STUDENT PROFESSIONALS TODAY

Volume 3 | Issue 5 | May 2019 | Pages 1-20 | Price Rs. 20

An Initiative by :

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Printed and Published by B P Bhargava on behalf of Vidhimaan Publishers Pvt. Ltd.

Printed at Delhi Press Samachar Patra Pvt. Ltd., 36-A, UPSIDC, Site-4, Sahibabad and published at 158 Basant Enclave, Palam Road, New Delhi 110057.

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email id : notreceived@vidhimaan.com

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Annual subscription price Rs.750/- (January - December, 2019), send your cheque in favour of Vidhimaan Publishers Private Limited, at Krishna Law House, 128, Municipal Market, Super Bazar Compound, Connaught Place, New Delhi-110001. Tel.: 011-23417866, 64566061

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MESSAGE FROM THE PRESIDENT

"A dream does not become reality through magic; it takes sweat, determination and hard work." – Colin Powell

My best wishes to all the students who are appearing for Company Secretaries Examination, June 2019 session. The examinations are around the corner, so my advice to the students is to start the preparation in full swing and try to maneuver your energy in a planned and positive manner in order to ensure timely preparation for examination. In this context a quote by John F. Kennedy is very apt which says that "the time to repair the roof is when the sun is shining". So, work hard from now onwards as this is the best time which can be put to good use.

Life is a competition, but it's not a race against anyone else. Rather, the real journey is only against yourself and your unrealized potential. If we take a close look at all those people who have made a difference in this world, we will easily notice that they owe their achievements to the fact that they primarily competed with themselves, not with others. They wanted to be better than their previous best. This is what should be the driving force within you in order to have a better tomorrow.

You must have faith in your abilities, preparation and hard work. Always compete with yourself, to do things better and faster. Setting clear goals and continuing to evaluate yourself is critical to staying on the right path. Instead of viewing competition as an obstacle, think of it as an opportunity to better yourself and learn new things.

In the end, I would like to conclude with a quote by Marsha Evans "Working hard overcomes a whole lot of other obstacles. You can have unbelievable intelligence, you can have connections, you can have opportunities fall out of the sky. But in the end, hard work is the true, enduring characteristic of successful people." All the best!

CS Ranjeet Pandey

President, ICSI

Insurance Contracts – A Legal Perspective

This article attempts to elucidate certain peculiarities of insurance contracts by analyzing some legal publications and related case law

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Introduction

Insurance is one of the least understood subjects in our country. For most of us, insurance knowledge began and ended with a life insurance agent in our neighborhood who was a friend or relative from whom we bought a policy. The knowledge gap is so wide that in many instances, even financially literate professionals are unable to draw the intended benefits of insurance policies that they purchase to the fullest extent. Hence it is very important to understand what insurance exactly means in legal contexts and why it is more misunderstood than understood.

Contract of Adhesion

Many contracts entered into by public utility undertakings and others take the form of a set of terms fixed in advance by one party which are not open to discussion by the other. Such contracts are called 'contracts d'adhesion' by French lawyers and as 'Contracts of Adhesion' by American lawyers. *"Freedom of contract is of little value when one party has no alternative between accepting a set of terms proposed by the other or doing without the goods or services offered".* [1]

1. *'Chitty on Contracts' Joseph Chitty, the younger and Thomas Chitty, 1 (31st ed.) London: Sweet & Maxwell. 2012.*

As per *Blacks' Law Dictionary*, such Adhesion Contracts are standardized contract forms of goods and services offered to consumers on essentially a 'take it or leave it' basis and under such conditions where the consumer cannot obtain the desired product or service except by acquiescing to form contracts, without affording him a realistic opportunity to bargain. A distinctive feature of an adhesion contract is that the weaker party has no realistic choice as to its terms. Not every such contract is unconscionable. Adhesion Contracts are commonly used in the context of property leases, deeds, and mortgages, vehicle purchases and vehicle rentals and insurance policies. Insurance contacts are considered as 'Contracts of Adhesion' or special form contracts especially when it comes to retail and small and medium enterprises ('SME') sectors. However, this may not be the case of bespoke insurance products.

Aleatory Contract

The obligation of the insurer to pay the proceeds of the insurance arises only upon the happening of an event; which is uncertain. *"If the event does not occur, the promise outlined in the contract will not be performed*." This could give rise to situations of an insured getting no tangible benefit from an insurance policy despite having paid the premium, because the expected event did not happen. It could also mean that the insured gets an amount disproportionately higher than the amount of premium paid by him if the expected event happens.

Synallagmatic Contract

In civil law, in a Synallagmatic Contract both parties to the contract are bound to provide something to the other party. In common law jurisdictions, it is understood as a bilateral contract. It is a reciprocal contract in which both parties have mutual rights and obligations that are binding. Every Synallagmatic Contract would state[2] *"in what event will a party be relieved of his undertaking to do that which he has agreed to do but has not yet done."* In essence, an insurer cannot just walk away from his obligations arising from an insurance contract and the insured is bound to adhere to certain behavior or conditions for the insurance to be enforceable.

Insurable Interest

Though insurance is generally understood as a legal contract between the buyer of an insurance policy and the insurance provider, the contract may not have any meaning unless the insured has insurable interest. This means that the person buying insurance must be interested in the safety and preservation of the underlying asset from any of the causes of loss (commonly called as perils) covered in the insurance policy. That is, the buyer of insurance must have a financial interest in the particular subject matter. In a life insurance context, one would have unlimited insurable interest in one's spouse's life while one's insurable interest in children's life could be limited. In general insurance, insurable interest could be wider - the property owner as well as the tenant/ leaseholder of the property would have insurable interest in the property based on terms of lease between them. Similarly, in case of a Project, the principal, the financier and the contractor may have insurable interest in same property. Hence, policies could be in joint names or individual names to cover common or respective interests. There could be specific clauses attached to the policy to recognize the insurable interest of another, say, a financier. In an insurance contract, the insured needs to be interested in the preservation of the thing insured[3] and the desire for the happening of the event insured against becomes remote.

