SUPPLEMENT

FOR

JUNE 2022 EXAMINATION

GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS

PROFESSIONAL PROGRAMME

MODULE-1, PAPER NO. 1

INDEX

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021 (August 3, 2021)

S. No.	Reference to Chapter No.	Amendments to Regulations/ Rules/ Act/ Circulars/ Notification	Brief particulars/ Link of the amendment
1.	Lesson 3: Board Effectiveness	**Regulation 16- Definition of Independent Director** **Regulation 16(1)(b)(iv)** after the words "during the" and before the word "immediately", the word **"two"** shall be **substituted** by the word **"three"**. **Regulation 16(1)(b)(v)** the words and symbols **"has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year"** shall be substituted by: **(A) is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its holding, subsidiary or associate company, respectively, or such higher sum as may be specified;** **(B) is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year;** **(C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately**	After amendment Regulation 16(1)(b)(iv) is read as: An Independent Director means a non-executive director, other than a nominee director of the listed entity who apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the **three** immediately preceding financial years or during the current financial year.

		preceding financial years or during the current financial year; or **(D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income:** **Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower."** **Regulation 16(1)(b)(vi)** i. the symbol and word **"/herself"** shall be inserted after the word **"himself"** and before the symbol and word **", nor"**. ii. in point (A), after the words **"associate company"** and before the words **"in any"**, the words and symbols **"or any company belonging to the promoter group of the listed entity,"** shall be inserted. iii. under the point (A), a **new proviso shall be inserted** namely: "Provided that in case of a relative, who is an employee other than key managerial personnel, the restriction under this clause shall not apply for his / her employment."	https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html
	Lesson 3: Board Effectiveness	**Regulation 17- Board of Directors** After Regulation 17(1B), a new sun-regulation (1C) is added: (1C) The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the **next general meeting or within a time period of three months from the date of appointment, whichever is earlier**.	https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html
	Lesson 5: Board Committees	**Regulation 18- Audit Committee** **In Regulation 18(1)(b)** the words **"At least"** shall be **inserted** before the words **"two-thirds"**.	The amendment clarifies that in an Audit Committee, **at least 2/3rd members shall be Independent Directors**. https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-

			obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html
	Lesson 5: Board Committees	**Regulation 19- Nomination and Remuneration Committee** **In Regulation 19(1)(c):** a) the words **"fifty percent"** shall be substituted by the words **"two-thirds"**. b) the symbols and words **"[and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors]"** shall be **omitted**.	This amendment provides that in a Nomination and Remuneration Committee, **at least 2/3rd members shall be Independent Directors**. https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html
	Lesson7: Accounting and Audit related issues, RPTs and Vigil Mechanism	**Regulation 23- Related Party Transaction** **In Regulation 23(2) a new proviso is inserted:** Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.	It provide that **only IDs in an Audit Committee can approve related party transactions.** https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html
	Lesson 3: Board Effectiveness	**Regulation 25- Obligation w.r.t. Independent directors** **In Regulation 25(2)** Sub-regulation 2A is inserted: (2A) The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution. **In Regulation 25(6):** i. the words **"the immediate next meeting of the board of directors or"** appearing after the words **"later than the"** and before the words **"three months"** shall be **omitted**. ii. the symbol and words **", whichever is later"** appearing after the words **"such vacancy"** and before the proviso shall be **omitted**.	It provides that Appointment, re-appointment or removal of an ID is subject to the passing of **special resolution.** It provides that In case of resignation by or removal of an ID, he/she shall be replaced by a new ID **within 3 months** from the date of such vacancy.

		In Regulation 25(10): the word, numbers and symbol **"October 1, 2018"** shall be **substituted** with the word, numbers and symbol **"January 1, 2022"** and the number **"500"** shall be **substituted** with the number **"1000"**. **Regulation 25(11) – After Regulation 25(10) following sub-regulation (11) shall be added:** **(11)** No independent director, who **resigns** from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, **unless a period of one year** has elapsed from the date of resignation as an independent director.	With effect from January 1, 2022, the top 1000 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors. https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html
	Lesson 8: Corporate Governance and Shareholders Right	**Regulation 36- Documents & Information to shareholders** **In Regulation 36(3)(d):** **after the words "the board", the words "along with listed entities from which the person has resigned in the past three years" shall be inserted.** **After Regulation 36(3)(e) a new clause (f) is added:** **(f)** In case of independent directors, the skills and capabilities required for the role and the manner in which the proposed person meets such requirements.	In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the names of listed entities in which the person also holds the directorship and the membership of Committees of the board along with listed entities from which the person has resigned in the past three years. This is an additional requirement of disclosure of information to shareholders in case of appointment/ re-appointment of **IDs.** https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-

			requirements-third-amendment-regulations-2021_51719.html
	Lesson 5: Board Committees	**Schedule II, Part D- Role of Nomination and Remuneration Committee** **In Schedule II, in Part D, in Para A, after clause (1), following clause (1A) is inserted:** **(1A)** For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may: a. use the services of an external agencies, if required; b. consider candidates from a wide range of backgrounds, having due regard to diversity; and c. consider the time commitments of the candidates.	https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html
	Lesson 3: Board Effectiveness	**Schedule III, Part A-Disclosure of events or information** **Schedule III, in Part A, in Para A, in clause (7B) In sub-clause (i):** i. the words **"The letter of resignation along with"** shall be **inserted** before the words **"detailed reasons"**. ii. the words **"of independent directors"** appearing after the word **"resignation"** and before the words **"as given"** shall be **omitted**. iii. the words **"shall be disclosed by the listed entities to the stock exchanges"** appearing after the word **"director"** shall be **omitted**. Sub clause (ia) shall be added: **(ia)** Names of listed entities in which the resigning director holds directorships, indicating the category of directorship and membership of board committees, if any.	The listed entity in case of resignation by an ID shall disclose to the stock exchanges **letter of resignation along with detailed reasons of resignation** as provided by the ID. Additional disclosure is added by the SEBI which is to be made by a listed entity to the Stock Exchanges in case of resignation by an ID.

		In sub-clause (iii): i. the words **"detailed reasons"** appearing after the words **"along with the"** shall be substituted by the word **"disclosures"**. ii. after the words and symbols **"sub-clause (i)"** and before the word **"above"**, the word and symbols **"and (ii)"** shall be inserted.	https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html

Lesson 7: Accounting and Audit Related Issues, Related Party Transactions and Vigil Mechanism

1. SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021 (November 09, 2021)

SEBI vide its notification dated November 09, 2021, amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force with effect from April 1, 2022 unless otherwise specified in the respective provision of the regulation.

- **The amendments, inter-alia, have been carried out in the definitions of Related Party and Related Party transactions.**

  In the existing provision under Regulation 2(1)(zb) it was provided that, any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.

  However, vide this amendment, it is provided that, any person or entity forming a part of the promoter or promoter group or any person or any entity, holding equity shares of 20% or more (10% w.e.f. 1st April, 2023) in the listed entity either directly or on a beneficial interest basis, at any time, during the immediate preceding financial year, shall be deemed to be a related party.

  Further, the definition of related party transaction under regulation 2(1)(zc), has been substituted with the following, namely, -

  "Related Party Transaction" means a transaction involving a transfer of resources, services or obligations between:

  (i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or

  (ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

  regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:

  Provided that the following shall not be a related party transaction:

  (a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;

  (b) the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:

  i. payment of dividend;
  ii. subdivision or consolidation of securities;
  iii. issuance of securities by way of a rights issue or a bonus issue; and
  iv. buy-back of securities.

(c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the Board:
Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s)."

Regulation 23

- In sub regulation (1), it was provided that, a transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity. Vide this amendment, it is provided that, a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds Rs. 1000 crore or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower."

- In regulation 23(2), after the words "party transactions" the words "and subsequent material modifications" shall be inserted and the words and symbol "audit committee." shall be substituted with the words and symbol "audit committee of the listed entity:"
Vide this amendment, it is clarified that even the subsequent material modifications in a related party transaction shall require prior approval of the audit committee of the listed entity.

- In regulation 23(2), after the existing proviso, the following shall be inserted, namely, -
"Provided further that:
(a) the audit committee of a listed entity shall define "material modifications" and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;
(b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity;
(c) with effect from April 1, 2023, a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary;
(d) prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

Explanation : For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to in (d) above, the prior approval of the audit committee of the listed subsidiary shall suffice."

