



Monthly Newsletter

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Secretary's Desk

RBI has released the results of the 80th round of the Industrial Outlook Survey (IOS) conducted in October-December 2017, which captures qualitative assessments of the business situation by companies in the Indian manufacturing sector for Q3:2017-18 and their expectations for Q4:2017-18. As per the results, business sentiment in the Indian manufacturing sector improved, as reflected in the Business Expectations Index (BEI) rising from 103.7 in Q2:2017-18 to 109.8 in Q3:2017-18. Further, FICCI's latest quarterly survey on Manufacturing (assessing the expectations of the manufacturers for 12 major sectors), portrays positive outlook for the manufacturing sector in Q-4 (January-March 2017-18) as the percentage of respondents reporting higher production in fourth quarter has increased to 55% from 47 % in the previous quarter of 2017-18.

In the wake of accounting scams and frauds in the corporate sector, Union Cabinet approved the proposal for establishment of National Financial Reporting authority (NFRA) as an independent regulator for auditing profession which is one of the key changes brought in by the Companies Act 2013. NFRA will review the quality of corporate financial reporting in certain classes and subclasses of companies and take disciplinary action against auditors/audit firms for not discharging their statutory duties with due diligence. The decision is expected to result in higher foreign/domestic investments, acceleration of economic growth while supporting greater globalization of business by conforming to international standards and assisting in the evolution of audit profession. The jurisdiction of NFRA for investigation of Chartered Accountants and their firms under section 132 of the Act would extend to listed companies and large unlisted public companies, the threshold for which shall be prescribed in the rules.

There have been several instances of economic offenders fleeing the jurisdiction of Indian courts, anticipating commencement of criminal proceedings which undermines the rule of law in India. In order to address this problem, The Fugitive Economic Offenders Bill, 2018 has been tabled in the Parliament. A Fugitive Economic Offender is a person against whom an arrest warrant has been issued in respect of a scheduled offence and who has left India so as to avoid criminal prosecution. A scheduled offence refers to a list of economic offences contained in the schedule to this Bill. The Bill is expected to re-establish rule of law with respect to economic offender as they would be forced to return to India to face trial for scheduled offences. This would also help banks and financial institutions to achieve higher recovery from financial defaults committed by the offender. All cases where value involved in such offences is greater than 100 crore will come under the purview of the Bill ensuring that the courts are not overburdened with such cases. Further, Ministry of Corporate Affairs is considering a proposal to collect passport details of directors of companies. The passport details at the digital warehouse will help authorities to take timely action and check fraudsters from fleeing the country.

An Insolvency Law Committee set up to review various aspects of Insolvency and Bankruptcy Code (IBC) submitted its report on March 26, 2018. The 14-member panel had the mandate to identify issues that might impact the efficiency of the corporate insolvency resolution and liquidation framework and suggest ways to address the challenges faced in the implementation of the law with recommendations for 'targeted amendments' to IBC. Some of the recommendations are (i) home buyers should be treated as financial creditors, (ii) Promoters of MSMEs who are not willful defaulters are allowed to bid for their companies, (iii) Trading of security should not be suspended during Corporate Insolvency Resolution process (CIRP) as it can give better price recovery, (iv) Voting share for approval of resolution should be reduced from 75 % to 66% and (v) Financial creditors will not become related party for conversion of debt into equity prior to insolvency commencement date.

Bankruptcy courts are overburdened as they also address other company law matters relating to mismanagement and oppression, mergers and acquisition and cases of deregistration of companies on account of defaulting on statutory annual return filing requirements. In this context, the Government is set to increase the number of benches to ease the load on existing benches overburdened by creditors suing defaulting businesses and expedite the resolution of insolvency cases. The idea is to resolve bankruptcy cases in less than a year compared to over four years it used to take under the earlier system so that a bankrupt firm can be turnaround quickly before its value erodes. The Government is also set to appoint more judicial and technical members.

POLICY DEVELOPMENTS

MOU between IBBI and RBI

The Insolvency and Bankruptcy Board of India (IBBI) signed a Memorandum of Understanding (MoU) with the Reserve Bank of India (RBI) on 12th March, 2018. The MoU was signed by Shri. Sudarshan Sen, Executive Director of the RBI and Dr. (Ms.) Mamta Suri, Executive Director of the IBBI in the august presence of Shri. Injeti Srinivas, Secretary to Government of India, Ministry of Corporate Affairs.

