



VIDHIK LEGIT ADVOCATES

WEEKLY NEWSLETTER

1st August, 2017

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“...One must forever strive for excellence or even perfection, in any task however small and never be satisfied with second best...”

- J.R.D. Tata



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RERA:

Standard Operating Procedure (SOP)

MahaRERA has issued Circular dated: 09/2017 dated: 24/07/2017 in relation to standard operating procedure (SOP) for handling complaints under section 25 of RERA 2016 read with Rule 6 of Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeals etc.) Rules 2017. The said circular is divided into two parts as under;

- A. SOP for handling of complaints against the registered projects; and
- B. Source of information on projects, which out to be have been registered but have not registered.

As far as Part A is concerned, the authority has prescribed online filing of complaints which will be automatically assigned to the Chairperson, Member 1 and Member 2 respectively. The same will be dealt as under:

- a. In case of Cash Compensation by Complainant the case will be assigned to Adjudicating Officer. It also provides for clubbing of cases of single Promoter by several Complainants.
- b. Email will be sent by authority confirming receipt of the complaint alongwith checklist.
- c. Complainant to file hard copy of documents within 45 days of complaint with proof of service of complaint to Respondent (Promoter) alongwith dully filled in check list.
- d. Upon verification of documents and check list the receiving officer will forward complaint to Legal Advisor of authority.
- e. First Hearing and subsequent hearings will be scheduled with staggered timing starting from 10:30 AM
- f. The authority will make full endeavour to hear and dispose of complaint within 60 days of the receipt of hard copy of documents and order shall be uploaded.

As far as Part B is concerned the authority has requested citizens to furnish information for the projects which out to have been registered but have not registered at Email id: sourcedetails@mahaera.mahaonline.gov.in.

COMPANY LAW:

Companies Amendment Bill, 2017

1. Annual Return:

The power of the central government to prescribe abridged form of annual returns for other types of companies [such as small companies, one person companies and private companies (less than an annual sales turnover of say, Rs 100 crore) as per the recommendations of the Standing Committee], in addition to One Person Company or a small company to be extended. [Section 92 of the Act]

2. Annual Financial Statement:

Proposes a company to attach, along with its financial statement, a separate financial statement of its associate companies, in addition to that of its subsidiaries. [Section 129 of the Act]

3. Financial Statement of Subsidiary:

Every company is required to file a copy of its financial statement with the Registrar, along with accounts of subsidiaries incorporated in foreign countries. This provision proposes to be applicable to all companies, and not just to listed public companies. [Section 137 of the Act]

4. Fee for Late Filing:

Time limits provided in Sections 89, 92, 117, 121, 137, 157, 403 are proposed to be removed from the Act and fresh time limits will be prescribed so as to remove anomaly and interpretational issues on amount of fees to be paid. It will also provide for payment of double the amount of fees in the case of delay.

(a) Proposes to remove the time limits for filing of documents under the Act. Such limits will now be prescribed, instead of being specified in the Act.

(b) For non-filing of documents under section 92 (filing of Annual Return) and section 137 (filing of financial statements), a minimum fine amount of Rs 100/day has to be specified. Further, the company shall be liable for penal action.

(c) If a company defaults on submitting the documents for two or more times, the fee to be levied on the company may be doubled. [Sections 89, 92, 117, 121, 137, 157, 403 of the Act]

5. Defines Investing Company:

Currently, as per Section 2(76) (viii), the Act states that “a related party in relation to a company includes: (i) a holding, subsidiary or an associate company of such a company or (ii) a subsidiary of a holding company to which it is also a subsidiary”. The 2016 Amendment seeks to add a third category including “an investing company or the venture of a company.” The New Amendment has provided further clarity by defining the term ‘investing company or the venture of a company’ as one whose investment in the company would make that company its associate company. [Section 2(76)(viii) of the Act]

6. Loans to Directors:

With regard to the provision dealing with “loans to directors”, it has been provided that if loans extended are used against certain conditions, amendment to Section 185 seeks to provide imprisonment or fine to defaulting party [including the Managing Director, KMP and such other persons as defined under Section 2(60) of the Act], in addition to the company and directors, every defaulting officer in the company may also be imprisoned or fined. [Section 185 of the Act]

7. Defaulting Officer Penalty:

Under Section 76(A) the punishment for the defaulting officer, in case of the Company accepting deposits from a person in violation of the Act or failing to repay the deposit within the specified time, in such case, every defaulting officer of the Company may be imprisoned, up to seven years, **and** fined. [Section 76(a) of the Act]

8. National Company Law Appellate Tribunal:

As per the Act, the NCLAT was allowed to hear appeals only against NCLT, however vide the 2017 Amendment, it has been proposed that the NCLAT can now hear appeals against: (i) NCLT, and also (ii) National Financial Reporting Authority. [Section 410 of the Act]

9. Profits and Dividends:

A proviso to Section 123 is proposed to be added which, in computing profits, excludes: (i) any unrealised or notional gains, or (ii) revaluation of assets and any change in carrying amount of an asset or liability. [Section 123 of the Act]

INCOME TAX:

Rejection of Application for Compounding filed in lieu of prosecution notice u/s 276CC of the Income Tax Act, 1961

The compounding application submitted by the assessee was rejected as per 'Guidelines for Compounding Offence' as the contention of the assessee that the offence can be said to be a 'first offence' cannot be accepted. It was held that, if a show-cause notice has been issued for prosecution for any prior assessment year and for any subsequent assessment year, the offence is committed by not filing the return the same cannot be said to be 'first offence'. Additionally, while considering the application for compounding, the merits of the case are not considered as these are considered in the trial.

SEBI:

Securities And Exchange Board of India (Depositories and Participants) (Second Amendment) Regulations, 2017

SEBI vide notification dated 25th July 2017 made certain amendments to the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996; wherein the following has been substituted in Regulation 58, sub-regulation 3:

“(3) Within fifteen days of receipt of the application, the depository shall after concurrence of the pledgee through its participant, create and record the pledge and send an intimation of the same to the participants of the pledger and the pledgee.”

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