- In regulation 23(4), after the words "related party transactions" the words and symbol "and subsequent material modifications as defined by the audit committee under sub-regulation (2)," shall be inserted and after the words "shall require" the word "prior" shall be inserted. Vide this amendment it is clarified that prior approval of shareholders shall be required for material related party transactions.

- In regulation 23(4), before the existing proviso, the following shall be inserted, namely, - "Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.
  Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice."

- In regulation 23(5), after clause (b), the following new clause shall be inserted, namely, - "(c) transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval."

- Regulation 23(7) shall be omitted
  Omitted Provision:
  For the purpose of this regulation, all entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not.
- Regulation 23(9) shall be substituted with the following, namely, -
  "(9) The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website:
  Provided that a 'high value debt listed entity' shall submit such disclosures along with its standalone financial results for the half year:
  Provided further that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results:
  Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023."

For details: https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2021_53851.html

2. Disclosure obligations of listed entities in relation to Related Party Transactions (Circular No. SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated November 22, 2021)

SEBI vide this circular has prescribed the information to be placed before the audit committee and the shareholders for consideration of RPTs.

A. Information to be reviewed by the Audit Committee for approval of RPTs

The listed entity shall provide the following information, for review of the audit committee for approval of a proposed RPT:

a. Type, material terms and particulars of the proposed transaction;
b. Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
c. Tenure of the proposed transaction (particular tenure shall be specified);
d. Value of the proposed transaction;
e. The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);
f. If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
    i) details of the source of funds in connection with the proposed transaction;
    ii) where any financial indebtedness is incurred to make or give loans, intercorporate deposits, advances or investments,
        - nature of indebtedness;
        - cost of funds; and
        - tenure;
    iii) applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and
    iv) the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.
g. Justification as to why the RPT is in the interest of the listed entity;
h. A copy of the valuation or other external party report, if any such report has been relied upon;
i. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;
j. Any other information that may be relevant

The audit committee shall also review the status of long-term (more than one year) or recurring RPTs on an annual basis.

B. Information to be provided to shareholders for consideration of RPTs.

The notice being sent to the shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, include the following information as a part of the explanatory statement:

a. A summary of the information provided by the management of the listed entity to the audit committee as specified above;
b. Justification for why the proposed transaction is in the interest of the listed entity;

c. Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary, the details specified under point 4(f) above; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
d. A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
f. Any other information that may be relevant.

C. Format for reporting of RPTs to the Stock Exchange

The listed entity shall make RPT disclosures every six months in the format provided.
This Circular shall come into force with effect from April 1, 2022.
For details: https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html

Lesson 1: Conceptual Framework of Corporate Governance

THE FINNISH CORPORATE GOVERNANCE CODE, 2020

The new Corporate Governance Code for Finnish listed companies ("2020 CG Code") entered into force from 01 January 2020 replacing the previous CG Code applied since 2016 ("2015 CG Code"). The purpose of the Corporate Governance Code is to harmonise the procedures of listed companies and to promote openness with regard to corporate governance and remuneration. From the perspective of a shareholder and an investor, the Corporate Governance Code increases the transparency of corporate governance and the ability of shareholders and investors to evaluate the practices applied by individual companies. The Corporate Governance Code also provides investors with an overview of the kinds of corporate governance practices that are acceptable for Finnish listed companies.

While the number of recommendations in the 2020 CG Code has decreased, the 2020 CG Code introduces additional requirements on listed companies, in particular in relation to remuneration and related party transactions as required by the Shareholders' Rights Directive and the national rules implementing the Directive. The 2020 CG Code also introduces changes to the recommendation concerning the audit committee and clarifications to the recommendation concerning the assessment and disclosure of independence of board members. For example, the company's remuneration statement has been replaced by the remuneration policy for governing bodies ("remuneration policy") and remuneration report for governing bodies ("remuneration report"), which are supplemented by information provided on the company's website. The remuneration policy and report concern the company's board of directors, supervisory board, if any, and the managing director and deputy managing director. Information on the remuneration of the rest of the management team will in future be provided on the company's website. The remuneration reporting section also includes a checklist to clarify the reporting obligations. Similarly, the board must in future report which of the board members are independent of the company and which are independent of the company's significant shareholders. In addition, the reasoning for determining that a board member is not independent must also be reported. The criteria to be taken into account in the overall assessment of independence have also been supplemented so that under the interpretation of the criteria, the benefits paid and offered to a member of the board by a shareholder otherwise than on the basis of an employment or service relationship may require assessment.

The Finnish Securities Market Association's board adopted the amended and updated CG Code in September 2019. As a result of which the new 2020 CG Code came into force in January 2020 replacing the previous Finnish CG Code.

The 'comply or explain' principle applies to the CG Code. Thus, the starting point is that the company must comply with all recommendations set out in the CG Code.

THE ITALIAN CORPORATE GOVERNANCE CODE

The Italian Corporate Governance Code applies to all companies with shares listed on the Italian main market ("Mercato Telematico Azionario") managed by Borsa Italiana ("companies").

Adoption of this Code is voluntary and is disclosed in the report on corporate governance and ownership structures ("corporate governance report").

The code has 6 articles and each article of the Code is divided into principles, which define the objectives of good governance, and into recommendations, which indicate the behaviour that the Code deems appropriate to achieve the objectives indicated in the principles.

The Code is neutral with respect to the governance model specifically adopted by the company (traditional; "onetier", which includes the so-called "modello monistico" for Italian companies; "two-tier", which includes the so-called "modello dualistico" for Italian companies). For companies adopting the "two-tier" model, the Code requires that the supervisory board is to be assigned the task of deliberating on the company's strategic guidelines and transactions of strategic importance (so-called "high level" management powers).

Companies apply the Code according to the principle of substance over form and the recommendations thereof on a "comply or explain" basis.

Companies adopting the Code provide in their corporate governance report accurate, easily understandable and exhaustive, albeit concise, information on how the Code is applied.

The application of the Code is based on principles of flexibility and proportionality.

Companies disclose in their corporate governance report how they have specifically applied the Code's principles. The choice to depart from one or more recommendations of the Code may depend on factors internal and external to the company, whereby the practice recommended by the Code may not be functional or compatible with its governance model. The application of the Code implies, however, that each deviation is clearly indicated in the corporate governance report and that companies: (a) explain how the best practice recommended by the Code has been disregarded; (b) describe the reasons for the deviation; (c) describe how the decision to depart from the recommendations has been made within the company; (d) if the deviation is limited in time, indicate when they plan to apply the related best practice; (e) describe any action adopted as an alternative to the best practice which they have not implemented and explain how this choice helps the company achieving the objective underlying the Code's principles and in any case contributes to good corporate governance.

In order to ensure a proportional application of the Code, some recommendations are calibrated according to the company's size and ownership structure, providing for:

- a set of recommendations intended only for larger companies ("large companies" category contained in the Code's "definitions");
- a simplified application of some recommendations by companies other than the "large" ones;
- the adaptation of some recommendations to companies with concentrated ownership (cf. the category of "companies with concentrated ownership" contained in the Code's "definitions").

In the presence of primary or secondary regulations incompatible with the application of certain recommendations of the Code, disclosure of the reasons for their failed or partial application is not required.

The Committee monitors the state of the Code's application, the evolution of the applicable regulatory framework and the international best practices, and is responsible for updating the Code. To this end, it evaluates a possible revision of the Code usually every two years.

The application of the Code is facilitated by a set of Q&As, periodically updated also in consideration of any requests that might be submitted by those companies that apply the Code.

The present Code was approved by the Committee in January 2020.

The companies adopting the Code are required to apply it starting from the first financial year that begins after 31 December 2020, while the disclosure shall be provided in the corporate governance report to be published during 2022.

"Large companies" apply the recommendations regarding the presence of independent directors in the board of directors starting from the first renewal of the board of directors following 31 December 2020.

JAPAN'S STEWARDSHIP CODE - PRINCIPLES FOR RESPONSIBLE INSTITUTIONAL INVESTORS

In this Code, "stewardship responsibilities" refers to the responsibilities of institutional investors to enhance the medium- to long-term investment return for their clients and beneficiaries (including ultimate beneficiaries; the same shall apply hereafter) by improving and fostering the investee companies' corporate value and sustainable growth through constructive engagement, or purposeful dialogue, based on in-depth knowledge of the companies and their business environment and consideration of sustainability (medium- to long-term sustainability including ESG factors) consistent with their investment management strategies.

