

# WHITESPAN

WINS

#### NEWSLETTER

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE MONTHLY NEWSLETTER

February 01, 2020 – February 29, 2020 Issue No. – 035/ 2020

WHITESPAN



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#### FROM THE CHIEF EDITOR'S PEN

"Unless you try to do something beyond what you have already mastered, you will never grow."

- Ronald E. Osborn

It gives me immense pleasure to share the 35<sup>th</sup> edition of "WINS – e-newsletter" for February 2020. My sincere gratitude to each one of you for sparing your valuable time in reading this newsletter and sharing your feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better content in timely manner, month after month. Hope we not only help you keep updated but also save your time by bringing a brief summary of all the updates through our section on Editor's Quick Take.

# **Our Editorial Board comprises the following professionals:**

- 1. **Mr. Vinay Shukla** Mr. Vinay Shukla, a Fellow Member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management is Co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Mr. Mayank Rai LL.M, M.Phil, is a practicing advocate having more than 26 years of experience also an Asst. Professor in Dept. of Law, V.S.S.D.College, Kanpur.
- **3. Ms. Jaya Yadav** Ms. Jaya Yadav, a practicing company secretary based at Gurgaon is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in law and Commerce from Delhi University.
- **4. Mr. Himanshu Gupta** Mr. Himanshu Gupta is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in law and Commerce.
- **5. Ms. Trishna Choudhary** Ms. Trishna Choudhary is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in commerce from Delhi University.
- **6. Ms. Ankita Pandey** Ms. Ankita Pandey is a commerce graduate from Kanpur University and an associate member of The Institute of Company Secretaries of India (ICSI).
- 7. Ms. Divya Shukla- Ms. Divya Shukla is presently pursuing law from Christ University, Bangalore.





# In this issue we have covered the following:

- Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
- Articles on:
- i. Difference between oppression and mismanagement
- ii. Consensual Relationships under The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013
- iii. Considerations before and after becoming Non Resident Indian

Compliance checklist for the month of March 2020.

We hope all these would be of interest to you.

We invite articles on topics of professional interest. Please do ensure that the article is original, written in good style and adds value for the reader.

Your candid feedbacks are valuable: appreciation will encourage us; criticism will help us improve! Feedbacks can be sent at the following email id:

### vinayshukla@whitespan.in

With warm regards
WINS (Whitespan Information and News Services)
February 29, 2020





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# WS WHITESPAN

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# MCA Ministry of CorporateAffairs





# 1. Notification of Section 230 (11) and (12) of Companies Act, 2013

Date of Notification: February 03, 2020

Effective Date: Date of their publication in the Official Gazette

**Above Notification is available at the following link:** 

http://www.mca.gov.in/Ministry/pdf/Notification 04022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 03, 2020 has notified sub-section (11) and (12) of section 230 of the Companies Act, 2013.

Section 230 (11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

Section 230 (12) 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.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of <u>section 66</u> shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.





# 2. The National Company Law Tribunal (Amendment) Rules, 2020

Date of Notification: February 03,2020

Effective Date: Date of publication in the Official Gazette Above Notification is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Rules3 04022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 03, 2020 has notified the National Company Law Tribunal (Amendment ) Rules , 2020 by amending the National Company Law Tribunal Rules, 2016 .Key highlights of the amendment are as follows :

 After rule 80 of the National Company Law Tribunal Rules, 2016, the following rule shall be inserted, namely:-

"80A. Application under section 230. – An application under sub-section (12) of section 230 may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.".

• In the principal rules, in SCHEDULE OF FEES, after S.No.22 and the entries relating thereto, the following shall be inserted, namely:-

"22A.	Sec 230(12)	Application in cases of takeover offer of	Rs. 5,000"
		companies which are not listed.	





• In the National Company Law Tribunal Rules, 2016 rules, in Annexure –B, after S.No-12 and the entries relating thereto, the following S.No shall be inserted, namely:-

12A.	Sec 230(12)	Application in cases of takeover	1. Affidavit verifying the petition
		offer of companies which are not	2. Memorandum of appearance with copy
		listed.	of the Board's Resolution or the executed
			vakalatnama, as the case may be.
			3. Documents in support of the grievance
			against the takeover.
			4. Any other relevant document."





3. <u>The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules,</u> 2020.

Date of Notification: February 03,2020

Effective Date: Date of their publication in the Official Gazette

**Above Notification is available at the following link:** 

http://www.mca.gov.in/Ministry/pdf/Rules1 04022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 03, 2020 has notified the Companies (Compromise, Arrangement and Amalgamation) Amendments Rules, 2020. Key highlights of the amendment are as follows

In rule 3, after sub-rule (4), the following sub-rules shall be inserted, namely:—

(5) A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of sub-section (11) of section 230, when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

Explanation I—"Shares" means the equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights.





Explanation II.—Nothing in this sub-rule shall apply to any transfer or transmission of shares through a contract, arrangement or succession, as the case may be, or any transfer made in pursuance of any statutory or regulatory requirement.

- (6) An application of arrangement for takeover offer shall contain:-
- (a) the report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors:—
- (i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;
- (ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.
- (b) details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.





# 4. The Companies (Incorporation) Amendment Rules, 2020

Date of Notification: February 06, 2020

Effective Date: February 15, 2020

## **Above Notification is available at the following link:**

http://www.mca.gov.in/Ministry/pdf/Rules4 07022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 06, 2020 has notified the Companies (incorporation) Amendment Rules, 2020 by amending the Companies (Incorporation) Rules, 2014. Key highlights of the amendment are as follows:

- The amendment in Rule 9 prescribes new procedure for reservation or change of name of the company, which prescribes to make an application for reservation of name through the MCA web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) and for changing the name of the company application shall be made through web service RUN (Reserve Unique Name). The applications shall be accompanied with the prescribed fee.
- The amendment has substituted the SPICe forms in the rules with new SPICe+ forms.
- the application for incorporation of a company under Rule 38 shall now be accompanied by eform AGILE – PRO, which shall also contain an application for Professional Tax Registration and for Opening of a Bank Account.





