

REGULATORY NEWSLETTER

MONTHLY UPDATE FEBRUARY 2020

(Circulars / Notifications released during February 2020)



RBI

SEBI

MCA

IBBI

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RBI

1. Interest Subvention Scheme for MSMEs

RBI/2019-20/155 FIDD.CO.MSME.BC.No.17/06.02.031/2019-20

Dated 5th February, 2020

Vide this notification, RBI has made changes in operational guidelines in respect of the 'Interest Subvention Scheme for MSMEs' as contained in the Circular of Feb 2019.

The following major changes have been made:

1. Statutory auditor certificate can be submitted by June 30, 2020. In the meantime, claims can be settled based on internal/concurrent auditor certificate.
2. Acceptance of claims in multiple lots for a given half-year by eligible institutions is allowed.
3. Requirement of Udyog Aadhar Number (UAN) may be dispensed with for units eligible for GST. Units not required to obtain GST, may either submit Income Tax Permanent Account Number (PAN) or their loan account must be categorized as MSME by the concerned bank.
4. Trading activities allowed without UAN .

Further, with the trading activity also now being eligible for interest subvention, the 'Format of Certificate for claiming Subsidy' has been revised.

[Notification](#)

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SEBI

1. Performance review of the commodity derivatives contracts

Circular No.: SEBI/HO/CDMRD/DNPMP/CIR/P/2020/21

Dated 4th February, 2020

Vide this circular, SEBI in consultation with the Commodity Derivatives Advisory Committee (CDAC) has decided the following in respect of commodity derivatives contracts:

1. All recognized stock exchanges shall review the performance of all contracts traded on their exchanges, in commodity derivatives segment, as per the parameters laid down in the Circular.
2. The said performance review shall be consulted with the Product Advisory Committee (PAC) constituted in terms of SEBI Circular dated August 07, 2019
3. The said performance review along with the methodology adopted in evaluation, if any, shall be disclosed by the stock exchanges on their website prominently.
4. The said performance review shall be conducted on an annual basis for each financial year and shall be disclosed by 30th June of the following financial year.

The provisions of the circular are effective from April 01, 2020 and the stock exchanges shall be required to undertake and disclose performance review of all contracts traded on their exchange from FY 2019-20.

[Circular](#)

2. Guidelines for Portfolio Managers

Circular No.: SEBI/HO/IMD/DF1/CIR/P/2020/26

Dated 13th February, 2020

SEBI had earlier this year in January notified the SEBI (Portfolio Managers) Regulations, 2020 ("PMS Regulations").

In addition to the above, certain changes have now been mandated to the regulatory framework for Portfolio Managers.

The changes introduced deal with the following issues

1. Fees and Charges
2. Direct onboarding of clients by managers
3. Uniform information about investment approach
4. Periodic reporting to SEBI
5. Reporting of Performance
6. Disclosure in respect of "material changes"
7. Supervision of Distributors

The provisions of this Circular are applicable with effect from May 01, 2020.

[Circular](#)

3. Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure

Circular No.: SEBI/HO/MRD1/DSAP/CIR/P/2020/29

Dated 26th February, 2020

SEBI had earlier permitted mutual fund distributors to use recognized stock exchanges' infrastructure to purchase and redeem mutual fund units directly from Mutual Fund / Asset Management Companies. It had also allowed SEBI Registered Investment Advisors (RIAs) to use infrastructure of the recognized stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies on behalf of their clients, including direct plans.

In order to further increase the reach of this platform, SEBI has decided to allow investors to directly access infrastructure of the recognized stock exchanges to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies.

[Circular](#)

4. Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015- Amendment

Circular No.: SEBI/HO/MRD1/DSAP/CIR/P/2020/30

Dated 27th February, 2020

Vide this circular SEBI has amended the SEBI (IFSC) Guidelines, 2015 issued on March 27, 2015.

Following is a gist of the amendments :

1. Any SEBI-registered intermediary (except trading member or clearing member) or its international associates in collaboration with such SEBI-registered intermediary may provide financial services relating to securities market, in IFSC, without forming a separate company (previously separate company was required to be formed for providing such services), subject to the prior approval of the Board.

