

Connection

Whatever the mind of man can conceive and believe, it can achieve. ~ Napoleon Hill

Companies (Significant Beneficial Owners) Rules, 2018

In exercise of the powers conferred by Section 90 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement.

(1) These rules may be called the Companies (Significant Beneficial Owners) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition-

(1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "form" means the form specified in Annexure to these rules;

(c) "registered owner" means a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold beneficial interest in such shares;

(d) "section" means a section of the Act

(e) "significant beneficial owner" means an individual referred to in sub-section (1) of section 90 (holding ultimate beneficial interest of not less than ten per cent.) read with sub section (10) of section 89, but whose name is not entered in the register of members of a company as the holder of such shares, and the term 'significant beneficial ownership' shall be construed accordingly;

Explanation I. - For the purpose of this clause, the significant beneficial ownership, in case of persons other than individuals or natural persons,

shall be determined as under-

(i) where the member is a company, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent, share capital of the company or who exercises significant influence or control in the company through other means;

(ii) where the member is a partnership firm, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent of capital or has entitlement of not less than ten per cent of profits of the partnership;

(iii) where no natural person is identified under (i) or (ii), the significant beneficial owner is the relevant natural person who holds the position of senior managing. Official;

(iv) where the member is a trust (through trustee), the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than ten per cent. interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership;

Explanation II. It is hereby clarified that instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares' for the purpose of this clause;

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification



of Definitions Details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and the said Rules.

3. Declaration of significant beneficial ownership in shares under section 90.-

(1) Every significant beneficial owner shall file a declaration in **Form No. BEN-I** to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.

(2) Every individual, who, after the commencement of these rules, acquires significant beneficial ownership in a company, shall file a declaration in **Form No. BEN-I** to the company, within thirty days of acquiring such significant beneficial ownership or in case of any change in such ownership.

4. Return of significant beneficial owners in shares.-

Where any declaration under rule 3 is received by the company, it shall file a return in **Form No. BEN-2** with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.

5. Register of significant beneficial owners.-

Just to Remind you:

- June 30 - Annual Statement of Equalisation Levy
- June 30 - TRAN 2
- June 30 - Maharashtra PT
- June 30 - Payment of Tax for 2017-18 by PTEC Holder

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(1) the company shall maintain a register of significant beneficial owners in **Form No. BEN-3**.

(2) The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

6. Notice seeking information about significant beneficial owners.-

A company shall give notice seeking information in accordance with under sub-section (5) of section 90, in Form No. **BEN-4**.



7. Application to the Tribunal.-

The company may apply to the Tribunal in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including –

(a) restrictions on the transfer of interest attached to the shares in question;

(b) suspension of the right to receive dividend in relation to the shares in question;

(c) suspension of voting rights in relation to the shares in question;

(d) any other restriction on all or any of the rights attached with the shares in question.

8. Non-Applicability.-

These rules are not made

applicable to the holding of shares of companies body corporates, in case of pooled investment vehicles/ investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

Enrolment & Registration as Valuer by Registered Valuers Organisation

Subject to meeting other requirements, an individual is eligible to be a registered valuer under the Companies (Registered Valuers and Valuation) Rules, 2017 (Rules), if he:

- (i) is a fit and proper person,
- (ii) has the necessary qualification and experience,
- (iii) is a valuer member of a Registered Valuers Organisation (RVO),
- (iv) has completed a recognised educational course as member of an RVO,
- (v) has passed the valuation examination conducted by the Authority, and
- (vi) is recommended by the RVO for registration as a valuer.

2. As a condition of recognition of an RVO under rule 14 (c) of the Rules, it shall admit only individuals who possess

the educational qualifications and experience requirements, in accordance with rule 4 of the Rules and as specified in its recognition certificate, as valuer members. Clause VI (9) of the Governance Structure and Model Bye-Laws for RVO requires that an RVO shall not enrol an individual as a valuer member if he is not eligible to be registered as a registered valuer with the Authority.

3. Accordingly, recognised RVOs are advised to admit only those individuals, who possess the necessary educational qualifications and experience and meet other eligibility requirements, as valuer members. They are also advised to recommend only those valuer members, who have completed the recognised educational course and passed valuation examination of the relevant asset class, to the Authority for registration.