5. The Companies (Issue of Global Depository Receipts) Amendment Rules, 2020

Date of Notification: February 13, 2020

Effective Date: Date of their publication in the Official Gazette

**Above Notification is available at the following link:** 

http://www.mca.gov.in/Ministry/pdf/notices 13022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 13, 2020 has notified the Companies (Issue of Global Depository Receipts) Amendment Rules, 2020 by amending the Companies (Issue of Global Depository Receipts) Rules, 2014. Key highlights of Amendments are as follows:

- A new proviso in Rule 7 has been inserted which states that the proceeds of the issue of depositories receipts maybe remitted in an IFSC banking unit and utilized in accordance with the instructions issued by the RBI on time to time.
- 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.





# 6. The Nidhi (Second Amendment) Rules, 2020

Date of Notification: February 14, 2020

Effective Date: Date of their publication in the official Gazette

Above Notification is available at the following link: http://www.mca.gov.in/Ministry/pdf/rule 14022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 14, 2020 has notified the Nidhi (Second Amendment) Rules, 2020 by amending the Nidhi Rules, 2014 Through this amendment, Rule 23A has been amended to extend the time limit of declaring a Public Company as Nidhi Company within 9 months. As per the new amendment, a public company shall declare it as Nidhi and every Nidhi incorporated under the Act shall get itself declared within a period of 1 year from the date of its incorporation or within a period of 9 months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later.





7. Filing of forms in the registry of MCA-21 by the Insolvency Professional (IP), Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator as appointed under Insolvency Bankruptcy Code, 2016.

Date of Circular: February 17, 2020 Effective from: February 17, 2020

Above Circular is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Circular 17022020.pdf

# **Editor's Quick Take:**

MCA vide its general circular dated February 17, 2020 has allowed filing of forms in the registry of MCA-21 by the Insolvency Professional (IP), Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator as appointed under Insolvency Bankruptcy Code, 2016.

- MCA has specified the requirement of filing Form INC-28 by Interim Resolution Professional/Resolution
  Professional/ Liquidator, as appointed by Hon'ble Bench of NCLT/ NCLAT, after the admission of petition
  filed under Insolvency and Bankruptcy Code, 2016. Before the initiation of Form INC-28, most of the
  corporates under CIRP had to face the issue of filing the relevant e-forms on the MCA portal, since the
  power of the Board of Directors get suspended, once the CIRP process is initiated against the company.
- Insolvency Professional is required to attach the order copy of NCLT/NCLAT in Form INC-28, which after verification from ROC, the same will get approved and Insolvency Professional will be allowed, to file the e-forms of the Company (under CIRP) by affixing his DSC.

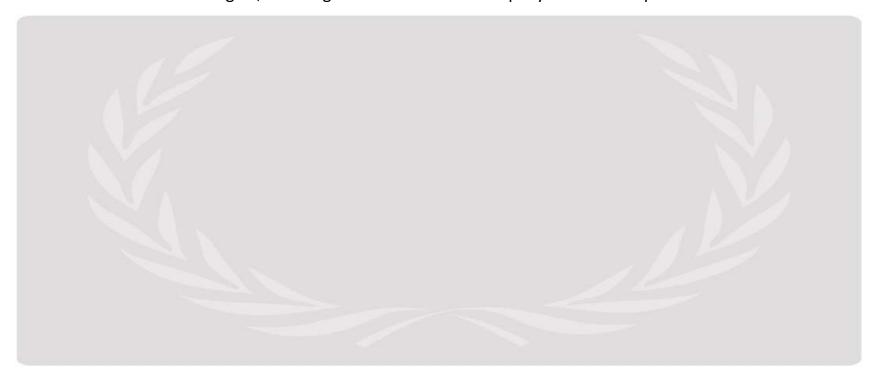


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• Once form INC-28 is approved by the respective ROC, the name of Insolvency Professional will be reflected as 'Chief Executive Officer' under the Authorized Signatory details of the Company. The status of the Company will be shown as under CIRP or Liquidation, based on the filing of the e-form.

On completion of the insolvency process or after getting stay order, the Insolvency Professional is required to file e-form INC-28 once again, to change the status of the Company on the MCA portal.







8. The Companies (Registration Offices and Fees) Amendment Rules, 2020.

Date of Notification: February 18, 2020

Effective Date: Date of their publication in the Official Gazette

Above Notification is available at the following link: http://www.mca.gov.in/Ministry/pdf/rule 19022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 18, 2020 has notified the Companies (Registration Offices and Fees) Amendment Rules, 2020 by amending the Companies (**Registration Offices and Fees**) Rules, 2014. after this amendment form GNL 2 shall be substituted with new Form GNL-2.

A Company can file certain documents with the Registrar of Companies by filing this e-Form GNL-2 and in case there is no e- Form prescribed for filing any document with Registrar, then company or liquidator can file such documents through this e-Form.





# 9. The Companies (Incorporation) Amendment Rules, 2020

Date of Notification: February 18, 2020

Effective Date: February 23, 2020

Above Notification is available at the following link: http://www.mca.gov.in/Ministry/pdf/rule 22022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 18, 2020 has notified The Companies (Incorporation) Amendment Rules, 2020. Key Highlights of the amendment are as follows:

- In rule 9, the following rule shall be substituted, namely:-
- "9. Reservation of name or change of name.- An application for reservation of name shall be made through the web service available at www.mca.gov.in 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) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020."
- In rule 38, in the marginal heading, for the word, brackets and letters "Electronically (SPICE)", the words, brackets and letters "Electronically Plus (SPICE+)" shall be substituted with effect from the 23rd February, 2020.





