



# Brahmayya Bulletin

January 2018

## Editorial

Wishing our readers a happy and prosperous 2018. As we step into new year, the Ministry of Corporate Affairs has been swift in introducing the Companies (Amendment) Act, 2017 with an aim to align the Indian Law with global standards. Major emphasis is laid on areas like disclosures, accountability, corporate governance and investor protection. The Companies Law Committee (CLC) have addressed the concerns of various stakeholders. The effort is commendable, as this Amendment Act, deals with aligning all concerns and harmonizing the Companies Act with other relevant regulations.

The gist of the Companies (Amendment) Act, 2017 is also provided in the "Our News" Section of the website.

Insolvency and Bankruptcy Code (Amendment) Act 2017 has received the assent of the President on 18<sup>th</sup> January 2018. The Ordinance was issued in the month of November and was effective from the date of issue or Ordinance.

The Insolvency Code has placed large onus and responsibility of the Resolution Professionals. Any non-compliance during the Corporate Insolvency Resolution Process resulting in penalties and fines are to be borne by the Resolution Professional. This is a stringent norm, and Resolution Professionals are to be alert and proactive to ensure going concern during the Corporate Insolvency Resolution Process.

We expect the year 2018 to be busy from the standpoint of amendments to various regulations. Major activity is expected in the Valuation, Mergers and Acquisition space and the alignment of all major laws like Income Tax Act, Companies Act, Insolvency Code and the Reserve Bank of India Guidelines is the need of the year.

Stay connected and watch this space for more updates.

Happy Reading!

Policy Directive order Instruction Update Clarification  
**Ministry of Corporate Affairs** Circular  
Rule Enactment Notification Guideline  
Framework Update Policy Instruction  
**Central Board of Direct Taxes**  
Order Notification Regulation Instruction  
Notice Circular Update Notification  
**Central Board of Excise and Customs**  
Directive Order Notification Enactment  
Pronouncement Announcement Framework Rule  
**Foreign Exchange Management Act**  
Instruction Order Clarification Directive Interpretation  
**Institute of Chartered Accountants of India**  
Circular Order Clarification Directive Framework  
**Reserve Bank of India** Notification  
Announcement Framework Clarification  
Notification Order Rule  
Instruction Order  
Framework Circular  
Update

## Ministry of Corporate Affairs (MCA)

Companies (Amendment) Act, 2017 has received the assent of President on 3<sup>rd</sup> January 2018. Details related to the amendments are elaborated in "Our News" section of our website

### Notification GSR 49 (E) - Dated 20<sup>th</sup> January 2018

Ministry of Corporate Affairs has notified Companies (Incorporation) Amendment Rules 2018 with effect from 26<sup>th</sup> January 2018. Key amendments are:

- Reservation of Company name shall be made through web service by using RUN (Reserve Unique Name) instead of Form INC 1.
- Form INC-7 cannot be filed to give notice of provisions for entrenchment in Articles of Association to ROC.
- Form INC-32 (SPICe) should be filed for incorporation of company along with fee as provided. If the objects of a Company requires registration or approval from sectoral regulators, registration or approval shall be obtained by the proposed company before pursuing such objects.
- In case of Incorporation of Company, where there is more than 7 subscribers or any subscriber is signing MOA/AOA, outside India, MOA/AOA should be filed with INC-32 (SPICe) along with certain prescribed formats.

### Notification GSR 48 (E) - Dated 20<sup>th</sup> January 2018

Companies (Registration Offices and Fees) Amendment Rules, 2018 is effective from 26<sup>th</sup> January 2018. Accordingly, re-submission of the application is not allowed in case of reservation of name. Fees to be paid to registrar for filings has been revised.

### Notification GSR 51 (E) - Dated 22<sup>nd</sup> January 2018

Companies (Appointment and Qualifications of Directors) Amendment Rules, 2018 has been notified with effect from 26<sup>th</sup> January 2018. Certain amendments in regard to DIN application have been introduced.

### File No.1/1/2018-CL.I - Dated 23<sup>rd</sup> January 2018

Section 1 and Section 4 of Companies (Amendment) Act 2017 shall come into force with effect from 26<sup>th</sup> January, 2018. Registrar can reserve the name for 20 days from the date of approval in case of new application or such other period as prescribed and in case of existing company for change in name or reservation of name, it may be reserved for 60 days.

### Insolvency & Bankruptcy Code 2016 (IBC)

Insolvency and Bankruptcy Code (Amendment) Act 2017 has received the assent of the President on 18<sup>th</sup> January 2018. The amendment act shall be deemed to be in force from 23<sup>rd</sup> November 2017.