4. The applications for regis-

tration in form A or Form B, as the case may be, complete in all respects, along with applicable attachments and verifications, and fee, may be sent to:

Deputy General Manager (Valuers Division) Insolvency and Bankruptcy Board of India 7th Floor, Mayur Bhawan Connaught Place, New Delhi-110001.

5. It is informed that the applications for registration as registered valuer shall be submitted online with effect from 1st July, 2018, the details of which shall be available on the web site of the Insolvency and Bankruptcy Board of India, www.ibbi.gov.in.



No Tax on issue of share capital by eligible start-ups at excess premium: CBDT

In exercise of the powers conferred by the clause (ii) of the proviso to clause (viib) of sub-section (2) of section 56 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification number S.O. 1160 dated 14th June, 2016 issued by Department of Revenue, Central Board of Direct Taxes, the Central Government, hereby notifies that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue

of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification under clause (i) of sub-para (3) of para 4 of the **notification number G.S.R. 364(E), dated 11th April, 2018** and published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i) dated the 11th April, 2018 issued by the De-

partment of Industrial Policy and Promotion.



Cost Inflation Index for Financial Year 2018-19

In exercise of the powers conferred by clause (v) of the *Explanation* to section 48 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O. 1790 (E), dated the 5th June, 2017,

namely:-

In the said notification, in the Table, after serial number 17, the following serial number and entries relating thereto, shall be inserted, namely:-

Sr. No.:18

Financial Year: 2018-19

Cost Inflation Index: 280

This notification shall come into force with effect from 1st day of April, 2019 and shall accordingly apply to the Assessment Year 2019-20 and subsequent years.



Clarifications of certain issues under GST

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an

inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?

1.1 As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in

the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State sup-





ply.

1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of good State supplies.

1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?

2.1 As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:

(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified

officer of the Zone;

(b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorised operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

2.3 Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?

3.1 Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under

section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).

3.2 Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.



Exemption from payment of late fee—Maharashtra PT

As per section 6(1) of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (the Profession Tax Act 1975), every employer who has obtained Profession Tax Registration Certificate (PTRC) under the Profession Tax Act, 1975 has to furnish return in the prescribed format showing the salaries and wages paid by him and the amount of tax deducted by him in respect thereof. as per Rule 11(2A) of the Profession Tax Rules 1975, such return shall be in electronic Form III B and payment shall be made before uploading the said return on the official website of the department). Section 6(2) of the Profession Tax Act, 1975, provides that a return without such proof of payments shall not be deemed to have been duly filed.

Kindly refer to Trade Circular 8T of 2017 dated 16/3/2017, which describes the process of SAP based e-filing of PTRC return. Also Circular 32T of 2016, dated t 27/10/2016 and 48T of 2017 dated 23/11/2017 were issued, describing the detailed process of e-payment under

SAP-TRM system.

From 01/04/2018, the PTRC return are being filed on the new web site www.mahagst.gov.in.

The Trade Associations and employers have not been able to upload returns. Further it is represented that they are facing technical difficulties in creating profile for accessing e - s e r v i c e s o n www.mahagst.gov.in.

The issue mentioned in Para 4 has been examined and it is found that because of the technical difficulties some of the employers could not file the returns by the due dates. Hence under the powers conferred by Notification No PFT-2014/CR-38/Taxations-3 dated 21-08-2014 issued by the State Governments under proviso of Section 6(3) of the Profession Tax Act, 1975 the whole of the late fee payable by the registered employer, in respect of the monthly or annual returns pertaining to the pertaining to the periods April 2016 to June 2018 is being exempted, subject to the fulfillments of eligibility conditions mentioned below-

Eligibility Conditions:

- Any amount payable as per return should have been/shall be paid on or be paid on or before the due date.
- The aforesaid employers should submit the monthly or, as the case may be, annual returns pertained to the periods April 2016 to June 2018 on or before 31st July 2018.

Needless to mention that no refund or adjustment against any tax liability shall be allowed where late fee has already been paid.

Revocation of late fee exemption: if it is found that the employer has not fulfilled the conditions or has submitted false information to avail the benefits of exemption then, his exemption of late fee shall be revoked and action will be taken against him as per the provisions of law.



Administrative Relief Application for Un-registered Period

You may recall that the Trade Circular cited at Ref. (9) and (13) above were issued to explain the various new processes implemented through new SAP based system. It was mentioned in these circulars that the various SAP based functionalities will Go Live in a phased manner. Accordingly, Registration, Returns, e-CST declarations/certificates, refunds etc. have become operational.