- In the said rules, in rule 38A,-
- (i) in the marginal heading, for the words, brackets and letters "and Employees' Provident Fund Organisation (EPFO) Registration", the words, brackets and letters ",Employees' Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account" shall be substituted;
- (ii) for the letters "AGILE", the letters "AGILE-PRO", shall be substituted;
- (iii) after clause (c), the following clauses shall be inserted, namely:-
  - "(c) Profession Tax Registration with effect from the 23rd February, 2020
  - (d) Opening of Bank Account with effect from 23rd February, 2020.





10. The Companies (Auditor's Report) Order, 2020.

Date of Order: February 25, 2020

Effective Date: from the date of its publication in the Official Gazette

**Above Notification is available at the following link:** 

http://www.mca.gov.in/Ministry/pdf/Orders 25022020.pdf

# **Editor's Quick Take:**

MCA vide its order dated February 25, 2020 has notified the revised Order namely Companies (Auditor's Report) Order, 2020. The applicability of revised CARO shall be:

Every company including a foreign company except,

- A banking company,
- ii. An insurance company,
- iii. A Section 8 Company,
- iv. A One Person Company,
- v. A small company,
- vi. 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, not more than one crore rupees as on the balance sheet date and 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 which does not have a total revenue exceeding ten crore rupees during the financial year as per the financial statements.





CARO will now have mandatory disclosure on CSR w.r.t transfer of the unspent amount to a fund specified in Schedule VII and the amount remaining unspent to the special account within a specified period.

Where, in the auditor's report, the answer to any of the questions unfavourable or qualified, the auditor's report shall also state the basis for such unfavourable or qualified answer, as the case may be.







11. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2020.

Date of Notification: February 28, 2020

Effective Date: date of their publication in the Official Gazette

**Above Notification is available at the following link:** 

http://www.mca.gov.in/Ministry/pdf/rule 28022020.pdf

# **Editor's Quick Take:**

MCA vide its notification dated February 28, 2020 has notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020 by amending the Companies (Appointment and Qualification of Directors) Rules, 2014.

In Rule 6 (1) Every individual –(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement;

apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

After the said amendment for the words three months the words "five months" shall be substituted;





• (b) in sub-rule (4),- (i) for the first proviso, namely:- the following proviso shall be substituted,

"Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or, more of the following, namely:-

- (a) listed public company; or
- (b) unlisted public company having a paid-up share capital of rupees ten crore or more; or
- (c) body corporate listed on a recognized stock exchange:,,.
- (ii) in the second proviso, for the word "companies" the words "companies or bodies corporate" shall be substituted.



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# SEBI

Securities
Exchange
Board of India





# 1. Common Application Form for Foreign Portfolio Investors

Date of Circular: February 04, 2020

Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/feb-2020/common-application-form-for-foreign-portfolio-

investors 45899.html

# **Editor's Quick Take:**

SEBI vide its circular dated February 04, 2020 has issued a common application form for Foreign Portfolio Investors. The Government of India vide notification number F. No. 4/15/2016-ECB dated January 27, 2020 notified the Common Application Form (CAF) for the purpose of (a) registration of Foreign Portfolio Investors (FPIs) with Securities and Exchange Board of India, (b) allotment of Permanent Account Number (PAN) and (c) carrying out of Know Your Customer (KYC) for opening of Bank & Demat Account.

The applicants seeking FPI registration shall be required to fill CAF and 'Annexure to CAF' and provide supporting documents and applicable fees for SEBI registration and issuance of PAN. The other intermediaries dealing with FPIs may rely on the information in CAF for the purpose of KYC.

DDP may continue to accept in–transit FPI registration applications, for a period of 60days from date of issuance of this Circular, received in the form prescribed in operational guidelines issued on November 05, 2019.





# 2. <u>Development of an Online System for Detecting Misuse of Clients' Securities by Brokers</u>

Date of Press Release: February 13, 2020

Above circular is available at the following link:

https://www.sebi.gov.in/media/press-releases/feb-2020/sebi-develops-an-online-system-for-detecting-misuse-of-clients-securities-by-brokers 45980.html

# **Editor's Quick Take:**

SEBI vide its press release dated February 13, 2020 has developed an in – house online system through which it would be able to prepare client level securities holding register of the brokers. SEBI collects the details of the clients' securities submitted in weekly report filed by brokers with the Exchanges and updates the same with trades conducted in the accounts of said clients using the data available with SEBI in DWBIS as well as data provided by Exchanges, Clearing Corporations and Depositories pertaining to auction trades, corporate actions, SLBM transfers, off market trades etc. The securities holding balance computed is matched with the actual clients' securities holding in demat account and submission made by the broker for the next day. Any mismatch in data is flagged as an alert for Exchanges.

SEBI has developed the in – house capabilities to online track the movement of client securities collected by broker as collateral and raise alerts with Exchanges if diversion of clients' securities is noticed. These reports are being generated by SEBI on a weekly basis and three such mismatch reports have already been forwarded to Exchanges for reconciliation with members. This system is likely to timely detect the misuse of clients' securities collected by brokers as collateral or received in pay-out of securities.





# 3. <u>Disclosure Standards for Alternative Investment Funds (AIFs)</u>

Date of circular: February 05, 2020 Effective Date: March 01, 2020

Above circular is available at the following link:

file:///C:/Users/DELL/Downloads/1580927734684.pdf

# **Editor's Quick Take:**

SEBI Vide its notification dated February 05, 2020 has decided to mandate a template for the Private Placement Memorandum providing certain minimum level of information in a simple and comparable format.

The template for PPM shall have two parts viz.

Part A – Section for minimum disclosures, and

Part B — Supplementary section to allow full flexibility to the Fund in order to provide any additional information, which it deems fit.