This Code defines principles considered to be helpful for institutional investors who behave as responsible institutional investors in fulfilling their stewardship responsibilities with due regard both to their clients and beneficiaries and to investee companies. By fulfilling their stewardship responsibilities properly in line with this Code, institutional investors will also be able to contribute to the growth of the economy as a whole.

Activities by institutional investors done to discharge their stewardship responsibilities (hereafter, "stewardship activities") should not be seen to be confined to voting, although voting is an essential element of stewardship activities. Stewardship activities include proper monitoring of the investee companies and constructive engagement with them done to discharge the stewardship responsibilities to foster sustainable growth of the companies

In the Code, two categories of institutional investors are identified: "institutional investors as asset managers" (hereafter, "asset managers"), which are entrusted to manage funds and invest in companies; and "institutional investors as asset owners" (hereafter, "asset owners"), including

providers of funds. The asset managers are expected to contribute to the enhancement of the corporate value of investee companies through day-to-day constructive dialogue with them.

The asset owners are expected to disclose their policies on fulfilling their stewardship responsibilities and contribute to the enhancement of the corporate value of investee companies through their own actions and/or the actions of the asset managers, to which they outsource their asset management activities.

The asset managers should aim to know the intention of the asset owners so that they can provide services as expected, and the asset owners should aim to assess the asset managers in line with the Code, not placing undue emphasis on short-term performance.

Parties such as proxy advisors and investment consultants for pensions which provide services at the request of institutional investors, etc. to contribute to the institutional investors' effective execution of stewardship activities (hereafter "service providers for institutional investors") are expected to play important roles in enhancing the functions of the entire investment chain running from their clients and beneficiaries to the investee companies.

Lesson 3: Board Effectiveness

CASE STUDIES ON SUCCESSION PLANNING

1. Marico Limited - A case study in professionalizing of the board

Marico Limited is one of India's leading companies in the fast-moving consumer goods (FMCG) and skin care businesses, founded by Harsh Mariwala. Harsh Mariwala joined his family-owned commodities trading business before eventually founding Marico in 1990 – completing a transformation of a traditional trading business into a leading consumer products and services company.

Mariwala turned the family-owned company into one that is now perceived by the market to be a well-managed, professionally run company. In 2014, Mariwala, who was till then, the Chairperson and Managing Director of the company, inducted a professional MD on the board – Saugata Gupta. He proceeded to then make his role nonexecutive – he would no longer look after the day-to-day operations, instead allowing a team of professionals to run the company. He would remain the chairperson of the company.

Mariwala's son Rishabh spent three years at Kaya, the beauty-salon business of the company, and then left to start a venture of his own in 2011. His daughter, Rajvi, left the company after two years and is now a canine behaviourist. His children are no longer part of the management or the board.

Mariwala has stated that he intends to make himself redundant in the company over time. By making an investment in professional leadership and staying away from day-to-day management, he has sought to demonstrate to the market that the interests of the promoter group are aligned with those of other stakeholders.

Marico's case is an excellent example of the promoter handing over the leadership to a professional and distancing themselves from day-to-day operations.

2. Godrej Group - Clear responsibilities for next generation promoters

The Godrej group is a large Indian conglomerate operating in the consumer products, real estate, consumer durables and animal feed businesses among others. Adi Godrej is a third-generation promoter and the current chairperson of Godrej Industries Limited, while his brother Nadir is the Managing Director for the same company. His cousin, Jamshyd Godrej is the chairperson of Godrej and Boyce, the consumer durables arm of the group.

Adi Godrej has ensured that the companies are run by a combination of family members and industry professionals. The group had appointed a facilitator in the past to oversee succession planning in the group. Family members seeking to enter the businesses in management roles are required to be well qualified.

Adi Godrej has three children, of which his eldest daughter, Tanya Dubash, his daughter, is an Executive Director of Godrej Industries Limited and the Chief Brand Officer for the group. She oversees the group's branding efforts and is also Chairperson of Godrej Nature's Basket, the gourmet retail arm of the company.

Nisaba Godrej, his second daughter is the Executive Chairperson of Godrej Consumer Products Limited, the home and personal care products division. Previously, she led the innovation strategy at the group company – Godrej Industries Limited. She was also involved with Godrej Agrovet Limited, the agribusiness arm of the company. Vivek Gambhir, a professional, serves as MD at Godrej Consumer Products Limited.

Pirojsha Godrej, Adi Godrej's son, looks after the real estate business. He has served as Managing Director and Chairperson at Godrej Properties since 2012. Effective April 2017, he serves as Executive Chairperson at the same company, while handing over the MD role to Mohit Malhotra, a professional who joined the company in 2010.

The succession plan has ensured that there are specific and clearly defined roles for the next generation based on individual strengths.

Lesson 4: Board Processes through Secretarial Standards

MEETING THROUGH VIDEO CONFERENCING

Section 173(2) of Companies Act, 2013 read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.

The Complete process for conducting of Board Meeting through video conferencing is prescribed under Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Secretarial Standard – 1.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014
Meetings of Board through Video Conferencing or Other Audio Visual Means

A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

1. Every Company shall make necessary arrangements to avoid failure of video or audio visual connection. 2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care–

(a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

(b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

(c) to record proceedings and prepare the minutes of the meeting;

(d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;

(e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

3. (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of subsection (3) of section 173 of the Act.

(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person."
(f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.
4. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

(a) name;
(b) the location from where he is participating;
(c) that he has received the agenda and all the relevant material for the meeting; and
(d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b).

5. (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete. Explanation.- A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.
(b) The Chairperson shall ensure that the required quorum is present throughout the meeting.
6. With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
7. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
8. (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.
9. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
10. From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

11. (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority "and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub-rule (12)".

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

12. (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation.- For the purposes of this rule, "video conferencing or other audio visual means" means audiovisual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Lesson 5: Board Committees

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE

CSR Expenditure

Amount of CSR to be spent Section 135(5) provides that the Board of every company referred to in section 135(1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

The first proviso to sub-section (5) provides that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

The second proviso further provides that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

The third proviso states that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Explanation. For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

Issue: If a company has only partly spent its CSR obligation during preceding three financial years, which is less than Rs. 50 lakh in each of these three financial years, though the quantum of prescribed 2% CSR was more than Rs 50 lakh, will section 135(9) of the Act be applicable to the company?

View: Section 135(9) of the Act uses the words "amount to be spent by a Company", which contemplates about CSR obligation under section 135(5) of the Act. Hence, in this case, the exemption from constituting the CSR committee as provided under section 135(9) of the Act will not be available to the company.

Transfer of amount to Specified Fund

Section 135(6) provides that any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the

date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

Illustration: ABC Private Ltd. did not spend as per the provisions of section 135(5) of the Act on the CSR activities by 31st March, 2021 pursuant to the ongoing project undertaken in pursuance of its CSR Policy. In this case ABC Private Ltd. should:

- Open a bank account with any scheduled bank under the name, "Unspent Corporate Social Responsibility Account for financial year 2020-21";
- Transfer the unspent amount within thirty days i.e. by 30th April, 2021 to such account and
- Spend such amount, in pursuance of its obligations towards the CSR Policy, latest by 31st March, 2024.

Penal Provisions for non-compliance

Section 135(7) provides that If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

Penal Provisions for non-compliance of Section 135(6) / (7)	
For Company in default	**For Officer in default**
Twice of the amount required to be transferred to the Fund OR Unspent CSR Account	One-tenth of the amount required to be transferred to the Fund or Unspent CSR Account
OR	**OR**
One Crore Rupees	Two lakh Rupees
Whichever is less	Whichever is less

Issue: Can a company spend in projects or programmes relating to activities mentioned in Schedule VII to the Act, but not specifically covered in CSR Policy?

View: As provided in section 135(5) of the Act, the Board shall ensure that the company spends at least 2% of the average net profits in pursuance of its CSR Policy. If a company wishes to spend CSR funds on activities mentioned in Schedule VII to the Act, but not specifically covered in CSR Policy, it may do so by suitably amending its CSR Policy with the approval of the Board to include such activities.

Case Law:

Technicolor India (P.) Ltd. v/s Registrar of Companies, CP NO. 124 (BB) OF 2019, JANUARY 31, 2020.