As per the provisions of section 16 of the Maharashtra Value Added Tax Act (hereinafter referred to as "MVAT Act"), a dealer, who exceeds the threshold of the sales Turn-over given in section 3 of the MVAT Act, is required to make an application for registration, within 30 days from the date of exceeding the said threshold of the turn-over. However, sometimes certain dealer's fails to apply for registration within the time

period given under the MVAT Act or rules made therein under in this behalf. Due to late application such dealer gets the registration from the date of application and not from the date on which the turn-over of sales exceeded the threshold.

This late application results into denial of the set-off as provided under rule 52 of the Maharashtra Value Added Tax Rules, 2005 (hereinafter re-





ferred to as “MVAT Rules”). In order to mitigate this difficulty, the Government of Maharashtra, Finance Department, has issued the Government Resolution cited at Ref. (1) and (2) above and provide the mechanism to grant the ADM Relief in respect of the periods for which the dealer remained unregistered. In pursuance to the aforesaid Government Resolutions, the Commissioner has also issued various Trade Circular(s) regulating the procedure for grant of ADM Relief.

Earlier, the application for ADM Relief was required to be made manually to the concerned Joint Commissioner. After receipt of the application, consideration of the facts as also the report in this behalf, obtained from the Nodal Officer concerned, the request for ADM Relief was either rejected or granted.

On this background and as part of the SAP based Automation project, the uploading and processing of the Application for ADM Relief is being provided to the dealers who have obtained the registration beyond the prescribed time limit given in the Act. The facility of ADM Relief is now being launched for the MVAT, CST Act, Luxury Tax Act and Entry Tax Act.

A Trade Circular is already published that lays down the process to file the ADM Relief Applications, its processing as laid down under various Trade and Internal Circulars issued from time to time shall remain in force and there is no change except online submission of ADM Relief Applications. Therefore, from the date of issuance of this Trade Circular, the uploading of ADM Relief Application facility is being made available to the dealers who desires to get the benefits under ADM Relief. This functionality provides

receipt of ADM Relief Application online and also online processing of the same.

Procedure to process the ADM Relief Application online:

The step by step procedure to process the online application for ADM Relief is given below;

The step by step procedure to file the online application for ADM Relief is given below;

Log On Process:

Login in to the link.

<https://www.maahgst.gov.in/en/log-services>

Fill in User Name and Password.

Click on logon.

Click on “Registration” tile, and click on “Admin Relief”. Here the dealer shall access and file the admin relief application.

Selection of Act:

Admin relief application can only be filed for VAT, CST, Luxury tax and Entry Tax on Goods Act.

Select appropriate act for which admin relief application needs to be filed and follow the steps to complete the application.

Out of these 4 Acts, only those Acts will be displayed in the “ACT” Tab under which the dealer is currently registered.

For example, if a dealer is registered with VAT and Luxury Tax, then VAT and Luxury ACT will be displayed under “ACT” filed and CST and Entry Tax on Goods Acts will not be displayed.

If a dealer desires to obtain ADM Relief for multiple Acts, then he must file separate

application for such ADM Relief under each Act.

However, dealer can file admin relief application for both VAT and CST ACT in single application, provided conditions, as follows, are met.

Dealer is currently registered under both the VAT and CST Acts.

Date of Registration under VAT and CST Acts is same.

If both of the above conditions are satisfied, then a new option “MVAT ACT 2002 and CST ACT 1956” will be displayed in “ACT filed “ and the dealers can select the said option to apply for admin relief under both the ACTs in a single application for Admin Relief. In other cases, separate ADM relief application shall be required to be filed.

Constitution of business at the time of commencement:

(Field type: Dropdown)

This filed shows the “Constitution of business at the time of commencement” of the business vis-à-vis “Act” selected under the Steps as shown above.

This filed is auto populated from dealers Registration data; hence, dealer cannot change this data in the ADM Relief application at the time when makes application. If the dealer is filing the ADM Relief application for VAT and CST combination (provided the above-mentioned criteria met for VAT and CST), then “Constitution of business at the time of commencement” field of VAT will be displayed.

If the constitution of business has been changed after the commencement of business.

It’s an option field.

Dealer may select the appropriate option from the avail-



able drop down list if the constitution of business has changed after the commencement of business.