Further, in order to ensure compliance with the terms of PPM, it will be mandatory for AIFs to carry out an annual audit of such compliance. The audit shall be carried out by either internal or external auditor/legal professional. However, audit of sections of PPM relating to 'Risk Factors', 'Legal, Regulatory and Tax Considerations' and 'Track Record of First Time Managers' shall be optional.





4. <u>Currency Future and Options Contracts (involving Indian Rupee) on Exchanges in</u> International Financial Services Centers (IFSC)

Date of circular: February 03, 2020

Above circular is available at the following link:

file:///C:/Users/DELL/Downloads/1580722127398.pdf

# **Editor's Quick Take:**

SEBI vide its circular dated February 03, 2020 with reference to Foreign Exchange Management Act, 1999 (42 of 1999) for introduction of Rupee derivatives at IFSC it has been decided that for currency futures and options contracts involving Indian Rupee (with settlement in foreign currency), the position limits for eligible market participants, per currency pair per stock exchange, shall be as follows:

- a) Trading Members (positions on proprietary basis as well as clients' position) Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher
- b) Institutional Investors Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher
- Eligible Foreign Investors (as referred to in SEBI Circular IMD/HO/FPIC/CIR/P/2017/003 dated January 04, 2017) – Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher
- d) Other Clients Gross open position across all contracts not to exceed 6% of the total open interest or USD 100 million equivalent, whichever is higher.





# Explanation:

For the purpose of extending aforementioned positions limits, Institutional Investors includes the following:

- International Banking Units (IBU) set up in IFSC
- Foreign Portfolio Investors (FPI)
- AMCs and other Funds set up in IFSC
- Insurance Companies set up in IFSC
- Foreign Banks setup in other offshore jurisdictions
- Supranational, Multilateral or Statutory Organization / Institution/Agency





# 5. Guidelines for Portfolio Managers

Date of circular : February 13, 2020

Effective Date: May 01,2020

Above circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/feb-2020/guidelines-for-portfolio-managers 45981.html

## **Editor's Quick Take:**

SEBI vide its notification dated February 13, 2020 decide to make certain changes in the framework for regulation of Portfolio Managers and the SEBI (Portfolio Managers) Regulations, 2020 ("PMS Regulations") to the regulatory framework for Portfolio Managers are mandated as under:

## **Fees and Charges:**

In case client portfolio is redeemed in part or full, the exit load charged shall be as under:

- a) In the first year of investment, maximum of 3% of the amount redeemed.
- b) In the second year of investment, maximum of 2% of the amount redeemed.
- c) In the third year of investment, maximum of 1% of the amount redeemed.
- d) After a period of three years from the date of investment, no exit load.

## **Direct on-boarding of clients by Portfolio Managers:**

Portfolio Managers shall provide an option to clients to be on-boarded directly, without intermediation of persons engaged in distribution services.





At the time of on-boarding of clients directly, no charges except statutory charges shall be levied.

#### **Disclosure Documents**

Material change, for the purpose of Regulation 22 (7) of PMS Regulations, shall include change in control of the Portfolio Manager, Principal Officer, fees charged, charges associated with the services offered, investment approaches offered (along with the impact of such change) and such other changes as specified by SEBI from time to time.

# Regulation 23(10) of PMS Regulations, it is clarified that Portfolio Managers shall:

- (i) Utilize services of only such distributors (whether known as Channel Partners, Agents, Referral Interfaces or by any other name) who have a valid AMFI Registration Number or have cleared NISMSeries-V-A exam.
- (ii) Pay fees or commission to distributors only on trail-basis. Further, any fees or commission paid shall be only from the fees received by Portfolio Managers.
- (iii) Ensure that prospective clients are informed about the fees or commission to be earned by the distributors for on-boarding them to specific investment approaches.
- (iv) Ensure that distributors abide by the Code of Conduct as specified in Annexure C.
- (v) Have mechanism to independently verify the compliance of its distributors with the Code of Conduct.
- (vi) Ensure that, within 15 days from the end of every financial year, a self-certification is also received from distributors with regard to compliance with Code of conduct.



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Reserve Bank of India





# 1. Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances

Date of circular: February 11, 2020

Above circular is available at the following link:

https://www.rbi.org.in/Scripts/BS CircularIndexDisplay.aspx?Id=11808

# **Editor's Quick Take:**

RBI vide its circular dated February 11, 2020 has extended the one-time restructuring of MSME advances permitted in terms of its circular <u>no. DBR.No.BP.BC.18/21.04.048/2018-19 dated January 1, 2019.</u> Accordingly, a one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification is permitted, subject to the following conditions:

- i. The aggregate exposure, including non-fund based facilities, of banks and NBFCs to the borrower does not exceed ₹25 crore as on January 1, 2020.
- ii. The borrower's account was in default but was a 'standard asset' as on January 1, 2020 and continues to be classified as a 'standard asset' till the date of implementation of the restructuring.
- iii. The restructuring of the borrower account is implemented on or before December 31, 2020.
- iv. The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on January 1, 2020.





Accounts which have already been restructured in terms of the <u>circular dated January 1, 2019</u> shall be ineligible for restructuring under this circular.

All other instructions specified in the <u>circular dated January 1, 2019</u> shall be applicable.





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Central Board of Excise & Customs





1. <u>Implementation of PGA eSANCHIT— Paperless Processing under SWIFTUploading of Licenses/Permits/Certificates/Other Authorizations (LPCOs) by PGAs</u>

Date of Circular : February 10, 2020 Effective date : February 10, 2020

**Above Circular is available at the following link:** 

http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-11-2020.pdf

## **Editor's Quick Take:**

CBIC vide its circular dated February 10, 2020 has notified implementation of PGA eSANCHIT— Paperless Processing under SWIFT.