In the instant case, the Company has spent some amount as per the CSR Policy of the Company during the fiscal year 2017-18, which remain below the threshold mentioned in Section 135(5) of Companies Act, 2013 read with Companies Rules, 2014. Due to human lapse, the concerned department misreported the amounts spent on CSR, which mentioned

in the CSR Annexure to the Directors' report for the fiscal year ended Company 31st March, 2018 as against the amount reported in the audited financials. Therefore, the Board of Directors of the Company, in their meeting held on 21st September, 2018 approved the draft Directors' report for the year ended 31st March, 2018 which mentioned the amount spent on CSR and associated details incorrectly, due to receipt of an incorrect input from the relevant department.

In the AGM held on 28-9-2018, the shareholders have adopted the audited financial statements for the year ended 31st March, 2018 including the audited balance sheet as on 31st March 2018, the statement of profit and loss account with the report of the board of directors and auditors. The amount spent on the CSR and associated detail is incorrectly captured in the annexure to the Director's report for the fiscal year ended 31st March, 2018 as against the amount recorded in the Audited financial against CSR activity and the issue was discovered during the pre-scrutiny stage of filing of the audited financials of the year. Therefore, the Board has taken a call to set the things right with the *suomotu* intent to make application under section 131(1)(*b*) to rectify the error in the Board's report. The Board thus has authorised to make this application.

The NCLT passed the following order:

- The Petitioner Company is permit to revise the Board's report, as sought for, as per Annexure-4 and with a direction to follow all the extant provisions of section 135 of the Companies Act, 2013, the Company (CSR) Rules, 2014 amended from time to time, and also rule 77 of NCLT Rules, 2016.
- This order is passed without prejudice rights of the Statutory Authorities to initiate any proceedings against the Company, for violation of any provisions of the Companies Act, which includes alleged violation of section 135 of the Companies Act, 2013.

Schedule VII
(See Section 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

(i) Eradicating hunger, poverty and malnutrition, ‘‘promoting health care including preventinve health care’’ and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

(iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

(vi) measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;

(vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports

(viii) contribution to the prime minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

(ix)(a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

(x) rural development projects

(xi) slum area development.

Explanation.- For the purposes of this item, the term `slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

(xii) disaster management, including relief, rehabilitation and reconstruction activities.

VIGIL MECHANISM

Although the establishment of Vigil Mechanism is mandatory under the Companies Act, 2013 as well as in SEBI (LODR) Regulations, 2015, but the word used is '**mechanism**' and not the '**committee**'. However, it shall be worthwhile to narrate the relevant provisions of the vigil mechanism here;

Provisions of VIGIL MECHANISM	
Under the Companies Act, 2013	**Under SEBI (LODR) Regulations, 2015**

Section 177 read with Rule 7 of the Companies (Meetings of Board and Its Powers)Rules, 2014	Regulation 22 deals with the Vigil Mechanism.
Constitution As per Section 177(9) Every listed company or such class or classes of companies as prescribed under Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may prescribed in Rule 7. **Establishment of Vigil Mechanism** (1) Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances- (a) the Companies which accept deposits from the public; (b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees. (2) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand. (3) In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns. (4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of	The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns. [Regulation 22(1)]

Audit Committee, as the case may be, in exceptional cases. (5) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.	
The vigil mechanism under section 177(9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.	The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases. [Regulation 22(2)]

Lesson 10: Governance and Compliance Risk

REGULATORY TECHNOLOGY (RegTech)

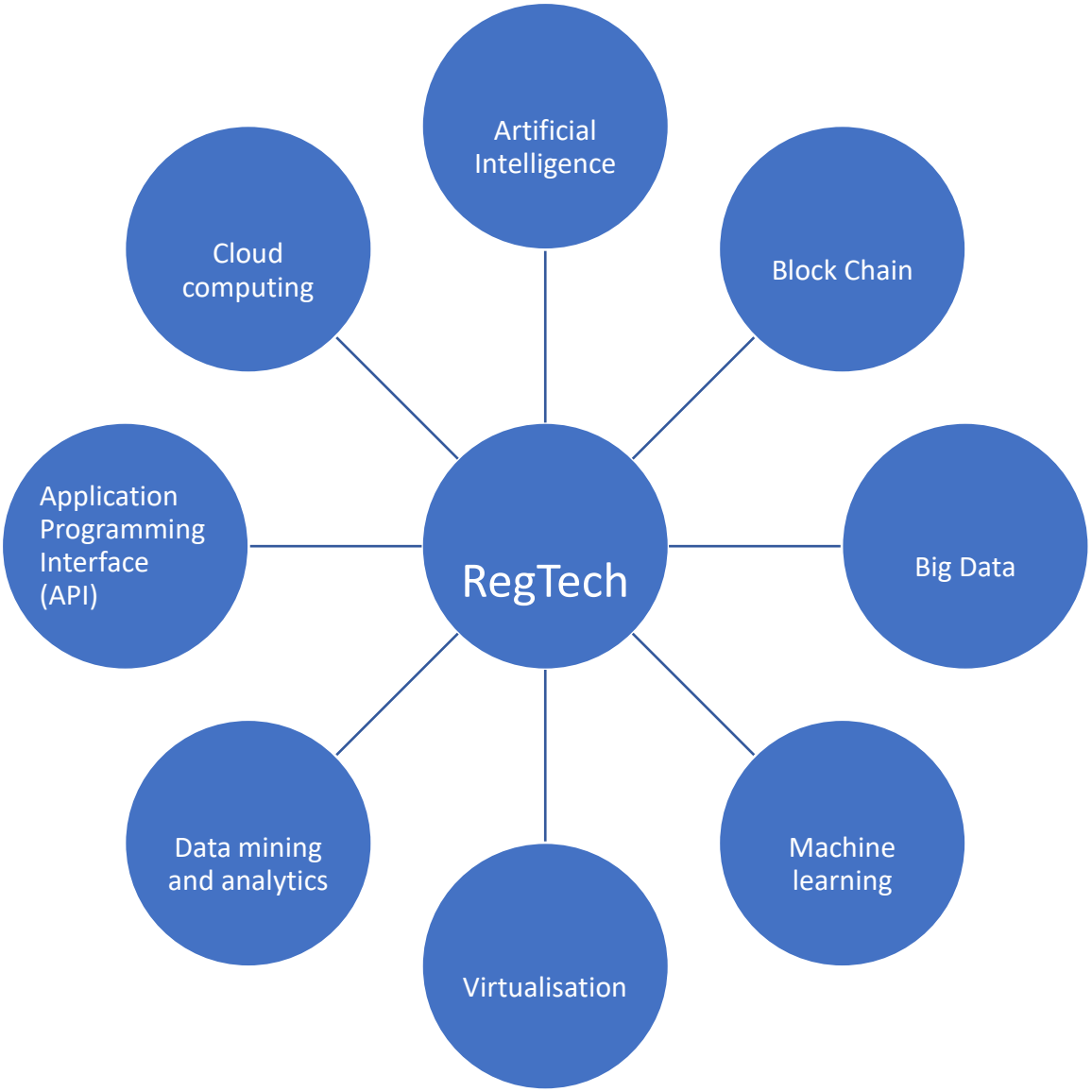
The Financial Service sector has long been brimming with regulations. In an attempt to reduce the vast and ever-increasing burden of these regulatory terms, financial institutions are starting to turn to new technology solutions. Around the world, regulatory changes in the financial sector is increasing at a staggering rate. Coping with the sheer volume of new regulatory changes imposes high complexity and stringent timelines upon financial institutions. Over the past decade, regulators have asked financial institutions to undertake several modernisations on their businesses and many of the organisations have struggled with regulatory-driven transformations. Regulatory Technology (RegTech) established a solid foundation within the FinTech (Financial Technology) ecosystem to overcome this and come up with solutions that are targeted to new and complex regulations, litigation and regulatory remediation areas faced by financial institutions (FI), combined with overall reduction in cost compliance. RegTech is a platform that combines regulations with technology. These are technologies created to facilitate compliance with increasingly complex regulations and serve users in-process monitoring.

Technologies supporting RegTech solutions

Areas of intervention and potential benefits

A successful RegTech strategy extends to engagement with other institutions and regulators to test and scale solutions faster with reduced cost and risk. For example, the development of shared testing facilities for solutions using machine learning to automate the management of regulation impact and change. RegTech will help financial institutions to co-create and scale solutions rapidly in partnership with financial institutions and FinTechs.