Wilful Misconduct of the Insured is not Covered

Similarly, on principles of justice, equity and good conscience, the law lays down that a murderer cannot inherit the property of the murdered person. To hold otherwise, would be allowing a person to take advantage of his own wrong.[4] In the case of Life insurance policies, the general rule that the legal representative(s) of the assured can recover on a life policy of the assured on the latter's death, clarifies this position. To this general rule, two exceptions have been recognized, i.e., *(i)* where the death of the assured is caused due to the violation of a rule of criminal law by the assured himself; and *(ii)* where death is the result of the suicide.[4]

As a sequel to this principle, Lord Atkin[5] in *Beresford* v. *Royal Assurance Co.*, observed that death caused by wilful misconduct of the assured himself debars the personal representatives from recovering on the assured's life policy. The same principle is an implied exception in all lines of business even in fire insurance; *i.e.* losses happening due to willful misconduct of the insured are not payable.

Where a person[6] is sentenced to death for committing the murder of another person and loses his life in execution of the sentence, it was held that all persons on whom the right to recover devolves by operation of law and who claim through such a convict are debarred from claiming under the policy. Applying the same analogy, it was held that when the assured commits suicide, the claims under the policy become unenforceable as it would be contrary to public policy to insure a man to benefit upon his death, by the hands of justice. When the event insured against happens due to the willful and wrongful acts of the assured or his agent, the theory

2. Hong Kong Fir Shipping Co Ltd. v. Kawasaki Kisen Kaisha Ltd. (1957), Lord Diplock

3. Mathey v. Curling (1922) 2 AC 180

4. Vadakkayil Devi Amma v. LIC of India 1999 ACJ 1348

5. Lord Atkin observed in Beresford v. Royal Assurance Co., 1935 AC 586 at 595

6. Amicable Insurance Society v. Bolland, (1830) 4 Bligh NS 194 HL

Non-Linked Plans, the nominee/ beneficiary of the policyholder would be entitled to *"at least 80% of premium paid provided the policy is in force"* and in case of revived policies, *"to an amount which is higher of 80% of the premiums paid till the death or the surrender value/ policy account value as available on the date of death"*. In case of **Linked Plans**, the nominee/ beneficiary *"shall be entitled to the fund value / policy account value, as available on the date of death"*.

Even in respect of general insurance policies where it is usual to recognize the interests of financiers in insurance policies, by way of specific clauses (such as Agreed Bank Clause), courts have held that the consent of the original insured would be required for making payments directly to the financier and before full and final settlement of the claims.[8]

The Concept of Indemnity

One of the corner stones of insurance law is that insurance contracts relating to property risks (such as Fire and Marine insurance) are contracts of indemnity and of indemnity only. This means that in the case of loss, the assured shall be fully indemnified but never more than fully indemnified. [The principle, however, applies differently in case of Life assurance and Accident insurance where the value of life, injuries and disabilities cannot be correctly measured.] Insurers' liability is limited to the actual loss as insurance policies are issued for protection and not for making any profit[9]. The emphasis is that the insurance contract is one of indemnity and, therefore, the insured can recover the actual amount of loss and no more. Courts[10] have held it as a *"fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it, that is to say which either will prevent the assured from obtaining a full indemnity, that proposition must certainly be wrong"*.

Stemming from this, insurers get **subrogation** rights by which they are legally entitled to claim the amounts paid by them towards claims from any third party responsible for the loss. This not much understood right allows the insurer to pursue the insured's rights and recover the amount of loss, For example, if one's car gets damaged in a road accident, due to someone else's reckless driving, the Insurer will compensate the loss and inherit the insured's right to recover the money paid as claim from the person who caused the loss.

Another sore area related to claims settlement is when Insurers reduce a percentage of the claim value towards **depreciation**. Here again, the insured has already derived the intended utility from the subject matter insured till the loss. Having already enjoyed the expected benefit, it would not be fair or logical if the insured gets the full value of the loss. An example would be, when a machine is damaged after being used for 6 months. Here having derived value from its use, the Insured may not be entitled for its full value. There are policies that pay the reinstatement value, *i.e.* without depreciation, at an extra cost.

Incorrect computation of the **sum insured** is another sore point in an insurance contract. Many people buy their insurances declaring values much lower than the actual value or market value, usually to save premiums and sometimes by being casual. This results in drastic reductions in claim payments. If a house worth 10 crore is insured for 5 crore, insurers will pay only proportionately lower amounts of claims, when losses happen. Similarly, many insured are not aware of the **coverage of the policy**, *i.e.* perils covered, excluded or not opted for. In recent instances of severe floods, for instance, many insured were shocked to realize that when they had bought their Fire policies, they had decided to opt out of flood and natural calamity covers to save premiums.

Third Party Liability

In India, under the provisions of the Motor Vehicles Act, 1988 (MV Act), it is mandatory that every registered vehicle plying on public roads should have a valid Third Party Liability Insurance. 'Motor Third Party Insurance' (also known as 'Motor Liability Insurance') being a statutory requirement under the Motor Vehicles Act is referred to as 'Act Only Policy'. The word 'Third-party' indicates that

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8. Ashok Kumar v. Nic Ltd. order of SCDRC dated 17th August, 2009

9. Halaburys Laws of England, vol. 25, 4th edn.

10. Castellain v. Preston (1883) 11 QBD 380 the beneficiary of the policy is someone other than the two parties (the insured and the insurer) of the contract. Other than covering the insured's legal liability for death/ disability of third-party loss or damage to third party property, the policy does not provide any direct benefit to the insured. In short, by protecting the insured's liabilities, Motor Third Party Insurance protects the victims of road accidents who are injured, killed or whose property is lost. Third Party can thus be the world at large, viz., the pedestrians, passers-by, etc., who can never be one of the contracting parties, but who may be involved in an accident. The insurance company owes a statutory liability to indemnify the owner/ driver due to whose act some other innocent party has suffered death or injury. A Third Party, therefore, can never be the person who could have been one of the contracting parties or who could have been covered under the contract of insurance/policy, by way of payment of additional premium.

The definition of 'Third party'[11] should include everyone (other than the contracting parties to the insurance policy), be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle, which is the subject matter of insurance policy. Bombay High Court[12] elucidated that section II of the Motor Insurance policy deals with Liability to Third Parties under section 147 of the M.V. Act. Under that section, the Insurance Company agreed to indemnify the insured in the event of an accident arising out of the insured vehicle against all the sums which the insured would become legally liable to pay in respect of death or bodily injury to 'any person' including occupants carried in the insured vehicle. Consequently, the insurance company had agreed to indemnify any driver who drove the vehicle on the order of the insured or upon his permission and who followed the terms, exceptions and conditions of the policy. Here, the driver was also included under the scope of third-party liability.

