

LOVI MEHROTRA & ASSOCIATES

CHARTERED ACCOUNTANTS

MONTHLY UPDATE FEBRUARY 2019

(Circulars/ Notifications released during February 2019)

[RBI](#)

[SEBI](#)

[MCA](#)

28th February, 2019

Lovi Mehrotra & Associates

21-22, II Floor, Krishna Nagar,

Safdarjung Enclave,

New Delhi – 110029

www.lma.co.in

I. RBI

S.NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY
1.	RBI/2018- 19/121 A.P. (DIR Series) Circular No. 18 Dated 7 th February, 2019	External Commercial Borrowings (ECB) Policy – ECB facility for Resolution Applicants under Corporate Insolvency Resolution Process	<p>RBI has decided to relax the end-use restrictions for resolution applicants under the Corporate Insolvency Resolution Process (CIRP) and allow them to raise ECBs from recognized lenders, except the branches / overseas subsidiaries of Indian banks, for repayment of Rupee term loans of the target company under the approval route.</p> <p>Accordingly, resolution applicants, who are otherwise eligible borrowers, can forward such proposals to raise ECBs, through their AD bank, to FED, Central Office, Mumbai of the Reserve Bank for approval.</p> <p>All other provisions of the extant ECB policy remain unchanged.</p> <p>Circular</p>
2.	RBI/2018- 19/123 A.P. (DIR Series) Circular No. 19 Dated 15 th February, 2019	Investment by Foreign Portfolio Investors (FPI) in Debt	<p>To encourage a wider spectrum of investors to access the Indian corporate debt market, RBI has decided to withdraw the restriction w.r.t, limit of investment of more than 20% of FPI's corporate bond portfolio in a single corporate.</p> <p>Circular</p>
3.	RBI/2018- 19/130 DNBR (PD) CC.No.097/03.10. 001/2018-19 Dated 22 nd February, 2019	Harmonisation of different categories of NBFCs	<p>In order to provide NBFCs with greater operational flexibility, RBI has decided to harmonise different categories of NBFCs into fewer ones based on principle of regulation by activity.</p> <p>Accordingly, it has been decided to merge the three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called NBFC - Investment and Credit Company (NBFC-ICC).</p> <p>Further, a deposit taking NBFC-ICC shall not invest more than twenty per cent of its owned fund in unquoted shares of another company which is not a subsidiary company or a company in the same group of the NBFC.</p> <p>Notification</p>

4.	RBI/2018-19/132 A.P. (DIR Series) Circular No. 20 Dated 27 th February, 2019	Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign entities	<p>RBI has amended Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any Other Place of Business) Regulations, 2016.</p> <p>Every NGO, NPO, Body/Agency/Department of a foreign Government making an application to RBI for opening of a BO/LO/PO/any other place of business in India has to ensure that it is not engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA).</p> <p>If it is so engaged, then it shall obtain a certificate of registration under the said Act only and not seek permission under LO/BO/PO policy. Form FNC has been modified accordingly to include such declaration.</p> <p>All other provisions of the LO/BO/PO policy shall remain unchanged.</p> <p>Circular</p>
----	--	---	--

[Back](#)