It is important to develop robust FinTech solutions with RegTech innovation for a sustainable financial products with security Automation of Regulatory Process. Major technologies supporting RegTech companies are:



Financial Institutions are complex legal entity structures, with various business models, metrics and risks. RegTech enables Financial Institutions to internal control and accountability for risk data, compliance assessment, analysis and effective policy and procedure management. The various advantages of RegTech Companies are:

- Remain complaint with regulations
- Simplifies data management
- Real time reporting
- Data analytics and decision making
- Regulation reframing and implementing new governances
- Fraud and risk management
- Reducing time needed for client onboarding
- Identifying the frauds
- Adapting to new regulations faster
- Improve data collection and data analytics

NEW DEVELOPMENTS- GOVERNANCE, RISK MANAGEMENT AND COMPLIANCE (GRC)

1. PNB Scam- Case Study

On 14 February 2018, PNB revealed that fraudulent transactions by billionaire jeweler Nirav Modi and related entities amounted to 110 billion rupees (US$1.77 billion). The key accused in the case were jeweler and designer Nirav Modi, his maternal uncle Mehul Choksi, and other relatives and some PNB employees.

Nirav Modi and his relatives escaped India in early 2018, days before the news of the scam became public. Nirav Modi and the companies linked to him colluded with bank officials to get guarantees or letters of undertaking to help fund buyer's credit from other overseas banks.Multiple fake LoUs were opened in favour of branches of Indian banks for import of pearls for a period of one year, for which Reserve Bank of India guidelines lay out a total time period of 90 days from the date of shipment but the guidelines were ignored by overseas branches of Indian banks. They failed to share any document/information with PNB, which were made available to them by the firms at the time of availing credit from them.

The Enforcement Directorate (ED) recovered bank token devices of the foreign dummy companies used by the fugitive diamond trader to transfer the fraudulent funds. The probe agency found that Nehal Modi, brother of Nirav Modi had destroyed the devices and had even secured a server located in the United Arab Emirates (UAE) soon after the scam broke out. These dummy firms had been receiving the fraudulent PNB LoUs and were based out in British Virgin Island and other tax havens.

This case was a result of the mismanagement from the internal regulatory bodies within the PNB itself and also from the side of the Reserve Bank of India (RBI). This is not the only instance in itself where the public sector banks have failed to perform their duties and therefore major changes need to be incorporated into the regulatory mechanisms to prevent such frauds.

In the aftermath of this case, RBI has directed banks to integrate SWIFT and core banking systems. It has also constituted a committee to look into the reasons for high divergence observed in asset classification, various incidents of fraud and necessary interventions (also in terms of information technology) to prevent such frauds. The government passed the Fugitive Economic Offenders Act (2018) which came into force on 21st April 2018. The Act was enacted to prevent economic offenders in the ilk of Nirav Modi from escaping the country.

2. YES Bank Crisis- Case study

YES Bank was once the country's fifth-largest private lender by market capitalization. YES Bank had been founded by Rana Kapoor and Ashok Kapoor in 2004. The bank was ranked number 1 bank in the Business Today-KPMG Best Banks Annual Survey 2008. YES Bank was the first institution globally to receive funding through IFC's Managed Co-Lending Portfolio Programme and the first Indian bank to raise loan under IFC's A/B loan facility.

What has led to a crisis at YES Bank?

The bank's loan book on March 31, 2014, was Rs 55,633 crore, and its deposits were Rs 74,192 crore. Since then, the loan book has grown to nearly four times as much, at Rs 2.25 trillion as on September 30, 2019. While deposit growth failed to keep pace and increased at less than three times to Rs 2.10 trillion. The bank's asset quality also worsened and it came under regulator RBI's scanner. Yes bank was lending aggressively disregarding the risk limits and also under-reporting the bad loans. They were lending to corporates that were already in very risk businesses and facing some challenges in their business like the Anil Ambani-led Reliance group, DHFL and IL&FS. All this happened in Rana

Kapoor's (Founder of Yes Bank) tenure. The exposure of loans to such bad performing companies was huge in Yes Bank's case, and to add up they were hiding the NPAs (Non-performing assets) or misreporting the same. After the above fiasco, Ravneet Gill took charge of Yes Bank but struggled to revive as deposits kept depleting and he wasn't able to raise enough capital given the loss of confidence in the market. The tipping point came when one of the bank's independent directors Uttam Prakash Agarwal, resigned from the board in January 2020 citing governance issues.

Several reasons behind the crisis of YES bank were:

1. NPAs: YES Bank ran into trouble following the central bank's asset quality reviews in 2017 and 2018, which led to a sharp increase in its impaired loans ratio and uncovered significant governance lapses that led to a complete change of management. The bank subsequently struggled to address its capitalisation issues. YES Bank suffered a dramatic doubling in its gross NPAs between April and September 2019 to Rs 17,134 crore.
2. NBFC crisis: The crisis in India's shadow-banking space started with the unravelling of Infrastructure Leasing & Financial Services (IL&FS) and then extended to Dewan Housing Finance Limited (DHFL). YES Bank's total exposure to IL&FS and DHFL was 11.5 per cent as of September 2019. In April 2019, the bank had classified about Rs 10,000 crore of its exposures, representing 4.1 per cent of its total loans under watch list, as potential non-performing loans over the next 12 months.
3. Governance issue: YES Bank faced several governance issues that led to its decline. On January 10, independent director Uttam Prakash Agarwal quit citing deteriorating corporate governance standards and compliance failure at the lender. In 2018-19, the bank under-reported NPAs to the tune of Rs 3,277 crore, prompting RBI to dispatch R Gandhi, one of its former deputy governors, to the board of the bank. Rana Kapoor, who was instrumental in building YES Bank from scratch, was asked to step down as chief executive in January 2019.
4. Excessive withdrawals: YES Bank's financial condition dissuaded many depositors from keeping funds in the bank over a longer term. The bank showed a steady withdrawal of deposits, which burdened its balance sheet and added to its woes. The bank had a deposit book of Rs 2.09 trillion at the end of September 2019.

Steps taken by RBI against YES Bank

1. RBI has taken over the YES Bank management
2. The central has imposed a moratorium on the lender
3. RBI announced a draft 'Scheme of Reconstruction' that entails SBI investing capital to acquire a 49% stake in the restructured private lender.

How can such conflicts between Management and Board be avoided?

The global best practice recommends that at least three-quarters of board members should be independent, the board should have an independent chairman and not an individual who serve the role of both CEO & Chairman of the board, annual board elections should be conducted as this forces directors to make more careful decisions and be more attentive to shareholders because they can cast the vote to keep or eliminate a director each year. Also, every year board self-assessment practices should be conducted, independent directors should annually/ quarterly meet and openly discuss various policies, management, and compensation without concerns about management influence.

Lesson 14: Reporting

SUSTAINABILITY REPORTING FRAMEWORK IN INDIA

Considering the importance of sustainability in businesses, MCA launched Corporate Social Responsibility Voluntary Guidelines in 2009. This voluntary CSR Policy addresses six core elements – Care for all Stakeholders, Ethical functioning, Respect for Workers' Rights and Welfare, Respect for Human Rights, Respect for Environment and Activities for Social and Inclusive Development. To take this further, in 2011 MCA issued 'National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business' which encourages reporting on environment, social and governance issues.

Business Responsibility Report is a disclosure of adoption of responsible business practices by a listed company to all its stakeholders. This is important considering the fact that these companies have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive

In line with the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business and considering the larger interest of public disclosure regarding steps taken by listed entities from a Environmental, Social and Governance ("ESG") perspective, SEBI decided to mandate inclusion of Business Responsibility Reports ("BRR reports") as part of the Annual Reports for listed entities.

SEBI in its (Listing Obligations and Disclosure Requirements) Regulations, 2015 has mandated the requirement of submission of BRR for top 1000 listed entities describing initiative taken by them from an environmental, social and governance perspective in the prescribed format [Regulation 34(2)(f)].

Regulation 34(2)(f) of SEBI(LODR) Regulations 2015:

34(2)The annual report shall contain the following:

(f) for the top one thousand listed entities based on market capitalization (calculated as on March 31 of every financial year), business responsibility report describing the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by the Board from time to time:

Provided that listed entities other than top one thousand listed companies based on market capitalization and listed entities which have listed their specified securities on SME Exchange, may include these business responsibility reports on a voluntary basis in the format as specified.