'eSANCHIT' application is successfully in operation since 01.04.2018. With the objective of further reducing physical interface between Customs/regulatory agencies and the trade and to increase the speed of clearance in both imports & exports, a facility to upload digitally signed Licenses/Permits/Certificates/Other Authorizations (LPCOs) by Participating Government Agencies (PGAs) on eSANCHIT at all ICES locations across India was introduced from 16.11.2018. Now, 3 more PGAs with their LPCOs as detailed in the Annexure-I are being brought onboard eSANCHIT platform. With this, the total number of PGAs brought on Board becomes 50 as on date. Since the facility to upload the LPCOs is now being fully made available to these 3 new PGAs, therefore, the beneficiaries i.e. importer/exporters/customs brokers would not be allowed to upload the previously issued LPCOs on eSANCHIT w.e.f 28.02.2020. Further, to facilitate the members of the trade (beneficiaries), the PGAs are required to upload the LPCOs issued by them during the last 15 days from the stated cut-off date. Any LPCOs issued on a prior date may also be uploaded by the PGAs on eSANCHIT, in order to enable the beneficiary to utilize the same.



NEWSLETTER

# CBDT

Central Board of Direct Taxes





1. <u>Procedure of PAN allotment through Common Application Form (CAF) along with registration of Foreign Portfolio Investors (FPIs) with SEBI under the Department of Economic Affairs and KYC for opening Bank and Demat Account</u>

Date of Notification: February 07, 2020

**Above Notification is available at the following link:** 

https://www.incometaxindia.gov.in/communications/notification/notification 11 2020.pdf

## **Editor's Quick Take:**

CBDT vide its notification dated February 07, 2020 has issued the Procedure of PAN allotment through Common Application Form (CAF) along with registration of Foreign Portfolio Investors (FPIs) with SEBI under the Department of Economic Affairs and KYC for opening Bank and Demat Account.

- A Common Application Form (CAF) for the purpose of registration, the opening of bank and Demat accounts and application for Permanent Account Number (PAN) has been notified for the Foreign Portfolio Investors (FPIs) in India by the Ministry of Finance, Department of Economic Affairs (SEBI).
- Application for allotment of Permanent Account Number (PAN) will be uploaded in CAF as specified by the Ministry of Finance, Department of Economic Affairs (SEBI). After due examination and generation of FPI Registration certificate, SEBI will forward data in form 49AA to prescribed Income Tax Authority through the signature of Authorised Signatories of its Designated Depository Participants (DDPs).





2. CBDT and SEBI would enter into a Memorandum of Understanding, which inter-alia would include modalities of / exchange of data, maintenance of confidentiality, a mechanism for safe preservation of data, weeding out after usage, etc. about the Assessees.

Date of order: February 10, 2020

**Above Notification is available at the following link:** 

https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/380/Order 138ITA 1961 Act Misc. Comm11 2 20.pdf

## **Editor's Quick Take:**

CBDT vide its order dated February 10, 2020 would enter into a Memorandum of Understanding with CBDT and SEBI, which inter-alia would include modalities of / exchange of data, maintenance of confidentiality, a mechanism for safe preservation of data, weeding out after usage, etc. about the Assessees. The data/information to be furnished by the specified income-tax authority shall be:

- Request based exchange of data, wherein, information such as PAN information, father's name/ husband's name, Date of birth (date of incorporation), photograph, signature, Name and PANs of partners in Partnership Firm and LLPs; KYC Information contained in IT Return, IP address appearing on the acknowledgment of the filed IT return; Financial particulars of the business as filed in ITR and Tax Audit Report including Income from trading in securities and/or any other information.
- **the Suo Moto exchange of data** by the CBDT to SEBI wherein, information such as List of scrutiny cases marked as having Evasion/Violation related to "Stock Market Manipulation".





• In the Automatic exchange of data information such as (i) Form 61 as per Income Tax Rules, 1962 (information of an individual or a person (not being a company or firm) who does not have a PAN} submitted by SEBI regulated intermediary; and (ii) Any other information considered necessary for SEBI (to be decided on basis of mutual agreement between SEBI and CBDT).

However, while furnishing the information, the specified income-tax authority shall form an opinion that sharing of such information is necessary for the purposes of enabling the SEBI to perform its functions under its respective laws.





## 3. The Income-tax (5th Amendment) Rules, 2020.

Date of Notification: February 13, 2020

Effective Date: from the date of their publication in the Official Gazette

**Above Notification is available at the following link:** 

https://www.incometaxindia.gov.in/communications/notification/notification 11 2020 new.pdf

## **Editor's Quick Take:**

CBDT vide its notification dated February 13, 2020 has notified the Income-tax (5th Amendment) Rules, 2020 by amending the Income-tax Rules, 1962. After the amendment PAN inoperative if it is not linked with Aadhaar. If a person, who has been allotted the permanent account number as on July 01, 2017 and is required to intimate his Aadhaar number, has failed to intimate the same on or before March 31, 2020, the permanent account number of such people will become inoperative immediately after the said date for the purposes of furnishing, intimating or quoting. Where the person has intimated his Aadhaar number after March 31, 2020, his permanent account number shall become operative from the date of intimation of Aadhaar number for the purposes of furnishing, intimating or quoting. Further, the person will be liable for all the consequences under the Act for not furnishing, intimating or quoting the permanent account number.





## 4. The Income-Tax (4th Amendment) Rules, 2020

Date of Notification: February 12, 2020

Effective Date: April 01, 2020

**Above Notification is available at the following link:** 

https://www.incometaxindia.gov.in/news/notification 10 2020.pdf

## **Editor's Quick Take:**

CBDT vide its notification dated February 12, 2020 has notified The Income-Tax (4<sup>th</sup> Amendment) Rules, 2020. Key highlights of the amendment are as follows:

After rule 21AD, the following rules shall be inserted, namely: -

"21AE. Exercise of option under sub-section (5) of section 115BAA.—(1) The option to be exercised in accordance with the provisions of sub-section (5) of section 115BAA by a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall be in Form No. 10-IC.