Proximate Cause

Another interesting concept of insurance is *'Causa Proxima',* also known as Proximate Cause, Direct Cause or Dominant Cause which is the cause by which a loss, damage or an injury happens as a natural, direct, uninterrupted consequence and without which the loss making incident would not have occurred.[13] It is an active, direct, and efficient cause of loss in insurance that sets in motion an unbroken chain of events which bring about damage, destruction, or injury without the intervention of a new and independent force.[14]

The State Consumer Dispute Redressal Forum[15] held that *"taking alcohol is not an impediment in obtaining insurance policy. The only impediment by virtue of clause 4.8 of the policy is that the insured should not suffer from any congenital external disease or defects or anomalies, sterility, venereal disease, intentional self-injury and use of intoxicating drugs/ alcohol. Unless and until there is medical evidence that the insured had suffered from any of aforesaid diseases and was hospitalized or operated upon in the near proximity of the date of issuance of the insurance policy aforesaid clause cannot be invoked."* As per this logic, the claim of expenditure incurred on hospitalization and treatment of a deceased insured under the Mediclaim policy was decided by the Court as payable by the Insurance Company.

Other Gaps in Perception

In some cases, the reason for dispute may be the difference in perceptions of the insured and insurer. One needs to note that insurance contracts are strictly bound by the policy wording which is basis of the legal relationship. There are many disputes and legal battles over such misunderstandings over the years, both in India and abroad. In a classic example, an insured bought a Fire policy for his building having stocks of fertilizers and seasonal goods such as jute, oil seeds, etc. While the jute was being loaded into a truck, there was a sudden sparking from a heavy duty power line due to which the jute caught fire and the stock of jute on the truck

11. National Insurance Co. Ltd. v. Fakir Chand, AIR 1995 J&K 91

12. HDFC Chubb General Insurance Co. v. Shantidevi Rajbalsingh Thakur (5th July, 2007)

13. Legal dictionary.thefreedictionary.com

14. http://www.businessdictionary.com/definition/proximate-cause.html

15. National Insurance Co. Ltd. v. Mrs. Preeti Sharma [8th October, 2007] was completely damaged. As the jute had caught fire when the stock was in loaded condition in the truck, which was not covered under the Insurance Policy; and as there was no damage of the jute stock in the insured godown, the Insurance Company took the stand that the claim was not payable.[16] The gap was that the insured had Fire policies which are location specific policies. Once the goods start moving outside the specified building, they are no longer covered under the Fire policy. While in transit, the risks need to be covered by Marine policies, which the insured did not have. In this case the Orissa State Consumer Forum ruled in favor of the Insurance Company. Though the terms were clear in the policy wording, as the insured had not gone through all the policy wordings, he was not aware of the policy conditions and hence, he did not trust the Insurance company's decision to deny the claim, resulting into unnecessary legal battle.

16. *New India Assurance Co. Ltd. v. Saroj Kumar Mohanty SCDRC order dated 1st October, 2008*

Conclusion

Despite its immense potential to mitigate the financial fallout of many unfortunate happenings, insurance continues to be one of the least understood subjects in our country. Enhancing insurance awareness and improving legal literacy are imperative for the noble business of insurance to be properly understood. Concerted efforts from multiple stakeholders are required for popularizing it as a risk management technique and to ensure that those who buy it derive the intended benefits in full measure.

KNOWLEDGE UPDATE

COMPANY LAW

The Companies (Incorporation) (Third Amendment) Rules, 2019

Central Government, vide Notification dated 29th March, 2019, has amended the Companies (Incorporation) Rules, 2014 by inserting rule 38A and e-form INC-35 with reference to application for incorporation of a company, that e-form shall be accompanied by e-form AGILE (INC-35) containing an application for registration.

Companies (Registration Offices and Fees) (Second Amendment) Rules, 2019

Central Government, vide Notification dated 25th April, 2019, has amended the Companies (Registration Offices and Fees) Rules, 2014 by extending the date to file e-form Active, *i.e.,* INC-22A without late fee till 15th June, 2019, after that Rs. 10,000 will be charged.

Companies (Incorporation) (Fourth Amendment) Rules, 2019

Central Government, vide Notification dated 25th April, 2019, has amended the Companies (Incorporation) Rules, 2014.

Companies (Indian Accounting Standards) (Second Amendment) Rules, 2019

Central Government, vide Notification dated 30th March, 2019, has amended the Companies (Indian Accounting Standards) Rules, 2015.

Relaxation of additional fees and extension of last date of filing e-form CRA-2 (Form of intimation of appointment of cost auditor by the company to Central Government) in certain cases under the Companies Act, 2013

Central Government, vide Circular No. 04/2019 dated 4th April, 2019, has examined the last date for filing e-form CRA-2 without additional fees where the company has been mandated to get its cost records audited for the first time under the Companies Act, 2013 on account of Companies (Cost Records and Audit) Amendment Rules, 2018 as notified vide GSR 1157(E) dated 03.12.2018 and decided to extend the last date for filing of e-form CRA-2 in the above-mentioned cases without payment of additional fees up to 31.05.2019.

Various Plans of Life Insurance : An Insight

This article deliberates upon different plans of life insurance.

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Introduction

When you have worked hard for everything you own, the last thing you want is to lose it all because of life's unexpected events. Think about it: no matter how careful you are, there will always be things in life that are beyond your control. Accidents and disasters can happen to anyone and if you aren't properly insured, it could lead to financial ruin. Insurance is a process where loss of a few are shared by others exposed to similar uncertain events / situation. Insurance covers: (i) Life Insurance (ii) General Insurance.