SEBI vide its circular No. **SEBI/HO/CFD/CMD-2/P/CIR/2012/562 dated 10th May, 2021** issued a circular on Business responsibility and sustainability reporting by listed entities. The circular states that-

1. In recent times, adapting to and mitigating climate change impact, inclusive growth and transitioning to a sustainable economy have emerged as major issues globally. There is an increased focus of investors and other stakeholders seeking businesses to be responsible and sustainable towards the environment and society. Thus, reporting of company's performance on sustainability related factors has become as vital as reporting on financial and operational performance.

2. 2. SEBI vide Circular no. CIR/CFD/CMD/10/2015 dated November 04, 2015 has prescribed the format for the Business Responsibility Report (BRR) in respect of reporting on ESG (Environment, Social and Governance) parameters by listed entities.
3. In terms of amendment to regulation 34 (2) (f) of LODR Regulations vide Gazette notification no. SEBI/LAD-NRO/GN/2021/22 dated May 05, 2021, it has now been decided to introduce new reporting requirements on ESG parameters called the Business Responsibility and Sustainability Report (BRSR). The BRSR is accompanied with a guidance note to enable the companies to interpret the scope of disclosures. The format of the BRSR and the guidance note are detailed in Annexure I and Annexure II respectively. [These Annexures have been provided at the end of this chapter]
4. The BRSR seeks disclosures from listed entities on their performance against the nine principles of the 'National Guidelines on Responsible Business Conduct' (NGBRCs) and reporting under each principle is divided into essential and leadership indicators. The essential indicators are required to be reported on a mandatory basis while the reporting of leadership indicators is on a voluntary basis. Listed entities should endeavor to report the leadership indictors also.
5. The BRSR is intended towards having quantitative and standardized disclosures on ESG parameters to enable comparability across companies, sectors and time. Such disclosures will be helpful for investors to make better investment decisions. The BRSR shall also enable companies to engage more meaningfully with their stakeholders, by encouraging them to look beyond financials and towards social and environmental impacts.
6. The listed entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (such as GRI, SASB, TCFD or Integrated Reporting) may cross-reference the disclosures made under such framework to the disclosures sought under the BRSR.

Applicability

7. In terms of the aforesaid amendment, with effect from the financial year 2022-2023, filing of BRSR shall be mandatory for the top 1000 listed companies (by market capitalization) and shall replace the existing BRR. Filing of BRSR is voluntary for the financial year 2021-22.
8. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities and also disseminate the same on their websites.

The Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation

W.e.f. the financial year 2022-2023, filing of BRSR shall be mandatory for the top 1000 listed companies (by market capitalization) and shall replace the existing BRR. Filing of BRSR is voluntary for the financial year 2021-22.

DIFFERENCE BETWEEN INTEGRATED REPORTING, SUSTAINABILITY REPORTING AND FINANCIAL REPORTING

	Integrated Reporting	*Sustainability Reporting*	*Financial Reporting*
Meaning	It is a process that results in communication by an organisation, about value creation over time	The practice of measuring, disclosing and being accountable to both internal and external stakeholders for the progress towards a more sustainable future.	Financial Reports are formal records of the financial activities and position of a business, person, or other entity. Like a balance sheet, statement of profit and loss, reports on a company's assets, liabilities, and owner's equity at a given point in time.
Information	Financial and non-financial information	Primarily non-financial information	Only Financial statements and accounts
Focus	Focus on past, present and future linked (short, medium and long-term) strategies	Backward looking – impact of existing CSR projects	Backward looking and present day financials
Purpose	Explain to providers of financial capital how value is created over time	Communicate the entity's broader social and environmental impacts, strategies and goals	The purpose of financial statement analysis is to evaluate the past, current, and future performance and financial position of the company for the purpose of making investment, credit, and other economic decisions.
Audience	Providers of financial capital and others interested in the organization's ability to create value.	Multi-stakeholder	Shareholders and investors
Scope	• Organizational overview and external environment • Governance • Business model • Risks and opportunities • Strategy and resource allocation • Performance • Outlook • Strategies impacted for value creation	• Economic • Environmental • Social, including labour practices, human rights and broader societal influences • Governance	Financial statements and accounts

Framework	• Reporting as per International Framework provided by IIRC	Reporting as per GRI guidelines to measure and disclose sustainability data	Reporting in compliance with regulations and standards

Lesson 16: CSR and Sustainability

CSR UNDER THE COMPANIES ACT, 2013

Section 135 of the Companies Act, 2013

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company 5[in areas or subject, specified in Schedule VII];
(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:
Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:
Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry

of the financial year.
Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.
[*Explanation.*—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.]

(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.]

(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

Report on Corporate Social Responsibility: Section 134(3)(o) states that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include, the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.

Penal provision for non-compliance: Section 134(8) further states that-If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

The Companies (Corporate Social Responsibility Policy) Rules, 2014

Meaning of Corporate Social Responsibility- Rule 2(d):

"Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-

(i) activities undertaken in pursuance of normal course of business of the company: Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;

CSR Committee- Rule 2(e): CSR Committee means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act.

CSR Policy- Rule 2(f): "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

Net profit- Rule 2(h):

"Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-

(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

(ii) (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act: Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

Corporate Social Responsibility- Rule 3

(1) Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub- section (I) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit. of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance .with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act

(2) Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to –

(a) constitute a CSR Committee; and
(b) comply with the provisions contained in sub-section (2) to (6) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.

CSR Implementation- Rule 4

(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through -

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the **01st day of April 2021:**

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the **01st day of April 2021.**

(b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

(c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

(3) **International Organisations Engagement for CSR Designing**: A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

(4) **A Collaboration of other Companies for CSR Expenditure:** A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that

the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(5) **CFO Certification:** The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

(6) **Ongoing Projects:** In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

CSR Committees- Rule 5

(1) The companies mentioned in the rule 3 shall constitute CSR Committee as under.-

(i) a company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director ;

(ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

(iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

(2) **Mapping of Annual Action for CSR:** The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its

CSR policy, which shall include the following, namely:-

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;

(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;

(d) monitoring and reporting mechanism for the projects or programmes; and

(e) details of need and impact assessment, if any, for the projects undertaken by the company:

However, the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

The Companies (Amendment) Act, 2020, has inserted the provision under Section 135(9) of the Companies Act, 2013 that where the CSR expenditure does not exceed Rs. 50 Lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee shall be discharged by the Board of Directors of such company.

CSR Expenditure- Rule 7
New norms introduced for carry forward and set-off excess CSR expenditure

(1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

(2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 , such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

(ii) the Board of the company shall pass a resolution to that effect.

(4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -

(a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or

(b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

(c) a public authority:

However, any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.]

CSR Reporting- Rule 8

(1) Directors Report:

The Company shall annex with its Board Report an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced Prior To 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

(2) In case of a Foreign Company:

The Balance sheet filed u/s 381(1) (b) of the Companies Act, 2013 shall contain ‘an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced prior to 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

(3) **Impact Assessment for big CSR projects**

(a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection 5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

(b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

Display of CSR activities on its website- Rule 9

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

Transfer of unspent CSR amount- Rule 10

Until a fund is specified in Schedule VII for the purposes of subsection (5) and(6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

CSR REPORTING UNDER SEBI (LODR) REGULATIONS, 2015

In line with the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business and considering the larger interest of public disclosure regarding steps taken by listed entities, SEBI had mandated the requirement of submission of Business Responsibility Report ('BRR') for top 1000 listed entities under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("SEBI LODR"). Regulation 34(2)(f) of the SEBI(LODR) Regulations, 2015, provides that the annual report shall contain the top one thousand listed entities based on market capitalization (calculated as on March 31 of every financial year), business responsibility report describing the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by the Board from time to time:
Provided that listed entities other than top one thousand listed companies based on market capitalization and listed entities which have listed their specified securities on SME Exchange, may include these business responsibility reports on a voluntary basis in the format as specified.