Both the RBI and the IBBI are interested in the effective implementation of the Code and its allied rules and regulations, through a quick and efficient resolution process. Therefore, they have agreed under the MoU to assist and co-operate with each other for the effective implementation of the Code, subject to limitations imposed by the applicable laws.

The MoU provides for: (a) sharing of information between the two parties, subject to the limitations imposed by the applicable laws; (b) sharing of resources available with each other to the extent feasible and legally permissible; (c) periodic meetings to discuss matters of mutual interest, including regulatory requirements that impact each party's responsibilities, enforcement cases, research and data analysis, information technology and data sharing, or any other matter that the parties believe would be of interest to each other in fulfilling their respective statutory obligations; (d) cross-training of staff in order to enhance each party's understanding of the other's mission for effective utilisation of collective resources; (e) capacity building of insolvency professionals and financial creditors; (f) joint efforts towards enhancing the level of awareness among financial creditors about the importance and necessity of swift insolvency resolution process of various types of borrowers in distress under the provisions of the Code, etc.

Arbitration and Conciliation (Amendment) Bill, 2018

The Union Cabinet chaired by Hon'ble Prime Minister Shri Narendra Modi has approved the Arbitration and Conciliation (Amendment) Bill, 2018 on 7th March, 2018 for introduction in the Parliament. It is a part of the efforts of the Government to encourage institutional arbitration for settlement of disputes and make India a center of robust Alternative Dispute Resolution (ADR) mechanism.

The Amendments in the Act of 1996 will facilitate achieving the goal of improving institutional arbitration by establishing an independent body to lay down standards, make arbitration process more party friendly, cost effective and ensure timely disposal of arbitration cases.

Commercial Courts, Commercial Division and Commercial Appellate Division of High Court (Amendment) Bill, 2018

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018 was cleared in a cabinet meeting chaired by Hon'ble Prime Minister Narendra Modi on 7th March, 2018. The proposed bill amends a law on arbitration for speedy settlement of business disputes as part of the Government's efforts to further improve India's Ease of Doing Business ranking. It also recommends to bring down the specified

value of a commercial dispute to ₹ 3 lakh from the present ₹ 1 crore and proposes establishment of commercial courts at district level under the jurisdiction of Madras, Delhi, Calcutta, Bombay and Himachal Pradesh high courts. The proposed bill seeks to bring down the time taken (presently 1,445 days) in resolution of commercial disputes.

It also introduces the pre-institution mediation process in cases where no urgent or interim relief is contemplated will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of the courts which will also help in reinforcing investor's confidence in the resolution of commercial disputes.

Revenue Standard (IndAS)115

MCA has notified Indian Accounting Standard (Ind AS) 115 which would be effective from 1st April. Ind AS 115 is a new revenue recognition standard for customer contracts in line with the International Financial Reporting Standards which will help in more transparent accounting of revenues with an impact on companies operating in diverse sectors, including technology, real estate and telecom.

Objective of Ind AS 115 is to establish the principles that should be applied when reporting useful information to users of financial statements. The standard requires an entity to recognize revenue "to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services"

The standard is likely to affect the measurement, recognition and disclosure of revenue, which is typically an entity's most important financial performance indicator - keenly scrutinized by investors and analysts. Once it is in force, the other two standards Ind AS 18 and 11, which are related to revenue and construction contracts, would be withdrawn.

Amendments to IBBI (Insolvency Professionals) Regulations, 2016

Based on the comments received on the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and the discussion paper, the Governing Board of the IBBI **has notified the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018**

According to the amended regulations,

- a. Subject to meeting other requirements, an individual shall be eligible for registration as an insolvency professional if he has passed the Limited Insolvency Examination within the last 12 months and has completed a pre-registration educational course from an insolvency professional agency, as may be required by the Board.
- b. The syllabus, format, qualifying marks and frequency of the 'Limited Insolvency Examination' shall be published on the website of the IBBI at least three months before the examination.
- c. An individual with the required experience of 10 / 15 years is eligible for registration as an insolvency professional. In addition, an individual with little or no experience shall be eligible for registration as an insolvency professional on successfully completing the Graduate Insolvency Programme, as may be approved by the IBBI.