Life Insurance

Life insurance is a contract between an insurance policy holder and an insurer or assurer, where the insurer promises to pay a designated beneficiary a sum of money in exchange for a premium, upon the death of an insured person. An individual's death leaves his family members financially and emotionally insecure. The shock that comes when someone passes away, or is diagnosed with a terminal illness, places great pressure on family and loved ones. Grief and loss are hard enough to cope with, without the financial worries that can come with an illness or death. But having a life insurance plan can help them handle the future uncertainties by providing them financial assistance in your absence. Life Insurance Cover helps protect your loved ones if you are diagnosed with a terminal illness or pass away. Protection is a very important aspect of life whether its cricket or personal. Cricket match can not be played without protective gears. Likewise the journey of life, we cannot live without protection.

How do you Determine the Value of Human Life?

Well to understand that let us understand the concept human life value. A human life value helps you calculate the monetary value of your life based on your income, savings, and liabilities. It is the value that denotes the loss of income and increase in liabilities that your family would have to face in case of your sudden demise. It therefore helps you ascertain an amount that would be suitable as a life cover for you and can take care of your family's needs in case of your unfortunate death.

This calculator ascertains the best life cover for you on the basis of four factors, namely, your profile, your savings, your liabilities, and your income. Life-based contracts tend to fall into the following two major categories:

- *Protection Policies* - Designed to provide a benefit, typically a lump sum payment, in the event of a specified occurrence. A common form—more common in years past—of a protection policy design is term insurance.
- *Investment Policies* - The main objective of these policies is to facilitate the growth of capital by regular or single premiums. Common forms are whole life, endowment, unit link polices policies etc...

Broadly speaking, life insurance can be further categorized as a pure risk coverage plan – purely insurance and the other, which is a combination of insurance and investment component.

Different Types of Life Insurance Policies in India

■ Term Plan – Pure risk cover
■ Unit linked insurance plan (ULIP) – Insurance + Investment Opportunity
■ Endowment Plan – Insurance + Savings
■ Money Back – Periodic Returns with Insurance Cover
■ Whole Life Insurance – Life coverage to the life assured for whole life
■ Child's Plan – For fulfilling your child's life goals like education, marriage, etc.
■ Retirement Plan - Plan your retirement and retire gracefully

Let's dive deeper to know each plan in detail.

Term Life Insurance

Term insurance is the simplest form of life insurance plan. Easy to understand and affordable to buy. A term plan provides death risk cover for a specified period. In case the life assured passes away during the policy period, the life insurance company pays the death benefit to the nominee. It is a pure risk cover plan that offers high coverage at low premiums. There's an option to add riders to widen up the coverage. The death benefit is payable as lump sum, monthly payouts, or a combination of both. There's no payout if the life assured outlives the policy term.

- *Best Known for*: High sum assured (coverage) at a low premium.
- *Benefit of Term Plan*: In case of an untimely death of the breadwinner, family is supported with an enormous amount of money – sum assured, which helps them to replace the loss of the income caused due to the breadwinner's death. Moreover, the money could be utilized to pay off loan, monthly household expenses, child's education, child's marriage, etc.

Unit Linked Plans (ULIPs)

A unit linked plan is a comprehensive combination of insurance and investment. The premium paid towards ULIP is partly used as a risk cover (insurance) and partly is invested in funds. One can invest in different funds offered by the insurance company depending on his risk appetite. The insurance company then invests the accumulated amount in the capital market *i.e.* in bonds, equities, debts, market funds, or a hybrid funds :

- *Best Known for:* Long-term investment option with much more flexibility to invest.
- *Benefit of ULIP:* Invest money as per your risk appetite. You have the option to invest either in equity, debt or in hybrid funds through the life insurance company with complete transparency.

Endowment Plans

Endowment plan is another type of life insurance plan, which is a combination of insurance and saving. A certain amount is kept for life cover – insurance, while the rest is invested by the life insurance company. In an endowment plan, if the life assured outlives the policy term, the insurance company offers him the maturity benefit. Moreover, Endowment Plans may offer bonuses periodically, which are paid either on maturity or to the nominee under death claim. On death, the death benefit is payable to the nominee.

Endowment plans are also commonly known as **traditional life insurance**, although, there is an investment component but the risk is lower than the other investment products and so are the returns.

- *Best Known for*: Long-term saving option for people with much lower risk appetite for investment.
- *Benefit of Endowment Plan*: Long-term financial planning and an opportunity to earn returns on maturity.

Money Back Life Insurance

Money back plan is a unique type of life insurance policy, wherein a percentage of the sum assured is paid back to the insured on periodic intervals as survival benefit. Money back plans are also eligible to receive the bonuses declared by the company from time to time. This way, policyholder can meet short-term financial goals.

- *Best known for*: Short-term investment product to meet short-term financial goals.
- *Benefit of Money Back Plan:* Short-term financial planning and an opportunity to earn returns on maturity.

Whole Life Insurance

A whole life insurance policy covers the life assured for whole life, or in some cases, up to the age of 100 years. Unlike, term plans, which are for a specified term. The sum assured or the coverage is decided at the time of policy purchase and is paid to the nominee at the time of death claim of the life assured along with bonuses if any. However, if the life assured outlives the age of 100 years, the insurance company pays the matured endowment coverage to the life insured. The premiums are higher as compared to term plans. Whole life insurance plans also offer partial withdrawals after completion of premium payment term.

- *Best known for:* Life coverage for whole life.
- *Benefit of Whole Life Plan*: Lifelong protection to the insured and an opportunity to leave behind a legacy for heirs.

Child Plan

Child plan helps to build corpus for child's future growth. Child plans help to build funds for child's education and marriage. Most of the Child plan provides annual instalments or one time payout after the age of 18 years. In case of an unfortunate event, the insured parent passes away during the policy term - immediate payment is payable by the insurance company. Some child plans waive off the future premiums on death of the life insured and the policy continues till maturity.

- *Best known for:* Building funds for your child's future.
- *Benefit of Child Plan:* Helps in fulfilling your child's dream.

Retirement Plan

Retirement plan helps to build corpus for your retirement. Helping you to live independently, financially and without worries. Most of the child plans provide annual instalments or one time payout after the age of 60 years. In case of an unfortunate event, life assured passes away during the policy term - immediate payment is payable to the nominee by the insurance company. Death benefit will be higher of coverage or fund value or 105% of premiums paid. Vesting Benefit will be payable if the life assured survives the maturity age. In which case, payout will be fund value which has to be utilized for buying an annuity.

