 16, 2009 shall stand rescinded.

3. *The aforementioned audit should be encompassing audit of systems and processes, inter alia, related to examination of integration of front office system with the back office system, fund accounting system for calculation of net asset values, financial accounting and reporting system for the AMC, Unit-holder administration and servicing systems for customer service, funds flow process, system processes for meeting regulatory requirements, prudential investment limits and access rights to systems interface.*
4. *Mutual Funds / AMCs are advised to conduct systems audit on an annual basis by an independent CISA / CISM qualified or equivalent auditor to check compliance of the provisions of this circular.*
5. *Mutual Funds / AMCs are further advised to take necessary steps to put in place systems for implementation of this circular. The exception report as per Annexure 2 should be placed before the Technology Committee for review. The Technology Committee after review shall place the same before the AMC & Trustee Board. Thereafter, exception observation report along with trustee comments starting from the financial year April 2019 – March 2020 should be communicated to SEBI within six months of the respective financial year. Further, System Audit Reports shall be made available for inspection.*
6. *This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.*

Related Link: https://www.sebi.gov.in/legal/circulars/apr-2019/system-audit-framework-for-mutual-funds-asset-management-companies-amcs-_42691.html

Risk-based Capital and net worth requirements for Clearing Corporations under Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018

Notification NO. SEBI/HO/MRD/DRMNP/CIR/P/2019/55

Dated: 10th April, 2019

1. *SEBI constituted a Committee under the Chairmanship of Shri R Gandhi, Former Deputy Governor, Reserve Bank of India, to review the extant regulatory framework pertaining to Market Infrastructure Institutions (“MIs”) viz. Stock Exchanges, Clearing Corporations (“CCP” or “CC”) and Depositories. Based on the recommendations made by the Committee, SEBI notified the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (“SECC Regulations, 2018”).*
2. *In order to ensure that the net worth of a CCP adequately captures the risks faced by it, SEBI vide Regulation 14(3) of SECC Regulations, 2018 has adopted a risk-based approach towards computation of capital and net worth requirements for CCPs. The same is reproduced as under:*

14(3)(a) Every recognized clearing corporation, on commencement of operations, shall, on an ongoing basis, maintain capital including retained earnings and reserves, as may be specified by the Board from time to time, to adequately cover counterparty credit risk, business risk, legal and operational risk.

14(3)(b) Every recognized clearing corporation shall hold additional capital to cover costs required for orderly wind-down or recovery of operations

14(3)(c) Every recognized clearing corporation shall maintain, at all times, a minimum net worth of one hundred crore rupees or capital as determined under regulation 14(3)(a) and

14(3)(b), whichever is higher.

3. Accordingly, in consultation with the recognised Clearing Corporations, it has been decided to issue granular norms related to computation of risk-based capital and net worth requirements for CCPs as under:

3.1. For Credit Risk ("A"):

3.1.1. The credit risk from default of clearing members is being captured through the Core SGF framework as prescribed vide SEBI circular CIR/MRD/DRMNP/25/2014 dated August 27, 2014 on "Core Settlement Guarantee Fund, Default Waterfall and Stress Test". The CCP contribution to Core SGF shall be at least 50% of the Minimum Required Corpus (MRC).

3.1.2. The minimum contribution required to be made by the CCP towards Core SGF shall be considered for the purpose of computing capital requirements towards credit risk.

3.2. For Business Risk ("B"):

3.2.1. The capital requirement for general business risk shall be based on a CCP's own estimate as it is dependent on factors specific to each CCP such as execution of business strategy, market environment, response(s) to competition or technological progress etc.

3.2.2. A CCP shall identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern.

3.2.3. The capital requirement for business risk shall be subject to a minimum of 25% of annual gross operational expenses.

3.3. For Orderly Wind-down ("C"):

3.3.1. A CCP shall have in place a viable recovery or orderly wind-down plan and hold sufficient liquid net assets funded by equity to implement this plan.

3.3.2. These assets shall be determined by the general business risk profile of the CCP

and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services.

3.3.3. While computing the capital requirement for winding down, a CCP shall consider a minimum time span of six months for ensuring an orderly winding down or restructuring of its activities and thus, hold liquid net assets equal to at least six months of gross operational expenses.

3.4. For Operational and Legal Risks (“D”):

3.4.1. A CCP shall identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, and control measures. CCPs may be exposed to risk of litigations from participants/investors or other entities. It is, therefore, important that the CCP identifies such risks and maintains adequate financial resources to mitigate any losses in the foreseeable future.

3.4.2. The capital requirement for legal and operational risks shall at least be 20% of the aggregate of capital requirements for counterparty credit risk, business risk and orderly wind-down or recovery of operations, i.e. 20% of (A+B+C).

4. The total risk-based net worth requirement for CCPs shall be computed as the aggregate of capital requirements each for counterparty credit risk, business risk, orderly winding down or recovery of operations and legal and operational risks i.e. (A+B+C+D) or, 1.20 (A+B+C). Thus, the CCPs shall be required to maintain, at all times, in the form of liquid assets, a net worth of either INR 100 crore or as determined in the manner specified above, whichever is higher.

5. The CCPs shall use the most recent audited information from their annual financial statement for the purposes of calculation of gross operational expenses.

6. The CCPs shall regularly review their net worth requirement and ensure that the net worth does not fall below the prescribed threshold. A certificate to this effect, as signed by the Managing Director of the CCPs, shall be submitted to SEBI within 15 days from the end of every quarter. The first such submission shall be made applicable for the April 2019 – June 2019 quarter.

7. In exceptional cases where the net worth of a CCP falls below the prescribed threshold, the CCP shall forthwith inform SEBI inter alia mentioning the reason(s) behind the same and the measure(s) it intends to adopt in order to re-attain the prescribed net worth.

8. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Related Link: https://www.sebi.gov.in/legal/circulars/apr-2019/risk-based-capital-and-net-worth-requirements-for-clearing-corporations-under-securities-contracts-regulation-stock-exchanges-and-clearing-corporations-regulations-2018_42675.html

Separate BSDA limit for Debt Segment

Circular NO. MRD/DoP2DSA2/CIR/P/2019/51

Dated: 10th April, 2019

1. SEBI vide circulars CIR/MRD/DP/22/2012 dated August 27, 2012 and CIR/MRD/DP/20/2015 dated December 11, 2015, introduced the facility of "Basic Services Demat Account" (BSDA) with limited services for eligible individuals with the objective of achieving wider financial inclusion and to encourage holding of demat accounts.
2. In order to further boost participation in Debt Market and based on representation received from market participants, in partial modification of the abovementioned SEBI circulars, it has been decided to revise the structure of charges for debt securities as defined in SEBI (Issue and Listing of Debt Securities) Regulations, 2008, as given below:
 - a) No AMC shall be levied in case the value of holdings of debt securities is up to Rs. 1 lakh and a maximum AMC of Rs. 100 shall be levied if the value of holdings of debt securities is between Rs. 1,00,001 and Rs.2,00,000.
and
 - b) No AMC shall be levied in case the value of holdings other than debt securities is below Rs. 50,000 and a maximum AMC of Rs. 100 shall be levied if the value of holdings other than debt securities is between Rs.50,001 and Rs.2,00,000.
3. This circular shall come into effect from June 01, 2019.
4. The Depositories are advised to:-
 - a) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision as may be applicable / necessary; and
 - b) communicate to SEBI, the status of implementation of the provisions of this circular by the DPs in the Monthly Development Report.
5. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Related Link: https://www.sebi.gov.in/legal/circulars/apr-2019/separate-bsda-limit-for-debt-segment_42667.html

RBI UPDATES

Foreign Exchange Management (Foreign Currency Accounts by a Person resident in India) Regulations 2015- Opening of Foreign Currency Accounts by Re-insurance and Composite Insurance brokers

Notification NO. RBI/2018-19/167

A.P. (DIR Series) Circular No.29

Indiacorp Law

0120-4214372, 9650826950, 9810894275 indiacorp@live.com, csaloknoida@gmail.com www.indiacorplaw.com

Dated: April 11, 2019

Attention of Authorised Dealers (ADs) is invited to the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015, notified vide Notification No. FEMA 10(R)/2015-RB dated January 21, 2016, as amended from time to time and the relevant directions issued thereunder.

2. The extant Regulations regarding opening of foreign currency accounts in India by persons resident in India have since been reviewed in consultation with the Government of India. As notified vide Notification No. FEMA 10(R)(2)/2019-RB dated February 27, 2019, re-insurance and composite insurance brokers registered with IRDA may open and maintain non-interest bearing foreign currency accounts with an AD bank in India for the purpose of undertaking transactions in the ordinary course of their business.

3. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

4. The Master Direction No. 14 on Deposits and Accounts, dated January 1, 2016 is being updated simultaneously to reflect the changes.

5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Related Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11533&Mode=0>

IBBI UPDATES

Compliance with regulations 7(2)(ca) and 13(2)(ca) of IBBI (Insolvency Professional) Regulations, 2016

File No. IBBI/IP/020/2019

12th April, 2019

Regulation 7 (2) (ca) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) specify the requirement and manner of payment of fees by an Insolvency Professional (IP) the Insolvency and Bankruptcy Board of India (Board). It reads as under:

“Certificate of registration

7. (1) ...

(2) The registration shall be subject to the conditions that the insolvency professional shall— (ca) pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year, on or before the 30th of April every year, along with a statement in Form E of the Second

Schedule;”

2. Regulations 13 (2) (ca) of the IP Regulations specify the requirement and manner of payment of fees by an Insolvency Professional Entity (IPE) to the Board. It reads as under:

“Recognition of Insolvency Professional Entities

13. (1) ...

(2) The recognition shall be subject to the conditions that the insolvency professional entity shall-

(ca) pay to the Board, a fee calculated at the rate of 0.25 percent of the turnover from the services rendered by it in the preceding financial year, on or before the 30th of April every year, along with a statement in Form G of the Second Schedule;”

3. The Board has enabled a facility for electronic submission of Form E or G, as the case may be, and details of login in this regard have already been shared with IPs and IPEs.

4. It is clarified that-

(a) Form E / Form G for the year 2018-19 shall be submitted electronically by an IP / IPE before 30th April, 2019; and

(b) Form E / Form G shall be submitted by every IP / IPE even if he has not earned any professional fee or does not have turnover during 2018-19.

5. This Circular is issued in exercise of powers under clauses (a), (aa) and (c) of sub-section (1) of section 196 of the Insolvency and Bankruptcy Code, 2016 read with sub-regulation (2) of regulation 7 and sub-regulation (2) of regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Related Link:

https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Apr/IBBI%20Circular%20No.%20IBBI-IP-020-2019%20dated%2012th%20April%202019_2019-04-12%2019:40:08.pdf

Thanking You,

Team Indiacorp

0120 - 421 4372, 9650826950, 9810894275

indiacorp@live.com, csaloknoida@gmail.com

www.indiacorplaw.com

Disclaimer:

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither India Corp Law nor any other member of the India Corp Law organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

Indiacorp Law

0120-4214372, 9650826950, 9810894275 indiacorp@live.com, csaloknoida@gmail.com www.indiacorplaw.com