Also, prior permission of the Board is not required in case such financial services are offered exclusively to institutional investors or services are exclusively to institutional investors by non SEBI-registered intermediary, if such intermediary is recognized entity in a foreign jurisdiction as defined under clause 2 (1) (j) of these guidelines

2. The entities issuing and/or listing their debt securities in IFSC shall prepare their statement of accounts in accordance with IFRS/ US GAAP/IND AS or accounting standards as applicable to them in their place of incorporation (previously statement of accounts were to be prepared in accordance with Companies Act, 2013 as applicable in IFSC) failing which a quantitative summary of significant differences between national accounting standards and IFRS shall be prepared by such entity and incorporated in the relevant disclosure documents to be filed with the exchange.

[Circular](#)

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MCA

1. Commencement Notification- Sub-section 11 and 12 of Section 230 of the Act 'Power to Compromise or Make Arrangements with Creditors and Members'

Notification No. S.O. ____ (E)
Dated 3rd February, 2020

With the provisions coming into effect, the compromise or arrangement made under the section will also include the takeover offer made in such manner as may be prescribed. However, in case of listed companies, takeover offer shall be as per the regulations framed by SEBI.

Also, an aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

[Notification](#)

2. Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020 read with National Company Law Tribunal (Amendment) Rules, 2020

Notification No. G.S.R. 79(E). and G.S.R. 80(E).
Dated 3rd February, 2020

In view of the commencement of the aforesaid sub-sections (Ref. Point 1 above), MCA has modified the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and National Company Law Tribunal Rules, 2016.

Following is a gist of the new provisions notified :

1. A provision for majority shareholders to buy out minority shareholders has been inserted whereby, a member of the company along with any other member holding not less than three-fourths of the shares in such company shall make an application for acquiring any part of the remaining shares of the company.
2. Such application of arrangement for takeover offer shall contain the following:
 - a. the report of a registered valuer disclosing details of the valuation of the shares
 - b. details of a bank account opened separately wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited
3. The application fees in case of takeover offer of companies which are not listed is Rs.5000.
4. The application is to be made in Form NCLT-1 along with the documents as prescribed in Annexure B of the rules.

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020 - [Notification](#)
National Company Law Tribunal (Amendment) Rules, 2020 - [Notification](#)

3. Nidhi (Amendment) Rules, 2020

Notification No. G.S.R. 81(E).
Dated 3rd February, 2020 *Effective Date – 10th February, 2020*

Vide this notification, amendments are made to substitute following forms in place of the existing forms:

Form No.	Particulars	Section/Rule
NDH-1	Return of Statutory Compliances	S-406 and sub rule (2) of rule 5 of the Nidhi Rules, 2014]
NDH-2	Application for extension of time	Sub-rule (3) of rules of 5 of Nidhi Rules, 2014
NDH-3	Return of Nidhi Company for the half year ended	Rule 21 of the Nidhi Rules 2014

[Notification](#)

