VERITAS FINANCE

Veritas Finance Private Limited

REGULATORY UPDATE

JULY 2019

www.veritasfin.in

INTRODUCTION

Objective:

Keeping up to date with Legislations, Rules and Practices applicable to our NBFC sector to stay compliant and be aware of repercussions, to plan consequential actions, to add value to business and to achieve a competitive edge.

Period: July 2019

Coverage:

The Newsletter would broadly cover the following applicable areas:

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Image courtesy : Reserve Bank of India (website: https://rbi.org.in/)

RESERVE BANK OF INDIA

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Notification Number	Date of Issue	Subject / Applicability	Gist
RBI/2019-20/12 DBR.BP.BC.No.2/ 21.04.098/2019-20	05.07.2019	Basel III Framework on Liquidity Standards - Liquidity Coverage Ratio (LCR), FALLCR against credit disbursed to NBFCs and HFCs https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11624&Mode=0	The RBI has decided to frontload the Facility to Avail Liquidity for Liquidity Coverage Ratio (FALLCR) scheduled to increase by 0.5% each in August and December 2019 and permit banks to reckon with immediate effect the increase in FALLCR of 1% of the bank's NDTL, to the extent of incremental outstanding credit to NBFCs and Housing Finance Companies (HFCs) over and above the amount of credit to NBFCs/HFCs outstanding on their books as on date. RBI also announced that an Internal Working Group is reviewing the liquidity management framework and the recommendations of the Group are expected toward the middle of July 2019. As per the roadmap, FALLCR is scheduled to increase by 0.50 per cent of NDTL on August 1 and December 1, 2019, respectively. The frontloading of FALLCR of one per cent, exclusively meant for incremental exposure to NBFCs/HFCs, will form part of general FALLCR as and when the increase in FALLCR takes place as per original schedule on August 1 and December 1, 2019.

Image courtesy : Securities and Exchange Board of India (website :https://www.sebi.gov.in/)

SECURITIES AND EXCHANGE BOARD OF INDIA

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Circular Number	Date of Issue	Subject / Applicability	Gist
SEBI/HO/CFD/CMD 1/CIR/P/2019/78	16.07.2019	Modification of circular dated September 24, 2015on 'Format for compliance report on Corporate Governance to be submitted to Stock Exchange (s) by Listed Entities https://www.sebi.gov.in/legal/circulars/jul-2019/circular-on-modification-of-circular-dated-september-24-2015-on-format-for-compliance-report-on-corporate-governance-to-be-submitted-to-stock-exchange-s-by-listed-entities-_43582.html	Regulation 27(2) of Securities and Exchange Board of India , LODR, 2015 ("Listing Regulations"), specifies that a listed entity shall submit a quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange(s) with in fifteen days from close of each quarter. There have been amendments to necessitate changes to the format of the quarterly compliance report. The formats for Compliance Report on Annex -I -on quarterly basis; Annex -II -at the end of a financial year (for the whole of financial year); Annex -III -within six months from end of a financial year have been modified. The amended regulations shall come into force with effect from the quarter ended September30, 2019.

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Ministry of Corporate Affairs

Government Of India

Image courtesy : Ministry of Corporate Affairs (website http://www.mca.gov.in/MinistryV2/homepage.html)

MINISTRY OF CORPORATE AFFAIRS

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Notification Number	Date of Issue	Subject	Gist
G.S.R. 528(E)	25.07.2019	Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019	These rules may be called the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019. As per the said notification: i) eForm DIR-3 KYC is to be filed by an individual who holds DIN and is filing his KYC details for the first time or by the DIN holder who has already filed his KYC once in eform DIR-3 KYC but wants to update his details. ii) Web service DIR-3-KYC-WEB is to be used by the DIN holder who has submitted DIR-3 KYC eform in the previous financial year and no update is required in his details.

INSOLVENCY AND BANKRUPTCY CODE, 2016(IBC)

INSOLVENCY AND BANKRUPTCY CODE, 2016(IBC)

Date	Description	Gist
25.07.2019	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019 https://ibbi.gov.in//uploads/press/CIRP_&_Liquidation_-_Press_Release.pdf	• The amendments require completion of liquidation process within one year of its commencement. These provide a model timeline for each task in the liquidation process. • It also specifies a maximum time of 90 days from the order of liquidation for completion of compromise or arrangement, if any, proposed by the stakeholders under section 230 of the Companies Act, 2013. • The financial creditors should contribute towards the liquidation cost, where the corporate debtor does not have adequate liquid resources to complete the process.. This will be applicable only when the committee of creditors (CoC) is unable to approve a plan for such contribution during corporate insolvency resolution process. • It also provided for constitution of a "Stakeholders' Consultation Committee" with representation from secured financial creditors, unsecured financial creditors, workmen and employees, government, other operational creditors, and shareholder or partners to advice the liquidator on matters relating to sale. • The advice of this committee, however, would not bind on the liquidator. • The amendments have introduced a comprehensive compliance certificate to be submitted along with the final report to the adjudicating authority.