- d. As a condition of registration, an insolvency professional shall undergo continuing professional education as may be required by the IBBI.
- e. An insolvency professional shall not outsource any of his duties and responsibilities under the Code.
- f. A company, a registered partnership firm or a limited liability partnership shall be eligible for recognition as an insolvency professional entity, if –
- its sole objective is to provide support services to insolvency professionals, who are its partners or directors, as the case may be;
 - it has a net worth of not less than one crore rupees;
 - majority of its shares is held by insolvency professionals, who are its directors, in case it is a company;
 - majority of capital contribution is made by insolvency professionals, who are its partners, in case it is a limited liability partnership firm or a registered partnership firm;
 - majority of its partners or directors, as the case may be, are insolvency professionals;
 - majority of its whole-time directors are insolvency professionals, in case it is a company; and
 - none of its partners or directors is a partner or a director of another insolvency professional entity.
- g. An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

The amended regulations are effective from 1st April, 2018. These are available at www.mca.gov.in and www.ibbi.gov.in.

Review of Corporate Sector:

A. As on 28th February, 2018, the number of companies registered under the Companies Act was 17,37,253. Of these, 5,39,202 companies were closed, 5,989 companies are under liquidation, 33,274 companies are in the process of being struck-off from the register, 111 companies were in the process of being re-activated and 1,204 companies have so far obtained the “dormant” status according to Section 455 of the Companies Act, 2013. Further, a total number of 3 companies have not filed their Annual Returns/ Balance Sheets for the past two consecutive years or more, and therefore not counted as active. There are 11,57,470 active companies, including 1,53,148 companies which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).

B. A total of 8,011 companies, including 440 One Person Companies (OPCs), were registered under the Companies Act, 2013 during February, 2018 with authorized capital of ₹ 6677.47 Crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in February, 2018	Total Authorized Capital (In ₹ in Crore)
Company limited by Shares	7,993	6677.46
Of which,		
(a) Private	7,841	645.23
Of which,		
One Person Companies	440	11.05
(b) Public	152	6032.23
Company limited by Guarantee	18	-
Of which,		
(a) Private	17	-
(b) Public	1	-
Unlimited Company	-	-
Grand Total	8011	6677.47

C. During the Month of February, 2018, Maharashtra had maximum number of company registrations (1,481) followed by Delhi (1,103) and Uttar Pradesh (818). “Business Services” topped the economic activity-wise classification (4,444) of newly registered companies.

D. During February, 2018 7,993 (out of 8011) companies were registered as companies limited by shares with authorized capital of ₹ 6677.46 crore. For more statistical details about the growth of the corporate sector, the reader is invited to the ‘Monthly Information Bulletin on Corporate Sector’, at URL: [mca.gov.in/MinistryV2/Information Bulletin.html](http://mca.gov.in/MinistryV2/InformationBulletin.html).

EVENTS

1. Competition Commission of India (CCI) successfully hosted the 17th International Competition Network (ICN) Annual Conference during 21st – 23rd March 2018 in Hotel Ashok, New Delhi. Around 500 professional attended the conference from 70 plus countries, which included heads of competition agencies, representatives and stakeholders consisting of legal and economic professionals, international organizations and academics. The Annual Conference is a key international platform in the field of competition law and policy. It provides an opportunity to exchange ideas and strategies for effective enforcement of competition law and for strengthening cooperation amongst competition authorities as they strive to promote and sustain competition in rapidly changing markets.

2. 58th National Cost Convention of the institute of Cost Accountants of India was held in Delhi on 16th March, 2018. The Vice president, Shri Venkaiah Naidu addressed the inaugural session emphasizing the need to bring in greater transparency, ethical corporate behavior and enhanced accountability into the corporate governance system. He further mentioned that no true development can be said to be meaningful unless it incorporates the needs of the farming sector. He discussed the role of professional bodies like ICAI which must be in the forefront in fighting against fraud and corruption.

3. International Women Day (8th March) was celebrated at MCA in a gala function. Ms. Reena Sinha, JS&FA and senior women officers graced the occasion and all women employees participated.