4. Companies (Issue of Global Depository Receipts) Amendment Rules, 2020	
Notification No. G.S.R. 111(E). Dated 13 th February, 2020	
<p>Vide this notification, MCA has amended the Companies (Issue of Global Depository Receipts) Rules, 2014.</p> <p><i>A gist of the amendments notified is as below</i></p> <ol style="list-style-type: none"> Substitution of words “Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993” with “Depository Receipts Scheme, 2014” in rule 2. Substitution of Rule 5 (1) stating that the depository receipts can be issued by way of a public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction Insertion of a new proviso in Rule 7 which states that the proceeds of the issue of depositories receipts may be remitted in an IFSC banking unit and utilized in accordance with the instructions issued by RBI from time to time. <p>Notification</p>	
5. Nidhi (Second Amendment) Rules, 2020	
Notification No. G.S.R. ____ (E). Dated 14 th February, 2020	
<p>Vide this amendment, Rule 23A of the Nidhi Rules 2014 has been amended to extend the time limit of declaring a Public Company as Nidhi Company from 6 months to 9 months.</p> <p>Accordingly, a public company and every Nidhi incorporated under the Act shall get itself declared within a period of one year from the date of its incorporation or within a period of nine months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later.</p> <p>Notification</p>	
6. Filing of forms in the Registry (MCA-21) by the Insolvency Professional (Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator) appointed under Insolvency Bankruptcy Code, 2016 (IBC, 2016)	
General Circular No. 04/2020 Dated 17 th February, 2020	
<p>Vide this circular, MCA has allowed the filing of forms in the registry of MCA-21 by the IRP or RP or Liquidator as appointed under IBC, 2016.</p> <p>The procedure specified by MCA is as under:</p> <ol style="list-style-type: none"> Order of NCLT/ NCLAT approving the IRP/RP/Liquidator to act as such is to be filed in E- Form INC-28 Once INC-28 is approved by the respective ROC, the name of Insolvency Professional will be reflected as 'Chief Executive Officer' under the Authorized Signatory details of the Company. Status of the Company will be shown as under CIRP or Liquidation, based on the filing of the e-form. On completion of the insolvency process or upon getting stay order, the Insolvency Professional is required to file INC-28 again, to change the status of the Company on the MCA portal. <p>Circular</p>	
7. Companies (Incorporation) Amendment Rules, 2020	
Notification No. G.S.R. 128(E). Dated 18 th February, 2020	
<p>MCA has modified the Companies (Incorporation) Rules, 2014. A</p> <p><i>A gist of the amendments made is as follows :</i></p> <ol style="list-style-type: none"> For Reservation of name or change of name, application is required to be made through the web service by using web 	

service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name)

2. In case of re-submission a time period of fifteen days for rectification of the defects is provided.
3. Form AGILE has been substituted with Form AGILE-PRO through which apart from Application for Goods and Services Tax Identification Number, Employees State Insurance Corporation Registration plus Employees Provident Fund Organization Registration, **Profession Tax Registration** and **Opening of Bank Account** can also be made.

[Notification](#)

8. Companies (Auditor's Report) Order, 2020

Order No. S.O.____(E).
Dated 25th February, 2020

MCA has notified the revised Order called the Companies (Auditor's Report) Order, 2020.

The applicability and the additional reporting requirements of CARO, 2020 have been briefly discussed in [Annexure A](#) to this newsletter.

[Companies \(Auditor's Report\) Order 2020](#)

1. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2020

Notification No. IBBI/2019-20/GN/REG055
Dated 12th February, 2020

The Regulations require the Insolvency Professionals (IP) to file a set of forms, namely, IP1, CIRP1, CIRP2, CIRP3, CIRP4, CIRP5, and CIRP6 covering the life cycle of a CIRP on an electronic platform of the Board within the prescribed time.

Vide this Amendment, IBBI has extended the last date of submission of delayed forms with fees from 01/01/2020 to 01/04/2020.

The filing of a Form under this regulation after the due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st April, 2020.

[Notification](#)

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Annexure A

Companies (Auditor's Report) Order, 2020

I. Applicability:

CARO, 2020 shall apply to every company including foreign company except:

- i. a banking company,
- ii. an insurance company,
- iii. a Section 8 Company,
- iv. a One Person Company and a small company,
- v. a private limited company, not being a subsidiary or the holding company of a public company, having:
 - a. paid-up capital and reserves and surplus, less than one crore rupees as on the balance sheet date and
 - b. which does not have total borrowings exceeding one crore rupees from any bank or financial institution at any point of time during the financial year and
 - c. which have a total revenue less ten crore rupees during the financial year as per the financial statements.

This Order does not apply to the Auditors' report on *consolidated financial statements* except for comment in respect of qualifications if any appearing in the reports of the companies whose accounts are consolidated.

The Order applies to Audit reports to be prepared in terms of section 143 of the Companies Act, 2013 on the accounts of every company audited, to which this Order applies, for the financial years commencing on or after the 1st April, 2019.