- *Best known for:* Long-term savings and retirement planning.
- *Benefit of Retirement Plan:* Helps in building corpus for retirement.

Conclusion

Insurance plan should generally be in line with the goals of life. Personal financial planning helps individuals and families reach goals that require money to achieve, such as having adequate retirement income or resources to cover college expenses. With good planning, most people find they can achieve their desired standard of living and meet their financial goals in a timely and orderly fashion.

KNOWLEDGE UPDATE

COMPANY LAW

Filing of one time return in DPT-3 Form

Pending the deployment of DPT-3 Form on MCA 21 portal and in order to avoid inconvenience to stakeholders on account of various factors, Central Government, vide Circular No. 05/2019 dated 12th April, 2019, has stated that the additional fee, as provided under the Companies (Registration Offices and Fees) Rules, 2014, shall be levied after 30 days from the date of deployment of the DPT- 3 form on MCA 21 portal.

Revamping the Corporate Governance – A Detailed Analysis of Form INC-22A – Active (Active Company Tagging Identities and Verification)

In this article, author makes detailed analysis of Form INC 22A Active (Active Company Tagging Identities and Verification) introduced by rule 25A inserted in the Companies (Incorporation) Rules, 2014 by the Companies (Incorporated) (Amendment) Rules, 2019.

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Introduction

According to the Institute of Company Secretaries of India, 'Corporate Governance' is the application of best management practices, compliance of laws in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.

Going by what has been stated by the Institute, the corporate governance is primarily all about compliance of laws in true letter and spirit. Well it seems easy to apply but hard to follow. The Companies Act, 2013 and the rules made thereunder have been amended time to time by Ministry of Corporate Affairs to strengthen the regulatory framework and provide necessary support to stakeholders such as Filing of Form DIR-3 KYC, Companies (Amendment) Ordinance, 2019, Form DPT-3 etc.

The Ministry of Corporate Affairs (MCA) has notified the Companies (Incorporation) Amendment Rules, 2019, effective from 25th February, 2019 wherein the new rule 25A is inserted in the Companies (Incorporation) Rules, 2014 to further amend the same. Continuing with its crackdown on 'fly by night and dummy' entities through stringent KYC regulations, the government has made it mandatory for over 12 lakh active registered companies in India to upload all their particulars including details of registered offices in an e-filing to the government.

Legal Framework and Analysis

New Rule 25A has introduced e-Form (INC-22A) ACTIVE (Active Company Tagging Identities and Verification). Where any company defaulted in payment of this form shall be *liable for action* under sub-section (9) of section 12 of the Companies Act, 2013, which is newly introduced some time ago by the Companies (Amendment) Ordinance, 2019.

Analysis of Sub-section (9) of Section 12

Sub-section (9) of section 12 states that "if the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII."

If Registrar has reasonable cause to believe that company is not carrying on any business and operations, he may take the following step in this regard:

Step-1 Physical Verification of Registered Office – He may cause a physical verification of the registered office of the company in such manner as may be prescribed. Which means that Registrar can send a team of expert to verify the registered office of the company.

Step-2 Removal of Name of the Company – If he found that company has not maintained any registered office capable of receiving and acknowledging all communications and notices as may be addressed to it within thirty days of its incorporation and at all times thereafter he may penalize the company and every officer-in-default with penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees and initiate action for the removal of the name of the company from the register of companies.

Analysis of the Companies (Incorporation) Amendment Rules, 2019

The detailed key analysis of the said rule is as follows :

Name and Enforcement Date **-** As it is clear from bare reading of the rule 1, it shall be called the Companies (Incorporation) Amendment Rules, 2019 and shall come into force with effect from 25th February, 2019. The Form INC-22A is available on MCA website for filing from 25th February, 2019.

Applicability and Due Date - The form shall be **mandatory** for every company (including public, private, listed, unlisted etc.) which is incorporated on or before **31st December, 2017** shall file the particulars of the Company and its registered office, in e-Form ACTIVE. Further, such form shall be filed on or before 25th April, 2019, which means that Ministry give 2 months time for filing.

Restriction and Exemption from filing of Form - Any company which has not filed its due financial statement under section 137 or due annual returns under section 92 or both with the Registrar, it shall be restricted from filing e-Form (INC-22A) ACTIVE. However, the same shall be allowed to file if such company is under management dispute and the Registrar has recorded the same on the register. The following companies are not required to file this form:

- Companies which have been struck off from the register of companies
- Companies which are under process of striking off
- Companies which are under process of liquidation
- Companies which are amalgamated or dissolved

The status of all of the above could be checked from Master Data of the Companies on MCA21 portal, as when this status is recorded in the register of the company, the same shall be reflected in Master Data of the company on MCA21 portal in the column named '*status of the company for filing'.*

Consequence of Non-filing of the Form

Concequence-1 - Company which does not intimate the said particulars, it shall be marked as "**ACTIVE-non-compliant**" on or after 26th April, 2019 and shall be liable for action under sub-section (9) of section 12.

Concequence-2 - The Company under status of "ACTIVE-non-compliant" shall not be allowed to file following event based information or changes with Registrar of Companies until it has not filed 'e-Form ACTIVE:

- Form SH-7 (for change in Authorized Share Capital)
- Form PAS-3 (for change in Paid-up Capital)
- DIR-12 (for changes in director except cessation)
- INC-22 (for change in registered office)
- INC-28 (for amalgamation, de-merger)

It must be noted here that form DIR-12 shall be filed for change in director and key managerial personnel and the rule said that change in director is not allowed to file, which means that company could file the same for appointment of key managerial personnel. Further, it must also be noted that the rule said 'change in director except cessation', so the form could be filed for cessation of directors which includes retirement, disqualification, death, resignation, vacation of office under section 169 or 161, removal under section 169, withdrawal of nomination by appointing authority and absence of re-appointment.

Remedy for "ACTIVE-Non-Compliant" Company

Where a company files e-Form ACTIVE on or after 16th June, 2O19, the company shall be marked again as 'ACTIVE Compliant'. Further, till 15th June, 2019, the form has no fees for filing, however after such date is would attract the fee of 10,000 rupees.

