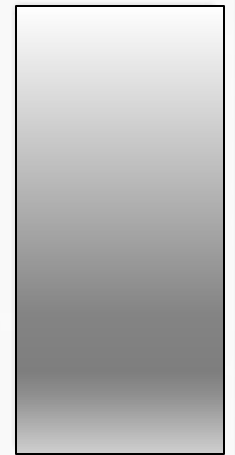


# **LEGALITE** ADVISORS

**IMPORTANT LEGAL UPDATES FOR JUNE, 2019**



# Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 07/2019 on filing of e-form DIR-3-KYC under the Companies Act, 2013 (“Act”) dated June 27, 2019 (“Circular”).**
  - Pursuant to the representations received from stakeholders, regarding certain difficulties faced in filing e-form DIR-3-KYC (application for KYC of directors) in accordance with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014 (“**Principal Rules**”) which states that every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year, shall submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year and pursuant to the request for extension, the MCA has examined the aforesaid matter and proposed the following vide the Circular:
    - ✓ simplified the directors’ KYC verification process, wherein every person who has already filed e-form DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service with pre-filled data based on the records in the registry, for ease of verification by the concerned person.
    - ✓ in case a person wishes to update his/her mobile no. or e-mail address, he/she would be required to file e-form DIR-3 KYC, as this facility of updation will not be proposed in the web-based service.

## Companies Act (Contd...)

- ✓ further, in case of updation in any other personal detail of the director, e-form DIR-6 (intimation of change in particulars of director to be given to the Central Government) is required to be filed for the same before completion of KYC through the web-based service.
- ✓ the amendment in the Principal Rules, including the amendment related to extension of time (allowing for adequate time) for completion of KYC through e-form DIR-3 KYC or the web-based service, as the case may be, will be notified shortly and the consequent compliance can be done thereafter.
- **Link of the Notification.**  
[http://www.mca.gov.in/Ministry/pdf/CosAppointmentQualificationDirAmend\\_01052019.pdf](http://www.mca.gov.in/Ministry/pdf/CosAppointmentQualificationDirAmend_01052019.pdf)

## Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 411 (E) on the Companies (Incorporation) Sixth Amendment Rules, 2019 dated June 07, 2019 (“Notification”).**
  - The MCA, *vide* the Notification, has further amended Companies (Incorporation) Rules, 2014 (“**Principal Rules**”) which shall come into force from August 15, 2019.
  - The major highlights of the Notification are as under:
    - ✓ Rule 19(1) of the Principal Rules, which provides license for new companies with charitable objects etc. has substituted e-form INC-12 (application for grant of license under section 8) with e-form INC-32.
    - ✓ The amendment in the immediately preceding paragraph envisages that new companies with charitable objects etc. shall make an application for grant of license under section 8, by filing 1 (one) e-form itself with the Registrar of Companies i.e. e-form INC-32.
    - ✓ In sub-rules 3 (a) and 3 (b), respectively the words ‘draft memorandum’ have been substituted with the words ‘the memorandum’. This substitution ensures alignment with the amendment to the Principal Rules.

## Companies Act (Contd...)

- ✓ Further, in Form No. 11 i.e. certificate of incorporation, in the heading the reference to sub-section (1) of section 8 has been inserted after sub-section (2) of section 7, in order to align with the aforesaid amendment.
- ✓ e-form INC-12 (application for grant of license under section 8) has been substituted with a new e-form INC-12 (application for grant of license to an existing company under section 8). This means that the existing companies shall make an application for grant of license under section 8 by filing new e-form INC-12 and the format of the said e-form has been appended in the enclosed Notification.
- **Link of the Notification.**  
[http://www.mca.gov.in/Ministry/pdf/Rules\\_07062019.pdf](http://www.mca.gov.in/Ministry/pdf/Rules_07062019.pdf)

## Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 390(E) on Schedule VII of the Companies Act, 2013 (“Act”) dated May 30, 2019 (“Notification”).**
  - The MCA, *vide* the Notification, has further amended Schedule VII of the Act (“**Schedule**”) which briefly encapsulates all the activities which may be included by a company in its corporate social responsibility policy (“**CSR Policy**”), which shall come into force from the date of its publication in the official gazette, i.e. May 30, 2019.
  - In the said Schedule, after item (xi) and the entries relating thereto, the following item and entries shall be inserted, namely
    - ✓ (xii) disaster management, including relief, rehabilitation and reconstruction activities.
  - Per the said amendment in the Schedule, a company can now also include activities pertinent to the aforesaid item in its CSR Policy and undertake the same in accordance thereto.
  - **Link of the Notification.**  
[http://www.mca.gov.in/Ministry/pdf/Notification\\_06062019.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_06062019.pdf)

# Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – circular no. RBI/2018-19/226 on Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies, dated June 28, 2019 (“Circular”).**
  - The RBI, *vide* the Circular has drawn attention to [A.P. \(DIR Series\) Circular No.133 dated June 20, 2012](#) which stipulated that all Indian companies which have received foreign direct investment (“**FDI**”) and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, should file the annual return on foreign liabilities and assets (“**FLA**”) in the soft form which can be duly filled-in, validated and sent by e-mail to the Reserve Bank by July 15 of every year.
  - The coverage was enhanced to reporting of inward and outward foreign affiliate trade statistics (FATS) and reporting by the limited liability partnerships (“**LLPs**”) through the subsequent circulars, viz. ([A .P. \(DIR Series\) Circular No. 145 dated June 18, 2014](#), [A.P. \(DIR Series\) Circular No.22, dated October 21, 2015](#), and [A.P. \(DIR Series\) Circular No. 29, dated February 02, 2017](#)).