II. Additional Matters to be included in Auditors report

Fixed Assets/ Property, Plant and Equipment (PPE)

- i) Reporting over maintenance of records of Intangible assets.
- ii) Whether title deeds of all immovable properties (other than leased properties) are held in Company's name.
- iii) In case of Revaluation of PPE, whether the same has been made based on the report of Registered Valuer. If the amount of change is 10% or more in the aggregate of the net carrying value of each class of PPE or intangible assets, to specify the amount of change.
- iv) Whether proceedings initiated or are pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 are appropriately disclosed in the financial statements.

Inventory

- i) Discrepancies identified by the management having impact of 10% or more of inventory value needs to be reported along with how they have been dealt with in the books
- ii) In case the Company is having working capital limit exceeding INR 5 crores at any time during the year, based on the security of current assets (e.g. Stock, Debtors), to report whether the quarterly statements (e.g. Stock Statements, Debtors Listing) filed with the lender are in agreement with books of accounts.

Investments, Loans or advances given by the company

- i) In case of any investments, loans or advances in the nature of loans, or guarantee or security provided :
 - to subsidiaries, joint ventures and associates
 - to parties other than subsidiaries, joint ventures and associates

to indicate the aggregate amount during the year and balance outstanding at the balance sheet date:

- ii) If the amount is overdue, state the total amount overdue for more than 90 days and whether reasonable steps have been taken by the company for recovery of principal and interest.
- iii) If any loan or advance in the nature of loan granted has fallen due during the year and it has been renewed or extended or fresh loans granted to settle the overdues of existing loans given to the same parties, specify the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the nature of loans granted during the year [not applicable to companies whose principal business is to give loans];

- iv) If the company has granted any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment, specify the aggregate amount, percentage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties as defined in clause (76) of section 2 of the Companies Act, 2013;

Undisclosed Income

- i) If any transactions not recorded in the books of accounts, have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961, whether the previously unrecorded income has been properly recorded in the books of account during the year;

Default in repayment of loans

- i) whether Company is declared as “Willful defaulter
ii) If the company has taken funds for meeting group company’s obligations, details thereof to be reported with nature of such transactions and the amount in each case;
iii) If the company has taken loans by pledge of securities held in its subsidiaries, JVs and associates, details thereof to be reported along with the fact if the company has defaulted in repayment of such loans raised.

Reporting of Fraud

- i) Whether any report under section 143(12) of the Companies Act, 2013 was filed by auditors in Form ADT-4 to Central Government
ii) Whether auditor has considered “Whistle Blower” complaints, if any, received during the year.

Internal Audit

- i) Whether the company has an Internal Audit System commensurate with its size and nature of business
ii) Whether the reports of Internal Auditors have been considered by the auditor.

Non-Banking Financial Activities

- i) Whether the company has conducted any non-banking financial or housing finance activities without a valid certificate of registration from RBI.
ii) If the company is Core Investment Company [CIC] as per regulations of RBI, whether it continues to fulfil the criteria of CIC and in case the company is exempt or unregistered CIC whether it continues to fulfil such criteria.
iii) If there are more than one CIC in the Group, report the number of CIC that are part of the Group.

Cash Losses

Whether the Company has incurred Cash Losses during the current and in preceding FY and amount of such cash losses.

Auditor’s resignation

If the statutory auditors have resigned during the year, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors.

Financial Ratios

Based on financial ratios, ageing and expected date of realization of financial assets and payment of financial liabilities and other information accompanying the financial statements and the auditors’ knowledge of Board of Directors and Management plans, whether the auditor is of the opinion that no material uncertainty exists as on the date of audit report that the company is capable of meeting its liabilities existing on the date of balance sheet as and when they fall due within a period of one year from the balance sheet date.

Corporate Social Responsibility

Whether the unspent amount has been transferred to a Fund specified in Schedule VII to the Companies Act, 2013 within 6 months from the end of the year and whether Ongoing project balance funds have been transferred to special account in compliance with sub-section 5 & 6 to section 135 of the Companies Act.

(Amendment under the Companies Act, 2013 not yet notified)

CARO of Consolidated Financial Statements

Whether there are any qualifications or adverse remarks by the respective auditors in the CARO reports of the companies included in the consolidated financial statements. If yes, to report the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks.

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.