Glimpse of the e-Form ACTIVE (Form INC-22A)

Address of registered office

First and foremost purpose introduced with the form is to provide the address of the registered office of the company. Further it is to be noted here that this time a photo of the registered office is mandatory showing therein at least one director or KMP who has affixed his/her digital signature to the form. It is also to be noted here that form is to be signed in following manner:

In case of one person company	To be digitally signed by one director
In case of other than OPC	To be digitally signed by one director and one KMP or two directors

Email-id of the Company - Email-ID is not a big thing for the Company as every company need to give at least one Email-ID at the time of incorporation and such ID is also reflected on Master data of the Company. However, this time company need to use an Email-ID for which the OTP could be send which is to be entered in the form for verification.

Details of Director - List of Directors as on date of filing is required to be entered in the form. Further before filing e-Form ACTIVE, please ensure that the DINs of all Directors are in 'approved' status and are neither 'De-activated due to non-filing of DIR-3 KYC' nor 'Disqualified u/s 164(2). Further if your company have more than 15 directors, then details (SRN) of the special resolution filed under section 149 to increase such limit shall also be filed with the form.

Details of Statutory Auditor and Cost Auditor (if applicable) - Same details as filed in other forms with the Registrar such as number of auditor appointed, their category (individual or firm), their Income-Tax Permanent Account Number (PAN), Name of such audit firm, period for which such auditor is appointed.

Details of the Managing director or Chief Executive Officer (CEO) or Manager or Whole-time Director of the company - According to rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (2014 Rules), every listed company and every public company having paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel. Further, according to rule 8A of the 2014 Rules, every company other than a company covered under rule 8 which has a paid-up share capital of five crore rupees or more shall have a whole-time company secretary. It is to be noted here that in rule 8A, every company includes both public and private company. The form is also required to file details of their key managerial personnel appointed.

Details of forms AOC-4/AOC-4 XBRL and MGT-7 filed for financial year 2017-18 - Company only need to mention the SRN number of the paid challan. However it must be noted that these details are only be filed for financial year 2017-18 and not before that. So cheers!!!.

Processing Type - The form will be processed in STP mode and not processed by Registrar.

Conclusion

"Satyam Vada, Dharmam Chara" (speak the truth, abide by the law) **- ICSI motto**

The basic purpose of the form mentioned in the help kit of the form is "All the companies which got incorporated on or before 31st December, 2017 which are under 'Active' status as on the date of filing shall submit required particulars in e-Form INC-22A on or before 25th April, 2019. In case company does not file e-Form INC-22A within the time limit, filing of e-Form shall be allowed with a fee of Rs. 10,000. But that is not basic purpose of the form. The basic purpose here is to comply with provisions of the Companies Act, 2013, maintain the forms, registers and documents at your registered office, appoint required number of key managerial personnel, auditors, etc. within prescribed time. In addition to creating fertile minds for professional and personal success we have committed ourselves to create responsible citizens who are the epitome of highest ethics and social conduct. Thus, the responsibility lies with us to nurture complete professionals, who can rightly be termed as 'Karam-Yogis'. By practicing the best manner in India, we can truly realize the motto of the Institute.

Dematerialization of Securities of Unlisted Public Companies : A Brief Analysis

This article is intended to explain dematerialization of securities of unlisted public companies under rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 as inserted by the Companies (Prospectus and Allotment of Securities) (Third Amendment) Rules, 2018

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Preface

The Ministry of Corporate Affairs (MCA) has notified the Companies (Prospectus and Allotment of Securities) (Third Amendment) Rules, 2018 ('Amendment Rules') by inserting rule 9(A) on 10th September, 2018 making the dematerialisation of securities of an unlisted public company mandatory. The Amendment Rules came in force on 02nd October, 2018. The objective is to keep track of transactions of corporates and making the things easier and transparent for the shareholders, and also to enhance investor protection and corporate governance standards. These rules are applicable only to unlisted public companies.

Meaning of Dematerialization

Dematerialisation is *the process of converting physical securities into electronic format.* It should be related to listing of securities. A shareholder intending to dematerialise its securities needs to open a demat account with depository participant. Investor defaces and surrenders his physical securities and in turn gets electronic shares in his demat account.

Major Provisions of Amendment Rules

As per rule 9A(1), an unlisted public company is required to issue the securities only in dematerialised form and facilitate dematerialisation of all its existing securities as per provisions of the Depositories Act, 1996 and regulations made there-under.

Further, as per rule 9A(2), every unlisted public company has to ensure that entire holding of securities of its promoters, directors, and key managerial personnel is in dematerialised form, at the time of making an offer for issue or buyback of securities or issue of bonus shares or rights.

Rule 9A(3) specifies that every holder of securities who intends to transfer securities or who intends to subscribe to any securities of an unlisted public company has to make sure that all their existing securities are held in dematerialised form before such transfer or subscription to the securities;

Rules 9A(4) mandates every unlisted public company to facilitate dematerialisation of all its existing securities by making necessary application to a depository and to secure international security identification number (ISIN) for each type of security and to inform all its existing security holders about such facility.

Rule 9A(5) and (6) requires timely fee payment by the public company to the depository and registrar to an issue and share transfer agent and to maintain security deposit of minimum 2 years' fee and in case default is made in payment of fees, unlisted company cannot issue shares until the fees is paid**.**

Rule 9A(8) - The unlisted public companies are required to submit a half-yearly audit report to the Registrar of Companies as provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 on a half-yearly basis.

Rule 11 has been inserted vide the Companies (Prospectus and Allotment of Securities) (Amendment) Rules, 2019

This rule shall not apply to an unlisted public company which is *(a)* a Nidhi, *(b)* a Government company, or *(c)* a wholly owned subsidiary.

Benefits of Dematerialization

- Elimination of risks associated with physical certificates such as loss, theft, mutilation, fraud, etc.
- Improving the corporate governance system by increasing transparency and preventing mal-practices such as benami shareholding, back dated issuance of shares, etc.
- Exemption from payment of stamp duty on transfer.
- Ease in transfer, pledge, etc., of securities.

Now the unlisted public companies are required to facilitate dematerialisation of their existing securities, further issue/ transfer, etc. in coordination with depositories and share transfer agents. Any grievances arising out of such dematerialization of securities will be handled by the IEPF Authority.