Note: Selection of option does not update the registration data. This information is gathered only for the purpose of ADM relief application.

Selection of period of ADM Relief: (Field. "From and To")

From: Field type: Date.

Required format DD/MM/YYYY. It's a mandatory field.

Select a date from which you want to file ADM relief application.

To: Field type: Date.

It is auto populated hence, dealer cannot change this text.

This date is the previous day date of registered with VAT on 01/06/2012, then the value of "To" field will be "31/05/2012".

Reason for remaining unregistered: Filed type: Free text:

User can write in this field). Max length: 512

Please specify the reason for remaining unregistered for the period for which relief is applied.

Turnover of Sales and Purchases during the period for which Admin Relief sought Filed type: Number.

The values should be in INR (Indian Rupees).

Total turnover of sales and Purchases during the period for which Admin Relief is being applied needs to be mentioned here.

Gross Sales Tax Liability during the period for which Admin Relief is sought Field type: Number.

The values should be in INR (Indian Rupees)

Please specify Gross Sales Tax Liability excluding adjustment of input tax credit/set of during the period for which admin relief has been applied for the selected Act.

Also please specify the input tax credit involved during the period for which Admin relief has been applied for selected Act.

Information about the returns for the post registration periods: Field type: Date.

From and To: These values will be auto populated cannot be changed by dealer. The displayed format is DD/MM/YYYY.

From and To, shows the period for which returns shall be filed before submission of application for ADM Relief. The system evaluates internally whether the returns have been filed for the said period. If the returns have not been filed, then the dealer will not be eligible to file the ADM relief application. Dealer needs to mention whether or not he has filed all the returns due up to the date of filing the ADM relief application by selecting the "Yes" or "No" option available as the Radio Buttons.

If the dealer selects "No", then he will not be eligible to file the ADM relief application.

If the applicant dealer selects the button as "Yes", the system will check, subject to the availability of the data in the system, whether the applicant dealer is defaulter in filing of any of the due returns for the periods April 2016 onwards. If the system finds the applicant dealer as defaulter, then unless the returns for the default period is filed he will not be able to upload the ADM

relief application.

In respect of the periods prior to April 2016, the officer to whom the said application is assigned shall verify whether or not the dealer has filed all the returns due. The dealer who desires to seek ADM relief are therefore requested to first ensure that they have filed all the due returns and then only file the application for ADM relief.

Discharge of Entire amount of tax liability and interest application for the period for which ADM relief is field. Field type: Radio Button.

The applicant dealer shall be required to disclose the amount and pay the whole by him. He shall be required to upload the copy of the challan as a proof of having discharge the said liability.

Once the required information has been given, click on "Next". In case of errors, corrections would be required to be made. To navigate to the next page "Next" button needs to be clicked

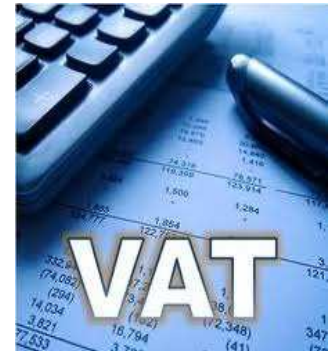
Uploading attachment:

Here the dealer can upload any document in support of his application including payment challan for tax, interest, fees etc.

After clicking on Next, a new screen appears where the proof of payment needs to be uploaded by the dealer by selecting the necessary file from his computer.

The upload may take some time depending upon the size of the file and speed of internet connection. Once the file is uploaded, the message will be displayed. Click on "Ok".

Multiple documents can be uploaded by following the





process as above.

Viewing and Deleting upload attachments: The uploaded documents can be viewed in the "View Document list".

Submitting the application:

"Submit" button needs to be clicked to submit the application. Once application is submitted, no changes can be done to the application.

Therefore, until submit, the "Bank" option can be used to visit the pages to view or edit the same. Application Reference Number gets generated

once the application is submitted which will be sent to the registered Mobile number and email id of the dealer.

Once, the Application is submitted, the same will be allotted to the Jurisdictional Joint Commissioners for further processing.

Submission can be aborted by clicking the "Cancel" button.

"User Manual for Online Filing of ADM Relief Application":

The dealer can access the "User Manual for Online Filing of ADM Relief Application" on

Departments Website for further detailed stepwise procedure.