Senior Level Appointments:

The following officers of Indian Corporate Law Service (ICLS) were promoted to Senior Administrative Grade (SAG): (i) Shri D.P. Ojha, DII, HQ (on regular basis); (ii) Shri B. Mohanty, Director, HQ (on ad hoc basis)

Notifications:-

- (i) Vide notification S.O. No. 1023(E), issued on 08.03.2018, this Ministry has specified new nominees of ICAI, ICSI and RBI on NACAS in pursuance of Section 210A of the Companies Act, 1956.
- (ii) Vide notification G.S.R. No. 213(E), issued on 08.03.2018, this Ministry has amended Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 to provide that a company which has once filed its financial statements in XBRL mode shall continue to file the same in XBRL mode in subsequent years also.
- (iii) Vide notification S.O. no. 1316(E) issued on 21.03.2018, the provisions of sub-section (3) and (11) of Section 132 relating to creation of post of Chairman, Member and Secretary of NFRA have been commenced.
- (iv) Vide notification G.S.R. no. 262(E) issued on 21.03.2018, the National Financial Reporting Authority (NFRA) (Manner of Appointment and other Terms and Conditions of Service of Chariperson and Members) Rules, 2018 have been notified. These Rules deals with composition of the Authority, manner of appointment, tenure etc. of creation of post of Chairman, Member and Secretary of NFRA.
- (v) Vide notification G.S.R. no. 284(E) issued on 23.03.2018 Rule 9 of the Companies (Incorporation) Rules, 2014 has been amended to provide that an application for reservation of name shall be made through web service available at www.mca.gov.in by using Form RUN (Reserve Unique Name).
- (vi) Vide notification issued on 28.03.2018, the Companies (Indian Accounting Standards) Rules, 2015 has been amended to bring back Ind AS 115 Revenue from Contracts with Customers and replace Ind AS 11, Construction Contracts and Ind AS 18, Revenue. Further, the amendments to other standards Ind AS 21, The Effects of Changes in Foreign Exchange Rates, Ind AS 112, Disclosure of Interests in Other Entities & Ind AS 28, Investments in Associates and Joint Ventures, Ind AS 40, Investment Property and Ind AS 12, Income

Taxes are due to annual improvements made in the corresponding IFRS standards/consequential changes due to Ind AS 115. The Ind AS 115 is going to improve revenue recognition aspects as per the various clauses stated in the said standard. The Indian Companies will benefit from convergence with the single globally applied and comparable standard on a key parameter in financial statement i.e. revenue recognition.

Circulars:-

- (i) MCA has issued General Circular No. 01/2018 dated 28.03.2018 for extending the time period for filing of AoC-4 XBRL E-Forms using Ind AS under the Companies Act, 2013 for the financial year 2016-17, without additional fee till 30th April, 2018.
- (ii) MCA vide General Circular No. 02/2018 dated 28.03.2018 has extended the Condonation of Delay Scheme, 2018 upto 30th April, 2018 on the requests of various stakeholders.
- (iii) **Call for research proposals** for funding under research component of the central plan scheme CDM on the following topics from outside agencies:
 - a) Performance of One Person Company (OPC)
 - b) Effectiveness of important provisions of Companies Act, 2013 such as companies incorporated under Section 8 of the Act (Section 25 of Companies Act, 1956)
 - c) Effectiveness of Investor protection and Investor Education
 - d) Performance of Corporates (across states, sector and size etc.)
 - e) Effectiveness of Competition Law and practice
 - f) Corporate Debt structure and leveraging
 - g) Analysis of utilization of funds mobilized by Corporates through IPOs etc.
 - h) Ease of Doing Business: Sub-indices within the ease of doing business index which directly pertains to corporate sector i.e. (i) Starting a business, (ii) protecting minority investors and (iii) insolvency resolution.
- i) Issues relating to emergence of Producer Companies in India.

Note: (i) Details of application for funding of research proposals can be seen at Guidelines for funding research and studies, workshops and conferences etc. under the plan scheme " Corporate Data Management" on the MCA's website (www.mca.gov.in) at Annexure I of http://www.mca.gov.in/Ministry/pdf/GuidelinesMCA_final_12022018.pdf. (ii) This notice can also be seen at Notice and Circulars section on the MCA's website at the following link http://www.mca.gov.in/Ministry/pdf/CDMNoticeGuidelines_10042018.pdf. (iii) Research proposals may be sent at cdm.research@mca.gov.in