II. SEBI

S.NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY
1.	<p>Circular No.: CIR/CFD/CMD1/27/2019</p> <p>Dated 8th February, 2019</p>	<p>Format for annual secretarial audit report and annual secretarial compliance report for listed entities and their material subsidiaries</p>	<p>SEBI has made the following changes w.r.t. secretarial audit of listed entities and its material unlisted subsidiaries incorporated in India:</p> <ul style="list-style-type: none"> - Listed entity and its unlisted material subsidiaries shall continue to use the same Form No. MR-3 for Annual Secretarial Audit Report. - Additionally, listed entities are required to have a check on compliance of all applicable SEBI Regulations and circulars/ guidelines issued thereunder by a PCS on an annual basis. - PCS is required to submit a report (Annual Secretarial Compliance Report) to the listed entity in the format prescribed in this circular. <p>Annual Secretarial Compliance Report in the aforesaid format is required to be submitted by the listed entity to the stock exchanges within 60 days of the end of the financial year.</p> <p>Circular</p>
2.	<p>Circular No.: SEBI/HO/MRD/DO P1/CIR/P/2019/28</p> <p>Dated 8th February, 2019</p> <p>Reference Circular No.: SEBI/HO/MRD/DO PI/CIR/P/2018/161/28</p> <p>Dated 31st December, 2018</p>	<p>Physical settlement of stock derivatives</p>	<p>SEBI has decided that in addition to the existing schedule of stock derivatives moving to physical settlement, the derivatives on such stock shall also be moved to physical settlement from the expiry of new cycle on satisfaction of any of the under mentioned criteria:</p> <ul style="list-style-type: none"> • Stocks which witness 10% or more intra-day movement on 10 or more occasions in the previous 6 months • Stocks which witness 10% or more intra-day movement on 3 or more occasions in the previous 1 month • Stocks which witness 25% or more intra-day movement on 1 or more occasions in the previous 1 month • Maximum daily volatility of the stock (as estimated for margining purpose) is more than 10% either in equity or equity derivatives segment in the previous 1 month <p>Circular</p>

3.	<p>Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2019/30</p> <p>Dated 11th February, 2019</p>	<p>Relaxation from requirement to furnish a copy of PAN for transfer of equity shares of listed entities executed by non-residents</p>	<p>Vide this circular, SEBI has decided to grant relaxation to non-residents (NRIs, PIOs, OCIs and foreign nationals) from the requirement of furnishing PAN and permitted them to transfer equity shares in listed entities to their immediate relatives.</p> <p>However, such relaxation shall only be available for transfers executed after January 01, 2016 for non-commercial transactions, i.e. transfer by way of gift among immediate relatives on the basis of submission of an alternate valid document to ascertain identity as well as the non-resident status.</p> <p>Immediate relative" shall have the same meaning as defined in Regulation 2(1)(l) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,2011</p> <p>Circular</p>
----	--	--	---

[Back](#)

III. MCA

S.NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY
1.	Notification No. G.S.R. 100(E). Dated 8 th February, 2019	Companies (Significant Beneficial Owners) Amendment Rules, 2019	<p>MCA has amended the Companies (Significant Beneficial Owners) Rules, 2018.</p> <p>It has clarified on several issues that have been raised in the past couple of months following the implementation of the SBO Rules.</p> <p>Brief highlights of the amendments are discussed in “Annexure A” to this Newsletter.</p> <p>Notification</p>
2.	Notification No. G.S.R. ____ (E). Dated 19 th February, 2019	Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2019	<p>MCA has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 and the amendment pertains to PAS-3.</p> <p>Against serial number 6, in item (b) of PAS-3, the words “not allotted securities with an application size of less than twenty thousand per person” against the second check box shall be omitted.</p> <p>As the requirement of application size of Rs. 20,000/- has been done away with for all companies recently, this amendment in PAS - 3 will sync the form with the applicable rules.</p> <p>Notification</p>
3.	Notification No. G.S.R. ____ (E). Dated 19 th February, 2019	Companies (Adjudication of Penalties) Amendment Rules, 2019	<p>MCA has amended the Companies (Adjudication of Penalties) Rules, 2014 and the amendment pertains to Rule 3 dealing with adjudication of penalties.</p> <p>The C.G. may appoint any of its officers not below the rank of Registrar, as adjudicating officers for adjudging penalty.</p> <p>The adjudicating officer for the purpose of adjudicating penalty, shall issue a written notice indicating (non-compliance, default, relevant penal provision, maximum penalty) to the relevant person to show cause why the penalty should not be imposed.</p>

			Notification
4.	<p>Notification No. G.S.R. ____ (E).</p> <p>Dated 21st February, 2019</p> <p>Effective Date: 25th February, 2019</p>	Companies (Incorporation) Amendment Rules, 2019	<p>MCA has amended the Companies (Incorporation) Rules, 2014.</p> <p>As per the amended provisions, a new Rule 25 has been inserted as per which every company incorporated on or before 31st December, 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) [INC-22A] on or before 25.04.2019.</p> <p>Delays in filing beyond the scheduled date will entail a penalty of Rs. 10,000.</p> <p>Notification</p>
5.	<p>General Circular No. 01/2019</p> <p>Dated 21st February, 2019</p>	Extension for last date of filing initial return in MSME Form 1 as specified in Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019	<p>MCA has clarified that pending the deployment of MSME Form I on MCA 21 portal, the period of thirty days for filing initial return in MSME Form 1 shall be reckoned from the date the said E form is deployed on MCA 21 portal.</p> <p>Circular</p>