Needless to say that the online acceptance of ADM Relief Application does not mean that the delay in obtaining registration has been condoned. The ADM relief application received online shall decided as per the provisions of law.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 was promulgated on June 6, 2018. It amends the Insolvency and Bankruptcy Code, 2016. The Code provides a time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.

Financial creditors: The Code defines a financial creditor as a person to whom financial debt is owed. Such debt includes any amount raised that has the commercial effect of a borrowing. Financial creditors are a part of the committee of creditors, which is responsible for taking key decisions related to the resolution. The Ordinance clarifies that an allottee under a real estate project will be considered a financial creditor. An allottee includes any person to whom a plot, apartment, or building has been allotted, sold, or transferred by a promoter (real estate developer or development authority).



Representative of financial creditors: The Ordinance allows the financial creditors to appoint authorised representatives in certain cases, such as when the debt is in the form of securities or deposits. These representatives will participate and vote in the committee of creditors as per the prior instructions received from the creditors. If a creditor does not give prior instructions, then the representative will abstain from voting.

Voting threshold of committee of creditors: The Code specifies that all decisions of the committee of creditors be taken by a majority of at least 75% of the financial creditors. The Ordinance lowers this threshold to 51%. For certain decisions of the committee, the voting threshold has been reduced from 75% to 66%. These include: (i) appointment and replacement of the resolution professional, (ii) approval of the resolution plan, and (iii) approval of certain actions of the resolution professional during the insolvency resolution process.

Ineligibility to be a resolution applicant: The Ordinance amends the criteria which prohibits certain persons from submitting a resolution plan. For example, the Code prohibits a person from being a resolution applicant if he has been convicted of an offence punishable with two or more years of imprisonment. Under the Ordinance, this provision will be applicable only for certain specified offences, and will not apply after two years from the date of his release from imprisonment.

The Code prohibits a person from being a resolution applicant if his account has been identified as a non-performing asset (NPA) for more than a year. The Ordinance provides that this criterion will not apply if such applicant is a financial entity, and is not a related party to the debtor (with certain exceptions). The Code also bars a person from submitting a plan, if he has executed an enforceable guarantee in favour of a person who is a creditor to a defaulter undergoing a resolution process. The Ordinance amends

this provision to specify that such a bar will apply if such guarantee has been invoked by the creditor and remains unpaid.

Applicability of the Code to Micro, Small and Medium Enterprises (MSMEs): The Ordinance provides that the ineligibility criteria for resolution applicants regarding NPAs and guarantors will not be applicable to persons applying for resolution of MSMEs. The central government may, in public interest, notify the applicability of certain other provisions of the Code to MSMEs.

Corporate resolution: The Ordinance provides that for a corporate applicant to initiate an insolvency resolution process, they will have to submit a special resolution. The special resolution must have been passed by at least three-fourth of the total number of partners of the corporate debtor.

Withdrawal of admitted applications: A resolution applicant may withdraw an application, filed to initiate an insolvency resolution process, from the National Company Law Tribunal (NCLT), after such process has been initiated. Such withdrawal will have to be ap-

proved by a 90% vote of the committee of creditors.

Implementation of resolution plans: The Ordinance specifies that the NCLT must ensure that a resolution plan has provisions for effective implementation, before approving it. Further, once the plan has been approved, the resolution applicant must obtain any necessary approvals, required by law, within a period of one year from such approval.



Indian Valuation Standards

Recognising the need to have the consistent, uniform and transparent valuation policies and harmonise the diverse practices in use in India, the Council of the Institute of Chartered Accountants of India (ICAI) at its 375th meeting has issued the Valuation Standards which are 1st of its kind in India.

With a vision to promote best practices in this niche area of practice, the Standards lay down a framework for the chartered accountants to ensure uniformity in approach and quality of valuation output. The following Valuation Standards have been issued by ICAI:

1. Preface to the Indian Valuation Standards
2. Framework for the Preparation of Valuation Report in accordance with the Indian Valuation Standards
3. Indian Valuation Standard 101 - Definitions
4. Indian Valuation Standard 102 - Valuation Bases

5. Indian Valuation Standard 103 - Valuation Approaches and Methods
6. Indian Valuation Standard 201 - Scope of Work, Analyses and Evaluation
7. Indian Valuation Standard 202 - Reporting and Documentation
8. Indian Valuation Standard 301 - Business Valuation
9. Indian Valuation Standard 302 - Intangible Assets
10. Indian Valuation Standard 303 - Financial Instruments

The Valuation Standards have been issued by the Institute of Chartered Accountants of India to set up concepts, principles and procedures which are generally accepted internationally having regard to legal framework and practices prevalent in India.