Process of getting Demat shares

The company shall make an application for admission of securities and to secure International security Identification Number (ISIN) with a 'depository' as defined in clause *(e)* of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure ISIN for each type of security and shall inform all its existing security holders about such facility. The shareholders who wish to avail the same shall submit a demat request form. Further, respective shareholders have to separately follow the process of getting shares dematerialized.

Process of Opening Demat Account

The process of opening of demat account is similar to that of opening of bank account. The process is as follows:

- The investor must first choose a DP as per based on his convenience and the DP's charges.
- The investor has to fill up the KYC form and attach the documents with it as per SEBI guidelines specified in SEBI circular MIRSD/SE/Cir/21/2011 dated 5th October, 2011 and circulars issued by KRA agencies from time to time.
- The investor also has to submit a completely filled, signed 'Additional KYC form for opening a demat account' as prescribed by NSDL/CDSL along with proof of correspondence address.
- Before opening the demat account, the investor will have to submit the duly signed "Rights and Obligations of Beneficial Owner and Depository Participant" to the Depository Participant on opening a demat account, a unique Beneficial Owner Identification (BO ID) Number is allotted to the demat account, which should be quoted in all future transactions.
- The last step is the allocation of the beneficiary ID (demat account number) once all the documents are in place and verified. The DP id and the Beneficiary id combined becomes your unique DP code for all future transactions, IPO applications, etc. Demat account can only hold shares in custody; investors still need a trading account with a broker to buy and sell shares.

Penal Consequences

Neither the Depositories Act nor the rules 9A provide any penal consequences for non- compliance thereof. However, the same will get hit by section 450 of the Companies Act, 2013 which is a residuary provision for penalty. The said section prescribes a fine which may extend to Rs. 10,000 for initial default and a further fine which may extend to Rs. 1,000 for every day for a continuing one for the company and every officer of the company who is in default.

Note: *Although care has been taken to ensure the accuracy, completeness and reliability of the information provided, Author is not responsible for any errors or omissions in the article therefore. Users of this information are expected to refer to the relevant existing provisions of applicable laws. The user of the information agrees that the information is not a professional advice and is subject to change without notice. I assume no responsibility for the consequences of use of such information.*

Mutual Fund : An Overview

This article provides an overview of mutual fund.

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Introduction

Financial markets have become more complex and sophisticated. In order to be successful, investors need an intermediary who provides the required knowledge and professional expertise. The concept of mutual fund emerged to play this role of intermediary.

What is Mutual Fund

A mutual fund is a trust that collects money from investors who share a common financial goal, and invest the proceeds in different asset classes, as defined by the investment objective. In simple terms, mutual fund is a financial intermediary, set up with an objective to professionally manage the money pooled from the investors at large. The word 'mutual' in a 'mutual fund' signifies that such benefits accrue pro rata to all the investors in proportion to their investment; they share mutually the benefits arising therefrom. By pooling money together in a mutual fund, investors can enjoy economies of scale and can purchase stocks or bonds at a much lower trading costs compared to direct investing in capital markets. The pooling of resources is the biggest strength for mutual funds. The relatively lower amounts required for investing into a mutual fund scheme enables small retail investors to enjoy the benefits of professional money management and lends access to different markets, which they otherwise may not be able to access.

Who are Fund Managers

The investment experts, who invest the pooled money on behalf of investors of the scheme, are known as 'fund managers'. These fund managers take the investment decisions pertaining to the selection of securities and the proportion of investments to be made into them.

How are Mutual Funds Set Up

A mutual fund is set up in the form of a trust, which has *(i)* Sponsor, *(ii)* Trustees, *(iii)* Asset Management Company (AMC) and *(iv)* Custodian.

The trust is established by a sponsor or more than one sponsor who is like a promoter of a company and registered with Securities and Exchange Board of India (SEBI). The trustees of the mutual fund hold its property for the benefit of the unit holders. Asset Management Company (AMC) approved by SEBI manages the funds by making investments in various types of securities. Custodian, who is registered with SEBI, holds the securities of various schemes of the fund in its custody. The trustees are vested with the general power of superintendence and direction over the AMC. They monitor the performance and compliance of SEBI regulations by the mutual fund. SEBI Regulations require that at least two thirds of the directors of trustee company or board of trustees must be independent *i.e.* they should not be associated with the sponsors. Also, 50% of the directors of AMC must be independent.

What is Net Assets Value (NAV)

It is the sum total of the market value of all the shares held in the portfolio including cash, less the liabilities, divided by the total number of units outstanding.

Types of Mutual Fund Schemes

Mutual fund schemes can be classified into different categories and sub-categories based on their investment objectives or their maturity periods.

Mutual fund schemes can be classified into the following three categories based on their maturity periods:

Open-ended funds : An open-ended fund or scheme is one that is available for subscriptions and redemptions on a continuous basis. Investors can conveniently buy and sell units at Net Asset Value (NAV) related prices which are declared on a daily basis.

Close-ended funds : A close-ended fund or scheme has a stipulated maturity period which can range from a few months to a few years. Investors can invest in the scheme at the time of the New Fund Offer and thereafter, they can buy or sell the units of the scheme on the stock exchanges where the units have to be mandatorily listed.

Interval funds : These schemes are a cross between an open-ended and a close-ended structure. These schemes are open for both purchase and redemption during pre-specified intervals (viz. monthly, quarterly, annually, (etc.) at the prevailing NAV based prices.

Mutual fund schemes can be classified into following categories based on their investment objectives:

Equity Funds : Growth/ Equity oriented schemes are those schemes which predominantly invest in equity and equity related instruments. The objective of such schemes is to provide capital appreciation over the medium to long term.

Income/ Debt Oriented Funds : Such schemes generally invest in debt securities like Treasury Bills, Government Securities, Bonds and Debentures etc. They are considered less risky than equity schemes, but also offer lower returns.

Index Funds : Index Funds invests in companies that constitute the index and in the same proportion, in order to replicate a specific market index and provide a rate of return over time that will approximate or match that of the market which they are mirroring subject to tracking error.

Gilt Funds : These funds invest exclusively in Government securities. Government securities have no default risk. NAVs of these schemes also fluctuate due to changes in interest rates and other economic factors as is the case with income or debt oriented schemes.