## Reserve Bank of India (Contd...)

- In view of enhancement of the security-level in data submission and further improve the data quality, the present email-based reporting system for submission of the FLA return is being replaced by the RBI with the web-based system online reporting portal, which would facilitate data submission by eligible entities (including the alternative investment funds (“AIF”) registered with the Securities and Exchange Board of India as also the reporting of foreign investment in the form of capital/profit share contribution received/transferred in case of LLPs and investment by persons resident outside India in an investment vehicle and as defined in [Foreign Exchange Management \(Transfer or issue of security by a person resident outside India\) Regulations 2017, dated November 7, 2017](#)).
- Following are the salient features of the revised Foreign Liabilities and Assets Information Reporting (FLAIR) system:
  - ✓ RBI would provide a web-portal interface <https://flair.rbi.org.in> to the reporting entities for submitting ‘User Registration Form’ (containing entity identification and business user details, where LLPs and AIFs will no longer required to use dummy corporate identification number).
  - ✓ The successful registration on web-portal will enable users to generate RBI-provided login-name and password for using FLA submission gateway and would include system-driven validation checks on submitted data.



## Reserve Bank of India (Contd...)

- ✓ The form will seek investor-wise direct investment and other financial details on fiscal year basis as hitherto, where all reporting entities are required to provide information on FATS related variables (it was mandatory only for subsidiary companies earlier). In addition, the revised form seeks information on first year of receipt of FDI/ODI and disinvestment.
- ✓ Reporting entities will get system-generated acknowledgement receipt upon successful submission of the form.
- ✓ They can revise the data, if required, and view/download the information submitted.
- ✓ Entities can submit FLA information for earlier year/s after receiving RBI confirmation on their request email.
- ✓ The existing mechanism of email-based submission of FLA forms will be discontinued.
- Indian entities not complying with above, will be treated as non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.
- These directions will come into force with immediate effect and would be applicable for reporting of information for the year 2018-19.
- **Link of the Circular.**  
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11607&Mode=0>

## Reserve Bank of India (Contd...)

- **The Reserve Bank of India (“RBI”) – circular no. RBI/2018-19/203 on prudential framework for resolution of stressed assets, dated June 07, 2019 (“Circular”).**
  - The RBI has, *vide* the Circular, issued the RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019, in view of the circular thereof dated February 12, 2018 (“**Earlier Circular**”) having been struck down by the Supreme Court, earlier this year, which prescribed the framework for resolving stressed assets earlier.
  - The Supreme Court had found the Earlier Circular, ultra vires was the powers of RBI, primarily basis the fact that it universally mandated reference of accounts to proceedings under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) where the aggregate exposure was greater than INR 2,000 crores and where the resolution was not implemented within 180 days. However, the Supreme Court held that such reference of defaulting borrower can be directed by RBI on a case-to-case basis having regard to the specific defaults.
  - The RBI, through the Circular has attempted to address the concerns faced during the regime of the Earlier Circular, the order of the Supreme Court and made the applicability more sweeping. The Circular has come into effect from June 07, 2019 and following are the major highlights of the Circular:

## Reserve Bank of India (Contd...)

- ✓ The Circular applies to scheduled commercial banks, All India Term Financial Institutions (“**AITFI**”), Small Finance Banks (“**SFB**”), Systemically Important Non-Deposit taking Non-Banking Financial Companies (“**NBFC-ND-SI**”) and Deposit taking Non-Banking Financial Companies (“**NBFC-D**”). It is not applicable to regional rural banks, Foreign Currency Convertible Bond holders etc.
- ✓ The Circular prescribed the lenders to adopt a board approved policy for resolution of stressed assets with timelines for resolution. This policy is required to outline the signs of financial stress and set out qualitative and quantitative criteria for determination of such financial stress.
- ✓ Lenders are expected to take proactive steps to initiate and implement a resolution plan even before a default has actually occurred. In case a default has occurred, and if the lender is a SCB, SFB or AITFI, they are required to undertake a review of the borrower within 30 days of such default (“**Review Period**”).
- ✓ A resolution plan (“**RP**”) under the Circular is required to be implemented within 180 days from the end of the Review Period, if the lenders have decided to pursue a restructuring (rather than a reference to insolvency proceedings under the IBC). A Review Period will commence on the earlier of the reference date (if the borrower has defaulted on or before the reference date) or on the date of first default after the reference date. The reference dates are as per the below:

## Reserve Bank of India (Contd...)

Aggregate exposure of the Borrower to SCBs, SFBs and AITFI	Reference Date
INR 20 billion and above	7 June 2019
INR 15 billion up to INR 20 billion	1 January 2020
Less than INR 15 billion	To be announced by RBI

- ✓ An inter-creditor agreement (“**ICA**”) is required to be entered into for the implementation of a RP between all lenders (including any asset reconstruction companies) during the Review Period. All decisions under the ICA, shall be made with the consent of 75% by value of the total outstanding credit facilities (fund based and non-fund based) and 60% of lenders by number will binding all lenders. Any dissenting lenders under the RP are required to be paid at least the amount which they would receive on liquidation.