Applicability of Valuation Standards:

These Indian Valuation Stan-

dards will be applicable for all valuation engagements on mandatory basis under the Companies Act 2013. In respect of Valuation engagements under other Statutes like Income Tax, SEBI, FEMA etc, it will be on recommendatory basis for the members of the Institute. These Valuation Standards are effective for the valuation reports issued on or after 1st July, 2018.

In formulating the Valuation Standards, ICAI considered best valuation practices followed globally as well as in India, uniqueness of Indian conditions, current practices in India alongwith their advantages and disadvantages and various purposes for which valuations might be required over and above the requirements of Companies Act.

Note: These Indian Valuation Standards will be effective till Valuation Standards are notified by the central Government under Rule 18 of the Companies (Registered Valuers and Valuation) Rules, 2018.



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FOREIGN INVESTMENT IN INDIA -REPORTING IN SINGLE MASTER FORM

A BIG INITIATIVE TAKEN BY RBI:

We would like to apprise you on the revision of reporting of Foreign Investment as directed by the RBI vide its circular dated **June 07, 2018** - RBI/2017-18/194 A.P (DIR Series) Circular No.30 on Foreign Investment in India - Reporting in Single Master Form (SMF).

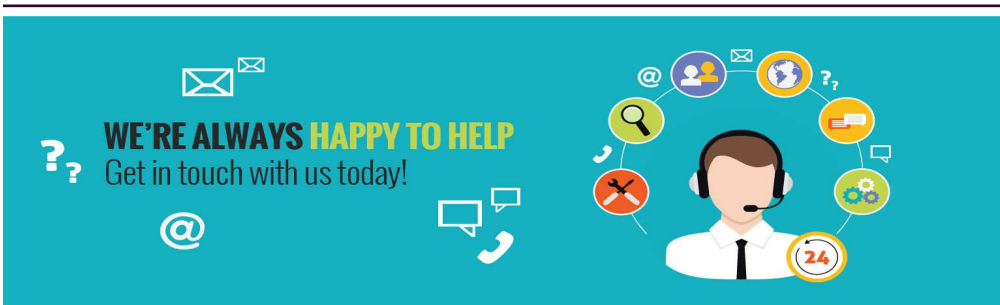
- As stated in the aforesaid circular, Reserve Bank, with the objective of integrating the extant reporting structures of various types of foreign investment in India, will introduce a **Single Master Form (SMF)**. The SMF would be filed online. SMF would provide a facility for reporting total foreign investment in an Indian entity, as also investment by persons resident outside India in an Investment Vehicle.
- The RBI has provided an interface to the Indian entities, to input the data on total foreign investment (including indirect foreign investment) in a specified master format which will be available on the RBI website from June 28 2018 to July 12, 2018. Indian entities have to submit the

information in the said master format, failure to comply with the same will restrict ability to receive future foreign investment and will be considered as noncompliant with the exchange control regulations.

- Introduction of **Form DI for reporting of downstream investment for indirect foreign investment** within 30 days of allotment of capital instruments. Information sought in the Form DI is in line with the extant reporting requirements provided for reporting to DIPP.
- Introduction of **Form InVi for reporting the details of foreign investment in investment vehicle** which needs to be reported by the investment vehicle receiving investment by a person resident outside India within 30 days of the date of issue of units. Earlier there was no prescribed form for foreign investment in investment vehicle.
- **Form FC-TRS required for reporting of cross border transfer of capital instruments of Indian company**, also required to be filed in case of gift of capital instruments of an Indian company. In addition, details in relation to de-

ferred arrangement, indemnity arrangement, escrow arrangement, etc. in a transfer transaction needs to be suitably provided in the FC-TRS.

- **Form FC-GPR, required for issue of capital instruments**, inter-alia, will include the details pertaining to refund of share application money, if any, conversion formula for issuance of convertible instruments.
- Other forms like form LLP-I, LLP-II, ESOP, DRR are also simplified and streamlined seeking relevant details.
- **Certificate from Company secretary**, inter-alia, needs to certify that Investment/ Shareholder agreement between the investee and investor is in compliance with the extant foreign investment regulations.



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