GST UPDATES

GST UPDATE

36th GST Council Meeting Highlights - held on 25th July 2019

A. GST rate related changes on supply of goods and services

The GST Council has reduced the GST rate on electric vehicles (EV) from 12% to 5%. Also, the GST rate on chargers or charging stations for electric vehicles is slashed from 18% to 5%. Further, the e-buses (seating capacity exceeds 12 passengers) can now be hired by all the local authorities without charging GST.

B. Changes in GST law:

- Time limit to opt for Composition Scheme by service providers (CMP-02) extended to 30 Sept 2019
- Due date for CMP-08 (Apr-Jun 2019) by composition dealers extended to 31 Aug 2019

Companies (Amendment) Bill, 2019

The Companies (Amendment) Bill, 2019 was introduced in Lok Sabha on July 25, 2019 by the Minister of Finance. It amends the Companies Act, 2013.

The key amendments are as follows:

1. Dematerialisation of securities of Unlisted Companies including Private Companies – Insertion of New sub-section 1A to Section 29

The said rule 9A provided for the issue of securities in dematerialized form by unlisted public companies.

Now, in furtherance to this, the Amendment Bill seeks to insert 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.

2.NFRA to perform its functions through divisions – Amendment to Section 132

The Bill proposes that Section 132 of the 2013 Act be amended, so as to enable the NFRA to perform its functions through divisions and the Executive Body. Further, Bill has clarified that each division of NFRA shall be presided over by the Chairperson or a full-time Member authorized by the Chairperson. With regard to constitution of an Executive Body, the same shall consist of the Chairperson and full-time Members of such Authority for efficient discharge of its functions.

Moreover, it has been provided in the Bill that where professional or other misconduct is proved, NFRA shall have the power to make order for debarring the member or the firm from:

- being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
- performing any valuation as provided under section 247.

3. CSR made mandatory, Transfer of Unspent CSR money to Funds mentioned in Schedule VII, Insertion of Penalty Provisions and more – Amendment to Section 135

The 2013 Act provides that if a company fails to spend CSR amount, the Board shall, in its report, specify the reasons for not spending the amount. Now, as a step further to the aforesaid reporting requirement, the Amendment Bill has provided that if companies are not able to spend the desired amount, then they are required to contribute the unspent money to the Funds mentioned in Scheduled VII of the 2013 Act.

The Bill further seeks to insert a new sub-section (6), which provides that any amount remaining unspent pursuant to any ongoing project, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30 days from the end of the financial year to a special account, named as “Unspent Corporate Social Responsibility Account“. Further, the said amount shall

be spent within next 3 years, and if not spent, shall be transferred to the Funds mentioned in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

Lastly, the Amendment Bill seeks to insert a new sub-section (7), i.e. penal provisions relating to non-compliance of the aforesaid provisions. Accordingly, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

4. CG empowered to file an application to NCLT in case of disgorgement of funds by Director, KMP or Officer – Amendment to Section 212

The Amendment Bill seeks to provide that any officer not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO), if so authorised, may arrest any person in accordance with the provisions of this section.

Secondly, the person so arrested may be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within twenty four hours of his arrest.

Thirdly, where an investigation report submitted by SFIO states that a fraud has taken place and any director, key managerial personnel or officer has taken undue advantage or benefit, then the Central Government may file an application before Tribunal with regard to disgorgement and such director, key managerial personnel or officer may be held personally liable without any limitation of liability.

5. Only fit and proper person to hold the office of director or any other office connected with the conduct and management of any company – Amendment to Sections 241, 242, and 243

The Amendment Bill seeks to empower Central Government to prescribe such company or class of companies in respect of which, applications under such sub-section, shall be made before the Principal Bench of the Tribunal and shall be dealt with by such Bench.

Further, the Bill provides for certain circumstances where Central Government may refer the matter and request the Honorable NCLT to inquire into the case and record a decision about whether the person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Amendment to Section 243 provides that where the NCLT reaches to a conclusion that such a person is not a fit and proper person pursuant to section 242, then such a person shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of 5 years from the date of the relevant decision of the Tribunal.

However, it has been clarified that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

Lastly, the Amendment Bill also seeks to provide that the person so removed from the office of a director or any other office connected with the conduct and management of the affairs of the company shall not be entitled to, or be paid, any compensation for the loss or termination of office.

6. Re-categorization of 16 offences

The Bill also seeks to keep intact the amendments proposed through preceding Ordinances, to 16 sections of the Act, so as to modify the punishment therein from fine to monetary penalties, to lessen the burden upon Special Court. These offences include: (i) issuance of shares at a discount, and (ii) failure to file annual return.