Business Responsibility and Sustainability Report (BRSR)

The Securities and Exchange Board of India (SEBI) has now introduced new requirements for sustainability reporting by listed entities. The new reporting called the Business Responsibility and Sustainability Report (BRSR) will replace the existing Business Responsibility Report (BRR). SEBI was one of the early adopters of sustainability reporting for listed entities amongst its global peers. The filing of the BRR containing ESG (Environment, Social and Governance) disclosures was first introduced for listed entities in 2012. Since then, a number of developments have taken place. With the adoption of the Paris Agreement on Climate Change and UN Sustainable Development Goals, adapting to and mitigating climate change impact and transitioning to sustainable economies have emerged as major issues globally. The COVID pandemic has also accelerated the relevance of ESG considerations to investors resulting in increased awareness of investors and a shift towards sustainable investing. The same is reflected in the spurt in new launches of ESG themed mutual funds and growth in assets of such schemes, including in India. As ESG investing becomes more mainstream, disclosure requirements need to keep pace with this change and the BRSR is a significant step towards this direction.

The BRSR is a notable departure from the existing Business Responsibility Report ("BRR") and a significant step towards bringing sustainability reporting at par with financial reporting. The reporting requirements were finalized based on feedback received from public consultation and extensive deliberations with stakeholders including corporates, institutional investors. Further, a benchmarking exercise with internationally accepted disclosure frameworks was also undertaken. A few of the key disclosures sought in the BRSR are highlighted below:

a. An overview of the entity's material ESG risks and opportunities, approach to mitigate or adapt to the risks along-with financial implications of the same
b. Sustainability related goals & targets and performance against the same
c. Environment related disclosures covering aspects such as resource usage (energy and water), air pollutant emissions, green-house (GHG) emissions, transitioning to circular economy, waste generated and waste management practices, bio-diversity etc.
d. Social related disclosures covering the workforce, value chain, communities and consumers, as given below:

i. Employees / workers: Gender and social diversity including measures for differently abled employees and workers, turnover rates, median wages, welfare benefits to permanent and contractual employees / workers, occupational health and safety, trainings etc.
ii. Communities: disclosures on Social Impact Assessments (SIA), Rehabilitation and Resettlement, Corporate Social Responsibility etc.
iii. Consumers: disclosures on product labelling, product recall, consumer complaints in respect of data privacy, cyber security etc.

Listed entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (such as GRI, SASB, TCFD or Integrated Reporting) may cross-reference the disclosures made under such framework to the disclosures sought under the BRSR.

The BRSR is an initiative towards ensuring that investors have access to standardized disclosures on ESG parameters. Access to relevant and comparable information, will enable investors to identify and assess sustainability-related risks and opportunities of companies and make better investment decisions. At the same time, companies will be able to better demonstrate their sustainability objectives, position and performance resulting into long term value creation. Overall, higher standards of ESG disclosures and transparency, will help in attracting more capital and investment.

Applicability of BRSR
The BRSR shall be applicable to the top 1000 listed entities (by market capitalization). In order to give time to companies to adapt to the new requirements, the reporting of BRSR shall be voluntary for FY 2021 –22 and mandatory from FY 2022 –23. However, companies are encouraged to be early adopters of the BRSR, thus being at the forefront of sustainability reporting.

SDG INDIA INDEX 2020-21: NITI AAYOG

The SDG India Index 2020–21 is developed in collaboration with the United Nations in India. The NITI Aayog launched its index in 2018 **to** monitor the country's progress on the goals through data-driven assessment, and foster a competitive spirit among the States and Union Territories in achieving them. NITI Aayog has the twin mandate to oversee the adoption and monitoring of the SDGs in the country, and also promote competitive and cooperative federalism among States and UTs. The index represents the articulation of the comprehensive nature of the Global Goals under the 2030 Agenda while being attuned to the national priorities.

In 2015, the UNs General Assembly adopted the 2030 Agenda for Sustainable Development. The 17 SDGs are a bold commitment to finish what the Millennium Development Goals (MDGs) started**,** and tackle some of the more pressing challenges.
The SDG India Index 2020–21 is also live on an online dashboard**,** which has cross-sectoral relevance across policy, civil society, business, and academia.

- **Methodology:**
  - The SDG India Index computes goal-wise scores on the 16 SDGs for each State and Union Territory.
  - These scores range between 0–100, and if a State/UT achieves a score of 100, it signifies it has achieved the 2030 targets.
  - The higher the score of a State/UT, the greater the distance to target achieved.
  - States and Union Territories are classified in four categories based on their SDG India Index score: Aspirant (0–49), Performer (50–64**),** Front-Runner (65–99), Achiever (100).
- **Comparison with Previous Editions:**
  - The SDG India Index 2020–21 is more robust than the previous editions on account of wider coverage of targets and indicators with greater alignment with the National Indicator Framework (NIF).
  - The 115 indicators incorporate 16 out of 17 SDGs, with a qualitative assessment on Goal 17, and cover 70 SDG targets.
  - This is an improvement over the 2018–19 and 2019–20 editions of the index, which had utilised 62 indicators across 39 targets and 13 Goals, and 100 indicators across 54 targets and 16 Goals, respectively.
- **National Analysis:**
  - The country's overall SDG score improved by 6 points - from 60 in 2019 to 66 in 2020–21.
  - Currently, there are no states in the aspirant and achiever category**;** 15 states/UTs are in the performer category and 22 states/UTs in the front runner category.
  - India saw significant improvement in the SDGs related to clean energy, urban development and health in 2020. However, there has been a major decline in the areas of industry, innovation and infrastructure as well as decent work and economic growth.
- **State Wise Performance:**
  - Kerala retained its position at the top of the rankings in the third edition of the index, with a score of 75, followed by Tamil Nadu and Himachal Pradesh**,** both scoring 72.
  - At the other end of the scale, Bihar, Jharkhand and Assam were the worst performing States. However, all States showed some improvement from last year's scores, with Mizoram and Haryana seeing the biggest gains.

NET CARBON-ZERO GOAL– ONE STEP TOWARD SUSTAINABLE DEVELOPMENT

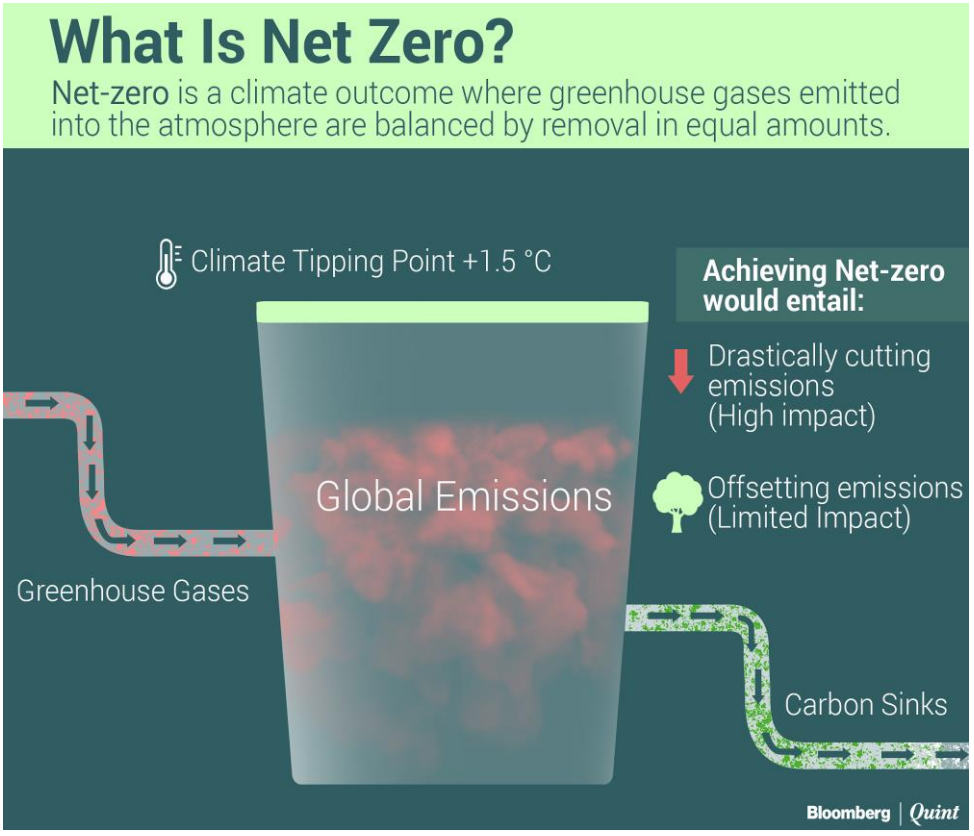
Some of India's largest firms have announced net-zero goals as companies globally switch to sustainable investments and seek suppliers with similar commitments to curb greenhouse emissions. Reliance Industries Ltd. plans to transform each of the units under its refining-to-retail conglomerate to create a sustainable business and chases a net carbon-zero goal by 2035. Private lender HDFC Bank Ltd. has set 2031-32 target for being carbon neutral, while Tata Consultancy Services Ltd. seeks to be there by 2030. Wipro Ltd., Infosys Ltd., Mahindra & Mahindra Ltd., JSW Energy Ltd. and even Indian Railways have also announced similar plans.