- (2) The option in Form No. 10-IC shall be furnished electronically either under digital signature or electronic verification code.
- (3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-
  - (i) specify the procedure for filing of Form No. 10-IC;





- (ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (2), for verification of the person furnishing the said Form; and
- (iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the Form so furnished.;

21AF. Exercise of option under sub-section (7) of section 115BAB. (1) The option to be exercised in accordance with the provisions of sub-section (7) of section 115BAB by a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall be in Form No. 10-ID.

- (2) The option in Form No. 10-ID shall be furnished electronically either under digital signature or electronic verification code.
- (3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-
  - (i) specify the procedure for filing of Form No. 10-ID;
  - (ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (2), for verification of the person furnishing the said Form; and
  - (iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the Form so furnished.".





5. Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Return of Income for A.Y 2016-17,2017-18, and 2018- 19 and Form No.9A and Form No. 10.

Date of Circular: February 19, 2020

**Above Notification is available at the following link:** 

https://www.incometaxindia.gov.in/communications/circular/circular no 6 2020.pdf

## **Editor's Quick Take:**

CBDT vide its circular dated February 19, 2020 has decided that where the application for condonation of delay in fi ling Form 9A and Form 10 has been filed, and the Return of Income has been filed on or before 31 S1 March of the respective assessment years i.e. Assessment Years 20 16- 17, 20 17- 18 and 2018- 19, the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.

CBDT has issued Circulars authorizing the Commissioners of Income Tax to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay U/S 11 9(2)(b) of the Income-tax Act, 1961 (Act).

Income Tax Returns have also been filed beyond the due date prescribed under section 139(1) of the Act, the condonation of delay in fi ling of Form 9A & Form 10 by the Commissioners is not of any help to the assessee, as section 13(9) of the Act, inserted w.e.f. 01.04.20 16, stipulates twin conditions of filing of Form 9A/Form 10 and also of fi ling Return of Income before the due date.



## NEWSLETTER

# Misc.Laws





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

Date of notification: February 12, 2020

Effective Date: from the date of their publication in the Official Gazette

Above circular is available at the following link:

https://ibbi.gov.in/uploads/whatsnew/5d33207e628c063b27457dcd20fa89ed.pdf

## **Editor's Quick Take:**

The IBBI vide its notification dated February 12, 2020 has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2020. Key highlights of the amendment are as follow

• In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in regulation 40B, for sub-regulation (4), the following sub-regulation shall be substituted, namely: -

"(4) The filing of a Form under this regulation after 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."





2. Policy to keep control on exporters using self certified system for EU- GSP Registered Exporter System.

Date of Notice: February 11, 2020

Above notice is available at the following link: http://dgft.gov.in/sites/default/files/T.N%2049.pdf

## **Editor's Quick Take:**

The DGFT has issued a Trade Notice dated February 11<sup>th</sup> 2020 to request exporters to submit fortnightly statements in the prescribed format on Statement of Origin issued. They are also requested to to respond to the verification requests by EU within the prescribed time limit, failing which the Registered Exporter Number (REX) may be annulled. Furthermore, issued FAQs in this regard to clarify the various issues pertaining to the same.

- It has been clarified, that there is no difference in tariff or customs preferences if the wholly obtained (WO) criteria are used instead of the product-specific rule (PSR).
- the WO criteria under Article 44 of EU regulation 2446/2015 should be used when all the inputs namely raw materials and intermediates used in the export product are originating in India.
- In case, there is a doubt on the origin of any input, used in the export product the WO criteria must not be used.





• It has been clarified, that the "Statement on Origin" can be issued retrospectively from the date of application for registration of an exporter, For example, if an exporter made an online application for registration on 1 April but the REX number was issued only on 15 April; he can use the REX number allotted to him for issuance of "Statement on Origin" for exports made from 1 April onwards.







## 3. Banning of Unregulated Deposit Schemes Rules, 2020.

Date of Notification: February 12, 2020

Effective Date: date of publication in the Official Gazette

Above notice is available at the following link:

http://egazette.nic.in/WriteReadData/2020/216125.pdf

## **Editor's Quick Take:**

Ministry of finance vide its notification dated February 12, 2020 has notified the Banning of Unregulated deposit schemes Rules, 2020. The information and particulars which the Competent Authority shall consider for provisionally attaching the property of the deposit taker shall include, namely:—

- (a) any complaint against the promotion or operation of an Unregulated Deposit Scheme, whether the complainant is a depositor in the said Unregulated Deposit Scheme or not;
- (b) any information received from the Central Government, or any State Governments or Union territory Administrations, or any law enforcement authority or agency or body under the charge of such Governments or Administrations, regarding the promotion or operation of an Unregulated Deposit Scheme;
- (c) information of any advertisement, whether in print or electronic media or both, inducing another person to invest in, or become a member or participant of any Unregulated Deposit Scheme; and





(d) any other information that the Competent Authority has, that a deposit taker is soliciting or accepting deposits in contravention of the provisions of the Act.

## Central Database.-

- (1) The authority may require any Regulator or the Competent Authority or any other entity or person to submit to it any information in its possession relating to deposit takers in India.
- (2) The designated authority shall operate a portal accessible to the public, containing information relating to deposit takers, which shall include the following, namely:
  - i. list of deposit takers operating in India, the extent and areas of their operation;
  - ii. any action taken under any law for the time being in force against any deposit taker for collection of deposits; and
  - iii. updates regarding proceedings for restitution of depositors under Chapter V of the Act.