[Back](#)

Annexure A

Companies (Significant Beneficial Owners) Amendment Rules, 2019

Following is the brief highlight of some of the important changes:

1. Change in definition - Significant Beneficial Owner (SBO): The definition is summarized as under-

1.	SBO in relation to a reporting company	(i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares; (ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares; (iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings; (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone
2.	If an individual does not hold any right or entitlement indirectly under sub clauses (i), (ii) or (iii) mentioned above	He shall not be considered to be a significant beneficial owner
3.	Holding a right or entitlement directly in the reporting company by an individual	(i) the shares in the reporting company representing such right or entitlement are held in the name of the individual; Or (ii) the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89, and has made a declaration in this regard to the reporting company
4.	Holding a right or entitlement indirectly in the reporting company by an individual	Body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership
		The individual- (a) holds majority stake in that member; or (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;
		Hindu Undivided Family (HUF) (through Karta)
		The individual is the Karta of the HUF
		Partnership entity (through itself or a partner)
		The individual- (a) is a partner; or (b) holds majority stake in the body corporate which is a partner of the partnership entity; or (c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.
		Trust (through trustee)
		The individual- (a) is a trustee in case of a discretionary trust or a charitable trust; (b) is a beneficiary in case of a specific trust; (c) is the author or settler in case of a revocable trust
		a) a pooled investment vehicle; or b) an entity controlled by the pooled investment vehicle, based in member State of the Financial Action Task Force on Money Laundering and the regulator of the
		The individual in relation to the pooled investment vehicle- (A) is a general partner; or (B) is an investment manager; or (C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity. Note: - (i) a pooled investment vehicle; or (ii) an entity controlled by the pooled investment vehicle, based in a jurisdiction which does not fulfill the requirements referred above, the provisions of clause (i) or clause (ii)

		securities market in such member State is a member of the International Organization of Securities Commissions	or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.
5.	Deemed to be 'acting together'	If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust.	
6.	Shares to include	The instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.	

2. Modifications of existing sub-rules and insertions of new sub-rules-

a) Rule 2A: Duty of the reporting company-

Every reporting company is required to take necessary steps to find out if there is any individual who is a SBO and after identification cause such individual to make a declaration in Form No. BEN-1

Every reporting company is required to give notice in Form No. BEN-4 to member holding not less than ten per cent of its shares, voting rights or right to receive or participate in the dividend or any other distribution payable in a financial year for seeking information.

b) Rule 3: Declaration of significant beneficial ownership under section 90: -

Every individual who is a SBO in a reporting company, is required to file a declaration in Form No. BEN-1 to the reporting company within ninety days from the commencement of these rules.

Any subsequent change is required to be filed in Form No. BEN-1 to the reporting company, within thirty days. Period of 30 days is to be reckoned from the date of expiry of aforesaid 90 days.

c) Rule 4: Return of significant beneficial owners in shares-

The reporting company is required to file a return in Form No. BEN-2 with the Registrar within a period of thirty days from the date of receipt of declaration in Form No. BEN-1.

d) Rule 7: Application to the Tribunal-

The reporting company is required to apply to the Tribunal in the following cases for obtaining order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and other matters –

- Where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein;
- Where the information given is not satisfactory

e) Rule 8: Non-Applicability-

These rules shall not apply to the extent the share of the reporting company is held by:

- Authority constituted for administration of IEPF.
- its holding reporting company (details of such holding reporting company shall be reported in Form No. BEN-2)
- the CG, SG or any local Authority
- a reporting company, a body corporate or an entity controlled by the CG or by any SG or Governments, or partly by the CG and partly by one or more SG
- SEBI 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
- Investment Vehicles regulated by RBI, or IRDAI, or Pension Fund Regulatory and Development Authority

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.