Money Market/Liquid Funds : These funds aim to provide easy liquidity, preservation of capital and moderate income. They invest in safer short-term instruments such as certificates of deposit, commercial paper, etc. These schemes are used mainly by institutions and individuals to park their surplus funds for short periods of time.

Balanced Funds : These are the funds that aim at allocating the total assets with it in the portfolio mix of debt and equity instruments. Balanced funds provide investor with an option of single mutual fund that combines both growth and income objectives.

Benefits of Mutual Fund

Following are the key benefits of investing in mutual funds:

- Professional Management
- Economies of scale
- Diversification
- Liquidity
- Flexibility
- Convenience
- Transparency
- Well Regulated

Investment Plans/Options Available to Investors

Investment Plans

Direct Plan : Under direct plan, investors can invest directly with a fund house wherein no agent or distributor is involved and thus they can save on costs. The direct plan has a separate NAV, which is generally higher than normal or regular plan as direct plan charges lower expenses because it does not entail paying any commission to agent/ distributor and thus gets reflected in the form of higher NAV.

Regular or Normal Plan : Under regular or normal plan, investors can invest through an agent or distributor in order to avail their investment advice/ services. The regular plan too has a separate NAV, which is generally lower than direct plan as former charges higher expenses in order to pay commission to an intermediary involved.

Investment Options

Growth Option - Under growth option, dividends are not paid out to the unit holders. Income attributable to the unit holders continues to remain invested in the scheme and is reflected in the NAV of units under this option. Investors can realize capital appreciation if any, by way of an increase in NAV of their units by redeeming them.

Dividend Payout Option - Dividends are paid out to the unit holders under this option. However, the NAV of the units falls to the extent of the dividend paid out and applicable statutory levies.

Dividend Re-investment Option - The dividend that accrues on units under option is re-invested back into the scheme at ex-dividend NAV. Hence, investors receive additional units on their investments in lieu of dividends.

Conclusion

Selecting a mutual fund for investment is a filtering process that involves eliminating funds based on the various characteristics that influence the performance of the fund. Investors should carefully consider the investment objectives and risks, as well as charges and expenses of the fund, before investing. Mutual Funds are more complex than a bank account but they are also much more powerful, especially for long term financial planning.

■■■

KNOWLEDGE UPDATE

FEMA LAW

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Third Amendment) Regulations, 2019

RBI, vide Notification No. G.S.R. 312(E) dated 18th April, 2019, has amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 (Notification No. FEMA. 20 (R)/2017-RB dated November 07, 2017) by adding definition of 'Municipal Bonds' in clause (xlvii) after clause (xlvi) of regulation 2.

Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015 – Opening of Foreign Currency Accounts by Re-Insurance and Composite Insurance Brokers

RBI, vide Circular No. A.P. (DIR Series) Circular No.29 dated 11th April, 2019, has reviewed the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015 regarding opening of foreign currency accounts in India by persons resident in India in consultation with the Government of India. As notified vide Notification No. FEMA 10(R)(2)/2019-RB dated February 27, 2019, reinsurance and composite insurance brokers registered with IRDA may open and maintain non-interest-bearing foreign currency accounts with an AD bank in India for the purpose of undertaking transactions in the ordinary course of their business.

Establishment of Branch Office (Bo) / Liaison Office (Lo) / Project Office (Po) or any Other Place of Business in India by Foreign Entities

RBI, vide Circular No. A.P. (DIR Series) Circular No. 27 dated 28th March, 2019, has issued advisory for opening of a BO/LO/PO or any other place of business in India, where the principal business of the applicant falls in the defence, telecom, private security and information and broadcasting sector, no prior approval of the RBI shall be required, if Government approval or license/permission by the concerned Ministry/ Regulator has already been granted.

RNI Regd. No.DELENG/2017/71754
Posted on : 12-14 May 2019
Published on 9, 10 & 11 May 2019

DELHI POSTAL REGD. NO. DL-SW-1/4199/17-19
Place of posting : NDPSO, New Delhi
LICENSED TO POST WITHOUT PRE-PAYMENT No. U(SW)-20/2017-19

KNOWLEDGE UPDATE

SEBI LAW

Separate 'Basic Services Demat Account' Limit For Debt Securities

In order to further boost participation in debt market and based on representation received from market participants, SEBI, vide MRD/DoP2DSA2/CIR/P/2019/51 dated 10th April, 2019, has decided to revise the structure of charges for debt securities as defined in SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

Extension of Time Lime for Implementation of Phase I of Unified Payments Interface with Application Supported by Block Amount for Streamlining the Process of Public Issue of Equity Shares and Convertibles

SEBI had introduced the use of unified payments interface (UPI) as a payment mechanism with application supported by block amount (ASBA) for applications in public issues by retail individual investors through intermediaries (syndicate members, registered stock brokers, registrar and transfer agent and depository participants) in Phase I, with effect from January 1, 2019. SEBI, vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2019/50 dated 3rd April, 2019, has extended the timeline for implementation of above-mentioned mechanism by 3 months i.e. till 30th June, 2019, in order to ensure that the transition to UPI in ASBA is smooth for all the stakeholders. The implementation of Phase II and III shall continue unchanged.

Procedure and Formats for Limited Review / Audit Report of the Listed Entity and Those Entities Whose Accounts are to be Consolidated with the Listed Entity

The Kotak Committee Report on Corporate Governance, inter-alia, suggested certain changes in the regulatory framework for Group Audit. SEBI, vide CIR/CFD/CMD1/44/2019 dated 29th March, 2019, while considering the recommendation of the Kotak Committee, decided to amend Regulation 33 of the SEBI (Listing Obligation and Disclosures Requirements) Regulations, 2015 ("SEBI LODR Regulations"). Accordingly, the new sub-regulation (8) was inserted under regulation 33, which will come into effect from 01st April, 2019.

Transfer of Securities Held in Physical Mode – Clarification

SEBI, vide Press Release No. PR No. 12/2019 dated 27th March, 2019, has clarified that Investor has the option of holding shares in physical form even after 1st April, 2019. Any investor who is desirous of transferring shares (which are held in physical form) after 1st April, 2019, can do so only after the shares are dematerialized except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in dematerialized form with a depository. This measure shall come into effect from 1st April, 2019.

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