## Form and manner of intimation.-

- (1) Every deposit taker commencing business shall submit an intimation in the Form annexed to these rules to the authority specified in sub-rule (1) of rule 6, within a period of thirty days from the commencement of the business.
- (2) In case of any change in any particulars submitted to the said authority, the deposit taker shall intimate the authority of such change within a period of thirty days from the date of the change



#### NEWSLETTER

An Article on Difference between oppression and mismanagement





## **Difference between Oppression and Mismanagement**

Sections 397 and 398 of the Companies Act, 1956 usually join those two sections and that although these two sections are often mentioned in the same breath in dealing with company matters, these are widely different sections. Section 397 seeks to prevent oppression and Section 398 seeks to prevent mismanagement.

In R. Balakrishnan And Ors. vs Vijay Dairy And Farm Products. on 18 November, 2004; Equivalent citations: 2005 125 CompCas 661 CLB, 2005 59 SCL 667 CLB; Bench: K Balu; ORDER K.K. Balu, Member. A plain reading of section 397 [corresponding to Section 241(1)(a) of Companies Act, 2013] reveals that on an application made by any member of a company having the right under Section 399, complains that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members, the Company Law Board may with a view to bringing to an end the matters complained of, make appropriate order, if the CLB is of opinion-

- 1. that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members;
- 2. that the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up; and
- 3. that the winding up order would unfairly prejudice the members. It is, therefore, clear that it is for the CLB to form an opinion on the facts alleged in the petition whether the requirements of Section 397(2)(a) and (b) have been duly met before making such orders as it thinks fit under section 397.





Section 398[corresponding to section 241(1)(b) of companies act, 2013] can be Invoked in either of the following two circumstances:-

- (A) that the affairs of the company are being conducted in a Manner which is
- i. Prejudicial to public interest; or
- ii. prejudicial to the interest of the company or
- (b) it is likely that the affairs of the company will be conducted in a manner
- i. prejudicial to public interest; or
- ii. prejudicial to the interest of the company due to a material change that has taken place in the management or control of the company. Such change may take place due to alteration in the Company's Board of Directors or manager or in ownership of its shares or membership or in any other manner whatsoever.

The Supreme Court *in Shanti Prasad Jain v. Kalinga Tubes, Limited, cited by Shri Ramakrishnan*, learned Counsel, while considering the provisions of section 397 expressed the position:

a petition under section 397 of the Companies Act, 1956, it is not enough to show that there is just and equitable cause for winding up the Company, though that must be shown as preliminary to the application of Section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing upto the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough





unless the lack of confidence springs from oppression of a minority by a majority in the management of a company's affairs and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder." in the petition whether the requirements of Section 397(2)(a) and (b) have been duly met before making such orders as it thinks fit under section 397. Section 398 [corresponding to Section 241(1)(b) Of Companies Act, 2013] can be invoked in either of the following two circumstances:-

- (a) that the affairs of the company are being conducted in a manner which is
- i. prejudicial to public interest; or
- ii. prejudicial to the interest of the company or
- (b) it is likely that the affairs of the company will be conducted in a manner
- i. prejudicial to public interest; or
- ii. prejudicial to the interest of the company due to a material change that has taken place in the management or control of the company. Such change may take place due to alteration in the Company's Board of Directors or manager or in ownership of its shares or membership or in any other manner whatsoever.

The Supreme Court *in Shanti Prasad Jain v. Kalinga Tubes, Limited, cited by Shri Ramakrishnan,* learned Counsel, while considering the provisions of section 397 expressed the position:

"In a petition under Section 397 of the Companies Act, 1956, it is not enough to show that there is just and equitable cause for winding up the Company, though that must be shown as preliminary to the application of Section 397.





It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of a company's affairs and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."

## Admissibility of the petition under Oppression and Mismanagement

Every kind of oppression cannot be remedied by the court. In Kerala High Court in the case of *V. J. Thomas Vettom v. Kuttanad Rubber Co. Ltd., reported in 1984 (56) Company Cases 284*. The relevant observation of the Hon'ble High Court in the said case is quoted below:

Every kind of oppression cannot be remedied by the court. Since the words used are "are being conducted", the action complained of must be a continuous one and not either an isolated or a stale one. Once the court is satisfied that the complaint is made without bonafides and to settle old scores or with the sole intention of mud-slinging, no orders under s. 397 or s. 398 will be passed. The court must have strong grounds before it to order winding up. An order under s. 397 or s. 398 can be supported only if such grounds are present. *In Shanti Prasad Jain V. Kalinga Tubes Ltd., reported in 1965 (35) Company Cases, Page-351* and the relevant portion of the judgment relied upon is quoted below:





Events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.



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Article on Consensual Relationships under The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013





# Consensual Relationships under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) act, 2013

## Consensual relationship is when both people consent to being in it.

Any act cannot be considered to be a harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 if such Act has occurred with the consent of both the Parties involved. However, if a consensual relationship ceases to exist, conduct once considered welcome may later be seen as unwelcome.

Consensual relationships are not harassment if they are welcomed by the person involved. Only unwelcome conduct can be sexual harassment.

**Unwelcome Conduct** is an act which is not appreciated by the recipient or is regarded as offensive or inappropriate by the recipient and is considered to be creating a hostile environment at the workplace.

Either person in a consensual relationship has the right to end it, at any point in time, and do so without fear of retaliation at the job. In such cases of ceased consensual relationships, if one of them objects to the behavior that was earlier welcome, the other is required to stop such behavior. In the event of continuance of such behavior despite objecting, it would be treated as sexual harassment.





## **ILLUSTRATION**

A was introduced to B during a training program. During the training, A and B started talking and to A's delight she found that B was from the training division the department she was planning to move to. B asked A to send him her resume after the training program. A sent her profile to B and was excited to hear that he had an opening for her. A joined B's team. B asked A out for dinner a few times and she agreed willingly. Slowly the work load increased and once when B asked A out to Dinner, she refused. At this B insisted that A go out for dinner with him as she 'owed it to him'. A then told B that from then on their relationship was to be strictly professional. B kept calling her and sending her emails. A begged B to stop but he didn't and she started taking time off from work to avoid him.