What Is Net-Zero?

Net-zero is a climate outcome where any greenhouse emissions through man-made sources are countered by removing such gases in equal amount. The 'net' effect is that the global temperature remains unchanged. There are two ways to achieve this: drastically reduce emissions and simultaneously use methods to neutralise or remove greenhouse gases.

Why's it relevant?

Foremost is to avoid an impending climate catastrophe. Consider carbon budget—the maximum limit of emissions that the Earth can handle before heating up. If we continue to release emissions on a net basis, that budget is breached and temperature continues to rise. For example, a water tank that is filled three-fourths. And a stream is connected to the tank that constantly keeps filling it. The idea of net zero is that we reduce the flow of the stream so that the water doesn't start to overflow.



Source: Bloomberg

Policymakers across the globe have a consensus that setting net-zero goals is a plausible way to contain further damage and, hopefully, reverse some of it. Under the landmark 2016 Paris climate agreement, countries including India agreed to limit global warming to well below 2 degrees Celsius, ideally 1.5

degrees C. A special report by nearly 100 scientists found that to achieve the goal, the world would have to hit net-zero emissions by 2050. That's not likely given the current progress.

Developed nations such as the U.K., France and Denmark, with higher emissions, have already codified in law their commitment to net-zero by 2050, according to the Energy and Climate Intelligence Unit. The European Union, South Korea and Canada have also proposed similar legislation. The U.S., Japan and Germany are considering making it a law.

India, a developing nation with relatively lower per capita emissions, doesn't have a net-zero target. But authorities are said to be considering pledging to net-zero by 2050.

Why Should Companies Care?

Bulk of the emission comes from industries—particularly in the energy, metals and transportation sectors. Any climate action will have to start by reducing or offsetting emissions that come from the industrial and commercial activity.

There is also the need to negate potential business losses. According to the Carbon Disclosure Project, Indian companies stand to collectively lose over Rs 7.14 lakh crore if they do nothing to mitigate climate risks in the next five years. These risks come from physical phenomena like floods, emerging regulations, emission caps, changing customer behaviour and preferences, and even potential legal issues. But if done right, opportunities worth Rs 2.9 lakh crore could emerge.

Indian suppliers of multinational firms also risk losing $274 billion worth of exports every year if they fail to curb carbon emissions, according to Standard Chartered.

Lesson 17: Anti-Corruption and Anti-Bribery Laws in India

FUGITIVE ECONOMIC OFFENDER ACT, 2018

There have been several instances of economic offenders fleeing the jurisdiction of Indian courts anticipating the commencement of criminal proceedings or sometimes during the pendency of such proceedings. The absence of such offenders from Indian courts has several deleterious consequences, such as, it obstructs investigation in criminal cases, it wastes precious time of courts and it undermines the rule of law in India. Further, most of such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India. The existing civil and criminal provisions in law are inadequate to deal with the severity of the problem.

In order to address the said problem and lay down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, Parliament enacted a legislation, namely, the Fugitive Economic Offenders Act, 2018 to ensure that fugitive economic offenders return to India to face the action in accordance with law.

The Fugitive Economic Offenders Act, 2018, *inter -alia*, provides for:

1. Measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts, to preserve the sanctity of the rule of law in India and for matters connected therewith or incidental thereto.
2. Key Definitions
    - Fugitive Economic Offender {Section 2(f)} :"fugitive economic offender" means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who—
        (i) has left India so as to avoid criminal prosecution; or
        (ii) being abroad, refuses to return to India to face criminal prosecution;
    - Scheduled Offense {Section 2(m)} :"Scheduled Offence" means an offence specified in the Schedule, if the total value involved in such offence or offences is one hundred crore rupees or more;
3. Attachment of the property of a fugitive economic offender and proceeds of crime (Section 5)
    (1) The Director or any other officer authorised by the Director, not below the rank of Deputy Director, may, with the permission of the Special Court, attach any property mentioned in the application under section 4 by an order in writing in such manner as may be prescribed.
    (2) Notwithstanding anything contained in sub-section (1) or section 4, the Director or any other officer, not below the rank of Deputy Director, authorised by the Director,

may, by an order in writing, at any time prior to the filing of the application under section 4, attach any property—

(a) for which there is a reason to believe that the property is proceeds of crime, or is a property or benami property owned by an individual who is a fugitive economic offender; and

(b) which is being or is likely to be dealt within a manner which may result in the property being unavailable for confiscation:

Provided that the Director or any other officer who provisionally attaches any property under this sub-section shall, within a period of thirty days from the date of such attachment, file an application under section 4 before the Special Court.

(3) The attachment of any property under this section shall continue for a period of one hundred and eighty days from the date of order of attachment or such other period as may be extended by the Special Court before the expiry of such period.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, the expression "person interested", in relation to any immovable property includes all persons claiming or entitled to claim any interest in the property.

4. The powers of Director relating to survey, search and seizure and search of persons;

According to section 6, The Director or any other officer shall, for the purposes of section 4, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;
(b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;
(c) compelling the production of records;
(d) receiving evidence on affidavits;
(e) issuing commissions for examination of witnesses and documents; and
(f) any other matter which may be prescribed.

5. Confiscation of the property of a fugitive economic offender and proceeds of crime;
6. Disentitlement of the fugitive economic offender from putting forward or defending any civil claim;
7. Appointment of an Administrator for the purposes of the proposed legislation;
8. Appeal to the High Court against the orders issued by the Special Court; and
9. Placing the burden of proof for establishing that an individual is a fugitive economic offender on the Director or the person authorised by the Director.

10. Notwithstanding anything contained in any other law for the time being in force,— (a) on a declaration of an individual as a fugitive economic offender, any Court or tribunal in India, in any civil proceeding before it, may, disallow such individual from putting forward or defending any civil claim; and (b) any Court or tribunal in India in any civil proceeding before it, may, disallow any company or limited liability partnership from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company or the limited liability partnership, or any promoter or key managerial personnel or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as a fugitive economic offender.

Process to Declare a Person as a Fugitive Economic Offender

APPLICATION *Section 4*	The process of declaring a person as a fugitive economic offender starts with an application that is to be filled by the director or any other person who is not below the position of deputy director. The application needs to contain the following: 1) Reason behind believing that such a person is an economic offender. 2) Any information about his whereabouts. 3) List of all the properties which are believed to be proceeds of crime or Benami property. 4) List of people an having interest in the said property.
ATTACHMENT *Section 5*	The Authorities may attach any property which is mentioned in the above application with the prior approval of the special court. Such an attachment will be valid for 180 days, which may be extended to the discretion of the court.
NOTICE *Section 10*	The individual against whom the proceedings have been initiated will be served a notice by the special court. Such a notice will require the said individual to be present at the specified date on the specified date, failure to report on that date will result in declaring that person as a fugitive economic offender. It must be noted that the court will give a minimum time of six weeks to the alleged offender to be present before the court.
PROCEEDINGS AND DECLERATION	If the alleged offender appears before the court within the prescribed time then the proceedings will be terminated, and if he is represented

Section 11 & 12	by his council then the court will grant them a period of one week to file a reply after which if the court doesn't find him as an fugitive economic offender then all his properties will be released. If that individual fails to appear in the stipulated date then he will be declared as a fugitive economic offender.
CONFISCATION *Section 12*	If the alleged person is found to be a fugitive economic offender then the special court may confiscate all the properties which are acquired from the proceeds of crime, Benami property. All the rights of this confiscated property shall solely vest with the central government. The central government has all the right to dispose of these properties after 90 days of confiscation.
APPEAL *Section 17*	The offender, if unsatisfied with the order, may appeal to the High Court within 30 of the order

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