### Circular No. IP/002/2018 - Dated 3<sup>rd</sup> January 2018

Insolvency and Bankruptcy Board of India has clarified that corporate person undergoing insolvency resolution process, fast track insolvency resolution process, liquidation process or voluntary liquidation process under the Insolvency and Bankruptcy Code, 2016 needs to comply with the provisions of the all the applicable laws unless the provisions specifically exempted by the competent authority or becomes inapplicable by operation of law for the corporate person.

Any loss or penalty levied for non compliance of any provision of applicable laws, shall not form part of insolvency process cost or liquidation process cost. Insolvency Professional will be held responsible for non compliance of the provisions, if it is on account of his conduct.

### Circular No. IP/003/2018 - Dated 3<sup>rd</sup> January 2018

Insolvency and Bankruptcy Board of India has clarified that insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code. It is clarified that insolvency professional can appoint accountants, legal or other professionals to assist in carrying out his responsibilities, however no third party certification is require as per the Code.

### Circular No. IP/005/2018 - Dated 16<sup>th</sup> January 2018

In the best interest of transparency, insolvency professionals is require to make disclosures of relationship with Corporate Debtor as well with other professionals, Financial Creditor, Interim Finance Provider within the prescribed time limit. It is the duty of Insolvency Professional to ensure the disclosure of relationship of other professionals with himself, Corporate Debtor, Financial Creditors, Prospective Resolution Applicant, Interim Finance Provider.

Relationships can be tested on the basis of certain pre-conditions that existed at any time or during the 3 years preceding the appointment of the Resolution Professional.

Insolvency Professional should provide the confirmation to the Insolvency Professional Agency that appointment of every other professional has been made at arm's length relationship.

### Press Release – Dated 6<sup>th</sup> January 2018

Relaxation relating to MAT levy has been provided to Companies under Corporate Insolvency Resolution Process. Accordingly, w.e.f., AY 2018-19 the amount of loss brought forward including unabsorbed depreciation shall be allowed to be reduced from book profit for the purpose of MAT levy under section 115JB of the Income Tax Act.

## Central Board of Direct Taxes (CBDT)

### Notification SO 29 (E) - Dated 2<sup>nd</sup> January 2018

Central Government has notified Electoral Bond Scheme 2018, which deals with the terms and conditions of the bonds issue. As per the scheme, bonds are valid for 15 days and no payment will be made to any payee if deposited after the expiry of the period. The procedures and denominations of the bonds has been clarified in the notification.

### Circular No. 01/2018 - Dated 10<sup>th</sup> January 2018

The Central Board Of Direct Taxes has issued Order under Section 119, wherein, before additions proposed under Section 143(1)(a)(vi) of the Income Tax Act, 30 days time period has been given to the assessee to provide the responses. The Second Proviso of the Section provides that if the response has not been received within 30 days, the proposed adjustment shall be made to the returned income.

## Securities and Exchange Board of India (SEBI)

### SEBI/HO/DDHS/CIR/P/2018/05 – Dated 5<sup>th</sup> January 2018

The existing framework of Electronic Book Mechanism has been revised, for issuance of debt securities on private placement and will be applicable from 1<sup>st</sup> April 2018. This circular will override the circular CIR/IMD/DF1/48/2016 dated 21<sup>st</sup> April 2016. As per this circular, electronic book mechanism is mandatory for all private placement of debt securities and Non Convertible Redeemable Preference Shares for INR 200 Crores or more.

## Reserve Bank of India (RBI)

### RBI/2017-18/114/IDMD.CCD.No.1671 /13.01.299/2017-18 – Dated 3<sup>rd</sup> January 2018

7.75% Savings (Taxable) Bonds, 2018 has been issued by Government of India with effect from 10<sup>th</sup> January 2018 wherein any individual, not being the Non-Resident Indian and Hindu Undivided Family is eligible to apply. Interest is taxable. Bonds are repayable on the expiration of 7 years from the date of issue. Premature encashment is allowed for individual investor in the age group of 60 years or above, subject to certain lock-in.

### RBI/FED/2017-18/60 FED Master Direction No.11/2017-18 - Dated 4<sup>th</sup> January 2018

Master Direction for Foreign Investment in India has been issued which lays down the modalities as to how the foreign exchange business has to be conducted by the authorised persons, their customers/constituents with a view to implementing the regulations framed.

### RBI/2017-18/116 A.P.(DIR Series) Circular No. 15 – Dated 4<sup>th</sup> January 2018

Indian Corporates are permitted to refinance their existing External Commercial Borrowings (ECBs) at a lower all-in-cost, however the overseas branches/subsidiaries are not permitted to extend such refinance. Overseas branches / subsidiaries are permitted to refinance ECBs of highly rated (AAA) corporates subject to certain conditions that original borrowing is not reduced and all-in-cost of fresh ECB is lower than existing ECB.

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