## Is A a victim of sexual harassment because her relationship with B was consensual?

Yes, A is a victim of sexual harassment as accepting an outing once does not give B the right to expect A to go out repeatedly with him. Since A is avoiding work, B's conduct is interfering unreasonably with her work performance. B is guilty of sexually harassing A.





# Article

Considerations before and after becoming Non Resident Indian



#### NEWSLETTER

## **Considerations before and after becoming Non Resident Indian**

With the Indian talent being recognized world over we see a large amount of Indians moving abroad for the purpose of employment, vocation, profession, education or any other purpose for an uncertain periods. At the time of moving abroad, the Indians are required to consider the following aspects pertaining to their investments and for the ease of their transactions, when they are physically not present in the country:

## 1. Conversion of Resident Savings Account into an NRO Account

Any person who becomes Non-resident of India, needs to convert its saving accounts into NRO account as per the FEMA Regulations. It shall be illegal for NRIs to hold resident savings account in India. If NRIs still continues to use resident savings account, he/she may incur heavy penalties under the FEMA Act. NRO Account is an ordinary savings account opened by NRIs, where the monies are non repatriable and can be transferred to NRE account only by the RBI's prior permission. In this account, NRIs are allowed to deposit all the Indian rupees earnings such as from rents, interest from savings account and fixed deposits. One can also remit foreign earnings in this account which shall be converted in to Indian rupees.

## 2. Opening a NRE Account (Non-Resident External Rupee account)

NRE account is an external saving bank account opened for Non Resident Indians where an NRI can deposit foreign money in this account. It should be noted that the monies can be repatriated freely outside India from an NRE account, at any time without taking any approval from RBI. There are three modes of deposit in NRE account, a) Foreign exchange transfer from abroad, b) Transfer of funds from existing other NRI's Non Resident External(NRE)/FCNR account held with another bank, and c) By deposit of foreign exchange during NRI's visit to India.



#### NEWSLETTER

With NRE account one can have the following benefits:

- 1. Interest earned on these accounts are tax-free
- 2. These accounts accept all currencies

Change in Residential status: If there is any change in residential status which is continued till maturity, can be designated to resident account or converted to Resident Foreign Currency Account (RFC). Funds originated in India cannot be transferred to NRE account, it can only be credited to NRO account like PF account settlement amount can be transferred to NRO account only.

#### 3. PPF Account

Public Provident Fund or PPF scheme is a long term investment option and savings-cum-tax-saving instrument backed by Government of India with attractive interest rate and returns that are fully exempted from Tax. An NRI cannot open a new PPF account but an NRI already having a PPF account, post change in residential status can continue his/her PPF account only till maturity, but after the maturity no further extension is permitted.

- 1. The payment towards the PPF account can be done from both NRE and NRO account.
- 2. The withdrawals from the PPF account are non-repatriable and need to be deposited in the NRO account only.

### 4. Investments

Post change in residential status, NRIs needs to duly inform the companies in which the person holds investments, RTA, broker as well as the depositories about the change in residential status to be fully FEMA compliant.





#### 5. Insurance Policies

There is no bar on the continuance of the life insurance policy and the general insurance policies, but yet the change of status should be duly notified and updated.

#### 6. Previous Investment Outside India

If the person has made any investment outside India then the person shall get the UIN no. allotted for investment, cancelled by RBI.

## 7. Power of Attorney for sale of property

Sale of property can be executed by only a special power of attorney given in favour of a blood relation.

## 8. General Power of attorney

The person should give a general power of attorney for all the other purposed to a person, who is trustworthy and can take care of all the transactions, on his behalf in the country in his absence.

## 9. Existing Loans from Financial institution

Any existing loans of the NRIs, including home loans, can continue to exist and the repayment of the loan shall be permitted through inward remittance or from funds in India. For any loans made by the NRI to a resident, the repayment shall be made only to the NRI's NRO account.

Sakshi Agarwal

CS and LLB

Leader & Director in Sameer Mittal & Associates



NEWSLETTER



# WINS

Compliance Checklist



# S WHITESPAN Advisory



## NEWSLETTER

Compliance Calendar for March 2020							
Sun	Mon	Tue	Wed	Thu	Fri	Sat	
		1	2	3	4	5	
6	7	8	9	10	11	12	
13	14	15	16	17	18	19	
20	21	22	23	24	25	26	
27	28	29	30	31			



## NEWSLETTER

Income Tax Related Compliances					
	Challan-cum-statement for TDS				
	<ul> <li>Due date for deposit of Tax deducted/collected for the month of February, 2020.</li> <li>However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan</li> </ul>				
	<ul> <li>Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2020 has been paid without the production of a challan</li> <li>4th Instalment of Advance Tax</li> <li>Issue of TDS certificate for tax deducted under section 194-IA ,194-IB and 194M</li> </ul>				
	File challan-cum-statement for TDS u/s 194-IA and 194-IB				
	Due date to link PAN with Aadhar				
RBI Related Compliances					
	<ul> <li>Monthly return (NBS-6) on exposure to capital market</li> <li>Monthly Return on Important Financial Parameters</li> </ul>				
	Monthly statement of short term dynamic liquidity in Form ALM-I				





## **Economic, Industrial & Labour Law Related Compliance**

- Monthly payment of PF (Non-Corporate)
- File monthly return (Form No.5) for employees leaving /joining during the previous month
- File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))
- File monthly return of members joining service during the previous month (Form no.F4(PS))
- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers
- Payment of ESI Contribution for the previous month

## **Good and Service Tax Related Compliances**

- GSTR-1 (Monthly)
- File GSTR-9 Annual Return
- GSTR-3B
- GSTR-5
- GSTR-5A

## **MCA Related Compliance**

• BEN-2





## For further information please contact:

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