## Reserve Bank of India (Contd...)

- ✓ One of the key conditions prescribed under the Circular is to have an independent credit evaluation (“**ICE**”) by credit rating agencies (“**CRAs**”) specifically approved by RBI.
- ✓ A list of ICE symbols and their description has been set out in the Circular for rating the RPs. Only those RPs which have a credit rating of RP4 for the residual debt will be considered for implementation. The onus and cost for appointing CRAs has now been imposed on the lenders.

Aggregate Exposure	CRAs
INR 5 billion or above	2 ICE
INR 1 billion or above	1 ICE

- ✓ An RP will be deemed to have been implemented, only if the following conditions are met:
  - **where there is no restructuring / change in ownership under the RP:** if the borrower has not defaulted with any of its lenders as on the 180th day from the end of the Review Period.

## Reserve Bank of India (Contd...)

- **where there is a restructuring / change in ownership:** (i) when all documents (including as regards security creation and perfection) are duly executed between the parties; (ii) the new capital structure is reflected in the books of both, the lender and the borrower; and (iii) the borrower is not in default with any lenders.
- **where the RP involves an assignment of exposures / recovery action:** the exposure to the borrower is fully extinguished.
- ✓ The Circular provides that the assets which are classified as 'standard', will immediately be downgraded to NPA in case of a restructuring and NPAs will continue to have the same asset classification as they had pre-restructuring. Conditions for upgradation of accounts from NPA to standard have been provided in the Circular.
- ✓ Accounts where lenders have an aggregate exposure of INR 5 billion or more, require at least 2 CRAs providing investment grade credit ratings and for exposures of INR 1 billion and up to INR billion, an investment grade credit rating from at least 1 CRA.

## Reserve Bank of India (Contd...)

- ✓ The Circular, however, provides concessions for provisioning where insolvency proceedings are initiated under IBC. The Circular provides for a immunity on provisioning for the earlier of:
  - (i) a period of 6 months from the date of submission of a RP; or
  - (ii) 90 days from the date of approval of the RP under the IBC.
- ✓ During this immunity period, lenders cannot reverse additional provisioning made, but will be required to make additional provisions to the extent of the shortfall. The immunity on provisioning will lapse if a RP is rejected. Specific provisioning norms have also been stipulated for additional and interim financing availed by any debtors.
- ✓ The Circular provides for additional provisioning, with maximum being 100%, to be made by all lenders for non-implementation of a viable RP, in addition to the provisions already made / required to be made based on the asset classification status of the borrower account

Timeline for implementation	Additional provision
180 days from the end of the Review Period	20%
365 days from the commencement of the Review Period	15% (i.e. a total additional provisioning of 35%)

## Reserve Bank of India (Contd...)

- ✓ The above additional provisioning is to be made in all cases where recovery proceedings have been initiated by the lenders but not been fully completed.
- ✓ Further, where
  - i. the borrower defaults on any of the credit facilities after an upgrade to its asset classification, but before the 'specified period' (being the period commencing on the date on which the RP is implemented and until payment of 20% of the outstanding principal debt as per the RP and interest capitalization sanctioned, if any,); or
  - ii. does not perform satisfactorily in the 'monitoring period' (being the period commencing from the date of implementation of the RP up to the date by which at least 10% of the sum of the outstanding principal debt under the RP and interest capitalisation as part of the restructuring, if any, is repaid) then the lenders are required to make an additional provisions of 15% for such accounts at the end of the Review Period.
- ✓ However, these additional provisions can be reversed, subject to compliance with certain conditions for each type of resolution as prescribed in the Circular



## Reserve Bank of India (Contd...)

- ✓ However, these additional provisions can be reversed, subject to compliance with certain conditions for each type of resolution as prescribed in the Circular.
- ✓ Further, the upgradation of asset classification, specifically, in case of a change in ownership is also subject to conditions such as:
  - i. the acquirer not being disqualified under S. 29A of the IBC;
  - ii. the new promoter holding at least 26% of the paid up equity share capital and voting rights of the borrower and being its single largest shareholder; and
  - iii. new promoter being in control, etc.
- ✓ The Circular also prescribes measures of income recognition, refinancing and disclosures.
- **Link of the Circular.**  
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11580&Mode=0>

## Deets / Disclaimer

### ❑ Deets.

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**Thank You**



***There is no wealth like knowledge and no poverty like ignorance - Buddha***